

Love, Marriage
&
Green Cards

Immigration to the United States
as the husband or wife of
an American Citizen

English Edition

Stephen J. Zawacki, Esq.

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*Love, Marriage & Green Cards:
Immigration to the United States as the husband or
wife of an American Citizen*

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This publication is designed to provide accurate information, not legal advice. For legal advice, be sure to consult with a qualified attorney who is experienced in American immigration law. Also, immigration law is very dynamic and changes often.

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INTRODUCTION

Love, Marriage and Green Cards!

Do I love him enough to marry him?

Does he love me for me - or because I can get him a green card?

What if she doesn't get her green card?

For U.S. citizens and lawful permanent residents (called "LPRs"), United States law allows them to petition for their husbands and wives to come to the U.S.A. and receive lawful permanent residence ("Green Card") status. Once granted, the "Green Card" allows a person to live indefinitely and work in the USA, providing the person obeys U.S. law and stays out of trouble.

The history of the "Marriage Green Card" has been a stormy one. The fear of introducing any communicable diseases into America, the exploitation of young Americans living temporarily overseas by schemers who only want to get across the border, and ethnic prejudices have all affected what is written into U.S. immigration law and how the law is interpreted by government officials, attorneys and judges.

United States immigration law is contained within the Immigration and Naturalization Act (INA). This law has seen many revisions over the years. As the American economy and foreign policy changes, so often does the INA get amended.

The INA supposedly provides a streamlined and orderly process to allow foreign-born spouses of Americans and Lawful Permanent Residents (LPRs) admittance into the United States as immigrants. However, the “Green Card” process is far from being streamlined, and is often compared to a dirt road, full of potential potholes and detours.

Both American citizens and lawful permanent residents (LPRs) can sponsor their spouses for immigration visas. However, there is a major difference - spouses of U.S. citizens can get an immediate visa and entry into the USA, while spouses of LPRs are placed on a “waiting list” that can take many years before a visa is available for them.

This book acts as a narrative map down the "Marriage Green Card" road. Accompanying us will be our guides - two typical private persons who will travel down the marriage road and the U.S. Government officials who will be the "immigration traffic police" they will encounter.

Our marriage-minded persons are *Miss Freda Foreigner* and *Mister Chester Citizen*.

Miss Freda Foreigner can be described as a woman in love with a U.S. citizen. She plans to marry her American boyfriend and move to the United States as his spouse. Miss Foreigner has never been a resident of the United States and this is her first experience with the American immigration system.

Mister Chester Citizen is typical of an American citizen in love with a woman who is a citizen and resides in another country. He plans to marry his foreign girlfriend. This is also Mister Citizen's first experience with the American immigration system.

((Note; While our players are shown as American and LPR males and a non-American female, the roles could just as easily been reversed. The examples within this book were chosen as those most commonly encountered.))

As with most bureaucracies, there are many activities that can be effectively accomplished by one government agency, but oftentimes more than one agency finds itself with some but-not-all of the responsibilities. These responsibilities may overlap, and there can be

rivalries between the agencies as to whose rules apply in a given situation. Immigration is one of those unfortunate activities.

The Department of Justice's Immigration and Naturalization Service (INS) handles all immigration processing that is originated in the United States.

The Department of State's Consular Affairs Branch has the honor of performing immigration processing at all U.S. embassies and consulates worldwide.

So, the agency with processing responsibility varies, depending whether the particular stage of the processing is to be done within the United States or outside (such as an embassy or consulate).

Agent America shall be our generic government official. He (or she, depending on the locale) may be an INS Agent in the United States, or "Consular Officer" at a U.S. embassy or consulate. It is his/her job to conduct interviews, process the paperwork and make judgment calls on the truth or falsity of statements or evidence given to him/her by our lovebirds.

**This book is divided
into seven chapters.**

Chapter One describes what *is* a marriage in the eyes of the American immigration system.

Chapters Two through Five cover specific time frames in the immigration-processing of a marriage-based visa: *Courtship and Marriage, Forms Preparation, The Marriage Interview* and *Denials*.

Chapter Six discusses fiancé visas - what they are and how they work.

Chapter Seven provides some typical "questions and answers" to marriage-related immigration topics.

So, onward we go.....

CHAPTER ONE

An American Marriage, Immigration Style

The Law

The United States immigration law allows American citizens to sponsor their spouses for an immediate visa and entry into the United States.

American immigration law also allows lawful permanent residents (LPRs) to sponsor their spouses. These spouses must wait until a visa is available before they can enter the United States. Unfortunately, this waiting period can be many years.

All marriage-based immigrant petitions center on whether the marriage is a legitimate one, or the marriage happened solely so that Miss Foreigner can get a green card.

The Government's Decision

Agent America has a crucial decision to make and that decision is based mainly on the answers to the following two questions:

- Is Miss Foreigner's and Mister Citizen's

relationship "*real*," in the sense that the two spouses have known each other long enough and have shared enough experiences to truly be in love and committed to marriage?

