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Family Based Immigration: Complete Process Guide

A comprehensive guide from EB5 Attorneys

Family based immigration allows U.S. citizens and lawful permanent residents to sponsor qualifying relatives for green cards. The process starts with Form I 130, moves through either adjustment of status or consular processing, and requires an affidavit of support meeting federal poverty guidelines. Immediate relatives of U.S. citizens face no annual visa cap; family preference categories involve waiting periods that can span years depending on the Visa Bulletin priority date.

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Immediate Relatives and Family Preference Categories

Family based immigration divides into two statutory tracks under the Immigration and Nationality Act (INA) Section 203(a). The first track covers immediate relatives of U.S. citizens: spouses (IR 1), unmarried children under 21 (IR 2), and parents of citizens aged 21 or older (IR 5). Immediate relative visas are not numerically limited under INA 201(b), meaning no annual cap applies and there is no waiting period based on priority dates. A petition approved today can move directly to visa issuance without waiting for a date to become current in the Visa Bulletin.

The second track comprises four family preference categories, each subject to annual numerical limits. The Family First Preference (F1) covers unmarried sons and daughters of U.S. citizens, capped at 23,400 visas per year. The Family Second Preference (F2) covers spouses and unmarried children of lawful permanent residents (F2A, capped at 87,934 per year) and unmarried sons and daughters of LPRs aged 21 or older (F2B). The Family Third Preference (F3) covers married sons and daughters of U.S. citizens, capped at 23,400 per year. The Family Fourth Preference (F4) covers brothers and sisters of U.S. citizens, capped at 65,000 per year.

Per country limits under INA 202(a) restrict any single country to no more than seven percent of the total family preference visas in a given year. Countries with historically high demand, including Mexico, the Philippines, China, and India, experience significantly longer backlogs in family preference categories. The priority date is the date USCIS receives the underlying I 130 petition. A visa number cannot be issued until the Visa Bulletin shows that priority date as current.

The distinction between immediate relative and preference category status is the single most consequential threshold in family immigration planning because it determines whether a case can move forward immediately or must wait in a potentially years or decades long queue.

Form I 130: Petition for Alien Relative

The I 130 petition is the foundational document in family based immigration. It is filed by the U.S. citizen or LPR sponsor (the petitioner) on behalf of the foreign national relative (the beneficiary). Filing establishes the legal basis for the family relationship and locks in the priority date.

USCIS Form I 130 requires the petitioner to provide: full legal names and addresses for both petitioner and beneficiary; proof of the petitioner's U.S. citizenship or LPR status (passport biographic page, naturalization certificate, or green card); documentary proof of the qualifying family relationship (marriage certificate, birth certificate, or other civil registration document); evidence that any prior marriages of either party were legally terminated if the petitioned relationship is a spousal petition; and the government filing fee, currently $535 per USCIS Form I 130 as established in the 2024 USCIS fee schedule effective April 1, 2024.

Each I 130 petition covers one beneficiary only. Sponsors with multiple beneficiaries in different preference categories must file separate petitions with separate fees. Children deriving from a spousal petition (derivative beneficiaries) may be included in the same petition under certain circumstances governed by 8 CFR 204.2(a)(4), but separate petitions are generally more reliable.

USCIS processing times for I 130 petitions vary significantly by service center and category. As of 2025, processing times at the National Benefits Center range from 12 to 18 months for most categories. Premium processing is not available for I 130 petitions. Petitioners should retain copies of all submitted documents and the USCIS receipt notice (Form I 797), which contains the priority date and receipt number.

Common errors that delay I 130 petitions include: submitting photocopies of documents when originals or certified copies are required; failing to submit certified translations for documents not in English under 8 CFR 103.2(b)(3); failing to include evidence of legal termination of prior marriages; submitting the petition to the wrong service center; and paying the incorrect fee amount.

Consular Processing vs. Adjustment of Status

Once the I 130 is approved and a visa number becomes available, the beneficiary can pursue permanent residence through one of two procedural tracks: consular processing at a U.S. embassy or consulate abroad, or adjustment of status (AOS) inside the United States.

