



HOW U.S. CITIZENS CAN PETITION THEIR PARENTS FOR PERMANENT RESIDENCE

A brief overview about how you can attain a green card through your US citizen son or daughter

MARCH 2023

Undocumented individuals who have U.S. Citizen (USC) children often ask when and if their child can help them obtain their Lawful Permanent Resident (LPR) status. The simple answer is yes—a child who is over 21 years old can begin the process for a parent to get their Permanent Residence card, often referred to as a green card. Though all that is needed initially is to show the relationship, the process can be complicated and any parent seeking a green card through their child needs to carefully consider certain things before they move forward.

Below is a brief explanation of this process, what is needed for a son or daughter to help their parent(s) obtain status, and some considerations to keep in mind as you explore this process.

WHAT IS A FAMILY-BASED VISA PETITION?

Family-based petitions are one of the most common ways in which people are granted lawful permanent residence. Through family-based petitions, USCs and LPRs can help certain family members obtain a green card and get on the path to citizenship.

USCs can petition their spouses, children under 21, sons and daughters over 21 who are married or unmarried, and their parents. LPRs can petition their spouses, children under 21, and their unmarried sons and daughters who are over 21 years of age.

All these petitions are referred to as “family based” since you are going through the process whereby you have a family member who has status in the United States. For

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parents with no lawful status who have a USC son or daughter, their son or daughter will be able to submit the family-based petition for them to begin the process once they turn 21.

WHAT IS THE PROCESS FOR OBTAINING LAWFUL PERMANENT RESIDENCE?

Obtaining a green card is a **two-step** process. The first step is having someone who can “petition” you or file a visa petition on your behalf. If the person is eligible for the visa petition, immigration will approve it. Once the petition is approved, the person will need to wait until there is a visa available before they can move on to step two. Step two involves the person applying for lawful permanent residence, often referred to as attaining a green card. Step two can either be completed through **consular processing**, outside the United States, or through **adjustment of status**, inside the United States.

Step 1) Submit the visa petition.

The visa petition begins the process. This is processed by U.S. Citizenship and Immigration Services (USCIS).

Step 2) Submit the application for lawful permanent residence.

This application will complete the process of getting a green card. This process can be completed either through Adjustment of Status in the United States or Consular Processing in your home country abroad. In short, this represents where an applicant’s paperwork is processed and where their accompanying interview takes place.

NOTE

IT IS IMPORTANT THAT YOU GET SCREENED BY AN IMMIGRATION ATTORNEY OR A DOJ-ACCREDITED REPRESENTATIVE BEFORE YOU BEGIN THE PROCESS.

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HOW WILL I KNOW IF I CAN ADJUST STATUS IN THE UNITED STATES OR IF I WILL HAVE TO CONSULAR PROCESS IN MY HOME COUNTRY?

As mentioned above, someone who does not qualify for adjustment of status (completing the process in the United States) will generally need to do consular processing (travel outside the United States, usually to their home country, to complete their case).

There are a few questions you will need to answer when speaking with your legal representative so they can assess if you are eligible to complete step two through adjustment of status in the United States. Some of the questions include things like:

- ▶ **How did you enter the United States?**
 - ▶ **Did you enter with a visa or in another way that was lawful?**
 - ▶ **If you did not enter lawfully, i.e. you entered without being inspected by an immigration official, have you traveled on Advance Parole and reentered?**
- ▶ **Do you currently live in the United States?**
- ▶ **Who submitted the visa petition for you?**
 - ▶ **Are they a USC?**
 - ▶ **Are they an LPR (green card holder)?**
 - ▶ **If you are being petitioned by a green card holder:**
 - ⇒ **Is the visa available now?**
 - ⇒ **Have you always had status?**
 - ⇒ **Did you work unlawfully?**

Generally, individuals who entered on a visa or were inspected and admitted by an immigration official will meet the first requirement for adjustment of status (note

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that there are many more). If you did not enter with some sort of permission, you generally will not be able to adjust status. It is important to speak with a legal representative to discuss your immigration history and see if you are eligible to adjust status or may become eligible to adjust status.

