

FORT CARSON LEGAL INFO PAPER

PERMANENT RESIDENCY

FEDERAL LAW



Military members who are permanent residents or citizens can sponsor foreign nationals for permanent residency. The process can be complicated and it best to consult with an immigration attorney who specializes in these matters. Check the U.S. Citizenship and Immigration Services website at <https://www.uscis.gov/green-card> or make an appointment with the Legal Assistance Office for more information.

WHAT IS PERMANENT RESIDENCY?

Having a Permanent Resident Card, also known as a Green Card, allows you to live and work in the United States. The status lasts forever unless abandoned or revoked by the U.S. government. Permanent residency is different from citizenship because you can still be deported for committing certain actions and you are not eligible to vote or serve in certain jobs. This information sheet primarily provides information on permanent residency through family-sponsorship.

I AM A CITIZEN. WHO CAN I SPONSOR FOR PERMANENT RESIDENCY?

There are two categories of family members; immediate and non-immediate. Your immediate relatives are your spouse, any unmarried child under the age of 21, and your parents so long as you are at least 21 years old. For non-immediate relatives, which includes children over 21, married children, and siblings, USCIS has established preference categories that impact eligibility requirements and how long the process will take. You cannot sponsor derivative beneficiaries such as grandchildren or your child's spouse.

WHAT CAN BAR MY FAMILY MEMBERS FROM ELIGIBILITY?

Unlawful entrance into the United States or failure to maintain lawful status can bar non-immediate relatives. Immediate relatives may be exempt from this bar if they initially entered the United States on a visa, but overstayed. Immediate relatives of military members may also be eligible for another process called Parole in Place (PIP) which provides a discretionary path to permanent residency if they entered unlawfully. However, that process is best advised by a trained immigration attorney. There are also certain crimes, such as drug offenses, crimes involving moral turpitude, trafficking, and terrorism, which make individuals inadmissible and will cause an application for permanent residency to be denied. Before applying on behalf of a family member, family members should be thoroughly screened for past immigration violations and any criminal history both inside and outside the U.S. If someone is unsure of their immigration or criminal history or record, this can be done through a FOIA/Privacy Act Request through USCIS and ICE and criminal records check through local and federal agencies.

WHAT IS THE PROCESS FOR SEEKING PERMANENT RESIDENCY?

The process varies depending on the family relationship and the location of the individual. Inside the U.S., the process is an adjustment of status. If seeking permanent residency from abroad, your family member will go through the consular process. For all applications, you will have to file a Form I-130, Petition for Alien Relative.

WHAT IS ADJUSTMENT OF STATUS?

Your family member will go through adjustment of status if currently in the U.S. The member must be inspected and admitted or inspected and paroled into the U.S., be physically present in the U.S. at the time of filing, and have an immigrant visa immediately available. Immediate relatives are always able to get immigrant visas, though the processing time can be lengthy. Other relatives may fall into numerically-limited immigrant categories and have to wait until a visa is available. Your family member will then file Form I-485, Application to Register Permanent Residence or Adjust Status, as associated forms with USCIS. Each applicant is required to go to a biometrics appointment and an interview.

WHAT IS THE CONSULAR PROCESS?

Your family member will apply through a US Consulate if currently abroad after the I-130 is approved. If USCIS approves the petition and a visa is available, the consular office conducts an interview and processes the case. The consular office will give your family member a Visa Packet. When your family member arrives in the U.S., the U.S. Customs and Border Patrol (CBP) will inspect the packet. If the CBP admits your family member, he or she has lawful permanent resident status.

WHAT ARE THE CITIZENSHIP OPTIONS ONCE MY SPOUSE OR FAMILY MEMBER IS A PERMANENT RESIDENT?

If approved for permanent residency, spouses of U.S. citizens can apply for naturalization after three years and other family members can apply after five years.

WHAT HAPPENS IF I SPONSOR MY SPOUSE FOR PERMANENT RESIDENCY AND WE LATER DIVORCE?

Once your spouse is a permanent resident, getting divorced does not change that status. However, it is important to know that the Affidavit of Support that you will provide during the process stays in effect regardless of marital status. If you get divorced before your spouse's permanent residency is finalized, the application will no longer be valid. USCIS requires that the relationship to the sponsoring family member still exist for eligibility.

I AM A PERMANENT RESIDENT SERVING IN THE MILITARY. CAN I SPONSOR MY FAMILY FOR PERMANENT RESIDENCY?

