

Frequently Asked Questions about Family Based Immigration

Q. **What is the USCIS?**

A. USCIS stands for **U.S. Citizenship and Immigration Services**. It is the agency of the U.S. government principally responsible for matters dealing with aliens in the United States. USCIS has jurisdiction over immigrant petitions and adjustment applications for Family Based Immigration. Prior to March 2003, the USCIS was called the Immigration and Naturalization Service (INS). For a brief period of time, it was known as the Bureau of Citizenship and Immigration Services (BCIS). It is also sometimes just referred to as the CIS. For purposes of this website, we use the current accepted name of the U.S. Citizenship and Immigration Services (USCIS).

Q. **What is family based immigration?**

A. Family based immigration is becoming a U.S. permanent resident through certain family relations. Normally, a U.S. citizen (USC) or legal permanent resident (LPR) would file an immigration petition with the United States Citizenship and Immigrations Services (USCIS). This USC or LPR is called the "Sponsor." The alien relative for whom the immigration petition is filed is called the "Beneficiary."

Q. **Who can be a Sponsor?**

A. A USC or LPR can be the Sponsor of a family based immigration petition. However, the Sponsor has to meet some requirements and legal obligations. The Sponsor has to execute a legally binding affidavit of support for the Beneficiary, in which the Sponsor guarantees to maintain the standard of living of the intending immigrant at a level not lower than 125% of the national poverty level. This obligation continues until the Beneficiary has become a U.S. citizen or has worked in the United States for 40 qualifying quarters.

Q. **My wife and I are aliens working in the U.S. My 1-year-old son was born in the U.S. and is a U.S. citizen. Can he file an immigration petition for us now?**

A. No, he cannot file immigration petition for you based on your parent-child relationship until he reaches the age of 21.

Q. **I am a permanent resident. May I file an immigration petition on behalf of my parents?**

A. No, you cannot. As a lawful permanent resident, you **are not eligible** to petition to bring your parents to live and work permanently in the United States.

Q. **Who can be a Beneficiary?**

A. First of all, "immediate relatives" of a USC, including parents, spouses, widows, and children of a USC (children who are unmarried and under 21 years of age, and, in the case of a parent of a USC, the petitioning son or daughter being at least 21 years of age) can immigrate to the United States without being subject to any numerical restrictions. They can apply for the permanent resident status without any waiting time. The rest of the Beneficiaries are divided into several groups called Preferences. Each Preference is given a numerical quota per year to limit the

number of immigrants admitted into the United States. Please see the section on [Visa Bulletin](#) for more information.

The four Preferences are as follows:

1st Preference: applies to unmarried sons and daughters of U.S. citizens

2nd Preference: applies to spouses and unmarried sons and daughters of lawful permanent residents

3rd Preference: applies to married sons and daughters of U.S. citizens

4th Preference: siblings of U.S. citizens

Q. I am a U.S. citizen. What documents must I prepare for the immigration petition for my alien spouse?

A. Generally, you will need to prepare the following documents:

1. [Form I-130](#), Petition for Alien Relative, with all required documentation;
2. A copy of your birth certificate showing your name, or your U.S. passport;
3. If you are a citizen and were not born in the United States, a copy of either
 - a. your Certificate of Naturalization or Citizenship or
 - b. your U.S. passport
4. Two completed and signed G-325A's (one for you and one for your spouse);
5. A copy of your marriage certificate;
6. A copy of any divorce decrees, death certificates, or annulment decrees that would show that any previous marriage entered into by you or your spouse was ended legally; and
7. Two recently taken color photos of you and two of your spouse.

Q. I am a lawful permanent resident and the step-parent of my wife's child. What documents must I prepare for the immigration petition for this child?

A. Usually, you need to prepare the following documents:

1. [Form I-130](#), Petition for Alien Relative;
2. A copy of your alien registration receipt card;
3. A copy of the child's birth certificate showing the child's name and the names of your wife;
4. A copy of the marriage certificate showing the names of you and your wife (your marriage to your wife must take place before your stepchild's 18th birthday);
5. A copy of any divorce decrees, death certificates, or annulment decrees that establish the termination of any previous marriages entered into by you or your wife;

Q. I am a U.S. citizen and filing a Form I-130, "Petition for Alien Relative", on behalf of my son. My son will turn 21. In order to make him eligible to be an immediate relative of a USC, when must I submit the immigration petition?

