

U Visa Adjustment of Status

1. Can U visa holders apply for lawful permanent residence (green card)?

Yes, a U visa holder may apply for lawful permanent residence after maintaining continuous physical presence in the United States for at least three years under their U Status. In addition, principal applicants must show that they continued to assist the law enforcement agency who certified them for a U visa, or that they never refused to assist if requested.

2. What is the process for U visa holders to obtain lawful permanent residence?

To apply for lawful permanent residence, U visa holders must be lawfully inside the United States with their U Status and file Form I-485 with the USCIS, accompanied by supporting documents that show compliance with statutory requirements. Supporting documents include evidence of continuous physical presence for at least 3 years under the U status, criminal records, and biographical data.

3. Is there a waiting period before U visa holders can apply for adjustment of status?

There is no waiting period to apply for Adjustment of Status once statutory requirements are met. The most important requirements are three years of continuous physical presence in the United States under U Status, and not having lost or abandoned that status by an unauthorized departure from the United States.

4. Can family members of U visa holders also apply for adjustment of status?

Yes, any individual who holds U Status, whether they are the principal applicant (U-1 category), or qualifying relative (U-2, U-3, U-4, U-5 categories) may apply for Adjustment of Status. Each U Visas holder applies for adjustment of status independently, and the failure of any family member, even of the principal applicant, to file for adjustment, does not impact the adjustment of the other U Visa holders.

5. Can U visa holders work while their adjustment of status application is pending?

Yes, any applicant for adjustment of status, including U visa holders, may apply for a work permit (employment authorization document) while their adjustment of status is pending. These work permits are issued for two years typically.

6. Is there a fee for filing the adjustment of status application for U visa holders?

No, currently there is not a filing fee for this type of process.

7. What happens if a U visa holder's family size changes during the adjustment of status process?

Individuals who hold U status in category U-1, that is, they are the principal applicants, can often petition certain family members under cover of their U visa. These family members are known as “after-acquired” family members. By filing a Form I-929, U-1 U visa holders may

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petition a new spouse or children/stepchildren, provided these family members never held U-1 status. This petition allows for the same broad waiver as a U Visa.

7. Can U visa holders travel outside the U.S. while their adjustment of status application is pending?

Adjustment of Status Applicants (with a pending I-485 application) are eligible to receive an Advance Parole travel document, which allows them to travel internationally and come back to the U.S. without the need of a visa while they wait for their Adjustment of Status application to be approved. However, one of the eligibility requirements of a U visa is that the applicant is required to assist law enforcement officers with the investigation and prosecution of the perpetrators who committed crimes. This is needed even after being granted U status. If the Adjustment of Status application is pending, and Applicant travels abroad, USCIS may find that the application was unable to actively assist law enforcement—especially if the trip abroad is for a long period of time.

8. Is there an interview for U visa holders during the adjustment of status process?

Adjustment of Status as a U visa recipient does not usually require attendance of an interview at USCIS. This means that the applicant will get his/her decision by mail, as well as his/her green card in the mail, if approved. However, if the USCIS has further questions about the Adjustment of Status application, the applicant may get a notice to attend an interview at the nearest USCIS office before issuing a decision for the Adjustment of Status application.

9. Can individuals with criminal convictions apply for adjustment of status after holding a U visa?

Yes, but certain crimes and convictions may make a person inadmissible to the U.S. and therefore ineligible to receive a lawful status. If a person is inadmissible for a criminal conviction/conduct, that person can submit a request for a waiver on Form I-192 during the U-Visa application process. If the waiver is approved, the U visa applicant who later applies for adjustment of status will not be subject to the grounds of inadmissibility at the time of adjustment. Additionally, if an applicant triggers a new inadmissibility ground after approval of U nonimmigrant status, this applicant can address the new crime or conviction during the Adjustment of Status application. We recommend you hire an experienced immigration attorney to represent you.

10. Can U visa holders include their children in the adjustment of status application?

Certain qualifying family members are eligible for a derivative U visa based on their relationship to the principal filing for the U visa. The principal petitioner must have their petition for a U visa approved before their family members can be eligible for their own derivative U visa. If the principal is over 21 years of age, he/she may petition on behalf of the spouse and children. However, after the approval of the U nonimmigrant status, each family member (derivatives) must submit their own Adjustment of Status application. The principal petitioner cannot include any family member (derivatives) in his/her Adjustment of Status application.

