

TORRES LAW

Law Office of
JONATHAN A. TORRES LLC

(407) 953-5818

jtorreslaw.com

FAMILY BASED IMMIGRATION GUIDE

This guide has been created as a general information tool. If you would like specific legal advice for your case contact our office at 407-953-5818 for a free consultation with Attorney Jonathan Torres.

FAMILY-BASED IMMIGRATION

If you are an immediate relative of a U.S. citizen, you may be able to become a lawful permanent resident of the U.S.A. depending on your familial relationship and if you meet certain eligibility requirements.

The U.S. Gov. Considers you an immediate relative if you are:

- The spouse of a U.S. citizen;
- The unmarried child under 21 years of age of a U.S. citizen; or
- The parent of a U.S. citizen (if the U.S. citizen is 21 years of age or older).

Other family members may also be able to apply under the following family “preference immigrant” categories:

- First preference (F1) - unmarried sons and daughters (21 years of age and older) of U.S. citizens;
- Second preference (F2A) - spouses and children (unmarried and under 21 years of age) of lawful permanent residents;
- Second preference (F2B) - unmarried sons and daughters (21 years of age and older) of lawful permanent residents;
- Third preference (F3) - married sons and daughters of U.S. citizens; and
- Fourth preference (F4) - brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age and older).

More information can be found at the USCIS website: <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-family-preference-immigrants>

Generally, most family-based immigrants will fall under the two broad categories of either “fiancé & marriage visa” or Parent Visa. However, there are five (5) subcategories:

- Fiancé & Marriage Visa:
 - K1 Nonimmigrant Visa is meant for foreign nationals with a fiancé/fiancée status to a U.S. citizen intending to enter the U.S. to marry and file petition for alien relative and adjustment of status to lawful permanent resident.
 - K3 Nonimmigrant Visa is for the spouse of a U.S. citizen with pending petition for alien relative intending to enter the U.S. to wait for the approval of such petition and pursue adjustment of status to permanent resident.
 - K2 Nonimmigrant Visa meant for the child (unmarried and under 21 years of age) of a K1, and K4 Nonimmigrant Visa meant for the child of a K3 (unmarried and under 21 years of age, only if he or she was under 18 when the U.S. citizen and you [the K3 parent] got married).
 - If you (K1 or K3) have either biological or legally adopted

children with a U.S. citizen, they might have acquired citizenship through the U.S. citizen parent.

Eligibility

If you are an immediate relative of a U.S. citizen, you can become a lawful permanent resident based on your family relationship if you meet certain eligibility requirements. However, it is important to know if you are the spouse or child of a U.S. citizen’s immediate relative, you must independently qualify for a Green Card on your own and will need to file your own application. In other words, you cannot qualify for a Green Card as the derivative beneficiary based on the immediate relative’s application. An eligibility chart has been provided by the USCIS and is available here: <https://www.uscis.gov/green-card/green-card-eligibility-categories>

You may be eligible to apply as a...	If you are the...
<u>Immediate relative of a U.S. citizen</u>	<ul style="list-style-type: none"> • Spouse of a U.S. citizen • Unmarried child under the age of 21 of a U.S. citizen • Parent of a U.S. citizen who is at least 21 years old
Other relative of a U.S. citizen or relative of a lawful	<ul style="list-style-type: none"> • Family member of a U.S. citizen, meaning you are the: <ul style="list-style-type: none"> ○ Unmarried son or daughter of a

<u>permanent resident under the family-based preference categories</u>	<p>U.S. citizen and you are 21 years old or older</p> <ul style="list-style-type: none"> ○ Married son or daughter of a U.S. citizen (any age) ○ Brother or sister of a U.S. citizen who is at least 21 years old <ul style="list-style-type: none"> • Family member of a lawful permanent resident, meaning you are the: <ul style="list-style-type: none"> ○ Spouse of a lawful permanent resident ○ Unmarried child under the age of 21 of a lawful permanent resident ○ Unmarried son or daughter of a lawful permanent resident 21 years old or older
<u>Fiancé(e) of a U.S. citizen or the fiancé(e)’s child</u>	<ul style="list-style-type: none"> • Person admitted to the U.S. as a fiancé(e) of a U.S. citizen (K-1 nonimmigrant) • Person admitted to the U.S. as the child

	of a fiancé(e) of a U.S. citizen (K-2 nonimmigrant)
<u>Widow(er) of a U.S. citizen</u>	Widow or widower of a U.S. citizen and you were married to your U.S. citizen spouse at the time your spouse died
<u>VAWA self-petitioner–victim of battery or extreme cruelty</u>	<ul style="list-style-type: none"> • Abused spouse of a U.S. citizen or lawful permanent resident • Abused child (unmarried and under 21 years old) of a U.S. citizen or lawful permanent resident • Abused parent of a U.S. citizen

Steps to becoming a Permanent Resident

Once you are the beneficiary of an approved immigrant petition and you have received an immigrant visa number, there are two ways to apply for lawful permanent resident status: (1) adjustment of status or (2) consular processing. Adjustment of status is the process that you can use to apply for lawful permanent resident status when you are present in the United States. If you are currently outside the United States, you will need to apply through the U.S. Department of State consulate abroad. This pathway is referred to as consular processing, and more specific information on this process can be found at <https://www.uscis.gov/green-card/green-card-processes-and-procedures/consular-processing>.

Process and Procedure

Once you have determined your eligibility you are ready to begin the next steps in the process:

First you need to Choose someone to sponsor your visa application. If you want to apply for an immigrant visa, you need a U.S. citizen to sponsor you. If you're applying under the family visa category, you already know that person will be a family member of yours who is a U.S. citizen. Sponsorship through a U.S. relative is the most common way to immigrate to the U.S. **Please note that Green card holders can only sponsor their husband or wife and unmarried children below the age of 21.** Immediate relatives can get immigrant visas immediately and will not have to go on a waiting list. Non-immediate relatives however will need to wait for their priority date. Husbands, wives, parents and children of U.S. citizens are considered immediate relatives. It will be your sponsor who must file the initial petition called Form I-130, Petition for Alien Relative.

