



# Marriage-Based Adjustments

## Online Course

## AILA Marriage-Based Adjustments Online Course Outline

### MODULE 1: CONDUCTING THOROUGH INITIAL CONSULTATIONS

#### Module Outline:

- **Video:** Welcome to the AILA Marriage-Based Adjustments Online Course –*Speaker: Angela J. Ferguson, Course Committee Chair, Kansas City, MO*
- **Reading:** How to Take This Course
- **Video:** Marriage-Based Case: Best Legal Option?
  - Overview of Module 1: Conducting Thorough Initial Consultations
  - Who Can Marry Legally? Examining the Validity of Marriage
  - Screening for K-1, J-1, Entry Without Inspection, and Unlawful Presence
  - Same-Sex Marriage After Previously Being in Opposite-Sex Marriage
  - Polygamous Marriages
  - Proxy Marriages
- **Reading:** Masliah, Noemi *et. al.* “Polyamory? Polygamy? Will Family Immigration Law Ever Allow Three to Tango?” *Immigration Practice Pointers* (AILA 2016–17 Ed.)
- **Video:** Evaluating Adjustment of Status vs. Consular Processing
  - Processing Time
  - Travel and Work Considerations, and Advanced Parole
  - Access to Counsel
  - Decisions and Appeals
  - Immigrant Intent, 90-Day Rule, and Misrepresentation on Entry
  - Jurisdictional Issues: Executive Office for Immigration Review (EOIR) vs. U.S. Citizenship and Immigration Services (USCIS)
- **Exercise:** Explaining Adjustment of Status vs. Consular Processing to Clients
  - Prepare a Simple, Client-Friendly Explanation of the Pros and Cons of Adjustment of Status and Consular Processing
- **Video:** Considerations for Children
  - Can Stepchildren Obtain Status?
  - Child Born Outside the Marriage, but During the Marriage
  - Children Not Mentioned on Petitioner’s or Beneficiary’s Previous Immigration Applications
  - Careful Review of Birth Certificates
  - Adam Walsh Act Analysis
- **Video:** Using the Consultation to Identify Red Flags That Make USCIS Suspect Marriage Fraud
  - Serial Petitioners, Couples with Numerous Divorces or Who Divorce and Remarry
  - Disparity in Age, Religion, Race or Social Class, or No Shared Language

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- Marriage Conveniently Timed, Marriage Quickly After Meeting or a Divorce, Secret Marriages, Arranged Marriages
- No Cohabitation During Marriage
- Adjusting Fees Based on the Complexity of the Case
- Countries That Immigration Offices Deem as High Risk of Marriage Fraud
- **Video:** Ethical Considerations in Dual Representation of Married Couples
  - What Is Dual Representation in a Marriage Case Context?
  - Informed Consent or Waiver of Potential Conflicts
  - How to Mitigate Problems with Dual Representation at the Beginning of Case
  - What to Include in Your Contract
  - Ethics of Flat Fees
- **Document:** Sample Paragraph(s) for Retainer Agreements Pertaining to Dual Representation in Marriage Context
- **Hypotheticals**
- **Resources List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

*Faculty:*

*Teddy Chadwick (ML), AILA Board of Governors, Milwaukee, WI*

*Eliana Christina Nader, Boston, MA*

*Stephanie Theresa DiPietro, Course Committee, New York, NY*

## MODULE 2: TACKLING PITFALLS, FRAUD, AND INADMISSIBILITY

*Module Outline:*

- **Video:** Ethics in Adjustment of Status
  - Overview of Module 2: Pitfalls, Fraud, and Inadmissibility
  - Duty of Candor to the Tribunal (and USCIS)
  - Duty of Confidentiality
  - Conflicts of Interest Between Parties
    - Taking Advantage of a Cooling-Off Period Until the Next Action Needed on the Case
  - When Clients Lie to You
  - When Non-Disclosure Becomes a Misrepresentation
- **Readings:** Bite-Sized Ethics
  - “Dual Representation,” AILA Doc. No. 20010932
  - A. Goldfarb, “Choosing Between Loyalty and Lying,” AILA Doc. No. 18051560
- **Document:** Sample Legal Services Agreement Addressing Dual Representation
- **Document:** Sample Criminal History Chart

