



INTRODUCTION TO CONSULAR PROCESSING

By ILRC Attorneys

Consular processing is one of ways an individual can obtain lawful permanent residence. This process is often confusing and daunting to individuals who do not regularly work on these types of cases since the process is completed with a U.S. consulate abroad and involves interaction with several government agencies.

This practice advisory provides an overview of the steps involved in a consular processing case and some considerations to keep in mind. For an in-depth look of consular processing see the ILRC's website for consular processing webinars and manuals.

I. Applying for Permanent Residence: Adjustment of Status v. Consular Processing

There are two ways a person can obtain lawful permanent residence: adjustment of status or consular process.

Adjustment of status is the process by which a person can become a permanent resident within the United States without having to leave the country. This is true for people who apply to become permanent residents through any means, including visa petitions, asylum, registry, cancellation of removal, and U visas. There are different types of adjustment of status depending on the basis for eligibility. This process is done with the U.S. Citizenship and Immigration Services (USCIS). Individuals who are not eligible for adjustment of status will need to go through consular processing.

Consular processing is the process through which a person obtains permanent residence from outside the United States. Consular processing is riskier than other pathways to lawful permanent resident status and it is important to understand the process involved and prepare clients who will obtain status through consular processing thoroughly. Unlike adjustment of status, consular processing involves travel outside of the United States, and an interview with a consular officer to obtain a green card. Clients must be prepared in advance of their consular interviews because attorneys cannot accompany their clients to clarify any misunderstanding of the law or of the visa application submitted.

Clients should be screened thoroughly, especially for people currently living in the U.S. who may trigger unlawful presence to attend their consular interview. Attorneys should screen for potential issues and grounds of inadmissibility before beginning the process. If there is an issue during the consular interview, an attorney cannot easily intervene from afar.

II. Government Entities in a Consular Processing Case: The National Visa Center, the U.S. Consulate, and the Department of State

Several governmental entities are involved throughout consular processing including the U.S. Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP), which are both agencies within the Department of Homeland Security (DHS), and the National Visa Center (NVC), and U.S. consulates in the beneficiary's home country, which are agencies of the Department of State (DOS).

Regardless of where the individual finishes their permanent residence process, all cases begin with USCIS where the filing of the visa petition (I-130) is done. Once USCIS approves the I-130, they will forward the case to the NVC who will handle documentation collection and information before it is sent to a U.S. consulate for the consular interview.

Also, it is important to note that the State Department writes its own regulations known as the Foreign Affairs Manual (FAM). The FAM governs consular processing cases and provides guidance to consular officers on visa adjudications. The FAM is published by the Department of State and is available on the Department's website at <https://fam.state.gov/>. Attorneys and legal representatives handling consular processing cases should consult and familiarize themselves with DOS and DHS regulations as they interact with the FAM regulations throughout this process.

III. Consular Processing Steps and Procedures

The DHS agencies and DOS each have different responsibility in the case. It is important to note which agency handles each of these steps in the consular processing.

Below are steps each applicant will need to take when completing their consular processing case. Note that the NVC website contains detailed instructions and identifies the additional documents needed to complete processing, with links to instructions that are specific to the consulate processing the immigrant visa. Certain consulates will have additional requirements and instructions.

1. Submit Immigrant Visa Petition with USCIS

Consular processing begins when the petitioner files Form I-130 and supporting documents to USCIS on behalf of a beneficiary. Once the I-130 is approved, USCIS sends it to the NVC for

initial review. Unless certain circumstances exist, only USCIS can approve a visa petition.¹ Similarly, once a visa petition is approved, neither the NVC nor the consular officer has the right to cancel or revoke a USCIS approval of the petition. Only USCIS may revoke approval of an immigrant visa in this context.

2. Consular Processing at the NVC

Once the petition is transferred to NVC, the NVC takes care of all the initial processing of the immigrant visa. The NVC will usually notify the petitioner and beneficiary when it is time to begin the final processing and will complete the following preliminary processing steps: 1) establish a point of contact; 2) collect the required fees; 3) collect and review for completeness of the electronic visa application form, the affidavit of support, and in most cases all the required supporting documentation; and (4) will forward all documents collected to the appropriate U.S. consulate for the final interview with the visa applicant.²

At this initial stage, the NVC will establish a point of contact through the petitioner to begin review. There is no formal “withdrawal of counsel” in consular processing cases. When an attorney takes over a consular processing case from another attorney, it is best practice to update the NVC that you are now the attorney of record and provide your Form G-28 and email address for future communications. When there is no attorney of record, the petitioner will select an agent to receive correspondence. Once the approved I-130 is received by the NVC, the petitioner will receive via email a “Notice of Immigrant Visa Case Creation.” The applicant/beneficiary will receive the online Choice of Address and Agent, Form DS-261. This form allows the applicant to select an agent to receive NVC correspondence. The online form DS-261 should be submitted by agents (including attorneys) and must be returned within a year to prevent their application from being terminated or losing the priority date. NVC will then provide the Immigrant Visa Case Number and Invoice ID Number to the applicant’s agent of choice or attorney of record.

