

Spouses

In order to obtain immigration benefits available to a “spouse,” there must be a valid and subsisting marriage between the parties. Generally, marriage is valid for immigration purpose if it is recognized by the law of the state or country where it occurs. However, a marriage between persons of the same sex will not be valid for immigration purposes, regardless of its possible validity where the marriage took place.

Proxy marriages are specifically excluded by the INA, unless the marriage has been consummated. A marriage that is legally valid may still be disregarded if it is found to be a sham marriage, entered into by the parties to obtain immigration benefits and without any intention to live together as husband and wife. Religious ceremonies alone may not create a binding marriage in some jurisdictions.

However, if a religious ceremony alone is in fact sufficient in the jurisdiction where it occurs, the marriage is valid. A marriage ceremony might also be valid for immigration purposes, if the parties entered into it in good faith, believed themselves to be married and lived together as husband and wife.