

Obergefell Expands The Number Of Individuals Potentially Eligible To Apply For Immigration Benefits

Eileen Momblanco
08.24.2015

Obergefell effectively expands the number of individuals who would be eligible to submit immigration applications on behalf of a same-sex spouse because same sex marriage is now legal across the country, rather than in a handful of states. U.S. Citizens and Lawful Permanent Residents in a same-sex marriage with a foreign national can now sponsor their spouses for family-based immigrant visas, otherwise known as “green cards,” by filing a Form I-130 and any applicable accompanying applications. U.S. Citizens can also file fiancé visa applications if their future spouse lives abroad and does not currently have a visa. According to the U.S. Citizenship and Immigration Services (USCIS), such family-based applications will be determined according to applicable immigration law and the same-sex nature of the marriage will not be a basis for denial of the green card or fiancé visa application. Lastly, regarding nonimmigrant visas, the U.S. Department of State issued guidance confirming that same-sex spouses and their children are also equally eligible for “derivative visas.” For example, if one spouse has an H-1B Visa, the other could obtain an H-4 Visa, which is the visa for dependent spouses of H-1B Visa holders. Similarly, spouses of L-1 Visa holders would be eligible for an L-2 visa.

Attorneys

Eileen M. Momblanco

Practice Areas

Business Immigration