

Should you petition for someone who is undocumented (illegal) in the United States?

One thing that transcends borders and laws is love. Many times, caution is to be thrown into the wind, and a U.S. Citizen or Lawful Permanent Resident (Green card holder) and an undocumented foreign national fall in love and marry. Sometimes the same two fall in love but do not marry because they are unsure of what it means in the world of Immigration Law.

The U.S. Citizen marries (or wants to marry) the foreign national who entered the U.S. with a visa, but overstayed

This is generally the best situation. If the foreign national entered with a visa and was inspected at the port of entry by an immigration officer, then the U.S. Citizen can petition for the spouse even if he is no longer in status. It is a fairly straight forward process, especially if you hire an experienced immigration attorney. If the marriage is less than two years old at the time of adjudication, the foreign national will receive a Conditional LPR grant, and in two years will be able to remove the conditions. Chances of success can be high assuming there are not grounds of inadmissibility that befall the foreign national.

The U.S. Citizen marries (or wants to marry) the foreign national who entered the U.S. illegally

This is a situation that is more prevalent than realized. In this situation, there is not only illegal presence but also an illegal entry. Therefore the first question: Will the couple be willing to allow the foreign national spouse to leave the United States and consulate process, meaning obtain the immigrant visa overseas? If yes, the couple must understand that a waiver (pardon) must be granted in order for the spouse to return. Generally the standard for a waiver in this situation is that the foreign national must demonstrate that the U.S. Citizen or Greencard spouse and other certain qualifying relatives will suffer "extreme hardship" if the foreign national is unable to return to the U.S. Having had a lot of success with these cases, there needs to be a thorough analysis before undertaking such course of action. Mere separation of a family does not constitute "extreme hardship." Further even relatively small criminal convictions can cause problems. If you are in this situation, greencard happiness is definitely achievable, but a lot of effort and a good attorney is generally required. The wait overseas can vary from consulate to consulate.

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