

Obtaining Legal Status for a Non-Citizen Spouse

There is a streamlined legal process for non-citizen spouses of American citizens seeking to gain or maintain legal status in the United States. If the non-citizen spouse is already in the U.S. through lawful admission (student or work visa, vacation, etc.) a series of forms must be filled out by both the citizen and non-citizen spouse. If the non-citizen spouse is outside of the U.S. a single form is initially required from the citizen spouse which is forwarded for consular processing in the nation where the non-citizen spouse is located.

U.S. Citizenship and Immigration Services (USCIS) is a division of Homeland Security and is tasked with all immigration processes for the federal government. All requirements for obtaining legal status for a non-citizen spouse emanate from this agency and must be complied with in order to secure legal status. It is important to note that “legal status” does *not* mean citizenship but rather “permanent residence status” – also known as a “green card.” Citizenship through naturalization can be sought later and special provisions apply for the dependents of military members.

Form I-130

The first step in applying for a spousal green card requires the U.S. citizen spouse to fill out the Form I-130, *Petition for Alien Relative*. The U.S. closely regulates immigration to the U.S. through a quota system as there is ordinarily an annual cap on the number of green cards that can be issued. If an applicant does not obtain a visa number (one of a certain number given out through lottery to otherwise approved applicants) his/her application will be denied. Fortunately, Form I-130 relieves non-citizen spouses of the obligation to obtain a highly coveted visa number as spousal green cards are exempted from the quota system. Form I-130 is the U.S. citizen spouse declaring that the individual for whom a green card is sought is in fact a legally recognized spouse. The form requires basic biographic information for both spouses as well as citizenship information for the citizen spouse. Proof of citizenship and legal marriage must accompany the form, and there is also a filing fee of \$420. If the non-citizen spouse is currently outside the U.S., Form I-130 must go to USCIS for approval. Once approved, it is sent for consular processing and the consulate or embassy where the non-citizen spouse is located will provide notification and further information for the non-citizen spouse. If the non-citizen spouse is already legally in the U.S. through some other means, he/she must simultaneously file Form I-485, *Application to Register Permanent Residence or to Adjust Status*.

Form I-485

Form I-485 is essentially the non-citizen spouse petitioning to have his/her status legally changed to permanent resident with official recognition by the federal government. Because it is filed simultaneously with the citizen spouse’s Form I-130 the non-citizen spouse should indicate that he/she is entitled to an immediately available immigrant visa number once the citizen spouse’s Form I-130 is approved. What follows is a series of questions delving into the background of the non-citizen spouse much like the SF-86 for security clearances. There is a \$985.00 filing fee as well as a \$85 biometric fee making Form I-485 expensive but necessary. There are also several other forms that must accompany Form I-485 to USCIS in order for it to be processed and approved.

The material in this handout represents general legal principles. Since the law is continuously changing, some provisions in this pamphlet may change with time. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular situation.

Form I-693

Form I-693, *Report of Medical Examination and Vaccination Record* requires non-citizen spouses already in the U.S. to report to a USCIS-approved physician who will administer a comprehensive physical as outlined on Form I-693. The nature of the examination focuses primarily on the potential existence of or exposure to infectious diseases such as tuberculosis, past or current drug abuse or addiction, and the existence of any physical or mental disorders with harmful behavior. There is also an examination of the applicant's vaccination record and the potential requirement to obtain missing vaccinations in exchange for consideration of status change.

Form G-325A

Form G-325A, *Biographic Information* is a short form that seeks to further focus in on the identity and past of the non-citizen spouse. It requests information such as any aliases or name changes, residences for the past five years, and employment history. In comparison to the other forms, it is relatively straightforward and simple to fill out.

Form I-864

The last form is Form I-864, *Affidavit of Support*. The federal government requires the citizen spouse to provide financial documentation substantiating the ability to provide for the non-citizen spouse should he/she be admitted to the U.S. as a permanent resident. An individual must declare all assets and provide evidence of those assets through bank statements, Leave and Earning statements, W-2s, etc. It is imperative that the citizen spouse understand the implications of Form I-864. The form states in no uncertain terms that by signing and submitting the form to USCIS the citizen spouse agrees to enter into a contractual relationship granting legal rights of action (the ability to be sued) to multiple parties. Should the citizen spouse fail to provide support for the non-citizen spouse he/she can be sued by the non-citizen spouse to recover said support. Also, if a non-citizen spouse becomes eligible for and receives any type of benefit from a local, state, or federal welfare agency the agency may sue the citizen spouse to recoup the cost of the support provided. Therefore, citizen spouses must understand that they assume an enormous amount of responsibility, liability, and stewardship when sponsoring a non-citizen spouse's application to register for permanent residence or to adjust status.

These five forms require a great deal of supporting documentation. Applicants should be prepared to submit copies of most vital documents including birth certificates, marriage licenses, proof of citizenship, employment records, residential records, etc. Copies should be submitted as originals will become part of the case file and will not be returned.

Because of the amount of detail and information required, the process for obtaining legal status for a non-citizen spouse should not be delayed once it is determined that such status is necessary. Document collection alone can take months as well as obtaining an appointment with a USCIS-approved physician. Monetary considerations also require planning and foresight on the members' part.

Necessary forms and instructions can be found on the USCIS webpage: www.uscis.gov. These instructions explain how and where to submit these documents for consideration by USCIS. Special attention should be given to these instructions as different factual scenarios mandate different mailing locations. It is prudent to consult an attorney during this process.

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