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11. What happens if the U visa holder's cooperation with law enforcement changes?

While in U nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement and cannot unreasonably refuse to assist with the investigation or prosecution of the criminal activity. The duty to remain helpful to law enforcement exists even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted will not be eligible to obtain lawful permanent residence and may have the visa revoked by USCIS, or their Adjustment application denied.

13. Can U visa holders apply for U.S. citizenship after obtaining a green card?

Yes. A legal permanent resident is eligible to apply for U.S. citizenship after five years of permanent residency. However, when applying to become a U.S. citizen, the applicant must continue to be a person of good moral character and maintain lawful permanent residence for 5 years in the U.S., to be eligible to apply to become a U.S. citizen. When applying for U.S. citizenship, the applicant will be interviewed and will be required to satisfy all other eligibility requirements (civics test, English test, writing test) like most other applicants applying for U.S. citizenship.

14. What evidence is required for the adjustment of status application for U visa holders?

Some of the evidence that must be included with the application to Adjust Status, is documentary evidence showing that the applicant has resided in the U.S. during the time he/she has had the U visa (at least 3 years). This evidence includes the applicant's employment paystubs, lease/rental agreements, utility bills, bank statements, income tax returns, and photographs. And of course, evidence that the applicant continued to assist law enforcement, or did not unreasonably refuse to assist. The latter is only required of principal applicants, that is, the primary victims of the crime (those with U-1 status), but not of their qualifying relatives.

15. Can U visa holders appeal a denial of the adjustment of status application?

Generally, you cannot appeal a decision to deny an adjustment of status application. However, even if the denial cannot be appealed, you may still be eligible to file a motion to reopen or reconsider with the USCIS office that issued the unfavorable decision. Depending on your case, you may find it appropriate to file a motion to reopen if it is based on new facts, or a motion to reconsider, which is a request for the office to review its decision due to an incorrect application of law or policy. Both types of motions are submitted on Form I-290B, Notice of Appeal or Motion, along with the appropriate fee. You must file your appeal or motion within 30 calendar days of the date of service of the adverse decision (or within 33 calendar days depending on when the decision was mailed to you). Currently, the filing fee for Form I-290B is \$800.00.

16. Can U visa holders apply for adjustment of status if they entered the U.S. illegally?

U Visa holders may be eligible to apply for adjustment of status even if they entered the U.S. illegally. They fit into a distinct nonimmigrant visa category specifically designed for victims of

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certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.

Unlike other noncitizens who may face inadmissibility grounds for entering without inspection, U visa holders are generally exempt from this requirement when seeking adjustment of status because they are not generally required to be admissible to the United States. The only ground of inadmissibility applicable to U nonimmigrants applying for adjustment of status under is for participating in Nazi persecutions, genocide, torture, or extrajudicial killings. Other than in connection to said grounds, U adjustment applicants are not required to establish that they are admissible, and the other inadmissibility grounds do not apply directly to U nonimmigrant adjustment applicants, so long as a waiver request is done properly and timely while filing for U Status.

17. Can individuals with final removal orders apply for adjustment of status after holding a U visa?

Generally, for an individual to be eligible to adjust their status in the United States, they must have been "inspected and admitted or paroled," be admissible, have an immigrant visa immediately available to them, and warrant a favorable exercise of discretion. Additionally, they must not fall under any of the adjustment of status bars. However, eligibility requirements for adjustment of status may vary depending on the specific immigrant category, including for U-visa holders.

Individuals with final removal orders can apply for adjustment of status after obtaining a U visa, provided that this ground of inadmissibility was disclosed and waived pursuant to the individual's I-192 waiver. Generally, when applying for immigration benefits, particularly for adjustment of status cases, there are numerous grounds of inadmissibility that cannot be set aside, even with a waiver. What sets the U visa apart, however, is that most of these grounds can be waived when applying for U-visa status. This means that even if a U-visa holder entered the U.S. without inspection multiple times or has had a final order of removal against them (which would typically render most applicants for immigration benefits "inadmissible"), they might still be able to adjust status provided that all grounds of inadmissibility were disclosed and waived at the time of their U-visa application.

If a U-visa holder has a previously disclosed order of removal and wishes to apply for adjustment of status, they can file their adjustment application once they become eligible to adjust, as the order of removal was waived or set aside at the time of their U-visa approval. An additional step required is to file a Motion to Reopen and Terminate Proceedings in immigration court as soon as the U-visa holder's Permanent Resident Status is approved, so that the green card holder can access all the benefits of his newly acquired status.

