



# Your Rights and Responsibilities as a Lawful Permanent Resident

As a lawful permanent resident (LPR), you are expected to respect and be loyal to the United States and to obey our country's laws. Being an LPR also means that you have new rights and responsibilities.

Being an LPR is a "privilege" and not a "right." The U.S. government can take away your LPR status under certain conditions. You must maintain your LPR status if you want to live and work in the United States and become a U.S. citizen one day. In this section, you will learn what it means to be an LPR and how you can maintain your LPR status.

## Your Rights and Responsibilities

What you do now as an LPR can affect your ability to become a U.S. citizen later. The process of becoming a U.S. citizen is called “naturalization.”

As an LPR, you have the right to:

- Live and work permanently anywhere in the U.S.
- Apply to become a U.S. citizen once you are eligible.
- Request a visa for your husband or wife and unmarried children to live in the U.S.
- Get Social Security, Supplemental Security Income, and Medicare benefits, if you are eligible.
- Own property in the U.S.
- Apply for a driver’s license in your state or territory.
- Leave and return to the U.S. under certain conditions.

- Attend public school and college.
- Join certain branches of the U.S. Armed Forces.
- Purchase or own a firearm, as long as there are no state or local restrictions saying you can’t.

As an LPR, it is your responsibility to:

- Obey all federal, state, and local laws.
- Pay federal, state, and local income taxes.
- Register with the Selective Service (U.S. Armed Forces), if you are a male between ages 18 and 26. See page 11 for instructions.
- Maintain your immigration status.
- Carry proof of your LPR status at all times.
- Give your new address in writing to the Department of Homeland Security (DHS) within 10 days of each time you move. See page 12 for instructions.



## Maintaining Your LPR Status

There are some things you must do to maintain your LPR status. These are also important to remember if you plan to apply for U.S. citizenship in the future.

- Don't leave the United States for an extended period of time or move to another country to live there permanently.
- File federal and state income tax returns.
- Register with the Selective Service, if you are a male between the ages of 18 and 26.
- Give your new address to DHS.



### Keep Your Immigration Status

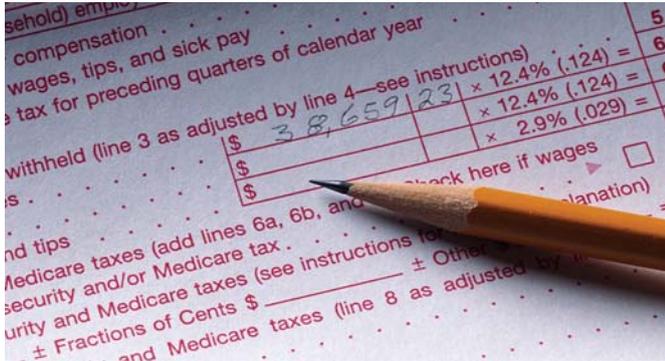
LPRs who leave the United States for extended periods, or who cannot show their intent to live permanently in the U.S., may lose their LPR status. If you think you will be out of the U.S. for a long period of time (more than 6 months), before leaving the country you should:

1. File Form I-131, Application for a Travel Document, to apply for a re-entry permit. A re-entry permit is valid for up to 2 years and is proof that you are returning from a temporary visit abroad. You may show the re-entry permit at a port of entry instead of a returning resident visa or a Permanent Resident Card.
2. File Form N-470, Application to Preserve Residence for Naturalization Purposes. Form N-470 lets you keep your residence status for naturalization purposes under certain circumstances.

Copies of these forms are on the USCIS website: <http://www.uscis.gov>. You must pay a fee to file Form I-131 and Form N-470.

### File Tax Returns

As an LPR, you must file income tax returns and report your income to the Internal Revenue Service (IRS) and your state tax department, if required by your state. If you do not file income tax returns while living outside of the U.S. for any length of time, or if you say that you are a “non-immigrant” on your tax returns, the U.S. government may say that you have given up your permanent residence status.



### Register With the Selective Service

If you are a man and you are 18 to 26 years old, you must register with the Selective Service. When you register, you tell the government that you are available to serve in the U.S. Armed Forces. The United States does not have a military draft now. LPRs and citizens are not asked to serve in the Armed Forces unless they want to.



You can register at a United States post office or on the Internet. To register for Selective Service on the Internet, visit the Selective Service website: <http://www.sss.gov>. To speak with someone from the Selective Service, call 1-847-688-6888. This is not a free call.

You can also find information on the USCIS website <http://www.uscis.gov>.

### Give Your New Address to DHS

Every time you move, you need to tell DHS your new address. You must file Form AR-11, Alien's Change of Address Card. There is no fee to file this form. You must file this form within 10 days of your move.

Send Form AR-11 to:

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Change of Address  
P.O. Box 7134  
London, KY 40742-7134

For more information, call the USCIS at 1-800-375-5283 or visit <http://www.uscis.gov/graphics/formsfee/forms/ar-11.htm>.

## If You Are a Conditional Resident

You may be in the U.S. as a conditional resident (CR). You are a CR if you were married for less than 2 years to your U.S. citizen or LPR spouse on the day your permanent residence status was granted. If you have children, they also may be CRs. Some immigrant investors are also conditional residents.

A CR has the same rights and responsibilities as an LPR. Conditional residents must file either Form I-751, Petition to Remove the Conditions on Residence, or Form I-829, Petition by Entrepreneur to Remove Conditions, within 2 years of the date they were granted conditional LPR status. This date is usually the expiration date of your Permanent Resident Card. You may file these forms as soon as 90 days before the 2-year anniversary of when you got your conditional LPR status. If you do not do this, you can lose your immigration status.

### Filing Form I-751 With Your Husband or Wife

If you are a CR and you are married, then you and your spouse must file Form I-751 together so that you can remove the conditions on your LPR status.

