

## Questions & Answers about Marriage to a U.S. Citizen

*This material has been adapted from handouts written by International Services at Indiana University and CU Health Sciences Center. Please be advised that ISSS is providing this information as a service and it is not liable for the accuracy of its contents. If you have specific questions, you are advised to consult an immigration attorney.*

If you marry a U.S. Citizen you are eligible to apply immediately for Permanent Residency (green card), unless you have had a J-1 visa with a two-year home residency requirement which has not been fulfilled or waived. There are several issues related to travel and timing of an application which need to be considered carefully. For further information:

<http://travel.state.gov/visas/immigrate/types/family.html>

**Question:** Do I get to be a permanent resident just by marrying an American?

**Answer:** No, you must file an application with USCIS (Citizenship and Immigration Services, formerly the INS) including an affidavit of support, certified medical examination, and other documentation as outlined in the instruction sheet attached.

**Question:** Can I apply before we get married?

**Answer:** No, USCIS needs proof that you are married. You can, however, prepare your application prior to marriage.

**Question:** What is a fiancé(e) visa?

**Answer:** A visa that allows a fiancé(e) outside the United States to enter the U.S. in order to get married. The U.S. citizen fiancé(e) has to file a petition with the USCIS in the U.S. The approved petition will be forwarded to the Consulate, which will contact the applicant and eventually schedule an interview. Processing will probably take about 4 months before the fiancé(e) visa is issued.

**Question:** My fiancé is American, but s/he doesn't have a U.S. passport, only a green card.

**Answer:** If your fiancé has a green card, s/he is NOT a citizen but a permanent resident. S/he can petition for you to become a permanent resident, but because of the quota there is a long wait before you can even apply for the green card. The wait is currently 5 years.

**Question:** If my permanent resident fiancé applies for me once we're married, can I stay in the U.S. ?

**Answer:** Not unless you have a valid non-immigrant visa throughout the waiting period (about 5 years!)

**Question:** Can I work while waiting to get my green card?

**Answer:** When you apply for permanent residency (I-485, affidavit, medical exam, photos, etc.), you can also request work authorization to cover employment while your application is being processed. If you marry a permanent resident and are not able to file for the green card yet, you can only work if you have a valid non-immigrant visa which allows you to work.

**Question:** Once I've filed the application with USCIS how long does it take?

**Answer:** It varies at different USCIS offices and can take anywhere from six months to two years. You should check with the office where you will be filing.

**Question:** After the interview, do I get my green card?

**Answer:** Your passport will be stamped as proof of permanent residency for travel, work, etc. The actual laminated "Permanent Resident" green card will be issued separately, but your permanent residency starts as of the original approval date.

**Question:** I've heard that both my spouse and I have to be interviewed---is that true? What will USCIS ask us?

**Answer:** Yes, both spouses will be interviewed. The purpose of the interview is to determine that the marriage was entered into in good faith and that all USCIS forms have been correctly completed.

**Question:** I've heard that the green card is only temporary---is that true?

**Answer:** Yes, because marriage is a relatively easy route to permanent residency, there is a second check on the marriage after 2 years. USCIS will grant conditional permanent residency for 2 years, after which you'll need to file another form to get an

unconditional green card. (If you've already been married 2 years by the time you are interviewed, the green card will be permanent.)

**Question:** If I become a permanent resident, do I have to give up my passport?

**Answer:** No. A permanent resident is NOT a citizen. Your citizenship doesn't change. In fact, you can only apply to become a U.S. citizen after having a green card and being married to a U.S. citizen for 3 years.

**Question:** What are the benefits of permanent residency?

**Answer:** You may be eligible for in-state tuition at a state university, will qualify for most student financial aid, do not have to be a full-time student, will not have restrictions on working, and can return to the U.S. freely after short trips abroad.

**Question:** What are the conditions of permanent residency?

**Answer:**

1. You must not leave the U.S. for more than a year without advance permission.
2. If you're planning to be abroad for extended periods of time you risk losing your permanent residency.
3. You will not qualify for some types of Federal Aid such as Food Stamps.

**Question:** What forms do I need, and where can I get them?

**Answer:** See <http://uscis.gov/forms> and the attached instruction sheet.

**Question:** I understand USCIS will ask my spouse to show s/he will always support me. What is that regulation?

**Answer:** With the passage of the immigration law of 1996, there are quite specific financial requirements for people applying for the green card based on marriage. See #'s 10 and 11 on the attached checklist.

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## Travel after Marriage

**Question:** I've heard it may be difficult to travel after I've married an American.

**Answer:** Yes. It may not seem logical, but if you marry an American or green card holder, you have to be very careful about travel. People in F or J status or in tourist status are expected to have a home outside the U.S. to which they intend to return. When you apply for a visa stamp at a U.S. Consulate, you have to prove ties to your home country. This becomes quite difficult once you've married a U.S. citizen - you really do look like an intending immigrant. If you need to apply for a new U.S. visa stamp in order to return to the U.S., there is a strong possibility that visa would be denied, even though you intend to continue as a full-time student.