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- **Video:** Past Criminal Acts and Their Effect on a Foreign National's Eligibility
  - Crimes Involving Moral Turpitude (CIMT), Petty Offense Exception
  - Domestic Violence
  - Juvenile Offenses
  - Dismissed Charges, Sealed or Expunged Cases, and What Is a Conviction
  - Disclosing and Discussing Traffic Issues
  - Drug Use, Legalization of Marijuana in Some States
- **Document:** Chart of Common Crimes and Effect on Eligibility
- **Video:** Immigration History That Negatively Affects the Process
  - Entry Issues: Waved Through, False Documents, False Claims to Citizenship at Entry
  - Past Applications Filed with Immigration Agencies, INA §245(i)
  - False Claim to U.S. Citizenship After Entry
  - Using FOIA to Your Advantage
  - Adjusting in EOIR/INA §204(c) Standard
- **Document:** Sample FOIA Requests
- **Video:** Determining Whether Discretion Will Be an Issue
  - Establishing Good Moral Character/Discretionary Merit
  - Overcoming Negative Discretionary Factors:
    - Old Arrests
    - Tax Issues
    - Child Support Arrears
    - Unauthorized Work with Fake Immigration Documents
  - Exclusion Orders as a Negative Factor
- **Video:** Addressing Red Flags Identified in the Initial Consult
  - Bona Fide Marriage (Cohabitation, Commingled Assets)
  - History of Marriage Petitions
  - Age Gaps
  - Quick Meeting, Short Courtship
  - History of Heterosexual Relationships/Present Same-Sex Relationship and Anticipating Adjudicator Scrutiny About Sexual Orientation
  - Language and Cultural Barriers
  - Potential Public Charge
  - Trafficking Allegations, Especially with Bringing/Arranging Entered Without Inspection (EWI) Trips for Family Members
  - Met via Online Dating, or at Work with Policy Against Interoffice Dating
- **Document:** Sample Client Questionnaires
- **Document:** "Bona Fide" Checklist for Marriage-Based Adjustment Cases
- **Video:** Strategy in Presentation of Sticky Issues
  - When the Client's Memory Isn't Perfect, Especially About Entry History
  - When the Criminal Records Aren't Favorable and Whether to Provide Police Reports

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- When the Facts Aren't Favorable, Especially with Apparently Fraudulent Past Behavior/Marriages
- **Exercise:** Draft an Office Dual Representation Letter
- **Hypotheticals**
- **Resources List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

*Faculty:*

*Jason Abrams (ML), New York, NY*

*Jesse Evans-Schroeder, Tucson, AZ*

*Alexander Mondor Gavern, Denver, CO*

### **MODULE 3: ADJUSTMENT OF STATUS APPLICATION PREPARATION**

*Module Outline:*

- **Video:** Proving a Good Faith Marriage: Evidence and Special Circumstances
  - Overview of Module 3: Adjustment of Status Application Preparation
  - Burden of Proof on Applicant: Preponderance of the Evidence
  - The Basics: Lease, Bank Accounts, Photos, Witness Letters, Mail, Utilities, Taxes, Insurance Policies, etc.
  - Evidence to Overcome Separate Residences
  - Documenting Marriage and Divorces According to the Jurisdiction
  - Evidence in Common Law Marriages, Kissing Cousins, Same Sex Marriages, etc.
  - Reciprocity Tables
  - Overcoming Poor Records
  - Marriage in Removal Proceedings
    - Two-Year Bar and Exceptions
    - Good-Faith Exception with Clear and Convincing Evidence (Higher Burden of Proof)
- **Reading:** T. Chadwick *et al.*, “Defining and Defending Bona Fide Marriages,” *Immigration Practice Pointers* (AILA 2021–22 Ed.)
- **Video:** The Basics: Proving Eligibility Under INA §245(a)
  - F2A Spouse Needs to Show in Status Entire Presence and No Unauthorized Work
  - What Evidence Proves a Lawful Admission?
  - Admission or Parole: Special Circumstances
    - *Quintanlan* Entry/“Wave-Through”
    - Advance Parole

