Policy Manual

The USCIS Policy Manual is the agency’s centralized online repository for USCIS’ immigration policies. The USCIS Policy Manual will ultimately replace the Adjudicator’s Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other policy repositories.

About the Policy Manual

The USCIS Policy Manual is the agency’s centralized online repository for USCIS’ immigration policies. The Policy Manual is replacing the Adjudicator’s Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other USCIS policy repositories. The Policy Manual contains separate volumes pertaining to different areas of immigration benefits administered by the agency, such as citizenship and naturalization, adjustment of status, and nonimmigrants. The content is organized into different volumes, parts, and chapters.

The Policy Manual provides transparency of immigration policies and furthers consistency, quality, and efficiency consistent with the USCIS mission. The Policy Manual provides all the latest policy updates; an expanded table of contents; keyword search function; and links to the Immigration and Nationality Act and Code of Federal Regulations, as well as public use forms. The Policy Manual contains tables and charts to facilitate understanding of complex topics. The Policy Manual also contains all historical policy updates.

The Policy Manual contains the official policies of USCIS and assists immigration officers in rendering decisions. The Policy Manual is to be followed by all USCIS officers in the performance of their duties but it does not remove their discretion in making adjudicatory decisions. The Policy Manual does not create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

How to use the USCIS Policy Manual website (PDF, 3.08 MB).

Adjudicator's Field Manual Transition

USCIS is retiring its Adjudicator's Field Manual (AFM), a collection of our immigration policies and procedures. We are working to update and incorporate all AFM content into the USCIS Policy Manual. Until then, we have moved any remaining AFM content in PDF format to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicymanual@uscis.dhs.gov.

To find remaining AFM content, see the crosswalk (PDF, 327.05 KB) between the AFM and the Policy Manual.

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### Updates

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Updates

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Updates(135)

POLICY ALERT - Additional Guidance Relating to P-1A Internationally Recognized Athletes
March 26, 2021

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to update and clarify guidance for internationally recognized athletes (P-1A nonimmigrants).

[Read More]

Affected Sections

2 USCIS-PM N.4 - Chapter 4 - Documentation and Evidence
2 USCIS-PM N.2 - Chapter 2 - Eligibility Requirements

POLICY ALERT - Special Immigrant Juvenile Classification and Saravia v. Barr Settlement
March 18, 2021

U.S. Citizenship and Immigration Services (USCIS) is updating the USCIS Policy Manual regarding the special immigrant juvenile (SIJ) classification to incorporate changes agreed to in the settlement agreement resulting from the Saravia v. Barr class action lawsuit.

[Read More]

Affected Sections

6 USCIS-PM J - Part J - Special Immigrant Juveniles

Technical Update - Removing Guidance on Inadmissibility on Public Charge Grounds
March 10, 2021
This technical update removes the guidance in Volume 2, Part A, Chapter 4, Volume 8, Part G, and Volume 12, Part D, Chapter 2 relating to the administration of the public charge ground of inadmissibility under the Inadmissibility on Public Charge Grounds final rule, 84 FR 41292 (Aug. 14, 2019); as amended by Inadmissibility on Public Charge Grounds; Correction, 84 FR 52357 (Oct. 2, 2019) (“Public Charge Final Rule”), which was implemented on Feb. 24, 2020. On Nov. 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the Public Charge Final Rule nationwide. On Nov. 3, 2020, the U.S. Court of Appeals for the Seventh Circuit issued an administrative stay and, on Nov. 19, 2020, a stay pending appeal of the U.S. District Court for the Northern District of Illinois’ Nov. 2, 2020 decision. On Mar. 9, 2021, the U.S. Court of Appeals for the Seventh Circuit lifted its stay and the U.S. District Court for the Northern District of Illinois’ order vacating the Public Charge Final Rule went into effect. USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. For information on related litigation affecting implementation, see our litigation summary.

Affected Sections

2 USCIS-PM A.4 - Chapter 4 - Extension of Stay and Change of Status
12 USCIS-PM D.2 - Chapter 2 - Lawful Permanent Resident Admission for Naturalization
8 USCIS-PM G - Part G - Public Charge Ground of Inadmissibility

Technical Update - Implementation of Revised Guidance on Naturalization Civics Educational Requirement

March 01, 2021

This technical update incorporates into Volume 12 the policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced February 22, 2021, addressing educational requirements for naturalization to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States (civics) under section 312 of the Immigration and Nationality Act (INA). Specifically, USCIS is reverting back to the 2008 version of the civics test, allowing a brief period during which USCIS may also offer the 2020 version of the test to applicants affected by the timing of this update. This guidance became effective March 1, 2021.

Affected Sections

12 USCIS-PM E.2 - Chapter 2 - English and Civics Testing

POLICY ALERT - Revising Guidance on Naturalization Civics Educational Requirement

February 22, 2021

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual regarding the educational requirements for naturalization to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States (civics) under section 312 of the Immigration and Nationality Act (INA). Specifically, USCIS is reverting back to the 2008 version of the civics test, allowing a brief period during which USCIS may also offer the 2020 version of the test to applicants affected by the timing of this update. This guidance becomes effective March 1, 2021.
Affected Sections

12 USCIS-PM E.2 - Chapter 2 - English and Civics Testing

Technical Update - Updating Filing Deadline for Liberian Refugee Immigration Fairness Adjustment of Status Applications

February 10, 2021

This technical update to Volume 7 adjusts the filing deadline for Liberian Refugee Immigration Fairness (LRIF) adjustment of status applications to December 20, 2021, to reflect an extension by Congress.

Affected Sections

7 USCIS-PM P.5 - Chapter 5 - Liberian Refugee Immigration Fairness

POLICY ALERT - Applications for Discretionary Employment Authorization Involving Certain Adjustment Applications or Deferred Action

January 14, 2021

U.S. Citizenship and Immigration Services (USCIS) is providing policy guidance in the USCIS Policy Manual regarding applications for discretionary employment authorization based on 8 CFR 274a.12(c)(9) (pending application for adjustment of status under INA 245) or 8 CFR 274a.12(c)(14) (grant of deferred action). USCIS is also providing guidance outlining the categories of aliens eligible for discretionary employment authorization.

Read More

Affected Sections


10 USCIS-PM B - Part B - Specific Categories

POLICY ALERT - Refugee and Asylee Adjustment of Status Interview Criteria and Guidelines

December 15, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating guidance in the USCIS Policy Manual regarding adjustment of status interview waiver categories and expanding the interview criteria for asylee and refugee adjustment of status applicants.

Read More

Affected Sections

7 USCIS-PM A.5 - Chapter 5 - Interview Guidelines
Technical Update - Clarifying Acquisition of Citizenship Requirement in Nationality Chart 2 for Children Born Out of Wedlock Before May 24, 1934

December 08, 2020

This technical update to Volume 12 incorporates a clarification to Nationality Chart 2 to align with the provisions of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), which affected acquisition of citizenship for children born before May 24, 1934. Specifically, this technical update clarifies that an alien child born out of wedlock before May 24, 1934 acquires citizenship retroactively to the time of birth in cases where the child’s mother resided in the United States at any time before the child’s birth, regardless of whether the child was legitimated by the alien father.

Affected Sections

12 USCIS-PM H.3 - Chapter 3 - U.S. Citizens at Birth (INA 301 and 309)

Technical Update - Incorporating Existing Guidance into the Policy Manual

December 08, 2020

This technical update is part of an initiative to move existing policy guidance from the Adjudicator’s Field Manual (AFM) into the Policy Manual. This update does not make major substantive changes but consolidates and incorporates existing AFM guidance into the Policy Manual, streamlining USCIS’ immigration policy while removing obsolete information. This guidance replaces Chapter 23.5(c) of the AFM, related appendices, and policy memoranda.

Affected Sections

7 USCIS-PM C - Part C - 245(i) Adjustment

POLICY ALERT - Properly Completed Medical Certification For Disability Exception (N-648)

December 04, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to reflect changes made in the new version of the Medical Certification for Disability Exception (Form N-648).
POLICY ALERT - Schedule A Designation

December 02, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address Schedule A designations.

Read More

Affected Sections

6 USCIS-PM E.7 - Chapter 7 - Schedule A Designation Petitions

Technical Update - Implementation of Redesigned Civics Test for Educational Requirement for Naturalization

December 01, 2020

This technical update incorporates into Volume 12 the policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced November 13, 2020, addressing the educational requirements for naturalization on the knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States (civics) under section 312 of the Immigration and Nationality Act. This guidance became effective December 1, 2020.

Affected Sections

12 USCIS-PM E.2 - Chapter 2 - English and Civics Testing

POLICY ALERT - Prerequisite of Lawful Admission for Permanent Residence under All Applicable Provisions for Purposes of Naturalization

November 18, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual to ensure consistency in the naturalization decision-making process and to clarify circumstances under which an applicant may be found ineligible for naturalization if the applicant was not lawfully admitted to the United States for permanent residence in accordance with all applicable provisions under the Immigration and Nationality Act (INA).

Read More

Affected Sections

12 USCIS-PM B.4 - Chapter 4 - Results of the Naturalization Examination

12 USCIS-PM D.2 - Chapter 2 - Lawful Permanent Resident Admission for Naturalization

12 USCIS-PM F.2 - Chapter 2 - Adjudicative Factors
POLICY ALERT - Job Portability after Filing Application to Adjust Status

November 17, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to consolidate and update guidance on the ability to change to a same or similar job, also known as portability, for certain beneficiaries of employment-based immigrant petitions after they have applied to adjust status.

Affected Sections

7 USCIS-PM E.5 - Chapter 5 - Job Portability after Adjustment Filing and Other AC21 Provisions

POLICY ALERT - Use of Discretion for Adjustment of Status

November 17, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating existing policy guidance in the USCIS Policy Manual regarding the discretionary factors to consider in adjudications of adjustment of status applications.

Affected Sections

7 USCIS-PM A.1 - Chapter 1 - Purpose and Background
7 USCIS-PM A.10 - Chapter 10 - Legal Analysis and Use of Discretion

POLICY ALERT - Age and “Sought to Acquire” Requirement under Child Status Protection Act

November 13, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual regarding the Child Status Protection Act (CSPA), to include how USCIS calculates age under certain contexts and what actions satisfy the “sought to acquire” requirement.

Affected Sections

7 USCIS-PM A.7 - Chapter 7 - Child Status Protection Act

POLICY ALERT - Civics Educational Requirement for Purposes of Naturalization

November 13, 2020
U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual regarding the educational requirements for naturalization on the knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States (civics) under section 312 of the Immigration and Nationality Act. This guidance becomes effective December 1, 2020.

**POLICY ALERT - Nonimmigrant Cultural Visitor (Q) Visa Classification**

October 15, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding the nonimmigrant cultural visitor visa classification, commonly known as the “Q” visa category.

**POLICY ALERT - Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act**

October 06, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual regarding whether temporary protected status (TPS) beneficiaries are eligible for adjustment of status under section 245(a) of the Immigration and Nationality Act (INA).

**POLICY ALERT - Inadmissibility Based on Membership in a Totalitarian Party**

October 02, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address inadmissibility based on membership in or affiliation with the Communist or any other totalitarian party.
8 USCIS-PM F.3 - Chapter 3 - Immigrant Membership in Totalitarian Party

Technical Update - Clarifying Requests for Relief Under INA 204(l)

September 22, 2020

This technical update clarifies how applicants and petitioners may request relief under INA 204(l).

POLICY ALERT - Residency Requirements for Children of Service Members and Government Employees Residing Outside of the United States for Purposes of Acquisition of Citizenship

September 18, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual regarding residency requirements under Section 320 of the Immigration and Nationality Act (INA), as amended by the Citizenship for Children of Military Members and Civil Servants Act.

POLICY ALERT - O Nonimmigrant Visa Classification

September 17, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to update and consolidate guidance related to O nonimmigrant classifications.
September 17, 2020

This technical update is part of an initiative to move existing policy guidance from the Adjudicator’s Field Manual (AFM) into the Policy Manual. This update does not make major substantive changes but consolidates and incorporates existing AFM guidance into the Policy Manual, streamlining USCIS’ immigration policy while removing obsolete information. This guidance replaces Chapter 33 of the AFM, related appendices, and policy memoranda.

Affected Sections

2 USCIS-PM N - Part N - Athletes and Entertainers (P)

Technical Update - Clarifying Dates of Absence for Continuous Residence

September 15, 2020

This technical update clarifies the examples provided to illustrate the impact of absences from the United States for purposes of the continuous residence requirement for naturalization, including the hypothetical dates used in the examples.

Affected Sections

12 USCIS-PM D.3 - Chapter 3 - Continuous Residence

POLICY ALERT - Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements Final Rule

September 02, 2020

U.S. Citizenship and Immigration Services (USCIS) is revising its policy guidance in the USCIS Policy Manual to align with the Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements Final Rule, published in the Federal Register on August 3, 2020. This guidance becomes effective October 2, 2020. For information regarding implementation, see our litigation summary.

Read More

Affected Sections

1 USCIS-PM A - Part A - Public Services

1 USCIS-PM B - Part B - Submission of Benefit Requests

2 USCIS-PM - Volume 2 - Nonimmigrants

7 USCIS-PM A - Part A - Adjustment of Status Policies and Procedures

7 USCIS-PM F - Part F - Special Immigrant-Based (EB-4) Adjustment

7 USCIS-PM M - Part M - Asylee Adjustment

11 USCIS-PM A - Part A - Secure Identity Documents Policies and Procedures
Technical Update - Removing Exemption from Discretion for Asylum Applicants Seeking Employment Authorization under 8 CFR 274a.12(c)(8)

August 27, 2020

This technical update removes the exemption from discretion for asylum applicants seeking employment authorization under 8 CFR 274a.12(c)(8). The Asylum Application, Interview, and Employment Authorization for Applicants Final Rule (Final Rule) (effective August 25, 2020) amended 8 CFR 274a.13(a)(1) to eliminate the exemption. Accordingly, asylum applicants who file applications for employment authorization on or after August 25, 2020 are subject to discretion like other applicants seeking employment authorization under 8 CFR 274a.12(c). Note: On September 11, 2020, the U.S. District Court for the District of Maryland in Casa de Maryland et al v. Chad Wolf provided limited injunctive relief to members of two organizations, CASA de Maryland (CASA) and the Asylum Seeker Advocacy Project (ASAP), in the application of the Final Rule to Form I-589s and Form I-765s filed by asylum applicants who are also members of CASA or ASAP. Therefore, while the rule is preliminarily enjoined, we will continue to apply the prior regulatory language and exempt from discretion CASA and ASAP members who file a Form I-765 based on an asylum application.

Affected Sections

10 USCIS-PM A.5 - Chapter 5 - Discretion

Technical Update - Braille-Related Accommodations for the Naturalization Test

August 27, 2020

This technical update incorporates references to Braille-related accommodations for the naturalization test.

Affected Sections

12 USCIS-PM C - Part C - Accommodations

POLICY ALERT - Clarifying Procedures for Terminating Asylum Status in Relation to Consideration of an Application for Adjustment of Status

August 21, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to update and clarify the procedures USCIS officers follow when termination of asylum status is considered in relation to adjudicating an asylum-based adjustment of status application.

Affected Sections

7 USCIS-PM M.6 - Chapter 6 - Termination of Status and Notice to Appear Considerations
August 06, 2020

This technical update provides clarification on the 2-year foreign residence requirement for certain exchange visitors subject to INA 212(e).

Affected Sections

7 USCIS-PM A.2 - Chapter 2 - Eligibility Requirements

Technical Update - Incorporating Existing Guidance into the Policy Manual

July 30, 2020

This technical update is part of an initiative to move existing policy guidance from the Adjudicator’s Field Manual (AFM) into the Policy Manual. This update does not make major substantive changes but consolidates and incorporates existing AFM guidance into the Policy Manual, streamlining USCIS’ immigration policy while removing obsolete information. This guidance replaces Chapters 22.3 and 26 of the AFM, related appendices, and policy memoranda.

Affected Sections

6 USCIS-PM H - Part H - Designated and Special Immigrants

7 USCIS-PM Q - Part Q - Rescission of Lawful Permanent Residence

POLICY ALERT - Clarifying Guidance for Deployment of Capital in Employment-Based Fifth Preference (EB-5) Category

July 24, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing clarifying policy guidance in the USCIS Policy Manual regarding deployment of investment capital, including further deployment after the job creation requirement is satisfied.

Read More

Affected Sections

6 USCIS-PM G.2 - Chapter 2 - Eligibility Requirements

6 USCIS-PM G.4 - Chapter 4 - Immigrant Petition by Alien Investor (Form I-526)

POLICY ALERT - Applying Discretion in USCIS Adjudications

July 15, 2020
U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the USCIS Policy Manual regarding the discretionary analysis required in the adjudication of certain benefit requests, including certain applications for employment authorization.

Affected Sections

1 USCIS-PM E.8 - Chapter 8 - Discretionary Analysis
10 USCIS-PM A.5 - Chapter 5 - Discretion

Technical Update - Removing Obsolete Form I-508F
June 18, 2020

This technical update removes references to Form I-508F, Request for Waiver of Certain Rights, Privileges, Exemptions and Immunities. French nationals are covered by a special convention between France and the United States. Previously, French nationals were required to submit both Form I-508 and Form I-508F to USCIS. The 11/08/19 form edition combines information from both forms. Therefore, French nationals are now only required to submit Form I-508.

Affected Sections

7 USCIS-PM A.2 - Chapter 2 - Eligibility Requirements
7 USCIS-PM F.6 - Chapter 6 - Certain G-4 or NATO-6 Employees and their Family Members
7 USCIS-PM O.3 - Chapter 3 - Children Born in the United States to Accredited Diplomats

Technical Update - Removing WA Food Assistance Program from the List of Public Benefits Considered
June 16, 2020

This technical update removes the WA Food Assistance Program for Legal Immigrants from the list of examples of state, local, and tribal cash assistance programs that are considered income maintenance for purposes of the public charge inadmissibility determination.

Affected Sections

8 USCIS-PM G.10 - Chapter 10 - Public Benefits

Technical Update - Moving the Adjudicator’s Field Manual Content into the USCIS Policy Manual
May 21, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating and incorporating relevant Adjudicator’s Field Manual (AFM) content into the USCIS Policy Manual. As that process is ongoing, USCIS has moved any remaining AFM content to its corresponding USCIS Policy Manual Part, in PDF format, until relevant
AFM content has been properly incorporated into the USCIS Policy Manual. To the extent that a provision in the USCIS Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the USCIS Policy Manual prevails. To find remaining AFM content, see the crosswalk (PDF, 327.05 KB) between the AFM and the Policy Manual.

Affected Sections

1 USCIS-PM - Volume 1 - General Policies and Procedures
2 USCIS-PM - Volume 2 - Nonimmigrants
6 USCIS-PM - Volume 6 - Immigrants
12 USCIS-PM - Volume 12 - Citizenship and Naturalization
8 USCIS-PM - Volume 8 - Admissibility
3 USCIS-PM - Volume 3 - Humanitarian Protection and Parole
4 USCIS-PM - Volume 4 - Refugees and Asylees
5 USCIS-PM - Volume 5 - Adoptions
7 USCIS-PM - Volume 7 - Adjustment of Status
9 USCIS-PM - Volume 9 - Waivers and Other Forms of Relief
11 USCIS-PM - Volume 11 - Travel and Identity Documents


May 20, 2020

This technical update clarifies guidance within the USCIS Policy Manual on portability for physicians with an approved immigrant petition based on a national interest waiver (NIW) applying for adjustment of status, and the applicability of the 2-year foreign residence requirement of INA 212(e) to certain NIW physicians.

Affected Sections

7 USCIS-PM A.8 - Chapter 8 - Transfer of Underlying Basis

Technical Update - Incorporating Existing Guidance into the Policy Manual

May 15, 2020

This technical update is part of an initiative to move existing policy guidance from the Adjudicator’s Field Manual (AFM) into the Policy Manual. This update does not make major substantive changes but consolidates and incorporates existing AFM guidance into the Policy Manual, streamlining USCIS’ immigration policy while removing obsolete information. This guidance replaces Chapters 1, 3.4, 10.2, 10.3(a), 10.3(c), 10.3(e), 10.3(i), 10.4, 10.22, 11.1(c), 13, 14, 17, 23.8, 31.7, 33.10, 34.5, 35, 41.6, 42, 44, 56.1, 56.3, 56.4, 62, 81, 82, 83.1, 83.2, and 83.3 of the AFM, related appendices, and policy memoranda.
POLICY ALERT - False Claim to U.S. Citizenship Ground of Inadmissibility and Matter of Zhang

April 24, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual regarding the false claim to U.S. citizenship ground of inadmissibility.

Read More

POLICY ALERT - Liberian Refugee Immigration Fairness

April 07, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding eligibility requirements, filing, and adjudication of adjustment of status applications based on the Liberian Refugee Immigration Fairness law.

Read More

Technical Update - Removing Obsolete Form I-864W

April 16, 2020

This technical update removes references to Form I-864W, Request for Exemption for Intending Immigrant’s Affidavit of Support, which was discontinued by the Inadmissibility on Public Charge Grounds Rule and is no longer used by U.S. Citizenship and Immigration Services.

POLICY ALERT - Liberian Refugee Immigration Fairness

April 07, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding eligibility requirements, filing, and adjudication of adjustment of status applications based on the Liberian Refugee Immigration Fairness law.

Read More
Technical Update - Replacing the Term “Entrepreneur”

March 19, 2020

This technical update replaces instances of the term “entrepreneur” with “investor” throughout the Policy Manual in accordance with the EB-5 Immigrant Investor Program Final Rule.

Affected Sections

7 USCIS-PM A.2 - Chapter 2 - Eligibility Requirements
7 USCIS-PM B.2 - Chapter 2 - Eligibility Requirements
12 USCIS-PM G.5 - Chapter 5 - Conditional Permanent Resident Spouses and Naturalization

Technical Update - Use of Photographs as Biometrics

March 11, 2020

U.S. Citizenship and Immigration Services (USCIS) is incorporating general information on USCIS’ use of photographs as biometrics.

Affected Sections

1 USCIS-PM C - Part C - Biometrics Collection and Security Checks

POLICY ALERT - Submission of Benefit Requests

March 05, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding submission of benefit requests to USCIS.

Read More

Affected Sections

1 USCIS-PM B - Part B - Submission of Benefit Requests

POLICY ALERT - Effect of Breaks in Continuity of Residence on Eligibility for Naturalization

February 26, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address naturalization applicants’ absences from the United States of more than 6 months but less than 1 year during the statutorily required continuous residence period.

