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# CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series  
Cyber Center of Excellence Office of the Staff Judge Advocate  
Legal Assistance Division, Fort Gordon

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## *Family-Based Immigration Permanent Residency*

**Military members who are permanent residents or citizens can sponsor foreign nationals for permanent residency. The process can be complicated and it best to consult with an immigration attorney who specializes in these matters. Check the U.S. Citizenship and Immigration Services website at <https://www.uscis.gov/green-card> or make an appointment with the Legal Assistance Office for more information.**

### **WHAT IS PERMANENT RESIDENCY?**

Having a Permanent Resident Card, also known as a Green Card, allows you to live and work in the United States. The status lasts forever unless abandoned or revoked by the U.S. government. Permanent residency is different from citizenship because you can still be deported for committing certain actions and you are not eligible to vote or serve in certain jobs. This information sheet primarily provides information on permanent residency through family-sponsorship.

### **I AM A CITIZEN. WHO CAN I SPONSOR FOR PERMANENT RESIDENCY?**

There are two categories of family members; immediate and non-immediate. Your immediate relatives are your spouse, any unmarried child under the age of 21, and your parents so long as you are at least 21 years old. For non-immediate relatives, which includes children over 21, married children, and siblings, USCIS has established preference categories that impact eligibility requirements and how long the process will take. You cannot sponsor derivative beneficiaries such as grandchildren or your child's spouse.

### **WHAT CAN BAR MY FAMILY MEMBERS FROM ELIGIBILITY?**

Unlawful entrance into the United States or failure to maintain lawful status can bar non-immediate relatives. Immediate relatives may be exempt from this bar if they initially entered the United States on a visa, but overstayed. Immediate relatives of military members may also be eligible for another process called Parole in Place (PIP) which provides a discretionary path to permanent residency if they entered unlawfully. However, that process is best advised by a trained immigration attorney. There are also certain crimes, such as drug offenses, crimes involving moral turpitude, trafficking, and terrorism, which make individuals inadmissible and will cause an application for permanent residency to be denied. Before applying on behalf of a family member, family members should be thoroughly screened for past immigration violations and any criminal history both inside and outside the U.S. If someone is unsure of their immigration or criminal history or record, this can be done through a FOIA/Privacy Act Request through USCIS and ICE and criminal records check through local and federal agencies.

### **WHAT IS THE PROCESS FOR SEEKING PERMANENT RESIDENCY?**

The process varies depending on the family relationship and the location of the individual. Inside the U.S., the process is an adjustment of status. If seeking permanent residency from abroad, your family member will go through the consular process. For all applications, you will have to file a Form I-130, Petition for Alien Relative.

### **WHAT IS ADJUSTMENT OF STATUS?**

Your family member will go through adjustment of status if currently in the U.S. The member must be inspected and admitted or inspected and paroled into the U.S., be physically present in the U.S. at the time of filing, and have an immigrant visa immediately available. Immediate relatives are always able to get immigrant visas, though the processing time can be lengthy. Other relatives may fall into numerically-limited immigrant categories and have to wait until a visa is available. Your family member will then file Form I-485, Application to Register Permanent Residence or Adjust Status, as associated forms with USCIS. Each applicant is required to go to a biometrics appointment and an interview.

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**WHAT IS THE CONSULAR PROCESS?**

Your family member will apply through a US Consulate if currently abroad after the I-130 is approved. If USCIS approves the petition and a visa is available, the consular office conducts an interview and processes the case. The consular office will give your family member a Visa Packet. When your family member arrives in the U.S., the U.S. Customs and Border Patrol (CBP) will inspect the packet. If the CBP admits your family member, he or she has lawful permanent resident status.

**WHAT ARE THE CITIZENSHIP OPTIONS ONCE MY SPOUSE OR FAMILY MEMBER IS A PERMANENT RESIDENT?**

If approved for permanent residency, spouses of U.S. citizens can apply for naturalization after three years and other family members can apply after five years.

**WHAT HAPPENS IF I SPONSOR MY SPOUSE FOR PERMANENT RESIDENCY AND WE LATER DIVORCE?**

Once your spouse is a permanent resident, getting divorced does not change that status. However, it is important to know that the Affidavit of Support that you will provide during the process stays in effect regardless of marital status. If you get divorced before your spouse's permanent residency is finalized, the application will no longer be valid. USCIS requires that the relationship to the sponsoring family member still exist for eligibility.

**I AM A PERMANENT RESIDENT SERVING IN THE MILITARY. CAN I SPONSOR MY FAMILY FOR PERMANENT RESIDENCY?**

Yes. While immediate family of citizens are guaranteed immigrant visas, family of permanent residents are instead considered within the family-based preference categories and will have to wait until a visa is numerically available. As military members are eligible for automatic naturalization, it may be faster for you to naturalize first so that your family member can apply under the immediate relative category.

**WHAT OTHER ASSISTANCE IS AVAILABLE?**

If you need further assistance, we encourage you to make an appointment with a Legal Assistance Attorney. We can refer you to an immigration attorney, or help you review paperwork and answer questions if you decide to file alone. You can make an appointment by calling 706-791-7812/7813.

*This Information Paper from the Fort Gordon Legal Assistance Office contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney. You may schedule a legal assistance appointment by calling the Fort Gordon Legal Assistance Office at 709-791-7812/7813.*