Consular processing applies when the beneficiary is outside the United States or when the beneficiary is inside the United States but ineligible for adjustment. After I 130 approval, USCIS transfers the case to the National Visa Center (NVC). NVC collects the immigrant visa application (Form DS 260), civil documents, and financial sponsorship documents. NVC schedules the immigrant visa interview at the appropriate U.S. consulate or embassy. The consular officer conducts the interview, adjudicates the visa application, and upon approval issues an immigrant visa allowing the beneficiary to travel to the United States and be admitted as a lawful permanent resident at the port of entry.

Adjustment of status applies when the beneficiary is physically present in the United States and was admitted or paroled. The beneficiary files Form I 485 (Application to Register Permanent Residence or Adjust Status) with USCIS, along with supporting documents. For immediate relatives of U.S. citizens, the I 130 and I 485 can be filed concurrently on the same day regardless of whether a visa number has been approved, because no cap limit applies. For family preference categories, concurrent filing is only possible when a visa number is immediately available as shown in the Visa Bulletin.

Key advantages of AOS include: the beneficiary can remain in the United States during processing; the beneficiary can apply for work authorization (Form I 765) and advance parole (Form I 131) while AOS is pending; and the interview typically occurs at a local USCIS field office rather than a consulate in a foreign country. Key advantages of consular processing include: it may be faster in high demand field offices and can avoid domestic USCIS interview backlogs; and it is the only option when the beneficiary is abroad.

Filing fees for I 485 are currently $1,440 per applicant (including biometrics), as established in the April 2024 USCIS fee schedule. Concurrent I 765 and I 131 applications are included in this fee for most family preference categories.

Priority Dates and the Visa Bulletin

The Department of State publishes the Visa Bulletin monthly. This publication is the authoritative source for determining when a family preference beneficiary may proceed with an immigrant visa application or adjustment of status. Understanding the Visa Bulletin is essential for preference category cases.

The Visa Bulletin contains two charts for family based categories: Chart A (Dates for Filing) and Chart B (Final Action Dates). Chart A shows the earliest priority dates eligible to file an adjustment of status application at USCIS if USCIS has confirmed availability. Chart B (Final Action Dates) shows the dates that must be current before a visa can actually be issued or AOS can be approved. USCIS publishes a monthly notice confirming whether Chart A or Chart B applies for that month.

The priority date is the date USCIS received the I 130 petition, as reflected on the Form I 797 receipt notice. A beneficiary may proceed only when their priority date is earlier than (or equal to) the date shown in the applicable Visa Bulletin chart for their preference category and country of chargeability.

For high demand countries with long backlogs, beneficiaries in F4 (siblings of U.S. citizens) from Mexico or the Philippines may wait 20 or more years from I 130 filing to visa availability. Tracking priority date movement in the monthly Visa Bulletin allows beneficiaries and their families to plan accordingly.

The eb5status.com/visa-bulletin resource provides monthly tracking of Visa Bulletin changes for both family and employment categories, allowing petitioners to monitor their wait without relying solely on State Department publications. The State Department also publishes historical movement data on travel.state.gov, which allows beneficiaries to estimate approximate wait times based on priority date and country of chargeability.

One strategic consideration: a petitioner who naturalizes to U.S. citizenship during a preference case can upgrade the petition from family preference to immediate relative status if the beneficiary is an unmarried child or spouse. This upgrade, authorized under INA 204(k), eliminates the wait and allows immediate case progression.

Affidavit of Support: Form I 864

The affidavit of support is a legally enforceable contract between the petitioner and the U.S. government, signed under penalty of perjury, in which the petitioner agrees to financially support the immigrant and reimburse any means tested public benefits the immigrant receives. The affidavit is required for virtually all family based immigrant visa applications under INA 213A.

The sponsor must demonstrate household income at or above 125 percent of the federal poverty guidelines for the sponsor's household size. The household size includes the sponsor, all dependents on the sponsor's most recent federal tax return, any persons the sponsor is currently sponsoring on other I 864 contracts, and the intending immigrant. For 2025, the 125 percent threshold for a household of two in the contiguous United States is $25,025 per year; for a household of three, $31,537. Updated thresholds are published annually by the Department of Health and Human Services and incorporated into USCIS guidance.

