



Chapter 4: Special considerations and commonly asked questions

I came to the U.S. with a visa but I overstayed my time. Can I still apply for a green card?

It shouldn't be a problem as long as you're married to an American citizen, even if you overstayed your visa for many years. Immigration laws allow an adjustment of status applicant to overstay their visa and work without authorization, as long as they're married to an American citizen.

Note that if you are married to a green card holder, overstaying your visa or working without authorization may disqualify you from adjustment of status. USCIS may schedule your green card interview at a U.S. embassy / consulate abroad, and you may need to file an I-601a provisional unlawful presence waiver. Many people in this situation will simply wait for their partner to become an American citizen, and then file the adjustment of status application so that they don't have to leave the U.S.

What if I was brought to the U.S. as a child, without a visa?

If you came to the U.S. without inspection by an immigration officer, USCIS may schedule your green card interview at a U.S. embassy / consulate abroad, rather than at your local USCIS office. Immigration laws regard this as the penalty for coming to the U.S. unlawfully, even if you were just a child.

There are some exceptions. For example, if you have DACA or TPS and are able to travel internationally with advance parole, then you should be able to adjust status in the U.S., if you are married to an American citizen. Another exception is if your U.S. citizen spouse is in the military.

If you are unable to adjust status in the U.S., you may need to attend your green card interview abroad. You will likely need to file an I-601a provisional unlawful presence waiver application beforehand. Speak with an immigration lawyer to learn more.

What if I came to the U.S. with fraudulent documents?



You should check what kind of documents you used. If you used someone else's documents, or falsified documents, then you may need to file an I-601 fraud waiver with your green card application.

If you used documents belonging to a U.S. citizen, like a U.S. passport or U.S. birth certificate, then you may have a tough time qualifying for your green card. This is because immigration laws incur severe penalties for falsely claiming to be a U.S. citizen.

What if I lied on a previous immigration application?

If you lied on a previous immigration application, for example a visa application, then you may need to file an I-601 waiver with your green card application.

For example, sometimes indicating that one is married rather than single can help lead to an easier tourist visa approval. Someone in that situation who then comes to the U.S., marries a U.S. citizen, and applies for a green card, may need to file a fraud waiver. USCIS generally has access to visa records at U.S. embassies / consulates abroad, and they will know what you filled out on your visa application, even if this was many years ago.

What if my U.S. citizen partner and I split up?

If you have already filed your green card application but your U.S. citizen partner and you eventually split up, you may still be able to receive a green card. If your ex is willing to come with you to your green card interview and be cooperative in your process, then immigration laws allow for USCIS to approve your green card. You should be honest with the USCIS officer that you have decided to split up, but that the relationship was "bona fide" (authentic). USCIS can only approve your application if you are still legally married, so getting divorced will stop your application cold.

If your partner is not cooperating with your process, then you might want to explore a VAWA green card application based on domestic violence. VAWA stands for the Violence Against Women Act. Domestic violence can be committed by either a man or a woman, and can be either physical abuse or mental abuse.



What if your green card has already been approved, and two years later you are required to file an I-751 application to remove the conditions on your temporary green card? If at this time your partner and you have decided to split up, USCIS can still approve your I-751 application. Your ex can still sign the I-751 if they are willing to cooperate, but you should be truthful with USCIS that you have decided to split up. The I-751 can also be approved based on domestic violence or extreme hardship.

I had to see an immigration judge years ago – can I still apply for a green card?

If you have a case in immigration court, you need to check to see if your case is still pending, or if it has been terminated or administratively closed. The status of your case in immigration court will determine whether and how you can apply for a green card. Speak with an immigration lawyer.

My U.S. citizen spouse has passed away – can I still apply for a green card?

Maybe. If you live in the U.S. and were married to a U.S. citizen who recently passed away, then you may still be able to adjust status to a green card holder. You should file your application sooner rather than later. Instead of form I-864 (the affidavit of support), you should use form I-864w. See our Client Story about this topic here:

<https://beaconimmigration.net/client-stories/>

I have been arrested – can I still apply for a green card?

Immigration laws are very strict regarding criminal history. At a minimum, you will need to get a certificate of disposition for each of your arrests in the U.S. You should have an immigration lawyer review your criminal history to ensure that you won't have any problems.

My U.S. citizen partner has been arrested – can I still apply for a green card?

Generally, it won't be a problem if your U.S. citizen spouse has been arrested. An exception is if they have been arrested for crimes against children.



I don't have a social security number and my U.S. citizen partner filed tax returns as "single" – will this affect my green card?

It won't be a problem if you married this year. If you were married last year and your U.S. citizen spouse filed tax returns as "single" or "head of household", and you lived with your partner in the U.S., then it could be a problem.

