



IMMIGRATING YOUR RELATIVES UNDER NUMERICAL LIMITATIONS

If you are:

- An unmarried son or daughter of a U.S. citizen (First Preference)
- A spouse or unmarried child of a permanent resident (Second Preference)
- A married son or daughter of a U.S. citizen (Third Preference)
- A brother or sister of a U.S. citizen (Fourth Preference)—

This chapter is for you.

I. NUMERICAL LIMITATIONS

Whenever there are more qualified applicants for a category than there are available numbers, the category will be considered "oversubscribed". When this happens, immigrant visas will be issued in the chronological order in which the petitions were filed until the numerical limit for the category is reached. The filing date of a petition becomes the applicant's priority date. An immigrant visa cannot be issued until an applicant's priority date is reached. In certain heavily oversubscribed categories, there may be a waiting period of several years before a priority date is reached. For the latest priority dates, call (202) 663-1541. Before calling, refer back to chapter one and learn what your preference is and take notes.

II. FIRST PREFERENCE

This preference is for all unmarried children over 21 years of age of a United States citizen. (Only one parent needs to be a U.S. citizen.)

Example: If one parent is a citizen of Canada and the other parent is a citizen on the United States, then the parent that is a U.S. citizen will qualify to file the petition.

Situation: Alberto Garcia is a United States citizen living in Los Angeles, California. He has an unmarried daughter, 24 years old, with two children, two and four years old. Can the unmarried daughter and children qualify to immigrate to the United States?

Answer: Yes. The unmarried daughter would come under the First Preference. The United States citizen parent would petition for the unmarried daughter with form I-130 (Petition to Classify Status of Alien Relative for Issuance on Immigrant Visa). The two dependent children would also be petitioned with their mother.

After approval of the petition by the INS, the petitioner will be notified and the petition will be sent to the American consulate in the foreign country designated with form I-130. The American consulate would notify the unmarried daughter and give optional form 230 (Application for Immigrant Visa and Alien Registration) and further instructions as needed. Under the numerical limitations, the unmarried daughter would be subject to a first-come, first-served basis.

The children would come into the United States with their mother on the same petition.

1. *Waiting Period:*

With the exception of Mexico and the Philippines, there will be little if any waiting period. Natives of Mexico can expect a waiting period of about two years. Philipinos will have a waiting time of about ten years. This is subject to change depending upon the INS backlog.

III. SECOND PREFERENCE

This preference is for a husband or wife and all unmarried children of a lawful permanent resident alien parent. Only one parent needs to be a permanent resident alien.

An example of this preference is Mr. Wong:

Situation: Mr. Wong recently immigrated to the United States and is a permanent resident alien. Mr. Wong now wishes to reunite with his wife and three children who are still in Taiwan. Can Mr. Wong's family qualify to immigrate to the United States?

Answer: Yes. Mr. Wong would go to the nearest immigration office and get four I-130s (Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa). After filling out the petitions, Mr. Wong will take them back to the immigration office to have them affirmed and filled out by an immigration inspector.

This preference consists of two categories: 2A, which includes spouses and minor children of a permanent resident alien; and 2B, which includes unmarried adult sons and daughters of a permanent resident alien.

1. Protection for Battered Immigrant Women and Children

The Justice Department has announced that the Immigration and Naturalization Service will be publishing a rule to allow abused spouses and children of citizens or legal permanent residents to self-petition to become legal permanent residents in the United States. This will be done on INS form I-360 (Petition for Amerasian, Widow or Special Immigrant). The rule implements a provision of the Violence Against Women Act, which was enacted as part of President Clinton's Violent Crime Control Act of 1994.

"Victims of domestic violence should not have to fear deportation because of their relationship with an abuser," INS Commissioner Doris Meissner said. "Under this new procedure, family members who would otherwise be eligible for permanent residency will no longer be forced to rely on an abuser to remain in the United States."

In a number of cases, potential immigrant women living in the United States have reported that an abusive spouse has threatened to have them deported if they did not comply with the abuser's wishes. Some abusers have refused to file the immigrant relative petition that would allow their spouses and children to apply for permanent residence. Others have threatened to withdraw petitions already filed which remained under their control.

Since January 1995, an interim instruction has directed INS field offices to begin accepting applications from battered woman and children who wished to self-petition for permanent resident status. With the publication of the implementing regulations in the Federal Register, new procedures will be established and a new INS form will be introduced.

