

Immigration Law

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North Carolina Bar Association



I am a
U. S. citizen

A1

How do I help my relative become a U.S. permanent resident?



U.S. Citizenship
and Immigration
Services

As a citizen of the United States, you may help a relative become a lawful permanent resident of the United States by obtaining what is often referred to as a "Green Card." To do so, you need to sponsor your relative and be able to prove that you have enough income or assets to support your relative(s) when they come to the United States.

You begin the process by filing **Form I-130, Petition for Alien Relative**. This form establishes the family relationship that exists between you and your relative. Filing instructions and forms are available on our Web site at www.uscis.gov. Sometimes the I-130 can be filed together with an application for permanent residence (**Form I-485, Application to Register Permanent Residence or Adjust Status**). This is discussed below.

Types of Relatives

What are the two types of relatives that I may petition for?

There are two categories of relatives – "immediate preference" relatives and "family preference" relatives.

Immediate Preference Relatives

What is an "immediate preference" relative?

Per the Immigration and Nationality Act, Sec. 203, A U.S. citizen can file a petition for the following relatives:

- Spouse
- Children, unmarried and under 21.
- Parents, if the petitioning U.S. citizen is 21 or older.

When you submit your petition, you are required to provide evidence to prove your relationship to the person for whom you are filing.

How many green cards are available for "immediate relatives?"

Unlike for other kinds of petitions, there is an unlimited number of visa petitions for "immediate relatives." Thus, immediate relatives are said to have immigration priority.

Family Preference Relatives

What is a "family preference" relative?

Both U.S. citizens and lawful permanent residents are able to file a petition.

A U.S. citizen can file a petition for the following relatives:

- Unmarried son or daughter who is at least 21 years old
- Married son or daughter
- Brother or sister who is at least 21 years old

A lawful permanent resident can file a petition for the following relatives:

- Spouse
- Child under the age of 21
- Unmarried son/daughter 21 years old or older

How many green cards are available for "family preference" relatives?

Unlike for immediate relatives, there is a limited number of green cards available for "family preference" relatives. Each year, approximately 480,000 green cards are available for "family preference" relatives. In addition, only a certain percentage of "family preference" green cards can go to any one country in each year. That means "family preference" relatives from countries like Mexico and China may have a long waiting period.

Which “family preference” relatives get priority?

“Family preference” relatives receive priority in the following order:

- Family First Preference (F1): Unmarried sons and daughters of U.S. citizens, and their minor children, if any.
 - Annual quota: approximately 23,400
 - Expected immigration backlog: 8-21 years
- Family Second Preference (F2): Spouses, minor children, and unmarried sons and daughters (age 21 and over) of lawful permanent residents. Note - At least seventy-seven percent of all visas available for this category will go to the spouses and children; the remainder is allocated to unmarried sons and daughters.
 - Annual quota: 114,200
 - Expected immigration backlog: 1-6 years
- Family Third Preference (F3): Married sons and daughters of U.S. citizens, and their spouses and minor children.
 - Annual quota: 23,400
 - Expected immigration backlog: 10-22 years
- Family Fourth Preference (F4): Brothers and sisters of U.S. citizens, and their spouses and minor children, provided the U.S. citizens are at least 21 years of age.
 - Annual quota: 65,000
 - Expected immigration backlog: 13-24 years

If the number of applications exceeds the annual quota, what occurs?

Whenever the number of qualified applicants for a category exceeds the available immigrant visas, there will be an immigration wait. In this situation, the available immigrant visas will be issued in the chronological order in which the petitions were filed using their priority date. The filing date of a petition becomes what is called the applicant's priority date. Immigrant visas cannot be issued until an applicant's priority date is reached.

Forms

What forms do I need to file for an immigration petition?

The U.S. citizen or lawful permanent resident must file a Form I-130, which establishes the relationship to certain alien relatives who wish to immigrate to the U.S. However, filing a Form I-130 is only the first step in the process. Eligible family members must wait until the petition has been approved before they can continue the process and become a lawful permanent resident. There is a filing fee of \$535. In certain circumstances, if the family relative is already in the United States, he or she may file a Form I-485 along with the I-130 petition

Filing

How do I file?