If the petitioner's income does not meet the threshold, options include: using assets (the combined value of assets must be at least five times the income shortfall for most family preference categories, or three times the shortfall for immediate relatives of U.S. citizens); adding a household member as a co sponsor by including their income under Form I 864A; or obtaining a joint sponsor (a separate Form I 864 filed by an independent person who meets the income threshold independently).

The I 864 obligation continues until the immigrant: becomes a U.S. citizen; has worked 40 qualifying quarters of Social Security coverage (approximately 10 years); permanently departs the United States; dies; or in some circumstances when a sponsor dies. Divorce does not terminate the I 864 obligation. If the immigrant receives means tested public benefits, the sponsoring agency can seek reimbursement from the sponsor.

Supporting documents required with Form I 864 include: the most recent federal income tax return with all schedules and W 2 forms; evidence of current employment (pay stubs for the most recent six months or an employer letter); and proof of any other income sources (Social Security award letters, pension statements, or investment income documentation).

Medical Examination Requirements

All immigrant visa applicants, whether applying through consular processing or adjustment of status, must undergo a medical examination by a USCIS designated civil surgeon (for AOS) or panel physician (for consular cases). The medical examination is required under INA 221(d) and serves to identify any conditions that constitute grounds of inadmissibility under INA 212(a)(1).

For adjustment of status cases, the civil surgeon completes Form I 693 (Report of Medical Examination and Vaccination Record). This form must be completed by a USCIS designated civil surgeon and submitted in a sealed envelope. USCIS does not accept I 693 forms completed by non designated physicians or submitted outside the required sealed envelope procedure. The civil surgeon's findings must not be more than two years old at the time of filing, and USCIS must adjudicate the case within two years of the examination date or a new examination may be required.

The medical examination covers: general physical examination; review of vaccination records with required vaccinations administered if the applicant is current on the USCIS vaccination schedule; tuberculosis (TB) testing, including a TB skin test or blood test and, if reactive, chest X ray and sputum culture as appropriate; mental health screening; and screening for communicable diseases of public health significance.

Health conditions that may constitute grounds of inadmissibility include: active tuberculosis; a communicable disease of public health significance (as designated by the Secretary of Health and Human Services under 42 CFR 34.2); failure to have required vaccinations; current drug abuse or addiction; and mental or physical disorders with associated harmful behaviors.

Waivers of health related inadmissibility grounds are available in many circumstances. USCIS Form I 601 is used for most inadmissibility waivers, including health related grounds. TB treatment completion records, vaccination records, and medical opinion letters from qualified specialists can support waiver applications.

The Immigrant Visa Interview

For consular processing cases, the immigrant visa interview at a U.S. embassy or consulate is the culminating step before visa issuance. The interview is scheduled by the NVC after all required documents and fees have been submitted and accepted. For AOS cases, USCIS schedules an interview at a local field office, though many AOS cases for immediate relatives of U.S. citizens are approved without an in person interview in recent years.

At the consular interview, the applicant appears before a consular officer who reviews the visa application, verifies documents, confirms the bona fide nature of the qualifying relationship (especially in spousal cases), and assesses admissibility. Consular officers have broad discretion under INA 104(a) and are generally not subject to administrative appeal. A denial at the consular interview is a significant obstacle requiring legal strategy to overcome.

Interview preparation should include: organizing all original civil documents (birth certificates, marriage certificates, police certificates, military records if applicable) in a logical, legible order; preparing the immigrant to explain the history of the qualifying relationship clearly and consistently with the petition; reviewing any potential inadmissibility issues in advance so the attorney can prepare responses or waiver applications; and reviewing the I 864 financial documents to confirm the interview file includes complete support evidence.

For spousal petitions, the consular officer may ask questions to establish the bona fide nature of the marriage. Common areas of inquiry include: how and when the couple met; the timeline of the relationship; living arrangements; shared finances; communication patterns during long distance periods; knowledge of each other's families and backgrounds; and any prior immigration history. Inconsistencies between the petitioner's and beneficiary's accounts raise credibility concerns that can result in additional scrutiny or denial.

Consular processing timelines vary significantly by post. High volume embassies like those in Mexico City, Manila, and Mumbai may have interview wait times of six months to over a year beyond NVC processing. Applicants should monitor post specific wait times on travel.state.gov and account for these delays in immigration planning.

