

You may be permanently barred from entering the U.S. if you commit other more serious offenses. Making more than one illegal entry into the U.S. triggers the permanent bar. So does saying that you are a United States citizen in order to come across the border or get some other benefits.

In some cases, a person can apply for a waiver of a bar but waivers are not automatic. To obtain a waiver, you must show that your U.S. citizen or permanent resident family member will suffer extreme hardship if you are not allowed to return to the U.S. It does not matter if you yourself will suffer extreme hardship and financial hardship is not always enough.

FREQUENTLY ASKED QUESTIONS

Q: My cousin's wife recently applied for him and he became a permanent resident even though he came into the country by crossing the river from Mexico. All he had to do was pay a \$1,000.00 fee to the government. Can't I do the same?

A: Your cousin/brother/aunt/friend most likely petitioned under Section 245(i) of the Immigration and Nationality Act (also referred to as the "Life Act"). This provision allows people to adjust their legal status to become permanent residents by paying a penalty fee. To qualify for 245(i), you must have been physically present in the United States on December 21, 2000 **AND** have submitted an immigrant petition before April 30, 2001. Some people are just becoming permanent residents now because they submitted their petitions before April 30, 2001 and have been on a long waiting list. People who have never applied for immigration status before cannot use Section 245(i) anymore.

Q: I entered the U.S. illegally. My U.S. citizen brother filed an application for me in 1999 and I am now on a very long waiting list to become a permanent resident. I just married a U.S. citizen. Can the application my brother did help me?

A: Yes. If someone filed a petition for you on or before April 30, 2001, you might be "grandfathered" under Section 245(i). You might be able to use your old petition to adjust status in a new relationship. A spouse of a citizen has a shorter wait than a brother or sister. You should consult an immigration attorney.

Q: I don't have legal status but my children were born here. Can they apply for me?

A: Your children are U.S. citizens by birth. U.S. citizens can only apply for their parents after they turn 21 years old. If your children are over 21, they can apply for you, but you would still have to go back to your home country for consular processing if you entered the U.S. illegally and no one petitioned for you before April 30, 2001. You would still trigger the bars if you have been in the U.S. illegally for more than six months at that point.

TALK TO AN EXPERT

It is important to talk to a trusted attorney or community agency about your immigration status, especially before filing any immigration applications. If a notary public or paid translator tells you that these rules don't apply to you, they might be taking advantage of you and they might be committing fraud.

CAN MY FAMILY APPLY FOR ME?

What you should know about immigrating to the U.S. through a family member (8/1/2005)



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Becoming a Lawful Permanent Resident in the United States can be a difficult and lengthy process. People often think that it is as easy as having a spouse or relative fill out a form. However, the process is much more complicated. There are some people who have a spouse, parent or child with legal status who are not

eligible for any legal immigration status under the current law.

WHO CAN APPLY FOR WHOM?

- A U.S. citizen may petition for a spouse, parent, child, brother, or sister;
- A Lawful Permanent Resident may petition for a spouse or an unmarried child. A Lawful Permanent Resident may NOT apply for a married child, a parent, or a sibling.
- No other relatives can petition. Aunts and uncles and grandparents cannot petition.

TWO STEP PROCESS

Applying for permanent residency through a family member is a two-step process.

- **First**, a U.S. citizen or Lawful Permanent Resident (petitioner) files a **petition** for a foreign family member (beneficiary).
 - The time it takes for an application to be approved varies from Service Center to Service Center and may take years.
 - Once the application is approved, the beneficiary must wait until a visa becomes available. Only a certain number of visas can be given out each year. A beneficiary may have to wait many years for a visa to become available depending on when the application was submitted, the beneficiary's home country, and the family relationship between the

petitioner and beneficiary. For example, brothers and sisters usually have to wait longer than spouses.

- **Second**, after the application is approved AND a visa becomes available, the beneficiary applies to immigrate either while in the U.S. through a process called “**adjustment of status**” OR while abroad at a United States consulate or embassy through a process called “**consular processing**.”

Not everyone can adjust status in the U.S. If the first step, the petition, was filed after April 30, 2001, to be eligible to adjust status you must have:

- (1) entered the U.S. legally, or
- (2) had a different family petition filed for you before April 30, 2001, or
- (3) had a different family petition filed for your parent before April 20, 2001 while you were still a minor

So, people who entered the country illegally, for example, by crossing the river from Mexico, have to return to their home country for consular processing. *However*, a serious problem arises when those people leave the U.S. for consular processing. Most people who entered illegally have “unlawful presence” in the U.S. They will trigger a three-year, ten-year, or permanent bar to coming back into the U.S. when they leave the country for consular processing.

TRIGGERING THE BARS

Unfortunately, just because you have an approved petition and there is an available visa for you does NOT mean that you will be able to become a legal permanent resident. In 1996, Congress passed strict reforms of immigration law in the U.S. These reforms include bars to re-entering the U.S. after having been here illegally for certain periods of time.

If you have been in the U.S. for more than 6 months (180 days) without authorization and leave the U.S. for any period of time, you are automatically barred from re-entering the U.S. for 3 years.

If you have been in the U.S. for more than 1 year (12 months) without authorization and leave the U.S. for any period of time, you are automatically barred from re-entering the U.S. for 10 years.

So, if you have enough unlawful presence in the U.S. and have left the U.S. (even once), you will not be able to complete the second step of the application process toward becoming a permanent resident. If you file an application, you might be deported and might not be able to return to the U.S. for ten years or longer.