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MARRYING FOR LOVE? YOU'LL HAVE TO PROVE IT

For noncitizens, marrying an American is still one of the easier ways to get legal residency. But it's gotten a lot harder. > By Ali Winston

Some marry for love, others marry for security. Still others marry for the benefits that come with living in America legally. In the years since the Sept. 11 terror attacks, as the nation's policies toward immigrants and outsiders have changed, marriage has emerged as one of the easier ways for a noncitizen to become documented. Concurrently, the government has stepped up enforcement and examines potential cases of marriage fraud much more closely.

In the ultimate immigrants' gateway city of New York – and around the U.S. – this has brought heartache to some legitimate would-be spouses who endure lengthy approval processes that test their relationships as much as their patience. As the number of immigrants seeking legal residency in the United States through marriage has risen by a dramatic 49 percent, from 183,796 in 2003 to 274,358 in 2007, denials of "adjustment of status" applications also have increased markedly, along with arrests and prosecutions in the categories covering marriage fraud.

Immigration officials maintain the stricter scrutiny is needed to preserve national security and the integrity of immigration controls. "If we look in the other direction and don't at least get the case denied...marriage fraud could very seriously undermine the entire immigration process," said Charles Akalski, a supervisor in the New York City office of the U.S. Customs and Immigration Service.

But to some activists, immigrants and their lawyers, the crackdown is tantamount to an unjust restriction on the affairs of the heart. "It's almost like immigrants aren't allowed to fall in love and marry," says Rev. Donna Schaper, minister of Judson Memorial Church in Greenwich Village. Schaper is active in the New Sanctuary Movement, an interdenominational religious network supporting immigrants' human rights without regard to legal status. A pastor for more than 30 years, counseling numerous foreign nationals in New York City, she says, "If an undocumented person falls in love with a documented person and wants to get married, what they go through is a kind of hell."

Petitioning for Uncle Sam's blessing

Put yourself in an applicant's shoes – you have just married a foreigner you fell in love with while traveling; a work colleague from another country; or you are normalizing a marriage conducted beyond America's borders. After procuring a marriage certificate from the City Clerk's office, you file forms with the U.S. Customs and Immigration Service (USCIS) establishing your relationship and requesting an adjustment of status for your spouse.

The next step in the process is an interview with an adjudications officer at USCIS' Foley Square

offices in Manhattan for a firsthand evaluation of your relationship.

“We’re trying to determine if a reasonable person would believe this couple is married,” said USCIS spokesman Shawn Saucier. “This is New York – we’re not looking for an Ozzie and Harriet marriage.”

But they are looking for "marriages of convenience" – like a student who married a classmate whose visa is about to expire; a gay person getting hitched to a straight friend without proper immigration papers; or an immigrant who's paid a broker to arrange a marriage with an American. These practices continue, because compared to other paths to obtaining permanent residency or citizenship, marriage *can* be quick, cheap, and simple. Employment and family-sponsored applications can take between six months to several years to process and are subject to annual quota restrictions set by Congress. By contrast, marital applicants are immediately eligible for immigration benefits and not limited by quotas.

To support your partner's application – for legal permanent resident status, or citizenship if he or she already has that – it is wise to bring shared documentation such as joint bank accounts, leases, utilities bills and health insurance forms. Missing documents are often a red flag for adjudicators and are common grounds for denial. In a closed interview room, the adjudicator will question you and your spouse about particulars of the relationship, such as details of your first date, the appearance of your bedroom, or specifics about photos you have brought as evidence. Friends, family and children may also give statements in support of your relationship.

Simultaneously, USCIS will conduct a background check by checking your names with the FBI’s criminal database, the government’s terrorist watch list (which, containing more than 1 million names, is criticized for being overbroad), and the Interagency Border Inspection System. FBI checks are supposed to take a maximum of 180 days – however, cases frequently drag on for years because of security checks.

If an adjudicator’s suspicions are aroused during the interview or a background check, your case will be referred to the Stokes Unit, a second-line interview unit established by a 1976 court order unique to New York City. A different adjudicator will question you and your spouse separately, and inquire about any inconsistencies in your statements or documents.

While adjudicators give applicants the benefit of the doubt, they're also alert to indicators of fake marriages. Staged photos are a common clue, according to Stokes Unit Adjudicator Bryant Chisholm. “You’ll sometimes see photos of a couple lying in bed on their wedding night,” Chisholm said. “What normal couple would allow someone to come into their room and photograph husband and wife in bed?”

Cultural barriers between spouses are another possible giveaway. During some interviews, Chisholm recounted, adjudicators bring in interpreters because the couple does not share a common language. However, he says such situations are not grounds for a denial: “We try to be fair, because you can be on the train and meet somebody and fall in love with them.”

