



**SUFFOLK ACADEMY OF LAW**  
*The Educational Arm of the Suffolk County Bar Association*  
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## **FAMILY BASED PETITIONS FOR UNITED STATES IMMIGRATION**

### **FACULTY**

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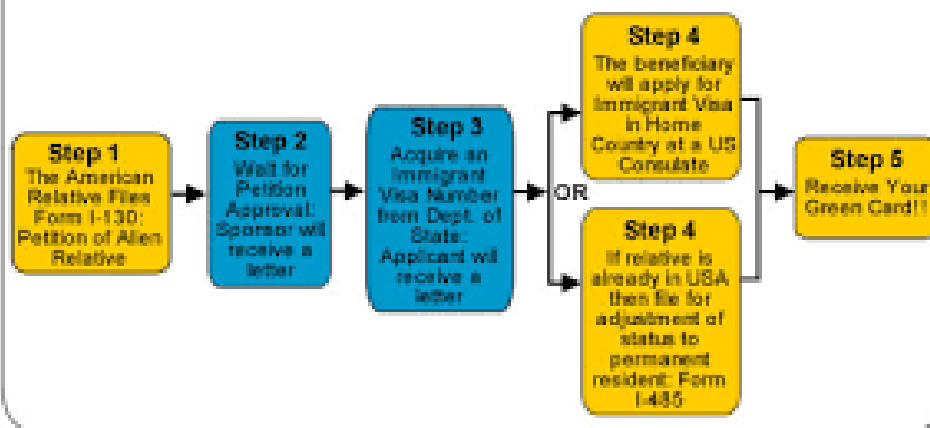
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6. **CLE certificates will no longer be mailed or emailed.** Certificates will be available within 10 days after the course.



**Sandra Melendez, Esq.** Born in Puerto Rico attended the University of Puerto Rico and graduated with a dual major in Business Administration & Accounting. Completed a Juris Doctor Degree from the Interamerican University and earned a master's degree in tax law (LLM) from Georgetown University. Worked as Chief Accountant then as an auditor for the Puerto Rico Worker's Insurance Fund. Move to New York in 2007 and worked for the Internal Revenue Service from 2008 until 2014. Currently I have a law practice in East Hampton Village providing immigration, tax, family and criminal law services.

**Family based green card is a 5 step process:**

The steps in blue means that there is no action required on your part. You simply have to wait for the papers to process.



## Family-Based Petitions

As a citizen of the United States, a person may sponsor a relative to become a lawful permanent resident of the United States. The first step is to file a Petition for Alien Relative to establish the family relationship that exists between the US citizen and his/her your relative.

If the Petition is filed by an immediate relative and the relative is in the United States, an Adjustment of Status Application may also be filed at the same time and under certain conditions.

A U.S. citizen can file a petition for the following relatives:

- Husband or wife;
- Children, married or unmarried.

A U.S. citizen who is at least 21 years or older may also petition for the following relatives:

- Parents;
- Brothers or sisters.

Permanent Residents are also allowed to file applications for relatives including the following:

- Husband or wife;
- Unmarried Children.

None of the family members of a permanent resident are considered immediate relatives. Permanent residents cannot file family-based petitions for parents or siblings.

## Immediate Relatives

The law gives special consideration to immediate relatives of U.S. citizens, which includes a U.S. citizen's spouse, unmarried children under 21 years of age, and parents.

- There is no waiting list to immigrate these relatives.
- The U.S. Department of State will invite them to apply for an immigrant visa as soon as we approve your I-130 petition.
- If the family-based petition has been approved, and the relatives are currently in the United States after making a legal entry (and they meet certain other

requirements), they may be able to file applications with USCIS to adjust to permanent resident status.

### **Relatives who are not Immediate Relatives and Have to Wait for a visa to become available**

For other relatives, the combination of high demand and the limits set by law on how many people can immigrate each year means the relative may have to wait several years "in line" while petitions that were filed before theirs are processed. When the relative's priority date (date the family-based petition was filed) reaches the visa availability the U.S. Department of State contacts the relative and invites him or her to apply for an immigrant visa.

**First: (F1)** Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

**Second:** Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. **(F2A)** Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. **(F2B)** Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

**Third: (F3)** Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

**Fourth: (F4)** Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

### **Upgrade relative's visa classification if Sponsor becomes a US Citizen while visa is pending for availability**

If you become a U.S. citizen while your relative is waiting for a visa, you can upgrade your relative's visa classification and advance the processing of that petition by notifying the appropriate agency of your naturalization. When you are a U.S. citizen, your husband or wife and any unmarried children under age 21 will have visas immediately available to them.

### **Affidavit of Support**

Under the law, each person who immigrates based on a relative's petition must have a financial sponsor. If you choose to sponsor your relative's immigration by filing a relative petition (I-130), when the time comes for your relative to immigrate, you must agree to be his or her financial sponsor by filing **Form I-864**, Affidavit of Support. If you do not

meet the financial qualifications, other individuals will then need to make this commitment.

### **Filing for Spouse or Step-daughter and Step-son of Spouse**

Only marriages entered in good faith are considered for immigrant purposes. If the US citizen files for I-130 Application less than two years after marriage took place, the permanent resident status will be issued for a period of 2 years and 90 days prior to the expiration of the second anniversary a new application to remove the condition of the permanent resident status must be filed. If application was filed after the second anniversary of the marriage, the permanent resident status shall be approved for a period of 10 years without any condition. Step-children are also included as immediate relatives if the marriage takes place before the children's 18<sup>th</sup> birthday.



## **SCBA Lawyers Helping Lawyers Committee**

**The SCBA Lawyers Helping Lawyers Committee** provides free and confidential assistance to those in the legal community who are concerned about their alcohol or drug use and/or mental health or wellbeing or that of a colleague or family member.

Assistance is available to the legal community including attorneys, members of the judiciary, law students, and family members dealing with alcohol or substance abuse disorder, other addictive disorders, anxiety, depression, vicarious trauma, age related cognitive decline and other mental health concerns that affect one's well-being and professional conduct.

**Please call the  
Lawyers Helping Lawyers Helpline at (631) 697-2499  
to speak with an attorney who will provide support and recommend  
resources. All calls are private and confidentiality is protected under  
Judiciary Law Section 499. (Lawyer Assistance Committee)**

***Feel Free to Join Us at Our Weekly Recovery Meeting***