Read More
POLICY ALERT - Implementation of Guidance on Inadmissibility on Public Charge Grounds

February 24, 2020

Note: On Nov. 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the Public Charge Final Rule nationwide. The U.S. Court of Appeals for the Seventh Circuit later issued a stay of the U.S. District Court for the Northern District of Illinois’ Nov. 2, 2020 decision. On Mar. 9, 2021, the U.S. Court of Appeals for the Seventh Circuit lifted the stay and the U.S. District Court for the Northern District of Illinois’ order vacating the Public Charge Final Rule went into effect. USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. For information on related litigation affecting implementation, see our litigation summary. The alert text below and related guidance are no longer in effect.

This update incorporates into Volumes 2, 8, and 12 policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced February 5, 2020, implementing the Inadmissibility of Public Charge Grounds Final Rule. This guidance is in effect as of February 24, 2020 and applies nationwide to all applications and petitions postmarked on or after that date. Certain classes of aliens are exempt from the public charge ground of inadmissibility (such as refugees, asylees, certain VAWA self-petitioners, U petitioners, and T applicants) and therefore, are not subject to the Final Rule. For more information about the classes of [noncitizens] who are exempt from the Final Rule, see the appendices related to applicability. For information on related litigation affecting implementation, see our page on the injunction.

POLICY ALERT - Public Charge Ground of Inadmissibility

February 05, 2020

Note: On Nov. 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the Public Charge Final Rule nationwide. The U.S. Court of Appeals for the Seventh Circuit later issued a stay of the U.S. District Court for the Northern District of Illinois’ Nov. 2, 2020 decision. On Mar. 9, 2021, the U.S. Court of Appeals for the Seventh Circuit lifted the stay and the U.S. District Court for the Northern District of Illinois’ order vacating the Public Charge Final Rule went into effect. USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. For information on related litigation affecting implementation, see our litigation summary. The alert text below and related guidance are no longer in effect.
U.S. Citizenship and Immigration Services (USCIS) is issuing guidance in the USCIS Policy Manual to address the final rule on the public charge ground of inadmissibility. This policy guidance is effective on February 24, 2020, and will apply to all applicants and petitioners filing applications and petitions for adjustment of status, extension of stay, and change of status, except for applicants and petitioners in the State of Illinois, whose cases will be adjudicated under prior policy, including the 1999 Interim Field Guidance (PDF) and AFM Ch. 61.1 (PDF, 77.92 KB). For additional information, see Public Charge Inadmissibility Determinations in Illinois. Certain classes of aliens are exempt from the public charge ground of inadmissibility (such as refugees, asylees, certain VAWA self-petitioners, U petitioners, and T applicants) and therefore, are not subject to the Inadmissibility on Public Charge Grounds final rule. For more information about the classes of [noncitizens] who are exempt from the final rule, see the appendices related to applicability.

Read More

Affected Sections

2 USCIS-PM A.4 - Chapter 4 - Extension of Stay and Change of Status

12 USCIS-PM D.2 - Chapter 2 - Lawful Permanent Resident Admission for Naturalization

8 USCIS-PM G - Part G - Public Charge Ground of Inadmissibility

POLICY ALERT - Accepting Petition for Alien Relative (Form I-130) Abroad

January 31, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address the limited circumstances in which USCIS has delegated authority to the U.S. Department of State to accept and adjudicate the Form I-130 filed abroad at U.S. embassies and consulates. This guidance becomes effective February 1, 2020.

Read More

Affected Sections

6 USCIS-PM B.3 - Chapter 3 - Filing

POLICY ALERT - Biometrics Services Updates

January 30, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address the availability of mobile biometrics services and clarify guidance on the validity period for fingerprint waivers.

Read More

Affected Sections

1 USCIS-PM C.2 - Chapter 2 - Biometrics Collection
POLICY ALERT - Replacing Permanent Resident Card

January 16, 2020

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding eligibility requirements, filing, and adjudication of requests to replace Permanent Resident Cards using the Application to Replace Permanent Resident Card (Form I-90).

Read More

Affected Sections

11 USCIS-PM B - Part B - Permanent Resident Cards

Technical Update - Naturalization of Spouses Subjected to Battery or Extreme Cruelty by U.S. Citizen Spouse

January 09, 2020

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual to clarify that the spouse of a U.S. citizen who was subjected to battery or extreme cruelty by his or her U.S. citizen spouse does not need to establish that he or she is still married to the abusive spouse at the time he or she files the application for naturalization.

Affected Sections

12 USCIS-PM G.3 - Chapter 3 - Spouses of U.S. Citizens Residing in the United States

POLICY ALERT - Effect of Travel Abroad by Temporary Protected Status Beneficiaries with Final Orders of Removal

December 20, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating the USCIS Policy Manual to clarify the effect of travel outside the United States by temporary protected status beneficiaries who have final removal orders.

Read More

Affected Sections

7 USCIS-PM A.3 - Chapter 3 - Filing Instructions

Technical Update - Naturalization for Surviving Spouse, Child, or Parent of Service Member

December 18, 2019

U.S. Citizenship and Immigration Services (USCIS) is clarifying guidance in the USCIS Policy Manual to indicate that the spouse, child, or parent of a deceased U.S. citizen member of the U.S. armed forces who
died “during a period of honorable service” (instead of as the result of honorable service) may be eligible for
naturalization as the surviving relative of the service member, consistent with the statutory language in INA
319(d).

Affected Sections

12 USCIS-PM I.9 - Chapter 9 - Spouses, Children, and Surviving Family Benefits

POLICY ALERT - Conditional Bar to Good Moral Character for Unlawful Acts

December 13, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual
on unlawful acts during the applicable statutory period that reflect adversely on moral character and may
prevent an applicant from meeting the good moral character requirement for naturalization.

Read More

Affected Sections

12 USCIS-PM F.5 - Chapter 5 - Conditional Bars for Acts in Statutory Period

Technical Update - Health-Related Grounds of Inadmissibility

December 10, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating existing guidance based on revised Centers
for Disease Control and Prevention Technical Instructions regarding tuberculosis, gonorrhea, and syphilis and
the change in nomenclature from leprosy to Hansen’s Disease. USCIS is also updating how USCIS submits a
request to CDC for advisory opinion and removing the outdated vaccination chart.

Affected Sections

8 USCIS-PM B.1 - Chapter 1 - Purpose and Background

8 USCIS-PM B.6 - Chapter 6 - Communicable Diseases of Public Health Significance

8 USCIS-PM B.8 - Chapter 8 - Drug Abuse or Drug Addiction

8 USCIS-PM B.9 - Chapter 9 - Vaccination Requirement

POLICY ALERT - Implementing the Decisions on Driving Under the Influence Convictions on Good Moral
Character Determinations and Post-Sentencing Changes

December 10, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual
regarding how post-sentencing changes to criminal sentences impact convictions for immigration purposes
and how two or more driving under the influence convictions affects good moral character determinations.
These updates incorporate two recent decisions issued by the Attorney General.

**Technical Update - Implementation of Fees for Submission of Benefit Requests**

December 02, 2019

This technical update incorporates into Volume 1 the policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced October 25, 2019, regarding submission and acceptance of fees for immigration benefit requests. USCIS published this guidance with an effective date of December 2, 2019. **Note: On December 11, 2019, the Federal District Court for the Northern District of California in Seattle v. DHS enjoined the Department of Homeland Security from requiring use of the new version of Form I-912, Request for Fee Waiver. USCIS has noted this in the corresponding Policy Manual guidance and reinstated the prior fee waiver policy guidance at AFM 10.9 (PDF, 2.87 MB) and 10.10 (PDF, 2.87 MB).**

**POLICY ALERT - Adjustment on New Basis After Termination of Conditional Permanent Residence**

November 21, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to update and clarify when USCIS may adjust the status of an applicant whose conditional permanent resident (CPR) status was terminated.

**POLICY ALERT - USCIS Special Immigrant Juvenile Classification**

November 19, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating the USCIS Policy Manual regarding the special immigrant juvenile (SIJ) classification.
POLICY ALERT - EB-5 Immigrant Investor Program Modernization Final Rule

November 06, 2019

U.S. Citizenship and Immigration Services (USCIS) is revising its policy guidance in the USCIS Policy Manual to align with the EB-5 Immigrant Investor Program Modernization Final Rule, published on July 24, 2019, and effective November 21, 2019.


October 29, 2019

This technical update incorporates into Volume 12 the policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced August 28, 2019 addressing requirements for “residence” in statutory provisions related to citizenship. This guidance became effective October 29, 2019.

POLICY ALERT - Fees for Submission of Benefit Requests

October 25, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding submission and acceptance of fees for immigration benefit requests, with an effective date of
December 2, 2019. Note: On December 11, 2019, the Federal District Court for the Northern District of California in Seattle v. DHS enjoined the Department of Homeland Security from requiring use of the new version of Form I-912, Request for Fee Waiver. USCIS has noted this in the corresponding Policy Manual guidance and reinstated the prior fee waiver policy guidance at AFM 10.9 (PDF, 2.87 MB) (PDF, 2.87 MB) and 10.10 (PDF, 2.87 MB). (PDF, 2.87 MB).

Read More

Affected Sections

1 USCIS-PM B.3 - Chapter 3 - Fees
1 USCIS-PM B.4 - Chapter 4 - Fee Waivers

Technical Update - Replacing the Term “Foreign National”

October 08, 2019

This technical update replaces all instances of the term “foreign national” with “alien” throughout the Policy Manual as used to refer to a person who meets the definition provided in INA 101(a)(3) [“any person not a citizen or national of the United States”].

Affected Sections

1 USCIS-PM - Volume 1 - General Policies and Procedures
2 USCIS-PM - Volume 2 - Nonimmigrants
6 USCIS-PM - Volume 6 - Immigrants
7 USCIS-PM - Volume 7 - Adjustment of Status
8 USCIS-PM - Volume 8 - Admissibility
9 USCIS-PM - Volume 9 - Waivers and Other Forms of Relief
10 USCIS-PM - Volume 10 - Employment Authorization
11 USCIS-PM - Volume 11 - Travel and Identity Documents
12 USCIS-PM - Volume 12 - Citizenship and Naturalization

Technical Update - Clarifying Policies and Procedures for Replacing Permanent Resident Cards

September 27, 2019

This technical update clarifies that, in circumstances involving the replacement or reissuance of a Permanent Resident Card, an Application to Replace Permanent Resident Card (Form I-90) is always required as outlined in form instructions and regulations. This may differ from the general reissuance policy.

Affected Sections
POLICY ALERT - Defining “Residence” in Statutory Provisions Related to Citizenship
August 28, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address requirements for “residence” in statutory provisions related to citizenship, and to rescind previous guidance regarding children of U.S. government employees and members of the U.S. armed forces employed or stationed outside the United States. This guidance becomes effective October 29, 2019.

POLICY ALERT - Employment Authorization for Parolees
August 19, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating its existing policies on the exercise of discretion to address the use of discretion when assessing if certain foreign nationals who are paroled into the United States should be employment authorized.

Technical Update - Civil Surgeon Designation and Revocation
June 06, 2019

This technical update changes language to state that USCIS officers “may” refer proposed civil surgeon designation revocations to the USCIS Office of Chief Counsel for review. Previously, the language specified that USCIS counsel “must” review any proposed civil surgeon designation revocation.

Technical Update - Fraud and Willful Misrepresentation and Department of State’s 90-Day Rule
June 05, 2019
This technical update incorporates clarifications regarding the Department of State (DOS)'s "90-day rule." While this "rule" does not apply to USCIS because it is DOS policy, USCIS is clarifying that it may also find that an applicant made a willful misrepresentation due to a status violation or conduct in the United States that is inconsistent with the applicant's prior representations, especially where the violation or conduct occurred shortly after the consular interview or admission to the United States.

Affected Sections

8 USCIS-PM J.3 - Chapter 3 - Adjudicating Inadmissibility

POLICY ALERT - USCIS Public Services

May 10, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual regarding services USCIS provides to the public, including general administration of certain immigration benefits, online tools, and up-to-date information.

Technical Update - Communicating with Centers for Disease Control and Prevention

May 03, 2019

This technical update removes references to sending documents to the Centers for Disease Control and Prevention (CDC) by mail or fax. CDC now prefers all requests for waiver consultations and any subsequent notifications from USCIS to be communicated by email.

Affected Sections

9 USCIS-PM D.2 - Chapter 2 - Waiver of Communicable Disease of Public Health Significance

9 USCIS-PM D.4 - Chapter 4 - Waiver of Physical or Mental Disorder Accompanied by Harmful Behavior

Technical Update - Medical Certification for Disability Exceptions

May 03, 2019

This technical update incorporates minor clarifying editorial changes to the policy guidance regarding the Medical Certification for Disability Exceptions (Form N-648).

Affected Sections

12 USCIS-PM E.3 - Chapter 3 - Medical Disability Exception (Form N-648)
POLICY ALERT - Controlled Substance-Related Activity and Good Moral Character Determinations

April 19, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to clarify that violation of federal controlled substance law, including for marijuana, remains a conditional bar to establishing good moral character (GMC) for naturalization even where that conduct would not be an offense under state law.

Read More

Affected Sections

12 USCIS-PM F.5 - Chapter 5 - Conditional Bars for Acts in Statutory Period

Technical Update - Implementation of Policy Guidance on Medical Certification for Disability Exceptions (Form N-648)

February 12, 2019

This technical update incorporates into Volume 12 the policy guidance that U.S. Citizenship and Immigration Services (USCIS) announced December 12, 2018 regarding the Medical Certification for Disability Exceptions (Form N-648). This guidance became effective February 12, 2019.

Affected Sections

12 USCIS-PM E.3 - Chapter 3 - Medical Disability Exception (Form N-648)

Technical Update - Visa Retrogression

February 06, 2019

This technical update removes language that restricted USCIS officers' ability to request a visa number from the Department of State in cases involving visa retrogression. As with all INA 245(a) adjustment cases, a visa must be available at the time of final adjudication.

Affected Sections

7 USCIS-PM A.6 - Chapter 6 - Adjudicative Review

Technical Update - Child Status Protection Act

January 23, 2019

This technical update clarifies that certain child beneficiaries of family-sponsored immigrant visa petitions who are ineligible for the Child Status Protection Act may continue their adjustment of status application if the petition is automatically converted to an eligible category.

Affected Sections
7 USCIS-PM A.7 - Chapter 7 - Child Status Protection Act

POLICY ALERT - Policies and Procedures for Secure Identity Documents

January 16, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address the general policies and procedures related to secure documents.

POLICY ALERT - Sufficiency of Medical Certification for Disability Exceptions (Form N-648)

December 12, 2018

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to update and clarify filing procedures and adjudications on the Medical Certification for Disability Exceptions (Form N-648). This guidance becomes effective February 12, 2019.

POLICY ALERT - Immigrant Investors and Debt Arrangements

October 30, 2018

U.S. Citizenship and Immigration Services (USCIS) is revising policy guidance in the USCIS Policy Manual to clarify its policy on debt arrangements.

POLICY ALERT - Use of Form G-325A

October 25, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual
to remove references to Biographic Information (Form G-325A).

Affected Sections

7 USCIS-PM A - Part A - Adjustment of Status Policies and Procedures
7 USCIS-PM B - Part B - 245(a) Adjustment
7 USCIS-PM F - Part F - Special Immigrant-Based (EB-4) Adjustment
7 USCIS-PM L - Part L - Refugee Adjustment
7 USCIS-PM M - Part M - Asylee Adjustment
7 USCIS-PM O - Part O - Registration

POLICY ALERT - Validity of Report of Medical Examination and Vaccination Record (Form I-693)

October 16, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in Volume 8, Part B of the USCIS Policy Manual regarding the period of time during which a Form I-693 submitted in support of a related immigration benefits application is considered valid.

Affected Sections

8 USCIS-PM B - Part B - Health-Related Grounds of Inadmissibility

POLICY ALERT - Marriage and Living in Marital Union Requirements for Naturalization

October 12, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual to clarify the marriage and living in marital union requirements under section 319(a) of the Immigration and Nationality Act (INA).

Affected Sections

12 USCIS-PM G.2 - Chapter 2 - Marriage and Marital Union for Naturalization

POLICY ALERT - Special Naturalization Provisions for Children

September 26, 2018
U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance to amend the USCIS Policy Manual to clarify certain special naturalization provisions for children.

Read More

Affected Sections

12 USCIS-PM G.3 - Chapter 3 - Spouses of U.S. Citizens Residing in the United States

12 USCIS-PM H.6 - Chapter 6 - Special Provisions for the Naturalization of Children

Technical Update - Authorized Medical Professionals

September 26, 2018

This technical update provides clarification on the medical professionals (medical doctors, doctors of osteopathy, and clinical psychologists) authorized to complete a written evaluation of medical condition in connection with an oath waiver request.

Affected Sections

12 USCIS-PM J.3 - Chapter 3 - Oath of Allegiance Modifications and Waivers

POLICY ALERT - Geographic Area of a Regional Center

August 24, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating guidance in the USCIS Policy Manual regarding a regional center’s geographic area, requests to expand the geographic area, and how such requests impact the filing of Form I-526, Immigrant Petition by Alien Entrepreneur.

Read More

Affected Sections

6 USCIS-PM G - Part G - Investors

Technical Update - Certificates of Citizenship for U.S. National Children

August 15, 2018

This technical update clarifies that a person who is born a U.S. national and is the child of a U.S. citizen may acquire citizenship and may obtain a Certificate of Citizenship without having to establish lawful permanent resident status.

Affected Sections

12 USCIS-PM H.4 - Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)

AILA Doc. No. 19060633. (Posted 3/26/21)
Technical Update - Rescinding Tenant-Occupancy Methodology

July 26, 2018

This technical update clarifies that the rescission of the policy regarding the tenant-occupancy methodology does not affect petitions pending on May 15, 2018 (the date USCIS announced the rescission).

Affected Sections

6 USCIS-PM G.2 - Chapter 2 - Eligibility Requirements

POLICY ALERT - Child Status Protection Act

May 23, 2018

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding the Child Status Protection Act (CSPA).

Read More

Affected Sections

7 USCIS-PM A.7 - Chapter 7 - Child Status Protection Act

POLICY ALERT - Adjustment of Status Interview Guidelines and Waiver Criteria

May 15, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating guidance regarding adjustment of status interview guidelines and interview waivers.

Read More

Affected Sections

7 USCIS-PM A.5 - Chapter 5 - Interview Guidelines

POLICY ALERT - Rescinding Tenant-Occupancy Methodology

May 15, 2018

U.S. Citizenship and Immigration Services (USCIS) is revising policy guidance in the USCIS Policy Manual to reflect that, as of May 15, 2018, USCIS no longer considers tenant occupancy to be a reasonable methodology to support economically or statistically valid forecasting tools.

Read More

Affected Sections
POLICY ALERT - Documentation of Conditional Resident Status for Investors with a Pending Form I-829

May 02, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance regarding the documentation of conditional permanent resident (CPR) status for employment-based fifth preference (EB-5) immigrants.

Read More

Affected Sections

POLICY ALERT - Acquisition of U.S. Citizenship for Children Born Out of Wedlock

April 18, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance to clarify certain requirements for U.S. citizenship for children born outside the United States and out of wedlock under INA 301 and 309. USCIS is making conforming edits to the USCIS nationality charts.

Read More

Affected Sections

Technical Update - Fraud and Willful Misrepresentation and Department of State’s 90-Day Rule

March 28, 2018

This technical update incorporates changes that the Department of State (DOS) made to its Foreign Affairs Manual (FAM) regarding its interpretation of the term “misrepresentation.”

Affected Sections

Technical Update - Authority to Administer the Oath of Allegiance

March 21, 2018

This technical update clarifies that the Secretary of Homeland Security has, through the Director of USCIS, delegated the authority to administer the Oath during an administrative naturalization ceremony to certain USCIS officials who can successively re-delegate the authority within their chains of command.
Technical Update - Military Accessions Vital to National Interest

March 21, 2018

This technical update clarifies that foreign nationals may apply for military naturalization after the certification of honorable service has been properly processed by the U.S. armed forces.

POLICY ALERT - Waiver Policies and Procedures

August 23, 2017

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance to address the general policies and procedures applicable to the adjudication of waivers of inadmissibility.

POLICY ALERT - Biometrics Requirements for Naturalization

July 26, 2017

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual to specify that every naturalization applicant must provide biometrics regardless of age, unless the applicant qualifies for a fingerprint waiver due to certain medical conditions.

POLICY ALERT - Administrative Naturalization Ceremonies

June 28, 2017

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance on USCIS administrative naturalization ceremonies, to include guidance regarding participation from other U.S. government and non-
POLICY ALERT - Job Creation and Capital At Risk Requirements for Investors

June 14, 2017

U.S. Citizenship and Immigration Services (USCIS) is updating the USCIS Policy Manual to provide further guidance regarding the job creation and capital at risk requirements for Form I-526, Immigrant Petition by Alien Entrepreneur, and Form I-829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.

Technical Update - Clarifying Intent to Reside in United States for Naturalization Purposes

January 05, 2017

This technical update clarifies that naturalization applicants are not required to intend to reside permanently in the United States after becoming U.S. citizens. This update is in accordance with current statutes; prior to 1994, a person who became a naturalized U.S. citizen was expected to hold the intention of residing permanently in the United States. See Section 104 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (October 25, 1994).

Technical Update - Medical Codes for Purposes of Medical Certification for Disability Exceptions

January 05, 2017

This technical update clarifies that, for purposes of Form N-648, Medical Certification for Disability Exceptions, USCIS accepts the relevant medical codes recognized by the Department of Health and Human Services. This includes codes found in the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases.
POLICY ALERT - Registration of Lawful Permanent Resident Status

December 21, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance addressing registration of lawful permanent resident (LPR) status.

[Read More]

Affected Sections

7 USCIS-PM O - Part O - Registration

POLICY ALERT - False Claim to U.S. Citizenship Ground of Inadmissibility

December 14, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance to address the false claim to U.S. citizenship ground of inadmissibility under section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (INA).

[Read More]

Affected Sections

8 USCIS-PM K - Part K - False Claim to U.S. Citizenship

Technical Update - Clarifying Designated Periods of Hostilities for Naturalization under INA 329

December 13, 2016

This technical update clarifies that, for purposes of naturalization under INA 329, the current period designated by Presidential Executive Order 13269 (July 3, 2002), as a period in which the U.S. armed forces are considered to be engaged in armed conflict with a hostile foreign force, is still in effect. In addition, this update adds information about the USCIS Military Help Line in this part.

