Immigrant Visas

Visas for immigrating to the United States

- Family-Based Petitions
- Burden of Proof in Visa Proceedings
- FAMILY PREFERENCE VISA CATEGORIES

Family-Based Petitions

FAMILY-BASED VISA PETITIONS

PARENTS PETITIONING FOR CHILDREN

The age and marital status of your children are important factors in the immigration process. For immigration purposes, a “child” is an unmarried person under 21 years of age. A “son” or “daughter” is a person who is married or is 21 years of age or older. For additional clarification, please read the requirements listed below.

| If you are a... | You may petition for... |

| --- | --- |

| U.S. citizen |

- **Children (unmarried and under 21) - Unmarried sons and daughters (21 or over) - Your son or daughter’s child(ren) may be included on this petition. - Married sons and daughters (any age) - Your son or daughter’s spouse and/or child(ren) may be included on this petition. |**

Permanent resident (Green Card holder) |

- **Children (unmarried and under 21) - Your child's child(ren) may be included on this petition. - Unmarried sons and daughters (21 or over) - Your son or daughter's child(ren) may be included on this petition. |**

See PARENT PETITIONING FOR CHILD **PAGE**

ADULT SONS & DAUGHTERS PETITIONING FOR A PARENT

To petition for your parents (mother or father) to live in the United States as Green Card holders, you must be a U.S. citizen and at least 21 years old. Green Card holders (permanent residents) may not petition to bring parents to live permanently in the United States.

| If you are a U.S. citizen who is at least 21 years old, and your… | Then you must submit... |

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| mother lives outside the United States, |

- **Form I-130 - A copy of your birth certificate showing your name and your mother's name - A copy of your Certificate of Naturalization or U.S. passport if you were not born in the United States |**

| father lives outside the United States, |

- **Form I-130 - A copy of your birth certificate showing your name and the names of both parents - A copy of your Certificate of Naturalization or Citizenship or U.S. passport if you were not born in the United States - A copy of your parents' civil marriage certificate |**

| father lives outside the United States and you were born out of wedlock and were not legitimated by your father before your 18th birthday, |

or reached the age of 21, whichever came first |

| father lives outside the United States and you were born out of wedlock and were legitimated by your father before your 18th birthday, |

- **Form I-130 - A copy of your birth certificate showing your name and your father's name - A copy of your Certificate of Naturalization or Citizenship or U.S. passport if you were not born in the United States - Evidence that you were legitimated before your 18th birthday through the marriage of your natural parents, the laws of your state or country (of birth or residence), or the laws of your father’s state or country (of birth or residence) |**

petition is filed to bring your step-parent to live in the United States, |

- **Form I-130 - A copy of your birth certificate showing the names of your birth parents - A copy of the civil marriage certificate of your birth parent to your step-parent showing that the marriage occurred before your 18th birthday - A copy of any divorce decrees, death certificates, or annulment decrees to show that any previous marriage entered into by your natural or step-parent ended legally |**

petition is filed to bring your adoptive parent to live in the United States, |

- **Form I-130 - A copy of your birth certificate - A copy of your Certificate of Naturalization or Citizenship if you were not born in the United States - A**

Burden of Proof in Visa Proceedings

BURDEN OF PROOF FOR A VISA

A. Burden of Proof

The burden of proof to establish eligibility for an immigration benefit always falls solely on the benefit requestor.[1] The burden of proof never shifts to USCIS.

Once a benefit requestor has met his or her initial burden of proof, he or she has made a *prima facie* case. This means that the benefit requestor has come forward with the facts and evidence which show that, at a minimum, and without any further inquiry, he or she has proven initial eligibility for the benefit sought, though in certain cases the officer is then required to determine whether approval or denial is appropriate, in his or her discretion.

B. Standards of Proof

The standard of proof is different than the burden of proof. The standard of proof is the amount of evidence needed to establish eligibility for the benefit

sought. The standard of proof applied in most administrative immigration proceedings is the preponderance of the evidence standard. Therefore, even if there is some doubt, if the benefit requestor submits relevant, probative, and credible evidence that leads an officer to believe that the claim is "probably true" or "more likely than not," then the benefit requestor has satisfied the standard of proof.[2]

If the requestor has not met this standard, it is appropriate for the officer to either request additional evidence or issue a notice of intent to deny, or deny the case.[3]

The preponderance of the evidence standard of proof does not apply to those applications and petitions where a different standard is specified by law. The Immigration and Nationality Act (INA) provides for a higher standard in some cases, such as the clear and convincing evidence standard that is required when a beneficiary enters into a marriage while in exclusion, deportation, or removal proceedings, and to determine the citizenship of children born out of wedlock.[4]

PREPONDERANCE OF EVIDENCE

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought. *See, e.g., Matter of Martinez*, **21 I&N Dec. 1035, 1036 (BIA 1997) (noting that the petitioner must prove eligibility by a preponderance of evidence in visa petition proceedings);** *Matter of Soo Hoo*, **11 I&N Dec. 151, 152 (BIA 1965) (finding that the petitioner had not established**

eligibility by a preponderance of the evidence because the submitted evidence was not credible); cf. *Matter of Patel*, 19 I&N Dec. 774, 782-3 (BIA 1988) (noting that section 204(a)(2)(A) of the Act, 8 U.S.C. § 1154(a)(2)(A) (Supp. IV 1986), requires a higher standard of clear and convincing evidence to rebut the presumption of a fraudulent prior marriage).

Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010)

(3) In most administrative immigration proceedings, the *applicant* must prove by a *preponderance of evidence* that he or she is eligible for the benefit sought.

More info regarding *Matter of Chawathe* is available on the Asylee Adjustment page.

Full decision here.

Matter of Martinez, 11 I&N Dec. 151, 152 (BIA 1965)

Matter of Soo Hoo, 11 I&N Dec. 151, 152 (BIA 1965)

Matter of Patel, 19 I&N Dec. 774, 782-3 (BIA 1988)

Unsupported block

BURDEN OF PROOF

Once a benefit requestor has met his or her initial burden of proof, he or she has made a *prima facie* case. This means that the benefit requestor has come forward with the facts and evidence which show that, at a minimum, and without any further inquiry, he or she has proven initial eligibility for the benefit sought, though in certain cases the officer is then required to determine whether approval or denial is appropriate, in his or her discretion.
The burden of proof to establish eligibility for an immigration benefit always falls solely on the benefit requestor.
The burden of proof never shifts to USCIS.

STANDARD OF PROOF

The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. The standard of proof applied in most administrative immigration proceedings is the preponderance of the evidence standard.

BURDEN V. STANDARD

The standard of proof is different than the burden of proof. The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. The burden of proof is WHO has to meet the standard of proof.

Immediate Relative & Family Preference

Family Based Immigration

A foreign citizen seeking to live permanently in the United States requires an immigrant visa (IV). To be eligible to apply for an IV, a foreign citizen must be sponsored by an immediate relative who is at least 21 years of age and is either a U.S. citizen or U.S. Lawful Permanent Resident (that is, a green-card holder).

Immediate Relative v. Family Preference

There are two types of family-based immigrant visas:
Immediate Relative – these visas are based on a close family relationship with a U.S. citizen, such as a spouse, child or parent. The number of immigrants in these categories is not limited each fiscal year.

Family Preference – these visas are for specific, more distant, family relationships with a U.S. citizen and some specified relationships with a Lawful Permanent Resident (LPR). The number of immigrants in these categories is limited each fiscal year.

US Citizen Petitioner

Keep in mind that U.S. citizens can file an immigrant visa petition for their:

- **Spouse**
- **Son or daughter**
- **Parent**
- **Brother or sister**

Permanent Resident Petitioner

U.S. Lawful Permanent Residents can only file an immigrant visa petition for their:

- **Spouse**
- **Unmarried son or daughter**

Family Unification

Family unification is an important principle governing U.S. immigration policy. The family-based immigration system allows U.S. citizens and LPRs to bring certain family members to the United States. Family-based immigrants are admitted either as immediate relatives of U.S. citizens or through the family preference system.

An unlimited number of visas are available every year for the immediate relatives of U.S. citizens. Prospective immigrants in this category must meet standard eligibility criteria, and petitioners must meet certain age and financial requirements. Immediate relatives are:

- **spouses of U.S. citizens;**
- **parents of U.S. citizens (petitioner must be at least 21 years**
- **unmarried children (petitioner must be under 21 years old**
- **married children (petitioner must be at least 21 years old**
- **parent).**

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limited number of visas are available every year under the family preference system. Prospective immigrants in the family preference system must meet standard eligibility criteria, and petitioners must meet certain age and financial requirements. The family preference system includes:

- **spouses and children (married and unmarried) and adult sons and daughters of LPRs;**
- **unmarried children (under 21) and adult sons and daughters of U.S. citizens (petitioner must be at least 21 years old to petition for a sibling); and**

In order to balance the overall number of immigrants arriving based on family relationships, Congress established a complicated system for calculating the available number of family preference visas for any given year. The number is determined by starting with 480,000 (the maximum number in principle allocated for all family-based immigrants) and then subtracting the number of immediate relative visas issued during the previous year and the number of aliens “paroled” into the United States during the previous year. Any unused employment preference immigrant numbers from the preceding year are then added to this total to establish the number of visas that are available for allocation through the family preference system. However, by law, the number of family-based visas allocated through the preference system may not be lower than 226,000. The number of immediate relatives often exceeds 250,000 in a given year and triggers the 226,000 minimum for preference visas. As a result, the total number of family-based visas often exceeds 480,000. In Fiscal Year (FY) 2019, family-based immigrants comprised 68.8 percent of all new LPRs in the United States.

LINKS

USCIS--Bringing Your Parents to the US

FAMILY PREFERENCE VISA CATEGORIES

FAMILY PREFERENCE VISA CATEGORIES

Immediate Relatives

An Immediate Relative for immigration purposes is the spouse, minor child or parent of a U.S. citizen. See the Green Card for Immediate Relatives of U.S. Citizen page on the USCIS website for more info.

Family Preference Categories

Other family members eligible to apply for a Green Card are described in the following family "preference immigrant" categories:

First preference (F1) - unmarried sons and daughters (21 and older) of U.S. citizens;

Second preference (F2A) - spouses and children (unmarried and under 21) of lawful permanent residents;

Second preference (F2B) - unmarried sons and daughters (21 years of age and older) of lawful permanent residents;

Third preference (F3) - married sons and daughters of U.S. citizens; and

Fourth preference (F4) - brothers and sisters of U.S. citizens (if the U.S. citizen is 21+)