Common Grounds for Denial and How to Respond

Family based immigration petitions and applications are denied on substantive and procedural grounds under INA 212 (grounds of inadmissibility) and INA 245 (adjustment of status requirements). Understanding common denial grounds allows petitioners and beneficiaries to prepare proactively.

Unlawful presence accrual under INA 212(a)(9)(B) is among the most common inadmissibility grounds. Individuals who accumulate more than 180 days but less than one year of unlawful presence and then depart the United States are subject to a three year bar to reentry. Individuals who accumulate one year or more of unlawful presence and depart are subject to a ten year bar. Only specific waivers under INA 212(a)(9)(B)(v) can overcome these bars. The waiver requires demonstrating extreme hardship to a U.S. citizen or LPR spouse or parent, and USCIS applies a stringent standard for what constitutes extreme hardship under Matter of Cervantes, 22 I&N Dec. 560 (BIA 1999).

Prior removal orders under INA 212(a)(9)(A) create a five year (expedited removal), ten year (standard removal), or permanent (multiple removal) bar to reentry. Waivers under INA 212(a)(9)(A)(iii) require permission to reapply for admission and a showing of extreme hardship.

Criminal grounds of inadmissibility under INA 212(a)(2) cover crimes involving moral turpitude (CIMT), controlled substance violations, multiple criminal convictions with aggregate sentences of five years or more, and several other categories. Petty offense exceptions and certain youthful offender exceptions apply. Waivers under INA 212(h) are available for some criminal grounds but are categorically unavailable for murder, torture, aggravated sexual abuse, and several other serious offenses.

Fraud or misrepresentation under INA 212(a)(6)(C) applies when an applicant has misrepresented a material fact or committed fraud to obtain an immigration benefit. This ground includes visa fraud, fraudulent marriages, and false claims to U.S. citizenship. The bar is permanent absent a waiver under INA 212(i), which requires demonstrating extreme hardship to a qualifying relative.

When a denial is issued, the applicant or petitioner has procedural options depending on the context: motion to reopen or reconsider with USCIS; an appeal to the Board of Immigration Appeals (BIA) in removal proceedings; waiver application; or federal court review under the Administrative Procedure Act in limited circumstances. Time limits apply to most appeal and motion procedures.

Timeline Ranges and Total Costs

Family based immigration timelines and costs vary widely based on the preference category, the beneficiary's country of chargeability, potential inadmissibility issues, and processing delays at specific service centers or consular posts.

For immediate relatives of U.S. citizens with no inadmissibility issues, the total processing timeline from I 130 filing through AOS approval typically ranges from 14 to 24 months as of 2025, with significant variation by field office. Concurrent I 130 and I 485 filing compresses this timeline for some applicants. Consular processing for immediate relatives typically runs 12 to 18 months from I 130 filing through visa issuance, though high demand posts may add months.

For family preference categories, the total timeline from I 130 filing to visa issuance must include the priority date wait. F2A (spouses and children of LPRs) historically has a relatively shorter wait of one to three years for most countries. F2B (unmarried adult children of LPRs), F3 (married children of citizens), and F4 (siblings of citizens) have substantially longer waits that vary by country of chargeability and can span five to twenty or more years for high demand countries.

Government filing fees as of the April 2024 USCIS fee schedule include: I 130 at $535; I 485 (adjustment of status with biometrics) at $1,440; I 864 (no separate filing fee); I 765 (employment authorization) at $0 when concurrent with I 485 for most applicants; I 131 (advance parole) at $0 when concurrent with I 485; immigrant visa application (DS 260) NVC fee at $325; immigrant visa issuance fee at $220. Civil surgeon examination fees are not government fees and vary by provider, typically ranging from $200 to $600.

Attorney fees for family immigration representation vary by complexity, geography, and scope of services. Straightforward immediate relative AOS cases in non complex markets may cost $1,500 to $3,000 in attorney fees. Cases involving inadmissibility waivers, prior removal orders, or complex criminal or immigration history may cost substantially more due to additional petition preparation and hearing representation requirements.