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- Parole in Place
  - U Nonimmigrant Grant
  - TPS? Stay Tuned...
- Initial Evidence Checklist
- **Document:** Sample *Velarde* Affidavit for Marriages Occurring Subsequent to the Issuance of a Notice to Appear (NTA)
- **Video:** INA §245(i) Adjustment of Status
  - Evidence That Grandfathering Petition Was “Approvable When Filed” and Filed by April 30, 2001 (Received Between April 30, 2001 and May 3, 2001)
  - If INA §245(i) Petition Between Jan. 14, 1998 and April 30, 2001; Principal Beneficiary Shows Physical Presence on Dec. 21, 2000
  - Locating Evidence Through FOIA
  - Who Is Covered by INA §245(i)?
  - Form I-485 Supplement A
- **Video:** Have You Ever ...?
  - Preparing an Addendum on Inadmissibilities: When to Include Discretionary Evidence
  - Obtaining Documentation on Inadmissibilities
  - When to File an I-601 Application for Waiver of Grounds of Inadmissibility: Considerations for Determining Whether to Include It in Initial Filing vs. At or After Interview
  - I-601 Eligibility Requirements
- **Video:** I-864 Affidavits of Support
  - Cast of Characters: Petitioner Sponsors, Joint Sponsors, Household Members, Intending Immigrants, and Substitute Sponsors
  - How to Document Value of Assets and Income
  - Explaining Sponsor’s Obligations and When They Terminate
- **Exercise:** Using Assets to Supplement Income
- **Video:** (Non-)Representation of a Joint Sponsor: Ethical Considerations
  - Model Rule 1.7: Conflict of Interest: Current Clients
  - Model Rule 4.3: Dealing with Unrepresented Person
  - Communicating Your Role with Joint Sponsor Requires that You Inform Him You Are Not “Disinterested”:
    - Explain That You Represent the Client Beneficiary
    - Correct Any Perception That Joint Sponsor May Have That You Represent His Interests, Including Any Perception That You Should “Reasonably” Have Detected
  - May Not Advise Beyond Recommendation to Obtain Separate Legal Representation, Including to Separately Execute I-864
  - Documenting Your Communications and Obtaining Signed Acknowledgement from Joint Sponsor
  - Confidentiality When Joint Sponsor Does Not Want Personal Information Shared with Client
  - I-864: Preparer's Statement (Part 10, Item 7)
- **Hypotheticals**

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- **Resources List**

- *A Curated List of Additional Publications, Recordings, and Resources*

*Faculty:*

*Elina Magaly Santana (ML), AILA Board of Governors, Miami, FL*

*Randall A. Chamberlain, New York, NY*

*Ral E.N. Obioha, Houston, TX*

### MODULE 4: INTERVIEW PREPARATION AND REPRESENTATION

*Module Outline:*

- **Video:** Preparing for the Interview
  - Overview of Module 4: Interview Preparation and Representation
  - Documents to Support the Marriage
  - Rescheduling: Drawbacks
  - Medicals
  - Interpreters
  - Accommodations for Applicants with Disabilities
  - Appearing Telephonically and Accommodations for Vulnerable Clients (*e.g.*, COVID)
  - Preparing LGBTQ Couples
  - Preparing to Discuss a Previous I-130 Application
- **Reading:** T. Chadwick *et al.*, “Defining and Defending Bona Fide Marriages,” *Immigration Practice Pointers* (AILA 2021–22 Ed.)
- **Video:** Newly Discovered Problems During the Interview
  - Handling Surprises During the Interview (Sidebar During vs. Later)
  - Separation
  - Social Media
  - Documentation Problems (Divorce Decree Not Signed, etc.)
  - Convictions or Prior Deportation
  - Referral to USCIS’s Fraud Detection and National Security Directorate (FDNS)
  - *Stokes* Interview Prep
- **Video:** Advocacy at USCIS
  - Best Practices and Tips: What to Do and NOT Do
    - Tone and Attitude
    - How Much to Interrupt
    - How Much to Expect from Officer in Terms of Respect
    - Client Attire