¹ See 9 FAM § 504.2-4(A), 504.2-4(B).

² U.S. Dep’t of State, *Immigrant Visa Process: Step 2: Begin National Visa Center (NVC) Processing*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/after-petition-approved/begin-nat-visa-center.html>.

Communicating with the NVC—As of June 2020, the NVC only accepts contact through its online inquiry service, “Public Inquiry Form,” that answers frequently asked questions and is found on the DOS website.³ All communication with the NVC should include the NVC case number and the applicant’s name in the subject line. In addition, it is wise to also include in the body of the message the NVC case number, the petitioners name and date of birth, the beneficiary’s name and date of birth, and the attorney of record’s name. If one is not already on file, it is important to attach Form G-28 to establish attorney of record

3. Pay Fees

The NVC will collect the required fees and review the visa application form at this step. There are two initial fees associated with the immigrant visa application process: the Form I-864 and the Immigrant Visa Application fee.⁴ The immigrant visa fee is paid per person immigrating, but only one affidavit of support fee is paid for an entire family if immigrating together. As of this writing, the fees for processing family visa petitions are the following: \$325 per applicant for the current Immigrant Visa Application, and \$120 for the Form I-864 Affidavit of Support Fee. Applicants can pay those fees online from a U.S. bank account through the Consular Electronic Application Center (CEAC).

Depending on whether there is an immigrant visa available, the NVC will either begin processing right away or wait until the applicant’s priority date is about a year from becoming current.

Filing the I-601A: Individuals that will need the I-601A waiver will need to file it before they leave the United States. The I-601A is submitted to USCIS with proof of payment of immigrant visa fee bill. Individuals can print payment confirmation from Consular Electronic Application Center (CEAC). USCIS will notify the NVC of receipt of the I-601A and I-601A decision.

4. Affidavit of Support

The NVC reviews the Form I-864 Affidavit of support for completeness to see if signatures, proof of sponsor’s status, proof of current income, and required tax transcripts or returns and W-2s or appropriate alternatives are included. The NVC should contact the petitioner, who will be the primary sponsor of the Form I-864 Affidavit of Support, with a fee receipt. The NVC page on the DOS website lists the financial documents along with the procedure for electronically submitting

³ U.S. Dep’t of State, *Public Inquiry Form*, <https://nvc.state.gov/inquiry>.

⁴ Other fees associated with consular processing are the fee for the medical exam and any required vaccinations prior to the immigrant visa interview and an “Immigrant Fee” that must be paid to USCIS after the visa is approved in order to receive the permanent resident card, or “green card.”

them.⁵ Note that while the NVC reviews for document completeness, only the consulate can make a decision as to whether the affidavit is legally sufficient to meet the public charge requirements.

5. Completing the DS-260

Form DS-260 must be electronically completed and submitted for each principal and derivative applicant. The DS-260 is completed in the CEAC online. In order to access the CEAC you will need the NVC case number, beneficiary ID number, and invoice ID number.

The DS-260 addresses inadmissibility questions, biographical information of applicants, where applicants will reside, and which port of entry the applicant intends to cross into. In addition, questions have been added to the DS-260 that ask about the applicant's social media accounts. These questions require the applicant to disclose which social media platforms they use along with their username for each platform for the last five years. Before submitting the DS-260, it is important to print it out and review it for accuracy. After submitting Form DS-260, the applicant will not be able to amend the responses made, so it is important that the information is verified and reviewed with the applicant before it is submitted. This information will be confirmed at the consular interview. After submitting, a copy of the confirmation page and a copy of the completed form should be printed for the applicants' record. It is required to take a copy of the confirmation page to the visa interview abroad. This may also be required at the time of the medical exam, or when undergoing fingerprints.

6. Civil Documents

As noted in the instructions listed on the "Civil Documents" tab of the NVC's homepage, the applicant will need to obtain the documents required, upload them to the NVC and bring the original plus a copy to the consular interview.