Sometimes, you do not have to file Form I-751 with your husband or wife. If you are no longer married to your spouse, or if your spouse has abused you, you can file Form I-751 by yourself. If you are not applying with your spouse, you can file Form I-751 at any time after you are a CR.

## HOW TO FILE USCIS FORMS I-751 AND I-829

### I-751, Petition to

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**Who:** Conditional residents

**Why:** Conditional resident status expires 2 years after the date you become a CR.

**When:** Conditional residents filing together with their spouse must file Form I-751. Immigrant Investors must file Form I-829. Both of these forms must be filed within the 90 days before conditional residence status expires. The expiration date is normally on your Permanent Resident Card.

**Where to get the form:** You can call the USCIS forms request line at 1-800-870-3676. You also can get the form at <http://www.uscis.gov>.

**Where to send the form:** Send it to a USCIS Service Center. The addresses of the Service Centers are in the instructions for the form.

**What it costs:** You must pay a fee. These fees can change, so check with USCIS for the current fees before you send the form.

If you file Form I-751 or Form I-829 on time, USCIS will usually send you a notice extending your CR status for up to 12 months. During this time, USCIS will review your application.

### I-829, Petition by

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► **TIP: Keep Copies of All Forms**

Keep copies of all forms you send to USCIS and other government offices. When sending documents, do not send originals. Send copies. Sometimes forms get lost. Keeping copies can help avoid problems.



## Finding Legal Assistance

If you need help with an immigration issue, you can use the services of a licensed and competent immigration lawyer. You can check with your local bar association for help finding a qualified lawyer.

If you need legal help on an immigration issue, but do not have enough money to hire a lawyer, there are some low-cost or free assistance options. You can ask for help from:

- **A Recognized Organization.** These are organizations that are recognized by the Board of Immigration Appeals (BIA). For an organization to be “recognized,” it must have enough knowledge and experience to provide services to immigrants, and can charge or accept only very small fees for those services. For a list of these BIA-recognized organizations, see <http://www.usdoj.gov/eoir/statspub/recognitionaccreditationroster.pdf>.
- **An Accredited Representative.** These are people who are connected to BIA “recognized organizations.”

These representatives can charge or accept only very small fees for their services. For a list of these BIA-accredited representatives, see <http://www.usdoj.gov/eoir/statspub/accreditedreproster.pdf>.

- **A Qualified Representative.** These are people who will provide free services. These representatives must know about immigration law and the rules of practice in court. Examples of qualified representatives include law school students and graduates and people with good moral character who have a personal or professional affiliation with you (relative, neighbor, clergy, co-worker, friend).

- **Free Legal Providers.** The Office of the Chief Immigration Judge has a list of recognized free legal service providers for people who are in immigration proceedings (see <http://www.usdoj.gov/eoir/probono/states.htm>). This is a list of attorneys and organizations that may be willing to represent immigrants in proceedings before the Immigration Courts. The attorneys and organizations on this list have agreed to help immigrants pro bono (free of charge) only in immigration proceedings, so some of them may not be able to help you with non-court-related matters (that is, visa petitions, naturalization, etc.).

## IF YOU ARE A VICTIM OF DOMESTIC ABUSE



If you are a victim of domestic abuse, you can find help through the National Domestic Violence Hotline at 1-800-799-7233 or 1-800-787-3224 (for hearing impaired). Help is available in Spanish and other languages.

The Violence Against Women Act allows abused spouses and children of U.S. citizens and LPRs to “self-petition,” or file their own petition to become a lawful permanent resident. See <http://uscis.gov/graphics/howdoi/battered.htm> or call the National Domestic Violence Hotline for more information.

- **Pro Bono Program.**

Local lists of recognized *pro bono* (free of charge) organizations and their representatives are usually available at each local USCIS office.



**Beware of Immigration Consultant Fraud!**

Many immigration practitioners are well qualified and honest and can provide good services to immigrants. However, there are some people who take advantage of immigrants.

Before you decide to get help with immigration matters, and before you pay any money, you should do some research so you can make the right decision about what kind of legal help you need. Protect yourself from becoming a victim of immigration fraud.

Here are some things to remember:

- No one has a special connection with USCIS. Ask questions of people who make promises that sound too good to be true or who claim to have a special relationship with USCIS. Do not trust people who guarantee results or faster processing. If you are not eligible for an immigration benefit, using an immigration lawyer or consultant will not change that.
- Some consultants, travel agencies, real estate offices, and people called “notary publics” offer immigration services. Be sure to ask questions about their qualifications and ask to see copies of their BIA accreditation letter or bar certificate. Some people who say they are qualified to offer legal services are not. These people can make mistakes that cause serious problems for you.
- If you use an immigration consultant or lawyer, get a written contract. The contract should be in English, and in your own language, if English is not your native language. The contract should list all services that will be provided to you and how much they cost. Ask for references before you sign the contract.

Try to avoid paying cash for services. Make sure you get a receipt for your payment. Be sure to keep your original documents.

- Never sign a blank form or application. Make sure you understand what you are signing.

Get help if an immigration consultant has cheated you. Call your state or local district attorney, consumer affairs department, or local police department.



## Consequences of Criminal Behavior for LPRs

The United States is a law-abiding society. LPRs in the United States must obey all laws. If you are an LPR and engage in or are convicted of a crime in the U.S., you could have serious problems. You could be removed from the country, not allowed back into the U.S. if you leave the country, and, in certain circumstances, lose your eligibility for U.S. citizenship. Examples of crimes that may affect your LPR status include:

- A crime defined as an “aggravated felony,” which includes crimes of violence that are felonies with a 1-year prison term.
- Murder.
- Terrorist activities.
- Rape.
- Sexual assault on a child.
- Trafficking in drugs, firearms, or people.

