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I-130 Relative Petition Overseas

→ **Who can file for a Relative Petition?**

Petitioner must be a US Citizen or Lawful Permanent Resident

→ **Who qualifies as a Relative?**

I. Immediate Relative Category (Visa Always available – no wait!)

-Spouse of USC (IR1)

-Unmarried children under 21 of USC (IR2) – *must be unmarried when petition filed AND entry to US, otherwise if over 21 then becomes (F1)*

-Mother/Father of USC (petitioner must be 21 or older) (IR5)

II. Family Preference Category (Limited Visas available per year – check Visa Bulletin)

-1st (F1) Unmarried son/daughter (21 or older) of USC – *must be unmarried when petition filed AND entry to US, otherwise if marry then become (F3)*

-2nd (F2A) Spouse and Unmarried children under 21 of LPR

-2nd (F2B) Unmarried sons or daughters (21 or older) of LPR

-3rd (F3) Married sons or daughters at any age of USC

-4th (F4) Brothers/Sisters of USC (petitioner must be 21 or older)

→ **If I am a USC or LPR, and I file for my parents, are my brothers/sisters included?**

No. You must file a separate petition for each eligible relative.

→ **If I am an LPR and file for my wife who is overseas, are my now step-children included?**

Yes, if they were under 18-years old when you and your wife (their mother) got married AND you file your wife's application before they turn 21.

→ **Who does NOT qualify as a Relative?**

-Adopted parent or adopted child if adoption happened after child turned 16 or is not in legal custody and not lived with parent for 2 years

-Stepparent or Stepchild if marriage happened after child turned 18

-Spouse if neither one was physically present at the marriage ceremony -unless marriage was consummated

-Spouse if gained LPR through a prior marriage, unless:

a) they're now naturalized

b) have been an LPR for 5-years

c) can establish that their prior marriage was not entered to evade US immigration laws, or

d) their marriage which they gained LPR ended by death of their former spouse

-Spouse if married while they are the subject of an exclusion, deportation, removal, or rescission proceeding, unless can prove otherwise

-Grandparent, Grandchild, Nephew, Niece, Uncle, Aunt, Cousin, or Parent-in-Law.

→ **How many applications do I need if my Relative has children?**

One application for the principal, and the derivatives are automatically included within that application.

→ **What evidence do I need to show if the beneficiary is my child?**

-If the petitioner is the mother, copy of child's birth certificate showing your name and the name of your child

-If the petitioner is the father, copy of child's birth certificate showing both parents' names, marriage certificate to the child's mother, and proof of legal termination of the parent's prior marriage (if any)

→ **My spouse is an LPR and I'm on a nonimmigrant visa in the US, can I adjust my status to a green card?**

No, your LPR spouse can file for I-130 while you're here. If the I-130 is approved and a visa number is available before your nonimmigrant visa expires, you can stay and adjust OR you can request your nonimmigrant visa be extended (ex. If a 6-mo. visa can ask for 6 more mos.) OR change your status to a different visa category (ex. F1 Student).

→ **My LPR spouse filed an I-130 and since then he became a US Citizen, can I switch category from F2A to IR1?**

YES!

→ **Can I visit my spouse in the US under B1 (business) or B2 (tourist) visa while my I-130 is pending consular processing?**

Avoid at all cost! When applying for a business or tourist visa you have to show intentions that you will return to your country. If you have a pending I-130, CBP may not allow you to enter the US because your visit may look like a permanent move because of the pending I-130, also triggering trouble of willful misrepresentation. NEVER LIE ABOUT YOUR INTENTIONS TO AN IMMIGRATION OFFICER, or conceal the fact that you are married to a USC or an LPR.

Notice: This document shall not be construed as legal advice. This is only general information to commonly asked questions.