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United States State Department Announces Visas for Same-Sex Spouses Are Now Available

August 5, 2013

On June 26, 2013, the Supreme Court found Section 3 of the Defense of Marriage Act (DOMA) unconstitutional, and we reported in our client alert of July 12, 2013 on implementation of the decision by United States Citizenship and Immigration Services (USCIS) relating to applications and petitions by United States citizens on behalf of same-sex partners.

The United States State Department announced this past Friday, August 2nd, its own implementation of the *Windsor* decision confirming that effective immediately "U.S. Embassies and Consulates will adjudicate visa applications that are based on a same-sex marriage in the same way that we adjudicate applications for opposite gender spouses. This means that the same sex spouse of a visa applicant coming to the U.S. for any purpose – including work, study, international exchange, or as a legal immigrant – will be eligible for a derivative visa. Likewise, stepchildren acquired through same sex marriages can also qualify as beneficiaries or for derivative status."

The State Department confirmed that as long as the marriage was valid in the jurisdiction where it took place, whether it is in the United States or a foreign country, it is valid for immigration purpose without reference to which state the same-sex couple would be residing in after entry into the United States.

It also confirmed that it must be a marriage under the jurisdiction where it took place and, thus, this guidance is not applicable to "civil unions" or "domestic partnerships."

Documentation requirements for spouses, children and stepchildren are applicable in the same manner as they are for opposite gender spouses.

While both United States Citizenship and Immigration Services and the State Department have issued guidance regarding the impact of *Windsor*, Customs and Border Protection (CBP) has yet to publish guidance on how it will administer immigration benefits to same-sex couples at the ports of entry.

Please contact Proskauer's Immigration & Nationality Group if you have any questions.