The list of civil documents required include birth certificates, criminal records, marriage certificates, marriage termination documents, photocopy of biographic page of passport, and sometimes police clearances. The applicant will need to obtain their "civil documents" according to the guidelines outlined in the FAM. Furthermore, in addition to the documents listed on NVC's instructions, many consulates have their own, location-specific instructions regarding the

⁵ The "Complete Online Visa Application (DS-260)," "Collect Financial Evidence" (in support of the Form I-864 Affidavit of Support), and the "Collect Civil Documents" (civil documents like birth, marriage, police certificates) links can be accessed through the National Visa Center homepage: U.S. Dep't of State, Immigrant Visa Process: Begin National Visa Center (NVC) Processing, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/after-petition-approved/begin-nat-visa-center.html>.

required civil documents. In order to assist the client properly, you will need to become familiar with the civil documents required by country in the FAM and the location specific instructions.

You can find a list of documents under the “Document Finder” or “country specific guidelines” selection. These will take you to the page entitled “U.S. Visa: Reciprocity and Civil Documents by Country.” There will be a list by country that details the types of documents needed and how to obtain them. It is important to cross-reference this document list with the consulate-specific requirements found on the NVC website under the “List of U.S. Embassies and Consulates” link. Note that all documents that are not written in English, or in the official language of the country from which you are applying, must be accompanied by a certified translation. The translation must include a statement signed by the translator stating that the translation is accurate, and the translator is competent to translate.

7. Submit Documents to NVC

Applicants will upload documents online using CEAC. Attorneys should note that these methods are always changing and depend on the specific policies laid out by the U.S. consulate or embassy you are working with. If you have received a letter from the NVC saying “You May Begin Online Processing” scan and electronically save your financial forms and evidence, civil documents, and translations, then upload these documents to your CEAC account online. For specific information review Document Scanning FAQ’s on the NVC overview page. You should regularly check the CEAC website to the NVC to ensure any missing documents are accounted for, and for messages related to your case. Once all documents are received, you will receive an email that the case is “documentarily complete,” and will move onto the next step of scheduling a consular interview.

Your client should bring the originals of each document submitted to their consular interview, together with duplicate copies, one copy to keep in their records and one copy to submit to the consulate at the interview, in order to have all the originals returned.

8. Establish Courier Service

Some consulates require that an immigrant visa applicant register in advance at a courier service designated by consulate prior to visa interview. This process allows applicants to receive delivery of their passport and the approved visa. Courier location may be anywhere inside the country. When there are multiple courier locations, you can choose the one that is most convenient to where the applicant plans to wait for the immigrant visa. The applicant will usually not return to the consulate, but rather will pick up these documents at the designated courier office. Applicants will need to contact the courier and appointment services online before the consular interview. By selecting “List of U.S. Embassies and Consulates” on the NVC webpage, you can select the

city of the consulate where the applicant will be interviewed. This page will also list courier services from which you will select a courier location

9. Schedule Fingerprints Appointment and Medical Exam

Applicants will need to schedule a medical appointment and, in some cases, a fingerprint appointment prior to their consular interview.

Presently, for immigrant visa applicants, some consulates will not require fingerprints, while others will. It is important to check for updates on this regularly to ensure which applicants will need fingerprints. Fingerprints, also known as biometrics, can be scheduled at the Application Support Center (ASC) in the country prior to the consular interview. Applicants need to make the appointment with U.S. visa service website and log in using the applicant's passport number, date of birth, and nationality. Further details are available at www.usvisa-info.com.

All immigrant visa applicants, regardless of age, require a medical exam before being issued a visa. The applicant will have to schedule the medical examination by an authorized physician, known as a "panel physician." You should always check the NVC website for a list of authorized panel physicians. You should explain to your client that the physician at the medical exam is looking for inadmissibility issues and is not looking out for their general health and wellness as a personal doctor is expected to do. The panel physician will record moles, scars, and tattoos, and ask about drug and alcohol use. The information provided to them is not confidential and the client should be warned of this beforehand.

The medical exam will include all required vaccinations not already received (and documented) by the applicant. As of October 2021, all immigrant visa applicants are subject to a vaccination requirement for COVID-19. The COVID-19 vaccine can be given before, during or completed after the first visit to the panel physician; however, the medical exam will not be considered complete until the COVID-19 requirement has been completed.⁶ Applicants are required to bring the following documents to their medical exam:

- Copies of prior medical records, immunization records, and prior chest x-rays;
- The applicant's passport, identity card, laissez-passer, or travel document;
- A copy of the consular interview appointment notice;
- A copy of the "Immigrant Visa and Alien Registration Application" confirmation page;
- Passport photos—the number varies depending on location;

⁶ CDC Requirements for Immigrant Medical Examinations: COVID-19 Technical Instructions for Panel Physicians | Immigrant and Refugee Health | CDC

- Other documents as indicated for the particular consulate’s medical examinations.

