

Cross Border Business Law Blog

We're Married! Let's Move to the U.S.! – Bringing Your Foreign-Citizen Spouse Into the U.S. (July 2020)

on 8.11.16 | Posted in Immigration, Travel

It may be surprising, but moving to the U.S. with your foreign-citizen spouse is not as simple as you might imagine. If you are a U.S. citizen working abroad and considering moving back to the U.S. with your foreign-citizen spouse and/or children, it is never too early to begin planning for return to the U.S.

If you are living outside the U.S. and have a foreign-born spouse and/or children, it may have been quick and easy for them to travel to the U.S. on holiday. But moving back to the U.S. is an entirely different story, requiring government filings and significant lead time of as much as a year or even more.

The move back to the U.S. may be motivated by retirement, change of jobs, or changes in the political/economic/legal changes (such as the enactment of an exit tax) in the country of residence. We are sometimes contacted by U.S. citizens who have already quit their jobs and planned to move back to the U.S. within months, who have just realized that it is not as easy as going to the U.S. on holiday. For holidays, all that may be needed is a B-2 visa or an ESTA (Electronic System for Travel Authorization). But to establish permanent residence, two different government entities must usually take action on two sequentially-filed sets of documents, each of which can take months to review and act on before the next phase can begin.

We generally recommend that U.S. citizens whose family members do not already have the right to live in the U.S., by dual citizenship or having permanent resident status, begin the process of obtaining approval for the U.S. residence about a year or more in advance. By doing so, you can be virtually assured that all of the paperwork and approvals will have been completed by the time your moving date arrives.

U.S. Filing

The process most often starts with a filing in the U.S. (In a few countries, the process begins and ends much more quickly in the country of residence). The U.S. citizen must submit a Petition for Alien Relative, Form I-130 in the U.S. That filing includes documents signed by both the U.S. citizen spouse and the foreign spouse and children. Processing times vary, but it can

often take up to about five months for review and action. Expediting is not a normal option.

It is only upon approval that the foreign-born spouse and children are able to begin the process in the country of current residence. That part of the process varies greatly in the amount of time it takes, but it is often three to six months or more. Expediting is sometimes allowed, but only at the discretion of the government. Some people begin the process as much as two years in advance to be able to be assured of greater flexibility. If started that early, it is possible to control the process and timing of important decisions. The system allows the parties to take up to several years to complete the process.

Only after both processes have been completed, with approvals by both U.S. Citizenship and Immigration Services and Department of State, can the spouse and children travel to the U.S. with the intention of establishing residence here. They will have up to six months from the date of visa issuance to travel to and begin living in the U.S.

Travel to U.S. in the Interim

Many people ask whether travel to the U.S. can be authorized while the processes noted above are underway. The answer is “It depends.”

Generally, the parties should plan on not traveling to the U.S. during the process. But, subject to the discretion of the government, temporary admission may be granted for short-term visits. The likelihood of admission diminishes significantly when the foreign-born person applies for an immigrant visa, so don't count on admission during the time between that filing and the issuance of an immigrant visa, even if admission has previously been granted.

Conclusion

Planning well in advance is the key to starting life in the U.S. with ease. You do not want to have your spouse and/or children detained at the U.S. airport and be sent on the next flight back to the country of origin – especially when that trip was intended to end with your family beginning a new life in the U.S.

Tags: (Electronic System for Travel Authorization), B-2 Visa, Department of State, ESTA, foreign-citizen spouse, Form I-130, government filings, permanent residence, Petition for Alien Relative, U.S. citizen working abroad, U.S. Citizenship and Immigration Services