

HOW TO GET LEGAL STATUS THROUGH YOUR FAMILY MEMBER

This section is for people in removal proceedings who are detained by Immigration and Customs Enforcement (ICE) but who might be able to obtain or keep their legal status in the United States through a petition filed by a U.S. citizen or lawful permanent resident family member.

Who might qualify to obtain legal status through a family member?

- You might be able to get legal status through your husband, wife, mother or father if they are lawful permanent residents OR United States citizens.
- You might be able to get legal status through your son, daughter, or siblings if any of them are United States citizens. Your son or daughter must be 21 years of age in order to petition for you.

Can you qualify if you have a criminal history?

You may not qualify to get status through a family member if you have a criminal history. The rules about what crimes prevent you from getting lawful permanent residency are complicated. For example, the law says that any drug crime or any crime “involving moral turpitude” makes you not eligible for lawful permanent residency. Determining what counts as a crime “involving moral turpitude” is not easy. You should consult with a lawyer if you have a criminal history. In some cases, there may be a waiver available that will let you apply even though you have a criminal history. There is no waiver for drug offenses except for a single offense of simple possession of less than 30 grams of marijuana. See Flyer on §212(h).

Do you qualify for adjustment of status in the United States if you entered the United States illegally or overstayed your entry visa?

- In general, the answer is NO. There are, however, exceptions that might permit you to adjust your status to that of a lawful permanent resident while in the United States. They are:
 - You entered legally, overstayed your authorized stay, and your spouse or son/daughter filing the petition for you is a U.S. citizen.
 - You were physically present in the United States on December 21, 2000, if you are the principal beneficiary and the petition was filed between January 15, 1998, and April 30, 2001.
 - You entered illegally but later got some kind of legal status.

Can you obtain status by getting married?

- It is possible to obtain legal status by marrying your U.S. citizen boyfriend or girlfriend. You, however, will need to provide “clear and convincing” proof showing that your marriage is real and is not just for immigration purposes.

What must you show to obtain status through a relative?

- You must show that you are admissible. As mentioned above, having a criminal history can make you inadmissible. You can be inadmissible for other reasons as well.
- You must also show that you qualify for and deserve adjustment of status.

What must you do in order to obtain status through a relative?

- Your relative will have to prepare a Petition for Alien Relative ([Form I-130](#)) and submit it to USCIS, along with any supporting documents including evidence of your relative’s relationship to you.
- The I-130 Petition for Alien Relative must be approved by USCIS in order for you to use it to support your application for lawful permanent residency. Applying for lawful permanent residency while in the United States is called “adjustment of status.”
- In addition to being approved, the I-130 Petition for Alien Relative must have a current “priority date.” A priority date is usually the date that the petition was filed.
- Depending on who filed the I-130 Petition for Alien Relative, it may take a short or long time for the petition’s “priority date” to become current. For example, a visa based on a U.S. citizen spouse is immediately available and there is no waiting period. In contrast, an I-130 Petition for Alien Relative filed by a lawful permanent resident spouse will take a few years to become current so that a visa is available to you.
- If you have a visa available to you now (and are admissible) AND you are eligible to “adjust status,” you may be able to get legal status soon and without having to leave the United States.
- To file for adjustment of status, you need to file the I-485 application for Adjustment of Status.

Are there other ways to obtain legal status through a relative?

- Yes, a relative petition is not the only way you can obtain legal status through a relative. Other ways include:
 - If you are under 21 and unmarried, AND your parent was granted **asylum**.
 - If you are under 21 and unmarried, AND your spouse was granted **asylum** and you were married to that person when that happened.
 - If you are under 21 and unmarried, AND you live with your parent or spouse who is Cuban and he/she entered the United States legally sometime after 1958 and has been physically present in the U.S. for at least one year. You can also qualify if your parent or spouse has already become a lawful permanent resident under The Cuban Adjustment Act.