Requests to Expedite Consular Interview: A person may expedite requests via the NVC or by contacting the post directly. The consular post will then request the file from the NVC if the request is approved. Applicants make expedited requests for many reasons including child age-out concerns, urgent medical circumstances, upcoming military deployment. Expedite requests are based on the specific circumstances of the petitioner. It is advisable to contact the NVC well in advance to request the process be expedited. The request should include detailed evidence and documentation along with the request.

10. Attending Consular Interview

The NVC will schedule the consular interview with the applicant and notify the attorney or petitioner of the details. The designated agent or the applicant will receive an appointment letter approximately one month before the interview date.⁷ At this point, the NVC will forward copies of the I-130 and complete immigrant visa application file to the consulate. Legal representatives should prepare a complete packet for the applicant to take with them to their consular interview. Preparing the client in advance of the interview is especially critical because the client attends the consular interview alone.

At the interview, the applicant will present new and updated forms and supporting documents. Additionally, the applicant should bring the original interview appointment letter from NVC, the original passport valid for six months after the intended date of arrival in the U.S., the sealed medical exam, performed by a “panel physician,” two color, passport-style photographs, all required originals and copies of civil documents, and any additional location-specific documents required by the consulate.

The officer will go over the questions in the DS-260 to confirm the answers. Applicants should be prepared to address any questions as to their admissibility. This means they must not be found inadmissible under INA 212(a), or, if they are, they must receive a waiver of the ground of inadmissibility. Attorneys should pay particular attention to issues including:

- Unlawful presence
- Public Charge
- Proof of valid and bona fide marriage
- DUI and domestic violence arrests and convictions, and “gang-related” tattoos
- Marijuana use and work in the cannabis industry

⁷ Note that some advocates have noted that they do not always get notices a month in advance.

The applicants need to understand what the procedure will be and how to address any issues that arise during the interview. It is important to go over logistics for the day of the interview by providing a map of the consulate, coordinating their stay and practicing questions that may arise at the interview to prepare them to answer any question.

For more in-depth information on how to prepare consular processing clients for the immigrant visa interview with special attention paid to screening for red flags see the ILRC practice advisory “Preparing Clients for Immigrant Visa Interviews at U.S. Consulates.”⁸

Visa denial and waivers: After the consular interview, the consular officer may grant or deny the visa. If denied a visa, the applicant may receive a 221(g) notice, which is like a Request for Evidence (RFE). A visa refusal may identify inadmissibility grounds deemed to apply and whether a waiver is available for a particular inadmissibility ground. In this circumstance, the applicant will need to apply for a waiver with USCIS and wait outside of the United States for it to be adjudicated. In most cases the waiver must be submitted after the initial consular interview in which the officer finds the person inadmissible, with the provisional waiver for unlawful presence being the exception, and sometimes the I-212 waiver for prior deportations. Note that if the consular officer determines that an additional ground of inadmissibility applies, apart from unlawful presence (and possibly a prior deportation), the provisional waiver will be revoked, and the applicant will have to renew their request for a waiver of unlawful presence grounds while remaining outside the United States. Both unlawful presence inadmissibility and the newly identified inadmissibility grounds must then be waivable and waived, together on Form I-601. This is done by submitting a new waiver package through the USCIS centralized processing procedure.

11. Enter U.S. with Immigrant Visa

After the immigrant visa application is granted, applicants receive an immigrant visa valid for six months. In order to become a lawful permanent resident, the applicant must present their unopened immigrant visa packet at a U.S. border or other port of entry before the visa expires. The applicant will present the visa materials from the consulate to CBP. The applicant becomes a lawful permanent resident once CBP admits them and places a stamp in their passport. Although the consular officer may issue an immigrant visa, it is CBP that grants permanent

⁸ “Preparing Clients for Immigrant Visa Interviews at U.S. Consulates” available at: https://www.ilrc.org/sites/default/files/resources/prepare_clients_visa_intrvws_us_consul-20181105v2.pdf.

resident status. The passport stamp authorizes the immigrant to work in the United States and is proof of lawful residence until the green card arrives.

12. Pay Green Card Production Fee

Once admitted to the United States, the individual will pay the USCIS Immigrant Fee also referred to as the “green card production fee.” The fee of \$220 does not have to be paid before returning to the U.S. but must be paid in order to receive the green card. In order to pay the fee, you will need the A-Number and DOS Case ID. For more information visit the USCIS website available at: <https://www.uscis.gov/forms/uscis-immigrant-fee>. Keep in mind that USCIS is the agency that will produce the card and may be contacted at LockboxSupport@uscis.dhs.gov.

IV. Conclusion

Consular processing provides one pathway to lawful permanent residence. When handled with thorough care, applicants can obtain a green card sometimes more expeditiously than through adjustment of status.



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About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend