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Immigration Alert: Effect of DOMA Decision on Immigration Law

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On June 26, 2013, the Supreme Court of the United States held in *United States v. Windsor* that Section 3 of the Defense of Marriage Act (DOMA) violated the equal protection clause of the Fifth Amendment of the Constitution. Section 3 of DOMA was a federal law that limited federal marriage recognition to different-sex couples. Because immigration law is federal, DOMA prevented lawfully married same-sex couples from obtaining immigration benefits otherwise available to dependent spouses, including lawful permanent residence (green cards) through marriage.

Now that DOMA has been declared unconstitutional, U.S. citizens and lawful permanent residents may submit applications for immigration benefits, including green card applications, for their same-sex spouse. It appears likely that the Supreme Court's ruling will also require that same-sex spouses of nonimmigrant (temporary) visa holders will qualify as dependents for nonimmigrant visas and related benefits. The Supreme Court's decision was applauded by the Secretary of Homeland Security, Janet Napolitano, who vowed to implement the decision so that all married couples will be treated equally and fairly in the administration of the U.S. immigration laws.

It is not necessary to live in a state where same-sex marriage is recognized to file for immigration benefits. The United States Citizenship and Immigration Services (USCIS) will look to the jurisdiction where the couple was married to determine if the marriage is valid for immigration purposes. While the Supreme Court's decision invalidating Section 3 of DOMA may result in some confusion in other areas – including the result that some federal benefits may only be available to married couples who live in a state that recognizes same-sex marriage – this is not the case for immigration benefits. However, it is unclear whether civil unions or domestic partnerships will be treated as marriages for immigration purposes. Traditionally, the USCIS has not treated civil unions or domestic partnerships as equivalent to marriages for immigration purposes.

Please contact your Vorys attorney if you have any questions.