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- Remembering the Officers' Names
  - Asking Permission to Use Computers
  - Bringing Own ID Cards
  - Insisting on Correct Pronoun Use for Transgender or Nonbinary Clients
  - When to Get a Supervisor Involved
  - When Your Client Is Arrested at Interview
- **Video:** Ethical Issues in Interview Preparation and Representation
  - No Misrepresentations, Omissions, or Misleading by Counsel
  - What to Do If Client Is Lying to USCIS
  - Obligation to Disclose Potential Bad Acts
  - Role of the Attorney During the Interview: How Zealous Is Too Zealous
  - Obligation to Disclose Additional Criminal Offenses After the Interview or Just Prior to the Interview
- **Mock Scene Video:** What to Expect at the Adjustment of Status Interview and How to Deal with Difficult Situations
  - The Beginning: Getting There Early, Looking Presentable, Being Prepared to Wait, Being Seated, "Reading" the Officer in First Few Minutes
  - Use of Interpreter
    - Make Sure Client Knows to Use the Interpreter
    - Applicant Can't Rely on Spouse or Even the Attorney to Interpret, Need a Third Party
    - How to Use the Interpreter in the Interview—*i.e.*, Make Sure Those Who Need the Interpreter Wait for Interpreter to Repeat the Officer's Question Completely Before Answering Any Questions
  - *Stokes* Interview
  - Officer Asking Questions That Seem Invasive or Go Beyond What Is Necessary for the Interview
  - Whether to Sign an Affidavit Prepared by the Officer During the Interview of the Officer's Questions, Applicant/Petitioner Responses
    - Officer Makes a Record of Specific Questions and Applicant Answers, then Has Applicant Sign the Document
    - Bare Minimum Actions Attorney Should Take to Protect Client
    - Discuss Why Some Attorneys Instruct Clients Not to Sign These Documents at All
- **Document:** What to Expect at USCIS Interviews
  - A List of Dos, Don'ts, and Tips for the General USCIS Interview
- **Document:** Checklist: What Documents/Information to Have in Preparation for Your Adjustment of Status Interview
- **Exercise:** Advise Your Client on What They Need to Bring for the Interview
- **Hypotheticals**
- **Resources List**
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*Faculty:*

*Tristan Gunn (ML), Course Committee, Chicago, IL*

*Andrea Comfort Martinez, Kansas City, MO*

*Stanley P. Walker, Fort Walton Beach, FL*

### MODULE 5: POST-INTERVIEW ISSUES

*Module Outline:*

- **Video:** What to Do When You Don't Have a Decision Post-Interview
  - Overview of Module 5: Post-Interview Issues
  - Timeline for When to Take Action
  - Submit Request for Decision/Inquiry with USCIS, via Contact Center or Email If Available for Your Local Field Office
  - Reach Out to Your Local AILA/USCIS Liaison for Assistance
  - Congressional Assistance
  - Sue in Federal Court (Mandamus)
- **Document:** Sample Mandamus Complaint
- **Video:** Responding to Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs)
  - Options: Submit a Complete or Partial Response, or Withdraw the Application/Petition
  - Standard of Review for RFEs: Preponderance of the Evidence
  - Is NOID Based on Derogatory Information? An Opportunity to Rebut That Information Shall Be Provided to the Applicant
  - Consider the Totality of the Submission
- **Exercise:** Organize Your Evidence and Response
  - Know What to Respond to and How to Respond
- **Video:** USCIS Denied the I-130 and/or Adjustment of Status Application: What Is Next?
  - Motion to Reconsider I-485 Application
  - Appeal of the I-130 Denial
  - Litigation in Federal Court
  - Refiling
  - When Will USCIS Issue an NTA?
    - If Applicant Is Unlawfully Present in United States at Time of the Denial, USCIS May Issue an NTA

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- USCIS Will Issue an NTA in Cases Where Fraud or Misrepresentation Is Substantiated
- Criminal Cases Where an Individual Is Convicted of a Criminal Offense May Be Referred to ICE Without Issuing an NTA or Adjudicating an Immigration Benefit
- **Reading:** NILA and AIC Practice Advisory, “Mandamus and Administrative Procedure Act (APA) Delay Cases: Avoiding Dismissal and Proving the Case” (Feb. 19, 2021)
- **Video:** Ethical Considerations Post-Interview
  - Ethics of Modified Fee Structures
    - Determine That the Modified Fee Is Fair and Reasonable
    - Inform the Client in Writing of the Modified Fee
    - Obtain the Client’s Informed Consent, in a Writing Signed by the Client
  - Divorce or Separation After the Interview
- **Hypotheticals**
- **Resources List**
  - *A Curated List of Additional Publications, Recordings, and Resources*

