

Immigration for Same Sex Couples Where Neither Partner is Canadian and Both Partners Are Immigrating

You and your partner are both citizens of different countries. Despite the obstacles this has posed, you are determined to create a future together. You have both explored and exhausted the options of immigrating to each other's country. The only other possible option is to find a country to which both of you can immigrate and start a new life together. Or, perhaps you are both citizens of the same country, but are unhappy living as a same-sex couple in your country. Many same-sex couples have immigrated to Canada for a better life. Equality rights for gays and lesbians are well advanced in Canada. The Canadian Human Rights Act and equivalent provincial and territorial human rights legislation prohibits discrimination on the basis of sexual orientation. The courts have interpreted the equality rights provisions in the Canadian Charter of Rights and Freedoms to include sexual orientation. Since the coming into force of the Civil Marriage Act in July 2005, same-sex couples anywhere in Canada, including couples where neither person is a Canadian, have the right to marry. I am using the term "Canadian" to include both permanent residents of Canada as well as citizens of Canada.

Canada is exceptional in allowing not only the sponsorship of common-law partners of Canadians but also recognizing the common-law partners of qualifying immigrants as dependents. Basically, common-law partners are treated the same as legally married spouses in our immigration law. Although the Immigration and Refugee Protection Act that came into effect on June 28, 2002 now puts this into law, Canadian immigration policy has recognized same-sex relationships since 1994. If one partner in a couple qualifies for immigration on his or her own merits, that person would be the principal applicant and their spouse or common-law partner and any dependent children would be processed as dependents. The principal applicant is assessed on points for eligibility but the dependents are only required to meet medical, criminal, and security admissibility requirements.

The principal applicant must be a citizen or have a minimum of one year of legal residence in the country serviced by the Canadian visa office the application is filed in. Even if the dependent partner does not have legal immigration status in that country, they can still be joined to the application.

“Common-law partners” are defined as persons in a conjugal (that is, marriage-like) relationship where the partners have cohabited for at least one continuous year. An exception is made for persons who are unable to cohabit because of persecution or penal sanctions in the country they both live in. This would not benefit a binational couple who are not living in the same country.

The Canadian Immigration Department also recognizes foreign same-sex marriages where "the marriage is legally recognized according to both the law of

the place where the marriage ceremony occurred and under Canadian law". Presently, same-sex marriages may also be legally performed Netherlands, Belgium, Spain, Republic of South Africa, or the State of Massachusetts. All of these jurisdictions stipulate that one or both persons who want to be married must fulfill certain residency requirements. Canada is unique in that it is the only place in the world where a foreign couple can fly in the morning, get married in the afternoon, and fly out in the evening. This works as long as both partners in the couple either do not need or are able to obtain a temporary resident (that is, visitor) visa to Canada.

If the two partners have not had a full year of cohabitation and are unable to legally marry, then the partner who qualifies for immigration could immigrate alone and then sponsor their partner as a "conjugal partner" after they have become a permanent resident of Canada. The "conjugal partner" category is an alternative option for Canadians to sponsor persons who do not meet the definition of spouses because they cannot marry or the definition of common-law partners because they do not have one year of cohabitation but have been in a conjugal relationship for at least one year.

After a binational couple has immigrated to Canada they would each be issued permanent resident cards. They would no longer be joined at the hip and each individual must take care to fulfill the residency requirement of physically residing in Canada for a minimum of two years during any 5 year period so that he or she does not lose permanent resident status. If one partner lost permanent residence, it would not affect the permanent resident status of the other partner.

Couples who have immigrated to Canada as permanent residents still retain their existing citizenship. After a permanent resident has accumulated sufficient time in Canada to be eligible to apply for Canadian citizenship, he or she can submit a citizenship application. Canada recognizes dual citizenship so there is no requirement to renounce existing citizenship. There is no residency requirement to maintain Canadian citizenship.

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