- Is their relationship a "*sham*," in the sense that the lovebirds are simply trying to fool Agent America in granting Miss Foreigner entry into the United States?

If Agent America's decision is that the marriage is a "*real*" marriage, then the processing of Miss Foreigner's immigrant visa will occur without delay.

If Agent America believes that a "sham marriage" exists, or that there is a strong potential that a "sham marriage" *may* exist, then our lovebirds have a serious problem. First of all, *at a minimum* the processing will take a lot longer, and also become much more expensive to our lovebirds.

Second, and more importantly, if Agent America can prove that a sham marriage has happened, then Miss Foreigner may be permanently banned from ever getting a green card, and Mister Citizen may be criminally prosecuted for committing fraud upon the American Government!

The facts and information available to Agent America, both in the documents provided during the petitioning process and the testimony given during interviews, shall determine what this decision will be.

Real or Sham Marriage

A newspaper ad looking for a spouse, and willing to pay \$1,000.00 for a “quickie marriage...”

One friend “helping” another by a “marriage in name only...”

An “arranged marriage” where the spouses don’t live together...

Sham relationship scams have been popular for many years, and the Agent Americas of the world have a lot of experience in recognizing these scams. Miss Foreigner and Mister Citizen may think they can convince Agent America in believing a relationship exists where there is none. This would be foolhardy!

Agent America has the benefit of a lot of training in how to recognize sham marriage scams, and probably has years of experience in evaluating other marriage-based petitions.

While our government agent may occasionally be fooled, it is only *occasionally*.

If our lovebirds try to fool Agent America, *and get caught trying*, they must remember that the penalties for immigration marriage fraud can be a fine of up to US\$ 250'000 and up to five years in jail! Also, Miss Foreigner can be banned from ever coming into the United States for the rest of her life!

The Agent America personnel are immigration professionals, and our lovebirds are immigration amateurs. Who usually wins in any contest between an amateur and a professional? Enough said!

Throughout the immigration process, the lovebirds will have to prove the sincerity and validity of the marriage. It is *not* the responsibility of Agent America to prove the marriage was created solely to get an immigration benefit. The burden of proof that the marriage is “real” falls on our lovebirds. That means our lovebirds will need *evidence* to prove their case.

We don't often think of a marriage as needing evidence to prove itself to others, but in the case of gaining a benefit from the American immigration system, this evidence is *critical*.

Agent America probably has never met either of our lovebirds before. Therefore, the agent's first opinions will be made only on the paperwork provided.

Examples of Agent America's initial questions are:

- 1) *How much time has elapsed between when the spouses first met and the date of the marriage?*
- 2) *What is the age difference between the spouses?*
- 3) *Is this a "cross-cultural" marriage?*
- 4) *How much time have the spouses spent much time together before the marriage?*
- 5) *Was the marriage "brokered?"*
- 6) *How many times has each spouse been married?*
- 7) *Has Miss Foreigner ever been previously married to an American?*

Oftentimes, when a person asks a question, a liberal answer with a lot of details is ex-

pected. However, what usually happens is that the person answering the question only wants to provide the minimum information possible to the question.

Most likely, Miss Foreigner will be angry and embarrassed when Agent America asks questions about intimate details of her relationship with her new spouse. Mister Citizen will also be upset that Agent America is peeking too closely into the couple's private lives.

Both Agent America and our lovebirds are in a no-win situation. Agent America must make a decision based on facts and experience, while our lovebirds don't want their private lives a matter of public record and scrutiny.

In the end, the question is, who will lose the most in this battle of wills?

For Agent America, this interview is a "business as usual" situation. Agent America will not lose his job or any money over a bad decision. Agent America only has to answer to his/her supervisor, and the standard practice is to make conservative, non-controversial decisions.

Agent America will not stick his/her neck out on any decision, no matter if Mr. Citizen threatens him or Miss Foreigner may beg.

Miss Foreigner and Mister Citizen, on the other hand, have a lot at stake. The cost of maintaining separate households, travel plans, and many other factors will be impacted if Agent America is not satisfied with the answers to his/her questions. While there is a desire to maintain their privacy, the reality of the need to get this process “over and done with” normally determines how the couple will respond.

There is no mandatory time requirement forcing Agent America to make his/her decision by a given date. Agent America is free to take as much time as s/he believes is necessary to thoroughly examine the facts of each case. Miss Foreigner's processing time can be lengthened by several months (even years!) if Agent America stalls, or worse yet, make a ruling that the marriage is a "sham marriage."

Many people have found that having a consultation with an experienced immigration attorney *before* submitting any petition for Miss Foreigner is money well spent. Some people, even before the marriage occurs, discuss the situation of both potential spouses with an immigration attorney. The idea is, a little planning in the beginning is better than a lot of reaction (and cost) later.

A determination of a "sham marriage" should not be taken lightly. The penalties, long and short term, are severe and long-lasting.

CHAPTER TWO

Courtship and Marriage

Marriage is supposed to be a lifetime commitment made between two persons to love, honor and protect the other. In the American Government's viewpoint, a marriage commitment also requires that persons have previously been in a relationship that:

- 1) has developed over a "reasonable" period of time; and
- 2) has involved "reasonable" personal contact between the persons.

