

Preference Categories and Priority Dates The Family Sponsorship Maze

If you are a Permanent Resident and wish to sponsor family members, your options are limited. As a Permanent Resident you may only sponsor your spouse and your unmarried children above and below the age of 21. Permanent Residents are **not** permitted to sponsor parents, married children or brothers and sisters. This privilege is reserved for US citizens.

If you are a US citizen your immediate relatives such as your spouse, minor children and parents get priority preference over everyone seeking an immigrant visa (i.e. Green Card) and have virtually no waiting time for a Green Card although the processing time depending on the location of the application may vary. If, however, you are an unmarried adult child of a US citizen over the age of 21, a married child of a US citizen, or a brother and sister of a US citizen, then you must wait until a visa becomes available before you can even apply for a Green Card. Because of the high volume of applications received each year, the US Department of State National Visa Center, implements a system of preference categories to judiciously distribute immigrant visas to each applicant. This preference category is divided by nationality, making five categories, one of which is titled “all areas”, but this category excludes the four most populous countries that have high visa requests. The other four nationalities or excluded categories, which are distinguished each have their own separate category. These countries or nationals are from China, Mexico, India, and the Philippines.

The preference category system requires applications to be made in stages. Two stages to be exact. The First stage establishes the relationship of the sponsor and the beneficiary relative. The Second phase or stage allows the beneficiary to then submit an application for residency either through submission of an immigrant visa application at a US Embassy overseas or an application for adjustment of status to permanent residency at a US CIS field office within the United States. So, if you are a Lawful Permanent Resident or a US citizen, then you must first submit an alien relative petition before your qualified relative can apply for a Green Card through either the Immigrant Visa process or Permanent Residency Application process. Again, those beneficiaries who are outside the United States must apply for the “Immigrant Visa” at a US Embassy. Those who are physically inside the United States must apply for “adjustment of status” to permanent residency on the Permanent Residency application.

If your relative falls into the visa preference system and is physically in the United States they may or may not be able to complete step two (2) of the Green card application process. If your preference category relative has overstayed his or her visa or entered the country illegally without a visa or passport, then s/he may be barred from submitting an adjustment of status application unless the alien relative petition was submitted during a period of time when Immigration regulation Section 245(i) was in effect. Section 245(i) was last in effect from December 2000 until April 30, 2001. Thus, if your alien relative petition was filed after April 30, 2001 and your beneficiary entered the United States without a visa or proper entry documents or overstayed his or her visa, they may not be eligible for a Green Card and submission of such as application could result in deportation. There are exceptions to this however, and a skilled attorney may be helpful in determining what can be done for your relative, if anything. I do not recommend, however, that your relative leaves the U.S. either because

they may not be able to re-enter for at least 10 years. If, however, your alien relative petition was filed before April 30, 2001 and s/he falls into the 245(i) category, then your beneficiary may apply for adjustment of status while in the United States but must pay a penalty fee of \$1000 for the violation of illegal entry or visa overstay. Remember, this applies only to married children, adult children over age 21 of US citizens, brothers and sisters of US citizens, and spouses, minor and unmarried adult children of Lawful Permanent Residents.

Provided your preference category relative is not a visa violator and is outside the United States hoping to get in, then the length of the wait before initiating stage two of the application process may be significant. For example, The first preference category is for unmarried children over age 21 of US citizens. Individuals in this category may take up to five (5) years before initiating the second phase of the Green Card application process.

If you are a permanent resident sponsoring a qualified family member, the process takes as long and sometimes much longer. A spouse and a minor child of a Permanent Resident will fall into the Second Preference A category or “2A” category. If you are the unmarried adult child (over age 21) of a Permanent Resident, then you would also fall into category 2B. The wait time may be four (4) to five (5) years for Category 2A. But if you are an unmarried adult child, over age 21, you may have to wait nine (9) years before getting to apply for the Immigrant Visa. If you are the married child of a US citizen, in category three (3), then your wait may be seven (7) to eight (8) years. The longest wait is for brothers and sisters of the US citizens, who are in the fourth (4) category. They will generally wait ten (10) to fifteen (15) years before getting to apply for the Green Card. If you are a national of China, Mexico, India, and the Philippines, however, your wait time will be significantly longer.

When will you know that you can initiate stage two (2) and submit your application for the Immigrant visa application or adjust your status to that of a Lawful Permanent Resident? This depends on your priority date. What is a priority date? It is most commonly the date your alien relative petition was submitted. You may submit your stage two application when either the National Visa Center notifies the Permanent Resident or US citizen sponsor that they must pay the visa fees and submit an affidavit of support in order to continue processing the application, or if you are in the United States and qualify for adjustment of status because of 245(i), you can apply for the Green card when your priority date is current. What does it mean to have a “current” priority date? It means the date your petition was filed is currently being reviewed by the Department of State National Visa Center. And that this date appears in a chart or table published monthly by the Department of State. The chart below gives a visual explanation of what the preference category is and the “current” priority dates are those inside the table. Also keep in mind that the dates in this chart do not move in a systematic fashion. This chart is available online at www.travel.state.gov under visa bulletins or by calling (202) 663 – 1541. The chart below is for the month January 2007.

Family	All Charge-ability Areas Except Those Listed	CHINA mainland born	INDIA	MEXICO	PHILIPPINES
1st	22APR01	22APR01	22APR01	01JAN94	15DEC91
2A	15MAR02	15MAR02	15MAR02	15MAR00	15MAR02
2B	08APR97	08APR97	08APR97	01MAR92	08SEP96
3rd	01JAN99	01JAN99	01JAN99	01JAN95	08FEB91
4th	08JAN96	22JUN95	01OCT95	22JAN94	01JUL84