

One of the most common issues in immigration law is how a US Citizen or Lawful Permanent Resident can petition for lawful resident status or what is commonly referred to as a “green card” for their family member. This issue can be complex depending on whether the family member is currently residing in the United States or if they are residing abroad. Also, if the family member has any prior illegal entries into the U.S., has previously overstayed a temporary visa for over six months, or committed a crime in the U.S., a waiver of inadmissibility may be required. If any of those issues apply consider consulting with an experienced immigration attorney, so that you are aware of the challenges your family member will face when applying for a green card.

The first step in the process is for the U.S. citizen or lawful resident to file an I-130, Petition for Alien Relative to establish that a qualifying relationship exists. The most frequent questions that people ask is which family members qualify to apply for permanent residence and how long it will take for them to be approved. The family members that qualify for a green card depend on the petitioner’s status in the United States. The petitioner is the family member who has lawful status in the U.S. and will be submitting an application on behalf of their family member who is considered the beneficiary. Depending on the qualifying relationship, it will be placed into one of six possible preference categories.

A U.S. citizen can petition for its immediate relatives which includes a spouse, unmarried child under the age of 21 and parent if the petitioner is over the age of 21. Such relationships allow for a visa to be immediately available upon approval of the petition. A U.S. citizen can also petition for its married sons and daughters and siblings, but there will be a wait period before a visa is available. Under certain circumstances, an immediate relative of a U.S. citizen may qualify to file an application for Adjustment of Status concurrently with the petition, and receive permanent resident status and work authorization without leaving the United States. This concurrent filing process is much quicker and more desirable than any other options.

A petitioner that is a Lawful Permanent Resident can petition for its spouse, children and unmarried sons and daughters. However, there is a wait period for all preference categories of lawful permanent residents. Once the petition is approved and a visa is immediately available, it will be forwarded to the National Visa Center for processing of the Immigrant Visa Application. After the application is accepted for submission an interview date will be scheduled at the nearest U.S. Embassy or Consulate of the beneficiary family member.

The reason there may be a wait period for visa availability is because Immigration sets an annual limit of visas that will be available for family-sponsored petitions. The Department of State tracks visa availability in its monthly Visa Bulletin. A visa is immediately available when the beneficiary’s priority date is earlier than the date for the specified preference category shown on the current Visa Bulletin. The alien’s priority date is determined by the date the petition is filed with Immigration Services. It is important to know that the date of visa availability for an approved petition will tend to vary and does not move forward on a day to day basis.

The petition must be filed with required supporting documentation in order to establish the qualifying relationship. If all the documentation is not submitted correctly the petitioner will receive a request for evidence or the application will be denied. The filing fee is \$420.00, so it is a good idea to do consult with an experienced immigration attorney or someone that has experience with successfully filing these petitions in order to get it approved in a timely manner.