A. According to the "Child Status Protection Act", your son will continue to be considered a child of a USC for immigration purposes if you file the immigration petition before he turns 21. For detailed information about "Age Out" in Family-based immigration, please click [here](#).

Q. How does U.S immigration law define "Siblings"?

A. A sibling is a brother, sister, stepbrother, stepsister, or adopted brother or sister. For the necessary sibling relationship to exist, each person must have been a child of at least one of the

same parents. The siblings need not share the same biological parents as long as both became "children" at the appropriate time, like, before the age of 16 in cases of adoption, and before the age of 18 for stepchildren. [INA 203 (a)(4)]

Q. I am a U.S. citizen, and I am over 18. May I apply for immigration for my alien sister?

A. No, you cannot. As a USC, you are eligible for filing for the immigration of your sister when you are at least 21 years old.

Q. I am a U.S. permanent resident. May I apply for immigration for my alien brother?

A. No, as an LPR, you are not eligible to apply immigration for your alien brother.

Q. How do I know if I qualify as a Beneficiary or not?

A. Beneficiaries are strictly defined and one has to meet the definition of its category at the time that the application of adjustment of status is approved. Those who do not meet the definitions cannot immigrate to the United States through family based immigration. Please check the section on Employment to explore other possibilities.

An "immediate relative" of a U.S. citizen is the spouse, parent, widow, or child of the U.S. citizen. Specifically, a "child" is the son or daughter of a U.S. citizen, who is unmarried and under the age of 21. An adopted child qualifies as long as the adoption was finalized before the child's 16th birthday. A stepchild qualifies as long as the marriage had occurred before the stepchild's 18th birthday. A "parent" must meet the same test as for the "child". One thing to point out is that a father-in-law or mother-in-law of a U.S. citizen are not "parents" of the U.S. citizen for immigration purposes. [INA 101 (b)(1), (b)(2), 203 (a)(4)]

Q. My father is a U.S. citizen, and he is filing for permanent residence for me. I am married with one son and one daughter. Should my father file separate petitions for my wife, son and daughter?

A. No. Your father need not file separate immigration petitions for your spouse, son and daughter. Your spouse and children will be included in the immigration petition your father is filing for you.

Q. What does a Sponsor need to do to start the immigration process?

A. A. There are two scenarios:
(1). If the Beneficiary is already in the United States in a non-immigrant status: If the alien is an immediate relative of a U.S. Citizen then he/she does not need to be in nonimmigrant status, but does need to have been admitted into the U.S. with a valid visa. In this case, if the Beneficiary is an immediate relative of a U.S. citizen, the U.S. Citizen sponsor can file an immigration petition (Form I-130), and the Beneficiary can file an Application for Adjustment of Status (Form I-485) at the same time. If the Beneficiary belongs to one of the four Preferences, then only the immigration petition can be filed, and the Beneficiary has to wait for the immigrant visa number to become current before he or she may apply to adjust to permanent resident. During this waiting period, the Beneficiary needs to independently maintain a valid non-immigrant status.

(2) If the beneficiary is outside the United States, the Sponsor needs to file an immigration petition and request that the USCIS notify a U.S. Consulate in the country where the Beneficiary lives. Once the immigration petition is approved, the National Visa Center of the U.S. State Department sends a forms and information package, "Packet 3", to the Sponsor. After the necessary forms are completed, the Beneficiary goes to the U.S. Consulate overseas to apply for an immigrant visa. On the day that the Beneficiary enters the United States on an immigrant visa, he or she becomes a U.S. permanent resident.

Q. I got my green card one month ago based on an Employment-based Immigration, the 2nd Preference (EB-2). Two months before my I-485 was approved, I went back to my home country and married my girlfriend. How can I bring her into the U.S.?

A. Since you were married before you became a lawful permanent resident, and your spouse did not physically accompany you to the U.S., your wife is eligible for "following-to-join" benefits. This means that you do not have to submit a separate Form I-130, Petition for Alien Relative, for your wife, and your spouse will not have to wait any extra time for a visa number to become available. You may file a Form I-824 with the USCIS and let it notify a U.S. Consulate that you are a lawful permanent resident, so that your wife can apply for an immigrant visa.

Q. How can I file the I-824? What documentation must I file with the USCIS?

You should file the I-824 at the USCIS office that took the most recent action on your case. The documents you must file with the USCIS are:

1. A [Form I-824](#), Application for Action on an Approved Application or Petition;
2. A copy of the original application or petition that was used to apply for your immigrant status;
3. A copy of the I-797, Notice of Action, for your original application or petition;
4. A copy of your alien registration receipt card or I-551;

If the I-824 is approved, USCIS will notify a U.S. consulate in your spouse's country that you are a lawful permanent resident so that your spouse can apply for a following-to-join immigrant visa. Your spouse must then contact the local U.S. consulate to complete the processing.