If you are already in the U.S. on a Nonimmigrant Visa...

(1) Adjustment of Status while in the U.S.

If you are already in the U.S. on a non-immigrant visa and want to become a permanent resident, you can apply for an "adjustment of status". You can do this by filing form I-485, Application to Register Permanent Residence or Adjust Status. This form will need to be filed either at the same

time an I-130 is filed, or after I-130 is filed and subsequently approved.

The form requires you to explain the reason you have for seeking permanent residency, and will ask questions about your family history, education, work history, and criminal history. Feel free to contact our office to assist you with the I-485 if you have questions.

Bars to Adjustment

Depending on how you entered the United States, you may be barred from adjusting status. For example, if you violated an immigration law. However, you may be able to adjust status under certain waivers available, even if you are subject to one of more adjustment bars and are otherwise ineligible for adjustment. At this point please contact our office to determine what type of relief applies to your case.

If you are going to start your process outside of the U.S....

(2) Consular Processing if outside the U.S.

This process applies if you are currently outside of the U.S. Under these circumstances, A U.S. citizen or lawful permanent resident relative will need to file a Form I-130, Petition for Alien Relative. After the sponsor files the immigrant petition, the USCIS will review the petition to see whether everything is complete and accurate. If the application packet is incomplete in any manner, the USCIS will return it to the sponsor.

Once a complete packet is before USCIS it will examine it for approval. If the

USCIS approves the petition, it will send it to the National Visa Center for immigrant visa pre-processing. The NVC will give the foreign national who wants a visa a case number and a bill for the application fees they'll need to pay to apply for their visa. The foreign national will be assigned a visa number and billed for the application fee. The foreign national will also need to send Form I-864, Affidavit of Support. Please note that applicants who aren't immediate relatives will need to wait for their priority dates before they will assign an appointment for an interview. Priority dates are posted in the USCIS's approval notice for their sponsor's petition

Documents you will need

*** Petition of Alien Relative and Adjustment of Status**

When you submit your application, you will also need the following documentation:

- Form I-130 if not filed already and filing together with form I-485;
- Form I-485, Application to Register Permanent Residence or Adjust Status;
- Copy of the Form I-797, Approval or Receipt Notice, for the Form I-130 petition filed on your behalf (unless you are filing Form I-485 together with the Form I-130);
- Two passport-style photographs;
- Copy of your government-issued identity document with photograph;
- Copy of your birth certificate;
- Copy of proof of relationship with U.S. Citizen or Permanent Resident applying on your behalf;

- Form I-864, Affidavit of Support Under Section 213A of the INA
- Form I-693, Report of Medical Examination and Vaccination Record. (This form will be needed later on during the process, preferably to be obtained when the interview with a USCIS official has already been scheduled)

You may also need the following if they apply:

- Copy of your passport page with nonimmigrant visa;
- Copy of your passport page with your admission or parole stamp;
- Copy of Form I-94, Arrival/Departure Record or copy of the U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document;
- Certified police and court records of all criminal charges, arrests, or convictions regardless of final disposition;
- Form I-485 Supplement A, Adjustment of Status Under Section 245(i)

Petition for Alien Relative and Consular Processing:

Initial Documents for Petition for Alien Relative:

- Form I-130
- Proof of U.S. Citizenship or Permanent Resident Status
- Evidence of family relationship

You will need to submit photocopies of all documentation requested and keep the original to bring them to your consular

interview once your I-130 Petition for Alien Relative is approved:

- Valid, unexpired passport
- Birth Certificate with translation
- Adoption Documentation
- Marriage Certificate with translation
- Marriage Termination with translation
- Court Records with translation
- Police Certificate(s) with translation
- Signed Affidavit of Support I-864 from your sponsor with supporting documentation including but not limited to: Proof of Domicile, proof of relationship, evidence of Income, form(s) W-2, IRS Tax Transcript, Federal Income Tax Returns, etc.
- You will also need to submit Form DS-260 Online Immigrant Visa Application and Registration to the State Department.

Other steps for applications outside of the U.S.

❖ **Medical Examination.** The USCIS requires medical examinations for the safety of its citizens and public health requirements. The medical exam is the last requirement before the final interview if applying outside of the U.S. When you receive the notice for the interview it will tell you what medical exams you specifically need to accomplish prior to the interview. The USCIS screens applicants to make sure they have received all the required vaccinations and to limit U.S. exposure to communicable disease and virus. The doctor who conducts your exam must complete a

Form I-693. This completed form must then be placed in a sealed envelope, which must remain sealed until it has been personally delivered to the consular officer for the interview. Please note that a medical examination is valid 6 months.

- ❖ **Interview** - The final step is the interview. You will need to bring some items with you to the interview including but not limited to: your passport, birth certificate, two passport-style photographs of yourself, and you will need to bring proof of passing the medical requirements explained above.

The USCIS Official or the Consular Officer, depending on your case, will examine the provided documents and conduct the interview and based on your responses, will decide to approve your adjustment of status if in the U.S. or if

you are eligible to obtain an immigrant visa and immigrate to the U.S.

ATTORNEY JONATHAN TORRES HAS BEEN REPRESENTING DEFENDANTS IN CRIMINAL MATTERS AND DUIs FOR OVER 10 YEARS.



CALL US FOR A FREE CONSULTATION AT 407-953-5818 or visit us at jtorreslaw.com.