When you apply for a green card, USCIS will require your partner to submit their most recent tax returns. For example, green card applications filed in 2023 will generally include the petitioner's most recent tax returns from 2022. If you married in 2023, then your partner can accurately mark on their 2022 tax returns that they were "single". But if you were married in 2022 or before and you lived together in the U.S., then USCIS will sometimes deny a green card application based on this reason. USCIS says that if you were married in a calendar year and lived together, then you generally have to file taxes as either "married filing jointly" or "married filing separately".

What if you don't have a social security number? Generally, a social security number is required to file tax returns. But if you don't have a social security number, you can apply for an Individual Taxpayer Identification Number (ITIN) until you receive your social security number. File IRS form W-7 with your tax returns, filing as "married filing jointly" or "married filing separately".

If your partner already filed tax returns as "single" or "head of household" and you were married then and living together in the U.S., the safest thing to do will be to amend their tax returns to indicate that you are married.

We already submitted our I-130/I-130a marriage green card petition, but didn't submit the rest of the adjustment of status forms. Help!

If you are in the U.S. and filed a standalone I-130/I-130a family petition without any of the other adjustment of status forms (like the I-485 and I-864), don't panic. You can still file your adjustment of status application.

Instead of filing another I-130 and I-130a, you should simply include a copy of the I-130 approval notice (if it was approved) or receipt notice (if it's still pending) with your adjustment of status application.



Diplomatic visas

If you immigrated to the U.S. with a diplomatic visa, like an A, G, or NATO visa, you may need to file forms I-508 and I-566 with your adjustment of status application. These forms indicate that you are waiving certain diplomatic rights and privileges associated with your previous diplomatic status.

E-2 visas

Similar to diplomatic visa holders, E-2 treaty investors may need to file form I-508 when adjusting status to a green card holder.

J visas (two-year home residence requirement / “no objection” waiver)

If you have ever used a J exchange visa, you should check your DS-2019 and J visa to see if you are subject to 212(e), the two-year home residence requirement. Some J visa holders are required to spend two years in their home country after completing their J exchange program, before being able to apply for a green card.

If you are subject to this requirement and you don't want to go home for two years, you may be able to apply for a waiver. The most common waiver involves requesting a “no objection” letter from your home government, in which your home government states that they have no objections to you becoming a permanent resident of the U.S.

My parents may have filed an immigration application for me when I was a child – will this affect my green card application?

You will probably be fine, but you should file a Freedom of Information Act (FOIA) request to see which applications were filed for you. For example, perhaps your parents applied for political asylum years ago and included you on their application. You should be careful because you may now have an immigration file that could affect your green card application.



For example, if your parents' political asylum application was denied and their case (and yours) was referred to an immigration judge, you may have to close your case in immigration court before applying for your green card.

Immigrant intent / 90-day rule / ESTA (visa waiver program)

“Immigrant intent” comes into play when you come to the U.S. with a temporary visa and soon after apply for a green card. For example, if you came to the U.S. as a B2 (tourist) visa holder, and then married your U.S. partner soon after and applied for a green card, USCIS sometimes considers this to be a fraudulent use of your tourist visa. They can say that your intention when you came to the U.S. was to remain here permanently, which goes against the nature of a temporary, tourist visa.

If you enter the U.S. as a visitor and then marry your U.S. citizen partner, it's generally a best practice to wait at least 60 to 90 days after you arrived before applying for a green card. By waiting two or more months after you arrived in the U.S. before applying for a green card, USCIS will generally not claim that you had immigrant intent.

If you used ESTA (the visa waiver program) to come to the U.S. and then decide to apply for a marriage green card, you should apply at least 60 days after you arrived in the U.S., but less than 90 days. This is because your ESTA will expire after 90 days, so you should apply for your green card before then.

I already applied for a green card but my work authorization card has expired – can I renew my work card?

Yes. USCIS processing times are catastrophic – it can take a year or more before USCIS approves your marriage green card. When you apply for a green card, you will receive a work authorization card and advance parole document (travel permit) before USCIS schedules your green card interview. Both your work card and your advance parole document might expire before USCIS gets around to scheduling your green card interview, because processing times are so long.



If that happens, you can renew these documents for free. You can file a renewal using forms I-765 and I-131. You should include a copy of your I-485 receipt notice, among other documents, as well as a USCIS case status printout, showing that your green card application is still pending.

I lost my I-94 entry document from years ago – can I still apply for a green card?

You should try to find a copy of your I-94 entry document, or pay to replace it. You can try to find a copy by filing a Freedom of Information Act (FOIA) request with Customs and Border Protection (CBP). Or you can pay to replace your I-94 by filing form I-102.

It's important to have your I-94 entry document because USCIS will require this as proof that you came to the U.S. lawfully.