

# *The Legal Rights of Women in Vermont*

## **Immigration**

### **Chapter 7**

This chapter includes information about:

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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”)**

A Lawful Permanent Resident is any person, not a citizen of the United States, who is residing in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant. Also known as "Permanent Resident Alien," "Resident Alien Permit Holder," and "Green Card Holder." Many laws use the term “aliens.”

In general, to meet the requirements for permanent residence in the United States, you must:

- be eligible for one of the immigrant categories established in the Immigration and Nationality Act (INA);
- have a qualifying immigrant petition filed and approved for you (with a few exceptions);
- have an immigrant visa immediately available; and
- be admissible to the United States.

All applicants for an immigrant visa or adjustment of status must prove they are eligible for admission to the United States. The grounds of inadmissibility are determined by the particular category under which you are immigrating. Inadmissibility could be based on many grounds, such as health-related, criminal, security-related or other.

Your adjustment of status application or immigrant visa application will be denied if you are found to be inadmissible to the United States. In some cases, if you are found to be inadmissible to the United States, you may be eligible to file Form I-601, a waiver of inadmissibility.

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

- family-based immigration;
- employment-based immigration;
- diversity lottery immigration;
- refugee or asylum status; or
- humanitarian relief (including VAWA, U-status, T-status, or Special Immigrant Juvenile 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.** You may be eligible to get a Green Card as:

- an immediate relative of a U.S. citizen, including spouses, unmarried children under the age of 21, and parents of U.S. citizen petitioners 21 or older;
- a family member of a U.S. citizen fitting into a preference category, including unmarried sons or daughter over the age of 21, married children of any age, and brothers and sisters of U.S. citizen petitioners 21 or older;
- a family member of a green card holder, including spouses and unmarried children of the sponsoring green card holder; or

- a member of a special category, including battered spouse or child (VAWA), a K nonimmigrant, a person born to a foreign diplomat in the United States, a V nonimmigrant or a widow(er) of a U.S. citizen.

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. 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.

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 attending an interview with a USCIS officer. If your application is approved, the immigrant spouse will receive her/his green card. If the two of you had been married for less than **two years** at the time of your approval for residency, then you will receive what is referred to as **two-year conditional LPR status**. Conditional status gives you what is known as a **temporary green card**, which expires 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 to the joint-petition requirement , except the “extreme hardship waiver”, , you must prove that you entered into the marriage in good faith, and not solely 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 will indicate that it **expires in ten years**, your status does not expire, and so you may renew the card indefinitely, regardless of the status of your marriage at that point.

## **Employment-based Immigration**

The main ways to immigrate based on a job offer or employment are listed below:

- a job offer;
- investment (may be available to investors/ entrepreneurs who are making an investment in an enterprise that creates new U.S. jobs);
- self petition (some categories allow you to file for yourself if deemed “Aliens of Extraordinary Ability” or granted a National Interest Waiver); and/or
- special categories of jobs (such as broadcaster, international organization employee, religious worker, etc.).

**Employment-based petitions, based on a job offer, require an employer to apply for an immigrant employee.** In order to qualify for a green card under this category, the employer must show, among other things, that a **qualified U.S. citizen is unavailable to do the job**. The employer usually handles this process. There are also employment and business visas that may allow foreign-born individuals to work in the United States, but which do not provide a path to LPR status.

## **Diversity-based Lottery Immigration**

The “**diversity lottery**” is conducted every year and selects up to 50,000 (or an amount decided by Congress) eligible applicants. Usually these applications are filed at the embassies or consulates in the immigrant’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**. Refugees come to the United States with refugee status; Asylum seekers apply for refugee status once they are in the United States. Refugees are required by law to apply for permanent resident status 1 year after being admitted to the United States. As an asylee, you are not required to apply for permanent resident status after being granted asylum for 1 year, although it may be in your best interest to do so.

To meet the status of a refugee, you must show that you have suffered or have a well-founded fear of future persecution on account of one of five protected 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 of origin, that the fear of persecution is countrywide, and that you have not settled in another country after leaving your country of origin. 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.

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**.

After one year in asylum or refugee status you may apply for lawful permanent resident (“green”) card status. To apply for a green card as a refugee or asylee, you need to file Form I-485.

Anyone applying for LPR status 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 addictions, etc.);
- criminal grounds (depending on the crime);
- security-related grounds (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 they fit 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.).

