Texas Immigration Law Council

ADJUSTMENT OF STATUS FOR FAMILY PREFERENCE CATEGORIES

A Guide to Becoming a Permanent Resident
Through Family-Based Preference Categories

WHAT ARE FAMILY PREFERENCE CATEGORIES?

Family preference categories include:

- F1: Unmarried sons and daughters (21 or older) of U.S. citizens,
- F2A: Spouses and unmarried children (under 21) of permanent residents,
- F2B: Unmarried sons and daughters (21 or older) of permanent residents,
- F3: Married sons and daughters of U.S. citizens, and
- F4: Brothers and sisters of U.S. citizens (if citizen is 21 or older)

KEY DIFFERENCES FROM IMMEDIATE RELATIVE CASES

- Must have a current priority date
- Limited number of visas available each year
- May have to wait years for visa number
- Cannot file I-485 until priority date is current
- Cannot file I-485 if out of status (with some exceptions)

BASIC ELIGIBILITY FOR ADJUSTMENT:

You must:

- Have filed an I-130 petition
- Have a current priority date
- Be physically present in the U.S.
- Have maintained lawful status (with some exceptions)
- Have entered the U.S. lawfully (with some exceptions)
- Be admissible to the United States

UNDERSTANDING PRIORITY DATES

What is a Priority Date?

- Date when I-130 petition was properly filed
- Found on I-797 Notice of Action
- Must be current to file I-485
- Can check in Visa Bulletin monthly by visiting this link: https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html

VISA BULLETIN

- Published monthly by State Department
- Shows which priority dates are current
- Dates are in day/month/year format
- Different dates for different categories
- Different dates for different countries
- Must use correct chart ("Final Action" vs. "Filing"). Determine which chart to use here: https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin

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THE APPLICATION PROCESS

STEP 1: I-130 PETITION

- Filed by U.S. citizen or permanent resident relative
- Establishes qualifying relationship
- Includes proof of petitioner's status
- Sets priority date

STEP 2: WAIT FOR PRIORITY DATE

- Monitor Visa Bulletin monthly
- Maintain continuous lawful status while waiting
- Keep address updated with USCIS
- Don't travel without proper documentation

STEP 3: FILE WHEN DATE IS CURRENT

In one package, you will need to submit the following forms signed by the following people and required evidence for each form:

1. **Form I-485, Application to Adjust Status:** This form is for your residency, and you will sign it as the Applicant.
    - Required Documentation:
        - Birth Certificates for you and your petitioner plus English translations if applicable
        - Evidence of your lawful entry to the US: Copy of your visa, passport stamp, and/or I-94
        - Signed and Sealed I-693, Medical Examination. Visit https://www.uscis.gov/tools/find-a-civil-surgeon to find an approved doctor near you.
        - Filing fee. As of January 11, 2024, the filing fee for this form is $1,440 for applicants over 14. Please check the USCIS website for up-to-date fees.
        - Passport Sized Photos. Check the form instructions for the number of photos needed for your application.
2. **I-864, Affidavit of Support:** This form is to prove that your US Citizen or Legal Permanent Resident relative petitioner can sponsor you financially. They will sign this form as the Petitioner/Sponsor. Their income must meet the requirements listed on the I-864P Form based on their household size. If they do not meet the requirements, you need a joint sponsor who does earn enough and they must ALSO fill out an I-864, Affidavit of Support and sign it as the Joint Sponsor.
    - Required Documentation:
        - Proof that the Sponsor/Joint Sponsor is a US Citizen or Lawful Permanent Resident. This can be a valid US Passport, birth certificate showing birth in the US, Naturalization Certificate, Certificate of Citizenship, or a copy of the front and back of their LPR card.
        - Copy of Sponsor/Joint Sponsor's tax filings for the most recent tax year.
        - Petitioner's proof of income, if applicable. This isn't necessary, but it is recommended. Pay stubs for the petitioner for the last 3-6 months is helpful
        - Petitioner's Proof of Assets. If your petitioner is relying on assets to prove they qualify, proof of the value of those assets should be submitted.
        - Proof of Petitioner's Employment. This isn't necessary, but it is recommended. A letter from Petitioner's employer, if applicable, on company letterhead is helpful.

