

Obtaining Permanent Residency through Family Sponsorship

Aliens wishing to become permanent residents are required to petition USCIS for lawful permanent residence (LPR). A four tier preference system is placed upon those petitioning the USCIS for a family-based change of status. However, certain individuals may qualify for special preference and are therefore outside the realm of the preference system and may be able to avoid long waits for visas.

1) Unmarried children of United States citizens

The first tier in the preference system consists of unmarried children of United States citizens. Children applying for these visas must be under the age of 21 when applying for entry into the US as well as when the visa is issued. These individuals are considered “immediate relatives,” and have immediate access to visas. However, the quota for this section is 23,400 per year plus any unused visas from the fourth preference section.

Various specifications are outlined in the definition of a child for this preference tier. Step-children can qualify for this preference as long as the step-relationship was initiated when the child was under the age of 18. Parents who have adopted children before they reach 16 and have had legal custody for 2 years may also petition for lawful permanent residence for their child.

2) Family Based Immigration

The second tier in the preference system for family-based immigration includes spouses, children, and unmarried sons and daughters over the age of 21 of lawful permanent residents. Individuals qualifying as spouses and children (unmarried, under the age of 21) of lawful permanent residents receive 77% of the 114,200 quota limit.

3) Married children of United States citizens

The third tier of the family-based preference system includes married children of United States citizens. The quota for this tier is 23,400 in addition to any unused visas from the first and second tiers.

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4) Siblings of United States citizens

The fourth tier is composed of siblings of US citizens, over the age of 21. Since this tier encompasses a large number of people, there has been a waiting list for visas of this type for more than a decade.

5) Immediate Family

Those in the first preference fall under the category of “immediate family,” as do spouses and parents of US citizens. Children petitioning for their parents must be over the age of 21. There is no quota limit for these visas, however the total number of immediate family members issued visas is subtracted from the overall family-based quota of 480,000.

6) Marriage & Spouses

A marriage is valid for immediate family qualification as long as it was entered into in good faith and not purely for immigration benefits. A presumption of fraud exists if the marriage occurs within two years of obtaining legal permanent residence and is judicially annulled or terminated less than two years afterwards.

With the Immigration Marriage Fraud Amendments of 1986, a marriage will now result in conditional residential status if the marriage occurred less than two years prior to granting immigrant status. Conditional residence ceases upon the USCIS’ determination that the marriage was entered solely for immigration purposes or upon the annulment or termination of the marriage. In moving to permanent resident status, petition I-751 must be filed within 90 days of the second anniversary of conditional resident status and prior to the end of the two year period. The noncitizen spouse may be out of the United States while the petition is pending, so long as they appear for their USCIS interview. The period during which the alien is a conditional resident may count towards nationalization.

A few subjective and objective standards and tests are used to determine whether the marriage was fraudulent at its inception. The bride and groom must prove that they intended to establish a life together, the marriage must be consummated, and the bride and groom must cohabit.

Penalties for marriage fraud can include imprisonment for up to five years and a maximum fine of \$250,000. Other criminal violations relating to this can include false statements, conspiracy, visa fraud, and civil action by opposite spouses.

7) Procedure

If you are located outside the United States and want to obtain a visa, a consular proceeding is required. This is usually a shorter processing time than an

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adjustment of status- about four to six months. However, a denial stated through this process is essentially undisputable.

If you are already located in the United States, you can apply for an adjustment of status for your visa. This process can take up to several years. However, it is easier to challenge a denial of an adjustment of status.

8) Timeline

Immediate relatives (described above), are not subject to waiting periods as other preference levels are. These individuals can gain entry into the United States more quickly than those that are subject to the preference system.

Family and employer based visas will be issued in order of the date a petition on their behalf was filed. This date determines when the visa can be issued and it can vary according to preference level and location of the applicant's nation of citizenship. Nations which are subject to varying visa waiting time requirements include China, India, Mexico, and the Philippines. Visas from these nations are in high demand, and the dates when visa applications were filed tend to be further in the past than for other nations. For example, for September 2009, the general first preference date is May of 2003, whereas for first preference individuals from the Philippines it is September of 1993.

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