

Implementation of the Supreme Court Ruling on the Defense of Marriage Act

Statement from Former Secretary of Homeland Security Janet Napolitano:

“After last week’s decision by the Supreme Court holding that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional, President Obama directed federal departments to ensure the decision and its implication for federal benefits for same-sex legally married couples are implemented swiftly and smoothly. To that end, effective immediately, I have directed U.S. Citizenship and Immigration Services (USCIS) to review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse.”

Frequently Asked Questions

Q1: I am a U.S. citizen or lawful permanent resident in a same-sex marriage to a foreign national. Can I now sponsor my spouse for a family-based immigrant visa?

A1: Yes, you can file the petition. You may file a Form I-130 (and any applicable accompanying application). Your eligibility to petition for your spouse, and your spouse’s admissibility as an immigrant at the immigration visa application or adjustment of status stage, will be determined according to applicable immigration law and will not be automatically denied as a result of the same-sex nature of your marriage.

Q2: My spouse and I were married in a U.S. state or a foreign country that recognizes same-sex marriage, but we live in a state that does not. Can I file an immigrant visa petition for my spouse?

A2: Yes. As a general matter, the law of the place where the marriage was celebrated determines whether the marriage is legally valid for immigration purposes. Just as USCIS applies all relevant laws to determine the validity of an opposite-sex marriage, we will apply all relevant laws to determine the validity of a same-sex marriage. The domicile state’s laws and policies on same-sex marriages will not bear on whether USCIS will recognize a marriage as valid.

<https://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>