Affected Sections

12 USCIS-PM I.1 - Chapter 1 - Purpose and Background

12 USCIS-PM I.3 - Chapter 3 - Military Service during Hostilities (INA 329)

POLICY ALERT - Employment-Based Fifth Preference Immigrants: Investors

November 30, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the eligibility requirements for regional centers and immigrant investors.
POLICY ALERT - Definition of Certain Classes of Medical Conditions and Other Updates Relating to Health-Related Grounds of Inadmissibility

November 02, 2016

U.S. Citizenship and Immigration Services (USCIS) is updating guidance regarding health-related grounds of inadmissibility in accordance with the U.S. Department of Health and Human Services (HHS) rulemaking updating Title 42 of the Code of Federal Regulations, part 34 (42 CFR 34).

POLICY ALERT - Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status, including adjustment based on classification as a special immigrant religious worker, SIJ, and G-4 international organization or NATO-6 employee or family member, among others.

POLICY ALERT - Determining Extreme Hardship

October 21, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance on determinations of extreme hardship to qualifying relatives as required by certain statutory waiver provisions. This guidance becomes effective December 5, 2016.
Read More

Affected Sections

**9 USCIS-PM B - Part B - Extreme Hardship**

Technical Update - Military Accessions Vital to National Interest Program and Time of Filing for Naturalization

October 19, 2016

This technical update clarifies that, in general, Department of Defense (DOD) Military Accessions Vital to National Interest (MAVNI) enlistees may file an application for naturalization during basic training in the U.S. armed forces.

Affected Sections

**12 USCIS-PM I.3 - Chapter 3 - Military Service during Hostilities (INA 329)**

POLICY ALERT - Department of Defense Military Accessions Vital to National Interest Program

August 03, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance to provide information about the existing Department of Defense (DOD) Military Accessions Vital to National Interest (MAVNI) Program.

Read More

Affected Sections

**12 USCIS-PM I.3 - Chapter 3 - Military Service during Hostilities (INA 329)**

POLICY ALERT - Effective Date of Lawful Permanent Residence for Purposes of Citizenship and Naturalization

July 27, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the date of legal permanent residence (LPR) for naturalization and citizenship purposes.

Read More

Affected Sections

**12 USCIS-PM D.2 - Chapter 2 - Lawful Permanent Resident Admission for Naturalization**

**12 USCIS-PM H.4 - Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)**
POLICY ALERT - Removing Obsolete Form I-643 from Filing Requirements for Certain Adjustment Applications

June 22, 2016

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual to remove obsolete Form I-643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status, from the filing requirements for applications for adjustment of status under section 209 of the Immigration and Nationality Act (INA).

POLICY ALERT - Adjustment of Status Policies and Procedures and 245(a) Adjustment

February 25, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance addressing the general policies and procedures of adjustment of status as well as adjustment under section 245(a) of the Immigration and Nationality Act (INA).

POLICY ALERT - Media Representatives (I) Nonimmigrant Visa Classification

November 10, 2015

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the foreign information media representative nonimmigrant visa classification, commonly known as the “I” visa category.

POLICY ALERT - Modifications to Oath of Allegiance for Naturalization

July 21, 2015
U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance to clarify the eligibility requirements for modifications to the Oath of Renunciation and Allegiance for naturalization.

Affected Sections

12 USCIS-PM J.3 - Chapter 3 - Oath of Allegiance Modifications and Waivers

Technical Update - Child Citizenship Act and Children of U.S. Government Employees Residing Abroad

July 20, 2015

This technical update clarifies that the child of a U.S. government employee temporarily stationed abroad is considered to be residing in the United States for purposes of acquisition of citizenship under INA 320.

Affected Sections

12 USCIS-PM H.4 - Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)
12 USCIS-PM K.2 - Chapter 2 - Certificate of Citizenship

Technical Update - Multiple Absences and Residence and Physical Presence

July 20, 2015

This technical update clarifies that along with reviewing for absences of more than 6 months, officers review whether an applicant for naturalization with multiple absences of less than 6 months is able establish the required residence and physical presence for naturalization.

Affected Sections

12 USCIS-PM D.3 - Chapter 3 - Continuous Residence

POLICY ALERT - Effect of Assisted Reproductive Technology (ART) on Immigration and Acquisition of Citizenship Under the Immigration and Nationality Act (INA)

October 28, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance relating to the use of Assisted Reproductive Technology (ART).

Affected Sections

12 USCIS-PM H - Part H - Children of U.S. Citizens
12 USCIS-PM H.2 - Chapter 2 - Definition of Child and Residence for Citizenship and Naturalization
Technical Update - Religious Missionaries Abroad and Residence and Physical Presence

October 21, 2014

This technical update clarifies who may be considered to be a missionary of a religious group for purposes of preserving residence and physical presence for naturalization while working abroad.

Affected Sections

12 USCIS-PM D.5 - Chapter 5 - Modifications and Exceptions to Continuous Residence and Physical Presence

Technical Update - Treating Certain Peace Corps Contractors as U.S. Government Employees

October 21, 2014

This technical update clarifies that Peace Corps personal service contractors are considered U.S. Government employees under certain circumstances for purposes of preserving their residence for naturalization while working abroad.

Affected Sections

12 USCIS-PM D.5 - Chapter 5 - Modifications and Exceptions to Continuous Residence and Physical Presence

POLICY ALERT - Nonimmigrant Trainees (H-3)

September 09, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance on the trainees (H-3) nonimmigrant visa category.

POLICY ALERT - Customer Service

August 26, 2014
U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance on its standards in customer service.

Read More

Affected Sections

1 USCIS-PM A - Part A - Public Services

Technical Update - Validity of Same-Sex Marriages

July 01, 2014

This technical update addresses the Supreme Court ruling holding that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional.

Affected Sections

12 USCIS-PM G.2 - Chapter 2 - Marriage and Marital Union for Naturalization

POLICY ALERT - Changes to Dates of Birth and Names on Certificates of Citizenship

June 17, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance relating to changes of dates of birth and names per court orders.

Read More

Affected Sections

12 USCIS-PM K.2 - Chapter 2 - Certificate of Citizenship

12 USCIS-PM K.4 - Chapter 4 - Replacement of Certificate of Citizenship or Naturalization

POLICY ALERT - Validity Period of the Medical Certification on the Report of Medical Examination and Vaccination Record (Form I-693)

May 30, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing an update to policy guidance in the USCIS Policy Manual addressing the validity period of civil surgeon endorsements on the Report of Medical Examination and Vaccination Record, Form I-693.

Read More

Affected Sections

8 USCIS-PM B.4 - Chapter 4 - Review of Medical Examination Documentation
Technical Update - Civil Surgeon Applications and Evidentiary Requirements

April 08, 2014

This technical update clarifies that an applicant for civil surgeon designation must, at a minimum, submit a copy of the medical degree to show he or she is a Medical Doctor or Doctor of Osteopathy.

Affected Sections

8 USCIS-PM C.2 - Chapter 2 - Application for Civil Surgeon Designation

POLICY ALERT - Fraud and Willful Misrepresentation Grounds of Inadmissibility

March 25, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance on the fraud and willful misrepresentation grounds of inadmissibility under INA 212(a)(6)(C)(i) and the corresponding waiver under INA 212(i).

Read More

Affected Sections

8 USCIS-PM J - Part J - Fraud and Willful Misrepresentation
9 USCIS-PM F - Part F - Fraud and Willful Misrepresentation

Technical Update - Vaccination Requirements for Pregnant or Immuno-Compromised Applicants

March 11, 2014

This technical update replaces the list of vaccines contraindicated for pregnant or immuno-compromised applicants with a reference to the Centers for Disease Control and Prevention (CDC)'s Vaccination Technical Instructions. This ensures the Policy Manual guidance includes the most up-to-date information.

Affected Sections

8 USCIS-PM B.9 - Chapter 9 - Vaccination Requirement

POLICY ALERT - Refugee and Asylee-Based Adjustment of Status under Immigration and Nationality Act (INA) Section 209

March 04, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address adjustment of status applications filed by refugees and asylees under INA sections 209(a) and 209(b).
POLICY ALERT - Health-Related Grounds of Inadmissibility and Waivers

January 28, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance in the USCIS Policy Manual on the health-related grounds of inadmissibility under INA 212(a)(1) and corresponding waivers under INA 212(g).

POLICY ALERT - Civil Surgeon Designation and Centralization of the Designation Process at the National Benefits Center

January 28, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to centralize the civil surgeon designation process at the National Benefits Center, effective March 11, 2014.

Technical Update - Commonwealth of the Northern Mariana Islands

September 30, 2013

This technical update adds the Commonwealth of the Northern Mariana Islands to list of certain territories of the United States where, subject to certain requirements, persons may be U.S. citizens at birth.
Technical Update - Certified Court Dispositions

September 30, 2013

This technical update adds language addressing existing policy on circumstances where an applicant is required to provide a certified court disposition.

Affected Sections

12 USCIS-PM F.3 - Chapter 3 - Evidence and the Record

POLICY ALERT - Security-Related Positions Abroad

June 10, 2013


Read More

Affected Sections

12 USCIS-PM D - Part D - General Naturalization Requirements

12 USCIS-PM D.5 - Chapter 5 - Modifications and Exceptions to Continuous Residence and Physical Presence

POLICY ALERT - Comprehensive Citizenship and Naturalization Policy Guidance

January 07, 2013

USCIS is issuing updated and comprehensive citizenship and naturalization policy guidance in the new USCIS Policy Manual.

Read More

Affected Sections

12 USCIS-PM - Volume 12 - Citizenship and Naturalization

Volume 1 - General Policies and Procedures

Part A - Public Services

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have
moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

Chapter 1 - Purpose and Background

A. Purpose

USCIS is the government agency that administers lawful immigration to the United States. USCIS has nearly 20,000 government employees and contractors working at more than 200 offices around the world. USCIS ensures its employees have the knowledge and tools needed to administer the lawful immigration system with professionalism. USCIS provides accessible, reliable, and accurate guidance and information about its public services.

This part provides guidance on USCIS public services, privacy, online tools, and other general administration topics.

B. Background

On March 1, 2003, USCIS assumed responsibility for the immigration service functions of the federal government. The Homeland Security Act of 2002 dismantled the Immigration and Naturalization Service (INS) and separated the agency into three components within the Department of Homeland Security (DHS).[1]

The Homeland Security Act created USCIS to enhance the security and efficiency of national immigration services by focusing exclusively on the administration of benefit applications. The law also formed Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to oversee immigration enforcement and border security.

USCIS benefits from a legacy of more than 100 years of federal immigration and naturalization administration.[2] The Agency History page on USCIS’ website provides information about the agency’s history, presents research from the History Office’s historians, and makes selected historical documents available electronically.

C. Mission Statement

USCIS administers the nation’s lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.[3]

D. Legal Authorities

administration of benefit applications

- Privacy Act of 1974, 5 U.S.C. 552a (PDF), as amended[^5] – Establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about persons that is maintained in systems of records by federal agencies

- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (PDF)[^6] – Ensuring persons with a disability are not excluded from participation in or subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any federal agency

Footnotes


[^2] See the Organizational Timeline page on USCIS’ website.

[^3] See the About Us page on USCIS’ website.


Chapter 2 - Web-Based Information

A. Website

The USCIS website (uscis.gov) provides the public with access to current information about USCIS’ work, as well as current news releases, alerts, and other updates.

The USCIS website provides the following:

- Timely and accurate information on immigration and citizenship services and benefits offered by USCIS;

- Easy access to forms, form instructions, agency guidance, and other information required to successfully submit applications and petitions;

- The latest news and policy updates, including progress in support of Executive Orders;

- Information on outreach events and efforts; and

- Information on ways to contact USCIS.[^1]

USCIS designed the website to accommodate easy navigation to highly trafficked pages directly from the home page, as well as a logical structure and search capability for easy access to all other pages.
In addition to uscis.gov, USCIS also hosts the following sub-sites:

- **myUSCIS** – Allows stakeholders to explore immigration options, create an online USCIS account, locate a physician to complete medical exams, practice the civics test, and complete other tasks online
- **Citizenship Resource Center** – Hosts information and resources designed to assist prospective citizens
- **USCIS Policy Manual** – The agency’s centralized online repository for USCIS’ immigration policies[2]
- **InfoPass** – System used by USCIS Contact Center for scheduling in-person services at domestic field offices on behalf of benefit requestors and other interested parties.

USCIS makes every effort to provide complete and accurate information on its website. USCIS does its best to update information and correct errors brought to its attention as soon as possible. Both the English language and Spanish language pages are updated at the same time, as appropriate.

### B. Social Media

Social media is an informal means of communication that also connects benefit requestors and other interested parties with core information and services on the USCIS website. In this way, social media complements the USCIS website and increases USCIS’ ability to communicate with the public.

USCIS’ social media presence includes:

- Twitter ([Main](https://twitter.com/uscis) and for [E-Verify](https://twitter.com/EVerify)) – for concise information and news, usually accompanied by links back to uscis.gov
- **Facebook** – for information and news, usually accompanied by links back to uscis.gov
- **YouTube** – for videos
- **Instagram** – for photos and informational graphics

The USCIS Office of Public Affairs (OPA) manages all USCIS social media accounts, working with various USCIS leadership and other offices to develop content. USCIS’ posts are visible to anyone with internet access.

USCIS generally uses social media to make information and services widely available to the general public, to promote transparency and accountability, and to help those seeking information or services from USCIS. USCIS posts information only after it has been appropriately approved and vetted by OPA. Only USCIS employees acting in their official capacity are authorized to post to USCIS social media sites.

Comments on USCIS’ social media channels are visible to the public. To protect their privacy, commenters should not include full names, phone numbers, email addresses, Social Security numbers, case numbers, or any other private information in comments.

USCIS does not moderate user comments on its channels before posting, but reserves the right to remove any materials that pose a security risk or otherwise violate the USCIS social media policy. Any opinions expressed in comments, except as specifically noted, are those of the individual commenters and do not reflect any agency policy, endorsement, or action. USCIS does not collect or retain comments in its records.

Use of each social media site is governed by that site’s privacy policy.[3]
Chapter 3 - Forms of Assistance

A. In-Person

1. Local Field Office

Persons with case-specific inquiries who have tried using the online tools and have not been able to attain the information they are looking for may call the USCIS Contact Center at 1-800-375-5283 (TTY: 1-800-767-1833). In-person appointments at Field Offices are reserved for critical services that require a person’s physical presence in the office to resolve the issue.

2. Community Outreach

USCIS engages in community outreach programs to educate and increase public awareness, increase dialogue and visibility, and solicit feedback on USCIS operations. During outreach events in local communities, USCIS employees do not respond to case-specific inquiries. Anyone asking case-specific questions at outreach events should be directed to submit their inquiry through appropriate channels.

The topics of community outreach programs are varied. Information on past and future outreach events can be found on the USCIS website. The website provides a list of future engagements and instructions on how to register to attend. Many events also have call-in numbers for those unable to attend in person. The website also contains notes and supporting documents from previous engagements.

B. Online

1. USCIS Online Account

USCIS online accounts allow applicants, petitioners, and representatives to access personalized, real-time information related to their individual case 24 hours a day through any internet-connected device. Persons can also communicate directly with the USCIS Contact Center through the secure messaging function to receive email responses to their case-specific inquiries. This is the easiest and most comprehensive way to communicate with USCIS regarding case-specific issues.

2. Online Messages

Benefit requestors can send messages and inquiries directly to the USCIS Contact Center, without an online account, and receive an email or phone response within 24 to 48 hours. Since these messages are outside of USCIS’ secure online account experience, Contact Center staff are limited from sharing case-specific
information to ensure the privacy of benefit requestors. The USCIS online account is the preferred method of contacting the agency for easy, timely, and effective responses to case-specific inquiries.

3. Emma and Live Web Chat

Emma is the USCIS Virtual Assistant. Emma can provide immediate responses to non-case-specific questions about immigration services and benefits, guide users through our comprehensive website, and connect benefit requestors and other interested parties to a live agent through web chat for more in-depth topics and questions.

4. Email

USCIS offices may provide designated email boxes for case-specific inquiries about a pending or adjudicated petition or application. Before submitting an inquiry, the person inquiring should review all available information listed on the USCIS Contact US web page to ensure that the inquiry is properly routed.

USCIS officers should use caution when responding to email inquiries requesting case-specific information, as issues of privacy and identity may arise.[1]

C. Telephone

1. USCIS Contact Center

For the convenience of benefit requestors and other interested parties located within the United States, USCIS provides a toll-free phone number answered by the USCIS Contact Center available 24 hours a day, 7 days a week. Automated information accessed through a menu of interactive options is always available. For information on when live help through a USCIS representative is available, see the USCIS Contact Center web page.

The toll-free phone number for the USCIS Contact Center is 1-800-375-5283 (TTY for the deaf, hard of hearing, or person with a speech disability: 1-800-767-1833).

Multi-Tiered Structure

The USCIS Contact Center provides escalating levels of service to handle inquiries of increasing complexity, primarily through an Interactive Voice Response (IVR) system and a multi-tiered level of live assistance.

IVR – Callers initially have the opportunity to have their questions answered directly by the IVR system. If additional assistance is needed, callers may request live assistance by selecting that option from within the IVR.

Tier 1 – Tier 1 is the first level of live assistance. Tier 1 staff members, who are contract employees, provide basic case-specific and general non-case-specific information. These responses follow a formatted script.

Tier 2 – If Tier 1 is unable to completely resolve an inquiry, the call may be transferred to the Tier 2 level of live assistance to be answered by a USCIS officer.

Callers may, at any time, request to have a call directed to a supervisor.

If an inquiry involves a case physically located at a domestic USCIS field office or service center, the USCIS Contact Center may create a service request. The service request is automatically routed to the USCIS office.
that can best resolve the inquiry. If an inquiry involves a case physically located at an international USCIS field office, the USCIS Contact Center may provide the caller with that office’s contact information and refer the inquiry, as appropriate.

2. International Service

Persons located outside of the United States should contact the international office with jurisdiction over their place of residence. USCIS provides a complete listing of international jurisdictions and field offices and their phone numbers on the International Immigration Offices page of the USCIS website.

3. Military Help Line

USCIS provides a toll-free military help line exclusively for members of the military and their families. For information on when USCIS military help line staff are available to answer calls, see the Military Help Line web page. After-hours callers will receive an email address they can use to contact USCIS for assistance.

The toll-free phone number for the military help line is 1-877-CIS-4MIL (1-877-247-4645) (TTY: for the deaf, hard of hearing, or person with a speech disability: 1-800-767-1833).

4. Premium Processing Line

USCIS provides a toll-free phone number exclusively for inquiries about petitions filed under the Premium Processing program. The toll-free phone number for the Premium Processing Line is 1-866-315-5718.

5. Intercountry Adoptions Line

USCIS provides a toll-free phone number exclusively for inquiries about domestically filed applications and petitions under the Orphan and Hague intercountry adoption programs. The toll-free phone number for the Intercountry Adoptions Line is 1-877-424-8374.

D. Traditional Mail or Facsimile

1. Traditional Mail

General mailing addresses are publicly available to allow the submission of applications and petitions, responses to requests for evidence, or service requests in a hard copy format. Dedicated mailing addresses are available, as appropriate, to aid specific USCIS processes.

Mailing addresses are available at the Find a USCIS Office page on the USCIS website.

2. Facsimile (Fax)

USCIS does not provide general delivery facsimile (fax) numbers. While USCIS does not publish dedicated fax numbers, USCIS offices have the discretion to provide a fax number when appropriate. For example, an officer may provide a fax number for the purpose of submitting documentation electronically to aid in the efficient resolution of a case or as a method to expedite delivery of requested documents or information. Documents should not be submitted by fax unless specifically requested by a USCIS employee.
Footnotes

[^1] See Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].


[^3] See the USCIS website for additional adoption-related contact information and more details about Orphan or Hague Process.

[^4] A service request is a tool that allows stakeholders to place an inquiry with USCIS for certain applications, petitions, and services. Service requests may also be submitted through the USCIS Contact Center or online. See Chapter 4, Service Request Management Tool [1 USCIS-PM A.4].

Chapter 4 - Service Request Management Tool

A. Generating Service Requests

1. USCIS-Generated

The Service Request Management Tool (SRMT) provides USCIS staff the ability to record and transfer unresolved service requests by benefit requestors and other interested parties to the appropriate USCIS service center, domestic USCIS field office, or USCIS asylum office where the application or petition is pending a decision or was adjudicated.

If an inquiry received through a call to the USCIS Contact Center cannot be resolved during the call, and the inquiry warrants creation of a service request, USCIS Contact Center staff will create a service request. Although the majority of service requests are created by staff at the USCIS Contact Center, officers in other locations may also create service requests. Using the SRMT to create a service request allows the person inquiring to receive a response without having to call the USCIS Contact Center again or return to a USCIS office in most instances.

2. Self-Generated

By using an online portal, a person may create a service request in the following categories:

- Change of address (COA) request (unless filing as a Violence Against Women Act (VAWA), T nonimmigrant, or U nonimmigrant applicant or petitioner);[^1]

- Request regarding a notice, card, or other document that was not received;

- Request regarding a case outside normal processing time;

- Request for accommodations;[^2] or

- Request for correction of a typographic error.

Benefit requestors may also submit a service request by mailing in a hard copy to a domestic USCIS field...
office.\[^3\]\n
\section*{B. Responding to Service Requests}

\subsection*{1. Timely Response}

The USCIS office receiving a service request should take the necessary steps to communicate directly with the benefit requestor about the inquiry or timely relocate the inquiry to another office or organization when appropriate.

USCIS categorizes a service request based upon the urgency and request type, and assigns a target completion date based on the category. USCIS completes requests within each category on a first-in, first-out basis. In general, the goal for resolution of service requests is 15 calendar days from the date of creation.

\subsection*{2. Prioritized Requests}

The following requests receive processing priority and should be responded to within 7 calendar days from the date of creation:

\textit{Change of Address}

USCIS must process change of address (COA) requests at the earliest opportunity to reduce the potential for undeliverable mail and associated concerns. The address recorded on all open associated application or petition receipts must be updated unless instructed otherwise by the person. Address changes are only limited to select identified receipts when the person explicitly requests the COA request be restricted.

When the address listed for the applicant in any request is different from the address listed in USCIS information systems, it is considered to be an address change request, regardless of whether the request was specifically for a COA or for another reason. The address in the request is then used to change address records on all directly related receipts.