There are two basic ways to legally assist your relatives to immigrate into the United States:

1. **If your relatives live in another country**, you will file an

I-130 petition with USCIS. Form I-130 can be filed with a USCIS Lockbox based on the petitioner's place of residence. Please refer to pages 4 and 5 of the instructions for mailing addresses. Please check our Web site for any updates on instructions or fees. Make sure your petition is complete, signed, and submitted with correct fees. You will need to submit evidence of your U.S. citizenship, and evidence proving your relationship to each person for whom you are filing a petition.

2. If your relatives **are already in the United States and was admitted or paroled**, then they may be able to file an I-485 application to adjust their status to lawful permanent resident at the same time as you file the I-130 relative petition. Please consult with an attorney to address eligibility for adjustment of status. Petitions filed **at the same time** with permanent residence applications (I-485) must be filed at a location that is different from where you would file an I-130 petition by itself. Please read the instructions for the two addresses where concurrent filings can be mailed.

What happens after I file?

USCIS will mail you a receipt confirming that we have received your petition. If your petition is incomplete, they may have to reject it, or ask you for more evidence or information, which will delay processing. **Please send all required documents the first time to avoid delay.**

USCIS will notify you when we make a decision. Normally, when USCIS approves the petition, we send it to the U.S. Department of State's National Visa Center (NVC). When your relative's place in line permits issuance of a visa number, the NVC will notify you and your relative, inviting him or her and qualifying dependents to apply for immigrant visas. You can find more information about immigrant visa processing from the State Department's Web site at www.state.gov.

How long will it take USCIS to process my petition?

Since processing time depends on a number of factors, it is difficult to provide a timeframe. USCIS posts current processing times on our Web site at www.uscis.gov, which is the best way to monitor progress of your petition.

Effects of Filing on Relatives

What does the petition do for my relative?

Filing a Form I-130 and proving a qualifying relationship gives your relative a place in line with others waiting to immigrate from the same country or region based on the same type of relationship. When your relative reaches the front of the line, he or she may be eligible to immigrate after passing the required background checks and meeting requirements for admission.

For example: You file a petition for your unmarried son over 21 years of age. If we approve it, your petition gives him a place in line with people from the same country category who are also unmarried sons or daughters over the age of 21 of U.S. citizens.

Your relative's place in line will be based on the date you file your petition. So there is an advantage to filing as soon as possible. There is no waiting period for immediate relatives of U.S. citizens, which include a U.S. citizen's spouse, parent, or unmarried child under 21 years of age.

What about my relative's family?

In most cases, when your relative reaches the front of the line,

your relative's spouse and unmarried children under 21 years of age can join him or her by also applying for an immigrant visa.

For example: You file a petition for your married daughter. You cannot directly petition for her husband and children. However, when your daughter's place in line allows her to apply for a Green Card, her husband and children can apply for immigrant visas at the same time with your daughter.

As a U.S. citizen, you must file a separate petition for each one of your direct relatives, including your own children.

For example: To sponsor your mother and father, file a separate petition for each. If they have other children—your brothers and sisters—file a separate petition for each of them. Visas are immediately available for mothers and fathers of U.S. citizens, but visas are not immediately available for brothers and sisters of U.S. citizens; therefore, they will have to wait for visa availability.

For example: You marry someone with a child. The child will usually qualify as your stepchild if he or she was unmarried and under 18 years of age at the time of your marriage. In this example, you are required to file two petitions: one petition for your wife and another for the child.

Can my relative wait in the United States until becoming a permanent resident?

No. If your relative is outside the United States, filing an I-130 does not allow your relative to live or work in the United States. An I-130 petition only establishes your relationship with your relative. Your relative should wait outside the United States to immigrate legally. If your husband or wife, unmarried child under 21 years, or parent is already in the United States after having entered legally, they can apply to adjust their status to permanent resident at the same time you file their I-130 petition.

