

Use of B-2 Status for Domestic Partners

A Summer 2001 edition of The MURTHYBULLETIN, an e-mail immigration news service of the Law Office of Sheela Murthy, included information on how domestic partners of non-immigrants (including partners of F-1 and J-1 non-immigrants) can use the B-2 Tourist Visa to remain in the U.S. with their F-1 or J-1 partner. This is based on new guidance issued by the U.S. Department of State.

For F-1s and J-1s, the dependent statuses of F-2 and J-2 are reserved for spouses, and/or children who are single and under the age of 21. However, parents of F-1s and J-1s must enter on B-2 Tourist Visas. Here is the information as provided by the Law Office of Sheela Murthy:

"A recent U.S. Department of State (DOS) cable message points out pre-existing DOS guidance allowing the B-2 (tourist) visa category to apply to such a parent. Based upon the same reasoning that would allow such status for accompanying parents, the cable puts forth new guidance stating that B-2 visas may be appropriate for cohabiting (unmarried) partners, whether of the same or opposite sex."

The cable, dated July 2001, explains that only a relationship that is recognized under law as granting all the rights of marriage can be the basis for a dependent visa such as H4, L2 etc. However, an unmarried partner whose primary purpose in coming to the U.S. is to accompany his/her partner can be issued a B-2 as long as s/he does not intend to work, and is otherwise eligible for a visa.

Though B-2 visits are usually for short periods of time, it is permissible for the accompanying partner to intend to accompany the principal for the duration of the work assignment or study program in the U.S., such as 3 years on an H1B. The accompanying partner must intend to depart at the conclusion of the principal's authorized stay in the U.S. In such cases there is a fixed end point, and therefore the B-2 applicant meets the requirement of temporary intent, even though s/he intends to stay longer than 6 months or a year.

Please note that, as with all B-2 applicants, it is still possible to be denied based upon abandonment of one's foreign residence. Therefore, it is still necessary to document thoroughly one's ties to the home country, to show that one will return at the conclusion of the principal's stay. The cable notes that the strength and duration of the relationship will be a key point in this context; if the commitment is strong, presumably the couple will return home together. Please note that the B-2 applicant is subject to this "residence abroad" requirement even if the principal may be in a category that does not have this requirement.

One obvious question that may arise is how a B-2 visa holder can stay for an extended period of time, when normally at the Port of Entry a B-2 is given a stay of six months. The cable suggests that an annotation be placed on the partner's visa, to encourage the INS Inspector to grant the maximum initial period of stay, which on a B-2 would be one year. An annotation on a visa is a brief note explaining the purpose of the travel, so in this

situation it may say something like "accompany F-1 student [name of principal]." (The cable does not provide an example of an annotation.) Also, it is important for the B-2 partner to apply for extension/s of stay in the U.S., and the cable instructs Consular Officers to remind the applicant of this requirement.

Based upon the cable, the DOS guidebook known as the Foreign Affairs Manual (FAM) is being amended to state expressly that household members, including such persons as unmarried partners or parents, can be issued the B-2 visa to accompany a principal alien who will be studying or working in the U.S. as a non-immigrant."