



SUPREME COURT OVERTURNS DOMA: HOW THE DECISION WILL AFFECT IMMIGRATION BENEFITS TO SAME-SEX COUPLES

On June 26, 2013, the U.S. Supreme Court struck down section 3 of the Defense of Marriage Act (DOMA) as unconstitutional. Section 3 previously limited the federal definition of marriage to be a legal union between a man and a woman. As a result, legally married same-sex couples will soon be eligible to apply for the same Federal benefits that have been available to opposite-sex married couples, including immigration benefits. While the ruling removes a barrier to immigration benefits for same-sex couples, only those same-sex couples whose marriage is legally recognized by the state of celebration will be eligible for these benefits.

New guidance is expected from the Department of Justice (DOJ) and U.S. Citizenship and Immigration Services (CIS) regarding the Supreme Court's decision, however, it is anticipated that legally married same sex couples will be eligible for the same immigration benefits as opposite-sex married couples including:

- Filing an immigrant visa petition for a same-sex spouse.
- Obtaining a derivative nonimmigrant visa for a same-sex spouse(i.e. H-4, L-2, TD, etc.)
- Eligibility as a derivative family member for family and employment based permanent residence processes.
- Claiming a same-sex spouse as a qualifying relative when applying for Cancellation of Removal or Suspension of Deportation, waivers of inadmissibility, or asylum status.
- Eligibility for protection under the Violence Against Women Act, if the abuse occurred at the hands of the same-sex spouse.

In addition to these benefits going forward, same-sex spouses who have had their I-130's previously denied may be allowed to file a request to CIS to have their cases reopened in light of the ruling.

In sum, this landmark decision paves the way for same-sex couples to obtain the same immigration benefits as have always been provided to opposite-sex couples. Once the DOJ and CIS provide guidance on the Court's decision, we can expect to receive similar direction from other government entities, such as the US Department of State. If you have any questions regarding these changes, please contact your FosterQuan immigration attorney for more information.

Before the Supreme Court acted, roughly 36,000 American citizens were specifically barred from applying for green cards for their same-sex spouses. But following the ruling, Secretary of Homeland Security Janet Napolitano confirmed that any legally valid marriage of a

U.S. citizen would be recognized for immigration benefits. If immigration reform passes Congress, same-sex couples will automatically be covered by the new law without any extra debate or amendments.

As always, FosterQuan will continue to monitor regulations and procedures and will provide additional information in future Immigration Updates©, and on our firm's website at www.fosterquan.com.