

Defense of Marriage Act (DOMA)

Definition of Marriage

“[T]he word “marriage” means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.”

States and Marriage

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Defense of Marriage Act (DOMA)

DOMA Passed the US House by an overwhelming vote of 362-47²

DOMA Passed the US Senate with a vote of 85-14³

DOMA was signed by President Clinton on Sept. 21, 1996¹

How Does DOMA Affect Immigration Law?

Form I-130 (USCIS.GOV)

The instructions for filing a petition on behalf of an alien spouse require the petitioner to provide USCIS with a copy of a valid marriage certificate.

Although DOMA permits individual States to determine whether they would recognize lesbian or gay marriages, the federal government does not and it permits other states to disregard the marriage certificates of gay or lesbian couples issued in different states.

Any married lesbian or gay couple who present a valid marriage certificate from their jurisdiction will not be permitted to petition for immigration because Congress has defined marriage as a union between a man and a woman.

How Does DOMA Affect Immigration Law?

Union Between Male and Female Couple

- Citizen/ LPR Spouse may file a petition to obtain an immigrant visa for foreign national spouse
- Once spouse is naturalized s/he may petition for other foreign family members:

Children

Parents

Brothers and Sisters

Union Between Gay or Lesbian Couple

- States do not have a legal obligation to recognize gay or lesbian couples' marriage certificates
- A citizen/LPR may file for a petition to obtain immigrant status for the foreign spouse but the federal government does not recognize marriage unless it is between one man and one woman
- The foreign spouse is blocked from accessing benefits because of the definition of marriage under the act

Current Lawsuits

- Massachusetts v. US Dept. of Health and Human Services, et al.
- Gill, et al. v. Office of Personnel Management
- Dragovich, et al. v. Department of the Treasury et al.
- Golinskiv. Office of Personnel Management
- Pederson v. Office of Personnel Management
- Windsor v. United States

On February 23, 2011 President Obama stated that his administration would no longer defend the Defense of Marriage Act.

Emerging Issues

- Trans-sexual and transgender petitioners (Pre-Op and Post-Op)
- Possible repeal of DOMA
- BLAG