

Polygamy in Immigration Law

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Speaker

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What is Polygamy?

- USCIS Policy Manual defines polygamy as “the custom of having more than one spouse at the same time.”
- USCIS website: “religious practice or historical custom of having more than 1 spouse at the same time.”
- <https://www.uscis.gov/humanitarian/information-for-afghan-nationals>
- FAM: Polygamy is the historical custom or religious practice of having more than one wife or husband at the same time. It is also called plural marriage.

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What does it mean to “practice polygamy”?

- USCIS does not define what actions constitute “practicing polygamy”
- Foreign Affairs Manual says the following: The applicant’s mere advocacy of or belief in the practice, or the fact that the applicant in the past may have practiced polygamy, would not be sufficient to render a finding of ineligibility. To sustain an ineligibility, an officer would have to find the applicant will maintain a married relationship with more than one spouse while in the United States. If one spouse is traveling with the applicant while the other spouse remains overseas, the applicant can only be found ineligible, if you believe the applicant will continue a relationship with the left-behind spouse - for example visiting the spouse, providing financial support, keeping in phone contact. If an applicant is legally married to a second spouse, but maintains no active relationship with that spouse, then that would not be practicing polygamy and would not sustain an ineligibility.
- Remember FAM does not bind USCIS!

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How does this impact derivative benefits?

- General rule that marriage is valid if valid in the place where performed, unless there is a public policy against it
- Here there is a public policy against it
- USCIS will not recognize a polygamous marriage for purposes of derivative benefits
 - However, USCIS will recognize the first marriage
 - USCIS will recognize a subsequent marriage if earlier marriages have terminated

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Divorce Options

- Customary divorce may be valid, even when parties to divorce not living in home country and did not travel to home country for divorce
 - *Adjei v. Mayorkas*, --- F.4th ----, 2023 WL 1787879 (4th Cir. 2023)
- State courts may divorce a couple that was married abroad as long as one member of the couple is domiciled in the U.S. for a certain period
- No divorce option or no desire to divorce?
 - No derivative benefits for second/subsequent spouse
 - Second spouse could seek independent immigration benefits (TPS, asylum)

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Practicing Polygamy as Inadmissibility Ground, INA 212(a)(10)(A)

- Remember that this inadmissibility ground is forward looking only. Past conduct not relevant (only in that it may tell us something about future conduct)
- Visa Refusals on this ground:
 - 2021: 7 Findings of Ineligibility, 4 Overcome
 - 2020: 12 Findings of Ineligibility, 7 Overcome
 - 2019: 31 Findings of Ineligibility, 6 Overcome
- <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports.html>

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Good Moral Character

- A person must be of “good moral character” in order to naturalize
- A person who is practicing or who has practiced polygamy during the statutory period lacks good moral character
 - Remember that a person who fails to support dependents during the statutory period also lacks good moral character! USCIS will ask for proof of payment of child support for all children

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How does this impact applications for relief?

- Asylum—Asylum applicants not subject to grounds of inadmissibility. Practicing polygamy is not a bar to asylum.
- Asylee adjustments— subject to most grounds of inadmissibility and there is a waiver for this ground under 209(c)
- TPS applicants— subject to most grounds of inadmissibility and there is a waiver for this ground
- SIV applicants— subject to most grounds of inadmissibility and there is [no](#) waiver for this ground

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Questions to Ask

- 1) Is there an **exception** to this ground of inadmissibility?
 - Person did practice polygamy but does not **intend** to practice polygamy in the U.S.
 - Does practicing polygamy mean marrying two people in the United States?
 - Does practicing polygamy mean living with two spouses who you married in the home country?
 - Does practicing polygamy mean living with one spouse while maintaining some type of relationship with the second spouse overseas? (FAM definition)
- If you have a good faith argument for an exception, make it! Do not have to concede the inadmissibility ground applies.

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Questions to Ask

2) *Is there a waiver?*

- For TPS and Asylee Adjustments **YES!**
- For SIV Adjustments, family-based cases, or other employment-based cases **NO!**

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