Frequently Asked Questions

1. What is the difference between an immediate relative and a family preference category?

Immediate relatives are the closest family members of U.S. citizens: spouses, unmarried children under 21, and parents of citizens 21 or older. They are not subject to annual visa caps under INA 201(b), so a petition approved for an immediate relative can move forward without waiting for a priority date to become current. Family preference categories cover more distant relatives and relatives of LPRs and are numerically capped under INA 203(a). Preference category beneficiaries must wait until the Visa Bulletin shows their priority date as current before applying for the immigrant visa, which can take years or decades depending on the category and country.

2. How long does it take to get a green card through family based immigration?

For immediate relatives of U.S. citizens with no inadmissibility issues, the total timeline from I 130 filing through green card approval ranges from approximately 14 to 24 months for adjustment of status cases as of 2025, though field office backlogs cause significant variation. Family preference category cases must include the priority date wait before this processing time begins. F2A cases may have total wait times of two to four years for most countries, while F4 sibling cases for high demand countries like Mexico and the Philippines can involve waits exceeding 20 years from I 130 filing to visa availability.

3. What happens if I cannot meet the income requirement for the affidavit of support?

If your household income falls below 125 percent of the federal poverty guidelines for your household size, you have several options under INA 213A. You can use assets to supplement income shortfalls; assets generally must equal five times the shortfall for most categories. You can include a household member as a co sponsor using Form I 864A, combining their income with yours. Alternatively, a completely separate joint sponsor can file their own Form I 864 using their independent income. The joint sponsor must independently meet the income threshold and accepts the same legally enforceable obligation to support the immigrant as the primary sponsor.

4. Can a person with prior unlawful presence get a family based green card?

It depends on the type and duration of unlawful presence and whether the person is inside or outside the United States. Individuals who accumulated more than 180 days but less than one year of unlawful presence and departed the U.S. are subject to a three year reentry bar under INA 212(a)(9)(B). Those with one or more years of unlawful presence face a ten year bar upon departure. These bars can be waived under INA 212(a)(9)(B)(v) by demonstrating extreme hardship to a U.S. citizen or LPR spouse or parent. Individuals adjusting status inside the United States without having departed may avoid triggering the bar in some circumstances, but the analysis is fact specific and requires legal evaluation.

5. What documents are needed to prove a bona fide marriage for a spousal petition?

USCIS and consular officers evaluate spousal petitions for evidence that the marriage was entered in good faith and not solely to obtain an immigration benefit, as required under INA 204(c) and 8 CFR 204.2(a)(1)(iii). Strong evidence packages include: joint financial accounts and statements; joint lease or mortgage documents; joint tax returns; insurance policies listing each spouse as beneficiary or covered family member; birth certificates of children born to the couple; correspondence, photos, and travel records documenting the relationship timeline; and affidavits from family members or friends who can attest to the relationship.

6. What is the Visa Bulletin and why does it matter?

The State Department publishes the Visa Bulletin monthly to indicate which priority dates are current for each family preference category and country of chargeability. A priority date is current when it appears in the applicable Visa Bulletin chart (either the Dates for Filing chart or the Final Action Dates chart, depending on which USCIS has authorized). Until a beneficiary's priority date is current, they cannot proceed to the immigrant visa or adjustment of status application stage, regardless of how long ago the I 130 was approved. Monitoring the Visa Bulletin monthly at travel.state.gov or eb5status.com/visa-bulletin allows petitioners to anticipate when they can move forward.

7. Can a lawful permanent resident sponsor a spouse for a green card?

Yes. LPRs can petition for a spouse under the Family Second Preference category (F2A) by filing Form I 130. Unlike immediate relatives of U.S. citizens, the F2A category is numerically capped and subject to annual limits under INA 203(a)(2)(A), though Congress has historically given F2A higher priority than other preference categories. The beneficiary spouse must wait for their priority date to become current in the Visa Bulletin before proceeding to the immigrant visa or AOS stage. If the LPR sponsor naturalizes to U.S. citizenship before the case is complete, the petition automatically upgrades to immediate relative status, removing the annual cap wait.

Disclaimer: This guide is provided for general informational purposes only and does not constitute legal advice. Every immigration case is unique. Consult a qualified immigration attorney for advice specific to your circumstances.

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