If the Stokes adjudicator is still doubtful after the interview, the adjustment of status application will

be denied along with a written explanation. Even if the relationship is established as bona fide and the application approved, a stipulation in the 1986 Marriage Fraud Amendments means green cards are conditional for *all* applicants for two years and can be revoked at any time by immigration authorities.

Should the officer believe your relationship was entered into for profit or immigration benefits, it may be referred to Immigration and Customs Enforcement (ICE) for investigation.

Denial rates are high. Of the applicants who show up to their interview – USCIS says there is a 20 percent no-show rate to begin with – almost one-third of cases in New York are denied for sham marriages.

Crimes, not misdemeanors

Academics and immigration attorneys say the spike in marriage applications stems from a broken immigration system in dire need of reform. “The legal immigration process is so cumbersome that it looks insurmountable,” said Crystal Williams, a Washington, D.C. attorney and member of the American Immigration Lawyers Association.

Kevin Johnson, an immigration law professor at the University of California-Davis, says the recent federal emphasis on enforcement has slowed application processing to a crawl as immigration arrests, prosecutions, and deportations skyrocket. “A lot of money is going to enforcement, but the same money or percentage isn’t going to services,” Johnson said – like the needed manpower to process the greater demand. Naturalization figures reflect this logjam in approvals. Of people who became naturalized citizens in 2007, 438,805 were already married, down from 459,718 in 2006.

New York City's experience reflects this trend. As of this June, the local office of ICE made 223 arrests in 2008 tied to marriage fraud investigations, compared with 92 in all of 2007, and 41 arrests in 2005.

The office of Michael Garcia, U.S. Attorney for the Southern District of New York, declined to provide a tally of recent marriage fraud cases, but ICE’s New York City office had referred approximately 60 cases of marriage fraud for prosecution in the first six months of this year – matching the total number of marriage fraud referrals for all of 2007.

In an age of border insecurity and terrorism fears, false marriages may seem relatively innocuous – but marriage fraud is a felony punishable by five years' imprisonment and a \$250,000 fine for U.S. citizens. Immigrants found guilty can be entered into deportation procedures.

The government believes marriage fraud is pervasive – 20,000 naturalization applications were denied on suspicion of fraud in fiscal year 2005 – but the extent of the problem is unknown. USCIS is currently conducting an assessment of marriage fraud to be released later this year.

At this point the government does not claim that its greater scrutiny of marriage-related adjustment of status applications has had a notable impact on national security, however. “Typically if terrorism/national security issues are involved, those issues would prevent the applicant from becoming a permanent resident,” USCIS spokesman Saucier wrote in an e-mail. “There is no doubt,

the majority of individuals who commit marriage fraud most likely do not intend to harm the United States. But USCIS has to take combating marriage fraud very seriously from a national security perspective because it is an avenue that can be exploited by those who do intend to harm the U.S."

Following the money

ICE-New York's twelve-person Document and Benefit Fraud Task Force, formed in 2006, is responsible for examining marriage fraud referrals. Similar units operate in ICE field units around the country to combat immigration fraud, money laundering and human trafficking. The task forces have augmented ICE's benefit fraud investigations: Such investigations have spiked – jumping from 2,334 in fiscal 2004 to 5,222 for fiscal 2006 plus the first half of fiscal 2007.

Though USCIS referred 205 cases of fraud (the majority of which were marriage fraud) to ICE in fiscal 2007, many of ICE's written referrals are letters from ordinary citizens.

According to Assistant Special Agent in Charge Peter Edge, the New York unit seldom handles individual cases of marriage fraud, due to limited investigative resources, the volume of referrals, and the agency's focus on large-scale conspiracies.

"We're looking at something that involves a whole scheme, that involves a financial network for payment, for people who have been doing this and are more or less a well-oiled machine," said Edge.

Like USCIS, ICE views marriage fraud as a threat to national security. Naturalization via marriage, Edge claims "could be abused by people who don't have the best of intentions for the USA."

Upon receiving a solid referral, ICE runs its own background checks and reviews documentation provided by USCIS or obtained by their own agents. The networks targeted by ICE tend to be international in nature, often involving immigrants seeking to profit off connections to their countries of origins, says Edge. No one ethnic group is more involved in marriage fraud – Russians, West Indians, Eastern Europeans and Latinos were involved in several recent cases.

"This type of crime transcends all ethnic groups," said Edge. "Everyone wants to come into the U.S. and become a citizen, and they want to do it as quickly and seamlessly as possible."

After an investigation has been sufficiently fleshed out, ICE hands the file over to the U.S. Attorney for the Southern District of New York. Federal prosecutors have a high evidentiary threshold for cases, which compels investigators to be as thorough as possible.

Immigration fraud prosecutions in New York South have been on the rise in recent years, particularly for lead charges used in marriage fraud cases. "Conspiracy to commit offense or to defraud the U.S." was used in 13 cases in fiscal 2007, up from nine in fiscal 2006, and none the year before.