The term "reasonable" is a legal word of art, and the interpretation of this word often varies from case to case. Since every culture and ethnic group has a different concept of what a courtship involves, "reasonableness" in the romantic development of the couple's relationship can require a lot of analysis.

In several cultures, a courtship is a very structured activity involving considerable ritual and family interaction. It may take many months, sometimes years, to ripen into a personal relationship leading to marriage.

In other cultures, the amount of contact between the potential marriage-mates is much more spontaneous. For some culture the amount of time potential spouses may spend together before marriage may be very brief. This is especially true when the marriage may have been arranged through family intermediaries or marriage-brokers.

Agent America must take these differences into account when determining “reasonableness,” especially regarding the length of time that Miss Foreigner and Mister Citizen know each other or are together.

What Agent America tries to determine is whether the relationship would exist if there was *no need or desire* for a United States green card.

In other words, would Miss Foreigner and Mister Citizen still get married if Miss Foreigner did not have to become a lawful permanent resident in order to live with her husband?

If the answer is “Yes,” then Miss Foreigner is well on her way to receiving a shiny new American immigrant visa in her passport.

If the answer is “No,” then Miss Foreigner will not get her immigrant visa.

Also, if the Agent America believes the lovebirds were intentionally trying to break any immigration laws, then Mister Citizen may be prosecuted for attempting to defraud the American Government.

So, the most effective way to prove the legitimacy of a marriage involving an American Citizen and a foreigner is to have *evidence* proving that a solid relationship existed prior to the marriage.

Evidence of a relationship can take many forms. The most common types of evidence are:

- Letters and Correspondence
- Tickets and Receipts
- Photographs
- Affidavits

The evidence does not have to be perfect. There is no need for the proof of the relationship to document every emotional moment of our lovebirds' lives. Indeed, if the proof was that perfect, Agent America may not believe it and may want to research the authenticity of several items.

People just don't keep perfect records on their love lives! So, if the proof reads like a romantic bestseller, then it will raise a questioning eyebrow as probably being fabricated especially for Agent America.

Remember, Agent America is only human. S/he simply want to feel comfortable in his/her determination as to the "bona fides" of the relationship. S/he doesn't want to know all of the intimate details of our lovebirds' courtship.

As long as there are no glaring deficiencies in our lovebirds' evidence, and there aren't obvious contradictions, our lovebirds will receive the paternal blessing of Uncle Sam!

Letters and Correspondence

The romantic in Agent America believes that people in love write letters to each other. The existence of love letters written by Miss Foreigner and Mister Citizen during their relationship, or a relationship in the making, provides proof that they have known each other during the letter-writing period.

In today's Internet-driven world, e-mail has replaced handwritten correspondence for many people.

Copies of e-mails can also be given to Agent America if e-mail between the lovebirds has been exchanged.

Now, Agent America is not naive. Many people have tried to fool Agent America by creating “evidence” that is untrue. Everything given to Agent America will be examined in some manner to determine if the evidence is authentic. Examples of the types of examinations Agent America can conduct are:

- A check of letters to see if the dates correspond to any information provided on Miss Foreigner's visa petition.
- Questions will be asked about the contents of these letters during Miss Foreigner's marriage interview.
- A check of postmarks on envelopes to verify dates and locations.
- A check to see any other obvious errors such as letters written by both persons which use the same paper, ink or typewriter.
- A check of e-mail routing symbols to see if they are accurate.

- A comparison of each person's handwriting. As silly as it may seem, people have shown Agent America different letters supposedly written by each of the lovebirds, however all the letters written are in one person's handwriting!

If the only letters available were written solely by Miss Foreigner (or Mister Citizen), the odds of the letters being believed by Agent America as legitimate are not good. Letters from *both* persons provide much greater credibility of the existence of a relationship. If available, the envelopes, since they have dated postmarks and return addresses, provide substantial evidence of the legitimacy of the letters.

So, Miss Foreigner and Mister Citizen need to keep all their letters and cards. Chances are, these letters may have more than personal value. They may become the proof which satisfies Agent America that our lovebirds' relationship is *reasonable* to result in marriage.

Tickets and Receipts

Letters between persons are nice, but if Miss Foreigner and Mister Citizen have proof that they have been together anywhere at any time, that's even better. Agent America has a diffi-

cult time believing that people who never have been physically in the presence of each other can develop a personal relationship strong enough to declare undying love and a desire to marry.

One of the most important checklist items for Agent America is to verify that the lovebirds have indeed been recently together *at least once prior to the decision to marry*, preferably within the past year.

Let's suppose that Miss Foreigner and Mister Citizen first met in Paris. They met again at a later date, during a rock concert in London. They also vacationed together in Cancun and Tahiti. As a result of all of these travels and joint adventures, they should have:

- *receipts,*
- *ticket stubs,*
- *hotel bills,*
- *airline boarding passes,*
- *passport stamps*
- *photographs, and*