However, no COA request is inferred if the service request was initiated by a representative and the address listed in the request is the representative’s address. Also, in these situations, a copy of the response should be mailed to the petitioner or applicant at his or her address of record.

USCIS does not accept COA requests on a VAWA, T nonimmigrant, or U nonimmigrant-related application or petition that are received through an SRMT. A hard-copy, signed COA request submitted through traditional mail is required. Offices should respond to VAWA, T nonimmigrant, and U nonimmigrant COA requests using the standard language.[^4]

\textit{Expedite Requests[^5]}

Expedite service requests are self-identified as urgent. The person requesting expedited service may be required to submit evidence to the office processing their case to support the expedite request.

\textit{Reasonable Accommodation[^6]}

Reasonable accommodation service requests must be responded to in accordance with the disability accommodations policy.

\textit{Military Referral}
Military referrals have implied urgency based upon the uncertainty of reassignments and deployments.

Footnotes

[^1] For information on COA in VAWA, T, U, see Chapter 7, Privacy and Confidentiality, Section E, VAWA, T, and U Cases [1 USCIS-PM A.7(E)].


[^3] See Chapter 3, Forms of Assistance, Section D, Traditional Mail or Facsimile [1 USCIS-PM A.3(D)].


[^5] Expedite requests are distinct from premium processing. For information on expedite requests and premium processing, see Chapter 5, Requests to Expedite Applications or Petitions [1 USCIS-PM A.5].


Chapter 5 - Requests to Expedite Applications or Petitions

Benefit requestors may request USCIS to expedite the adjudication of their applications or petitions. USCIS considers all expedite requests on a case-by-case basis and generally requires documentation to support such requests. The decision to grant or deny an expedite request is within the sole discretion of USCIS.

Expedite Criteria

USCIS does not consider expedite requests for petitions and applications that have Premium Processing Service available.

USCIS may consider expediting a benefit request if it meets one or more of the following criteria:

- Severe financial loss to a company[^1] or person[^2] provided that the need for urgent action is not the result of the petitioner’s or applicant’s failure: (1) to file the benefit request or the request to expedite in a reasonable time frame; or (2) to respond to any requests for additional evidence in a reasonably timely manner;

- Urgent humanitarian reasons;

- Compelling U.S. Government interests (such as urgent cases for the Department of Defense or DHS, or other public safety or national security interests); or

- Clear USCIS error.

Not every circumstance that fits under one of these categories will result in expedited treatment.

To increase efficiency in the review and processing of expedite requests, USCIS is not required to provide justification and is not required to respond regarding decisions on expedite requests.

This policy applies to all expedite requests filed on or after May 10, 2019, the effective date of this policy. USCIS reviews expedite requests filed before May 10, 2019 under the prior policy in effect.

AILA Doc. No. 19060633. (Posted 3/26/21)
For more information on how to make an expedite request, see the How to Make an Expedite Request web page.

Footnotes

[^1] Severe financial loss to a company means the company would be at risk of failing.


Chapter 6 - Disability Accommodation Requests

A. Background

USCIS accepts requests for accommodations from benefit requestors, other interested parties, and other persons with disabilities who use USCIS services and access USCIS facilities. Accommodation requests may be made in advance for instances that include, but are not limited to:

- An interview with an officer;
- an oath ceremony; or
- A USCIS-sponsored public event.

Accommodations ensure compliance with Section 504 of the Rehabilitation Act of 1973,[1] which states that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency.”[2]

B. Reasonable Accommodation

The essential feature of an accommodation is that it allows the person with a disability to participate in the process or activity. While USCIS is not required to make major modifications that would result in a fundamental change to the processes or cause an undue burden for the agency, USCIS makes every effort to provide accommodations to persons with disabilities. Reasonable accommodations vary, depending on the situation and the person’s disability.

Benefit requestors must satisfy all of the legal requirements to receive an immigration benefit; however, USCIS must provide reasonable accommodations to persons with disabilities to afford them the opportunity to meet those requirements.

Examples of accommodations include, but are not limited to:

- Those unable to use their hands may be permitted to take a test orally rather than in writing;
- Those who are deaf or hard of hearing may be provided with a sign language interpreter for a USCIS-sponsored event;[3]
• Those unable to speak may be allowed to respond to questions in an agreed-upon nonverbal manner;[4]

• Those unable to travel to a designated USCIS location for an interview due to a disabling condition may be interviewed at their home or a medical facility.

C. Requesting Accommodation

1. How to Make a Disability Accommodation Request

To request disability accommodation for any phase of the application process, benefit requestors, other interested parties, and other persons with disabilities who use USCIS services and access USCIS facilities, should generally submit the request online using the Disability Accommodations for Appointments tool.[5] Requestors should submit accommodation requests to USCIS as soon as they are aware of the need for an accommodation for a particular event. The more advance notice USCIS has, the more likely it will be able to make arrangements for the accommodation request.[6]

2. USCIS Points-of-Contact

To ensure accountability, each field office, application support center (ASC), or asylum office must designate at least one employee to be responsible for handling accommodation requests. All employees should be aware of the procedures for handling such requests.

If a requestor contacts the field office, ASC, or asylum office directly to request a disability accommodation for an interview, the office may enter a service request into the Service Request Management Tool (SRMT) to work with the requestor to respond to the request, and mark the request as fulfilled when it is complete so that the request and the response are recorded.

Offices are encouraged to provide reasonable accommodation requests made by walk-ins whenever practical. If the accommodation is not available, the office should inform the requestor that the office is not able to provide the accommodation at that time, but that arrangements can be made to provide the accommodation for a future appointment or event.

3. USCIS Review

USCIS evaluates each request for a reasonable accommodation on a case-by-case basis. The Public Disability Access Coordinator must generally concur on any alternative accommodation offered or any accommodation denial before the office communicates either action to the requestor.

While a requestor is not required to include documentation of a medical condition in support of a reasonable accommodation request, an office may need documentation to evaluate the request in rare cases. In these situations, the office must consult the Public Disability Access Coordinator for guidance before the USCIS office requests medical documentation to support an accommodation request.

4. Review Timeframe

In general, the affected USCIS office determines whether it may reasonably comply with the accommodation request within 7 calendar days of receiving the request, unless unusual circumstances exist.

If an accommodation is warranted, it should be provided on the date and time of the scheduled event; rescheduling should be avoided, if possible. If an accommodation cannot be provided for the originally
scheduled event, the requestor should be notified as soon as possible. Any rescheduling should occur within a reasonable period of time.

5. Reconsideration of Denied Request

To request a reconsideration of a denial of a disability accommodation request, the requestor should call the USCIS Contact Center and provide any new information they have in support of their request. Upon receiving the request, the relevant office must review the prior request and any additional information provided. The office should contact the requestor if additional information is needed.

Generally, all affirmed denials must be approved by the Public Disability Access Coordinator, the field office director, ASC manager, or asylum office director, whichever applies.

Footnotes


[^3] This applies to any member of the public who wants to attend the event, such as a naturalization ceremony or an outreach engagement.

[^4] Offices should understand that, while the inability to speak is considered a disability under the Rehabilitation Act, the inability to speak the English language (while being able to speak a foreign language) is not considered a disability under the Act. Therefore, no accommodation is required and one should not be provided if a requestor is unable to speak English. No request for an interpreter should be approved unless the requestor is otherwise eligible. See, for example, 8 CFR 312.4.

[^5] Certain categories of applicants, such as asylum and NACARA 203 applicants, cannot submit their request online. These applicants should call the USCIS Contact Center at 1-800-375-5283 (TTY: 1-800-767-1833). For additional instructions on how to submit a disability accommodation request, see the Requesting Accommodations for Disabilities web page.

[^6] For more information on service requests, see Chapter 4, Service Request Management Tool [1 USCIS-PM A.4]. For information on handling disability accommodations related to asylum cases, see Chapter 7, Privacy and Confidentiality, Section F, Asylees and Refugees, Subsection 3, USCIS Assistance [1 USCIS-PM A.7(F)].

Chapter 7 - Privacy and Confidentiality

A. Privacy Act of 1974

The Privacy Act provides that federal agencies must protect against the unauthorized disclosure of personally identifiable information (PII) that it collects, disseminates, uses, or maintains.[1] The Privacy Act requires that personal information belonging to U.S. citizens and lawful permanent residents (LPRs) be protected from
unauthorized disclosure. Violations of these requirements may result in civil and criminal penalties.

B. Fair Information Practice Principles

DHS treats all persons, regardless of immigration status, consistent with the Fair Information Practice Principles (FIPPs). The FIPPs are a set of eight principles that are rooted in the tenets of the Privacy Act of 1974. The principles are:

- Transparency;
- Individual participation;
- Purpose specification;
- Data minimization;
- Use limitation;
- Data quality and integrity;
- Security; and
- Accountability and auditing.

The table below provides a description of each principle.

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparency</td>
<td>DHS provides transparency for how it handles sensitive information through various mechanisms, including Privacy Impact Assessments, System of Records Notices, Privacy Act Statements, and the Freedom of Information Act (FOIA).</td>
</tr>
<tr>
<td>Individual Participation</td>
<td>To the extent practicable, DHS should involve persons in the process of using their personal information, and they may always request information about themselves through a FOIA request.</td>
</tr>
<tr>
<td>Purpose Specification</td>
<td>DHS’ default action should be to not collect information, and if it is otherwise necessary, DHS should articulate the authorities that permit collection and must clearly state the purposes of the information collection.</td>
</tr>
</tbody>
</table>
**C. Personally Identifiable Information**

DHS defines PII as any information that permits the identity of a person to be directly or indirectly inferred, including any information which is linked or linkable to that person regardless of whether the person is a U.S. citizen, lawful permanent resident (LPR), visitor to the United States, or a DHS employee or contractor.[3]

Sensitive PII is defined as information which, if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to a person.[4] Some examples of PII that USCIS personnel may encounter include:

- Name;
- Address;
- Date of birth; and
- Certificate of Naturalization or Citizenship number.

- Alien number (A-number);
- Social Security number;
- Driver’s license or state ID number;
- Passport number; and
• Biometric identifiers.

USCIS employees have a professional and legal responsibility to protect the PII the agency collects, disseminates, uses, or maintains. All USCIS employees must follow proper procedures when handling all PII and all information encountered in the course of their work. All USCIS employees processing PII must know and follow the policies and procedures for collecting, storing, handling, and sharing PII. Specifically, USCIS employees must:

• Collect PII only when authorized;
• Limit the access and use of PII;
• Secure PII when not in use;
• Share PII, only as authorized, with persons who have a need to know; and
• Complete and remain current with all privacy, computer security, and special protected class training mandates.

D. Case-Specific Inquiries

USCIS receives a variety of case-specific inquiries, including requests for case status updates, accommodations at interviews, appointment rescheduling, and the resolution of other administrative issues. USCIS personnel are permitted to respond to these inquiries if:

• The requestor is entitled to receive the requested case-specific information; and
• Disclosure of the requested case-specific information would not violate Privacy Act requirements or other special protected class confidentiality protections.

1. Verifying Identity of Requestor

USCIS employees must verify the identity of a person inquiring about a specific application or petition. For in-person inquiries, those present must provide a government-issued identity document so that USCIS can verify their identity.

For inquiries not received in person (for example, those received through telephone call or email), it may be difficult to verify the identity of the person making the request through a government-issued document. In these cases, USCIS employees should ask for specific identifying information about the case to ensure that it is appropriate to communicate case-specific information. Examples of identifying information include, but are not limited to: receipt numbers, A-numbers, full names, dates of birth, email addresses, and physical addresses.

If a person is unable to provide identifying information that an applicant, petitioner, or representative should reasonably know, USCIS employees may refuse to respond to the request, or direct the requestor to make an appointment at a local field office or create a myUSCIS account.

2. Disclosure of Information

Except for case types with heightened privacy concerns,[5] USCIS employees may communicate about administrative case matters if the requestor is able to demonstrate his or her identity (for example, by
showing government-issued identification during an in-person encounter), or provide verifying information sufficient to demonstrate that communication would be proper. Administrative case matters are generally any issues that do not involve the legal substance or merit of an application or petition.

USCIS employees should not disclose PII when responding to case-specific requests; inquiries can generally be resolved without any discussion of PII. To ensure that a USCIS employee is not disclosing PII, the USCIS employee can always require that the requestor first provide and confirm any PII at issue. In addition, a USCIS employee may take action that results in the resending of cards, notices, or documents containing PII to addresses on file instead of directly disclosing PII to a requestor.

Interested parties may be present at in-person appointments or during telephone calls, with the consent of the applicant or petitioner. Consent is usually implied if both the applicant or petitioner and the third party are present together. However, a USCIS employee may always ask the applicant or petitioner if he or she consents to the third-party’s presence if there is any doubt.

3. Communication with Address on File

USCIS sends written responses and duplicate notices to the addresses on file. Before USCIS is able to send any correspondence to a different address, the person must initiate a service request to update his or her address in USCIS systems. Change of address requests associated with cases subject to confidentiality provisions must follow separate procedures.

4. Third-Party Information

Information from other agencies, such as Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), or the Department of State (DOS) may be located in USCIS files and systems. This information must not be released in response to an inquiry, although it may be appropriate to refer the inquiry to another agency.

5. Third-Party Government Inquiries

USCIS may share records covered under the Privacy Act with written consent from the person or pursuant to a routine use listed in the applicable System of Records Notices. Before sharing information with a government entity, USCIS must determine if the disclosure and use of information is compatible with an existing routine use. Planned uses must also be compatible with the purpose for which DHS originally collected the information. There are, however, enumerated exceptions of the Act that may apply.

Congress

One exception is for disclosures to either house of Congress, or any Congressional committee, subcommittee, joint committee, or subcommittee of a joint committee, if the matter is within its jurisdiction. For all other requests from members of Congress, such as constituent requests, the person whose information is to be released must have provided the member of Congress with a privacy release for USCIS to disclose any information related to that person.

The USCIS Office of Legislative and Intergovernmental Affairs (OLIA)) and designated liaisons handle all inquiries and certain correspondence from Congress to USCIS. Members of Congress, congressional offices, and congressional committees should always go through OLIA when initiating an inquiry. The USCIS and Congress webpage on USCIS’ website provides instructions on how members of Congress should interact with and contact USCIS. Non-liaison USCIS employees who are contacted directly with a congressional inquiry should refer it to OLIA so that it may proceed through the proper channels.

AILA Doc. No. 19060633. (Posted 3/26/21)
Law Enforcement Agencies

Information may be shared with other DHS components under the existing DHS information sharing policy,[9] which considers all DHS components one agency, as long as there is a mission need in line with the requestor’s official duties.

Requests from law enforcement agencies outside of DHS must go through DHS Single Point of Service (SPS) Request for Information (RFI) Management Tool, which requires an account. Account requests can be submitted to DHS-SPS-RFI@hq.dhs.gov.

Before referring any relevant RFI to USCIS, SPS ensures any RFI is consistent with the USCIS mission, has been reviewed and cleared by DHS Counsel and Privacy (as required), and is provided a tracking number. SPS then submits the RFI to Fraud Detection and National Security (FDNS) Intelligence Division (ID). FDNS ID logs official RFIs and takes the necessary steps to process and answer them, including review by USCIS Office of Chief Counsel and Office of Privacy.

Federal Investigators

If an Office of Personnel Management or DHS Office of Inspector General (OIG) investigator requests information, the USCIS employee should provide the information upon verifying the requestor’s identity. Disclosure of any information needs to meet a routine use or be covered by a data share agreement. USCIS employees and contractors must provide prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing, and supervisors may not impede this cooperation.

Other Third-Party Inquiries

Prior to responding to a non-congressional third-party case inquiry, a written, signed, and notarized privacy release must be obtained from the applicant or petitioner. Third parties should submit a written authorization and identify the information the person desires to be disclosed. USCIS staff can accept the authorization via facsimile or email as long as the signature on the original is handwritten, and not typed or stamped.[10] The USCIS Office of Privacy will conduct an analysis for disclosure requests for PII on persons not covered by the Privacy Act or the Judicial Redress Act, absent another mechanism that confers a right or process by which a member of the public may access agency records.

E. VAWA, T, and U Cases


Applicants and recipients of immigration relief under the Violence Against Women Act of 1994 (VAWA)[11] and the Victims of Trafficking and Violence Prevention Act of 2000[12] (T and U nonimmigrant status for victims of trafficking and other serious crimes) are entitled to special protections with regard to privacy and confidentiality. The governing statute prohibits the unauthorized disclosure of information about petitioners and applicants for, and beneficiaries of VAWA, T, and U-related benefit requests to anyone other than an officer or employee of DHS, the Department of Justice (DOJ), or the Department of State (DOS) who has a need to know.[13]

This confidentiality provision is commonly referred to as “Section 384” because it originally became law under Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996,[14] which protects the confidentiality of victims of domestic violence, trafficking, and other crimes.
who have filed for or have been granted immigration relief.

An unauthorized disclosure of information which relates to a protected person can have significant consequences. USCIS employees must maintain confidentiality in these cases. Victims of domestic violence, victims of trafficking, and victims of crimes can be put at risk, as can their family members, if information is provided to a person who is not authorized.

Anyone who willfully uses, publishes, or permits any information pertaining to such victims to be disclosed in violation of the above-referenced confidentiality provisions may face disciplinary action and be subject to a civil penalty of up to $5,000 for each violation.

2. Scope of Confidentiality

Duration of Confidentiality Requirement

By law, the confidentiality provisions apply while a VAWA, T, or U case is pending and after it is approved, and ends when the application for immigration relief is denied and all opportunities for appeal of the denial have been exhausted.

Disclosure of Information

USCIS cannot release any information relating to a protected person until the identity of the requestor of information is verified and that person's authorization to know or receive the protected information is verified. Such identity and eligibility verification must be done before responding to any inquiry, expedite request, referral, or other correspondence. Upon identity verification, USCIS can provide protected information directly to the protected person or his or her representative authorized to receive 1367-protected information.

Exceptions for Disclosure of Information

USCIS is permitted to disclose information relating to a protected person in certain, limited circumstances. These circumstances include:

- Statistical Information – Disclosure of data and statistical information may be made in the manner and circumstances permitted by law.[15]
- Legitimate Law Enforcement Purposes – Disclosure of information may be made to law enforcement officials to be used solely for a legitimate law enforcement purpose.
- Judicial Review – Information can be disclosed in connection with judicial review of a determination provided it is in a manner that protects the confidentiality of the information.
- Applicant Waives Confidentiality – Adults can voluntarily waive the confidentiality provision; if there are multiple victims in one case, they must all waive the restrictions.
- Public Benefits – Information may be disclosed to federal, state, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits.[16]
- Congressional Oversight Authority (for example, Government Accountability Office audits) – The Attorney General and the Secretary of Homeland Security can disclose information on closed cases to the chairmen and ranking members of Congressional Committees on the Judiciary, for the exercise of Congressional oversight authority. The disclosure must be in a manner that protects the confidentiality
of the information and omits PII (including location-related information about a specific person).

- Communication with Non-Governmental Organizations (NGO) – Government entities adjudicating applications for relief[17] and government personnel carrying out mandated duties under the Immigration and Nationality Act (INA)[18] may, with the prior written consent of the alien involved, communicate with nonprofit NGO victims’ service providers for the sole purpose of assisting victims in obtaining victim services. Agencies receiving referrals are bound by the confidentiality provisions.

- National Security Purposes – The Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in their discretion the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

- To sworn officers or employees of the Department of State or Department of Justice, for legitimate Department, bureau, or agency purposes.

3. USCIS Assistance

USCIS employees must ensure confidentiality is maintained when an applicant, petitioner, or beneficiary of certain victim-based benefits requests assistance.

Change of Address

Applicants with VAWA, T, or U-related cases can request a change of address by submitting an Alien’s Change of Address Card (Form AR-11) with an original signature to the Vermont Service Center (VSC) by mail.

If the requestor previously filed for a waiver of the I-751 joint filing requirement because of abuse, the requestor should file a Form AR-11 with an original signature with the USCIS office assigned to work the Form I-751. The requestor can find the appropriate USCIS office by referring to the receipt number issued in response to the Form I-751 filing.[19]

An applicant may also appear in person at a USCIS field office to request a change of address, by calling the USCIS Contact Center at 1-800-375-5283 (TTY: 1-800-767-1833) to request an in-person appointment. The applicant’s identity must be verified before making the requested change. If the case is at the VSC or the Nebraska Service Center (NSC), the field office must also notify the VSC or NSC of the change of address for VAWA, T, and U cases.

Telephonic Inquiries

The identity of the person inquiring about a confidential case must be verified and that person’s eligibility to receive information must also be verified. Such verification cannot be made telephonically.

F. Asylees and Refugees


Federal regulations generally prohibit the disclosure to third parties of information contained in or pertaining to asylum applications, credible fear determinations, and reasonable fear determinations.[20] This includes information contained in the legacy Refugee Asylum and Parole System (RAPS) or the legacy Asylum Pre-Screening System (APSS), and Global System (the 2018 replacement for RAPS/APSS) or related
information as displayed in CIS2 and PCQS, except under certain limited circumstances. As a matter of policy, the confidentiality protections in these regulations are extended to Registration for Classification as Refugee (Form I-590), Refugee/Asylee Relative Petitions (Form I-730), and Applications for Suspension of Deportation or Special Rule Cancellation pursuant to NACARA (Form I-881).

These regulations safeguard information that, if disclosed publicly, could subject the claimant to retaliatory measures by government authorities or non-state actors in the event the claimant is repatriated. Such disclosure could also endanger the security of the claimant’s family members who may still be residing in the country of origin.

Moreover, public disclosure might give rise to a plausible protection claim by the claimant where one would not otherwise exist. This is because such disclosure may bring an otherwise ineligible claimant to the attention of the government authority or non-state actor against which the claimant has made allegations of mistreatment.

2. Breach of Confidentiality

Confidentiality is breached when the unauthorized disclosure of information contained in or pertaining to, these protected classes allows the third party to link the identity of the applicant to:

- The fact that the applicant or petitioner has applied for asylum or refugee status;
- Specific facts or allegations pertaining to the individual asylum or refugee claim contained in an asylum or refugee application; or
- Facts or allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum or refugee status.

The same principles generally govern the disclosure of information related to credible fear and reasonable fear determinations, and applications for withholding or deferral of removal under Article 3 of the Convention Against Torture, which are encompassed within the Application for Asylum and for Withholding of Removal (Form I-589). As a matter of policy, USCIS extends the regulatory safeguards to include claims under the Safe Third Country Agreement, applications for suspension of deportation, special rule cancellation of removal under NACARA 203, refugee case information, as well as refugee and asylee relative information.