Does filing a relative petition commit me to anything?

Yes. Under the law, each person who immigrates based on a relative's petition must have a financial sponsor. If you choose to sponsor your relative's immigration by filing a relative petition (I-130), when the time comes for your relative to immigrate, you must agree to be his or her financial sponsor by filing **Form I-864, Affidavit of Support**. If you do not meet the financial qualifications, other individuals will then need to make this commitment.

What if I filed a petition for a relative when I was a permanent resident, but I am now a U.S. citizen?

If you become a U.S. citizen while your relative is waiting for a visa, you can upgrade your relative's visa classification and advance the processing of that petition by notifying the appropriate agency of your naturalization. When you are a U.S. citizen, your husband or wife and any unmarried children under age 21 will have visas immediately available to them.

- If you become a U.S. citizen **after your Form I-130 petition is already approved** and it has been forwarded to the State Department's National Visa Center (NVC), you should notify the NVC that you have become a U.S. citizen. Requests to upgrade petitions due to the naturalization of the petitioner should be sent to:

**National Visa Center
31 Rochester Avenue, Suite 200
Portsmouth, NH 03801-2915**

Please include a letter with information regarding your relative, a copy of your Naturalization Certificate, and a copy of the petition approval notice. Once the NVC is notified that the petitioner

has been naturalized, the NVC will immediately send the visa information on your relative to the designated U.S. Embassy or consulate abroad. To confirm that your approved petition has been forwarded to the NVC, you can contact the NVC's automated recorded message system at **1-603-334-0700** and, with a touchtone telephone, enter your USCIS receipt number.

- If you become a U.S. citizen and your relative's petition **has not yet been approved** by USCIS, you will need to send the notification to the Service Center address located on the receipt notice you received when you filed your Form I-130 petition. Please include a letter with information regarding your relative, a copy of your Naturalization Certificate, and a copy of the petition receipt notice. Call Customer Service at **1-800-375-5283** for assistance or if you are unsure about the status or location of your petition.
- If your relative is your spouse and has children who are your natural children, stepchildren, or adopted children, and you did not file separate petitions for them, you must file a separate petition for each of them with evidence of your U.S. citizenship. Please include a copy of the receipt notice for the original petition.

Which governmental body is tasked with deciding green card applications?

Green card applications are typically handled by the United States Citizenship and Immigration Services (USCIS).

Are there any additional resources where I can learn more?

Yes! The following sites are very helpful and informative:

- <https://www.uscis.gov/family/family-us-citizens>
- <https://www.uscis.gov/greencard/family-preference>
- <https://www.uscis.gov/greencard/eligibility-categories>
- <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration/family-based-immigrant-visas.html>
- <https://immigration.findlaw.com/immigration-overview/family-preference-and-immediate-relative-petitions-the-basics.html>



I am a permanent resident **B3**

How do I apply for U.S. citizenship?



U.S. Citizenship and Immigration Services

U.S. citizenship provides many rights, but also involves many responsibilities. Thus, the decision to become a U.S. citizen through naturalization is important. In most cases, a person who wants to naturalize must first be a permanent resident. By becoming a U.S. citizen, you gain many rights that permanent residents or others do not have, including the right to vote. To be eligible for naturalization, you must first meet certain requirements set by U.S. law.

What special privileges are granted to U.S. citizens?

The ability to:

- Vote in federal elections
- Travel with a U.S. passport
- Run for elective office
- Obtain certain state and federal benefits
- Expand and expediate ability to bring family members to the United States

How does a person become a U.S. citizen?

If you meet certain requirements, you can become a U.S. citizen either at birth or after birth.

To become a citizen at birth, you must have been born in the United States (or certain territories of the United States) OR had a parent or parents who were citizens at the time of your birth (if you were born abroad).

To become a citizen after birth, you must apply for naturalization.

What is naturalization?

Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA).

What steps are involved in the naturalization process?

