



This chapter includes information about:

- [Becoming a Lawful Permanent Resident \(Getting your “Green Card”\)](#)
- [Removal \(Deportation\) Proceedings](#)
- [Special Provisions for Battered Immigrants](#)
- [Special Provisions for Victims of Human Trafficking](#)
- [Special Immigrant Juvenile Status](#)
- [Immigration and Benefits](#)

The immigration system in the United States is complex. This section provides a brief overview of how you can apply to become a permanent lawful resident, what happens if you are facing deportation, are a young person, are an immigrant who has been abused or are a victim of human trafficking.

More information and links to resources can be found in [VCW’s Resource Directory – Legal section](#), including a link to the [U.S. Citizenship and Immigration Services website](#). All of the forms and accompanying instructions mentioned in this chapter are also available on this website.

Forms that you might be required to fill out come with detailed instructions. You must read them very carefully, paying particular attention to the following:

- the filing fee (made payable to the United States Department of Homeland Security);
- where to file the form and supporting documentation (there are service centers all over the country, and the center closest to you may not necessarily be the one that processes the type of application you are applying for); and
- supporting documentation (paying particular attention to what documents need to be originals, as well as what documents require a notary seal or must be certified).

## **Becoming a Lawful Permanent Resident (Getting your “Green Card”)**

There are four main paths to **obtaining lawful permanent resident (“LPR”) status, also known as having a “green card,”** that allows an “alien” (the term usually used to describe people who are not citizens of the United States) to live and work in the U.S. indefinitely, and eventually apply to be a citizen. These four paths are:

- family-based immigration;
- employment-based immigration;
- diversity lottery immigration; or
- refugee or asylum status.

To become a lawful permanent resident you file **Form I-485**. In most cases, after you have LPR status for five years, you may apply to be a United States citizen. The application to naturalize is done using **Form N-400**.

## Family-based Immigration

**Family-based petitions are the most common way that aliens become LPRs. Citizens of the United States** may apply for their spouses, children (unmarried and under 21 years of age), parents, and siblings. To petition for a parent, the United States citizen must be over the age of twenty-one. The wait time for each category varies. Though spouses, children, and parents are considered “**immediate relatives**,” the whole process can take two years, and sometimes longer. **For brothers and sisters**, the wait may be up to twenty years before they can apply for a green card, depending on the citizenship of that sibling. Family-based petitions are filed with the United States Citizenship and Immigration Services (“USCIS”) on **Form I-130**. LPRs may also use **Form I-130** to apply for their spouses and children. **LPRs are not eligible to apply for their parents or siblings.**

In the past, same-sex marriages were not recognized under immigration law. However, After the U.S. Supreme Court decision in *U.S. vs. Windsor*, on June 26, 2013, holding Section 3 of the Defense of Marriage Act unconstitutional, **same-sex legally married couples are entitled to the same federal benefits, including immigration benefits, as opposite-sex married couples.**

To obtain LPR status through marriage, you and your spouse must be able to show that you entered the marriage in good faith (meaning not solely for immigration purposes) and meet with a USCIS officer. The process includes filing a form and documentation with the proper office, and then in most cases both of you having an interview with a USCIS officer. Then, you will usually receive what is referred to as **two-year conditional LPR status**. That status gives you what is known as a **temporary green card**, expiring in two years. Within ninety days of that card expiring, you must file **Form I-751** to remove the conditions and receive a permanent green card.

If you are still married to the United States citizen, you may file a joint petition to remove the conditions, and may be asked to attend another interview. USCIS may waive this part of the process in their discretion. For example, if you and your spouse have a child together and submit a copy of the birth certificate with both names on it, or other ample evidence, the officer may presume that the good faith marriage is still intact.

You may also file your own petition (also using **Form I-751**) if you fit into one of the following limited circumstances:

- you entered the marriage in good faith but your spouse died;
- you entered into the marriage in good faith but it subsequently ended in divorce or annulment;
- you entered into the marriage in good faith, but you have been battered or subjected to extreme cruelty by your citizen or LPR spouse; or
- the termination of your status and removal would result in extreme hardship. The standard for “**extreme hardship**” is a high burden.

For all of these exceptions, except the “extreme hardship waiver”, to the joint-petition requirement, you must prove that you entered into the marriage in good faith, and not for immigration purposes.

If you satisfy all of the requirements, the conditions will be removed and you will receive a lawful permanent resident (“green”) card. Though the card may say that it **expires in ten years**, you may renew it indefinitely, regardless of the status of your marriage at that point.