Q. What documents are typically required for a family based immigration petition?

A. Depending on the relationship between the Sponsor and the Beneficiary, these are the typical documents required: certificate of naturalization, birth certificate, marriage license, adoption paper, and/or a divorce decree. In most cases, the Sponsor needs to provide employment verification and W-2 forms for recent years. Other information required of the Beneficiary includes the passport, visa, I-94, photos, and medical examination report.

Q. What is a fiancé visa?

A. A fiancé(e) visa is a special visa, K-1, issued to an alien who seeks to enter the United States to marry a U.S. citizen. First of all, the U.S. citizen Sponsor has to file a petition with the USCIS. Once approved, the alien fiancé will apply for a K-1 visa at a U.S. Consulate overseas. On a K-1

visa, the alien has to marry the U.S. citizen Sponsor within 90 days after the alien enters the United States. For more information about K-visas, please [click here](#)

Q. I'm a U.S. citizen, and filed an I-130 for my wife who is right now in her home country. However, the I-130 is pending. Can my spouse come to the U.S. to live while the visa petition is pending?

A. Yes, she can. Once you file a form I-130, your spouse is eligible to apply for a nonimmigrant K-3 Visa. This will entitle her to come to the U.S. to live and work while the visa petition is pending. However, it is not necessary for your wife to obtain a K-3 visa in order to come to the U.S. to live and work. Your wife may wait abroad for immigrant visa processing. Seeking a K-3 visa can be a method for her to come the U.S. more quickly. For more information about K-3 visas, please [click here](#).

Q. What is a Conditional Green Card?

A. A Conditional Green Card is issued to the Beneficiary if the Beneficiary is the spouse of the U.S. citizen Sponsor and the marriage occurred less than two years before the Beneficiary is admitted as a U.S. permanent resident. Both spouses need to jointly petition to remove the condition within 90 days before the second anniversary of the Beneficiary's admission as a permanent resident. Failure to do so will result in the termination of the Beneficiary's conditional permanent residence. [\[INA 216 \(c\)\]](#)

Q. Can new immigrants work legally in the United States?

A. Yes. If the Beneficiary is already in the United States and has applied for permanent residency, he or she can apply for an Employment Authorization Document (EAD) at the same time. Within three to four months, long before the Beneficiary actually receives the Green Card, the Beneficiary will be able to start to work legally in any profession with an EAD. For more information about Employment Authorization Documents, please [click here](#)

Q. What if the Beneficiary needs to travel overseas while waiting for the Green Card?

A. Due to the huge backlog within the USCIS, it may take up to two years for the Beneficiary to receive the Green Card after the application for adjustment of status has been submitted. During this waiting period, the Beneficiary can apply for an Advance Parole, which allows him or her to travel overseas and come back to the United States without affecting the Green Card application. The only prerequisite for an Advance Parole is that the Beneficiary has maintained a legal status throughout his or her stay in the United States. For more information about Advance Parole, please [click here](#)

Q. What is the current income according to the federal poverty line?

A. The poverty lines vary according to the size of the family unit. In 2016, poverty lines for the contiguous 48 states and the District of Columbia consisted of the following breakdown:

A. 2 household members: \$20,025

B. 3 household members: \$25,200

- C. 4 household member: \$30,375
- D. 5 household members: \$35,500
- E. 6 household member: \$40,725
- F. 7 household member: \$45,912
- G. 8 household member: \$51,113
- H. *(For family units with more than 8 members, add \$5,200 for each additional member. Please be noted that the federal poverty lines are lower for sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child. The federal poverty guidelines are higher for Alaska and Hawaii.) [Information according to the U.S. Department of Health and Human Services].*

Q. Do the federal poverty guidelines change?

A. Yes, the federal poverty guidelines change from year to year.

Q. I am a U.S. citizen and have been out of work for several years, can I sponsor my wife in her green card application?

A. Yes, but you need a co-sponsor for the financial supports.

Q. If I have a co-sponsor for my wife's application, will the USCIS question my ability to support my wife who can actually support herself?