- A crime of “moral turpitude,” which in general is a crime with an intent to steal or defraud; a crime where physical harm is done or threatened; a crime where serious physical harm is caused by reckless behavior; or a crime of sexual misconduct.

There are also serious consequences for you as an LPR if you:

- Lie to get immigration benefits for yourself or someone else.
- Say you are a U.S. citizen if you are not.
- Vote in a federal election or in a local election open only to U.S. citizens.
- Are a “habitual drunkard”—someone who is drunk or someone who uses illegal drugs most of the time.
- Are married to more than 1 person at the same time.
- Fail to support your family or to pay child or spousal support as ordered.

- Are arrested for assault or harassing a family member (commit domestic violence), including violating a protection order.
- Lie to get public benefits.
- Fail to file tax returns when required.
- Willfully fail to register for the Selective Service if you are a male between the ages of 18 and 26.



If you have committed or been convicted of a crime, before you apply for another immigration benefit you should consult with a reputable immigration lawyer or a community-based

organization that provides legal service to immigrants. See p. 14 for information on how to find legal assistance.



# Legal Assistance

## IMMIGRATION AND NATIONALIZATION

**8 USCS 1101-1537**

**8 USC 1101**

**TEXT**

**FREQUENTLY ASKED QUESTIONS**

# **IMMIGRATION AND NATURALIZATION**

## ***E Pluribus Unum – From Many, One***

- Motto of the United States of America

The United States is a nation of immigrants. Throughout our history, immigrants have come here seeking a better way of life and have strengthened our nation in the process.

There is little doubt that deciding to become an U.S. citizen is one of the most important decisions in an individual's life. If one completes the process for naturalization and is accepted for citizenship, it illustrates a commitment to the United States. Moreover, making the journey to citizenship demonstrates loyalty to our United States Constitution and the American people. As Legal Assistance officers in the United States Navy, it is our duty to assist service members who qualify in their quest for the honored title of "United States Citizen."

American citizenship is the goal of almost every alien who enters the United States. United States citizenship provides certain rights and privileges not available to aliens. These benefits include the right to vote, the right to hold public office, and eligibility for unlimited types of employment, including federal jobs, especially those requiring security clearances. A sailor born outside the United States may not be able to advance in rate and undertake certain assignments because he or she has not yet become a citizen. Citizens are normally able to confer immigration benefits upon their family members more easily and quickly than lawful permanent resident aliens (LPRs).

Beginning in 1986, Congress has amended the immigration laws at least every two years – these legislative changes have made keeping up with immigration law difficult. Yesterday's answers to immigration law questions may change because of current law changes. Since each individual's situation is unique, it is best to seek assistance directly from the Immigration and Naturalization Service or an attorney practicing immigration law.

Assisting people in obtaining lawful permanent resident status for family members or United States citizenship for themselves and their dependents are some of the important services of the Naval Legal Service Office. We provide authorized personnel with advice and assistance in completing the necessary Immigration and Naturalization Service forms for their needs.

[Return to Immigration and Naturalization Home](#)

# **FREQUENTLY ASKED QUESTIONS**

**Am I a U.S. citizen?**

**Can I become a U.S. citizen?**

**How long will it take for me to become a citizen once I file?**

**Will the military help me become a citizen?**

**What relatives can I bring to the United States?**

**My family is in the family-sponsored preference category – is there anything the Legal Service Office or military can do to get them here sooner?**

**How do I bring my relatives into the United States?**

**I want to marry a foreign national what do I have to do?**

**I want my new spouse to become a Lawful Permanent Resident – what do I need to do?**

**What is an “Affidavit of Support”, and why do I need it?**

**My spouse was admitted in a "Conditional Status", how do I get that changed to unconditional?**

**How do I get a U.S. passport?**

**How do I put together my application for mailing?**

**How do I extend my stay in the United States?**

**How does my spouse apply to extend her stay in the United States?**

**When should I apply to extend my stay?**

**What if my authorized stay has already expired?**

**Do I have register for Selective Service?**

*Information on this page is drawn from the U.S. Navy's "Immigration Primer," edited by Michael Cole, Office of the Judge Advocate, Code 16, and "A Guide to Naturalization" published by the Immigration and Naturalization Service.*

**[Return to Immigration and Naturalization Home](#)**

### **Am I a U.S. citizen?**

U.S. citizenship is conferred through the location of person's birth, or through their parents citizenship status. If you were born in the United States, its territorial seas or Puerto Rico, Guam or the U.S. Virgin Islands, you are a U.S. citizen and your birth certificate is your proof of citizenship.

For persons born outside of those areas, your citizenship is conveyed at birth through your parents. Generally, although born abroad, you will be an U.S. citizen if:

- Both parents are U.S. citizens at the time of your birth; and at least one of your parents lived in the United States at some point in their life.
- One of your parents was a U.S. citizen when you born; that parent lived at least five (5) years in the United States before you were born; and at least two (2) of those years were after your citizen parent's 14th birthday.

In both of these situations, your record of birth abroad, if registered with a U.S. consulate or embassy will be your proof of citizenship. U.S. military hospitals abroad report the births of service member's children to the U.S. consulate or embassy serving that country. The U.S. State Department maintains copies of these birth records. Information about obtaining a copy of your overseas birth record is available here.

Those persons born abroad who do not obtain citizenship at birth may still be U.S. citizens based upon their parents' subsequent naturalization or upon their adoption by a U.S. citizen. Generally, if not a citizen at birth, you will automatically become a citizen if natural parent(s):

- Both parents become naturalized; AND
- You were under 18 when they naturalized; you were not married; and you became a lawful permanent resident before your 18th birthday.
- One parent becomes naturalized; AND
- That parent was the only surviving parent OR that parent had legal custody AND
- You were under 18 when they naturalized; you were not married; and you became a lawful permanent resident before your 18th birthday; or
- One parent becomes naturalized; AND you were under 18 on February 27, 2001 AND at the time the first of your parents naturalized; you were not married; and you became a lawful permanent resident before your 18th birthday.

In the situations above you may obtain a passport as evidence of citizenship. You may also file an Application for Certificate of Citizenship (N-600) with the BCIS to obtain proof of citizenship.

Adopted children also become U.S. citizens under the Immigration and Naturalization Act. In order to obtain U.S. citizen status from your adoptive parents the following requirements must be met:

- Both adoptive parents are citizens or become citizens AND
- You were adopted before the age of 16; are in the United States as a lawful permanent resident; are in the custody of your adoptive parents; and, if applicable, under the age of 18 when your parent(s) become naturalized; or
- One adoptive parent is a U.S. Citizen AND you were adopted before the age of 16; are in the United States as a lawful permanent resident; are in the custody of the citizen adoptive parent; and if that parent is naturalized, you were under the age of 18 on February 27, 2001 and at the time the first of your parents became naturalized.

In the situations above, as an adopted child you may obtain a passport as evidence of citizenship. You may also file an Application for Certificate of Citizenship in Behalf of an Adopted Child (N-643) with the BCIS to obtain proof of citizenship.

[Back to Questions](#)   [Return to Immigration and Naturalization Home](#)

### **Can I become a U.S. citizen?**

There are a number of different categories under which a Lawful Permanent Resident may qualify to become a U.S. Citizen. You may be eligible for citizenship if:

- You have been a Lawful Permanent Resident for 5 years;
- You have been a Lawful Permanent Resident for 3 years, have been married to a U.S. citizen for those (3) years AND continue to be married to that citizen;
- You are the Lawful Permanent Resident child of U.S. citizen parents; or
- You have qualifying service in the U.S. Armed Forces  
"Qualifying Service" consists of 3 years military service (active of reserve) while in a Lawful Permanent Resident status OR any length of service on active duty during time of declared military hostilities regardless of resident status.

Additional requirements include that a person must be of good moral character; able to read, write and speak the English language; AND demonstrate a knowledge and understanding of the history and form of government of the United States.

To become a citizen, you must file an Application for Naturalization (N-400) with the BCIS at the BCIS Service Center responsible for your state. In addition to filing the N-400, if you have any military service you will have to file an

BCIS form G-325B - Biography that will be sent by the BCIS to your service component for a military records check.

At some time after filing your application for naturalization, the BCIS will contact you to provide the time and date at which you must report to an application support center to have your fingerprints taken. Following that process, you will be notified at some point of a date and time for your citizenship interview. During this interview you will be expected to complete the U.S. history and government test and display your proficiency with the English language. **You should make all efforts to be at this interview because missing it can cause your application case to be closed.** If you know that you will not be able to make the appointment, contact the BCIS at the address on your interview notice, or make an appointment to see an attorney.

Once the interview is completed satisfactorily and all other open issues are addressed, the BCIS will provide you a date and time for you to take the Oath of Allegiance and become a U.S. citizen.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

#### **How long will it take for me to become a citizen once I file?**

The time from filing your N-400 to becoming a citizen depends upon the part of the country in which you reside. The application turnaround time currently runs between one (1) and two (2) years for naturalization applications submitted directly to the BCIS. Active Duty service members with "Qualifying Military Service" filing with the assistance of their command can expect a four (4) to eight (8) months turnaround from filing to naturalization.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

#### **Will the military help me become a citizen?**

Under an agreement between the BCIS and the Department of Defense, the military services will take responsibility for the initial processing of naturalization applications submitted under the "qualifying military service" naturalization category for their service members. Service members still need to prepare an Application for Naturalization (N-400) as well as the BCIS form G-325B – Military Biography. Additionally, you will need to prepare a BCIS form N-426 – Request for Certification of Military or Naval Service that is available through your command or the Legal Service Office.

Navy commands will follow the guidance in NAVADMIN 049/00 and the procedures in the Navy Immigration Guide for processing a service member's application for naturalization. Briefly, your command will review the application; obtain a certification of military/naval service; schedule an appointment for finger printing; and forward the entire package to a specified BCIS processing facility

for military applications. Unlike the normal application, the processing facility for military applications does not depend on where the service member is stationed.

It is expected that the time from filing the application until citizenship is granted under the military application processing procedures will be between four (4) to eight (8) months.

**These procedures are only available to Active Duty Service Members.**

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

### **What relatives can I bring to the United States?**

Which relatives you may bring into the United States as Lawful Permanent Residents and how soon they are admitted depends upon your citizenship status and their degree of relationship to you. To be admitted as a Lawful Permanent Resident (LPR), your relative must either qualify as a "immediate relative" or as a "family-sponsored preference immigrant." Individuals eligible for "immediate relative" status will not be required to wait for a quota to be permitted to immigrate to the United States.

The only immediate relatives recognized by United States immigration law are:

1. Unmarried children under age 21 of United States citizens;
2. Spouses of United States citizens; and
3. Parents of United States citizens age 21 and over.

Any delay in immediate relatives being granted an immigrant visa can be attributed to a backlog in the processing of immigrant visas at the U.S. Embassy in their country. Generally, countries in which large numbers of people are attempting to immigrate to the United States will have longer processing time than those with few people interested in immigrating. Waits as long as 8 to 9 months are possible.

Individuals not in the "immediate relative" classification may still be petitioned into the United States if they fit into one of the 4 classes of "family-sponsored preference immigrants" but these individuals must wait for a quota.

The four classes of family-sponsored preference immigrants are:

- **First Preference:** Unmarried children age 21 and over of United States citizens;
- **Second Preference A and B:**
  - Spouses and unmarried children under age 21 of LPRs
  - Unmarried children age 21 and over of LPRs;
- **Third Preference:** Married children age 21 and over of United States citizens; and

- **Fourth Preference:** Brothers and sisters of adult citizens (adult = 21 and over).

Only a certain number of family-sponsored preference immigrants are permitted to immigrate to the United States each year. Because of this quota system, their wait before entry includes the time required to obtain a quota as well as that attributed to processing at the embassy. This wait can be 4 years or more and a listing of the delay for each category can be found in the Visa Bulletin published by the U.S. Department of State.

The immediate relative and preference categories are the only family relationships recognized by United States immigration law as capable of conferring Lawful Permanent Resident status. No other relative categories (grandparents, grandchildren, aunts, uncles, etc.) may allow for sponsorship to immigrate and achieve Lawful Permanent Resident status.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

**My family is in the family-sponsored preference category – is there anything the Legal Service Office or military can do to get them here sooner?**

Unfortunately, there are no provisions under the Immigration and Naturalization Act that allow service members to bypass the quota system and gain expedited entry for their relatives.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

**How do I bring my relatives into the United States?**

To sponsor an alien relative into the United States, you will need to file a Petition for an Alien Relative (BCIS form I-130) with the BCIS Service Center responsible for the state where you reside.

If you were admitted to the United States as a Lawful Permanent Resident under the diversity visa program and you had a spouse and/or children at the time, special procedures apply for their entry. Please make an appointment to speak with an attorney.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

**I want to marry a foreign national what do I have to do?**

**1. Overseas Marriages to Foreign Nationals – Applying for an Immigrant Visa**

Bring the spouse into the U.S. based upon an overseas marriage to foreign national is a five-step process, consisting of: (1) Service approval; (2) Petition for alien relative (I-130); (3) Overseas processing of the immigrant visa; (4) entry into the United States; and finally, (5) Removal of "Conditional Status," if necessary.

## **Service Approval**

An important first step in the marriage of a service member to a foreign national outside the United States is to obtain Military Service approval. MILPERSMAN Section 5352-030 governs the marriage of Naval personnel to a foreign national outside the United States. The Army and Air Force have similar regulations. These regulations require that all members planning to marry a foreign national will submit an application for permission to marry to their area commander or a designated representative. This is required regardless of whether the service member is stationed overseas or only traveling there to get married. As part of the application process, the alien spouse will receive a medical screening and a background investigation. **If you are planning on marrying a foreign national outside the U.S. please make an appointment to see a legal assistance attorney.**

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

## **I want my new spouse to become a Lawful Permanent Resident – what do I need to do?**

There are three different options that are available for making a spouse a Lawful Permanent Resident, these depend upon the location of the alien and your citizenship status. They are: (1) Petition the spouse into the United States based upon a marriage overseas; (2) Adjustment of status based upon marriage or spouse lawfully present in the United States; or (3) Filing a petition by a U.S. citizen to have their fiancé come to the United States for marriage. Procedures differ somewhat depending on whether such marriages take place overseas or in the United States. If the couple is stationed overseas, obtaining LPR status requires consular processing of the alien spouse's application for an immigrant visa. If the couple resides in the United States, the alien spouse files for adjustment of status at a local BCIS District Office.

Marriage to a United States citizen leads to "immediate relative" status, which eliminates any waiting line to apply for Lawful Permanent Resident status. There are no numerical limitations placed on the immigration of immediate relatives of U.S. citizens to this country. The waiting period for spouses of a Lawful Permanent Resident, who must rely on the family-sponsored preferences, for immigration is significantly longer.

## **Options:**

- (1) Petition the spouse into the United States based upon a marriage overseas;
- (2) Adjustment of status based upon marriage or spouse lawfully present in the United States; or

(3) Filing a petition by a U.S. citizen to have their fiancé come to the United States for marriage

[Back to Questions](#)

**1. Petition the spouse into the United States based upon a marriage overseas:**

The first step after your marriage is to file a "Petition for Alien Relative, Form I-130," to establish the appropriate relative qualification on behalf of the alien spouse. On this form, the United States citizen or Lawful Permanent Resident is the petitioner, and the alien spouse is the beneficiary. This form should be filed at the nearest United States Consulate or at the BCIS District Office having jurisdiction over where petitioner will be residing. The documents to be filed with the I-130 include the marriage certificate (with certified translation, if necessary), Form G-325A (Biographic Information) and the filing fee (\$110.00). If BCIS approves the Form I-130, it is then forwarded to the State Department.

**Processing the Immigrant Visa**

Once the Form I-130 is approved, the U.S. Consulate in the country where the beneficiary (alien spouse) resides will send them an immigrant visa packet, including the Application for Immigrant Visa and Alien Registration (Optional Form 230 (OF-230) Part 1 and Part 2). The beneficiary (alien spouse) will complete the OF-230 and provide the necessary documentation. The sponsor will also need to execute an Affidavit of Support (Form I-864) for the beneficiary. When all the information is gathered, the Consulate schedules an interview with the couple. This is normally brief and addresses only the marital relationship and any grounds for exclusion such as conviction of a serious crime. No judicial review is available for consular denials of immigrant visas. If the beneficiary (alien spouse) also wants to have his or her children admitted, a separate Petition for Alien Relative, Form I-130 and Application for Immigrant Visa (OF-230) must be processed for each child.

