

Family Based Petition and Immigrant Visa at the U.S. Consulate

The Petition for Alien Relative and Application for Permanent Residence is the process to get permanent residence for close relatives of U.S. citizens and U.S. permanent residents.

Relatives that Qualify for the Permanent Residence Petition

1. Immediate Relatives. Relatives of U.S. citizens are immediate relatives if they are spouses, children under 21, or parents of the U.S. citizen. There is no wait to file for IR visas.

2. Preference System Relatives. Other relatives are classified under the preference system.

1st Preference: Unmarried sons and daughters (over 21) of a U.S. citizen.

2nd Preference: [2A] Spouses and children (under 21) of a permanent resident.
[2B] Unmarried sons and daughter (over 21) of a permanent resident.

3rd Preference: Married sons and daughters (over 21) of a U.S. citizen.

4th Preference: Brothers and sisters of a U.S. citizen.

Step 1. Immigrant Visa Petition (I-130)

The immigrant visa petition for an alien relative can be filed at any time. The Petitioner must show proof of U.S. citizenship or permanent residence and documentary evidence of the qualifying relationship to the Beneficiary. **After the Relative petition is approved, the USCIS forwards the approval notice to the National Visa Center.**

Step 2. National Visa Center (NVC) processing

When the USCIS sends the approval to the National Visa Center (NVC) they assign a case number. The NVC determines if visa numbers are available based on the *priority date* of the case. A priority date is determined by the date the relative petition was filed. The immigrant visa for entry to the U.S. as a permanent residence may be filed when the U.S. Dept. of State indicates, in the DOS Visa Bulletin that there are visa numbers available. A link to the Visa Bulletin is at www.Fonglegal.com.

If a visa number is available, the NVC forwards the approval to the consulate noted on the petition. If a visa number is *not* available, the NVC keeps the case until a visa number is available at which time, they forward the approval to the beneficiary's home consulate.

The NVC sends an Affidavit of Support (I-864), Agent of Choice form (DS-261), request for processing fee and a return envelope to the applicant. If the forms are not returned to the NVC within one year, the NVC will terminate the case.

When the Affidavit of Support fee is paid, the NVC reviews the I-864 and supporting documents. The Affidavit of Support must be signed by the petitioning USC and must meet the income requirements of the USCIS. If the USC does not meet the income requirement, the law allows for a *joint sponsor* to complete another Affidavit of Support.

The NVC then forwards the Immigrant Visa fee request. After payment, the NVC sends the *Instructions Package for Immigrant Visa Applicants* (formerly Packet 3). Once the applicant notifies the NVC that all documents ready, the NVC will forward the case to the Consulate to schedule interview appointment.

Step 3. Immigrant Visa Consular processing (DS-260)

Filing for an immigrant visa for permanent residence outside the United States is called *immigrant visa consular processing*. The spouse and unmarried minor children *under* the age of 21 may file for immigrant visas at the same time as the principal.

Each consulate has different procedures and visa interview appointments vary but are usually scheduled within 90 days. The Consulate will send the *Appointment Package for Immigrant Visa Applicants* (formerly Packet 4) which advises the Applicant and accompanying family members regarding the medical examination and immigrant visa interview. Processing times are available at www.travel.state.gov.

Marriage: If the relative petition is based on marriage, *at the time of entry to the U.S. and the grant of permanent residence*, if the Petitioner and Beneficiary have been married *less* than two years, the USCIS will grant the Beneficiary *conditional permanent residence*. The Beneficiary must file a petition to remove the conditions (I-751) 90 days prior to the two-year anniversary of granting conditional permanent residence.

Parent case: If the relative petition is based on a parent-child relationship, the US consulate may require documentary evidence of parental authority. This can include, evidence of cohabitation, financial support, school records, medical records or family photographs.

Step 4. Entry to the U.S.

On entry to the U.S., the officer will annotate the passport with a stamped as evidence of permanent residence. It may take some time for you to receive your Permanent Resident Card. The Service is not required to give you any other temporary evidence of your permanent residence. We advise you to wait for issuance of the card prior to any international travel.

U.S. Permanent Residents enjoy many rights and have many responsibilities, including paying or filing US income taxes, notifying the USCIS of address changes and maintaining certain physical presence in the United States.

Fong•Ilagan, LLP works with clients to simplify the immigrant visa process. To discuss your case with a board-certified immigration attorney, please contact our office at 713.772.2300.