I strongly suggest that if you find yourself in this category you employ a good divorce attorney to assist you.

NOTE:

The law requires the abused spouse or child to be a person of "good moral character".

2. What is the Meaning of "Child" to the INS?

A child born in wedlock qualifies as a legitimate child provided that a relationship has existed between parent and child.

A child born outside of wedlock qualifies if the child's and mother's names are on the birth certificate, or the child's father or stepparent qualifies with birth certificate showing both parents names and proof that a parent/child relationship exists or existed between the father or stepparent.

NOTE:

A stepchild can only qualify for immigration as long as a relationship was established before the child's 18th birthday.

3. Waiting Period:

All countries except Mexico and the Philippines can expect a waiting period of about three years for the spouse and six years for children. Mexico will be about five years for

the spouse and six years for the children and the Philippines will be about four years for the spouse and six years for the children.

IV. THIRD PREFERENCE

If you (regardless of age) are a married son or daughter of a United States citizen, then you will qualify under this preference. (You must be married at the time of application for admission). An example of this preference is Mike Reed:

Situation: Mike Reed is married and has two children. He and his wife and children are all citizens of Great Britain. Mike's mother and father are United States citizens. Can Mike and his complete family qualify to immigrate to the United States?

Answer: Yes, Mike's father would petition for his son by submitting form I-130, (Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa).

1. Waiting Period:

All countries except Mexico and the Philippines can expect a waiting period of about three years. Mexico will be about nine years and the Philippines will be about eleven years.

V. FOURTH PREFERENCE

If you have a brother or sister that is a United States citizen and you, the beneficiary, are over 21 years old, then you will qualify here. An example of this preference is Chad Brosig:

Situation: Chad Brosig, age 34, is a citizen of the United States living in Denver, Colorado. Chad has a brother who is a citizen of West Germany and is presently attending school in the United States as a nonimmigrant on an F-1 visa for the duration of status. Can Chad's brother qualify to immigrate to the United States?

Answer: Yes. Chad's brother would qualify and would continue to attend school until that status of student expired. At that time, if the petition had not matured, he would be obligated to return to his country until it did. On the other hand, if the petition was current at the close of his student visa or before then, he would qualify to adjust his status and not be obligated to return to his country. He would then fill out form I-485, (Application for Status as Permanent Resident).

1. Waiting Period:

All countries will have a very long waiting period here of at least ten years, with Mexico and the Philippines having to wait even longer, because of the large number of petition applications.

VI. INS FORMS

1. Obtaining the INS Forms:

This can be simple or confusing. Follow my instructions closely and you will have no problems in receiving all of the necessary INS forms I listed on my chart.

You can go to the nearest INS office (see Appendix B for listings of INS offices in the United States) and state your intention. They will give you a packet of forms that will include all that I listed for you.

NOTE:

If you choose to go to the INS office, be prepared to wait up to three or four hours. In some cases you will have to return the next day.

OR

Call the INS forms line at 1-800-870-3676. Listen closely and follow the instructions given on the recording. Speak clearly and slowly into the phone. You will be given an option of English or Spanish. You will be asked to give the name and number of the INS forms you need. You will also be asked to state and spell your name, address with ZIP Code and your telephone number. Then you may hang up. Allow between one to two weeks for INS forms to arrive by mail.

NOTE:

Do not try and order the forms that I have listed for outside the United States. Those forms can only be obtained at a U.S. consulate or embassy in the foreign country from which the beneficiary is coming.

2. Which INS Forms to ask for

A. For a Beneficiary who is Presently Inside the United States:

When petitioning under a family category with a first, second, third, or fourth preference, very seldom will the family member (beneficiary) be eligible for the form I-485 (Application to Register Permanent Residence or Adjust Status). I mention it here for the benefit of that rare opportunity.

If a petition is being filed in behalf of a beneficiary that is presently in the United States legally (with documentation), then ask for the following:

I-130	Petition for Alien Relative
I-485	Application to Register Permanent Residence or Adjust Status
G-325	Biographic Information
I-864/I-864A	Affidavit of Support
I-765	Application for Employment Authorization
I-693	Medical Examination
M-378	Photograph Specifications

NOTE:

If you, the petitioner, are filing for your spouse, then you also will need to submit form G-325 (Biographic Information) and Photograph's according to M-378 (Photograph Specifications).