**Obtaining LPR Status in the United States**

If the visa is approved by the Consulate, it is usually valid for only 6 months. Failure to travel to a U.S. port of entry for admission leads to expiration of the Immigrant Visa. The alien spouse must travel to a United States entry point to receive Lawful Permanent Resident status from the BCIS. If the couple has been married for at least 24 months, then the alien spouse receives full Lawful Permanent Resident status. If not, then the spouse receives permanent resident status on a conditional basis for a two-year period. He or she is a full permanent resident in all respects—eligibility for employment, ability to travel freely in and out of the United States, accumulation of time toward compliance with residence and physical presence requirements for naturalization as a U.S. citizen—but that residence is subject to termination within two years after it is granted if the marriage is terminated by divorce or annulment during that period, or the

marriage is determined to be a sham. This conditional status must be removed by petition to the BCIS.

[Back to Options](#) [Back to Questions](#)  
[Home](#)

[Return to Immigration and Naturalization](#)

## **2. Adjustment of Status for Marriages to Foreign Nationals in the United States**

If the petitioner and alien spouse reside in the United States and the alien spouse is in the United States pursuant to a lawful admission, the alien spouse may be allowed to adjust his or her status to Lawful Permanent Resident status in the United States rather than apply for an immigrant visa at an overseas United States Consulate. Because no service approval is required for marriages entered into in the United States, adjusting the status of an alien spouse is a three-step process, consisting of: (1) Petition for alien relative (I-130); (2) Application for permanent residence; and, if necessary, (3) Removal of Conditional Status.

### **Petition for Alien Relative (I-130)**

The Petition for Alien Relative, Form I-130 process is similar to that for overseas consular processing of the immigration visa. It should be filed at the BCIS District Office where the couple resides. The documents to be filed with the I-130 include the marriage certificate (with certified translation, if necessary), Form G-325A (Biographic Information) and the filing fee (\$110.00). BCIS approval of the I-130 filed by the United States citizen spouse qualifies the alien spouse to apply for permanent residence. The I-130 Petition is typically submitted concurrently with the Application for Permanent Residence (Form I-485) when the couple is already in the United States.

### **Application for Permanent Residence (Form I-485)**

Instead of applying for an immigrant visa to enter the United States for admission as a Lawful Permanent Resident, the alien spouse files an Application for Permanent Residence (Form I-485) with the BCIS District Office having jurisdiction over the applicant's place of residence. The Form I-485 addresses many of the same issues and requests much of the same documentation as the OF-230 discussed above, such as evidence of employment of the spouses, criminal history if any, the mental and physical status of the applicant (Form I-693) and the status of the marital relationship. As with the overseas processing, the sponsor will also need to execute an Affidavit of Support (Form I-864) for the beneficiary. An BCIS examiner will interview the couple on all of these issues.

Once the applicant has filed the adjustment application, the applicant **must stay** in the United States until the application is finally decided. If the applicant leaves the U.S. (except under a grant of advance parole), the application will be considered withdrawn. **This is true even if accompanying a military spouse on overseas orders. However, if the military spouse is a**

**citizen, it may be possible to expedite the naturalization of the nonmilitary alien spouse. Please make an appointment to see an attorney.** A grant of advance parole by BCIS to depart the U.S. gives permission to return to the US. to resume applying for permanent residence. However, if an alien is subject to a ground of inadmissibility such as a criminal conviction or being unlawfully present in the United States for more than 180 days, he or she should be advised that advance parole may not guarantee a return to the U.S. to resume applying for permanent residence. Again, if the couple has been married less than two years at the time the Form I-485 is approved, the alien spouse is granted LPR status on a conditional basis, and they must petition for removal of the conditions.

[Back to Options](#) [Back to Questions](#)  
[Home](#)

[Return to Immigration and Naturalization](#)

### **3. Petition for Alien Fiance(e)**

Service members who are U.S. citizens stationed in the United States may also file what is known as a Petition for Alien Fiancé (Form I-129F) to bring an alien fiancé(e) to the United States. This form has the same purpose as the I-130 – to bring someone into the United States. The difference is that with the I-129F, the couple is not yet related by marriage. To qualify, the couple must have met in person within two years of filing the Form I-129F and the couple **must** marry within 90 days of the fiancé(e) entering the United States. The two exceptions to meeting within the prior two years are: (1) if meeting would violate the strict and long-established customs of the foreign culture or social practice of the fiancé(e); or (2) the requirement to meet in person would result in extreme hardship. During the ninety-day period leading up to his or her marriage, the alien is authorized to engage in employment.

Following the couple's marriage, the procedures are the same as discussed above for an adjustment in status for marriages in the United States. **Within 90 days after marrying, the alien spouse should apply for adjustment of status to LPR status by filing the Application for Permanent Residence (Form I-485) to obtain conditional LPR status.** Conditional Lawful Permanent Resident status should be removed by applying to remove the conditional status within two years by filing Form I-751.

[Back to Options](#) [Back to Questions](#)  
[Home](#)

[Return to Immigration and Naturalization](#)

### **What is an "Affidavit of Support," and why do I need it?**

The Form I-864 Affidavit of Support is a required part of both the overseas consular processing for an immigrant visa (Form OF-230) and the adjustment of status (Form I-485) processing for bringing alien spouses to the United States to become Lawful Permanent Residents. The Affidavit of Support is a tool that Congress has mandated to ensure that aliens do not become "public charges." Anyone immigrating through a family visa petition *must* have an affidavit of

support (Form I-864) properly submitted, or the person will be inadmissible as a public charge. This Form I-864 legally obligates the United States citizen to support the sponsored alien relative until the alien relative becomes a citizen of the United States or until the alien has worked 40 qualifying quarters under the Social Security Act, dies, or permanently leaves the U.S. It will also end if the sponsor dies.

The sponsor's obligation does not end because of divorce, because the immigrant disappears and doesn't communicate with the sponsor, or for other personal reasons. It does end if the sponsor dies, although the sponsor's estate may have to pay obligations that arose before the sponsor died. The level of support required is 125% of the federal poverty guidelines (100% for military families).

