

PERMANENT RESIDENCY AND MARRIAGE | FREQUENTLY ASKED QUESTIONS

1. I have started the Permanent Residency process and want to get married. I would like my spouse to become a Lawful Permanent Resident at the same time I do, or at least immigrate to join me in the U.S. as quickly as possible. When should I get married?

A spouse outside the United States can apply for an immigrant visa to join you in this country, so long as the marriage occurred before you immigrate or otherwise become a Lawful Permanent Resident (LPR) of the United States.

2. What do you mean by "immigrate to the United States"?

You can immigrate through the "Adjustment of Status" process in the U.S., which is conducted by U.S. Citizenship and Immigration Services (USCIS), or you can immigrate by obtaining your immigrant visa from a U.S. Department of State (DOS) Consulate abroad and entering the U.S. as an LPR. (An "LPR" and an "immigrant" are one and the same thing, there is no difference.)

Adjustment of Status: In general, in order to be eligible to adjust status in the U.S. (without paying a penalty), you must not have violated your nonimmigrant status. After you file your application for permanent residency with a USCIS office, you will be scheduled for fingerprinting, and you will eventually receive a notice which either schedules you for an interview, or indicates that you are eligible for a waiver of the permanent residency interview. If the USCIS determines that you are eligible for a waiver of the interview (this is often the case for adjustment applications based on employment), you will receive a notice from the USCIS which indicates that your application for permanent residency was approved. The date of this approval notice will be the date that you "immigrate to the United States".

For example: Jackson & Hertogs submits your application for permanent residency to the USCIS on January 1. On July 1, USCIS issues a notice indicating that your application for permanent residency is approved. Your spouse can apply for permanent residency as a derivative using your priority date if the marriage occurred prior to July 1, the date your permanent residence application was approved.

Consular Processing: You will appear at a U.S. Consulate for an immigrant visa interview. Assuming the Consul does not find that additional security checks must be processed in your case, the immigrant visa is normally issued on the same day that you have the interview. Once the immigrant visa has been issued, the Consul will take your biometric information (e.g., fingerprints) and issue you a biometric immigrant visa which you will present to a U.S. Customs and Border Protection (CBP) Immigration Inspector at a U.S. port of entry, and you will be admitted to the United States as an immigrant. This will be the date you "immigrate" to the United States.

Hypothetically, you could be interviewed by the Consul on January 1, get married on January 29, and then admitted to the United States as an immigrant on January 31. Your spouse becomes eligible to process the immigrant visa paperwork at the U.S. Consulate as soon as you obtain your marriage certificate. Depending on consular processing times, there could be a delay of weeks or months for your spouse to be issued an immigrant visa.

3. What if I wait to marry until after I immigrate?

You can still sponsor your spouse after you have immigrated, or adjusted status to lawful permanent residence. However, if you file an immigrant visa petition for your spouse as a lawful permanent resident, it will take several years before your spouse can immigrate, and filing the immigrant visa petition provides your spouse no immediate immigration benefit. The filed immigrant visa petition would only obtain a priority date for your spouse. Due to the oversubscription of the annual visa allotment for spouses of immigrants, a wait of four to five years (sometimes even longer) may be involved, even if the immigrant petition was approved immediately. For example, visas for spouses of LPRs are currently only available to spouses of immigrants who obtained a priority date over four years ago, even where though the immigrant visa petition might already have been approved.

In August 2004, USCIS announced they would adjudicate immigrant visa petitions on file only after an immigrant visa number is available for the petition beneficiary (your spouse). As a result, an immigrant petition filed today by an LPR for a spouse may "sit" with the USCIS for years without action. During this time, the pending immigrant visa petition provides your spouse no independent ability to remain in or enter the United States. In fact, your spouse may find it more difficult to obtain certain types of nonimmigrant visas requiring "nonimmigrant intent". Thus, filing an I-130 immigrant visa petition might actually prevent your spouse from staying in the United States, rather than enabling him or her to remain. Do so only after consulting with an immigration attorney about the potential consequences.

Given the lengthy waiting times faced by immigrant spouses, during which time certain nonimmigrant visas may become unavailable, you may decide upon an alternate strategy. For example, spouses of U.S. citizens are exempt from annual visa limits. Many permanent residents apply for naturalization to U.S. citizenship immediately upon becoming eligible. Please see our FAQ on U.S. citizenship for the requirements for naturalization).

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A U.S. citizen may file an immigrant visa petition on his or her spouse's behalf with USCIS. If in the U.S. and otherwise eligible, the spouse can concurrently file an application for adjustment of status with USCIS. If abroad, the spouse must wait for approval of the immigrant visa petition, and can then file an immigrant visa application at a U.S. Consulate.

The advantage of waiting to acquire U.S. citizenship before filing is that certain nonimmigrant visa categories will remain open to your spouse that might be foreclosed by filing an immigrant petition while you are still an LPR.

4. Does it make a difference whether the marriage is in the United States or elsewhere?

No. It does not make a difference as long as it is a legal marriage according to the laws of the jurisdiction where the marriage took place. However, certain types of marriages (e.g., "proxy marriages," where only one spouse is present at the ceremony) may require additional evidence regarding the bona fides of the relationship before the government will issue a visa.

5. I processed my immigrant visa at a U.S. Consulate via consular processing. My immigrant visa was issued by the Consulate. What is the maximum time I can wait before I enter the United States and immigrate?

The immigrant visa is valid for six months from the date that the immigrant visa was issued.