*Faculty:*

*Heather L. Poole (ML), Pasadena, CA*

*Andrea Paola Reyes, Jacksonville, FL*

### MODULE 6: I-751 REMOVAL OF CONDITIONS

*Module Outline:*

- **Video:** Who Needs to File a Form I-751? Basic Overview
  - Overview of Module 6: I-751 Removal of Conditions
  - Joint Filing: When to File
  - Mention of Children’s I-751 Filings
  - Late Filings
  - Document Preparation for Joint Filings
  - Special Circumstances (*i.e.*, Joint Filings but Not Living Together Due to Work, Separated but Not Divorced, Marriage Counseling, Possible Interviews, etc.)
  - Option to File for Naturalization When Eligible Due to Long Processing Time for Form I-751
  - Amending Joint Filing to Waivers
- **Document:** Sample Redacted RFE for Jointly Filed Form I-751
- **Video:** Waivers for Good Faith Marriage or Deceased Spouse

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- When to File
- Document Preparation for Good Faith Marriage and Deceased Spouse Waivers, Types of Documents to Prove Good Faith Marriage
- How to Obtain Support Letter from U.S. Citizen Spouse
- Terms in Divorce Settlement Agreement That May Support or Harm Good Faith Marriage Waivers (*i.e.*, Spousal Support, Division of Joint Property, Child Custody, etc.)
- Preparing for a Good Faith Marriage Waiver Interview
- **Exercise:** Drafting Declarations in Support of Good Faith Marriage Waivers
- **Video:** Domestic Violence, Extreme Cruelty, and Extreme Hardship Waivers
  - When to File
  - Document Preparation Including Police Reports, Restraining Orders, Criminal Domestic Violence Charges, etc.
  - Pros and Cons of Filing Under Domestic Violence Waiver vs. Good Faith Marriage Waiver
  - Preparing for a Domestic Violence Waiver Interview
- **Reading:** S. Parras Konrad *et al.*, “What to Do When a Marriage Petition Becomes a Potential VAWA” *Immigration Practice Pointers* (AILA 2021–22)
- **Video:** Children’s Form I-751 Filings
  - When to File
  - To Be Included with a Parent’s Filing or File Child’s Own Separate I-751
  - Document Preparation for Good Faith Marriage, Domestic Violence, Extreme Cruelty, and Extreme Hardship Waivers Specifically Addressing Children’s Own Form I-751 Filings
  - Preparing Children for I-751 Waiver Interview
- **Video:** Ethical Considerations in Filing Form I-751
  - Does Counsel Have Ethical Obligation to Notify or Remind Client of the Filing of Form I-751?
  - Dual Representation of Couples
  - Ethical Issues for Waivers: Divorce, Annulment, Domestic Violence, etc.
    - Can the Same Attorney Who Represented the Couple Represent a Single Person in Case of Divorce or Domestic Violence?
  - Ethical Issues Between Principal Applicant (Parent) and Children’s I-751 Filings
    - Can Same Attorney Who Represented the Parent’s Joint Filing with U.S. Citizen Spouse Represent a Child’s I-751 with Possible Child Abuse Allegations?
  - Informed Consent for Continuing Representation
- **Video:** What to Do If the I-751 Is Denied
  - Timing Considerations
  - Jurisdictional Considerations
  - NTA and Removal Proceedings
  - If There Is No NTA: Mandamus, Refiling, or Filing for Citizenship
  - If Your Client Remarries
  - Exploring Other Options for Legal Status
- **Hypotheticals**

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- **Resources List**

- *A Curated List of Additional Publications, Recordings, and Resources*

*Faculty:*

*Ginny Hsiao (ML), Course Committee, Arcadia, CA*

*Hardeep Sull, AILA Board of Governors, Las Vegas, NV*

*Irene Mugambi, AILA USCIS Field Operations Committee, Dallas, TX*

### **AILA Marriage-Based Adjustments Online Course Committee**

*Angela J. Ferguson, Course Committee Chair, Kansas City, MO*

*Stephanie Theresa DiPietro, New York, NY*

*Kreuzza L. Gjezi, Southfield, MI*

*Tristan Gunn, Chicago, IL*

*Ginny Hsiao, Arcadia, CA*

*Bernadette McGuire, Englewood, CO*

*Heidi Beth Nowotny, Overland Park, KS*

*Kate Molski, AILA eLearning Manager, Washington, DC*

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