

Green Card Process for Spouse of US Permanent Resident

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Submitted by Chief Editor on Jan 14th 2015

I am a US Permanent Resident from Nepal. My girlfriend (soon to be wife) is a student doing her MBA and is in F-1 visa (student). She is graduating in May 2015 and will start her OPT soon after that. We are planning to get court married real soon (within a month) and file for her green card soon after that. Once she gets her green card, we'll go home and get married with all the religious ceremonies.

I had few questions about the green card process for my wife. I looked through various threads of various forums and I am more confused than before on how exactly this process works. I got conflicting answers for these questions. So, I am posting these questions so that I could get the correct answers from the expert himself.

I understand that for my wife's GC, first I need to petition I-130 and she needs to wait until her priority date becomes current (which the people say can take several years to be current), then she needs to apply for Adjustment of Status.

1. Could you go briefly on the whole process from start to finish?
2. Some of the threads on the other forums said that the Congress changed the law so that there is no wait time for Spouse of Permanent Resident to apply for her green card. How much truth is in this statement?
3. Some people who applied about a year or two ago said that they got their GC on hand within 6 months. How is that even possible when the wait time to just apply for GC under this category is several years?
4. What happens if she applies before her priority date becomes current? Will her application be denied or will it just sit in a queue (first come first serve) until the priority date becomes current and then it will get processed?
5. If she starts her OPT in May 2015 and the OPT lasts for 1 year (till May 2016), would that be enough time for her to apply for GC through my petition?

ANSWER:

See clip from Attorney Rajiv S. Khanna's conference call video that addresses this question.

<https://www.youtube.com/watch?v=QvnIAm0nQJ8#t=99> [2]

FAQ Transcript

One of the problem with a student applying for a green card is that traveling could become an issue because if CBP stops you at the border they could say that her student status is questionable because she has immigrant intent. She could have the same problem if she is married and has applied for a green card when she tries to go for her OPT. So keep these two things in mind. You may want to time the filing of marriage and the filing of I-130 after the OPT starts and not travel until the green card is actually in hand.

Looking at the Visa Bulletin which is a monthly estimation from the State Department of the dates that will be available in the following month, the latest one which is January 2015 (<http://www.immigration.com/visa-bulletin/visa-bulletin-january-2015> [3]), and if we look at this in F2A category for Nepal which is ?All Chargeability Areas Except Those Listed? right now they are backed up to 15 April 2013. At least they are backed out for less than two years. It is reasonable to expect that the green card within a couple of years maybe two/two and half years. But these dates can go up and down quite rapidly. Keep that in mind.

Typically Form I-130 is filed. Once that is filed you have to wait till the priority date becomes current. When the priority date becomes current you file I- 485 and with the I-485 typically you file an application for employment authorization for advance parole to travel. Once you get the advance parole you can travel. At that point student status is no longer an issue.

So in a nutshell that is the process. When the time comes, the I-485 gets approved and she gets her green card.

Answer to question 2: That is incorrect there is a wait time.

Answer to question 3: That can happen only if the priority dates are current.

Answer to question 4: I-130 has to be applied before I-485 or will simply be returned and you will lose your fees and will have to file again.

Answer to question 5: It does not look like it, but you can apply for H-1 because H-1 is immune from the problem of having a green card pending. F-1 has a problem and she can't travel. But H-1 will not have that problem. I would suggest in this April apply for her H-1. That way you are good for three years and you can apply for her I-130 right away. She can travel freely once she gets her visa stamping. So it is a really good way to go.

Green Card:

[Family-Based Green Cards](#) [4]

[Immigration through Marriage](#) [5]

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [6] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [7]

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