

Obtaining Legal Status for a Non-Citizen Spouse

DISCLAIMER: The information contained in this fact sheet is of a general nature and is provided for your assistance. It is not intended as legal advice and is not a substitute for legal counsel. The law is continuously changing, some provisions in this pamphlet may change with time. If you have any questions as to how the law affects you or your legal rights, contact your civilian attorney or the Eglin AFB Legal Office at (850) 882-4611 for an appointment with a licensed attorney.

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), a division of Homeland Security, is tasked with all immigration processes for the federal government. USCIS governs all requirements for obtaining legal status for a non-citizen spouse. 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 military dependents.

The five forms discussed require a great deal of supporting documentation. Applicants should be prepared to submit copies of birth certificates, marriage licenses, proof of citizenship, employment records, residential records, etc. Copies, not originals, should be submitted because they become part of the case file and will not be returned. Because of the amount of detail and information required, do not delay in gathering information. Document collection 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.

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 through a quota system for visa numbers, as there is ordinarily an annual cap on the number of green cards that can be issued. The Form I-130 relieves non-citizen spouses of the obligation to obtain a visa number as spousal green cards are exempt from the quota system. The Form I-130 is the U.S. citizen spouse declaring that the individual 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 \$535. 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 \$1,140 filing fee as well as a \$85 biometric fee, totaling \$1,225. There are also several other forms that must accompany Form I-485 to USCIS in order for it to be processed and approved.

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 examination focuses primarily on the potential existence of or exposure to infectious diseases, 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. There is no filing fee, but if the non-citizen spouse is not current on vaccinations, they may be required to be vaccinated to obtain resident status. Vaccines vary in cost.

Form G-325A

Form G-325A, Biographic Information is a short form for information 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. There is no filing fee.

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. 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. There is no filing fee with USCIS; however, since the Department of State reviews the form, there is a \$120 fee when filed in the United States.

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