

*Filing a Form I-751 Waiver of the Joint Filing Requirement of the
Petition to Remove Conditions on Residence*

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September 2006

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The I-751 waiver is a special application available to some immigrants who obtain conditional permanent residence (sometimes called a “2-year greencard” or “temporary greencard”) through marriage to a United States citizen, but who are unable for some reason to file a joint request with their spouse for their permanent residence (also known as a “permanent greencard”).

In the following pages, you will find information about:

- who is eligible to file an I-751 waiver
- what evidence you should gather to support your case

The information in this packet does not constitute legal advice. Do not submit anything to the immigration services without first talking to an immigration attorney or another legal representative.

Please be aware that the most important thing in this process is your personal safety. Never put yourself or your family in danger in order to get evidence for your case. Under most circumstances, if you can explain clearly and honestly why you are not able to present a specific document, USCIS will understand and make an exception. Always discuss with your representative anything that may be worrying you about your case.

Immigration law is complex, convoluted, and in a constant state of changing. That is why groups like Northwest Immigrant Rights Project (NWIRP) exist in various parts of the United States to help immigrants understand and pursue their rights. **No one should present documents to U.S. Citizenship and Immigration Services (USCIS), formerly known as the INS, without legal assistance or representation from an expert in these particular areas of immigration law.** If anything in these pages or any part of this process is unclear to you, please consult with an attorney.

A. ELIGIBILITY AND APPLICATION PROCESS

This section discusses the situations in which an I-751 waiver may be needed.

1.) What is conditional residence?

Conditional residence is the immigration status granted to an immigrant who has applied for their green card within two years of getting married to a United States citizen. The immigrant spouse will be a conditional resident for two years from the time conditional residence is granted.

2.) What rights does a conditional resident have?

A conditional resident has the same rights as a lawful permanent resident. A conditional resident can live in the United States, work in the United States, and can travel outside the United States. There are certain reasons why USCIS may terminate a conditional resident's status, including when a conditional resident has been convicted of certain crimes. If you have ever been arrested, it is extremely important to discuss this with your legal representative.

3.) How do I remove the conditions on residence?

Within 90 days prior to expiration of the conditional green card, both the immigrant spouse and the United States citizen spouse must file an application with USCIS to remove the conditions on the immigrant spouse's residence. This application is called a Form I-751, Application to Remove the Conditions on Residence. Under certain circumstances, USCIS can choose to waive the 90 day requirement.

4.) What if I can't file the application to remove the conditions on residence with my spouse?

There are certain situations in which a conditional resident may not be able to depend on their spouse to help them file the Form I-751, Application to Remove the Conditions on Residence. The conditional resident may apply for an I-751 waiver of the joint filing requirement by filing the Form I-751 alone (indicating that requesting waiver of joint filing requirement called an "I-751 Waiver" if they can show:

- That they entered into the marriage in good faith, but that the marriage was terminated in divorce; and/or
- That they entered into the marriage in good faith, but the marriage was terminated due to the death of the United States Citizen spouse; and/or
- That she entered into the marriage in good faith, and that she was subjected to physical battering and/or extreme mental cruelty; and/or
- That she would suffer extreme hardship if returned to her country of origin.

Please note that if you are filing an I-751 waiver, you do not have to show your eligibility under all grounds. At the very least, you must meet one of the grounds of eligibility. For example, if you entered into your marriage in good faith and were abused by your spouse but you are not yet divorced, you are eligible under the second ground. If you entered into your marriage in good faith, and were abused by your spouse, and your marriage ended in divorce (with a final divorce decree) during the period of conditional residence, you are eligible under both the first and second grounds. If you meet more than one ground, you should mark more than one box on the Form I-751.

B. DOCUMENTING YOUR I-751 WAIVER APPLICATION

Following is an explanation of each element and how you can prove your case.

1.) How can I prove that my marriage is “good faith” and I did not get married just to get immigration papers?

There are several ways to prove this. The following documents are examples of what you can provide as proof that your marriage was in good faith. Please note that this list is not exhaustive, you may have other documents that prove your marriage was in good faith.

- A “personal declaration” in which you describe, in great detail, how you met your spouse, why you got married, and the feelings that you had or still have towards him or her, and why.
- If you and your spouse have a child or children together, present the birth certificate for each child.
- Wedding pictures and/or photographs of other moments when you and your spouse, and/or other members of your families and friends have been together.
- Declarations (formal letters) from people who know you and your spouse and who can affirm that your marriage was based on sentimental or cultural ties, who witnessed your marriage ceremony or who knew you as a married couple. These letters should include as many details as possible.
- Letters that you received from your spouse while you were dating, separated, or during any other stage of your relationship.
- Letters from people addressed to both you and your spouse, or in which the person who wrote the letter refers to both of you as a couple.
- Papers with the names of both you and your spouse that show that you bought a car, a house, furniture, or something else together.
- A rental agreement for your house or apartment with both of your names on it, or a letter from the building manager or owner proving that you lived together.
- Letters or statements from a bank that show that you had or have a savings or checking account together.

