



Immigration and Nationality Law



What Are Immigration and Nationality Laws?

Immigration laws are the laws that control the terms of admission of non-citizens into the United States and establish restrictions on their ability to live and work in this country. Nationality laws regulate issues of citizenship. Because the laws and procedures surrounding these two areas are highly technical and ever changing it is crucial that you ensure you have the latest, most up-to-date information. Contact *United States Citizenship and Immigration Services* (USCIS), for more information and current regulations, guidance, and forms. All of these can be obtained by going to the USCIS website www.uscis.gov.

Basic Principles of Immigration and Nationality: Citizens vs. Aliens

Anyone who is not a citizen of the United States is considered an “alien.” Aliens fit into two categories: immigrants and non-immigrants. An immigrant alien is a non-citizen who intends to gain admission to and remain permanently in the United States by obtaining lawful permanent resident (commonly called “Green Card”) status. There are a limited number of immigrants allowed to come into the United States each year. Immediate relatives of immigrants (spouses, parents, and unmarried children under the age of 21), though, are not subject to numerical limitations, and so usually can immigrate relatively quickly, just as soon as the paperwork is processed by USCIS. Lawful permanent residents may eventually naturalize to become United States citizens if they meet certain other requirements. A naturalized citizen has all of the same rights and privileges as a citizen who acquired citizenship status by birth.

Non-immigrant aliens are temporary visitors to the United States, such as tourists or students. They are afforded fewer rights and privileges than immigrants, and are generally not authorized to work in the United States.

Generally, an alien must have a visa to be admitted into the United States. However, Canadians and citizens of other countries that participate in a visa waiver program do not need a visa to enter the United States as non-immigrant visitors.

Aliens in the United States illegally are subject to removal (formerly called deportation). Aliens in the United States legally are also subject to removal if they commit certain felonies or engage in other conduct that is inconsistent with the status in which they were admitted.

Disclaimer: This information is general in nature and presented to assist those eligible in preparing for a legal assistant appointment with a professional in the legal office. Do not rely upon this general restatement of background information without discussing your specific situation with a legal professional.

Bringing a Foreign Spouse Into the United States

Service-members who marry while stationed overseas and desire to bring their foreign spouses with them when they return to live in the United States can do so in one of two ways:

Overseas Processing: The service-member may sponsor the foreign spouse for an immigrant visa by filing a *Form I-130, Petition for Alien Relative*, at a U.S. embassy or consulate in the country of the spouse's nationality or citizenship, or by filing the same application in the USCIS office that has jurisdiction over the petitioner's place of residence.

For sponsors who reside in or will reside in California, Nevada, Arizona, Hawaii, or Guam, use the California Service Center. The address is:

**U.S. Citizenship and Immigration Services
California Service Center
P.O. Box 10130
Laguna Niguel, CA 92607-0130**

For sponsors who reside in or who will reside in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Oklahoma, Tennessee, or Texas, use the Texas Service Center. The address is:

**U.S. Citizenship and Immigration Services
Texas Service Center
P.O. Box 850919
Mesquite, TX 75185-0919**

For sponsors who reside in or who will reside in Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin or Wyoming, use the Vermont Service Center. The address is:

**U.S. Citizenship and Immigration Services
Nebraska Service Center
P.O. Box 87130
Lincoln, NE 68501-7130**

The sponsor must show that the couple is legally married and that the sponsor is a U.S. citizen or legal permanent resident of the United States (called an "LPR" for short, and typically referred to by the public as a "Green Card Holder").

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Domestic Processing: The second way to bring a foreign spouse into the United States is called domestic processing and it generally follows the exact same procedure as Overseas Processing but is accomplished domestically. The sponsor must file both the *Form I-130, Petition for Alien Relative* and a *Form I-129F, Petition for Alien Fiancé* with the appropriate Service Center listed above. If you are engaged to marry a foreign national and he or she is still overseas, you must file a *Form I-129F* in order for your fiancé to join you in the United States before the marriage.

Once approved, the foreign spouse will be permitted to enter the United States on a “K” non-immigrant visa, which must then be converted to a permanent residency status by filing a *Form I-485, Application for Adjustment of Status to Permanent Residence* at the appropriate Service Center address listed above. A foreign spouse who is already in the United States lawfully in some other status may also apply to adjust his or her status to that of lawful permanent residency. Permanent residency is conditional for all marriages of less than two years’ duration. The spouses must apply to have the condition removed at the end of the two year conditional period.

Bringing Your Foreign-Born Children Into the United States

Children born overseas of two United States citizen parents are, by law, also United States citizens at birth. Nevertheless, it is wise to contact the nearest United States embassy or consulate in that country to apply for a U.S. passport for your child as well as a *Consular Report of Birth Abroad*. This will establish that your child is a United States citizen when it is time to return with him or her to the United States.

If only one parent of a child born overseas is a United States citizen, the citizen parent must satisfy certain residency requirements and must obtain a *Certificate of Citizenship* from USCIS by filing a *Form N-600, Application for Certificate of Citizenship* before the child will be recognized as a United States citizen.

Adoption of a foreign-born child by United States citizen parents is another means by which a child can become a United States citizen. Orphans adopted by a United States citizen parent are citizens once their adoption is final and they have lawfully entered the United States.

Obtaining Authorization to Work

It is unlawful for aliens to work in the United States unless they have been granted “work authorization.” Green Card holders have such work authorization and need only present their green cards to show that they can work. Aliens who are in the United States on a non-immigrant visa status are not entitled to work authorization except in certain limited circumstances, such as when the alien has an application pending to change his or her status to permanent resident status and has applied for provisional authorization.

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Becoming a Citizen Through Naturalization

Naturalization is the means by which an individual who was not born in the United States, and who did not acquire citizenship at birth becomes a citizen. It requires the filing of an application, the *Form N-400, Application for Naturalization*, and the fulfillment of certain other requirements. Generally, those requirements are that the individual be age 18 years of age or older, have been a permanent resident alien for a certain period of time (usually 5 years), be a person of good moral character, have resided in the United States for a certain period of time (generally 5 years), have been physically present in the district in which they file for naturalization for at least the preceding 6 months, and demonstrate the basic ability to read, write, and speak the English language as well as possess a basic knowledge of United States government and history. The residency requirements for spouses and military members are shorter. After the petition is approved by USCIS, the applicant will be asked to take an Oath of Allegiance to the United States of America. Upon taking the Oath, the applicant becomes a naturalized United States Citizen.

Foreign Travel by Non-Citizens With Pending Applications for Change in Status

An alien who has applied to adjust his or her status to lawful permanent residence cannot travel abroad without first obtaining permission from USCIS by filing a *Form I-131, Request for Advance Parole* with the appropriate Service Center. If the alien leaves the country without obtaining permission to do so he or she will be considered to have abandoned their pending application and will not be allowed to reenter the United States. If an active duty member receives orders to PCS overseas, and the member's spouse is applying for U.S. Citizenship, USCIS may be able to expedite the citizenship application.

USCIS has established a toll-free "Military Help Line" exclusively for members of the military and their families: 1-877-CIS-4MIL (1-877-247-4645).

Additional Information

More detailed information can be found on the United States Citizenship and Immigration Service's website at www.uscis.gov. This website includes forms for visa and change in status applications as well as fees for filing and where to file.

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