Yes. While immediate family of citizens are guaranteed immigrant visas, family of permanent residents are instead considered within the family-based preference categories and will have to wait until a visa is numerically available. As military members are eligible for automatic naturalization, it may be faster for you to naturalize first so that your family member can apply under the immediate relative category.

WHAT OTHER ASSISTANCE IS AVAILABLE?

If you need further assistance, we encourage you to make an appointment with a Legal Assistance Attorney. We can refer you to an immigration attorney, or help you review paperwork and answer questions if you decide to file alone. You can make an appointment by calling 719-526-5572.

Consultation with Army attorneys is free to eligible clients. If you have questions or need help with legal problems, call the Fort Carson Legal Assistance Office at (719) 526-5572/5573 or come by the office (Building 6222) Monday through Thursday from 0900-1600 and Friday 0900-1500. Appointments are made on the last duty day of every week and you can call or walk in to schedule an appointment.

This is an informative handout from the Fort Carson Legal Assistance Office containing general information on a topic that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation.

Checklist

Application for Permanent Residency for Immediate Relatives through Adjustment of Status

A U.S. Citizen may sponsor an immediate family member (spouse, child under 21, parent) for lawful permanent residency through the Adjustment of Status process if the immediate family member has proof of entry of legal entry into the United States, even if that visa has since expired, and the immediate family member has not departed the United States.

The above is true as long as there are no other basis of inadmissibility which includes, but are not limited to, past criminal history, past visa violations, false claims to U.S. Citizenship, previous deportations, or previous periods of unlawful status. If there is any question as to whether an immediate family member may be subject to inadmissibility, is always recommended that a licensed immigration attorney to fully vet the applicant prior to filing. Failure to do so may result in one's family member being deported or excluded from the United States on a temporary or permanent basis.

A great place to start is here: <https://www.uscis.gov/forms/explore-my-options/us-citizen-petition-for-an-immediate-relative-to-become-a-lawful-permanent-resident>

Check www.uscis.gov and click on FORMS to get the most recent forms, instructions, and to verify most-recent fees necessary in order to concurrently file both a U.S. Citizen's application for a visa for an immediate relative and an immediate relative's application for permanent residency. Fees and forms change periodically. A current fee schedule is also available at <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf>

FORMS/DOCUMENTS NEEDED:

U.S. Citizen Completes:

- Forms:
 - I-130, Petition for Alien Relative
 - I-130A, Supplemental Information for Spouse Beneficiary (for spouses only)
 - G-1145, E-Notification of Application/Petition Acceptance (optional)
 - Filing fee of \$535 (checks to U.S. Department of Homeland Security)

Foreign National Completes:

- Forms:
 - I-485, Application to Register Permanent Residence or Adjust Status

- I-693, Report of Medical Examination and Vaccination Report (to be completed by a USCIS designated physician. Find a physician online at <https://my.uscis.gov/findadoctor>. Do not submit with application. Bring to you at time of interview)
- I-864, Affidavit of Support
- I-765, Application for Employment Authorization
- I-131, Application for Travel Document (only for those without unlawful presence)
- G-1145, E-Notification of Application/Petition Acceptance (optional)
- Filing Fee of \$1225 (includes biometrics)(checks to U.S. Department of Homeland Security)
- Additional Items to file I-130/I-485 Adjustment of Status Concurrent Filing:
 - Two passport photos for each person (write A# and name on back in pencil)
 - Proof of US Citizen Status
 - Birth Certificates of both individuals
 - Copy of Foreign National's current passport (every page)
 - I-94 of Foreign National (most recent entry – also available at <https://i94.cbp.dhs.gov/I94>)
 - Proof of relationship status (i.e. marriage certificate for spouse or birth certificate for parent or child)
 - Proof of bona fide relationship if applying for spouse (i.e. joint bank accounts, joint children's birth certificates, joint lease, Tricare enrollment, joint bills, family photos, etc.)
 - Military IDs (front and back)
 - Divorce Decrees (if applicable)
 - Most recent tax returns
 - Certified police and court records of Foreign National of all arrests, criminal charges, and final court dispositions regardless of where they occurred (if applicable. If this applies you should consult with an immigration attorney prior to filing on behalf of your relative!)
 - Certified translations of any foreign-language documents (free translation services available through Military One Source at www.militaryonesource.com)
 - Deployment orders to request expedited processing (if applicable)

Where to file: <https://www.uscis.gov/forms/all-forms/direct-filing-addresses-for-form-i-485-application-to-register-permanent-residence-or-adjust-status>

USCIS has a Military and Family Help Line at 877-247-4645 or militaryinfo@uscis.dhs.gov which is exclusively for military, their families, and veterans.