

OFFICE OF THE STAFF JUDGE ADVOCATE 48TH FIGHTER WING, RAF LAKENHEATH, UK



MARRIAGE IN OVERSEAS COMMAND

Do you plan on marrying a British national or other non-U.S. citizen during your stay at RAF Lakenheath? This handout will address:

1. Your Air Force obligations under AFI 36-2609, Marriage in Overseas Commands; and
2. Steps you need to take in order to bring your new spouse back to the states under a visa.

For information on how to make your new spouse a US citizen, please couple this handout with the handout on Immigration and Naturalization. There is also a handout on Marriage in the U.K., which explains procedurally how to obtain a local marriage certificate, ect.

AFI 36-2609, Marriage in Overseas Commands

If you plan on marrying a British national, or other non-U.S. citizen, there are certain steps and procedures that you need to be aware of. This particular AFI is for guidance only and is not intended to preclude a member from going through with the marriage. Specifically, the restrictions listed in the instruction “are for the protection of both the alien and the U.S. citizen from the possible disastrous effects of an impetuous marriage entered into without the appreciation of its implications and obligations.”

What’s Needed

Air Force personnel stationed in or visiting foreign countries are required to obtain written authorization from the senior overseas area commander (or designee) prior to marrying a foreign national who is not a legal resident of the U.S. It’s policy that approval will be given in all instances where military personnel have complied with local instructions implementing this policy. Contact your First Sergeant to obtain the necessary paper work.

What You Need To Show

1. Before authorization to marry will be given, the applicant must demonstrate financial ability to prevent the alien spouse from becoming a public charge. This means that the member must show that resources, either through paycheck or otherwise, are available to keep the alien spouse from seeking state public assistance like food stamps and federal welfare.
2. A medical examination is required of the alien fiancé and all dependents that will actually be residing with the prospective spouse. This examination can be conducted at either a U.S. Public Health Service office or here at RAF Lakenheath. The examination will be of sufficient scope and thoroughness to detect mental or physical illnesses or conditions.

NOTE: This examination does not ensure final medical acceptance of the prospective spouse or dependents for entry into the United States.

3. There is a premarital investigation in accordance with AFI 31-501, Personnel Security Management Program.
4. Members will also be encouraged to seek premarital advice and counsel of a military chaplain before making final plans for marriage.

Things to Consider

Although not a showstopper, the admissibility of the potential spouse and children nonetheless merits serious consideration by the parties because such marriages are normally planned in anticipation of eventual residence in the United States. One of the criteria for admission as a citizen of the U.S. is having good moral character. A person also cannot be found to be a person of good moral character if during the last five years he or she:

- a. Has committed and been convicted of one or more crimes involving moral turpitude
- b. Has committed and been convicted of 2 or more offenses for which the total sentence imposed was 5 years or more
- c. Has committed and been convicted of any controlled substance law, except for a single offense of simple possession of 30 grams or less of marijuana
- d. Has been confined to a penal institution during the statutory period, as a result of a conviction, for an aggregate period of 180 days or more
- e. Has committed and been convicted of two or more gambling offenses
- f. Is or has earned his or her principal income from illegal gambling
- g. Is or has been involved in prostitution or commercialized vice
- h. Is or has been involved in smuggling illegal aliens into the United States

- i. Is or has been a habitual drunkard
- j. Is practicing or has practiced polygamy
- k. Has willfully failed or refused to support dependents

How To Bring Your Spouse Back To The United States

In order for a United States Citizen (USC) to bring his/her foreign-born spouse to the United States, the citizen must petition the Bureau of Citizenship and Immigration Services (BCIS) (formerly INS) for permission to do so.

