Key immigration points to review before filing for divorce

Divorce is already a complex process, and when immigration status is part of the picture, the stakes become even higher. For couples where one spouse is a foreign national, the end of a marriage can carry serious consequences that go well beyond property division or child custody. Understanding these immigration-related risks early can help you make informed decisions and avoid unintended harm to your legal standing in the United States.

If you or your spouse are navigating a marriage that crosses international borders, it is wise to review your specific immigration situation before any divorce papers are filed. The path you choose and the timing of your divorce can directly affect your ability to remain in the country, adjust your status, or even pursue relief from removal. An **immigration and divorce lawyer** can help you see the full picture, but knowing what to watch for on your own is a good first step.

Check your current immigration status and how the marriage affects it

Your immigration status is the single most important factor when considering divorce. If you are a lawful permanent resident or a U.S. citizen, the divorce will likely have little direct effect on your own status. But if you are in the United States on a visa that depends on your marriage, the situation is different. Spouses who entered on a fiancé visa, a spousal visa, or who obtained lawful permanent residency through a marriage-based petition within the last few years need to proceed carefully. A divorce can interrupt the process of obtaining a green card or even lead to the revocation of a conditional green card.

If you have a conditional green card (valid for two years), you and your spouse normally file a joint petition to remove the conditions within the 90 days before the card expires. Divorce before that joint petition is filed can make removal of conditions much harder. In some cases, you may still apply for a waiver if the marriage ended in good faith, but the burden of proof shifts to you. Knowing the expiration date of your green card and the deadlines for filing can help you avoid a lapse in status.

Understand the implications for a marriage-based green card petition

If you are in the middle of a marriage-based green card application, a divorce will terminate the petition. U.S. Citizenship and Immigration Services requires proof that the marriage was entered into in good faith, not solely for immigration benefits. Once a divorce is final, the basis for that petition disappears. The same is true if you are a permanent resident who filed a petition for your spouse and the divorce happens before the petition is approved.

For those who can show that the marriage was genuine but the relationship has irretrievably broken down, there are limited options. The Violence Against Women Act provides a path for spouses who have been abused by a U.S. citizen or permanent resident spouse, allowing them to self-petition for a green card without the abuser's involvement. This is not a blanket solution, but it is an important exception for survivors of domestic violence. If you believe you qualify, speak with a lawyer experienced in both family law and immigration law. An immigration and divorce lawyer can coordinate between the two areas to protect your rights.

Consider the impact on a pending application for adjustment of status

If you have filed for adjustment of status and the application is still pending, a divorce can stop the process entirely. The application is based on the marriage, and without it, USCIS will likely deny the petition. In some cases, you might be able to convert your application to a different category, such as a self-petition under VAWA, but that is not always available. The safest approach is to wait until the adjustment is approved and you hold lawful permanent resident status before initiating divorce proceedings. Even then, if you obtained your green card through marriage within the past five years and the marriage is found to have been fraudulent, USCIS may still initiate removal proceedings.

If you are in removal proceedings, the situation is even more urgent. A divorce can eliminate a major form of relief from deportation, such as cancellation of removal for certain nonpermanent residents who have a qualifying relative. Understanding how your divorce interacts with any pending removal case is critical. A lawyer who handles both immigration and family law can advise on timing and strategy.

Review custody and support orders for cross-border effects

When children are involved, a custody order can have immigration consequences. If one parent is a foreign national and the other is a U.S. citizen, the custody arrangement may affect the child's ability to travel internationally or the parent's ability to remain in the country. A court order that grants sole custody to the foreign national parent might strengthen their argument for staying in the U.S. to care for the child, while a shared custody arrangement could complicate things. Similarly, child support orders can be enforced across borders, but enforcement mechanisms vary by country. It is wise to have a custody order that is clear, detailed, and enforceable both in the U.S. and in the other parent's home country.

If you are considering relocation after the divorce, whether within the U.S. or abroad, the custody order should address that. Many international marriages involve one spouse who wants to return to their home country after the divorce. A court may restrict that move if it disrupts the other parent's visitation rights. Planning ahead can prevent later disputes and protect your ability to travel.

Look into the domestic violence waiver and other protections

For those who have experienced abuse, the domestic violence waiver is a critical option. It allows a spouse who entered the marriage in good faith to self-petition for a green card without the abuser's cooperation or knowledge. This applies even if the marriage ended in divorce, as long as the petitioner can show the marriage was genuine and that they or their child suffered battery or extreme cruelty. The waiver can also be used to remove conditions from a green card without the joint filing requirement. If you are in this situation, do not wait to seek help. A lawyer can guide you through the evidence requirements and help you file a strong application.

Other forms of relief, such as a U visa for victims of certain crimes or a T visa for trafficking victims, may also be available depending on your circumstances. These are not tied to the marriage itself, but they can provide a path to lawful status when the marriage ends. Exploring these options with a qualified attorney early in the process can make a significant difference.

Plan for the financial and practical side of divorce with immigration in mind

Divorce involves financial disclosure, property division, and often spousal support. For an immigrant spouse, the outcome can affect their ability to meet the income requirements for a green card or to afford legal representation in immigration proceedings. If you are the petitioner spouse, you may be required to support your spouse financially under an affidavit of support, even after divorce, until the immigrant spouse becomes a U.S. citizen or accumulates enough work quarters. Understanding this obligation before you file can help you avoid surprises.

Similarly, if you are the immigrant spouse, you need to consider how divorce might affect your employment authorization. Some work permits are tied to a pending green card application. Once that application is denied or withdrawn, your work authorization may expire. Planning for a gap in employment can help you stay financially stable while you pursue alternative immigration options.

Divorce is a personal decision, and no one should stay in an unhappy or unsafe marriage solely for immigration reasons. But being aware of the immigration consequences before you act gives you the power to make a choice that respects both your well-being and your legal status. Consulting with a lawyer who understands both family law and immigration law is the best way to chart a safe course. They can help you time the filing, preserve your rights, and explore any waivers or alternative forms of relief that may apply to your situation.