

IMMIGRATION & NATURALIZATION



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

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Legal Assistance & Preventive
Law
Pamphlet Series

CITIZENSHIP

There are two ways to become a U.S. citizen: birth and naturalization. It is not true that an alien who marries a U.S. citizen automatically and immediately becomes a U.S. citizen. There is a statutory waiting period before naturalization occurs. A child born to a U.S. citizen, regardless of whether both parents are U.S. citizens, will typically be a U.S. citizen. The rules governing children born out of wedlock can become quite complicated. If you have questions regarding this situation, you should speak with a legal assistance attorney.

VISAS

Most aliens who lawfully enter the U.S. do so by visa. Typically, a visa will be for an immigrant or a nonimmigrant. A nonimmigrant is an individual who seeks temporary entry into the U.S. An immigrant is an individual intending to stay permanently. An alien fiancée of a military member, for example, will seek an immigrant visa or K visa.

THE K VISA

An individual who enters the U.S. with a U.S. resident for the purpose of marriage within 90 days may obtain a K visa. Following marriage, the individual may have his or her status changed to conditional permanent residence (discussed below). Remember that the K visa or passport must be obtained prior to entry into the U.S., or entry will be denied.

Several documents are required to obtain these visas: (1) Form I-129F, *Petition for Alien Fiancée*; (2) birth certificate; (3) certificate of naturalization (if applicable); (4) valid, unexpired U.S. Passport issued within last five

years; (5) proof that you can legally marry (if the jurisdiction or state of marriage has special requirements such as parental consent); (6) divorce decrees if either party was previously married; (7) color photos of you and your fiancée taken within 30 days of petition; (8) Form G-325A, *Biographic Information*.

FAMILY MEMBER VISAS

Family members of U.S. citizens can typically obtain an immigrant visa. A quota may limit the number of aliens in that category per year. Thus, there is no guarantee that the individual will obtain the desired visa for that year.

VISAS SUBJECT TO QUOTAS AND THOSE NOT SUBJECT TO QUOTAS

The following individuals may apply for an immigrant visa but are subject to quota restrictions: an adult (21 or over) child of a U.S. citizen; married children of U.S. citizens; and brothers and sisters of U.S. citizens.

The following people may apply for an immigrant visa without being subject to quotas: spouses; children (under 21); and parents.

Spouses may apply even if the citizen sponsor has died so long as the marriage was for two years or longer before death and the spouse has not remarried. An immigrant who has served honorably in the armed forces is not subject to quotas.

PROCEDURES FOR FAMILY-BASED IMMIGRANT VISAS

First, the citizen needs to file a petition (Form I-130) naming his or her relative with the U.S. Citizenship and Immigration Services (USCIS). To support this form, the applicant will provide a document proving the relationship (marriage documents, birth certificates, etc.). Typically, USCIS will require originals, which they will return to the petitioner. Any foreign language document must be accompanied by a certified translation. To prove his or her citizenship, the petitioner must provide a birth certificate or unexpired passport. Military members might be able to use certified personnel records. USCIS will inform the petitioner of any problems in the petition and allow 60 days for correction. If USCIS denies a petition, they will inform the petitioner how to file an appeal. Even after a petition is approved, the process is just beginning. USCIS will forward another form that the alien will have to complete, as well as support with several documents.

RESIDENT STATUS AND NATURALIZATION

If the petition process goes well, the alien will have a permanent resident status until naturalization occurs. In certain circumstances, such as when a marriage occurred within 24 months of immigrating, the status will be conditional. Either way, the alien should be able to naturalize, barring unusual circumstances or misconduct.

Naturalization requires completion of a complete application and the applicant must demonstrate physical presence in the U.S., good moral character, the ability to speak English and complete a test about U.S. History and

Government. Finally, the applicant must take an oath of allegiance to the U.S.

CONCLUSION

Perhaps the crucial part of immigration is the sponsor's obtaining proper documentation and having the time to do so. Even the simplest immigration petitions require a great deal of paperwork and will not be granted immediately. For more information, you can visit the U.S. Citizenship and Immigration web site at: <http://www.uscis.gov>

This pamphlet is for basic information of immigration and naturalization. It is not to be used as a substitute for legal advice from a Judge Advocate. Please contact the 354th Fighter Wing Legal Office for questions and further information.

