
Frequently Asked Questions: Family-Based Immigration

What family members can immigrate to the United States?

Family-based immigration allows close relatives of U.S. citizens and lawful permanent residents (“LPRs”) to immigrate to the United States. U.S. citizens may sponsor their spouses, unmarried or married children, parents, and siblings. LPRs may sponsor their spouses and unmarried children. No other relatives, such as aunts, uncles or cousins, may be sponsored to live permanently in the United States. Family members immigrate either as “immediate relatives” or through the “family preference system.” Generally, immediate relatives will immigrate faster than individuals in the family preference system. This is because there are a limited number of immigrant visas available each year for individuals immigrating in the family preference system while there is no such limitation for immediate relatives.

Who can immigrate as an immediate relative?

Immediate relatives include the following: (1) spouses of U.S. citizens; (2) unmarried children under age 21 of U.S. citizens; and (3) parents of U.S. citizens, when the citizen is at least 21 years old. The term immediate relative also includes widows or widowers of U.S. citizens who were married at the time of the citizen’s death; were not legally separated at the time of death; file an application within two years of the citizen’s death; and did not remarry before obtaining permanent residence.

Who can immigrate through the family preference system?

The family preference system allows the following persons to immigrate: (1) unmarried sons and daughters over age 21 of U.S. citizens; (2) spouses of lawful permanent residents; (3) unmarried children (any age) of lawful permanent residents; (4) married children (any age) of U.S. citizens; and (4) brothers and sisters of U.S. citizens, when the citizen is at least 21 years old. Individuals named in the relative petition and immigrating through the preference system are referred to as “principal beneficiaries.”

Can other family members immigrate with principal beneficiaries?

Yes, a principal beneficiary in the preference category may immigrate with his or her spouse and unmarried children under 21. These family members are called “derivative beneficiaries” and can immigrate without a separate petition filed on their behalf. Immediate relatives cannot immigrate with spouses and minor children unless a separate relative petition is filed on their behalf.

What is the procedure to petition for a family member to immigrate to the United States?

The procedure to petition for a family member involves two-steps. First, the U.S. citizen or LPR must file a form I-130 relative petition on behalf of his or her family member with the U.S. Citizenship and Immigration Service (USCIS). The main purpose of this petition is to prove the family relationship exists. For example, if applying for a spouse, the U.S. citizen or LPR must prove a legal marriage exists. The second step of the process

takes place after the I-130 is approved by the USCIS. At the second stage the beneficiary of the approved petition files an application for permanent residency. The process of applying for permanent residence in the United States is called adjustment of status; if applying outside the United States, the process is called consular processing. In some circumstances, the I-130 petition and the application for permanent residence may be filed together. An immigration lawyer or legal counselor can tell you if this option is available to you.

What is the legal status of a family member once an I-130 is approved by USCIS?

It is important to know that the approval of a relative petition alone does not give legal status to the beneficiary. In some situations, the beneficiary may have to wait several years after approval of the I-130 before he or she is able to apply for permanent residence status. During this waiting period, the beneficiary does not have the right to live and work in the United States.

How does the family preference system work?

Family members immigrating through the preference system may have to wait several years before they are able to immigrate. Since the number of individuals wishing to immigrate in the family categories each year is greater than the number of visas available, backlogs have developed. To deal with these backlogs, relative petitions are assigned “priority dates” on the date they are filed with the USCIS. Visas are distributed on a first-come, first-served basis determined by the priority date. The Department of State publishes a monthly Visa Bulletin that summarizes the availability of immigrant visas. To read the Visa Bulletin, check the family preference category and country of origin that applies to you. If your priority date (date of filing the I-130 petition) is a date before the date listed in the Visa Bulletin, you have a current priority date and can apply for permanent residence.

Where can I find the Visa Bulletin?

The Visa Bulletin can be found at: travel.state.gov/visa/frvi_bulletincurrent.html. You may also call the Department of State for a recording of current priority dates at (202) 663-1541.

Remember that immigration law is complicated and applies differently to people in different situations. When you have an immigration law question, check with an immigration lawyer or BIA accredited representative.

Visit www.cliniclegal.org/affiliates/directory to find one near you.