



Immigration Law/ Consular Processing
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Consular Processing Steps

When the relative of a U.S. citizen or lawful permanent resident is overseas, or is otherwise unable to apply for lawful permanent residency (i.e., the "green card") while in the U.S., the application process must be completed overseas at a U.S. consulate. Sometimes consular processing is a more strategically sound option, and there are times when it is more convenient to apply for permanent residency at a U.S. consulate. In general, however, applying for permanent residency while in the United States (a process termed "adjustment of status") is preferable because the Immigration Service (USCIS) has customer service centers as well as appeals procedures in place in case the application is denied. This article discusses the steps in processing a spousal petition at an American embassy or consulate overseas.

Step One: File an I-130

The application process begins the same as it does with cases in which the foreign spouse is in the U.S. The U.S. citizen spouse begins the application process by filing an I-130 Petition for Alien Relative, where the petitioner must show good faith marriage.

Step Two: National Visa Center

If the I-130 is approved by USCIS, it is forwarded to the National Visa Center. The National Visa Center will send bills for processing fees, which require advance payment for the applications at the consulate that had been designated by the petitioner in the previously-filed I-130 form.

Once the fee bills are received, the National Visa Center will send instructions for completing the documents needed for the consulate appointment.

Step Three: Form DS-230 Application for Immigrant Visa

The DS-230 is an application to receive an immigrant visa. This is the Consulate's version of the I-485 Application for Permanent Residency, and has many of the same requirements. Like the I-485, the foreign spouse is trying to demonstrate that he or she is admissible to the United States.

Step Four: Form I-864 Affidavit of Support

The U.S. citizen spouse must be able to show that he or she can properly support his/her family in the United States. Usually copies of the sponsoring spouse's most recent income tax return is submitted, along with proof of U.S. citizenship and proof of current employment.

Step Five: The Consular Appointment

The foreign spouse will be scheduled for an interview at the U.S. Consulate in the foreign spouse's country of origin. The consular officer will be looking again at the issue of good faith marriage, as well as whether the foreign spouse is inadmissible for any reason. Visa interviews are, for the most part, conducted by young junior officers at the start of a five-year probationary period, working long hours under stressful and sometimes erratic schedules. At many posts, these junior officers interview dozens if not hundreds of foreign spouses every day. Therefore, it is essential to have all documentation complete, labeled, and organized by index tabs for quick and easy reference.

The foreign spouse must also undergo a medical exam and receive local police clearance before the interview. It is important that the foreign spouse be aware that any statements made during the interview may be used against him/her during the application process. For instance, an admission of past drug use can be used as a basis for inadmissibility. Therefore, it is important to consult an experienced immigration attorney before filing the I-130 and to thoroughly examine any possible grounds of inadmissibility that may prevent the foreign spouse from obtaining a visa.

When the foreign spouse has never illegally entered the United States nor overstayed a visa, then if the application is approved, and the foreign spouse will receive a nonimmigrant visa. This visa allows the foreign spouse to enter the U.S. legally. If the visa is only a conditional (temporary) visa, then a permanent immigrant visa must be applied for after the foreign spouse enters the U.S.

In cases where the foreign spouse enters the U.S. with a permanent immigrant visa, this is the beginning of the immigrant's permanent residency. At that point, USCIS will have been alerted by the consulate to begin processing the green card for the foreign spouse.

About the author: Kathleen Lord-Black is an immigration and foreclosure defense attorney whose offices are located in downtown San Francisco and in Santa Cruz, CA. She has served as Immigration Consultant for the San Francisco Public Defenders Office, 2005 Chair of the Immigration Section of the Barristers Club of the Bar Association of San Francisco, and 2003 AILA Congressional liaison for U.S. Representative Farr. Ms. Lord-Black is an active member of the Center for California Homeowner Association Law in Oakland and the American Civil Liberties Union. She also serves as a Judge Pro Tem. Her articles regularly appear in the Bay Area Arabic-language newspaper, Alra'i Alarabi. Ms. Lord-Black can be reached via email at kathleen@kathleenlord.com; and by telephone at (415) 205-5601 and (831) 332-7515. Her web address is www.kathleenlord.com.