1. Determine if you are already a U.S. citizen.
2. Determine your eligibility to become a U.S. citizen.
3. Prepare Form N-400, Application for Naturalization.
4. Submit Form N-400, Application for Naturalization.
5. Go to the biometrics (fingerprinting) appointment, if applicable.
6. Complete the interview.
7. Receive a decision from USCIS on your Form N-400, Application for Naturalization.
8. Receive a notice to take the Oath of Allegiance.
9. Take the Oath of Allegiance to the United States.
10. Understand your rights and responsibilities as a U.S. citizen.

What are the basic requirements to apply for naturalization?

The process of applying for U.S. citizenship is known as **naturalization**. In order to be eligible for naturalization, you must first meet certain requirements required by U.S. immigration law.

Generally, to be eligible for naturalization you must:

- Be age 18 or older; and
- Be a permanent resident for a certain amount of time (usually 5 years or 3 years, depending on how you obtained status); and
- Be a person of good moral character; and
- Have a basic knowledge of U.S. government (this, too, can be excepted due to permanent physical or mental impairment); and
- Have a period of continuous residence and physical presence in

the United States; and

- Be able to read, write, and speak basic English. There are exceptions to this rule for someone who at the time of filing:
 - Is 55 years old and has been a permanent resident for at least 15 years; or
 - Is 50 years old and has been a permanent resident for at least 20 years; or
 - Has a permanent physical or mental impairment that makes the individual unable to fulfill these requirements.

What are the Continuous Residence and Physical Presence Requirements for Naturalization?

“Continuous residence” means that the applicant has maintained residence within the United States for five years before applying or three years in the case of qualified spouses of U.S. citizens.

Extended absences outside the United States may disrupt an applicant’s continuous residence.

Applicants must also show that they were physically present in the U.S. for thirty months within the five-year period before applying, or physically present for eighteen months within the three-year period before applying for qualified spouses of U.S. citizens.

When can I apply for naturalization?

You may be able to apply for naturalization if you are at least 18 years of age and have been a permanent resident of the United States:

- For at least 5 years; or
- For at least 3 years during which time you have been, and continue to be, married to and living in a marriage relationship with your U.S. citizen husband or wife; or
- Have honorable service in the U.S. military.

Certain spouses of U.S. citizens and/or members of the military may be able to file for naturalization sooner than noted above.

How do I apply for naturalization?

To apply for naturalization, file **Form N-400**, *Application for Naturalization*.

For more information on the naturalization process, please see our manual, **M-476**, *A Guide to Naturalization*.

If you are in the military and are interested in becoming a U.S. citizen, please see our brochure, **M-599**, *Naturalization Information for Military Personnel*.

Do I have to be in the United States when I file an N-400 application?

An applicant does not necessarily need to be in the United States when filling Form N-400. Please refer to **M-476** for more information about filing from overseas.

Do I need to pass a test in order to complete the naturalization process and become a U.S. citizen?

Yes, as mandated by Section 312 of the Immigration and Nationality Act (INA). The naturalization test includes questions in English and Civics. The applicant must demonstrate an understanding of the English language, including an ability to read, write, and speak basic English. The applicant must also show an understanding of the

basics of United States history and government. The pass rate for the naturalization test typically exceeds 90%.

When do I officially become a U.S. citizen?

If the USCIS approves your form N-400, the applicant then will get to participate in a naturalization ceremony where he or she will take the Oath of Allegiance. After taking the Oath of Allegiance, the applicant will receive a Certificate of Naturalization.

Are there any additional resources where I can learn more?

Yes! The following sites are very helpful and informative:

- <https://www.uscis.gov/citizenship/educators/naturalization-information>
- <https://www.uscis.gov/sites/default/files/USCIS/files/M-1051.pdf>
- https://www.uscis.gov/sites/default/files/USCIS/Office%20of%20Citizenship/Citizenship%20Resource%20Center%20Site/Publications/PDFs/pathway_to_citizenship.pdf
- <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartD.html>

Refugees: Frequently Asked Questions

What is a refugee?

The legal definition of refugee is located in section 101(a)(42) of the Immigration and Nationality Act (INA).

