

Legal Matters



INFORMATION FROM THE LAW FIRM OF MURPHY DESMOND S.C.

Immigration Impact: United States Supreme Court Ruling on DOMA

On June 26, 2013, the U.S. Supreme Court in a 5 to 4 decision struck down a key Section of the 1996 Defense of Marriage Act (DOMA) in *United States v. Windsor*, 570 U.S. ____ (2013). By striking down Section 3 of DOMA, legally married same-sex couples are now eligible for over 1,000 federal benefits, including immigration. Official, individual guidance is expected from the myriad federal agencies impacted by this ruling. However, initial information released by the U.S. Department of Homeland Security (DHS), Citizenship and Immigration Services (USCIS) indicates the agency will favorably adjudicate qualifying I-130 Petitions for Alien Relative filed by legally married same-sex couples. This would allow, for the first time in U.S. history, foreign nationals to immigrate based on bona fide same-sex relationships.

Legal Background

At issue in *United States v. Windsor* was a same-sex couple residing in New York, who were legally married in Ontario, Canada in 2007. When one spouse died in 2009, leaving her entire estate to her wife, the surviving spouse sought a federal estate tax exemption. However, Section 3 of DOMA prohibited the Internal Revenue Service (IRS) from extending the federal estate tax exemption because the term "spouse" only applied to a marriage "between one man and one woman." Thus, the IRS denied the exemption and compelled the surviving spouse to pay \$363,053 in estate taxes. The case made its way through the federal

courts, and eventually arrived before the U.S. Supreme Court, which reached a decision on June 26, 2013.

Impact of U.S. Supreme Court Decision

The *Windsor* ruling overturning Section 3 of DOMA signifies that legally married same-sex couples are no longer excluded from over 1,000 federal benefits and programs, including immigration benefits for spouses.

After the Supreme Court ruling, DHS Secretary Janet Napolitano released a brief statement and Q&A on July 2, 2013, confirming that legally married same-sex couples can now file I-130 Petitions for Alien Relative with DHS/USCIS. However, the preliminary guidance issued by USCIS does not address how this federal agency will adjudicate I-130 Petitions from legally married same-sex couples domiciled in states where same-sex marriage is not recognized.

Board of Immigration Appeals (BIA) Opinion

On July 17, 2013, the BIA issued a precedent decision in *Matter of Zeleniak*, 26 I&N Dec. 158 (BIA 2013), relating to Section 3 of DOMA. In *Matter of Zeleniak*, the BIA took the position that a marriage is valid under the laws of the state where it was celebrated, considering the same-sex marriage of a couple who reside in a non-marriage-equality state, and who traveled to a different jurisdiction to marry. The subsequently filed I-130 Petition for

Alien Relative, on appeal to the BIA, was determined to be based upon a legally valid marriage. The BIA remanded the I-130 to the USCIS Field Office in Newark to rule on the remaining merits of the case (i.e. whether evidence shows that the couple entered into a bona fide marriage), and issue a new decision.

Conclusion

USCIS will likely issue guidance in the near future allowing case adjudicators to approve petitions filed by same-sex couples based on the laws where the marriage was celebrated, not the laws of where the couple resides. Even so, the issue remains complicated by various statutes currently on the books in dozens of states. Until further guidance is published, it remains to be seen how the *Windsor* ruling will ultimately affect the adjudication of I-130 Petitions in certain non-marriage equality states. However, given the recent decision from the BIA in *Matter of Zeleniak*, we remain hopeful that USCIS will fully implement the recent U.S. Supreme Court ruling striking Section 3 of DOMA.

U.S. Jurisdictions Where Same-Sex Marriage is Legal

California	Minnesota
Connecticut	New Hampshire
Delaware	New York
Iowa	Rhode Island
Maine	Vermont
Maryland	Washington
Massachusetts	Washington D.C.

Murphy Desmond Can Help: If you have questions about your or a loved one's immigration options in light of the recent Supreme Court decisions, the Lopez Immigration Law at Murphy Desmond team can help. Our attorneys are members in good standing of the American Immigration Lawyers Association (AILA), and Immigration Practice Leader, Glorily Lopez, is a past Chair of the AILA Wisconsin Chapter and previously served on the AILA Board of Governors at the national level. Contact Murphy Desmond today to schedule an initial consultation, by telephone at (608) 270-5550 or by email at infoimmigration@murphydesmond.com.