



United States: Spousal Sponsorship for a Green Card

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THE UNITED STATES FEDERAL GOVERNMENT provides lawful permanent residence, in the form of a green card, to spouses of American citizens through one of two processes. The green card can be obtained through adjustment of status if a spouse is inland, or through visa processing, which requires an interview with a consular officer abroad.

Visa processing can begin at some consular offices with the filing of all documents, including the petition of the American citizen spouse who lives abroad, the application of the foreign national spouse, and supporting documents. This is often a fairly speedy process taking only months to process. If the consular office will not accept the filing, or if the American citizen spouse lives in the United States, the process occurs in steps, which drags out the time it takes to complete it. The visa processing route without the advantage of filing at the consular office can be taken by a couple where both spouses live in the United States. This process may be advantageous to some.

For an alien spouse filing for adjustment of status, there must be consideration given to the 30/60 day rule, that is, if a spouse marries and/or files for adjustment within the first 30 days after a B visitor entry, the application is likely to be denied due to preconceived intent. Within the first 60 days after B visitor entry, there is a presumption of preconceived intent, which can be overcome. Waiting to marry and file after the 60 days is the best way to overcome this potential problem.

For those who file to adjust their status from the non-immigrant work categories of H-1 or L-1, and for their dependents, the doctrine of dual intent is there to help. This permits a non-immigrant H or L to have immigrant intent, and to enter in non-immigrant status anyway. Unlike other non-immigrant statuses, an H or L can enter with the plan to file for adjustment of status. She can also travel freely after filing for adjustment of status on her valid H or L visa, or on her H or L approval notice, if she is visa exempt. Derivative dependent family members (L-2's and H-4's) are afforded the same privilege. The impact of dual intent is not really evident until placed in contrast to those for whom dual intent does not exist.

With limited exceptions, those who are in non-immigrant status other than H or L or for whom legal status has expired can be sponsored by a spouse and file to obtain a green card through adjustment of status. Adjustment of status applicants are entitled to open work permits while they wait out the process. Those who have not accrued sufficient unlawful presence to trigger a bar to re-entry can obtain travel permission while the process continues. While H's and L's may not always find these ancillary benefits attractive, other applicants usually do. In fact, they are so much a part of the process, their applications, when filed with an adjustment of status application, do not bear additional filing fees. An important consideration is that it can take 90 days or more to obtain these ancillary benefits, possibly leaving the alien spouse unable to work or to re-enter the United States after travel abroad for three months or more.

The accrual of unlawful presence does not generally impact upon the adjustment of status process. However, it is an important consideration in the decision to file for travel permission, known as advance parole. Such travel permission prevents the adjustment of status applicant from abandoning her