Disclosures may only be made to U.S. government officials or employees and U.S. federal or state courts where there is a demonstrated need-to-know related to certain administrative, law enforcement, and civil actions. Any other disclosure requires the written consent of the claimant or the express permission of the Secretary of DHS.

3. USCIS Assistance

USCIS employees must not disclose information contained in, or pertaining to, any asylum or refugee application or claim to any third party without the written consent of the applicant, except as permitted by regulation or at the discretion of the Secretary of DHS.[21]

This includes neither confirming nor denying that a particular person filed a protection claim by submitting any of the following:

- An Application for Asylum and for Withholding of Removal (Form I-589);
• A Registration for Classification as Refugee (Form I-590);
• A Refugee/Asylee Relative Petition (From I-730);
• A Request for a Safe Third Country Agreement Determination;
• A Request for a Credible Fear Determination;
• A Request for a Reasonable Fear Determination; and
• An Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA) (Form I-881)).

USCIS employees should respond to inquiries related to Form I-589, Form I-881, requests for information pertaining to the Safe Third Country Agreement, credible fear and reasonable fear processes, Form I-590, and Form I-730 in different ways, depending on the inquiry:

Request for Disability Accommodation at an Upcoming Form I-589 Interview

Tier 2 staff members may use the Service Request Management Tool (SRMT) to record and transfer requests to the asylum office with jurisdiction over the pending application. The asylum office then contacts the applicant to arrange for disability accommodation at the interview. While officers must not confirm or deny the existence of a pending protection claim or NACARA 203 application, those making disability accommodation requests for upcoming asylum interviews should be told that the request is being recorded and will be forwarded to the appropriate office for follow-up.

Change of Address Request

Tier 2 staff members may create a service request and submit it to the asylum office or service center with jurisdiction over the pending Form I-589, Form I-881, or Form I-730 petition. The office then fulfills the service request. While staff members must not confirm or deny the existence of a pending protection claim, those making address change requests should be told that the request is being recorded and will be forwarded to the appropriate office.

USCIS Contact Center Status Inquiries for Form I-589, Form I-881, and Form I-730

USCIS Contact Center personnel may not respond to any status inquiries, and may not confirm or deny the existence of an application or petition. Instead, USCIS Contact Center personnel should direct the caller to the Case Status Online tool. If the caller needs further assistance than the Case Status Online tool can provide, USCIS Contact Center personnel should direct the caller to the local office with jurisdiction over the application. For information on office-specific in-person appointment requirement, see the Asylum Office Locator tool. The office with jurisdiction over the application must respond to the inquiry.

USCIS Contact Center Status Inquiries for Form I-590 Applications

USCIS Contact Center personnel may not respond to any status inquiries and may not confirm or deny the existence of an application or petition. Instead, USCIS Contact Center personnel should obtain all relevant information from the inquirer and refer the inquiry to the USCIS Headquarters Refugee Affairs Division (RAD) for response.

Inquiries Regarding Subsequent Applications or Petitions Based on Underlying Form I-589, Form I-590, or Form I-730
Staff members may respond to inquiries regarding subsequent applications or petitions that are based on an underlying Form I-589, Form I-590, or Form I-730 (including Application for Travel Document (Form I-131), Application for Employment Authorization (Form I-765), or Application to Register Permanent Residence or Adjust Status (Form I-485)). Staff members may not confirm or deny the existence of the underlying application.

**General Inquiries**

USCIS employees may respond to general questions about the asylum program, the U.S. Refugee Admission Program (USRAP), and credible and reasonable fear screenings.[22] However, for all specific case status questions relating to I-589 applications or I-730 petitions, the inquirers must be directed to contact the local asylum office or service center with jurisdiction over the application. For specific case status questions relating to I-590 refugee applications, the inquiry must be referred to RAD for response.

Asylum offices may accept case inquiries from the applicant or the applicant’s attorney or representative with a properly completed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) on file.

Asylum offices may receive case inquiries in a variety of ways, such as by mail, email, phone, fax, or in person. When it is possible to verify the identity of the applicant or attorney or representative inquiring, offices may respond using any of those communication channels. If it is not possible to verify the identity of the inquirer, asylum offices should respond to inquiries by providing a written response to the last address the applicant provided.

RAD does not respond to inquiries over the phone, but instead asks the inquirer to put his or her request in writing so that the signature and return address can be compared to information on file. RAD responds to an inquiry received by email only if the email address matches the information the applicant submitted to the Resettlement Support Center or if the principal applicant provides written consent that includes the principal applicant’s signature.

**G. Temporary Protected Status**

**1. Confidentiality Provisions**

Like refugee and asylum cases, information pertaining to Temporary Protected Status (TPS) cases may not be disclosed to certain third parties because unauthorized disclosure of information may place the applicant or the applicant’s family at risk.[23]

The law prohibits the release of information contained in the TPS application or in supporting documentation to third parties without the written consent of the applicant. A third party is defined as anyone other than:

- The TPS applicant;

- The TPS applicant’s attorney or authorized representative (with a properly completed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) on file);

- A DOJ officer, which has also been extended to include a DHS officer following the transfer of certain immigration functions from DOJ to DHS; or

- Any federal or state law enforcement agency.
2. USCIS Assistance

USCIS may not release any information contained in any TPS application and supporting documents in any form to any third party, without a court order or the written consent of the applicant. Status inquiries may not confirm or deny the existence of a TPS application, or whether a person has TPS, until the identity of the inquirer has been confirmed and it has been determined the inquirer is not a third party to whom information may not be released.

USCIS employees must adhere to these same TPS confidentiality provisions regarding the disclosure of information to third parties, even if the information is contained in a TPS-related form such as:

- The Application for Employment Authorization (Form I-765), which every TPS applicant must file;
- A TPS-related waiver requested on Application for Waiver of Grounds of Inadmissibility (Form I-601); or
- A TPS-related Application for Travel Document (Form I-131).

With respect to confidentiality, USCIS employees must treat these records as they do other TPS supporting documentation in the TPS application package.

USCIS employees may respond to general questions about the TPS program. However, for all case-specific questions relating to Form I-821 applications, USCIS employees must first confirm the identity of the person and his or her eligibility to receive such information.

Offices must not take or respond to inquiries about the status of a TPS application made by telephone, fax, or email because it is not possible to sufficiently verify the identity of the inquirer. Offices may accept written status requests signed by the applicant (or the applicant’s attorney or representative with a properly completed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) on file).

3. Exceptions for Disclosure

Information about TPS applications and information contained in supporting documentation can be disclosed to third parties in two instances:

- When it is mandated by a court order; or
- With the written consent of the applicant.

Information about TPS cases can be disclosed to officers of DOJ, DHS, or any federal or state law enforcement agency since they are not considered third parties. Information disclosed under the requirements of the TPS confidentiality regulation may be used for immigration enforcement or in any criminal proceeding.

H. Legalization


Statutory and regulatory provisions require confidentiality in legalization cases and Legal Immigration Family Equity (LIFE) Act legalization cases, prohibiting the publishing of any information that may be identified with a legalization applicant. The laws also do not permit anyone other than sworn officers and
employees of DHS and DOJ to examine individual applications.

Information contained in the legalization application can only be used in the following circumstances:

- To make a determination on the legalization application;
- For criminal prosecution of false statements violations;[28] or
- In preparation of certain reports to Congress.

A breach in confidentiality of legalization cases can result in a $10,000 fine.[29]

2. USCIS Assistance

Case-specific information may be provided to the applicant and the applicant’s attorney or authorized representative (with a properly completed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) on file) after the inquirer’s identity has been verified. No others are authorized to receive legalization information unless one of the enumerated exceptions to disclosure noted below applies.

3. Exceptions for Disclosure

USCIS is permitted to disclose information pertaining to legalization cases in certain, limited circumstances. These circumstances include:

Law Enforcement Purposes

USCIS is required to disclose information to a law enforcement entity in connection with a criminal investigation or prosecution, when that information is requested in writing.

Requested by an Official Coroner

USCIS is also required to disclose information to an official coroner for purposes of affirmatively identifying a deceased person (whether or not the person died as a result of a crime).

Statistical Information

Disclosure of data and statistical information may be made in the manner and circumstances permitted by law.[30]

Available from Another Source

USCIS may disclose information furnished by an applicant in the legalization application, or any other information derived from the application, provided that it is available from another source (for example, another application or if the information is publicly available).

I. Special Agricultural Workers


Material in A-files filed pursuant to the Special Agricultural Workers (SAW) program is protected by strict confidentiality provisions.[31] The statute provides that the employee who knowingly uses, publishes, or
permits information to be examined in violation of the confidentiality provisions may be fined not more than $10,000.[32]

In general, USCIS may not use information furnished by the SAW applicant for any purpose other than to make a determination on the application, for termination of temporary residence, or for enforcement actions relating to false statements in applications.[33] The applicant may not waive the confidentiality provisions, which even survive the death of the applicant.

2. USCIS Assistance

In general, it is permissible for USCIS employees to disclose only that an applicant has applied for SAW and the outcome of the adjudication. Case information may be provided to the applicant and the applicant’s attorney or authorized representative (with a properly completed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) on file) after the inquirer’s identity has been verified. No other parties are authorized to receive SAW information, unless one of the enumerated exceptions to disclosure noted below applies.

3. Exceptions for Disclosure

It is appropriate for DHS and DOJ employees to have access to SAW material. The materials are subject to the above-mentioned penalties for unlawful use, publication, or release. USCIS is permitted to disclose information pertaining to SAW cases in certain, limited circumstances. These circumstances include:

Law Enforcement Purposes

USCIS is required to disclose information to a law enforcement entity in connection with a criminal investigation or prosecution, when that information is requested in writing.

Requested by an Official Coroner

USCIS is also required to disclose information to an official coroner for purposes of affirmatively identifying a deceased person (whether or not the person died as a result of a crime).

Criminal Convictions

Information concerning whether the SAW applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

J. S Nonimmigrant Visa Category

Nonimmigrants under the S visa category are alien witnesses or informants. An S nonimmigrant is not readily identified in USCIS systems. However, if a USCIS employee discovers that an inquiry is from an S nonimmigrant or from someone who has applied for such status, the case must be handled carefully.

Inquiries regarding the following should come from a law enforcement entity:[34]

- An Interagency Alien Witness and Informant Record (Form I-854A);
- An Interagency Alien Witness and Informant Adjustment of Status (Form I-854B); and
- An Application for Employment Authorization (Form I-765) filed on the basis of being a principal
nonimmigrant witness or informant in S classification.

If USCIS receives an inquiry regarding the status of a Form I-854 or a Form I-765 filed as an S
nonimmigrant, the USCIS employee must neither confirm nor deny the existence of such applications and
should inform the person that inquiries on these applications must be submitted through appropriate law
enforcement channels.

Under no circumstances may USCIS employees ask questions about the S nonimmigrant’s role in cooperating
with law enforcement, the type of criminal activity for which the nonimmigrant is an informant or witness, or
any specific information about the case in which the S nonimmigrant may be involved.

K. Witness Security Program

1. Program Participants

Participation in the Witness Security Program (commonly known as the Witness Protection Program) is not
reflected in USCIS systems. Applicants in the Witness Security Program should not tell anyone, including
USCIS employees, that they are participants in the program. A separate immigration file is created for a new
identity of an alien in the program, and information from before and after the change in identity must be in
separate files. However, one file will have documentation of a legal name change.

2. USCIS Assistance

If an applicant indicates that he or she is in the Witness Security Program, the applicant should be referred to
the U.S. Marshals Service.[35] Also, under no circumstances should USCIS employees ask questions about
why or how the applicant was placed in the Witness Security Program or any specific information about the
case which resulted in the applicant being placed in the Witness Security Program.

Footnotes

U.S.C. 552a (PDF)).


[^3] See Privacy Incident Handling Guidance (PDF), DHS Instruction Guide 047-01-008, issued December
4, 2017.

[^4] See Privacy Incident Handling Guidance (PDF), DHS Instruction Guide 047-01-008, issued December
4, 2017.

[^5] The enhanced privacy protections and other confidentiality protections associated with certain
applications and petitions mean that merely acknowledging the existence of a pending petition or application
could violate statutory and regulatory requirements. As a result, when responding to inquiries about these
types of cases, including Violence Against Women Act (VAWA), T, U, and asylum cases, USCIS employees
should follow the policies in place for those specific benefits. For more information, see Section E, VAWA, T,
and U Cases [1 USCIS-PM A.7(E)] through Section K, Witness Security Program [1 USCIS-PM A.7(K)].

[^6] A case’s status generally refers to its current posture in the adjudication process, which is dictated by the
last action taken. For example, a case could be pending background checks, with an officer, awaiting
response to a request for evidence (RFE), or with a decision issued on a given date.

[^7] See USCIS Change of Address web portal. See Chapter 4, Service Request Management Tool, Section
B, Responding to Service Requests [1 USCIS-PM A.4(B)].

[^8] See Section E, VAWA, T, and U Cases, Subsection 3, USCIS Assistance [1 USCIS-PM A.7(E)(3)].


[^10] For requests from federal, state, or local government agency representatives who want to review or
want copies of documents from an A-file, USCIS employees should refer to USCIS records procedures
regarding outside agency requests for USCIS files.


[^19] For more information regarding change of address procedures, see the Change of Address Information
webpage.


[^22] Examples of general inquiries include: who can apply for asylum or refugee status, how to apply for
asylum or access the USRAP, bars to protection, whether applicants are eligible for work authorization, and
number of days it normally takes before an interview is scheduled.

[^23] See INA 244(c)(6). See 8 CFR 244.16.


[^25] Examples of general inquiries include: Who can apply for TPS, how to apply for TPS, bars to TPS,
whether applicants are eligible for work authorization, and the number of days it normally takes to adjudicate
an application for TPS.

[^26] See 8 CFR 244.16.

[^27] See INA 245A(c)(4)-(5). See 8 CFR 245a.2(t), 8 CFR 245a.3(n), and 8 CFR 245a.21.

[^28] See INA 245A(c)(6).
Chapter 8 - Conduct in USCIS Facilities

A. Privacy in USCIS Offices

When communicating about personal or case specific information, both USCIS employees and the public should note the importance of protecting privacy.[^1] Whenever possible, both USCIS employees and the public should take common sense steps to make communications as private as possible. For example, USCIS employees should:

- Avoid projecting so that others in the room can clearly hear conversations that involve personal information; and
- For in-person encounters about case-specific inquiries, ensure that inquirers are given sufficient space so that documents presented are not on display for others to see.

USCIS must strike a balance between quickly and accurately assisting large groups of benefit requestors on the one hand, and protecting the privacy of all persons on the other. USCIS employees and benefit requestors must work together to strike this balance as best as possible. Persons contacting USCIS regarding a matter with heightened privacy considerations should work with USCIS employees to ensure that their privacy is protected.

B. Electronic Devices

Visitors must abide by applicable policies established by the facility in which they are seeking services. Depending on the facility’s policies, visitors may be permitted to possess cell phones, personal digital assistants, tablets, laptops, and other electronic devices.

No one may photograph or record at a USCIS office except when observing naturalization or citizenship ceremonies. In addition, phones should be silenced while in the waiting area and any conversations should be kept to a low level so as not to disrupt others. Phones should be turned off during interviews or while being served by USCIS staff at the information counter.

To ensure successful implementation of this guidance, USCIS field offices are encouraged to:

[^29] See INA 245A(c)(5)(E).
[^33] See INA 210(b)(7).
[^34] See 8 CFR 274a.12(e)(21).
[^35] Officers can find information on how to contact their local U.S. Marshals Service office (if they are in the United States) on the U.S. Marshals Service website. Officers should advise applicants to consult with the U.S. Marshals Service on how to handle the disclosure of their participation in the Witness Protection Program.
• Ensure all USCIS federal and contract employees are aware of the cell phone usage policies;
• Ensure all visitors are informed of the cell phone usage policies; and
• Display posters and signage regarding this guidance in common areas.

Footnote

[^1] See Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

Chapter 9 - Feedback, Complaints, and Reporting Misconduct

A. Feedback

1. USCIS Contact Center

USCIS conducts telephone interviews every month with callers who have used the USCIS Contact Center within the past 90 days. USCIS may contract with a private company to execute this task. The interviews that are conducted represent a statistically valid sample.

2. In-Person Appointments

Field offices may provide feedback forms in their waiting rooms. If such forms are provided, field offices should also provide a place within the office to deposit the feedback forms.

3. USCIS Website

In February 2010, USCIS implemented the American Customer Satisfaction Index (ACSI) Survey on the USCIS website. This recognized instrument is a voluntary, randomized, pop-up, online survey offered to USCIS website users. By participating in this survey, USCIS became part of the E-Government Satisfaction Index and joined more than one hundred other government organizations and agencies that have already implemented this survey and are receiving feedback.

USCIS reviews the results of the survey on a quarterly basis and identifies opportunities to improve the USCIS website. Survey data also informs USCIS where resources might best be used to affect overall satisfaction.

USCIS also reviews a wide assortment of research papers and other products available from the survey administrator to help USCIS in data gathering, analysis, and site improvement activities.

B. Complaints[^1]

1. Ways of Submitting Complaints

Complaint in USCIS Office

Persons can make a complaint in a USCIS office by asking to speak to a supervisor. In these situations, a
supervisor must be made available within a reasonable amount of time. The supervisor should take the complainant’s name and information about the nature of the complaint. The supervisor should attempt to resolve the issue before the complainant leaves the office.

Submit Written Complaint

Written complaints may include handwritten letters, emails, or faxes.\[^2\]

Contact Office of Inspector General Directly\[^3\]

Contact information for DHS Office of Inspector General (OIG) can be found on both the USCIS website and on the DHS website. OIG contact information must also be displayed in a public area and visible in every USCIS field office.

File Complaint with USCIS Headquarters

USCIS Headquarters (HQ) contact information is provided on USCIS’ website. If the complaint is directed to the wrong directorate or program office, the complaint must be forwarded to the appropriate HQ entity.

Ask to Speak to Contact Center Supervisor

If a caller is dissatisfied with the service he or she received during a call to the USCIS Contact Center, the caller may ask to speak to a supervisor.\[^4\] Both Tier 1 and Tier 2 staff members must transfer the call to a supervisor.

2. Complaints Received

A person should not be expected to know where to first submit a complaint or how to elevate a complaint if they think that their issue has not been adequately addressed. Under no circumstances should a person’s complaint be dismissed or disregarded because the proper process for filing a complaint was not followed. All complaints received must be handled appropriately.

All complaints should be responded to by providing a written response, telephone call, or if applicable, addressing the complaint in person upon submission. The response should explain steps taken to resolve the issue. In cases where the complaint cannot be resolved in a reasonable time, the response should acknowledge the receipt of the complaint, when a resolution is expected, and any additional action the person may take.

Applicants with complaints about being victimized by a person engaged in the unauthorized practice of immigration law (UPIL) should be directed to USCIS’ website where they can find state-by-state reporting information, as well as information on how to report UPIL to the Federal Trade Commission.

C. Reporting Allegations of Misconduct

Benefit requestors and other interested parties should report allegations of misconduct by USCIS employees.\[^5\]

1. Employee Misconduct

Allegations of misconduct by USCIS employee and contractors should be reported immediately to the USCIS Office of Investigations (OI) or the DHS Office of the Inspector General (OIG). Allegations can include, but
are not limited to:

- Fraud, corruption, bribery, and embezzlement;
- Sexual advances or sexual misconduct;
- Theft or misuse of funds and theft of government property;
- Perjury;
- Physical assault;[6]
- Unauthorized release of classified or special protected class[7] information;
- Drug use or possession;
- Unauthorized use or misuse of sensitive official government databases;
- Misuse of official position for private gain;
- Misuse of a government vehicle or property;
- Failure to properly account for government fund;
- Unauthorized use or misuse of a government purchase or travel card;
- Falsification of travel documents; and
- Falsification of employment application documents.

2. Reporting Employee Misconduct

Reporting Employee Misconduct

Contact Information[8]

<table>
<thead>
<tr>
<th>DHS Office</th>
<th>Phone and Fax</th>
<th>Mail</th>
</tr>
</thead>
<tbody>
<tr>
<td>USCIS OI</td>
<td>202-233-2453 (Fax)</td>
<td>Office of Investigations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Attn: Intake</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mail Stop: 2275</td>
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<tr>
<td></td>
<td></td>
<td>U.S. Citizenship and Immigration Services</td>
</tr>
<tr>
<td></td>
<td></td>
<td>633 Third Street NW, 3rd Floor, Suite 350</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Washington, DC 20529-2275</td>
</tr>
<tr>
<td>DHS OIG</td>
<td>Toll-free hotline: 800-323-8603</td>
<td>DHS Office of Inspector General, Mail Stop: 0305</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Attn: Office of Investigations - Hotline</td>
</tr>
<tr>
<td></td>
<td></td>
<td>245 Murray Lane, SW</td>
</tr>
</tbody>
</table>
USCIS OI makes every effort to maintain the confidentiality of informational sources. However, for investigations in which an allegation is substantiated and disciplinary action is proposed, the subject of such investigation is entitled to review documentation and evidence relied upon as the basis for the proposed action.

OI refers matters to DHS OIG for review and investigative determination as required, depending on the nature of the allegations included in the report. If the allegation either does not meet the criteria for referral to DHS OIG or is not accepted by DHS OIG for investigation, OI may resolve the matter by conducting an investigation; referring the matter for an official management inquiry, if appropriate; or referring the matter to the appropriate USCIS manager for information and action as necessary.

As a matter of procedure, OI does not provide a complainant, victim, witness, or subject of a complaint with the initial investigative determination of a complaint, since a disclosure of this nature could adversely impact the investigative process or agency resolution of the alleged behavior.

Any allegation may also be reported by contacting DHS OIG directly either through a local OIG field office,[9] or by one of the methods above.

3. Allegations of Discrimination

Allegations of discrimination based on race, color, religion, sex, sexual orientation, parental status, protected genetic information, national origin, age, or disability should be promptly reported to a USCIS supervisor or to the DHS Office for Civil Rights and Civil Liberties (CRCL).[10] In addition, allegations involving physical assault (such as grabbing, fondling, hitting, or shoving) should be reported to OI or DHS OIG. CRCL’s website also contains detailed information about avenues for filing complaints with different offices and components of DHS.[11]
D. Reporting Fraud, Abuse, and Scams

Benefit requestors and other interested parties should report fraud, abuse, and scams as indicated on the USCIS Contact Us page.

