

Special Immigrant Visas

United States Citizenship & Immigration Services (US CIS) as accepts applications from certain individuals who qualify for exceptions of their general visa or Green Card application process. While most people commonly obtain Lawful Permanent Residency (LPR) status through close family members (blood relatives or marriage), there are some individuals who gain Lawful Permanent Residency Status because of circumstance. The status of special immigrant is defined by Immigration & Nationality Act § 101(a)(27) and includes individuals, or special immigrants, who are juveniles or children who are designated wards of the state, widow/er(s) of US citizens, religious workers, and people returning to reclaim Lawful Permanent Residency status after a temporary interruption in their physical presence in the United States.

First I will speak briefly about special immigrant juveniles. These are children under the age of 18 who have been abandoned, abused or neglected by their biological parent(s) or an adult caregiver. Some come to the United States unaccompanied by an adult or come with their parents and are later abused or abandoned by their parents or an adult caregiver. Usually, involvement by a state child welfare agency is required to determine the state of abuse, neglect or abandonment. The process of obtaining a Green Card for a special immigrant juvenile is not always easy. First, a case must be brought in state juvenile court by either the child welfare agency or any private attorney having knowledge of how the child was abused, abandoned or neglected. Secondly, the state court judge must determine that there is a suitable place or custodian for the child to live with in the United States. The child may be placed in temporary foster care, placed with a relative if one exists and is willing to accept responsibility for the child, or the child may be returned home as in the case of Elian Gonzalez if the parents demand return of their child. If the parents are outside the U.S., International law, the Hague Convention in particular, requires that attempts be made to contact the biological parents to find out their side of the events and whether they want to or can care for their children. If they express a desire to have the child returned to them, then the court must oblige.

Once the state court determines what has happened, has heard from the parents if they can be contacted, and if it determines that it is better for the child to remain in the United States, then the child is declared a ward of the state in which s/he resides. Once this process is over, then an application for an immigration special immigrant juvenile petition can be filed and reviewed by an Immigration Officer. Once the child is processed by US CIS, then s/he will become a Lawful Permanent Resident of the United States and can apply for naturalization on or after his or her eighteenth birthday. A child who gained Lawful Permanent Residency Status through the Special Immigrant Juvenile process is not eligible to sponsor or file petitions for their biological parents or siblings once they become adults.

The Second category of Special Immigrant is the Widow/er of a U.S. Citizen. While this may be self explanatory, approval of a petition under this category requires that certain conditions be met. First, the US citizen spouse must have died within two years of submitting the application. Then, the surviving spouse must demonstrate that s/he married the U.S. citizen in good faith, that is, that the spouses resided together lawfully as man and wife prior to the death of the U.S. citizen spouse. Thus, the applicant must show joint accounts or household bills, jointly held property and jointly filed tax returns. In addition, the widow/er must show proof that

s/he is a person of good moral character and has no noteworthy criminal convictions that may obstruct the process.

The third group of special immigrants is religious worker. These are individuals who are ordained clergy, those with theological degrees, seminarians with specialized religious knowledge or function, or religious personnel with skills essential to the function of a church or religious organization. These applicants must demonstrate that they have been members of the particular denomination or faith sponsoring them for at least two years prior to submitting their applications. The church or religious entity must be recognized as such by providing proof of status as an Internal Revenue Service § 501(c)(3) not for profit entity. Proper documentation of education, ordination or certification is required, as well as proof of affiliation with the faith or religion for the two (2) years prior to application. Usually, an affiliate, subsidiary or sister organization in the applicant's country or origin is extremely helpful and necessary to proving one's case. Further, the religious entity should be able to provide proof of ability to pay a living wage for the application or that the applicant has a means of support independent of work outside the religious vocation. Once this petition for religious worker is approved, the applicant can apply for Lawful Permanent Residency status and sponsor immediate or nuclear family members such as spouses and children, if they belong to a faith tradition which allows them to marry.

The last group of special immigrants is people who were granted Lawful Permanent Residency status but who have been absent from the United States for more than 6 months but less than two years. These individuals may be attending school, working or receiving medical treatment abroad. If they failed to apply for a re-entry permit prior to their departure from the U.S. because they did not anticipate a prolonged absence, they may be able to submit a special immigrant visa petition at a U.S. Embassy abroad to facilitate re-entry to the United States. An applicant must show that s/he had not relinquished their domicile in the United States, that is, that s/he still calls the U.S. home in so far as they maintain a primary residence, property and family ties to the United States. A critical point to determine whether an individual has relinquished domicile is filing or payment of federal income taxes or consistent ownership of real estate. Once a consular officer at a US Embassy reviews this case, the applicant may obtain a visa that allows re-entry to the U.S. and revalidation of the Green Card. It should be noted, however, that a Lawful Permanent Resident of the U.S. who remains outside the U.S. longer than six months risks losing the Lawful Permanent Residency status because re-entry is sometimes at the discretion of the official at the port of entry or at the U.S. Embassy.

Thus, in addition to the customary ways of immigrating to the U.S. there are several ways an individual can apply for residency based on circumstance. For the child who has been abandoned, neglected, or abused, there is the special immigrant juvenile process. For the Widow/er, provided death of the U.S. citizen spouse was recent, there is a widow/er petition. For the religious worker, there is a visa based on the necessity and function of the legitimate religious enterprise, and lastly, for a Lawful Permanent Resident who has remained outside the United States longer than anticipated, s/he may show proof of established domicile in the U.S. to regain and revalidate his or her status.