18. Is there a deadline for U visa holders to apply for adjustment of status?

Yes. U visa holders are advised to initiate the adjustment of status process within the specified filing period designated by USCIS. To qualify for adjustment of status, individuals must have maintained their U Nonimmigrant status for a minimum of three years from the date

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of its approval. When filing the adjustment application, they must demonstrate several factors, including continuous physical presence for at least three years since admission as a U-1 nonimmigrant, cooperation in the investigation or prosecution of the qualifying criminal activity, absence of inadmissibility, justification of presence in the United States on humanitarian grounds, family unity, or public interest, and merit a favorable exercise of discretion. It is crucial to emphasize that U visa holders should submit their adjustment of status application before the expiration of their U visa status. Failure to do so may result in the loss of legal status in the country, forfeiting the opportunity to obtain permanent residency, and facing potential deportation.

It is important to note that all U nonimmigrants, including derivatives, must accrue at least three years in U nonimmigrant status before they may apply to adjust status to that of a lawful permanent resident. Therefore, extensions of status may be necessary in cases where the U visa is valid for less than three years. This ensures that U visa holders attain the requisite three years in U nonimmigrant status for the purpose of adjustment to lawful permanent residency. This situation is more commonly encountered in cases involving U visa derivatives, particularly when the derivative is unable to enter the United States timely due to a delay in consular processing. The request to extend U-visa nonimmigrant status needs to be made before the expiration of U nonimmigrant status using Form I-539 and paying the applicable fee.

19. Can U visa holders lose their status if they fail to meet certain requirements?

Yes, U-visa status can be revoked once approved if the U-visa holder unreasonably refuses to cooperate with law enforcement in the investigation of the crime and the official certifying withdraws the certification, if approval of the petition was in error, or if there was fraud in the petition.

U visa holders must generally maintain continuous physical presence in the U.S. from the time they were admitted as a U-1 nonimmigrant until they adjust their status to lawful permanent resident or become eligible for other immigration benefits. This continuous physical presence in the U.S. is especially crucial because U visa holders are required to cooperate with law enforcement agencies in the investigation or prosecution of the qualifying criminal activity that led to their U visa application. They need to be available to assist in the detection, investigation, and/or prosecution of qualifying crimes when reasonably requested, meaning that long absences from the United States for U-visa holders are strongly discouraged. Unreasonably refusing to provide assistance to law enforcement since the U-visa holder received their U visa will definitely jeopardize their U visa status. Failure to cooperate may result in the U-visa holder's inability to apply for lawful permanent residence based in the future, as well as the revocation of the U visa status. Certifying agencies play an important role in supporting the integrity of the U visa program by notifying USCIS when a victim refuses or fails to provide assistance when reasonably requested, informing USCIS of any known criminal activity, and alerting USCIS of any suspected fraud. Thus, if the U-visa holder unreasonably refuses to cooperate with law enforcement in the investigation of the crime, the official certifying "helpfulness" may withdraw the certification based on the U visa application or disavow the contents in writing. Additionally, the U-visa status can be revoked if the approval of the petition was in error. Providing false

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information or engaging in fraudulent activities in connection with the U visa application or during the period of U visa status can also result in the revocation of U visa status as USCIS' fraud detection units investigate cases where there is suspicion of fraud and work with other federal, state, and local law enforcement agencies when fraud or abuse of the program is discovered.

20. Can U visa holders apply for U.S. citizenship if they initially entered on a U visa?

Yes, U visa holders can apply for U.S. citizenship if they initially entered on a U visa. However, they must follow a specific process and meet eligibility requirements. Firstly they must be eligible to apply for adjustment of status, which involves maintaining U nonimmigrant status for at least three years from the date of approval, maintaining continuous physical presence for at least three years since being admitted as a U-1 nonimmigrant, cooperating in the investigation or prosecution of the qualifying criminal activity, meeting certain admissibility requirements, justifying presence in the U.S. on humanitarian grounds or for family unity, and proving good moral character. After adjusting status to a Lawful Permanent Resident, the applicant must maintain lawful permanent residence for at least 5 years in the U.S. to be eligible to apply for U.S. citizenship. When applying for U.S. citizenship, the applicant will be interviewed and required to satisfy all other eligibility requirements, including passing the Civics test, English test, and Writing test, like most other applicants applying for U.S. citizenship.