

Selected Family Court Deadlines That Affect Immigration

Adoptions

To establish a parent-child relationship for immigration purposes, adoptions must be completed before a child reaches age 16.¹ The deadline of age 16 is relaxed only where more than one sibling is adopted. In such instances, the adoption of at least one sibling must be completed before the age of 16 and all others must be completed before the age of 18.²

Creation of a Parent-Child Relationship through Marriage

For immigration purposes, stepchildren are treated as all other children. A marriage that occurs prior to the child reaching age 18 creates a parent-child relationship for immigration purposes. 8 U.S.C. § 1101(b)(1)(B). In some instances, for immigration purposes this relationship may survive a subsequent dissolution of the marriage that created it.

Special Immigrant Juvenile Status for Court Dependents

Juveniles who are deemed “dependent on the juvenile court” by placement in foster care, delinquency or through certain guardianships or adoptions may qualify for legal permanent residence status as special immigrant juveniles. Under current regulations, the court must retain jurisdiction until the Bureau of Citizenship and Immigration Services actually grants permanent residency.³ In some instances this may require the court to retain jurisdiction longer than it normally would.

Marriage and Divorce

A marriage, if bona fide at inception, continues to exist for immigration purposes until a divorce judgment is entered. The issue is intent at inception, not the current state of the marital union, even if the couple is separated or if divorce proceedings are pending. Continuing viability of the marriage simply is not required to establish a relationship for immigration purposes.⁴

¹ 8 U.S.C. § 1101(b)(1)(E)(i).

² 8 U.S.C. § 1101(b)(1)(E)(ii).

³ 8 C.F.R. § 204.11(c)(5).

⁴ “[I]t has long been established that that the nonviability of a marriage at the time of adjustment is not a permissible basis for denying a petition.” Hernandez v. Ashcroft, 345 F.3d 824, 846 (9th Cir. 2003); Matter of Boromand, 17 I. & N. Dec. 450, 454 (BIA 1980) (“[T]he denial of an adjustment of status application or the subsequent rescission of such a grant cannot be based solely on the nonviability of the marriage at the time of the adjustment application.”); United States v. Qaisi, 779 F.2d 346, 348 (6th Cir. 1985) (“Decisions from the Immigration and Naturalization Service and the district courts have universally

Divorce Triggers Two-Year Period for VAWA Application

Some spouses and children who are abused by a U.S. citizen or legal permanent resident spouse or parent may qualify to “self-petition” for legal immigration status under the Violence Against Women Act (VAWA). An application may be filed even after separation or divorce, but it must be filed within two years of a divorce.⁵

Conditional Residence

Persons who enter the United States as or adjust status to legal permanent residents on the basis of a marriage that is less than two years old receive “conditional” residency.⁶ Two years after acquiring this conditional status, the wife and husband are required to file a joint petition to remove the condition.⁷ If it is not possible to petition jointly, the conditional resident may qualify for a hardship waiver of the requirement.⁸

held that the viability of a marriage is not a material factor in deciding to confer or deny an immigration benefit.”).

⁵ 8 U.S.C. § 1154(a)(1)(ii)(II)(aa)(CC)(bbb).

⁶ 8 U.S.C. § 1186a(a)(1).

⁷ 8 U.S.C. § 1186a(c)(1).

⁸ 8 U.S.C. § 1186a(c)(4).