Specifically, a refugee is someone who:

- Is located outside of the United States,
- Is of special humanitarian concern to the United States,
- Demonstrates that they were persecuted or fear persecution due to race, religion, nationality, political opinion, or membership in a particular social group,
- Is not firmly resettled in another country, and
- Is admissible to the United States

Who is not a refugee?

A refugee does not include anyone who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. Also, a refugee does not include a person who has left his or her home only to seek a more prosperous life.

What is asylum, and how does it differ from a refugee?

Asylum status is a form of protection available to people who:

- Meet the definition of refugee
- Are already in the United States, and
- Are seeking admission at a port of entry

What is the “fear” requirement for refugees?

To be eligible, refugees must have a “well-founded fear of future prosecution”

What are the types of fear that can fulfill this requirement?

- Fear based on race
- Fear based on nationality
- Fear based on religion
- Fear based on membership in a social group
- Fear based on political opinion

What constitutes a “well-founded fear?”

- I.N.S. v. Cardoza-Fonseca, 480 U.S. 421 (1987): One can have a “well-founded fear” of an event occurring even if there is not an objective 50% chance of the event occurring. Overturned I.N.S. v. Stevic.
- I.N.S. v. Stevic, 467 U.S. 407 (1984): A “well-founded fear” means the feared event is “more likely than not” to occur.

Who determines the number of refugee admissions?

Each year, the President of the United States, in consultation with Congress, sets the number of refugee admissions.

How many refugees can be admitted to the United States in fiscal year 2019?

A maximum of 30,000. This is the lowest number since enactment of the Refugee Act in 190.

What countries do refugees come from?

In 2018, the top five countries in terms of refugees coming to the United States were the Democratic Republic of the Congo, Myanmar, Ukraine, Bhutan, and Eritrea. Notably, the number of refugees from Syria and Iran dropped significantly because of President Trump’s travel ban preventing individuals from Iran, Libya, North Korea, Somalia, Sudan, Syria, and Yemen from entering the United States.

Who refers refugees to the United States?

UNHCR, the United Nations (UN) Refugee Agency, screens applicants to determine if they qualify as refugees and, if so, their priority in resettlement.

How long does it take to screen and vet a refugee?

An average of two years. Before admittance to the United States, a refugee must be screened and vetted by the United States Refugee Admissions Program (USRAP).

Once in the United States, can a refugee legally work?

Yes, as soon as they receive employment authorization.

Once in the United States, can a refugee become a U.S. citizen?

Yes. After one year in the United States, refugees must apply for a green card in order to become a lawful permanent resident. After five years of residency, they become eligible to apply for U.S. citizenship?

Are there any additional resources where I can learn more?

Yes! The following sites are very helpful and informative:

- <https://www.uscis.gov/humanitarian/refugees-asylum/refugees>
- <https://www.uscis.gov/humanitarian/refugees-asylum/asylum>
- <https://immigrationforum.org/wp-content/uploads/2018/05/Refugee-Factsheet-Updated-FY18.pdf>
- <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>

Fiancé Visas (K-1)

If you are a U.S. citizen who wants to bring your foreign fiancé to the United States in order to get married, you will need to file **Form I-129F**. This is the first step to obtaining a K-1 nonimmigrant visa for your fiancé(e). The K-1 nonimmigrant visa is also known as a fiancé(e) visa.

You may be eligible to bring your fiancé(e) to the United States on a fiancé(e) visa if you meet the following requirements:

- You are a U.S. citizen;
- You and your fiancé(e) intend to marry one another within 90 days of your fiancé(e)'s admission to the United States on a K-1 nonimmigrant visa;
- You and your fiancé(e) are both legally free to marry (this means you both are legally able to marry in the United States and any previous marriages have been legally terminated by divorce, death, or annulment); and
- You and your fiancé(e) met each other in person at least once within the 2-year period before you file your petition. You may request a waiver of this in-person meeting requirement if you can show that meeting in person would:
 - Violate strict and long-established customs of your fiancé(e)'s foreign culture or social practice; or
 - Result in extreme hardship to you, the U.S. citizen petitioner.