Procedure

1. Step 1-- Petition for Alien Relative, I-130
 - a. The U.S. Citizen will be the sponsor for his/her foreign-born spouse, and files the petition.
 - b. The petition is filed with the BCIS on Form I-130; the fee is \$130 (current as of April 2003).
 - c. The sponsor must show that he/she can financially support the spouse at 125% of the federal poverty line. (For military member sponsors, they must show only 100%.) Form I-864, Affidavit of Support, is used.
 - d. The sponsor must provide proof of his/her relationship with the alien spouse.
2. Step 2—Obtain Immigrant Visa from U.S. State Department
 - a. The U.S. State Department—and not the BCIS—controls the issuance of Visas.
 - b. Spouses of U.S. Citizens are considered "immediate relatives" for visa purposes. This means that, once the I-130 petition is approved, the spouse's visa will be issued without a significant wait.
 - c. The fee for the immigrant visa itself is \$260, plus \$65 for issuance, from the State Department.
 - d. The Visa is issued at an American Embassy or Consulate abroad.
3. The "K" Visa—an alternative to Visa Processing Abroad
 - a. A nonimmigrant visa, the "K" visa, is available for the spouses of United States citizens. A nonimmigrant is a foreign national seeking to temporarily enter the United States. The "K" visa was created by the LIFE Act, which was enacted on December 21, 2000.
 - b. Once the U.S. Citizen has filed the I-130 Petition for his/her foreign-citizen spouse, the foreign-citizen spouse may then apply for the "K" nonimmigrant visa. This allows the foreign-citizen spouse to travel to the U.S., and to avoid immigrant visa processing abroad.
 - c. Once the foreign-citizen spouse enters the U.S. on the "K" visa, (s)he will continue the processing for the lawful permanent resident status, with the BCIS, from within the U.S.
4. Step 3-- Conditional Permanent Resident status based on Marriage to a U.S. Citizen

The spouse of a U.S. Citizen is granted conditional permanent residency if, at the time of her/his admission into the US, the marriage to the citizen is less than 2 years old. (If the marriage has passed its 2nd anniversary, the spouse enters the US as a Lawful Permanent Resident, without condition.)

- a. Why is “conditional permanent residency” done? Because of marriage fraud.
 - b. The "conditional" status lasts for 2 years.
 - c. During the conditional period, BCIS can terminate your foreign-citizen spouse's residency if BCIS determines that the marriage is fraudulent, was entered into for pay, or was ended by annulment or divorce.
 - d. During the 90 days before 2nd anniversary of your spouse's admission into United States, you (the U.S. citizen) must file a joint petition—Form I-751—with your spouse to remove the condition so that your spouse can become a Legal Permanent Resident (LPR). The fee for the I-751 is \$145 (current as of April 2003). Important Note: The BCIS is very strict about the timeliness of this joint petition. Your spouse's legal status terminates at the two year anniversary of her/his admission into the U.S. He/she may be placed into removal (deportation) proceedings if the joint petition is not filed at the proper time!
 - e. Even if the marriage is strained and "without hope of revival", the joint petition can be approved if the BCIS is convinced that the marriage was entered into in good faith.
 - f. There are certain circumstances in which an alien spouse may self-petition—that is, where (s)he does not need to file the I-751 petition jointly with her/his spouse. See a legal assistance attorney.
 - g. BCIS will interview both you (the U.S. citizen) and your spouse separately to verify that marriage is bona fide. Expect that some of these questions may be personal.
 - h. The Form to remove the condition is I-751, Petition to Remove Conditions of Residence.
5. Step 4-- How Can Your Non-Citizen Spouse Become a United States Citizen?

Your foreign-citizen spouse can apply to become a U.S. citizen (a process called naturalization) once (s)he has been an LPR for 3 years and has been married to you (the U.S. citizen) for 3 years. Your spouse's time as a conditional LPR counts towards the 3 years. Again, for more information, see the Legal Office's handout on Immigration and Naturalization.

There is also a special provision for expedited naturalization for the foreign-citizen spouse of a U.S. citizen soldier who will be stationed (PCS) abroad, when the spouse intends to accompany the soldier overseas. See Immigration and Nationality Act section 319(b) and 8 CFR section 319.2.

For other lingering questions, feel free to stop by or call the legal office at 226-3553, to set an appointment to speak with an attorney. Remember to check our other office handout on Immigration and Naturalization.