All those who are not eligible for adjustment of status will need to complete step two through consular processing. Leaving the United States for consular processing can have some risks and may trigger some immigration penalties that can complicate your case. This is why it is important to discuss your immigration history with a trusted legal representative before you move forward to make sure you do not trigger any penalties when you leave the United States.

WHEN CAN MY SON OR DAUGHTER PETITION ME?

USCs 21 or over are eligible to submit a family-based petition for their parents. Parents of USCs are eligible if they have the required family relationship (for example, parent and son/daughter), and the family member has the immigration status required for the petition (for example, the son or daughter is a USC). If the petitioner can prove these two foundational elements, USCIS must approve the visa petition. Here, you would just need to show that your son or daughter is over 21 and that you are their parent. This is usually shown through a birth certificate.

In this process, your son or daughter will be known as the **petitioner**, since they are the ones who submit this petition. You will be known as the **beneficiary**, the person who is receiving the benefit.

ONCE MY SON OR DAUGHTER PETITIONS ME, WHEN CAN I MOVE TO STEP TWO?

A person will be able to move to step two when a visa becomes available. For parents, moving onto step two may take very little time since parents of USCs are considered immediate relatives and a visa is always available to them. Once the visa petition is

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approved, you will be able to proceed with step two to apply for your green card.

It is in step two that a person will be evaluated to make sure they can be approved. Here, USCIS will review your immigration history, determine if you have broken any immigration laws or are eligible to apply for a pardon for breaking them, and evaluate that you are eligible for this benefit. It is very important that you speak truthfully and completely with a trusted legal service provider so they can determine if there are any concerns or complexities in your case.

WHAT SHOULD I CONSIDER IF I AM ELIGIBLE TO BE PETITIONED BY MY SON OR DAUGHTER?

The most important thing you can do if you think you are eligible to have your son or daughter, or any other family member, petition you is to speak to an immigration

NOTE

WHEN SEEKING IMMIGRATION LEGAL SUPPORT, HEAD **HERE** TO LEARN HOW TO AVOID FRAUD.

attorney or a DOJ-accredited representative. It is critical to understand that the process to obtain lawful permanent residence can be complicated, and someone with the proper qualifications should help you navigate the requirements, determine what can make you ineligible, and address any potential consequences.

Below are a few things to keep in mind as you move forward:

- *If you have been in the country for more than 6 months without status, you could potentially trigger the 3- or 10- year bar when you leave the country. This is particularly important for those who will need to complete the process outside the United States since these bars are only triggered when you depart the country.*
- *If you have reentered multiple times without permission and/or if you have been detained at the border, it is possible you have the permanent bar—one*

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that can prevent you from completing your process for 10 years. Individuals who have been in the U.S. for more than one year, leave, and then return to the U.S. without permission, most likely have this bar.

- *If you have ever been before an immigration judge or received notification that you needed to go before an immigration judge but failed to attend, it could mean that you have a removal order or need to resolve an issue with immigration court before you move forward.*
- *If you have been arrested for or received a conviction for certain crimes, you could potentially be denied the benefit if the crime bars you from being approved for a green card. If you have had contact with the criminal legal system, it is important to gather all the related documents before you speak with an immigration attorney so they can properly analyze your case and any risks associated with applying.*

Remember that these are only a few things to take into consideration when seeking information on how to move forward if your USC son or daughter is over 21. For many, the path to lawful permanent residence is straightforward, while for others there may be more steps to clear before moving forward. The best way to understand where those complexities exist is through an honest and thorough consultation with an immigration attorney or a DOJ-accredited representative.

For more information on how to prepare for an immigration consultation or explore what can impact an immigration case, visit the ILRC's *Immigration Preparedness Toolkit*, available [here](#).

To find a trusted legal services provider in your area, visit ilrc.me/findhelp.

Are you a California Community College (CCC) or a California State University (CSU) student? If so, you qualify for FREE immigration legal services!			Discover more community explainers, toolkits, & alerts about immigration law.				
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