If the alien relative is forced to go on public assistance, the agency providing the assistance may compel reimbursement from the United States citizen sponsor of any money paid out in public assistance in a federal court action as well as seek enforcement of future support. In addition, the terms of the law creating the Affidavit of Support obligations appear to provide for entitlement in the alien's own right to compel support in a court of law. Only naturalization or 40 qualifying quarters of work by the alien terminates the support obligation.

[Back to Questions](#)   [Return to Immigration and Naturalization Home](#)

**My spouse was admitted in a "Conditional Status", how do I get that changed to unconditional?**

If the alien spouse was given conditional resident status, both spouses must file the Petition to Remove the Conditional Basis on Residence (Form I-751) within 90 days preceding the second anniversary of the alien spouse's receiving conditional permanent resident status. The one exception relates to conditional residents who are outside the U.S. during this 90 day period pursuant to U.S. government orders. Such aliens may file their petitions within 90 days after they return to the United States.

The BCIS regional service center reviews the Form I-751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director forwards the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The Form I-751 process will then conclude with an interview with a BCIS examiner who is seeking to verify the validity of the marriage and ensure that the marriage was not entered into solely for an immigration purpose. As long as the marriage is valid, BCIS will remove the conditional status and the alien will become an LPR without conditions.

A failure to jointly file the Form I-751 and appear together for the Form I-751 interview before a BCIS examiner will result in an automatic termination of the spouse's LPR status, unless the alien spouse is able to establish that he or she should be excused from the requirement to jointly file the Form I-751. The alien spouse then begins to accrue unlawful presence as of the date the conditional status as a Lawful Permanent Resident expires and may be placed by BCIS in proceedings before an immigration judge to remove him or her from the United States.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

### **How do I get a U.S. passport?**

If you will be traveling outside the United States, whether on military orders or on holiday, you will probably need a U.S. passport. The passport identifies you as a United States citizen in foreign nations and allows you to freely re-enter the country upon your return. U.S. Passports are issued by a component of the United States Department of State. The Consular Affairs Bureau has a web site providing answers to frequently asked questions about getting a passport. In general, however, if you do not already have a passport, you will need to apply in person by submitting the Form DSP 11. There are several locations around the country where you can submit your passport application, including with the clerk of many courts and even some post offices. There is also a passport office search engine that will determine if there is a facility that accepts passports at your location. Those individuals only needing to update their passport may do so by mail by submitting a Form DSP 82 to the Passport Agency.

In some cases, if you are being assigned overseas, you or your dependents will be issued an official no-fee passport for use. Special requirements apply to use of this document and the State Department has answers to the most frequently asked questions about Military No-Fee Passports.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

### **General tips on assembling applications for mailing**

1. Mark both the envelope and the cover letter as to the nature of the submission. Example: ORIGINAL SUBMISSION - BRIEF FOR AN APPEAL - RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION - etc.
2. Use the appropriate mailing address and mark both the envelope and the cover letter as to the form type. Example: I-130; I-690; I-698, etc.

3. Provide both the receipt notice number and the A-Number as an identifier, if they are available.
4. If the packet is being resubmitted in response to a REQUEST FOR ADDITIONAL EVIDENCE, please place the notice requesting the additional evidence/information on the top of the packet. Also, please use the special mailing envelope provided.
5. If evidence is being submitted in support of a previously filed appeal or motion, a cover letter stating "BRIEF FOR APPEAL", etc., should be placed on top of the packet.
6. In preparing your packet, please take note of the following:
  - a. Do not use binders or folders that cannot be easily disassembled.
  - b. Use ACCO fasteners to hold together thick or bulky applications or petitions. Two-hole punching the top of the material for easy placement in the file is appreciated.
  - c. The use of tabs assist in locating items listed as attachments. The tabs should be placed on the bottom and not the side for ease in filing.
  - d. Avoid using heavy-duty staples; instead use ACCO fasteners or heavy clips.
  - e. Avoid submitting originals unless specifically required (Forms I-94, Labor certifications, etc). Avoid submitting oversized documentation when possible.
7. If you are sending more than one case in an envelope, clearly separate the cases by rubber band or clip fasteners.
8. A form G-28 is not acceptable unless signed by the authorized representative and the petitioner (re: petitions) or the applicant (re: applications). Facsimile signature stamps are acceptable for the signature of the representatives. However, applicants/petitioners must live sign the initial Form G-28 submitted with the application/petition. Any subsequent Form G-28 relating to the same case may be a photocopy of the original, which should be already attached to the relating case.
9. Send copies of any prior approval notices with any new requests for extensions of stay, change of status or amended petitions.
10. Keep copies of all submissions. Don't assume the officer will have access to a prior file or record. Submit as **complete** a packet as possible so the case can be adjudicated from what you submit. Submit a complete packet of information for each petition or application. If officers have to review prior files or records, the adjudication of the case can be delayed substantially.