In addition, immigration fraud can be reported to:

- Immigration and Customs Enforcement;
- Department of Labor’s Wage and Hour Division;
- The Federal Trade Commission; and
- State authorities.

The USCIS website also contains information on common scams and how to avoid scams.

Footnotes

[^1] This section specifically addresses complaints that do not involve egregious or criminal misconduct. For information on the Office of Security and Integrity’s policy on reporting criminal and egregious misconduct, see Section C, Reporting Allegations of Misconduct [1 USCIS-PM A.9(C)].

[^2] See Appendix: Dissatisfaction with USCIS: Terms and Definitions for information on where to send complaints.

[^3] See Appendix: Dissatisfaction with USCIS: Terms and Definitions for information on how to contact the OIG.


[^5] USCIS employees are also subject to mandatory reporting requirements for known or suspected misconduct by federal employees and contractors.

[^6] Physical assault may include grabbing, fondling, hitting, or shoving.

[^7] See Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

[^8] Allegations reported directly to the DHS OIG may also be reported through a local DHS OIG field office.

[^9] A list of OIG Office of Investigations field offices is available on the DHS OIG’s website.

[^10] See the File a Civil Rights Complaint page on the DHS website.


Part B - Submission of Benefit Requests
In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 10 - An Overview of the Adjudication Process (External) (PDF, 2.87 MB)

Chapter 1 - Purpose and Background

A. Purpose

Aliens seeking immigration benefits in the United States must generally request benefits by filing the appropriate USCIS form(s) with USCIS.[1] Proper submission of benefit requests provides USCIS the opportunity to determine whether a person is initially eligible for the benefit requested and facilitates an efficient management of requests.[2]

B. Background

With the Immigration Act of 1891, the federal government assumed direct control of inspecting, admitting, rejecting, and processing all immigrants seeking admission to the United States.[3] On January 2, 1892, the Immigration Service opened Ellis Island in New York Harbor. The Immigration Service began collecting arrival manifests from each incoming ship. Inspectors then questioned arrivals about their admissibility and noted their admission or rejection on the manifest records.[4]

Over the years, different federal government departments and offices have adjudicated immigration benefit requests. The process of submitting benefit requests has also changed over time. Today, requestors generally seek benefits from USCIS by submitting specific forms; the forms also help guide requestors in collecting and submitting necessary evidence. USCIS uses forms to establish the record, verify identity, and adjudicate the benefit request.

USCIS is primarily funded by immigration and naturalization benefit request fees charged to applicants and petitioners.[5] Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA). These fee collections fund the cost of fairly and efficiently adjudicating immigration benefit requests, including those provided without charge to refugee, asylum, and certain other applicants.

Form Types

USCIS adjudicates immigration benefit requests in and outside the United States. The table below provides a list of the major benefits USCIS provides, the corresponding form(s), and corresponding Policy Manual guidance for more information.[6]
## Common USCIS-Issued Immigration Benefits

<table>
<thead>
<tr>
<th>Benefit Sought</th>
<th>Relevant Form(s)</th>
<th>For More Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nonimmigrant status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Petition for a Nonimmigrant Worker</td>
<td>(Form I-129)</td>
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<tr>
<td>Petition for Alien Fiancé(e)</td>
<td>(Form I-129F)</td>
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<tr>
<td>Petition for U Nonimmigrant Status</td>
<td>(Form I-918)</td>
<td>Volume 2, Nonimmigrants [2 USCIS-PM]</td>
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<tr>
<td>Petition for Qualifying Family Member</td>
<td></td>
<td></td>
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<tr>
<td>of a U-1 Nonimmigrant</td>
<td>(Form I-929)</td>
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</tr>
<tr>
<td>Application to Extend/Change</td>
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<td></td>
</tr>
<tr>
<td>Nonimmigrant Status</td>
<td>(Form I-539)</td>
<td></td>
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<tr>
<td><strong>Immigrant status</strong></td>
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<td></td>
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<tr>
<td>Petition for Alien Relative</td>
<td>(Form I-130)</td>
<td></td>
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<tr>
<td>Immigrant Petition for Alien Worker</td>
<td>(Form I-140)</td>
<td>Volume 6, Immigrants [6 USCIS-PM]</td>
</tr>
<tr>
<td>Petition for Amerasian, Widow(er),</td>
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<tr>
<td>or Special Immigrant</td>
<td>(Form I-360)</td>
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<tr>
<td>Immigrant Petition by Alien Investor</td>
<td>(Form I-526)</td>
<td>Volume 6, Immigrants, Part G, Investors [6 USCIS-PM G]</td>
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<tr>
<td>Application to Register Permanent</td>
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<tr>
<td>Residence or Adjust Status</td>
<td>(Form I-485)</td>
<td>Volume 7, Adjustment of Status [7 USCIS-PM]</td>
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<tr>
<td>Benefit Sought</td>
<td>Relevant Form(s)</td>
<td>For More Information</td>
</tr>
<tr>
<td>----------------------------------------</td>
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<td>--------------------------------------------</td>
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<tr>
<td>Refugee or asylee status</td>
<td>Application for Asylum and for Withholding of Removal (Form I-589)</td>
<td>Volume 4, Refugees [4 USCIS-PM]</td>
</tr>
<tr>
<td></td>
<td>Refugee/Asylee Relative Petition (Form I-730)</td>
<td>Volume 5, Asylees [5 USCIS-PM]</td>
</tr>
<tr>
<td>Temporary Protected Status</td>
<td>Application for Temporary Protected Status (Form I-821)</td>
<td>Volume 3, Protection and Parole [3 USCIS-PM]</td>
</tr>
<tr>
<td>Travel authorization (including reentry permit, humanitarian parole, and advance parole document)</td>
<td>Application for Travel Document (Form I-131)</td>
<td>Volume 11, Travel and Identity Documents [11 USCIS-PM]</td>
</tr>
<tr>
<td>Citizenship</td>
<td>Application for Naturalization (Form N-400)</td>
<td>Volume 12, Citizenship and Naturalization [12 USCIS-PM]</td>
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<td>Application for Certificate of Citizenship (Form N-600)</td>
<td>Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens [12 USCIS-PM H]</td>
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<td>Application for Issuance of Certificate Under Section 322 (Form N-600K)</td>
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<td>Overcoming Inadmissibility</td>
<td>Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal (Form I-212)</td>
<td>Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]</td>
</tr>
<tr>
<td></td>
<td>Application for Waiver of Grounds of Inadmissibility (Form I-601)</td>
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</tbody>
</table>
Each USCIS form has accompanying instructions that explain how to complete the form, as well as the necessary supporting evidence and fees that must be submitted with the completed form. In addition, some forms may require the submission of biometric information and an additional fee for biometric processing.

C. Legal Authorities

- **INA 103** - Powers and duties of the Secretary, Under Secretary, and Attorney General
- **8 CFR 103.2** - Submission and adjudication of benefit requests
- **8 CFR 103.7** - Fees

Footnotes


[^2] The terms “benefit request” and “immigration benefit request,” as used in this Part, include, but are not limited to, all requests funded by the Immigration Examinations Fee Account (IEFA). These terms may also refer to forms or requests not directly resulting in an immigration benefit, such as those resulting in an exercise of prosecutorial discretion by DHS.


[^4] See the USCIS History and Genealogy website for additional information. See Overview of Legacy Immigration and Naturalization Service (INS) History (PDF, 284.73 KB).

[^5] See INA 286(m). See 8 CFR 103.7(c).

[^6] See the USCIS website for a complete list of all USCIS forms and form instructions.

[^7] See 8 CFR 103.2. For a list of all forms and form instructions, see the USCIS Forms page.
See 8 CFR 103.2(a)(1).

Chapter 2 - Signatures

A. Signature Requirement

USCIS requires a valid signature on applications, petitions, requests, and certain other documents filed with USCIS.[1] Except as otherwise specifically authorized, a benefit requestor must personally sign his or her own request before filing it with USCIS.[2]

In order to maintain the integrity of the immigration benefit system and validate the identity of benefit requestors, USCIS rejects any benefit request with an improper signature and returns it to the requestor.[3] USCIS does not provide an opportunity to correct (or cure) a deficient signature. The benefit requestor, however, may resubmit the benefit request with a valid signature. As long as all other filing requirements are met, including payment of the required fee, USCIS may accept the resubmitted benefit request.

If USCIS accepts a request for adjudication and later determines that it has a deficient signature, USCIS denies the request. If USCIS needs additional information to confirm that a person[4] is authorized to sign on behalf of another person, corporation, or other legal entity, USCIS may issue either a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID) to confirm that such signature authority existed at the time the document was submitted.

If USCIS issues a denial based on a deficient signature or unauthorized power of attorney (POA), the benefit requestor retains any motion and appeal rights associated with the applicable form.[5]

B. Valid Signature

A valid signature consists of any handwritten mark or sign made by a person to signify the following:

- The person knows of the content of the request and any supporting documents;
- The person has reviewed and approves of any information contained in such request and any supporting documents; and
- The person certifies under penalty of perjury that the request and any other supporting documents are true and correct.

A valid signature does not need to be legible or in English, and may be abbreviated as long as this is consistent with how the person signing normally signs his or her name. A valid signature does not have to be in cursive handwriting. A person may use an “X” or similar mark as his or her signature. A signature is valid even if the original signature on the document is photocopied, scanned, faxed, or similarly reproduced. Regardless of how it is transmitted to USCIS, the copy must be of an original document containing an original handwritten signature, unless otherwise specified. The regulations do not require that the person signing submit an “original” or “wet ink” signature on a petition, application, or other request to USCIS.

When determining whether a signature is acceptable, officers should review any applicable regulations, form instructions, and policy to ensure that the signature on a particular benefit request is proper. USCIS does not accept signatures created by a typewriter, word processor, stamp, auto-pen, or similar device.
For benefit requests filed electronically as permitted by form instructions, USCIS accepts signatures in an electronic format. Benefit requestors must follow the instructions provided to properly sign electronically. [6]

### Acceptable and Unacceptable Signatures

<table>
<thead>
<tr>
<th>Acceptable</th>
<th>Unacceptable</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Original signature</td>
<td>• Typed name on signature line</td>
</tr>
<tr>
<td>• Handwritten “X,” or similar mark, in ink (including a fingerprint, if unable to write)</td>
<td>• Signature by an attorney or representative signing for the requestor or requestor's child</td>
</tr>
<tr>
<td>• Abbreviated signature, if that is the normal signature</td>
<td>• Signature created by a typewriter, word processor, stamp, auto-pen, or similar device[9]</td>
</tr>
<tr>
<td>• Signature of parent or legal guardian of benefit requestor if requestor is under 14 years of age</td>
<td></td>
</tr>
<tr>
<td>• Signature by the benefit requestor’s legal guardian, surrogate, or person with a valid durable power of attorney or a similar legally binding document[7]</td>
<td></td>
</tr>
<tr>
<td>• An original signature on the benefit request that is later photocopied, scanned, faxed, or similarly reproduced, unless otherwise required by form instructions</td>
<td></td>
</tr>
<tr>
<td>• Electronic signature[8]</td>
<td></td>
</tr>
</tbody>
</table>

### C. Who May Sign

The signer of a benefit request or any document submitted to USCIS affirms that the signer has authority to sign the document, has knowledge of the facts being represented in the document, and attests to the veracity of the facts and claims made in the document. Signers may be held accountable for any fraud or material misrepresentation associated with the benefit request.

For any particular benefit request, USCIS may specify the signature requirements, as well as related evidentiary requirements, to establish signatory authority. Benefit requestors should refer to the benefit request and any accompanying instructions for benefit-specific information on signature requirements.

### 1. Benefit Requestors Themselves

In general, any person requesting an immigration benefit must sign their own immigration benefit request, and any other associated documents, before filing it with USCIS. [10] Therefore, corporations or other legal entities, attorneys, accredited representatives, agents,[11] preparers, and interpreters generally may not sign a benefit request, or associated documents, for a requestor.

By signing the benefit request, the requestor certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at or after the time of filing, is true and correct.
2. Parents and Legal Guardians of Requestors

A parent may sign a benefit request on behalf of a child who is under 14 years of age. Children 14 years of age or older must sign on their own behalf. If a parent signs on behalf of a child, the parent must submit a birth certificate or adoption decree to establish the parent-child relationship.

A legal guardian may also sign a benefit request on behalf of a child who is under 14 years of age, as well as for a mentally incompetent person of any age.

By signing the benefit request, the parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at or after the time of filing, is true and correct.

Legal Guardian

A legal guardian is a person who a proper court or public authority has designated as the benefit requestor’s legal guardian or surrogate and who is authorized to exercise legal authority over the requestor’s affairs. Legal guardian does not include persons who were not appointed by the proper court or public authority, even if they have a legitimate interest in the legal affairs of the child or incapacitated adult, are acting in loco parentis, or are a family member.

USCIS requires documentation to establish the legal guardian’s authority to sign a benefit request on behalf of the child or mentally incompetent requestor. Acceptable documentation includes, but is not limited to, official letters of guardianship or other orders issued by a court or government agency legally authorized to make such appointment under the law governing the place where the child or incapacitated requestor resides.

Designated Representative

For purposes of naturalization, a designated representative may also sign for the applicant who is unable to understand or communicate an understanding of the Oath of Allegiance because of a physical or developmental disability or mental impairment.

Durable Power of Attorney Requirements

USCIS accepts a durable POA or similar legally binding document only in the case of an incapacitated adult. A formal court appointment is not necessary if a person signs on behalf of an incapacitated adult under the authority of a POA.

A POA is a written authorization to act on another’s behalf in private or business affairs or other legal matters. A durable POA is a contract signed while a person is still competent that assigns power of attorney in the event that the person becomes incapacitated at some point in the future.

In most cases, the language of the durable POA specifies steps that need to be taken in order for the durable POA to take effect. To assess whether a durable POA is valid and in effect, USCIS generally requires, at minimum, a copy of the durable POA, as well as evidence showing that the steps required for the durable POA to take effect have occurred. Often this evidence includes a physician’s statement indicating that the durable POA is in effect as the result of the incapacitated adult’s disability. USCIS accepts a durable POA only if it complies with the state laws where it was executed. It is the burden of the person making the request to demonstrate that a durable POA is valid and in effect under the applicable state law.

If the person providing signatory authority under the POA is also acting as the incapacitated benefit requestor’s attorney or authorized representative for purposes of appearing before DHS, the person must
submit a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28), and meet other regulatory requirements.[18]

3. Authorized Signers for Corporations or Other Legal Entities [19]

Under the Immigration and Nationality Act (INA), corporations and other legal entities, such as limited partnerships (LP), professional corporations (PC or P.C.), limited liability companies (LLC), or limited liability partnerships (LLP), may file certain requests with USCIS. Such a filing may include a request to classify an alien as an immigrant or nonimmigrant under a specific employment-based category, for example.

Benefit requests filed with USCIS by such legal entities may only be signed by a person with the authority to sign on behalf of the petitioning entity. Authorized persons may include, but are not limited to:

- An executive officer of a corporation or P.C. with authority to act on behalf of the corporate entity and legally bind and commit the corporate entity in all matters (for example, chief executive officer, president, or vice president);
- A managing partner or managing member of an LLC or LLP;
- A duly authorized partner of a partnership;
- An attorney employed in an employer-employee relationship by a corporation or other legal entity as its legal representative, or as a legal representative by the corporation or other legal entity’s legal department in an employer-employee relationship (for example, in-house counsel, or other attorney employees or contractors);
- A person employed within the entity’s human resources, human capital, employee relations, personnel, or similar department who is authorized to sign legal documents on behalf of the entity;
- An executor or administrator of an estate;
- A trustee of a trust or a duly appointed conservator; or
- Any other employee[20] of the entity who has the authority to legally bind and commit the entity to the terms and conditions attached to the specific request and attestations made in the request.

A sole proprietor is the only person authorized to sign a request filed on behalf of a sole proprietorship.

In all cases involving authorized signers for corporations or other legal entities, the benefit request must contain a statement by the person signing the request, affirming that:

- He or she has the legal authority to file the request on the petitioning employer’s behalf;
- The employer is aware of all of the facts stated in the request; and
- Such factual statements are complete, true, and correct.

If such affirmation if the form itself, a signature by the person filing the form may be sufficient to meet this requirement. If the affirmation specified above is not contained in the form, the authorized signer must provide a separate statement affirming that he or she has the authority to legally bind the corporation or other legal entity.

If USCIS has reason to doubt a person’s authority to sign or act on behalf of a corporation or other legal
entity, USCIS may request evidence that demonstrates the person has the requisite legal authority to sign the request. Such requested evidence may include, but is not limited to:

- Bylaws;
- Articles of organization;
- A letter reflecting delegation of such authority from a corporate officer or board member;
- Board of director’s minutes reflecting the grant or the board’s approval of such authority being exercised by the person in question; or
- A similar document that indicates the employee may legally bind the corporation or other legal entity with his or her signature.

D. Clarification Regarding Form G-28

An attorney or accredited representative may sign and submit a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) to certify that the person, corporation, or other legal entity named in the Form G-28 has authorized the attorney or representative to act on the person’s or legal entity’s behalf in front of Department of Homeland Security (DHS). However, a Form G-28 by itself does not authorize a representative to sign a request or other document on behalf of a person or legal entity. Further, an attorney or representative may not use a POA to sign a Form G-28 on behalf of a person or legal entity to authorize his or her own appearance.

Footnotes

[^1] Except as specifically authorized in the regulations, this guidance, or in the respective form instructions, an applicant, petitioner, or requestor must personally sign his or her own request before filing it with USCIS.

[^2] See 8 CFR 103.2(a)(2). The term “request” refers to any written request for an immigration benefit, service, or request for action, whether the request is submitted on an Office of Management and Budget-approved form or is an informal written request submitted to USCIS. The term also includes any form supplements and any other materials that require the signature of the requestor. An example of an exception to this requirement is for naturalization applications where a designated representative may sign an application on behalf of an applicant who otherwise qualifies for an oath waiver under INA 337(a) because of a physical or developmental disability or mental impairment. For more information, see Volume 12, Citizenship and Naturalization, Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers, Section C, Waiver of the Oath [12 USCIS-PM J.3(C)].


[^4] Unless otherwise specified, the term “person” as used in the Policy Manual refers to a natural person.

[^5] A rejection of a filing with USCIS may not be appealed, see 8 CFR 103.2(a)(7)(iii).


[^7] Must contain evidence (such as a physician's statement) indicating that the durable POA is in effect as a result of the person's disability.
For benefit requests filed electronically as permitted by form instructions, USCIS accepts signatures in an electronic format. Benefit requestors must follow the instructions provided to properly sign electronically, see 8 CFR 103.2(a)(2).

In certain instances, a stamped signature may be allowed as provided by the form instructions. For example, a health department physician who is acting as a blanket-designated civil surgeon and submitting a vaccination assessment for a refugee adjusting status on the Report of Medical Examination and Vaccination Record (Form I-693) may provide an original (handwritten) or stamped signature, as long as it is the signature of the health department physician. See Form I-693 instructions (PDF, 327.18 KB). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation, Section C, Documentation Completed by Civil Surgeon, Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)]. For benefit requests filed electronically as permitted by form instructions, USCIS accepts signatures in an electronic format. Benefit requestors must follow the instructions provided to properly sign electronically, see 8 CFR 103.2(a)(2).

This Part does not address agents who are filing as a petitioner on behalf of a corporation or other legal entity seeking an H, O, or P nonimmigrant worker, as provided in 8 CFR 214.2(h)(2)(i)(F), 8 CFR 214.2(h) (5)(i)(A), 8 CFR 214.2(h)(6)(iii)(B), 8 CFR 214.2(o)(2)(i), 8 CFR 214.2(o)(2)(iv)(E), 8 CFR 214.2(p)(2)(i), and 8 CFR 214.2(p)(2)(iv)(E). See the governing regulations and Petition for a Nonimmigrant Worker (Form I-129) instructions for more information on the applicable signature requirements for these particular nonimmigrant categories.

If a legal guardian signs on behalf of a requestor, the legal guardian must submit evidence to establish legal guardianship.

Different jurisdictions may have different terms for legal guardians, including conservator, committee, tutor, or other titles designating a duly appointed surrogate.

This scenario specifically describes a “springing” durable POA (as distinguished from an “immediate” durable POA). See Black’s Law Dictionary, 2nd Ed. (“durable power of attorney”). Because USCIS only accepts durable POAs that are in effect as the result of an incapacitated adult’s disability, a valid durable POA accepted by USCIS would necessarily be springing.

This section does not address agents who are permitted to act as a petitioner for a corporation or other legal entity seeking an H, O, or P nonimmigrant worker, as provided in 8 CFR 214.2(h)(2)(i)(F), (h)(5)(i)(A), (h)(6)(iii)(B), (o)(2)(i), (o)(2)(iv)(E), (p)(2)(i), or (p)(2)(iv)(E). See the particular nonimmigrant category’s regulations or the Petition for a Nonimmigrant Worker (Form I-129) instructions for the requirements governing the scope of an agent’s authority in those contexts.

The person’s title or department within the corporation or other legal entity is not determinative.
Chapter 3 - Fees

Alert

On Sept. 29, 2020, the U.S. District Court for the Northern District of California in Immigration Legal Resource Center et al., v. Wolf, et al., 20-cv-05883-JWS, preliminarily enjoined DHS from implementing or enforcing any part of the USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements rule (PDF).

While the rule is preliminarily enjoined, we will continue to:

- Accept USCIS forms with the current editions and current fees; and
- Use the regulations and guidance currently in place to adjudicate applications and petitions. This includes accepting and adjudicating fee waiver requests as provided under Adjudicator's Field Manual (AFM) Chapters 10.9 (PDF, 2.87 MB) and 10.10 (PDF, 2.87 MB).

Alert

The Federal District Court for the Northern District of California in Seattle v. DHS has enjoined DHS from requiring use of the 10/24/19 edition of Form I-912, Request for Fee Waiver, and from adjudicating fee waiver requests in accordance with the October 25, 2019 USCIS Policy Alert or the USCIS Policy Manual Volume 1: General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 3, Fees and Chapter 4, Fee Waivers that were issued on October 25, 2019 and took effect on December 2, 2019.

DHS is also not requiring use of the 10/24/19 edition of Form I-912, Request for Fee Waiver, and will not apply the October 25, 2019 revisions to the USCIS Policy Manual Volume 1: General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 3, Fees and Chapter 4, Fee Waivers that took effect on December 2, 2019, or any of the other changes described by the October 25, 2019 USCIS Policy Alert (including supersession and rescission of the March 13, 2011 Policy Memorandum), pursuant to an order by the Federal District Court for the District of Columbia.

