

UNDERSTANDING CONDITIONAL PERMANENT RESIDENT STATUS
BASED ON MARRIAGE TO A U.S. CITIZEN



by

Kristen A. Chang and David J. Long
Long, Chang & Associates, L.L.P.
4915 Piedmont Parkway, Suite 103
Jamestown, NC 27282
Phone: (336) 855-5700
www.longchangonline.com

As a result of the Immigration Fraud Amendments Act of 1986, an individual who obtains permanent residence based on a marriage that was less than two (2) years old at the time the permanent resident status was granted obtains “conditional permanent residence”. This individual will receive only a Permanent Resident Card with a 2-year validity period as opposed to the traditional 10-year validity period for all other permanent residents. This applies to both the spouse who obtains the conditional permanent resident status through marriage to a U.S. citizen and any child who also obtains conditional permanent resident status based on that marriage.

A conditional permanent resident has the same rights and privileges as any other permanent resident. He or she has the right to live and work in the United States on a permanent basis and can petition for his or her children. The key difference is that a conditional permanent resident must file a Form I-751 (Petition to Remove the Conditions on Residence) in order to remove the conditional basis of his or her permanent resident status. USCIS will not remind the conditional permanent resident of when to file. A conditional permanent resident who does not file the Form I-751 on time can lose his or her permanent resident status.

Generally, the Form I-751 Petition is supposed to be filed jointly by the conditional permanent resident and his or her spouse during the 90-day period prior to the expiration of the 2-year Permanent Resident Card. At that time, the Form I-751 and its filing fees should be submitted to the appropriate USCIS Service Center, along with evidence of the bona fide nature of the marriage. This evidence must prove to an immigration officer that the marriage upon which the conditional permanent resident status is based is a real, good faith marriage as opposed to a marriage that was entered into for the purpose of obtaining a green card (also known as a “sham” marriage.)

Evidence of a good faith marriage typically includes some or all of the following items which can be used to demonstrate that the conditional permanent resident and his or her spouse have lived together and are still living together as husband and wife:

- Birth certificates of children born during the marriage;
- Proof of residence together (apartment lease or home ownership in both names);

- Utility bills;
- Joint bank account statements;
- Credit cards;
- Medical insurance;
- Life insurance;
- Automobile insurance;
- Family photos;
- Evidence of trips together (airline tickets, passport stamps, etc.);
- Any other evidence that the couple is living together in a real marital relationship.

A conditional permanent resident and his or her spouse should gather as much of the foregoing evidence for the duration of the marriage so that it can be presented in good faith as part of the Form I-751 Petition.

While the general rule is that the Form I-751 Petition should be filed jointly, the conditional permanent resident can file the Form I-751 alone (without his or her spouse) and request a waiver in the following limited circumstances:

- Death of the spouse of the conditional permanent resident;
- Extreme hardship to the conditional permanent resident if he or she were removed from the United States;
- The marriage was entered into in good faith but the marriage has been terminated (i.e., there must be a final divorce as opposed to just a marital separation); or
- The marriage was entered into in good faith but the conditional permanent resident spouse or child was battered by or subjected to extreme cruelty caused by the other spouse.

The conditional permanent may be interviewed by the USCIS along with his or her spouse (where the Form I-751 Petition is filed jointly). If the Form I-751 is approved, then the conditional nature of the permanent resident status is removed and the permanent resident will receive a 10-year Permanent Resident Card.

Kristen A. Chang and David J. Long are attorneys in the immigration law firm of Long, Chang & Associates, L.L.P. Ms. Chang and Mr. Long are members of the North Carolina State Bar and the American Immigration Lawyers Association (AILA). Ms. Chang is fluent in both the Korean and English languages. Mr. Long has been certified by the North Carolina State Bar as a Specialist in Immigration Law. They may be reached via telephone at (336) 855-5700 or via e-mail at info@longchangoonline.com.

This article should not be taken as legal advice for any individual case or situation. This information is intended to be general and should not be relied upon for any specific situation. For legal advice, consult an attorney experienced in immigration law.