Several high-profile marriage fraud cases have been prosecuted here recently. In April, 33 U.S. Navy sailors and Eastern European women were charged with marriage fraud after a two-year investigation stretching from New York to Hampton Roads, VA. Also this spring, Vladimir Bararushkin and five other defendants pled guilty to leading a ring that charged immigrants roughly \$15,000 to marry a

U.S. citizen, who was paid for marrying and quickly divorcing the client.

Immigration officials themselves have been apprehended for involvement in some marriage fraud rings. In one highly publicized case from 2006, USCIS adjudicator Phillip Browne and 29 other defendants were charged in a sprawling marriage fraud ring based in Jamaica, Queens. A legal and financial assistance business operated by Browne's sister, Beverly, arranged fake marriages for \$8,000 to \$16,000, netting more than \$1 million in profits. Browne was sentenced to two and a half years in prison and forfeited \$500,000 in proceeds.

Of fraud ... and fear

On the other side of the table, immigrants and their attorneys view the state of the larger immigration system as dysfunctional. Several lawsuits have been brought against the Department of Homeland Security over processing times, including *Yakuba v. Chertoff* (filed by the New York Legal Assistance Group) and *Milanés v. Chertoff* (brought by the Puerto Rican Legal Defense and Education Fund).

The government's emphasis on marriage fraud and immigration enforcement, said Enzo Soderini of City College's Immigration Center, is a sop to Americans frustrated with an ailing economy and fewer job prospects. "It offers a false sense of safety, of protection for citizens," Soderini said.

Applicants themselves are hesitant to discuss their experiences. Numerous attempts, for this article, to interview immigrants and citizens involved in or accused of immigration fraud were rebuffed. Many convicted of marriage fraud wanted to put the past behind them – while others with applications pending declined to speak for fear of influencing the outcome of their case.

Marriage fraud's prevalence may be overstated, as it has been in the past. Testifying before the U.S. Senate in 1985, Immigration and Naturalization Services Commissioner Alan Nelson claimed that up to 30 percent of marriage applicants were fraudulent relationships. In 1986, Congress passed the Immigration Marriage Fraud Amendments to combat this perceived problem, introducing the 2-year conditional green card and deportation proceedings for violators. However, the INS later admitted in a 1990 court case (*Manwani v. U.S.*) that Nelson's figures were fraudulent.

Marital adjustments of status in New York are taking longer and longer, say immigration attorneys and advocates, with "security delays" cited as the official reason. Carol Wolfenson, a Midtown immigration attorney, says security delays are "night and day" compared to before September 11.

"Before, I didn't see many at all," Wolfenson said, referring to security delays. In her 30 years of practicing immigration law, Wolfenson states the current situation is "the worst it's ever been." According to a Department of Justice audit released this June, the delays are linked to the FBI's name check system.

Coincidentally, Wolfenson believes the crackdown on marriage fraud has disproportionately targeted Muslim men (who are well represented on the FBI list). Since 2005, twelve of Wolfenson's marriage cases have run into the security wall, all Muslim males from Pakistan, Turkey or Iran. She says Muslim women do not face similar obstacles. Geopolitics might play a role in the delay. Similar

delays were felt for Iranian applicants shortly after the 1979 Iranian Revolution. “They were taking those cases and putting them on the bottom of the application pile,” Wolfenson said.

Recent disclosures indicate government agencies are subjecting individuals of Muslim origin to particular scrutiny. A 2006 ICE memo mentioned a proposed list of 35 countries stretching from Morocco to Kazakhstan, most with predominantly Muslim populations, as nations of “special interest.” Both USCIS and ICE claim they do not single out Muslims for investigation, however.

The security delays are straining relationships. One of Wolfenson’s clients, an Iranian man whose application has been in limbo since 2001, recently separated from his American wife because of uncertainty about his citizenship possibilities.

Another of her clients, Ulster County resident Frances Sadiq, has been married to Mohammed Sadiq since March 2001. They have been interviewed by USCIS adjudicators in 2002 and 2005, yet Mohammed’s adjustment of status application is still pending due to security checks, the attorney said. Mohammed is Pakistani.

“The whole situation is nerve wracking,” said Mrs. Sadiq, who is on disability and does not work. “It’s cost us a lot of money.” To make ends meet and pay their legal bills, Mohammed drives a taxi in addition to jobs at a grocery store and a gas station.

Frances believes her husband’s ethnicity is behind the delays. “I believe it’s racial profiling,” she said. “There are terrorists in the world, yes – but there are terrorists of all nationalities.”

To Rev. Schaper, the fact that well-intentioned people are subject to such "government surveillance" around the intimate matter of wedlock flies in the face of American values. She even cites the musicals Americans love best, like "West Side Story" and "Fiddler on the Roof" – or the current Broadway rave revival, "South Pacific" – as proof. "Love between people from different worlds, and all the tension that brings – do we still believe in that? We're denying the basic American beliefs by which we live."

[- Ali Winston](#)

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