## **Other Ways**

### **Green Card Through the Legal Immigration Family Equity (LIFE) Act**

You may be eligible to receive a green card through Section 245(i) if you:

- are the beneficiary of a qualified immigrant petition (Form I-130 or I-140) or application for labor certification (Form ETA-750) filed on or before April 30, 2001;
- were physically present in the United States on December 21, 2000, if you are the principal beneficiary and the petition was filed between January 15, 1998 and April 30, 2001;

- are currently the beneficiary of a qualifying immigrant petition (either the original Form I-130 or I-140 through which you are grandfathered or through a subsequently filed immigrant petition);
- have a visa immediately available to you;
- are admissible to the United States.

### **Green Card for a Person Born in the United States to a Foreign Diplomat**

You may be eligible to receive a green card (permanent residence) through creation of record if you meet all of the following conditions:

- you were born in the United States to a foreign diplomat;
- you have had residence in this country continuously since birth;
- you have not abandoned your residence in the United States.

### **Green Card for an Amerasian Child of a U.S. Citizen**

You may be eligible to receive a green card (permanent residence) as an Amerasian if you meet all of the following conditions:

- you were born in Korea, Vietnam, Laos, Kampuchea, or Thailand between January 1, 1951 and October 21, 1982 and were fathered by a U.S. citizen;
- you have a financial sponsor in the United States who is 21 years of age or older, of good moral character, and is either a U.S. citizen or permanent resident;
- you are admissible to the United States;
- an immigrant visa is immediately available to you.

### **Green Card for an American Indian Born in Canada**

You may be eligible to receive a green card (permanent residence) as an American Indian born in Canada if you:

- have 50% or more of blood of the American Indian race;
- were born in Canada.

### **Green Card for a Cuban Native or Citizen**

Cuban natives or citizens can apply for a green card while in the United States if they have been present in the United States for at least 1 year, have been admitted or paroled and are admissible as immigrants.

### **Green Card for a Haitian Refugee**

You may be eligible to get a green card through the HRIFA provisions if you:

- are a national of Haiti;

- qualify as a dependent applicant under HRIFA (see below);
- are admissible to the United States;
- have been continuously present in the United States since December 31, 1995. (This requirement only applies to unmarried sons or daughters over the age of 21 of the principal applicant.);
- are physically present in the United States when the application is filed.

### **Green Card for an Informant (S Nonimmigrant)**

An S nonimmigrant is an individual who has assisted a law enforcement agency as a witness or informant. A law enforcement agency may submit an application for permanent residence (a green card) on behalf of a witness or informant when the individual has completed the terms and conditions of his or her S classification. Only a federal or state law enforcement agency or a U.S. Attorney's office may submit a request for permanent residence as an S nonimmigrant on behalf of a witness or informant. The requesting agency must also be the same agency that initially requested S nonimmigrant status on behalf of the individual. Qualifying family members of the principal S nonimmigrant may also be eligible to apply for a green card.

### **Green Card Through the Indochinese Parole Adjustment Act**

You may be eligible to get a green card (permanent residence) under the Indochinese Parole Adjustment Act if you meet all of the following conditions:

- You are a native or citizen of Vietnam, Kampuchea (Cambodia), or Laos;
- You were inspected and paroled into the United States before October 1, 1997;
- You were paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;
- You were physically present in the United States prior to and on October 1, 1997;
- You are admissible to the United States.

### **Removal (Deportation) Proceedings**

The United States government can place individuals in removal proceedings when the immigrant has been found violating the immigration laws. Immigrants could be considered for a formal removal if they were inadmissible at the time of entry, commit certain criminal offenses, fail to register, falsified documents, became a public charge within five years of entry, or violate immigration status conditions.

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 ways to avoid deportation. Examples include being eligible for permanent resident status (see above), by filing for asylum or **Withholding of Removal** (Individuals eligible for withholding of removal are those who do not meet all the asylum requirements but who can still 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**, which is for LPRs who have been here, had their status for at least five years, been in the country for at least seven and had not been convicted of any aggravated felony. This could also be non-LPRs who have been in the country for at least ten years, whose removal would cause exceptional and extremely unusual hardship to the immigrant’s U.S. citizen or LPR spouse, parent or child.

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.

## **Special Provisions for Battered Immigrants**

If you are an immigrant survivor of domestic violence or your non-citizen child is a survivor of domestic violence, you may be eligible for legal status in certain situations.

In general, to be eligible for a Violence Against Women Act (“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.