**Question:** What if I have a valid student visa still in my passport? Could I travel in that case?

**Answer:** As long as you have a valid visa stamp, will be continuing as a full-time student, and have your I-20 or DS-2019 signed for travel by International Services, you will probably be able to re-enter the U.S. without a problem. However, if the immigration officer at the port of entry thinks that you will be applying for the green card, they can still refuse to let you enter.

**Question:** How about travel to Canada-- can't we go there since I won't need a new visa stamp to come back from Canada?

**Answer:** Crossing the border from Canada in some ways may be easier, but if your spouse is in the car with you, it may be immediately clear that you are married to a U.S. citizen or permanent resident. That could lead quite naturally to questions about your plans for leaving the U.S. Several people have had problems returning to the U.S. from Canada, and travel there after marriage is not recommended.

**Question:** (A) Would it be easier if we were married in my home country?

(B) But we'd planned to have our honeymoon in my home country after we're married in the U.S.

**Answer:** It's the same problem in both cases--how do you get back into the U.S.? Any return to the U.S. after marrying an American raises the issues described in question #1.

**Question:** Does this mean I can't leave the U.S. once I'm married?

**Answer:** Once you apply for the green card, it is possible to get permission from USCIS to travel while your application is being processed. This permission is called "advance parole." You cannot apply for advance parole before being married and filing the entire green card application, and unless there is some emergency, USCIS will take a while to process the parole. Once it is granted, however, you will be able to leave and enter the U.S. freely without having to apply at the U.S. Consulate abroad.

If you are married to someone with a green card, you aren't able to apply yet for your own green card, so you are not eligible for the advance parole.

**Question:** My friend was married at the Courthouse in the U.S. and then went home for a big ceremony. How was s/he able to do that?

Answer: That's a good point. The civil marriage is the official one in the United States, so someone who wishes to have two separate marriages, a civil marriage and a religious ceremony, could have the civil marriage in the U.S. and apply for the green card. S/he could then get advance parole and travel home for the religious service, and would be able to return using the parole.

## **Checklist for One-Step I-130/I-485 Application to Adjust Status Immediate Relative of USC (spouse, parent, or minor child)**

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1. Form I-130 Petition for Immigrant Relative  
 \$355 filing fee
2. Form I-485 Application to Adjust Status to Permanent Residence  
 \$1,010 filing fee for I-485 (\$600 under 14)  
 2 (two) photos (see CIS photo instructions)
3. Form I-765 Application for Employment Authorization  
 Fee included as part of I-485 fee
4. Form I-131 Application for Permission to Travel: Advance Parole with supporting documents  
 Fee included as part of I-485 fee  
 2 (two) photos  
 Copy of I-94 and/or proof of no unlawful presence for longer than 180 days (usually not required for F/J in "D/S")
5. Form I-485 Supplement A, if needed (required if applying under 245i)  
 \$1000 filing fee
6. Form G-325A Biographic Data Form-- beneficiary (4 copies)
7. Form G-325A Biographic Data Form- petitioner (marriage-based case only)  
 1 yellow copy  
 1 (one) photo of petitioner
8. Form I-693 Medical Examination Form and Vaccination Supplement-- Sealed after completion by Dr.
9. I-181 Worksheet/Processing Sheet (Denver or WR-703)
10. Form I-864 Affidavit of Support under Section 213A-Petitioner/Sponsor with supporting documents
  - a. a letter from sponsor's current employer or other proof of sponsor's income such as pay stub;
  - b. a copy of all parts of and attachments to tax returns for last three years (if petitioner's income not above 125% of poverty level for household size, will need joint sponsor and 2 I-864 forms) ;
  - c. proof of US citizenship or LPR status (and residence in U.S. if has lived abroad recently)
11. Form I-864 Affidavit of Support under Section 213A-Joint Sponsor if needed, with supporting documents
  - a. a letter from sponsor's current employer or other proof of sponsor's income;
  - b. a copy of all parts of and attachments to tax returns for last three years; and
  - c. proof of sponsor's USC or LPR status and US residence.
12. Birth certificate with English translation - Applicant
13. Passport (all pages)- Applicant
14. Evidence of Applicant's status and entry into the US (do not need to prove lawful status):
  - a. a copy of the I-94 arrival/departure card; and
  - b. copies of any USCIS forms, such as I-20, IAP 66 forms (with waiver, if applicable), approval notices for any changes/extensions in nonimmigrant status, EAD cards, etc.
15. Proof of U.S. status of petitioner and relationship to applicant  
 U.S. Birth certificate, or  
 U.S. passport (ID page only), or  
 U.S. naturalization certificate or certificate of citizenship, or  
 Other
16. Marriage certificate with English translation (for current marriage)
17. Divorce or death certificates (showing termination of prior marriages)  
 Petitioner  
 Beneficiary
18. Marriage certificates (for prior marriages if any)
19. Proof of bona fides of the marriage (marriage-based case only) with exhibit list
20. Proof of parental relationship for father petitioning for child born out of wedlock  
 Child's birth certificate showing father's name or other evidence that child is his natural child;  
 Evidence father supported/acknowledged the child prior to age 21, such as receipts, affidavits, etc.; and  
 DNA testing if necessary