What I have listed here does not cover all of the forms displayed on my reference chart. This will however allow the INS receiving your recorded message to know what your needs are and all the other appropriate INS forms will arrive in a packet form. If you were to take the time to name all of the INS forms, the recorder could run out.

B. For a Beneficiary who is Presently Inside the United States Without Documentation

If a petition is being filed in behalf of a beneficiary who is presently in the United States without inspection or documentation, then most likely you will need to ask for in addition:

I-485A Supplement A to form I-485

This form allows a nonimmigrant that is presently in the United States to adjust status under Section 245 of the Immigration Act without regard to manner of entry into the United States and without regard to most immigration status violations. The beneficiary may be required to pay an additional cost of \$1,000 when applying under this provision.

C. For the Beneficiary who is Presently Outside the United States:

When the petition is being filled out for a beneficiary who is presently outside the United States, then you will ask for the following forms:

I-130 Petition for Alien Relative
I-864\I-864A Affidavit of Support
G-325 Biographic Information

The other needed information will be filled out on forms: OF 230I and OF 230II, provided by the consulate or embassy in the country where the beneficiary lives. (See Appendix A for a listing of the consulates and embassies.)

3. Properly Completing the INS Forms

I have listed a set of instructions or copied the INS instructions for your benefit on the listed INS forms in Appendix E. When filling out INS forms, either type or print legibly with black ink. This is very important. Fill out all the blocks or spaces. If a block or space does not apply, then state either NONE or N/A (not applicable). A rule of thumb is "make it simple". In this case we want to make it simple for the adjudicator who will be looking over your work. You will want to start with INS form I-130, then INS form I-485, and, if called for, I-485A, then G-325A. These are your principal INS forms.

VII. SUPPORTING EVIDENCE

I listed briefly in the far right side of the chart in chapter one the supporting documentation that you would need. Let's now go through that in more detail, for this more than anything else will either cause a denial or slow down the petition process.

The INS will want to see an original and one copy of your supporting documentation. However, because it is against the law to copy a Certificate of Naturalization, a Certificate of Citizenship, or an Alien Registration Receipt Card (green card), you are to give them the original only. They state that they will return the original(s) back to you. That is true they will, but when? I suggest that you provide a self-addressed envelope. This should quicken the return of your personal papers. If you are planning a trip outside the United States, you may have your traveling plans disrupted.

All copies of original documents must be certified as copies of the original by:

1. An INS or U.S. consular officer
2. An attorney admitted to practice law in the U.S.
3. An accredited representative.

Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that they are competent to translate.

1. ***Evidence of U.S. Citizenship***

- A. If you were born in the United States, submit a certified copy of your birth certificate.
- B. If you are a naturalized citizen, submit your original Certificate of Naturalization or proper certified copy.
- C. If you were born outside the United States, and you are a United States citizen through your parents, give:
 - 1) Your original Certificate of Citizenship
 - OR*
 - 2) Your form FS-240 (Report of Birth Abroad of a United States Citizen).
- D. In place of any of the above, you may give the INS your valid unexpired U.S. passport that was initially issued for at least five years.

2. ***Birth Certificate of Both the Petitioner and the Beneficiary.***

When submitting your birth certificate be sure that it is an original or certified copy of the original. When the birth record is in a foreign language, it is essential that it be properly translated.

3. ***Color Photos***

You will need to submit color photos of both you and your spouse. I suggest that you submit four photos each. The reason for this is that the INS is going to be picky in accepting the correct photos. The photos can be taken at any photo shop that deals with passport photos. I refer you to INS form M-378 in Appendix E. I always recommend that

the petitioner and/or beneficiary take the M-378 (Photo Instructions) with them to the photo shop.

4. Divorce Agreement

If either the petitioner or the beneficiary has been divorced, then you will have to submit evidence of your previous marriage. If your name has changed you will have to submit legal documents to show how the name change took place. Example: a marriage certificate, adoption decree, court order, etc.

5. Deceased Spouse

If your husband or wife is deceased then submit a certified copy of the death certificate. If that is not available then other evidence showing that the person is in fact deceased.

6. Father Petitioning for His Legitimate Child

You, the father and petitioner must submit your child's birth certificate showing both your name and the name of the child's mother (your wife) and your marriage certificate to your child's mother.