You and your fiancé will have to complete other requirements after the approval of the visa before they are able to come to the United States. If your fiancé(e) marries you within 90 days of being admitted to the United States as a K-1 nonimmigrant, he or she may apply for lawful permanent resident status in the United States. If you want to find out more about the Fiancé visa process, please visit [USCIS.gov](https://uscis.gov).



Finding Immigration Help

Warning: Notario públicos (or immigration consultants) *cannot* give immigration advice.

In the U.S., notario públicos (or immigration consultants) are *not* lawyers. They do *not* have formal training in immigration law. And, they are *not* authorized by the U.S. government to represent you in your immigration case. They may certify your identity and your signature, but they are *not* qualified to give immigration advice or help with an immigration application.

Are there other immigration services I should avoid?

- Avoid immigration consultants and visa consultants.
- Avoid travel agencies and real estate offices that offer immigration advice.
- Do *not* believe anyone who tells you that there is a secret new immigration law or an amnesty.
- Do *not* believe anyone who says he or she has a special connection with any U.S. government agency.

Notario públicos and immigration consultants harm immigrants.

Since notario públicos and immigration consultants do not have formal training in immigration law, they often file the wrong immigration applications and miss important filing deadlines. These mistakes can prevent you from getting legal immigration status in the future. Some notario públicos and immigration consultants just take your money and never file your immigration application.

About this Guide

This guide was created by the Legal Aid Society of Northeastern New York in partnership with the New York LawHelp Consortium and Pro Bono Net, with support from the Legal Services Corporation Technology Initiative Grant program.

To read all of the guides in this series, visit LawHelpNC.org or LawHelp.org.

I have been harmed by a notario público or immigration consultant. What can I do?

Notario públicos and immigration consultants remain in business because immigrants are afraid to complain about them. If you have been harmed by a notario public or immigration consultant, go to www.stopnotariofraud.org or call (202) 442-3363 for a list of agencies that can help you.

Where can I get immigration advice?

You should only get immigration advice from (1) *a licensed lawyer* or (2) *an accredited representative* of a not-for-profit agency recognized by the Board of Immigration Appeals (BIA) of the U.S. government.

What is a licensed lawyer?

A licensed lawyer is a person who has a valid license from a particular state to practice law. To find out if a lawyer has a valid license and is allowed to represent you before U.S. Immigration officials:

- Ask the lawyer, "In what state are you licensed to practice law?" You can also ask to see the license and write down the license number.
- Then, contact the "state bar association" or the state court system to find out how to check if the license is valid and if the lawyer is in "good standing." For a list of state bar associations, go to www.americanbar.org/groups/bar_services/resources/state_local_bar_associations.html
- Do *not* use a lawyer on this list: www.justice.gov/eoir/discipline.htm. Lawyers on this list are not allowed to practice before U.S. Immigration officials.

What is an accredited representative?

An accredited representative is a person who works for a not-for-profit agency recognized by the Board of Immigration Appeals (BIA) of the U.S. government.

For a list of accredited representatives in your area, go to www.justice.gov/eoir/ra.html

Finding immigration help

Many not-for-profit agencies across the U.S. provide free or low-cost immigration help. To find free or low-cost immigration help in your area, go to:

- LawHelp - www.LawHelp.org and select the state where you live.
- Immigration Law Help – www.immigrationlawhelp.org
- Catholic Charities
www.catholiccharitiesusa.org/page.aspx?pid=292

If you do not qualify for free or low-cost immigration help, contact the American Immigration Lawyers Association at www.ailalawyer.com for a referral to a licensed immigration lawyer.

For More Information

Looking for more information on this topic? Visit LawHelpNC.org to find other self-help resources and information about free and low-cost legal aid providers in your area.

Disclaimer

This guide was prepared for general information purposes only. The information it contains is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Also, the law may vary from state to state. Some information in this guide may not be correct for your state. To find local resources, visit LawHelpNC.org.

