

WHAT IT MEANS TO BE A CONDITIONAL PERMANENT RESIDENT FOLLOWING MARRIAGE TO A U.S. CITIZEN

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by

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Background

An individual who receives legal permanent resident status (also known as LPR status or green card status) based on marriage to a United States citizen is considered a “conditional permanent resident” if the qualifying marriage took place within two (2) years of the date he or she receives permanent residence. Such an individual is required to file additional paperwork with the United States Citizenship and Immigration Service (USCIS) in order to maintain his or her permanent resident status. This article will explore what it means to be a conditional permanent resident and how to remove the conditional status.

The Law Defining Conditional Permanent Resident Status

Prior to 1986, an individual who obtained permanent resident status based on marriage to a U.S. citizen was not treated any differently than any other permanent resident regardless of when the qualifying marriage took place. A major change in the law occurred in 1986 with the passage of the “Immigration Marriage Fraud Amendments **of 1986**”. With the passage of that law, Congress made a major distinction based on when the marriage resulting in the green card took place. Under this law, an individual who receives permanent residence through a marriage which took place within 2 years of either the date of the adjustment of status or the date the individual was admitted to the U.S. based on an immigrant visa is considered a “conditional permanent resident”. If the marriage took place more than 2 years before the green card is received, the individual receives permanent residence without any conditional status. Such an individual receives permanent resident status which will not expire on given date. The individual will receive an alien registration card with a 10-year validity period. This simply means that in order to maintain proof of his permanent resident status, he must renew or replace his alien registration card at the end of the 10-year period. Failure to renew it does not result in the loss of permanent resident status. It simply means the person does not have proof of permanent resident status which may lead to practical difficulties in working or traveling back to the United States after a trip abroad.

If you obtain your permanent resident status based on marriage to a United States citizen, check your alien registration card to see when the card expires. If your card expires two years after the date you became a permanent resident, then you are a conditional permanent resident and must file additional paperwork to maintain your permanent resident status.

How A Conditional Permanent Resident Is Different Than Other Permanent Residents

In many ways, a “conditional permanent resident” is entitled to all of the rights and privileges of all other permanent residents. A “conditional permanent resident” can live and work in the United States on a permanent basis. He or she can travel outside the United States subject to the same rules and conditions as all other permanent residents. The major difference is that a conditional permanent resident can lose permanent resident status if an application to remove the conditional status is not filed with the USCIS within the appropriate time period. Subject to limited exceptions, in order to remove the conditionals on the permanent resident status, a conditional permanent resident and his or her spouse must jointly file a Form I-751 application package with the required supporting documentation with the USCIS within the 3-month period prior to the 2nd anniversary of the date he or she received permanent residence. It is extremely important that the conditional permanent resident remember these dates because the USCIS will not remind the conditional permanent resident. Failure to file in the required time period can result in the loss of permanent resident status and removal from the United States.

It is important to note that the application to remove the conditions (Form I-751) must be filed jointly. That being said, if the conditional permanent resident’s spouse cannot or will not sign the application, then the conditional permanent resident can file the application alone and request a waiver of the joint filing requirement. A waiver can be requested where: (a) the conditional permanent resident’s spouse is deceased; (b) the marriage was entered into in good faith, but the marriage was entered terminated through divorce or annulment; (c) the marriage was entered into in good faith, but the conditional permanent resident has been battered or subjected to extreme cruelty by his or her spouse; or (d) the termination of the conditional permanent resident’s status and his or her removal from the United States would result in an extreme hardship.

A conditional permanent resident should consider using a qualified immigration attorney to prepare the required package and to timely file the required package since the failure to properly file can result in the loss of permanent resident status and removal from the United States.

The Rationale for Treating Conditional Permanent Residents Differently

I am often asked why the immigration officials require a conditional permanent resident to file additional paperwork after having already obtained the green card. The simplest explanation is the USCIS wants to take a second look at the marriage to determine that the marriage is real and bona fide (i.e., not a fake or fraudulent marriage). Essentially,

the rationale is that, if your marriage was entered into only a short time before you got the conditional green card status, then there is a chance that USCIS could have made a mistake at your first adjustment of status interview when it approved your case. The law requiring the conditional permanent resident to file a separate application package within the 3-month period prior to the 2nd anniversary of the date permanent residence was granted gives the USCIS another opportunity to evaluate the bona fide nature of the marriage.

Conclusion

It is important for an individual who gains permanent resident status through marriage to a United States citizen to determine if he or she is a “conditional” permanent resident. While a conditional permanent resident is similar to any other permanent resident, there is a one crucial distinction – the requirement to file a separate application package in order to remove the conditions on the permanent resident status. Failure to do so properly can result in termination of permanent resident status and removal from the United States.

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