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3. **(Optional) I-765, Application for Employment Authorization:** This form is to get a work permit while your residency application is pending. You will sign this as the applicant.
    - Required Documentation:
        - Copy of your passport page with your picture on it, other photo ID, and/or prior employment authorization card.
        - Passport Sized Photos. Check the form instructions for the number of photos needed for your application.
        - Filing fee. As of January 11, 2024, the filing fee for this form is $260. Please check the USCIS website for up-to-date fees.

4. **(Optional) I-131, Application for Advance Parole:** This form is to receive permission to travel outside of the U.S. while your residency application is pending. YOU CANNOT TRAVEL OUTSIDE THE U.S. WITHOUT ADVANCE PAROLE once you submit your application for residency.
    - Required Documentation:
        - Copy of your passport page with your picture on it
        - Passport Sized Photos. Check the form instructions for the number of photos needed for your application.
        - Filing fee. As of January 11, 2024, the filing fee for this form is $630. Please check the USCIS website for up-to-date fees.

STEP 4: ATTEND BIOMETRICS APPOINTMENT

- Take a photo ID
- Get fingerprinted
- Have photo taken
- USCIS conducts a background check

STEP 5: INTERVIEW (IF REQUESTED BY USCIS)

- Both you and petitioner must attend
- Bring original documents (birth certificates, passports, visas, etc) including your petitioner's photo identification
- Answer questions, including questions about your application, your entries and exits to and from the United States, and/or your relationship with the petitioner under oath
- (for spouses) Bring additional proof of your ongoing good faith marriage–especially evidence you've collected since submitting your application.

IMPORTANT THINGS TO KNOW

Child Status Protection Act (CSPA)

- Protects some children from "aging out" after they turn 21 years old
- Complex calculations required
- Child must "seek to acquire" their visa within one year of a visa being available to them
- Different rules for different categories
- Consult an attorney if you have concerns about "age out"

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Maintaining Status

- Must maintain lawful status while waiting for visa availability in order to apply for adjustment from within the US
- Some exceptions may apply
- Violations may require waiver
- Consult an attorney if out of status as it may mean that you need to consular process

CONDITIONAL RESIDENCE

- **If you have been married for less than 2 years, you will likely receive Conditional Permanent Residence.** This means that your green card is conditional and only valid for 2 years versus the 10-year standard green card. If you receive a 2-year green card, you must apply to remove the conditions on your residency (Form I-751) within 90 days of your card expiration. Do not file the I-90 to renew the green card as only those with a 10-year green card can renew their card with an I-90.

TIMELINE

- Processing times vary by location. You can check processing times here: https://egov.uscis.gov/processing-times/
- Typically receive a work permit and/or travel permission in about 3-8 months
- Total process usually 8-12 months but mostly depends when visa is available
- Premium processing not available

BENEFITS WHILE PENDING

- While your application is pending, you can obtain a work permit if you file Form I-765, and travel permission if you file Form I-131. You are permitted to remain in the United States until you receive a decision on your application for residency. During this time, you can obtain a Social Security number and may qualify for state identification or a driver's license.

AFTER APPROVAL

- Upon approval, you will receive your green card by mail, allowing you to work and travel freely. You must maintain your primary residence in the United States. If you are married to a U.S. citizen, you can apply for citizenship after three years; all others may apply after five years of permanent residency.

SEE AN ATTORNEY IF YOU HAVE:

- It is important to consult with an immigration attorney if you have any complex Child Status Protection Act (CSPA) calculations, questions about priority dates, or issues with legal status violations. Additionally, seek legal counsel if you have previous immigration violations such as visa overstays, denied admissions, deportations, or unlawful entries or presence. An attorney should also be consulted if you have any criminal history, have received public benefits, or have prior deportation orders.

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