- Insurance papers that show that you were or still are covered by your spouse's insurance plan, or that your plan covers or covered him or her.
- Bills, such as electricity, water, heat, cable TV, phone, or others that show both you and your spouse's names.
- Income tax papers that show your name and your spouse's name.
- An identification card that shows that you use your spouse's last name.
- Applications or membership cards for video clubs, grocery stores or similar businesses, that show joint membership for you and your spouse.
- Any other documents you can think of to show that you did not get married just to get immigration papers.

2.) How can I show that I am no longer married?

A document that shows your marriage has been terminated either through divorce, annulment, or death is evidence that you are no longer married. In most cases, this would be an order from a judge.

3.) How can I show that my spouse abused me physically or psychologically?

There are many different ways to show that your spouse abused you. The following is a list of possibilities:

- In your personal declaration, you should explain how your spouse treated you and/or your children. If your spouse has ever physically harmed or beaten you, describe those incidents. Be sure to include dates and descriptions of any injuries you sustained. If your spouse has threatened you in any way, including with deportation, separation from your children, death, or injuries to you or someone else, describe these threats. If he or she has made sexual demands on you; has denied you economic support; has kept you isolated; or engages in or has engaged in any other behavior that has made you fear for your own safety or for someone else's, write as much about this as possible. Try to write about how it made you feel when he has threatened, hit, insulted, or in any other way tried to control you. All of this will serve as evidence of abuse or extreme mental cruelty.
- If there are other people who know about the way your spouse or parent has treated you, you should present letters from these people. If there is no one you can ask to write a letter for you, be sure to explain why not in your declaration.
- If, at any time, you or someone else called the police because they suspected or knew that your spouse was hurting you, you should try to obtain the police report.
- Past or present court orders that prohibit your spouse from approaching you or your children.

- Hospital or clinic reports that show that you were physically assaulted and/or emotionally harmed by your spouse, even if you did not tell the person helping you the truth about how you got hurt.
 - If you or your children have attended a support group for survivors of domestic violence, or if you have or continue to see a mental health professional, the support group facilitator or therapist could write a letter to support your case. If you have received the assistance of a shelter or other center for survivors (victims) of sexual abuse or domestic violence, a staff member at the agency could write a letter regarding what he or she knows about your case.
- 4.) How can I show that I will suffer extreme hardship if I have to go back to my country of origin?**

One way to show you are eligible for an I-751 waiver is to show that you are afraid of what would happen to you if you were returned to your country of origin. In order to establish your eligibility under this provision, consider the following:

- In your personal declaration, explain what would happen to you if you had to return to your country of origin. For example, if you have been a victim of domestic violence or sexual assault, describe the physical and psychological consequences of the abuse you have suffered; the impact of the loss of access to United States courts and criminal justice system; your ongoing need for social, medical, mental health, or other supportive services; the existence of laws, social practices, or customs in your country that would punish you or your children for having been a victim of abuse, leaving the situation, or taking actions to stop the abuse; your abuser's ability to travel to the foreign country; the likelihood that the abuser's family, friends, or others would harm you.
- If there are other people who know about what would happen to you if you had to return to your country of origin, you should present letters from these people.

REMEMBER:

- ✓ **ALL DOCUMENTS MUST BE SUBMITTED IN ENGLISH OR HAVE AN ENGLISH TRANSLATION ATTACHED.**
- ✓ **YOU MUST INFORM USCIS OF YOUR CHANGE OF ADDRESSES WITHIN 10 DAYS OF MOVING TO A NEW ADDRESS.**
- ✓ **SEND ALL DOCUMENTS TO USCIS VIA CERTIFIED MAIL SO YOU CAN HAVE PROOF OF RECEIPT.**

C. WHAT WILL HAPPEN ONCE I HAVE GATHERED TOGETHER ALL OF THESE DOCUMENTS, FILLED OUT THE FORM I-751, AND PAID THE FILING FEE?

Once you have all of your paperwork together, your legal representative will make copies of everything and submit it, along with the Form I-751 and the filing fee (or a fee waiver request), to USCIS, via certified mail. Soon after, your representative should receive a receipt notice in the mail. The receipt notice will extend your conditional resident status for one year. During that year, you will be able to work and travel outside the United States.

Somewhere near the end of the year, USCIS may schedule you for an interview. Your representative will accompany you to the interview. At the interview, USCIS will probably ask you questions about your marriage, the abuse you suffered, and then decide whether to remove the conditions on residence, thereby granting you your lawful permanent residence outright.

(NOTE: As of September of 2006, the filing fee for the I-751 is \$205. Fees may change so please make sure you are submitting the correct fee)