

IMMIGRATION STATUS OF PETITIONING RELATIVE

as a Lawful Permanent Resident



Law Office of
Randi Megan Otwell

Lawful Permanent Residents Can Petition For:

F2A
SPOUSES
CHILDREN
(Unmarried and
under age 21)

F2B
UNMARRIED SONS
OR DAUGHTERS
(Over age 21)

Family members (Beneficiaries) of the Lawful Permanent Resident (Petitioner) are subject to the priority system. This means that only so many visas are allotted per year and the family member has to “get in line”. The length on the line varies dependent on whether the petition is for F2A or F2B and the country of the Beneficiary.

See the current line here:

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

From here, the process will vary dependent on the location of the family member (Beneficiary). Are they in the United States or abroad?

If the Petitioner wants to petition for another relative, like a sibling, they will first need to obtain citizenship. You can view the family members a U.S. citizen can petition for here. You can obtain more information on citizenship here.



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IMMIGRATION STATUS
OF PETITIONING
RELATIVE

as a Lawful Permanent
Resident of the United States

Contact Us

320 Decker Dr. Suite 100 | Irving, TX

Mon-Fri: 9:00AM-5:00PM

By Appointment Only

(469) 713-6353

If Your Family Member is in the United States

In order to adjust status or obtain a green card in the United States your family member must have been:

1. “Inspected and admitted or paroled into the United States” (in other words have a lawful entry– I-94, advance parole, admission on visa waiver, or non-immigrant visa like a student visa, visitor visa, or work visa);
2. File an application for adjustment of status,
3. Be eligible to receive an immigrant visa and admissible to the United States
4. Have an immigrant visa immediately available at the time the application is filed.

Notable exceptions to the first requirement are a “procedurally regular admission” under Matter of Quinlantan and 245(i), which provides that an alien can still adjust status if they entered without inspection (such as with an illegal border crossing) if an “approvable” visa petition (Forms I-130 and I-140) or a labor certification was filed on family member’s behalf on or before April 30, 2001. If one of these exceptions does not apply, the family member (Beneficiary) will likely have to consular process.

Being eligible to receive an immigrant visa includes a requirement that your relative is in lawful immigration status at the time the adjustment application is filed and has not worked without authorization in the United States. INA 245(c). However, this requirement is waived if the Petitioner is a United States citizen petitioning for a Spouse, Parent, or Child Under 21. If the Petitioner is a lawful permanent resident, they may want to consider obtaining citizenship before filing the petition.

If a family member (Beneficiary) has had prior contact with immigration officials or any criminal history (regardless of expunction or dismissal after plea), they may need a waiver to obtain their green card.



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Consular Processing

If Your Family Member Is Obtaining a Visa Abroad

Consular processing must be used when the family member (Beneficiary) is abroad. Consular processing is also used when a family member (Beneficiary) is unable to adjust status in the United States, usually because they entered without inspection (illegally crossed the border) and do not qualify for an exception to the “inspected and admitted” requirement.

Consular processing is a three step process. **First**, the petition is filed with USCIS. Once approved, the petition is forwarded to the National Visa Center (NVC). **Second**, a visa application, an affidavit of support, and certain civil documents are filed with the NVC. **Finally**, the visa application and all supporting documents are forwarded to the consulate abroad where the family member will attend their visa interview.

If a family member (Beneficiary) has had prior contact with immigration officials or any criminal history (regardless of expunction or dismissal after plea), they may need a waiver to obtain their green card.

Waivers

In order to adjust status or obtain an immigrant visa, the family member (Beneficiary) must be admissible to the United States. The various grounds of inadmissibility are found in INA 212(a). Some of the most common grounds of inadmissibility requiring a waiver are unlawful presence in the United States or fraud/misrepresentation to obtain an immigration benefit. Eligibility for a waiver varies based on the ground of inadmissibility. If a family member has been deported/removed from the United States, they may need a waiver as well dependent on the length of time from the deportation/removal and the basis for the deportation/removal proceedings.

Consultation with a lawyer is highly advisable if the Beneficiary had prior contact with immigration officials or has any criminal history (regardless of expunction or dismissal after plea).



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Citizenship

Basic Eligibility for Citizenship:

1. Lawful Permanent Resident for 5 years
2. Resided Continuously in the United States for 5 years
3. Been physically present in the United States for at least half of the 5 year period
4. Has been a person of good moral character during the 5 year period

If you are still married to the U.S. citizen that filed the petition for your green card, you only need to be a lawful permanent resident for 3 years, continuously reside in the United States for 3 years, be physically present in the United for at least half of the 3 year period, and have been a person of good moral character during the 3 year period.

Certain criminal history can permanently disqualify you for citizenship. Other times, it is advisable to wait to file to a citizenship application if recent criminal history will mean the application may be denied due to the good moral character requirement.

Request for Evidence (RFE) or Notice of Intent to Deny (NOID)

Requests for Evidence are issued when the filer did not establish eligibility for a benefit with the initial evidence submitted or when the adjudicator determines an alien may not be eligible for a benefit based on evidence in the immigration file or found during an interview. If you do not respond to an RFE or fail to file a complete response, immigration can deny your application.

A Notice of Intent to Deny is issued when derogatory information exists in the file that would make the alien ineligible for a benefit. If you do not respond to an NOID or fail to file a complete response, immigration can deny your application.

As of Oct. 1, 2018, USCIS may issue a Notice to Appear (meaning the person is placed in removal proceedings) on adjustment of status applications. <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>. Therefore, a thorough and complete response to either a RFE or NOID is crucial.



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Other Services

1. Green Card Renewals
2. DACA renewals
3. Petitions to Remove Conditions of Residence (Form I-751) either jointly or with a waiver of the joint filing requirement
4. VAWA Self-Petitions - A person may be eligible to self petition if he or she is the victim of battery or extreme cruelty committed by: A U.S. citizen spouse or former spouse; A U.S. citizen parent; A U.S. citizen son or daughter; A lawful permanent resident (LPR) spouse or former spouse; or An LPR parent.
5. Attendance at Green Card Interviews



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