A. No. It is OK as long as your co-sponsor meets the financial support requirements.

Q. I have no income and cannot find a co-sponsor, what else can I do to sponsor my wife?

A. You may provide evidence of assets that are readily available and, combining with your total household income, fulfill the income eligibility requirement. Your wife's income may also be included as your household income if she has been living with you for the last 6 months. [[8 C.F.R. 213a.2 \(c\)\(1\)](#)]

For example: Mr. Chang is unemployed and has no income, but he has a house with a current value of \$500,000 free from any liabilities. He may submit evidence of his ownership of the house to meet the financial support requirements.

Q. I have no income and have no valuable assets in the U.S., but I have a house in China with a current value of US \$100,000. Does it count?

A. Yes. You may count significant assets outside the U.S. as long as your assets are readily convertible to cash within 13 months. [[8 C.F.R. 213a.2 \(c\)\(2\)\(iii\)\(B\)](#)]

Q. How can I determine that my assets are sufficient to meet the financial support requirements?

A. The value of your assets less any offsetting liabilities must exceed by at least 5 times the poverty lines minus the sponsors household income.

For example: Mr. Smith has an annual income of \$2,490. If the federal poverty line for a 2-member household is \$12,490. He must show that the value of his assets is not less than $(\$12,490 - \$2,490) \times 5 = \$50,000$.

Q. What evidence of assets may I submit?

A. Evidence of assets includes almost all tangible or intangible properties. Usually they are: (A) bank statements covering the last 12 months; (B) stocks, bonds, and other securities; (C) personal property; or (D) real estate.

Q. I recently obtained an M.D. degree, but my current income does not meet the minimum income requirement, does my degree count?

A. No. A degree alone does not count.

Q. I am unemployed and have no income, but my wife's income exceeds the federal poverty line. Can my wife sponsor herself?

A. No. But your wife's income can be included as your household income if she has been living with you for the last 6 months. Household income includes those living with the sponsor for the last 6 months if they are related to the sponsor by birth, marriage, or adoption, and persons listed as dependents on tax return.

Q. Who may be a co-sponsor?

A. Basically to be a co-sponsor, a person must be a U.S. citizen or permanent resident, 18 years of age or older, and must fulfill the domicile requirement, the affidavit requirement, and the income requirement.

Q. I do not have any family relationship with the petitioner or the beneficiary, can I be a co-sponsor?

A. Yes if you fulfill other requirements for a co-sponsor.

Q. Can I have more than one person to be my co-sponsor?

A. Yes. There is no limitation on number of co-sponsors that you can have. But if you have more than one co-sponsor, each co-sponsor must submit evidence showing that he/she meets the full 125% income requirement.

Q. What is the domicile requirement?

A. Domicile is a person's principle or actual dwelling place. The U.S. immigration law requires that a co-sponsor must domicile in the U.S., i.e. must have a principle or actual dwelling place in the U.S. [[INA 213 A\(f\)](#)]

For example: Mr. Taylor is a U.S. citizen. He sold his house in Detroit, Michigan and moved to Toronto, Canada last year. Mr. Taylor does not meet the domicile requirement of a co-sponsor because he has no domicile in the U.S.

Q. What is the affidavit requirement?

- A. A co-sponsor must submit with the affidavit the following documents:
- A. Federal tax returns for most recent three years;
 - B. Evidence of current employment; and
 - C. Evidence that the sponsor's income sufficient to meet the income requirement.

Q. What is the income requirement for a co-sponsor?

- A. Basically, the co-sponsor must have an income 125% above the federal poverty lines.

Q. Can a co-sponsor combine his/her assets to reach the 125% guideline?

- A. No. Unlike a sponsor, a co-sponsor is not allowed to combine his/her assets to meet the 125% guideline.

Q. What document do I need to submit as a co-sponsor?

- A. As a co-sponsor, you need to submit an affidavit of support.

Q. Is the affidavit of support legally enforceable?

- A. Yes. Under the U.S. immigration law, an affidavit of support is legally enforceable and may be enforced by the sponsored person, the state or federal government or any agency providing a means-tested public benefit.

Q. I sponsored my wife but we are now divorced. Am I still bound by the Affidavit of Support after our divorce?

- A. Yes. Divorce alone does not nullify the affidavit.

For more information about Family-Based Immigration, please click the following topics:

- [Family based immigration](#)
- [Exceptions to the Fraudulent/Preconceived Intent \(30/60/90-day Rule\) Issue](#)
- [Frequently asked questions about family based immigration](#)
- [Attorney Fees](#)