## **Employment-based Immigration**

**Employment-based petitions require an employer to apply for an alien employee.** In order to qualify for a green card under this category, the employer must show, among other things, that there is **no qualified citizen available to do the job**. The employer usually handles this process. There are also employment and business visas that may allow the alien to work in the United States, but do not provide a path to LPR status.

## **Diversity-based Lottery Immigration**

The “**diversity lottery**” is conducted every year and selects up to 55,000 (or an amount decided by Congress) eligible applicants. Usually these applications are filed at the embassies or consulates in the alien’s home country.

## **Refugee or Asylum Status**

A person can apply for **LPR as a refugee or asylee**. The difference between refugees and asylees is the **place of application**.

- You can apply as a refugee for protection from abroad, such as from a refugee camp, or through an international organization.
- You may apply for asylum once you enter the United States. You must file your asylum application within one year of coming to the United States, unless there is a compelling reason why you were not able to do so, on **Form I-589**.

To meet the definition of a refugee, you must show that you have suffered or have a well-founded fear of persecution on account of one of five grounds: race, religion, nationality, political opinion, or membership in a particular social group. The persecution must be by the government or a group that the government is unable or unwilling to control.

In addition, you must establish that you are unable or unwilling to get protection in **your** country, that the fear of persecution is countrywide, and that you have not settled in another country after leaving your native country. Finally, you must demonstrate that you are eligible for asylum as a matter of discretion, which is usually done by showing that you are a good person and have little or no criminal history.

After one year in asylum or refugee status you may apply for lawful permanent resident (“green”) card status.

Anyone applying for LPR status, you must show that they are “**admissible**” to the United States. Some common grounds which might cause one to be **inadmissible** include:

- health-related grounds (communicable diseases, physical and mental disorders, drug abuses, etc.);
- criminal grounds (depending on the crime);
- security-related (such as ties to terrorist organizations);

- public charge grounds (for example, if the person receives certain benefits, or is likely to require them in the future, unless she fits an exception);
- labor certification grounds;
- illegal entry and immigration violations (including entering without inspection, previous removal, etc.);
- documentation grounds; and
- other miscellaneous grounds (including polygamists, unlawful voters, etc.).

## Removal (Deportation) Proceedings

If the Department of Homeland Security is trying to remove you from the United States, you have the right to have an attorney, but the government will not pay for it, except in very limited circumstances, such as if you are not competent or are a victim of human trafficking. An inability to pay for a lawyer is not reason for the government to appoint one. You may represent yourself (**pro se**).

Depending on the facts of the case, there may be certain remedies available, such as **Withholding of Removal** where an individual that does not meet the asylum requirements but can prove that they would “more likely than not” face persecution on account of one of the five protected statutory grounds).

Another example is **Cancellation of Removal**, for LPRs who have been here and had their status for at least five years and been in the country for at least seven, or non-LPRs who have been in the country for at least ten years and whose removal would cause exceptional and extremely unusual hardship to a U.S. citizen or LPR spouse, child, or parent.

Another example is **Withholding of Removal under the Convention Against Torture**, for example, if it is “more likely than not” that you would be tortured if sent back to your country.

There may also be remedies for certain nationals of Cuba, people who have been in the country since 1972 and meet other requirements, and aliens eligible for green cards such as someone married to a United States citizen.

## Special Provisions for Battered Immigrants

If you are an alien or your non-citizen child is a survivor of domestic violence, you may be eligible for legal status in certain situations. Under the Violence Against Women Act (“VAWA”), spouses and children of United States citizens and LPRs may file “self-petitions” (using **Form I-360**) to apply for lawful status, which may lead to work permits and green cards in certain circumstances. **Self-petitions may also be used by abused parents of adult citizens and parents of children who have been abused by LPR or citizen parents.**

In general, to be eligible for a VAWA self-petition, you must show that:

- your spouse or parent is a citizen or LPR;
- you lived with the spouse in the United States;
- you married the person in good faith and not solely for immigration purposes;
- you were the victim of battery or extreme cruelty by the citizen or LPR spouse or parent; and
- you have good moral character.

You may file self-petitions at any time in the marriage, regardless of whether the spouse has filed an **I-130** on their behalf, or within two years of death or divorce, or loss of the spouse's LPR status **if the loss was related to domestic violence**.

