

Gaining Permanent Residence Status in the U.S.

Due to the complex nature of the Permanent Resident application process, it is impossible to address the many variables that may come into play within the scope of this handout. International students and scholars considering immigrating to the U.S. should consult with an immigration attorney for more specific information about their situation. Other resources include the U.S. Citizenship and Immigration Service's (USCIS) web site at <http://uscis.gov>, the U.S. Department of State's (DOS) web site at <http://travel.state.gov> or the American Immigration Lawyers Association (AILA) at www.aila.org. Books and publications on this topic can also be found at any public library or bookstore (since the laws are apt to change, make sure your source is current).

Frequently Asked Questions

What is a "Green Card?"

This is the identification card that shows that a person has obtained permanent residence status in the U.S. What is known as a "green card" actually came in a variety of different colors at different times in its history. Currently, the card (called the "Permanent Resident Card") is a multi-colored document with many high-tech security features such as holograms and scanning devices.

What's the difference between Permanent Residence Status and U.S. Citizenship?

You must first become a permanent resident before you are eligible to apply for citizenship. Permanent residents can live and work in the U.S. indefinitely (if you depart the U.S. for a significant length of time, you may risk losing permanent residence status), and are not required to apply for citizenship unless it is desired. When people apply for U.S. citizenship, they swear by oath that they will uphold the principles stated in the U.S. constitution and serve in the U.S. military if necessary. Although permanent residents may be allowed to vote in local elections depending on the local rules, they cannot vote in federal elections nor may they hold federal elective office. Synonymous terms for a permanent resident in the United States are: *immigrant, green card holder, and resident alien*.

I've lived in the U.S. for many years. Can I apply for Permanent Residence Status now?

Under current U.S. immigration laws, you *cannot* apply for permanent resident status in the U.S. simply by residing here. Likewise, time spent in the U.S. does not improve your eligibility for Permanent Resident status.

How can I apply for Permanent Residence Status?

A petition for Permanent Resident status must be submitted to the U.S. Citizenship and Immigration Service (USCIS). Application materials can be downloaded from the USCIS web site at www.USCIS.gov. The following are ways in which people can become eligible for legal permanent residence status:

- 1) sponsorship from a family member or spouse who is already a citizen or permanent resident
- 2) sponsorship from an employer
- 3) through the Diversity Visa Lottery
- 4) by becoming a Refugee or seeking asylum.

How long does it take to get Permanent Residence Status?

For family and employment-sponsored applications, U.S. law limits the number of immigrant visa numbers (permanent residents) every year based on the applicant's country of birth. If a visa number is not available for your country during a specific year, you are put on a waiting list. For some, the waiting list can last several years, depending on the "preference category" under which you are applying (see box on reverse). Some countries that have a high demand for visa numbers such as China, India, Mexico, and the Philippines have a long waiting period. In many cases, being on the waiting list does not specifically give an individual the right to remain in the U.S. Other measures must be taken to assure your legal status while waiting for an immigrant visa number to become current.

Preference Categories for Family or Employment-Sponsored Permanent Residence Status

I. Family-Sponsored

1. *Spouse of a U.S. citizen
2. *Parent of a an adult U.S. citizen (21 years or older)
3. *Unmarried child (under 21 years old) of a U.S. citizen
4. Unmarried child (21 yrs. or older) of a U.S. citizen
5. Spouse of a permanent resident
6. Unmarried son or daughter of a permanent resident
7. Married son or daughter of a U.S. citizen
8. Brother or sister of a U.S. citizen (21 years or older)

* called "Immediate Relative"

II. Employment-Sponsored

A. "Priority Workers"

1. Exceptional Ability
2. Outstanding Professor or Researcher
3. Multinational Executive or Manager

B. Advanced Degree Holders

1. Professionals with advanced degrees (Master's) or certificates
2. Exceptional ability in the sciences, arts or business

C. Skilled Workers, professionals, and other workers (unskilled)

1. Skilled workers in short supply
2. Professionals with Bachelor's degrees
3. Other unskilled workers in short supply

D. Special Immigrants:

Religious workers, certain employees of the U.S. government abroad, Panama Canal employees, international organization classes plus juveniles declared dependent by a U.S. court.

E. Investors:

Must invest between \$500,000 to \$3 million in a new commercial enterprise and must create at least 10 full time jobs for U.S. citizens or permanent residents.

What is the Diversity Visa Lottery?

The Diversity Visa Lottery is a program that allows people to apply for permanent residence status if they are from countries that have had low immigration rates to the U.S. A simple application with a person's biographical information is submitted during a short period each year. Those who are randomly selected are allowed to submit an application for permanent residence status. For more complete information, check the Department of State's Web site at: http://travel.state.gov/visa/immigrants/types/types_1318.html

Can I become a Permanent Resident if my child is born in the U.S.?

You will be eligible to apply for permanent residence status when your U.S. citizen child becomes age 21 or older.

Do I need to hire an attorney to apply for Permanent Residence Status?

In most cases, an attorney will be needed to complete the complex permanent residence process. However, employers may have staff trained in the process and may take responsibility for filing on your behalf. Persons applying for permanent residence status based on marriage to a U.S. citizen may be able to complete the process without hiring an attorney, but a consultation is recommended to assess the difficulty of a particular case. The Berkeley International Office maintains a list of immigration attorneys available upon request.

I'm getting married to a U.S. Citizen. We are planning to travel out of the U.S. for our honeymoon. Can I re-enter the U.S. with my F-1/J-1 visa?

This is a potentially risky scenario. U.S. law does not allow a person who is an intending immigrant to enter the U.S. as a non-immigrant such as F-1 or J-1. Your re-entry to the U.S. as a non-immigrant may be considered fraudulent if you have plans to apply for permanent residence status after your marriage. Consultation with an immigration attorney in this case is recommended to help you plan your travel across the U.S. border.

Can Berkeley International Office help me with an application for Permanent Residence?

We assist individuals who will be tenure-track professors or permanent staff at the University only. All others should consult with an immigration attorney. Berkeley International Office maintains a list of immigration attorneys in the Bay Area available upon request.