

If you are a conditional permanent resident, you must file an I-751 petition to remove conditions on your residency up to 90 days prior to the expiration of your green card. That process requires you to demonstrate that you are still in a bona fide marriage with your petitioning spouse and submit additional evidence demonstrating you are still living together and sharing a life together.

But what happens when things aren't working out with your spouse? Many immigrants feel forced to stay in an unhappy or abusive marriage because they fear that if they separate from their spouse, they will be unable to file the I-751 removal of conditions form and they will be deported. This case study serves to explain what exceptions there are to a jointly filed I-751.

First and foremost, it is important to understand as an immigrant that no one can use your immigration status against you. This includes your spouse who petitioned you. Even if they were ultimately responsible for helping you obtain the green card in the first place, you have options to continue the process alone should your marriage turn abusive, your spouse be cruel to you, or simply because your marriage, with all of its best intentions, didn't work out.

It is important to know that if you are pursuing one of the three divorce waiver options, you MUST legally be divorced. It is not enough to simply separate from your spouse, a legal divorce is required. If you live in a state like North Carolina where you must be legally separated for one year prior to filing for divorce, you should speak with an immigration attorney who can advise you on the timing of filing the I-751 to your subsequent divorce.

There are three exemptions from jointly filing an I-751 from your spouse through divorce.

- The first is by demonstrating that you entered into your marriage in good faith, but it simply ended in divorce. “Good faith” means that your marriage was entered into for the right reasons, and not solely for immigration benefits. To prove this you need to show:
 - Evidence of your lives together;
 - That you have commingled finances and filed taxes jointly; and
 - Show the reason that your marriage ended, through no fault of either party.
- The second exemption is if you were battered or subject to extreme cruelty by your spouse, and that was the reason for leaving your marriage. To prove this, you can:
 - Show many types of evidence such as records of 911 calls, police reports, and civil protective orders.
 - Many times abused spouses are afraid to contact the authorities, especially when their spouse threatens them with calling immigration or getting them deported. In that case, you can also use affidavits from friends and family members who are aware of the abuse and cruelty to demonstrate why you are deserving of the waiver being granted.
- The third exemption is by demonstrating that you would be subject to an extreme hardship if your status is terminated and you are removed from the United States. USCIS will



consider a variety of factors when evaluating hardship, including if you have US citizen or lawful permanent resident immediate relatives who depend on you, conditions in your home country that would cause hardship upon removal, among many other factors.

You are not limited to pursuing one of these three exemptions to a joint I-751 filing; you can pursue one, two, or all three simultaneously, and the more evidence you have to show each factor the stronger your filing should be. It is important to know that your spouse cannot use your conditional resident status against you. You have options to continue pursuing permanent residency even if your marriage is ending, and you should not be afraid that your spouse can get you deported.