7. Father Petitioning for His Illegitimate Child

When you, the father are petitioning for your child who was born out of wedlock, you must submit proof that a father/child relationship exists or existed. Examples:

- A. Your child's birth certificate showing your name.
- B. Evidence showing that you are presently or have been active in supporting you child.

NOTE:

A blood test indicating a biological father child/relationship may be necessary.

8. Stepparent

You will need to submit your birth certificate showing the names of both natural parents and the marriage certificate of your parent to the stepparent.

9. Adoptive Parent or Adopted Child

You will need to submit a certified copy of the adoption decree, the legal custody decree if you obtained custody of the child before adoption, and a statement showing the dates and places you have lived together with the child.

10. Police Certificate and Military Records

This is not always required in submissions of an immigrant petition. In many instances there is no military history to submit. I would advise going to the police and asking them to give to you a report of any or no arrest reports for the time you have lived in that area up to five years.

11. Passport

When applying from outside the United States you need to have a passport that is valid for six months after the approval of the petition.

VIII. WHAT IF A DOCUMENT IS NOT AVAILABLE?

If the documents needed above are not available, you can give INS the following instead. The INS may require a statement from the appropriate civil authority certifying that the needed document is not available.

1. *Church Record*

A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of the child's birth, date of the religious ceremony, and the names of the child's parents.

2. *School Record*

A letter from the authorities of the school attended (preferably the first school), showing the date of admission to the school, child's date and place of birth, and the names and places of birth parents, if shown in the school records.

3. *Census Record*

State or federal census record showing the names, place of birth, and date of birth or the age of the person listed.

4. *Affidavits*

Written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove; for example, the date and place of birth, marriage, or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth, and his or her relationship to you, if any; full information concerning the event; and complete details concerning how the person acquired knowledge of the event.

IX. SUBMITTING THE PETITION TO THE INS FROM INSIDE THE UNITED STATES

The petitioner is the person who will submit the petition. In just about all cases the petition will be mailed to the INS service center in your geographic area. In any event the following will need to take place:

1. *Both the Petitioner and Beneficiary are in the United States.*

As regards to this chapter, when both the petitioner and beneficiary are in the U.S. we are dealing with an adjustment of status. Both you and the petitioner should go to the nearest INS office in your area with all the completed INS forms. You must have with you a money order. I recommend a postal or bank money order made payable to Immigration and Naturalization Service. The amount needed may be different than at the time of this publication. The following is the listed amount currently required:

I-130	Petition for Alien Relative	\$110
I-485	Application to Register Permanent Resident or Adjust Status	\$220
	For those Under 14 years	\$160

See Appendix D for more detail on INS costs. Remember! Always read the cover sheet of the INS form. The information contained there will be of great help to you in properly submitting your petitions.

An address where you are to submit your petition should be stapled to the INS form I-130. If this is not the case, Appendix B will instruct you on where to send your petition.

Within about two weeks from filing you should hear back from the INS informing you that your petition has been approved and passed on to the NVC (National Visa Center). From there it will be forwarded to the consulate as indicated on INS form I-130 for further processing. If there is additional information needed then you will be given instructions on what must be done to satisfy that need. In the event that your petition is denied, you have the option of filing an appeal. If this is the case, I suggest that you seek qualified council in doing so.

B. The Petitioner is Inside the United States and the Beneficiary is Outside the United States.

In this case the petitioner will submit INS form I-130 (Petition for Alien Relative), and if filing for his/her spouse a G-325A (Biographic Information) is also required along with photos for both husband and wife taken according to the form M-378 (Photograph Specifications). The other needed forms will be issued and handled through the consulate in the beneficiary's country of residence. Once the INS approves the petition, they will send the petitioner a notice of approval, form I-797. The INS will also forward the approved petition to the Immigrant Visa Processing Center, which will contact the intending immigrant with further information.

X. THE INS INTERVIEW

The INS interview in most cases is nothing more than a formality. Be alert, listen to what is being said, and answer all questions truthfully. There are times, especially when dealing with a marriage, that the interview can become quite intense.

A married couple will most likely be interviewed separately and asked a series of questions to determine for certain that the husband and wife are, in fact, living together in an intimate relationship and not one of convenience for immigration purposes.

After approval of the petition by the INS the petitioner will be notified and the petition will be sent to the American consulate in the foreign country designated on form I-130. The beneficiary is then notified by the American consulate and given Optional Form 230 (Application for Immigrant Visa and Alien Registration) and further instructions as needed.