The 10/24/19 edition of the form and the provisions of Chapters 3 and 4 of the Policy Manual published on October 25, 2019 have been removed from the USCIS website. USCIS will accept the current 10/15/19 edition of Form I-912 and also accept prior editions or a written request. For applicable policies currently in effect, see Adjudicator's Field Manual (AFM) Chapters 10.9 (PDF, 2.87 MB) and 10.10 (PDF, 2.87 MB).

Chapter 4 - Fee Waivers

Alert

On Sept. 29, 2020, the U.S. District Court for the Northern District of California in Immigration Legal Resource Center et al., v. Wolf, et al., 20-cv-05883-JWS, preliminarily enjoined DHS from implementing or enforcing any part of the USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements rule (PDF).
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The 10/24/19 edition of the form and the provisions of Chapters 3 and 4 of the Policy Manual published on October 25, 2019 have been removed from the USCIS website. USCIS will accept the current 10/15/19 edition of Form I-912 and also accept prior editions or a written request. For applicable policies currently in effect, see Adjudicator's Field Manual (AFM) Chapters 10.9 (PDF, 2.87 MB) and 10.10 (PDF, 2.87 MB).

**Chapter 5 - Interpreters and Preparers**

If an interpreter assists the benefit requestor in reading the instructions and questions on a benefit request, the interpreter must provide his or her contact information, sign, and date the benefit request in the section indicated.

If a preparer assists the benefit requestor in completing his or her benefit request, the preparer and any other person who assisted in completing the benefit request must provide their contact information, sign, and date the benefit request in the section indicated.

If the person who helped interpret or prepare the benefit request is an attorney or accredited representative, he or she must determine if the level of involvement and rules of professional responsibility require him or her to submit a signed and completed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) with the benefit request. If the person intends to represent the benefit requestor before USCIS, he or she must submit a completed Form G-28. The attorney or accredited representative of the benefit requestor cannot serve as an interpreter during the interview.[1]
Footnote

[^1] Officers cannot make exceptions for good cause.

Chapter 6 - Submitting Requests

A. How to Submit

1. Traditional Mail

Benefit requestors may use traditional mail to file benefit requests involving fees with a USCIS Lockbox.[1] Benefit requestors should refer to the form instructions and USCIS website for more information on where and how to submit a particular benefit request, and what initial evidence is expected.[2]

Assembling and Submitting Application Package

USCIS recommends that benefit requesters assemble their benefit request packages in the order indicated for that particular benefit.[3]

Application Intake Inquiries

Requestors who have questions or concerns about the intake of a benefit request should route their inquiries as indicated on the USCIS Contact Us webpage.

2. Electronic Submission

Some USCIS forms are available for submission online. Filing online allows users to:

- Set up and manage accounts;
- Submit benefit requests and supporting documents electronically;
- Manage and link paper-filed benefits with an online account;
- Receive and respond to notices and decisions electronically;
- Make payments online; and
- Access real-time information about the status of cases.

Information entered electronically in anticipation of filing online is saved for 30 days from the last time a person worked on the request. USCIS cannot accept the benefit request until the person completes the electronic submission process.

If a benefit requestor files a benefit request online, USCIS notifies the person electronically of any notices or decisions. In general, USCIS does not issue paper notices or decisions for electronically-filed benefit requests. However, an online filer may request that USCIS mail paper notices. USCIS may also, in its discretion, decide to issue a paper notice.[4]
B. Intake Processing

Once USCIS receives a benefit request, USCIS assesses whether the request meets the minimum requirements for USCIS to accept the request. If all minimal requirements (including submission of initial evidence for intake purposes) for acceptance are not met, USCIS rejects the benefit request for improper filing.\[5\]

USCIS only begins to adjudicate a benefit requests after USCIS accepts the request (and processes required fees).

In order for USCIS to accept a benefit request, a submission must satisfy all applicable acceptance criteria.\[6\] USCIS generally accepts the request if it contains:

- A complete, properly executed form, with a proper signature;
- The correct fees;\[7\] and
- The required initial evidence for intake purposes, as directed by the form instructions.\[8\]

USCIS rejects benefit requests that do not meet these minimum requirements. Reasons for rejection may include, but are not limited to:

- Incomplete benefit request;\[9\]
- Improper signature or no signature;\[10\]
- Use of an outdated version of a USCIS form at time of submission;
- Principal application error (USCIS cannot process derivative or dependent applications if the related principal application is in error); and
- Incorrect fee, including missing fees or fees in the wrong amount.\[11\]

In addition, USCIS rejects benefit requests for an immigrant visa if an immigrant visa is not immediately available to the applicant.\[12\]

The rejection of a filing with USCIS may not be appealed.\[13\] However, rejections do not preclude a benefit requestor from resubmitting a corrected benefit request. If the benefit requestor later resubmits a previously rejected, corrected benefit request, USCIS processes the case anew, without prejudice.\[14\] The rejected case does not retain its original receipt date when resubmitted.

USCIS requires new fees with any new benefit request; a new filing date also generally applies.\[15\]

Effect of Returned Payment

If, subsequent to receipting, a check or other financial instrument submitted for payment is returned as not payable, USCIS re-submits the payment to the remitter institution one time. If the instrument used to pay the fee is returned as non-payable a second time, USCIS rejects the benefit request as improperly filed and the receipt date is forfeited. USCIS assesses a $30 returned check fee and pursues collection using administrative debt collection procedures. A rejection of a filing with USCIS may not be appealed.\[16\]
**Returned Payment for an Underlying Petition**

If a dishonored payment rejection occurs on an underlying petition that is accompanied by other filings that are dependent on the filing that is rejected, such as an Immigrant Petition for an Alien Worker (Form I-140) concurrently filed with an Application to Register Permanent Residence or Adjust Status (Form I-485), even though the other filings’ fees may be honored, USCIS administratively closes the dependent filings and refunds the fees.

**Returned Payment for Premium Processing Service Requests**

If a premium processing fee for a Request for Premium Processing Service (Form I-907) is dishonored when it is filed at the same time as a Petition for Nonimmigrant Worker (Form I-129) or Immigrant Petition for Alien Workers (Form I-140), USCIS rejects the entire filing.

If USCIS has approved the petition and any fee, including one fee of a multiple fee filing, is dishonored, USCIS may revoke the approval. In this case, USCIS issues a Notice of Intent to Revoke (NOIR) to the requestor. If the requestor does not rectify the dishonored payment within the requisite NOIR time period, USCIS revokes the approval and retains (and does not refund) any fee that was honored in association with the approval.

For example, if the Form I-907 fee is dishonored after USCIS approves an associated Form I-140, USCIS revokes the Form I-140 approval (assuming the NOIR time period has passed without sufficient response). USCIS then retains the Form I-140 fee, administratively closes the Form I-485, and refunds the Form I-485 fee.

**Response to a NOIR**

If the benefit request was approved by USCIS, the approval may be revoked upon notice.[17] If the approved benefit request requires multiple fees, approval may be revoked if any fee submitted is not honored. USCIS may retain (and not refund) other fees that were paid for a benefit request that is revoked because of a dishonored fee payment.

To sufficiently respond to a NOIR, the requestor must demonstrate that the payment was honored or that it was rejected by USCIS by mistake.[18] If USCIS issues a NOIR and the request does not return sufficient evidence to reinstate the case to pending status, then USCIS reopens and denies the request. USCIS then sends a notice to the applicant informing him or her that USCIS has been revoked the approval and denied the benefit request. In contrast with the rejection of a filing, a revocation of an approval due to a dishonored fee may be appealed to the USCIS Administrative Appeals Office.[19] All revocation notices instruct the requestor on how they may appeal the revocation or denial due to a dishonored payment.[20]

If USCIS does not have the authority to revoke or reopen and deny the benefit request, USCIS annotates the file to indicate that USCIS never received payment and notifies the benefit requestor of the payment deficiency. USCIS then notifies the applicant or petitioner that there is a payment deficiency. The officer should also request local counsel assess the applicant’s actions and intentions and assist in determining the appropriate next steps on a per case basis.

If USCIS already denied or revoked the benefit request for other reasons, or determined that the requestor abandoned the benefit request, the existence of a dishonored payment does not affect that decision. USCIS pursues collection of all payment deficiencies, regardless of the outcome of adjudication.

**C. Date of Receipt**

AILA Doc. No. 19060633. (Posted 3/26/21)
USCIS considers a benefit request “received” on the date it is physically or electronically received. This date is also known as the filing date. Requestors may only obtain a date of receipt or filing date if their submission is accepted at the proper location, as designated on the USCIS website. USCIS does not assign a date of receipt or filing date to benefit requests that are rejected.\[21]\[42x633\]

The date of receipt may impact eligibility for immigration benefits. For example, USCIS uses the date of receipt to determine whether an appeal, Application for Temporary Protected Status (From I-821), or Petition for a Nonimmigrant Worker (Form I-129) should be rejected for failure to timely file or because an annual numerical limit has been reached.

The date of receipt may also be significant for purposes of seeking lawful permanent residence; the filing date is referred to as the priority date for an approved immigrant visa petition in certain preference categories\[22\]. For approved petitions in preference categories that are not current, the priority date dictates how soon the beneficiary may file for permanent residence. Similarly, the filing date establishes the statutory period for various benefits, including naturalization.

**Footnotes**

[^1] Registration for Classification as a Refugee (Form I-590) must be completed with the assistance of the Resettlement Support Center (RSC) staff overseas after a referral to the U.S. Refugee Admissions Program (USRAP), and cannot be completed independently by a benefit requestor. As such, any information in this section regarding submitting or filing a benefit request does not apply to Form I-590. For more information, see the Refugees USCIS web page.

[^2] See 8 CFR 103.2(b)(8)(ii). A benefit requestor may need to provide additional evidence to establish eligibility for the benefit sought at the time of an interview or in response to a Request for Evidence (RFE).

[^3] For tips on filing applications with USCIS, see General Tips on Assembling Applications for Mailing and Lockbox Facility Filing Tips.


[^7] See 8 CFR 103.7(a)(1). For information on fee waivers, see Request for Fee Waiver (Form I-912). For information on reduced fees, see Request for Reduced Fee (Form I-942).

[^8] For example, family-based or employment-based adjustment of status categories where an Affidavit of Support (Form I-864), if required, is submitted with the Application to Register Permanent Residence or Adjust Status (Form I-485).

[^9] See 8 CFR 103.2(b)(1). Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Benefit requestors can determine which fields are required based on the form type and form instructions.


For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)].

See 8 CFR 103.2(a)(7)(iii).

USCIS treats the benefit request as if the requestor had not previously submitted it.

Some exceptions may apply. For example, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 3, Priority dates [7 USCIS-PM A.6(C)(3)]. See 8 CFR 204.2(h).

See 8 CFR 103.2(a)(7)(iii).

See 8 CFR 205.2.

Otherwise, USCIS considers the requestor to have failed to file the required fees. See 8 CFR 103.2(a)(1).

In accordance with 8 CFR 103.3 and the applicable form instructions.

See 8 CFR 103.3.

See 8 CFR 103.2(a)(7)(ii).

For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 3, Priority Dates [7 USCIS-PM A.6(C)(3)] and the USCIS’ webpage on Visa Availability and Priority Dates.

Part C - Biometrics Collection and Security Checks

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 10 - An Overview of the Adjudication Process (External) (PDF, 2.87 MB)

Chapter 1 - Purpose and Background

A. Purpose

As part of its administration of immigration benefits, USCIS has the general authority to require and collect biometrics, which include fingerprints, photographs, and digital signatures, from any person seeking any immigration or naturalization benefit or request.
B. Background

Biometrics collection allows USCIS to verify a person’s identity, produce secure documents, and facilitate required criminal and national security background checks to protect national security and public safety, as well as to ensure that the person is eligible for the benefit sought. Biometrics collection and security checks enhance national security and protect the integrity of the immigration process by ensuring that USCIS only grants benefits to eligible requestors.

In addition, depending on the particular application, petition, or request filed, USCIS conducts security checks, which may include conducting fingerprint-based background checks, requesting a name check from the Federal Bureau of Investigation (FBI), and other DHS or inter-agency security checks.

The President has established priorities for enhancing national security and public safety by implementing uniform screening and vetting standards for all immigration programs[^3]. Screening and vetting standards include those needed for identity verification, which is crucial to protect against fraud and help USCIS determine if a person is eligible to receive an immigration benefit. Historically, USCIS collected biometrics (including photographs) for background and security checks. Presently, biometrics are also stored and used to verify a person’s identity in subsequent encounters with DHS.

C. Legal Authorities

- **8 CFR 103.16** – Collection, use, and storage of biometric information
- **8 CFR 103.2** – Submission and adjudication of benefit requests
- **INA 105** – Liaison with internal security officers
- **INA 335; 8 CFR 335.1; 8 CFR 335.2** – Investigation and examination of applicants for naturalization

Footnotes

[^1] The term person includes any applicant, petitioner, beneficiary, sponsor, derivative, requestor, or person filing or associated with a benefit request.

[^2] The term biometrics refers to “the measurable biological (anatomical and physiological) or behavioral characteristics of a natural person, including the person’s fingerprints, photograph, or signature.”

[^3] See Executive Order 13780 (PDF), Protecting the Nation From Foreign Terrorist Entry Into the United States, signed March 6, 2017.

Chapter 2 - Biometrics Collection

A. Application Support Center Appointments

After a person files an application, petition, or other benefit request, USCIS schedules a biometrics appointment at a local Application Support Center (ASC).[^1] The appointment notice (Notice of Action (Form I-797C)) indicates the date, time, and location of the ASC appointment. The person submitting
biometrics must bring the Form I-797C and valid, unexpired photo identification (for example, Permanent Resident Card (Form I-551), passport, or driver’s license) to the appointment, if required. Generally, if a person requests an exemption from the collection of a particular biometric modality, that request must be made at the ASC during the scheduled appointment.

USCIS considers a person to have abandoned his or her application, petition, or request if he or she fails to appear for the biometrics appointment unless, by the appointment time, USCIS receives a change of address or rescheduling request that it concludes warrants excusing the failure to appear.

B. Mobile Biometrics Collection

USCIS provides mobile biometrics services for those with a disability or health reason that renders them unable to appear in person. In other very limited circumstances, USCIS may in its sole discretion provide mobile biometrics services for those who are unable to attend scheduled ASC appointments in person.

Persons in Custody

USCIS does not grant requests to collect biometrics from persons in custody at correctional institutions. USCIS officers and contract staff therefore do not travel to jails, prisons, or similar non-Department of Homeland Security (DHS) detention facilities to perform biometric collections for any detained or incarcerated persons (including applicants, petitioners, beneficiaries, derivatives, sponsors, or other requestors, regardless of their immigration status or country of citizenship). In the case of an incarcerated person, USCIS officers must continue to follow all applicable regulations and procedures in issuing ASC notices to those whose appearance is required for biometrics collection. Per intradepartmental agreement, U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) is responsible for completing background and security checks for those who are incarcerated at DHS facilities and applying for benefits with USCIS.

USCIS generally does not approve requests to reschedule a biometrics appointment for reason of detention or incarceration. The person must follow the procedures listed in the biometrics appointment notice to request their appointment be rescheduled.

C. Fingerprint Waivers

A person may qualify for a waiver of the fingerprint requirement if he or she is unable to provide fingerprints because of a medical condition, including but not limited to disability, birth defects, physical deformities, skin conditions, and psychiatric conditions. Only certain USCIS employees are authorized to grant a fingerprint waiver.

A USCIS employee responsible for overseeing a person’s fingerprinting may grant the waiver if all of the following requirements are met:

- The applicant, petitioner, beneficiary, sponsor, derivative, requestor, or individual person filing or associated with a benefit request appeared in person for the biometrics collection;
- The officer or authorized technician attempted to fingerprint the person (or determined that such an attempt was impossible); and
- The officer determines that the person is unable to be fingerprinted at all or is unable to provide a single legible fingerprint.
A USCIS employee should not grant a waiver if the waiver is solely based on the following situations:

- The person has fewer than 10 fingers;
- The officer considers the person’s fingerprints as unclassifiable; or
- The person’s condition preventing the fingerprint collection is temporary.

If a fingerprint waiver is granted, the waiver is valid only for the particular application(s), petition(s), or benefit request(s) listed on the ASC notice for which biometrics are collected. The person must request a fingerprint waiver for each individual application, petition, or benefit request subsequently filed if the subsequent filing has a biometrics collection requirement.

A person who is granted a fingerprint waiver must bring local police clearance letters or other form-specific documentation covering the relevant periods to the interview. All clearance letters become part of the record. In cases where the person is granted a fingerprint waiver or has two unclassifiable fingerprint results, USCIS must take a sworn statement from the person covering the relevant periods.

USCIS’ decision to deny a fingerprint waiver is final and may not be appealed.

D. Biometrics Collected [Partially Reserved]

1. Fingerprints [Reserved]

2. Photographs

USCIS imbeds a photograph when creating secure documents as a security feature. There are instances where USCIS requires a photograph be submitted with an application, petition, or request in order to create a secure document and the application, petition, or request does not have an associated biometrics collection requirement. Where the applicant, petitioner, or requestor fails to submit a photograph at time of filing, USCIS may issue a Request for Evidence.

3. Signatures [Reserved]

Footnotes

[^1] Requestors residing overseas may be fingerprinted by USCIS officers overseas, a U.S. consular officer at a U.S. embassy or consulate, or at a U.S. military installation abroad. An exception to the requirement to collect new biometrics exists in the case of military naturalization. For military naturalization cases, a biometric background check must be performed, but USCIS may use previously collected fingerprints from a different immigration filing or may use fingerprints collected as part of enlistment processing to perform the check.

[^2] For more information on how to prepare for a biometrics appointment, see the Preparing for Your Biometrics Services Appointment web page.


[^4] The USCIS website provides a definition of the term accommodation; mobile biometrics is only one
subset of accommodations. See the USCIS website for information on Disability Accommodations for the Public.

[^5] Please see the USCIS Contact Center web page.

[^6] If the person is no longer in custody, he or she must also submit a change of address request on an Alien’s Change of Address Card (Form AR-11) for the appointment to be rescheduled at the new address.

[^7] The regulations at 8 CFR 204.3(c)(3) allow USCIS to waive the fingerprint requirement for prospective adoptive couples or additional adult members of the prospective adoptive parents’ household when it determines that such adult is “physically unable to be fingerprinted because of age or medical condition.” (Emphasis added.) As such, solely with respect to Petition to Classify Orphan as an Immediate Relative (Form I-600) and Application for Advance Processing of an Orphan Petition (Form I-600A) adjudications, USCIS must also consider whether the person is unable to be fingerprinted due to age in addition to medical condition.

[^8] The officer responsible for overseeing fingerprinting may request that a licensed mental health professional (that is, a psychologist, psychiatrist, or similar practitioner) or a licensed medical practitioner who has responsibility for the person’s care submit reasonable documentation in accordance with the procedure laid out in Part A, Public Services, Chapter 6, Disability Accommodation Requests [1 USCIS-PM-A.6].

[^9] For example, affidavits under 8 CFR 204.310(b) for an Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I-800A) if the person is “physically unable to comply” with biometrics collection.

[^10] For example, Permanent Resident Card (Form I-551) and Employment Authorization Document (Form I-766).


Chapter 3 - Security Checks [Reserved]

Part D - Attorneys and Representatives

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 12 - Attorneys and Other Representatives (External) (PDF, 384.38 KB)

Part E - Adjudications

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moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 10 - An Overview of the Adjudication Process (External) (PDF, 2.87 MB)

AFM Chapter 11 - Evidence (External) (PDF, 316.09 KB)

AFM Chapter 15 - Interview Techniques (External) (PDF, 423.86 KB)

Chapter 1 - Purpose and Background

A. Purpose

In administering U.S. immigration laws, one of USCIS’ primary functions is to adjudicate immigration benefit requests.

Upon proper filing, each benefit request must be thoroughly reviewed to determine jurisdiction, presence of required supporting documentation, existence of related files, and eligibility.

This part provides general guidance on USCIS’ adjudications across the various types of benefit requests that USCIS adjudicates. Variations in requirements and procedures may exist, depending on the benefit type, and are discussed in more detail in the program-specific parts of the Policy Manual.

B. Background [Reserved]

C. Legal Authorities

- Freedom of Information Act, 5 U.S.C. 552 – Public information; agency rules, opinions, orders, records, and proceedings
- INA 103 – Powers and duties of the Secretary, Under Secretary, and Attorney General
- 8 CFR 103.2 – Submission and adjudication of benefit requests
- INA 291 – Burden of proof upon alien
- Delegation of Authority 0105.1 – Delegation to the Bureau of Citizenship and Immigration Services

Footnotes
Chapter 2 - Record of Proceeding

A. Maintaining a Record of Proceeding

A record of proceeding is the organized, official material constituting the record of any application, petition, hearing, or other proceeding before USCIS. A record of proceeding is typically contained within an Alien Registration File (A-File) or other agency file or electronic case management system, or a hybrid paper and electronic file.[1]

B. A-Files

A-files are a series of records maintained on an alien that document the alien’s immigration history. A-files are created when an application or petition for a long-term or permanent benefit is received, or when enforcement action is initiated.

A-files may exist in physical format, or they may be created in digital format in various electronic case management systems, or they may be a hybrid of both paper and electronic files.[2]

A-files are stored and maintained by Department of Homeland Security (DHS) for aliens born less than 100 years ago. For aliens born 100 years ago or more, A-files are transferred to and stored by the National Archives and Records Administration (NARA).

Footnotes

[1] Information contained in a record of proceeding is protected by the Privacy Act. For more information on the Privacy Act and confidentiality provisions, see Part A, Public Services, Chapter 7, Privacy and Confidentiality, [1 USCIS-PM A.7].

[2] Digitized A-files may exist in the Enterprise Document Management System (EDMS) or STACKS.

Chapter 3 - Jurisdiction

A. Coordination in Cases Involving Removal Proceedings

In some cases, U.S. Immigration and Customs Enforcement (ICE) may notify USCIS of an application or petition pending with USCIS for a person in removal proceedings that must be timely adjudicated. In these cases, USCIS attempts to issue a decision on the relevant petition or application within 30 calendar days of receiving the necessary file(s) if the person is detained. If the person is not detained, USCIS attempts to issue a decision within 45 calendar days of receiving the file(s). If the next hearing in the removal case is scheduled within the 30- or 45-day time frame, USCIS typically works with ICE, to the extent possible, to complete action on the petition or application before the hearing date. USCIS maintains communication with ICE
regarding the progress and status of the case.