Under the VAWA, abused spouses and children of United States may self-petition for lawful status, which can then lead to work permits and green cards.. **Self-petitions may also be filed by abused parents of adult citizens and parents of children who have been abused by the other LPR or citizen parent.**

You may file self-petitions at any time in the marriage. You can file regardless of whether your abusive spouse has filed an **I-130** petition on your behalf, within two years of your spouse’s death or divorce from him/her, or loss of the spouse’s LPR status **if the loss was related to domestic violence.**

You may also be able to file a self-petition if you aren’t still married to your abusive spouse if:

- you believed you were legally married to your abusive spouse but the marriage is not legitimate solely because of the bigamy of your abusive spouse;
- your abusive spouse died within 2 years of filing the petition;
- your abusive spouse lost or renounced his / her citizenship or lawful residence status due to an incident of domestic violence; or
- your marriage to your abusive spouse was terminated within the 2 years prior to filing of the petition, and there is a connection between the termination of the marriage and the battery or extreme cruelty.

As mentioned before, there are also provisions for abused spouses with conditional green cards to waive the joint-filing requirement and self-petition for the removal of the conditions 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.** Any non-citizen who is a victim of a qualifying crime might be eligible for a U visa regardless of whether they are in valid immigration status. 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.

**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.

Applicants must file **Form I-918**. 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. All applicants will need to have a certificate (on **Form I-918B**) signed by a law enforcement official.

Immigrants who have been granted U nonimmigrant status may file for a green card if all of the following conditions are met:

- have been physically present in the United States for a continuous period of at least 3 years since the first date of admission as a U nonimmigrant and continue to hold that status at the time of application for adjustment of status;
- have not unreasonably refused to provide assistance in the criminal investigation or prosecution;
- are not inadmissible under 212(a)(3)(E) of the Immigration Nationality Act; and

- have established that their presence in the United States is justified on humanitarian grounds, to ensure family unity or is in the public interest.

To obtain a green card, apply using Form I-485.

## Special Provisions for Victims of Human Trafficking

**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.

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.

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

- be a victim 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);
- submit proof of reasonable cooperation with a trafficking investigation;
- be physically present in the United States due to trafficking; and
- suffer extreme hardship involving unusual and severe harm if removed.

T visa applicants can file **Form I-914** with a certification from law enforcement official (using **Form I-914B**) as proof of reasonable cooperation with an investigation.

**If you qualify, you have the right to decide which visa or both you would like to apply for.**

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 immigrant children may be eligible for immigration relief.** Applying for SIJ is a two-step process.

First, a state court in the United States having jurisdiction over matters regarding care and custody of juveniles must issue an order with the following “special findings”:

- The child is a dependent of the court and has been legally placed with a state agency, a private agency or a private person;
- It is not in the child’s best interest to return to her/his home country (or the country s/he last lived in); and
- The child cannot be reunited with one or both parents because of ANY of the following – abuse, abandonment, neglect, or similar reason under state law.

Second, the child must then apply for Special Immigrant Juvenile Status using Form I-360 and lawful permanent residency using Form I-485 with USCIS. The child must include a certified copy of the state court’s “special findings” with the I-360 application. As well, the child must:

- be unmarried and under the age of twenty-one;
- remain under the jurisdiction of the juvenile court at the time of filing the I-485 application with USCIS. *\*Note: as of the writing of this guide, there is some confusion in the law regarding whether an unmarried child under 21 who files after aging-out of juvenile court jurisdiction can still be eligible for SIJS. To be safe, the child’s I-485 application should be filed while the child is still under the jurisdiction of the juvenile court. In Vermont, this would be before the child turns 18.*

It is important to note that if a child gets her/his green card through SIJS, then s/he can never petition for a green card for her/his parents.

## **Immigration and Benefits**

**Immigrants qualify for some public benefits that are available to citizens.**

As a permanent resident, you have the right to:

- live and work anywhere permanently in the United States;
- get Social Security, Supplemental Security Income, and Medicare benefits, if you are eligible;
- own property in the United State;
- attend public school and college.

As a permanent resident, it is your responsibility to:

- obey all federal, state and local laws;
- pay federal, state and local income taxes;
- maintain your immigration status; and
- notify the USCIS when you change your address.

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 immigrant status and have a child who is a citizen of the United States, you may apply for benefits on the child's behalf.**

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.**

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, 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.**

## **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

Cuban Adjustment Act of 1996

Haitian Refugee Immigration Fairness Act

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