11. Be sure to complete all pertinent items on the petition or application.  
Ensure all entries on the forms are legible. Note the appropriate consulate, embassy, or a request to adjust status on the petition. Do not enter "N/A" when "None" is appropriate.
12. If you believe your situation to be unique, explain it fully in an attachment to the packet, not as a cover letter.
13. Please submit certified translations for all foreign language documents.  
The translator must certify that s/he is competent to translate and that the translation is accurate.  
The certification format should include the certifier's name, signature, address, and date of certification. A suggested format is:  
**Certification by Translator**  
I typed name , certify that I am fluent (conversant) in the English and languages, and that the above/attached document is an accurate translation of the document attached entitled .  
Signature  
Date Typed Name  
Address
14. The BCIS no longer routinely requires submission of original documents or "certified copies." Instead, ordinary legible photocopies of such documents (including naturalization certificates and alien registration cards) will be acceptable for initial filing and approval of petitions and applications.  
At the discretion of the officer, original documents may still be required in individual cases. Please be advised that the BCIS no longer returns original documents submitted with the exception of Certificates of Naturalization, Forms I-551, Permanent Resident Card, Forms I-94, Arrival/Departure Document, valid passports, or those specifically requested by the officer. Such documents will be returned when they are no longer needed.
15. **Reminder:** The best way to locate records is through the receipt number and/or the A-Number. Always provide this information whenever possible. If you don't know the A-Number, provide a COMPLETE name and date of birth. ALSO: Provide ANY AND ALL names used by the individual, including aliases, maiden names, names used when originally admitted to the United States, etc. Providing this information is extremely helpful and speeds up processing time.
16. **DUPLICATE FILINGS (without fee):** Cases will be accepted as a duplicate filing only when the BCIS has specifically requested that a duplicate be filed. In such a case, be sure to submit the receipt number of original filing or any copies of notices received from the BCIS on the first filing when submitting a duplicate petition or application.

17. The address block on the forms is the data field captured for all of our mailings. Consistent with the limitations on the number of characters per line (a maximum of 32) and the total numbers of lines (4) in that field, whatever is in the block will become the mailing address used by the system. The data in these fields is entered exactly as indicated on the forms. Please include internal routing symbols in the address block, especially for large organizations. It is better to abbreviate the name of the organization and have space for the routing codes than to fully spell out the name and have notices sit in the organization's mailroom.
18. Recognized authorities: Many I-129 petitions filed with evidence of the beneficiary's education or accomplishments include documentation submitted by various authorities. For example, petitions for artists and entertainers may include evidence the beneficiary has received an award or other recognition of achievement. Petitions for individuals employed in a specialty occupation may include evidence the beneficiary belongs to a professional organization. When an individual's awards or membership is used to support a petition, evidence establishing the reputation of that organization must also be submitted. Examples of the type of evidence needed includes the following: the size and standing of the organization or the organization's requirements for membership and any other documentation which would establish the reputation of that organization. When an opinion from a **recognized authority** is submitted, the opinion should state: the writer's qualifications as an expert; the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; how the conclusions were reached; and the basis for the conclusions, including copies or citations of any research material used.
19. Any application or petition for an individual currently in F-1 status needs to include evidence the student has been maintaining status and has been authorized employment if applicable. Such evidence usually can be satisfied by submitting the latest Form I-20AB/I-20ID and a copy of the employment authorization card.

[Back to Questions](#)   [Return to Immigration and Naturalization Home](#)

### **How do I extend my stay in the United States?**

#### **(How do I extend my nonimmigrant status?)**

#### ***Why do you need to extend your nonimmigrant status?***

A nonimmigrant *temporarily* enters the United States for a specific purpose such as business, study, or pleasure. When you entered the country as a nonimmigrant, a U.S. immigration inspector should have examined your passport and visa and then given you a BCIS Form I-94 (Arrival/Departure Record). This record should tell you (in the lower right-hand corner) when you

must leave the United States. You can prove you did not violate U.S. laws by turning in your BCIS Form I-94 to the proper authorities when you leave the country. If you want to extend your stay in the United States, then you must ask for permission from the Bureau of Citizenship and Naturalization Services (BCIS) *before your authorized stay expires*. Proof that you are willing to obey U.S. immigration laws will be important if you want to travel to the United States as an immigrant or nonimmigrant in the future. If you break immigration laws, you may also become subject to removal (deportation).

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

### **How does my spouse apply to extend her stay in the united states?**

If your employer files BCIS Form I-129 (Petition for Alien Worker) for you, then your spouse and child must carefully read and complete BCIS form I-539 (Application to Extend/Change Nonimmigrant Status) and submit any required supporting documents to extend their stay. It is best to submit both forms at the same time.

If you are filing BCIS Form I-539 for your own extension, you may include your spouse and any unmarried children under the age of 21 in your application if you are all in the same nonimmigrant category. You may also include your spouse or children in your application if they were given derivative nonimmigrant status. This means that your spouse and children were given nonimmigrant visas based on *your* nonimmigrant status. For instance, if a student is given an F-1 "Academic Student" visa, then the spouse and child are given F-2 "Spouse and Child of an Academic Student" visas.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

### **When should I apply to extend my stay?**

You should apply to extend your stay at least 45 days before your visa expires, but the BCIS Service Center must receive your application by the day your visa expires.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

### **What if my authorized stay has already expired?**

#### **(What If I Am Late Filing for an Extension?)**

If you are late filing for an extension and your authorized stay has already expired, you must prove that:

- The delay was due to extraordinary circumstances beyond your control;
  - The length of the delay was reasonable;
  - You have not done anything else to violate your nonimmigrant status (such as work without BCIS approval);
  - You are still a nonimmigrant (This means you are not trying to become a permanent resident of the United States. There are some exceptions.);
- and

- You are not in formal proceedings to remove (deport) you from the country.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)

### **Do I have Register for Selective Service?**

Selective Service registration allows the United States Government to maintain a list of names of men who may be called into military service in case of a national emergency requiring rapid expansion of the U.S. Armed Forces. By registering all young men, the Selective Service can ensure that any future draft will be fair and equitable.

Federal law requires that men who are at least 18 years old, but not yet 26 years old, must be registered with Selective Service. This includes all male non-citizens within these age limits who **permanently** reside in the United States. Men with "green cards" (lawful permanent residents) must register. Men living in the United States without BCIS documentation (undocumented aliens) must also register. But men cannot register after reaching age 26.

Failure to register for the Selective Service may (in certain instances) make you ineligible for certain immigration benefits, such as student loans and citizenship.

[Back to Questions](#) [Return to Immigration and Naturalization Home](#)