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# Family-Based Green Card

## Family-Based Green Card <sup>[1]</sup>

Submitted by Guest on Feb 8th 2009

One of the most-used methods of getting a Green Card is through a member of the family. The two sets of eligible relationships are as follows:

- Relatives of U.S. Green Card Holders
- Relatives of U.S. Citizens

### **Eligibility**

In order to sponsor a family member to immigrate to the United States, the sponsor must meet the following criteria:

- Be a citizen or lawful permanent resident (Green Card holder) of the U.S. and be able to provide documentation proving that status.
- Prove the ability to support the relative at 125% above the mandated poverty line with an Affidavit of Support.

A lawful permanent resident (Green Card holder) is a foreign national who has been granted the privilege of permanently living and working in the United States. A lawful permanent resident can file a petition for the following relatives:

- Husband or wife
- Minor unmarried children (under the age of 21)
- Unmarried adult son or daughter of any age

A U.S. Citizen of any age (either by birth or by naturalization) can file a petition for the following relatives:

- Husband or wife
- Minor unmarried child (under the age of 21)
- Unmarried adult son or daughter (21 or older)
- Married son or daughter of any age

A U.S. citizen who is at least 21 years or older can file a petition for the following relatives:

- Brother or sister, **if the sponsor is at least 21 years old**
- Parent, **if the sponsor is at least 21 years old.**

Grandparents, aunts, uncles, in-laws, and cousins cannot sponsor a relative for immigration.

## **Documents Required for Filing**

There are two stages to a family-based petition before the family member, known as the beneficiary, becomes a permanent resident:

### 1) Form I-130: Petition for Alien Relative

The Permanent Resident or U.S. Citizen (sponsor) completes and submits the I-130 Petition on behalf of the beneficiary. Proof of the relationship must be included along with other required documentation. The current USCIS filing fee is \$355.00.

### 2) Form I-485 (Adjustment of Status) or Consular Processing (CP)

The family member will need to determine how they will file for their Green Card. If the family member is already in the U.S., they can choose to file Adjustment of Status (AOS) or Consular Processing. If the family member is outside of the U.S., they will need to file through Consular Processing.

## **Status within the United States**

The I-130 petition alone will not provide the beneficiary with status to stay in the U.S. To remain in the U.S. while waiting for a current Priority Date, the beneficiary must have valid non-immigrant status or through another Green Card application pending. (for example, an employment-based case). Once the beneficiary has an AOS petition pending with the USCIS, they will be eligible to stay in the U.S. while it is being adjudicated.

## **Preference Categories**

Depending on the category and country of birth, there are backlogs in visa numbers for some of the family-based categories. The Priority Date (the date the I-130 was received by USCIS for processing) and [Visa Bulletin](#) <sup>[2]</sup> determine when the beneficiary of a family-based applicant can expect their Green Card.

Immediate relatives do not have to wait for an immigrant visa number to become available once the visa petition filed for them is approved by USCIS. The relatives in the limited family-based categories must wait for an immigrant visa number to become available.

## **Immediate Relatives of U.S. Citizens**

Immediate relatives of US Citizens (including spouses, unmarried children under 21, orphans adopted either abroad or in the US, and parents) currently have no backlog in visa number availability. Eligible sponsors can file the I-130 and AOS petitions concurrently if the beneficiary is already within the U.S. If adjusting through Consular Processing in the beneficiary's home country, the National Visa Center will forward the required documents once the I-130 is approved. Please note, a child does not have derivative status in an immediate relative (IR) petition.

## Limited Family-Based Immigrants

These types of immigrant classifications involve specific family relationships with a U.S. citizen and some specified relationships with a Lawful Permanent Resident. Under immigration law, there are fiscal year numerical limitations on family preference immigrants as explained below.

- **Family First Preference (F1):** Unmarried adult sons and daughters of U.S. citizens, and their children, if any. (23,400)
- **Family Second Preference (F2):** Spouses, minor children, and unmarried sons and daughters (21 and older) of lawful permanent residents. (114,200) At least seventy-seven percent of all visas available for this category will go to the spouses and children; the remainder will be allocated to unmarried sons and daughters.
- **Family Third Preference (F3):** Married adult sons and daughters of U.S. citizens, and their spouses and children. (23,400)
- **Family Fourth Preference (F4):** Brothers and sisters of United States citizens, and their spouses and children, provided the U.S. citizen sponsors are at least 21 years of age. (65,000)

Children under 21 of immediate relatives being sponsored cannot benefit from permanent resident petitions of their parents. A separate petition must be filed for each child. In Category F2 [spouses, minor children, and unmarried adult sons and daughters (21 years and older) of lawful permanent residents], children do benefit from their parent's petition.

