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## The defeat of DOMA: Does it mean the end of marriage inequality in U.S. immigration law?

by Matthew I. Hirsch

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On June 26, the U.S. Supreme Court held that the Defense of Marriage Act, or DOMA, is unconstitutional. Writing for the majority, Justice Kennedy found that DOMA violated the equal-protection clause of the Constitution. The court's rejection of DOMA has wide-ranging implications and means that, under federal law, married same-sex couples will be treated the same as traditional couples.

In practical terms, the decision means that married same-sex couples will have the same rights as traditional married couples in such areas as income tax, estate tax, health privacy and other federally regulated areas — including immigration.

Since the elimination of quotas, family unity has been a cornerstone of U.S. immigration policy. Under the current system, two-thirds of all legal immigration is family-sponsored, and roughly two-thirds of that is applications for marriage-based permanent residence. And while U.S. citizens and permanent residents have sponsored foreign-born spouses for green cards for decades, for just as long, immigration benefits have been denied to same-sex couples.

In fact, for a variety of reasons, including stigma and futility, few same-sex couples even filed for marriage-based permanent residence. One notable exception was U.S. citizen Richard Adams who, in 1975, got a license from the clerk of Boulder, Colo., and married his Australian partner, Anthony Sullivan. What followed is a story that will take its place in American civil-rights history alongside other episodes of racial, religious and ethnic discrimination in the U.S.

Sullivan had entered the U.S. as a visitor. To stay, he would need to become a lawful permanent resident. Following their marriage, Adams filed papers with the INS seeking lawful permanent residence — a green card — for Sullivan. Before long, the INS issued its decision. The denial by an officer in Denver included the stinging remark: "A bona fide marriage cannot exist between two f\*\*\*\*\*s", using a harsh slang for gay men.

But Sullivan and Adams were not deterred. They challenged the denial, eventually reaching the Court of Appeals, one step below the U.S. Supreme Court. Fighting against tradition and societal mores, the citizen spouse argued that the denial represented indefensible discrimination under the U.S. Constitution. That court's decision found for the INS and upheld the denial of benefits to Adams' partner.

What followed for Adams and Sullivan was a nomadic life. Faced with the possibility of deportation, they left America and lived abroad, separated from family and unable to legally reside together in the U.S. They eventually returned and, facing the risk of deportation, lived together for years as a committed gay couple.

Adams died in December. Sullivan, his Australian mate of 41 years, took care of him to the end. At the time of his death, Adams knew that the DOMA decision was coming. He died before the issuance of that historic decision, and before it was possible for Sullivan to legalize his status as the spouse of a U.S. citizen.

Adams also died before he could see his undocumented spouse, Sullivan, honored at the annual benefit of the American Immigration Council. There, to a thunderous outpouring of

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support, the understated Sullivan accepted that organization's Immigrant Achievement Award, for himself and for his late spouse. His retelling of their saga, so poignant just days after the DOMA decision, brought stillness to the clamorous room.

Adams and Sullivan were pioneers in the fight for marriage equality. Their failed attempt to obtain marriage-based permanent residence in the U.S. was a casualty of its time, but the decision in that case foreshadowed the tidal change reflected in the DOMA decision and the decision overturning California's ban on gay marriage.

Within hours of the Supreme Court's decision, the White House issued a statement declaring support for marriage equality. Soon after, DHS Secretary Napolitano announced that the agencies within her department, including Citizenship and Immigration Services, would begin to implement the ruling. Within days, news came that the CIS, which had been holding same-sex cases in abeyance, approved its first-ever marriage-based petition for a same-sex couple.

News of the approval spread quickly. Years of advocacy by activist organizations and individuals had made marriage between same-sex couples a reality. For Sullivan, it was too late; his spouse was gone. But for thousands of others, what was once an unlikely dream had become a reality.

The changes brought by the DOMA decision will present challenges. Just as there was before the DOMA decision, there will be those who try to use phony marriages to obtain immigration benefits. But laws and procedures already exist to investigate, prevent and punish that kind of abuse. Most importantly, for couples married in states that allow same-sex marriage, the DOMA decision will open the door to legal permanent-residence status, enabling families to stay together, the sanctity of their relationship recognized by the U.S. Constitution.

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