As mentioned before, there are also provisions for spouses and children with conditional green cards to waive the joint-filing requirement and remove the conditions based on domestic violence using Form **I-751** (please see the Family-based Immigration section within this chapter).

The **U visa is a form of relief for victims of certain crimes who assist in the investigation or prosecution of the crime**. Applicants must file Form **I-918**. Any non-citizen who is a victim of a crime might be eligible for a U visa regardless of whether they are in valid immigration status.

**Eligibility for a U visa** requires that:

- you have suffered “substantial physical or mental abuse” as a result of being the victim of criminal activity;
- you possess information concerning the criminal activity;
- the criminal activity violated a law of the United States; and
- you have been helpful, or are likely to be helpful to a federal, state, or local law enforcement official.

If you are under sixteen years of age, the parent or guardian may be the one who possesses the information and assists the law enforcement official. You will need to have a certificate (on **Form I-918B**) signed by a law enforcement official. Qualifying crimes include rape, incest, domestic violence, trafficking, abusive sexual conduct, prostitution, sexual exploitation, being held hostage, involuntary servitude, kidnapping, blackmail, murder, and felonious assault, among others.

## **Special Provisions for Victims of Human Trafficking**

If a law enforcement officer or a state legal representative such as a state's attorney or the office of the attorney general thinks that you might be a victim of human trafficking, you may be eligible for either a T Visa or a U Visa or both. **If you qualify, you have the right to decide which visa or both you would like to apply for.**

As soon as practicable after you meet with them, they must provide certain services for you:

- Notify the victim's compensation program at the Vermont Center for Crime Victims Services that you may be eligible for services.
- Make a preliminary assessment to see if you meet the criteria for certification as a victim of a **severe form of human trafficking** and/or are eligible for other federal, state or local benefits and services, including legal services.
- If you meet the criteria, complete the certification Form I 914 B or Form I 918 B

**To be eligible for a T visa**, you must:

- be a victim of a severe form of human trafficking;
- comply with any reasonable request for assistance from law enforcement in the investigation or prosecution (there is an exception if you are under the age of eighteen);
- be physically present in the United States due to trafficking; and

- suffer extreme hardship involving unusual and severe harm if removed.

T visa applicants must file **Form I-914** with a certification from law enforcement official (using **Form I-914B**).

**The definition of human trafficking in Vermont law is the same as what federal law calls, “a severe form of human trafficking”:** sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

For more information about human trafficking see the [Violence Against Women and Children chapter of \*The Legal Rights of Women in Vermont\*](#), the website of the [Vermont Human Trafficking Task Force](#), and the [Vermont Human Trafficking Crisis Response Protocol](#), which provides instructions and information for anyone in Vermont that may have contact with potential victims of sex or labor trafficking.

## Special Immigrant Juvenile Status

**Abused, neglected or abandoned alien children who are in the custody of the state’s child protection agency (DCF in Vermont) may be eligible for immigration relief.** This application, which leads to another pathway to obtaining LPR status, also uses **Form I-360**.

To be eligible, the alien must:

- be unmarried and under the age of twenty-one;
- have been declared a dependent of a United States juvenile court, or such a court must have legally committed the alien to a state agency or department, and has been found eligible for long-term foster care: and
- have been the subject of an administrative or judicial process in which it was determined that it was not in the juvenile’s best interest to be returned to the juvenile’s or parents’ country of nationality or last habitual residence.

## Immigration and Benefits

**Immigrants qualify for some public benefits that are available to citizens.** However, even if you are eligible for a benefit program, it **may impact your eligibility for a green card because you may be considered a public charge.**

Different programs have specific requirements and therefore you should talk directly to the agency that administers the benefit to determine your eligibility. **If you have alien status and have a child who is a citizen of the United States, you may apply for benefits on the child’s behalf.**

LPR children are eligible for in-state tuition at public universities and colleges. Some states also offer in-state tuition to undocumented immigrants who have lived in the state for a certain period of time.

However, Vermont has not passed any state legislation regarding this issue. **A child born in the United States has all of the rights of every other citizen, regardless of her parents' immigration status.**

## **Relevant Laws**

### **Vermont:**

Human Trafficking, 13 V.S.A. §2663

### **Federal:**

Immigration and Nationality Act (INA)  
Title 8 of the Code of Federal Regulations (8 C.F.R.)  
Severe form of trafficking 22 U.S.C. §7105

Updated 10-30-2013 - LT