Please note, a child does not have derivative status in an immediate relative (IR) petition. This is different from the family second preference (F2) petition. A child is included in his/her parent's F2 petition. A child is not included in his/her parent's IR petition.

## Conditional Permanent Resident Status for Spouses of U.S. Citizens and Permanent Residents

If the beneficiary receives the AOS or CP approval before the two-year anniversary of their marriage, they will receive Conditional Permanent Resident (CPR) status and the CPR card will only be valid for two years. Within the 90-day period before the CPR card expires, the CPR must complete and file Form I-751, Petition to Remove the Conditions of Residence. The purpose of this form is for a conditional resident who obtained status through marriage to apply to remove the conditions on his or her residence.

The USCIS will require proof that the marriage was entered in "good faith" and not for the purposes of evading immigration laws. Any evidence that shows the U.S. Citizen and CPR are still in a legitimate relationship can be submitted.

### Effect of Not filing

If this petition is not filed, the CPR will automatically lose their permanent resident status as of the second anniversary of the date on which the conditional status was issued. They will then become removable from the U.S.

### Affidavit of Support

While there is no required minimum age to file a family-based petition (unless specified for a particular category), the sponsor must be at least 18 years of age to file the Affidavit of Support, Form I-864. The affidavit of support is required to show that the sponsor can financially support the relative(s) for whom they are petitioning.

If the Sponsor cannot prove they meet 125% of the poverty guidelines for their household size, a co-sponsor must commit to providing the required financial support.

## **Medical Examination and Vaccinations**

Before becoming a permanent resident, each applicant must have a medical exam completed by a USCIS Certified Civil Surgeon (or Consulate approved doctor if filing through Consular Processing). The medical will include any vaccinations required by U.S. immigration laws.

## **When a Legal Permanent Resident Becomes a U.S. Citizen while a Family-Based Petition is Pending**

**If the I-130 petition was filed for a relative when the Sponsor was a Legal Permanent Resident, the petition must be upgraded once the Sponsor becomes a U.S. Citizen. This can benefit many family-based petitions, because the retrogression affecting relatives of Legal Permanent Residents is greater than that affecting relatives of U.S. Citizens.** A copy of the Sponsor's Naturalization Certification and the biographical page from the U.S. Passport must be filed as proof in order for the USCIS to upgrade the pending family-based petition.

Children of applicants in Category F2 benefit from their parent's petition. Once the Sponsor has upgraded the petition from that of a Legal Permanent Resident to that of a U.S. Citizen, these children must file a petition of their own, as they will no longer benefit from a parent's petition.

## **Ineligible Relatives**

Certain conditions and activities may make a relative ineligible for a U.S. Permanent Residency. Examples of these ineligibilities are:

- Drug trafficking
- Having HIV/AIDS
- Overstaying a previous visa
- Practicing polygamy
- Advocating the overthrow of the government
- Submitting fraudulent documents


A relative may also be refused a visa if the Petitioner or Applicant provided a willful misrepresentation of a material fact, or in the event of fraud.


For details provided by USCIS on family-based cases, please review the attachments.

1. [For Green Card Holders: How do I help my relative become a permanent resident?](#) <sup>[3]</sup>
2. [For US Citizens: How do I help my relative become a permanent resident?](#) <sup>[4]</sup>

**Attachment**

**Size**

 [For Green Card Holders How do I help my relative become a permanent resident.pdf](#)<sup>[3]</sup> 1.17 MB

 [For US Citizens How do I help my relative become a permanent resident.pdf](#)<sup>[4]</sup> 1.18 MB

## Green Card:

### Family-Based Green Cards <sup>[5]</sup>

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### Links:

[1] <https://immigration.com/greencard/family-based-green-cards/family-based-green-card>

[2] <http://www.immigration.com/visa-bulletin>

[3] <https://immigration.com/sites/default/files/For%20Green%20Card%20Holders%20How%20do%20I%20help%20my%20relative%20become%20a%20permanent%20resident.pdf>

[4] <https://immigration.com/sites/default/files/For%20US%20Citizens%20How%20do%20I%20help%20my%20relative%20become%20a%20permanent%20resident.pdf>

[5] <https://immigration.com/greencard/green-card/family-based-green-cards>