USCIS adjudicates all immigration benefit requests according to existing laws, regulations, and USCIS policies and procedures. If acting on ICE's request to adjudicate an application or petition might compromise those responsibilities or adherence to any law, regulation, policy or procedure, USCIS notifies ICE that the adjudication cannot be completed within the 30- or 45-day timeframe. USCIS continues to communicate with ICE about the status of the case.

To the extent ICE currently coordinates directly with USCIS service centers with respect to benefit requests pending at the service centers, this guidance does not supersede or amend those arrangements.

**B. Transferring Jurisdiction**

A pending application or petition may be transferred to a different office or jurisdiction for several reasons, including but not limited to:

- The application or petition was not filed in the proper jurisdiction;
- The benefit requestor now resides within another jurisdiction;
- An application or petition pending at a service center appears to warrant an in-person interview at a field office; or
- Regulations require transfer of an application or petition to another office for specific action.

For certain applications, such as an Application for Naturalization (Form N-400), the applicant must meet certain jurisdictional requirements relating to residency as of the date of filing; transferring jurisdiction alone may not adequately address such filing deficiency.\[^1\]

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**Footnote**

[^1]: See Volume 12, Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

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**Chapter 4 - Burden and Standards of Proof**

**A. Burden of Proof**

The burden of proof to establish eligibility for an immigration benefit always falls solely on the benefit requestor.\[^1\] The burden of proof never shifts to USCIS.

Once a benefit requestor has met his or her initial burden of proof, he or she has made a prima facie case. This means that the benefit requestor has come forward with the facts and evidence which show that, at a minimum, and without any further inquiry, he or she has proven initial eligibility for the benefit sought, though in certain cases the officer is then required to determine whether approval or denial is appropriate, in his or her discretion.
B. Standards of Proof

The standard of proof is different than the burden of proof. The standard of proof is the amount of evidence needed to establish eligibility for the benefit sought. The standard of proof applied in most administrative immigration proceedings is the preponderance of the evidence standard. Therefore, even if there is some doubt, if the benefit requestor submits relevant, probative, and credible evidence that leads an officer to believe that the claim is “probably true” or “more likely than not,” then the benefit requestor has satisfied the standard of proof.\[^2\]

If the requestor has not met this standard, it is appropriate for the officer to either request additional evidence or issue a notice of intent to deny, or deny the case.\[^3\]

The preponderance of the evidence standard of proof does not apply to those applications and petitions where a different standard is specified by law. The Immigration and Nationality Act (INA) provides for a higher standard in some cases, such as the clear and convincing evidence standard that is required when an alien enters into a marriage while in exclusion, deportation, or removal proceedings, and to determine the citizenship of children born out of wedlock.\[^4\]

Footnotes


Chapter 5 - Verification of Identifying Information

As part of the adjudication of immigration benefits requests, USCIS reviews evidence and biometrics submitted by the benefit requestor, as well as USCIS systems, to verify identifying information.

A. Full Legal Name

In general, the requestor’s full legal name is comprised of his or her:

- Given name (first name);
- Middle name(s) (if any); and
- Family name (last name).

The legal name is one of the following:

- The requestor’s name at birth as it appears on the birth certificate (or other qualifying identity...
documentation when a birth certificate is unavailable);[1] or

- The requestor’s name following a legal name change.

For purposes of requesting immigration benefits, a married person may use a legal married name (spouse’s surname), a legal pre-marriage name, or any form of either (for example, hyphenated name, pre-married name or spouse’s surname). Requestors must submit legal documentation, such as that listed below, to show that the name used is the requestor’s legal name:[2]

- Civil marriage certificate;
- Divorce decree;
- Family registry;
- Country identity document;
- Foreign birth certificate;
- Certificate of naming; or
- Court order.

*Construction of Foreign Names*

Construction of foreign names varies from culture to culture. For example, certain countries’ birth certificates display names in this order: family name, middle name, given name. This is in contrast to most birth certificates issued in the United States, which display names in this order: given name, middle name, family name.[3]

**B. Personal Information**

1. Date of Birth [Reserved]

2. Gender

Where a person claims to have legally changed his or her gender, USCIS may recognize that claim based upon the following documentation:

- A court order granting change of sex or gender;
- A government-issued document reflecting the requested gender designation. Acceptable government-issued documents include an amended birth certificate, a passport, a driver’s license, or other official document showing identity issued by the U.S. government, a state or local government in the United States, or a foreign government; or
- A letter from a licensed health care professional certifying that the requested gender designation is consistent with the person’s gender identity.[4] Generally, a licensed health care professional includes licensed counselors, nurse practitioners, physicians (Doctors of Medicine or Doctors of Osteopathy), physician assistants, psychologists, social workers, and therapists.
If submitting a health care certification letter, [5] the letter must include the following information:

- The health care professional's full name, address, and telephone number;
- The health care professional’s license number and the issuing state, country, or other jurisdiction of the professional license;
- Language stating that the health care professional has treated or evaluated the person in relation to the person’s gender identity; and
- The health care professional’s assessment of the person’s gender identity.

USCIS may request additional evidence of the person’s gender identity, as necessary to verify the requested change in gender designation.

**Footnotes**

[^1] There may be instances in which a birth certificate is unobtainable because of country conditions or personal circumstances. In these instances, a requestor may submit secondary evidence or affidavits to establish his or her identity. Any affidavit should explain the reasons primary evidence is unavailable. For more information, see the Department of State (DOS) Reciprocity Tables for identity documents that cannot be obtained in particular countries and during specific time periods. Asylum applicants may be able to establish their identity, including their full legal name, with testimony alone.


[^3] For more information, see 8 Foreign Affairs Manual (FAM) 403.1, Name Usage and Name Change.

[^4] Proof of sex reassignment surgery or any other specific medical treatment is not required to show changed gender; a licensed health care professional’s certification is sufficient.


**Chapter 6 - Evidence [Reserved]**

**Chapter 7 - Interviews [Reserved]**

**Chapter 8 - Discretionary Analysis**

Many immigration benefits require the requestor[^1] to demonstrate that the request merits a favorable exercise of discretion in order to receive the benefit.[^2] For these benefits, a discretionary analysis is a separate, additional component of adjudicating the benefit request. Whether to favorably exercise discretion is typically assessed after an officer has determined that the requestor meets all applicable threshold eligibility requirements.

The discretionary analysis involves the review of all relevant, specific facts and circumstances in an individual case. However, there are limitations on how the officer may exercise discretion; the officer may
not exercise discretion arbitrarily, inconsistently, or in reliance on biases or assumptions.

In some contexts, there are regulations and case law that outline certain factors that officers must review and use as a guide in making a discretionary determination. However, there is no exhaustive list of factors that officers must consider. To perform a discretionary analysis, officers must weigh all positive factors present in a particular case against any negative factors in the totality of the record. The analysis must be comprehensive, specific to the case, and based on all relevant facts known at the time of adjudication. For complex or difficult cases, officers should consult with supervisors and local counsel.

### A. Applicability

Congress generally provides discretionary authority explicitly in the statutory language that governs an immigration benefit. In some instances, however, discretionary authority is less explicit and must be inferred from the statutory language. Executive agencies may also outline their discretionary authority explicitly in regulations.

Many immigration benefit requests are filed under provisions of law that require the favorable exercise of discretion to administer the benefit. In these cases, the benefit requestor has the burden of demonstrating eligibility for the benefit sought and that USCIS should favorably exercise discretion. Where an immigration benefit is discretionary, meeting the statutory and regulatory requirements alone does not entitle the requestor to the benefit sought.

Certain immigration benefits are not discretionary. In these cases, if the requestor properly filed and meets the eligibility requirements then USCIS must approve the benefit request. There is no discretionary analysis as part of the adjudication, and these requests cannot be denied as a matter of discretion.

The following table provides a non-exhaustive overview of immigration benefits and whether discretion is involved in the adjudication of such benefits.

<table>
<thead>
<tr>
<th>Benefit Type</th>
<th>Discretion Involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petition to classify an alien as a nonimmigrant worker</td>
<td>No (with some exceptions)</td>
</tr>
<tr>
<td>Petition to classify an alien as a fiancé(e) of a U.S. citizen</td>
<td>Yes</td>
</tr>
<tr>
<td>Application to extend or change nonimmigrant status</td>
<td>Yes</td>
</tr>
<tr>
<td>Advance permission to enter as a nonimmigrant</td>
<td>Yes</td>
</tr>
<tr>
<td>Benefit Type</td>
<td>Discretion Involved</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Humanitarian parole[12]</td>
<td>Yes</td>
</tr>
<tr>
<td>Temporary protected status[13]</td>
<td>Yes</td>
</tr>
<tr>
<td>Refugee status[14]</td>
<td>Yes (with some exceptions)[15]</td>
</tr>
<tr>
<td>Asylum[16]</td>
<td>Yes</td>
</tr>
<tr>
<td>Petition to classify an alien as a family-based immigrant[17]</td>
<td>No (with some exceptions)</td>
</tr>
<tr>
<td>Petition to classify an alien as an employment-based immigrant[18]</td>
<td>Yes</td>
</tr>
<tr>
<td>Petition to classify an alien as an immigrant investor[19]</td>
<td>Yes</td>
</tr>
<tr>
<td>Adjustment of status[20]</td>
<td>Yes (with some exceptions)[21]</td>
</tr>
<tr>
<td>Registration[22]</td>
<td>No</td>
</tr>
<tr>
<td>Recognition as an American Indian born in Canada[23]</td>
<td>No</td>
</tr>
<tr>
<td>Waivers of inadmissibility[24]</td>
<td>Yes</td>
</tr>
<tr>
<td>Consent to reapply for admission after deportation or removal[25]</td>
<td>Yes</td>
</tr>
<tr>
<td>Employment authorization[26]</td>
<td>Yes (with some exceptions)</td>
</tr>
<tr>
<td>Removal of conditions on permanent residence[27]</td>
<td>No (with some exceptions)[28]</td>
</tr>
<tr>
<td>Benefit Type</td>
<td>Discretion Involved</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Naturalization</td>
<td>No</td>
</tr>
<tr>
<td>Application for a Certificate of Citizenship</td>
<td>No</td>
</tr>
</tbody>
</table>

**B. Overview of Discretion**

1. **Definition**

The Board of Immigration Appeals (BIA) has described the exercise of discretion as:

- A balancing of the negative factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on his or her behalf to determine whether relief appears in the best interests of this country.
- A matter of administrative grace where the applicant has the burden of showing that discretion should be exercised in his or her favor.
- A consideration of negative factors and the need for the applicant to offset such factors by showing unusual or even outstanding equities.

These characterizations imply that the exercise of discretion cannot be arbitrary, inconsistent, or dependent on intangible or imagined circumstances.

In short, discretion is defined as the ability or power to exercise sound judgment in decision-making. While the discretionary analysis gives the officer some autonomy in the way in which he or she decides a particular case after all applicable eligibility requirements are established, that autonomy may only be exercised within the confines of certain legal restrictions. These restrictions define the scope of the officer’s discretionary authority.

2. **Adjudicative Discretion**

There are two broad types of discretion that may be exercised in the context of immigration law: prosecutorial (or enforcement) discretion and adjudicative discretion. The scope of discretion is defined by what type of discretionary decision is being made. This chapter only discusses the exercise of adjudicative discretion.

Adjudicative discretion requires an officer to decide whether to exercise discretion favorably when adjudicating a request for an immigration benefit. This decision is guided by the applicable statutes, regulations, and policies that outline the eligibility requirements for the benefit and the facts present in the case at issue. The U.S. Supreme Court has referred to adjudicative discretion as merit-deciding discretion.

In general, an officer may exercise favorable adjudicative discretion to approve a benefit request when the
requestor has met the applicable eligibility requirements and negative factors impacting discretion are not present. An exercise of discretion to grant a benefit may also be appropriate when the requestor has met the eligibility requirements for the benefit, and the positive factors outweigh the negative factors. An exercise of discretion to deny, rather than to grant, may likewise be appropriate when the requestor has met the requirements of the request, but negative factors found in the course of the adjudication outweigh the positive factors.

3. Who Exercises Discretion

Congress expressly granted discretion to the Secretary of Homeland Security in deciding when to grant certain immigration benefits. For example, the Immigration and Nationality Act (INA) states: “The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum . . . .”

The Secretary’s discretionary power is delegated to the officer, through DHS and USCIS. Therefore, when an officer exercises discretion in adjudicating a request for an immigration benefit, the officer is exercising discretion on behalf of the Secretary of Homeland Security.

In many cases, the INA still refers to the Attorney General’s discretion because the statutory text has not been changed to reflect the creation of DHS and the transfer of many functions from the U.S. Department of Justice (DOJ) to DHS. If USCIS has adjudicative authority over the benefit, the statute should be read as conferring the power to exercise discretion on the Secretary of Homeland Security.

4. Discretion

Eligibility Threshold

For discretionary benefits, there is never discretion to grant an immigration benefit if the benefit requestor has not first met all applicable threshold eligibility requirements.

It is legally permissible to deny an application as a matter of discretion without determining whether the requestor is otherwise eligible for the benefit. However, the record is essentially incomplete if USCIS denies an application, petition, or request in its exercise of discretion without making a determination concerning eligibility.

Therefore, as a matter of policy, officers should generally make a specific determination regarding eligibility before addressing the exercise of discretion. Where denying the benefit request is appropriate, the officer should generally include in the denial letter his or her determination on all eligibility requirements, including but not limited to discretionary grounds, if applicable, so that the reasons for the ultimate denial are clearly reflected in the record.

Lack of Negative Factors

A person’s threshold eligibility for the benefit sought is generally also a positive factor. Therefore, absent any negative factors, USCIS ordinarily exercises discretion positively. Generally, if there are no negative factors to weigh against that positive factor, denial of the benefit would be an inappropriate use of discretion.

C. Adjudicating Discretionary Benefits
When adjudicating a discretionary benefit, the officer should first determine whether the requestor meets all threshold eligibility requirements. For example, in adjudicating an application for adjustment of status under INA 245(a), the officer should first determine:

- Whether the applicant was inspected and admitted or paroled or has an approved petition as a VAWA self-petitioner;
- Is eligible to receive an immigrant visa;
- Is admissible to the United States for permanent residence; and
- Has an immigrant visa immediately available to him or her at the time he or she files the adjustment application.[43]

If the officer finds that the requestor does not meet the eligibility requirements but may be eligible for a waiver, exemption, or other form of relief, the officer should determine whether the requestor qualifies for a waiver, exemption, or other form of relief. Not all applications are concurrently filed, and in some instances, applicants must file a separate waiver application or application for relief and have that application approved before the applicant qualifies for the benefit.

If the officer finds that the requestor meets the eligibility requirements because of an approved waiver, exemption, or other form of relief, the officer must then determine whether the request should be granted as a matter of discretion. If the officer finds that the requestor does not meet all applicable eligibility requirements, the officer can still include a discretionary analysis in the denial. The discretionary determination is the final step in the adjudication of a benefit request. Adding a discretionary analysis to a denial is useful if an appellate body on review disagrees with the officer’s conclusion that the requestor failed to meet the threshold eligibility requirements. In such a situation, the discretionary denial may still stand.

1. Basic Adjudication Steps

Officers should generally follow a three-step process when adjudicating a benefit request involving a discretionary analysis.

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Fact Finding[44]

Fact finding refers to the process of gathering and assessing evidence. The focus of fact finding should be to obtain credible evidence relevant to a requestor’s eligibility for the benefit, including the discretionary determination. If a requestor is interviewed, the officer should elicit information pertinent to fact finding.
during the interview. As part of fact finding, officers should evaluate relevant information present in the record. Depending on the benefit sought, such information might include, but is not limited to:

- Immigration history;
- Family ties in the United States;
- Any serious medical conditions;
- Any criminal history;
- Other connections to the community; or
- Information indicating a public safety or national security concern.

Background information may be relevant for eligibility determinations and to the exercise of discretion.

For discretionary benefits, the benefit requestor has the burden of showing that a favorable exercise of discretion is warranted through the submission of evidence. In cases where negative factors are present, the officer may ask the requestor directly why he or she warrants a favorable exercise of discretion. The officer should document any response, or lack thereof, in the record.

**Determining Whether Requestor First Meets Threshold Eligibility Requirements**

The discretionary analysis is the final step in the adjudication. Generally, the officer should first determine whether the requestor meets all threshold eligibility requirements before beginning the discretionary analysis. If the officer determines the requestor has not met the eligibility requirements for the benefit sought, the officer may deny the request without completing a discretionary analysis. However, an officer may include a discretionary analysis if a discretionary denial would be warranted even if the requestor had met the threshold statutory and regulatory requirements.

In the process of determining whether the requestor has met the eligibility requirements for the benefit sought, the officer might find that certain facts related to threshold eligibility for the specific benefit may also be relevant to the discretionary determination.

For example, if an officer finds that an adjustment applicant was convicted of a crime, the applicant might be inadmissible. The criminal conviction may also affect the discretionary analysis.

**Conducting Discretionary Analysis**

The act of exercising discretion involves the weighing of positive and negative factors and considering the totality of the circumstances in the specific case. In the immigration context, the goal is to assess whether, based on the totality of the circumstances, the alien warrants a favorable exercise of discretion.

2. **Identifying Discretionary Factors**

Any facts related to the alien’s conduct, character, family ties, other lawful ties to the United States, immigration status, or any other humanitarian concerns may be appropriate factors to consider in the exercise of discretion. An alien’s conduct can include how he or she entered the United States and what he or she has done since arrival, such as employment, schooling, or any evidence of criminal activity. Whether the alien has family members living in the United States also is relevant to the discretionary analysis. Ties to the United States may include owning real estate or a business; the conduct of that business (including
maintenance of such business in compliance with the law) may also be relevant to the discretionary analysis. Humanitarian concerns may include, but are not limited to, health issues.

Precedent case law provides guidance on how to consider evidence and weigh the positive and negative factors present in a case. These precedent decisions and USCIS guidance provide a framework to assist officers in arriving at decisions which are consistent and fair.[47]

Factors That May Be Considered

There are a number of factors or factual circumstances that are generally considered when conducting a discretionary analysis. Factors may include, but are not limited to:

- Whether the requestor is eligible for the benefit sought;[48]
- The applicant or beneficiary’s ties to family members in the United States and the closeness of the underlying relationships;[49]
- Hardship due to an adverse decision;[50]
- The applicant or beneficiary’s value and service to the community;[51]
- Length of the applicant or beneficiary’s lawful residence in the United States and status held during that residence, including the age at which the alien began residing in the United States;[52]
- Service in the U.S. armed forces;[53]
- History of employment;[54]
- Property or business ties in the United States;[55]
- History of taxes paid;
- Nature and underlying circumstances of any inadmissibility grounds at issue, the seriousness of the violations, and whether the applicant or beneficiary is eligible for a waiver of inadmissibility or other form of relief;[56]
- Likelihood that lawful permanent resident (LPR) status will ensue soon;
- Evidence regarding respect for law and order, good character, and intent to hold family responsibilities (for example, affidavits from family, friends, and responsible community representatives);[57]
- Criminal history (in the United States and abroad) and whether the applicant or beneficiary has rehabilitated and reformed;[58]
- Community service beyond any imposed by the courts;
- Whether the alien is under an unexecuted administratively final removal, deportation, or exclusion order;[59]
- Public safety or national security concerns;[60]
Moral depravity or criminal tendencies reflected by a single serious crime or an ongoing or continuing criminal record, with attention to the nature, scope, seriousness, and recent occurrence of criminal activity.\[61\]

Findings of juvenile delinquency;\[62\]

Compliance with immigration laws;\[63\]

Previous instances of fraud or false testimony in dealings with USCIS or any government agency;

Marriage to a U.S. citizen or LPR for the primary purpose of circumventing immigration laws;\[64\]

Other indicators of an applicant or beneficiary’s character.\[65\]

This is a non-exhaustive list of factors; the officer may consider any relevant fact in the discretionary analysis.

3. Weighing Factors

The act of exercising discretion involves weighing both positive and negative factors and considering the totality of the circumstances in the case before making a decision. Whether a favorable exercise of discretion is warranted is case-specific and depends on the evidence of positive and negative factors submitted by the requestor. As the negative factors grow more serious, a favorable exercise of discretion may not be warranted without the existence of unusual or outstanding equities in the case.\[66\]

Totality of the Circumstances: Evaluating the Case-Specific Considerations for Each Factor

An officer must consider the totality of the facts and circumstances of each individual case involving discretionary benefit requests. To do so, officers should ensure discretionary factors are considered in the context of all factors in the case.

There is no formula for determining the weight to be given a specific positive or negative factor. Officers should not attempt to assign numbers or points to a specific factor to determine if one factor is more or less favorable than another. Officers should consider each factor separately and then all the factors as a whole. The negative and positive factors should be balanced against each other and then evaluated cumulatively.\[67\] The weight given to each factor may vary depending on the facts of a particular case as well as the relationship of the factor to other factors in the analysis.

Discretionary factors are often interrelated. Officers must therefore determine whether each particular factor is positive or negative and how it affects the other factors under consideration. Some factors are generally given more weight than others. A small number of positive factors may overcome a larger number of negative factors, and vice versa, depending on the specific factors.

For example, when weighing the positive and negative factors, the officer should not consider the various factors individually, in isolation from one another.\[68\] When considering each factor individually, without considering how all the factors relate to each other, it becomes difficult to weigh the positive and negative factors properly.

Once the officer has weighed each factor individually, the officer should consider all the factors cumulatively to determine whether the unfavorable factors outweigh the favorable ones. If, after weighing all the factors, the officer determines that the positive factors outweigh the negative factors, then the requestor merits a
favorable exercise of discretion. If the negative factors outweigh the positive factors, then the officer may decline to favorably exercise discretion and deny the benefit request. There may be instances where the gravity of a negative factor is of such significance that the factor by itself weighs heavily against a favorable exercise of discretion.\footnote{69}

Cases that are denied on the basis of an unfavorable exercise of discretion must include an officer’s explanation of why USCIS is not exercising discretion in the requestor’s favor.\footnote{70} The denial notice must clearly set forth the positive and negative factors considered and explain why the negative factors outweigh the positive factors.

4. Supervisory Review\footnote{71}

Officers should discuss complex or difficult cases with their supervisors, as needed, particularly those involving criminality or national security issues, regardless of whether the outcome is favorable or unfavorable to the alien. As appropriate, supervisors may raise issues with USCIS local counsel.

Sometimes a case, especially when coupled with government errors or delay and compelling humanitarian factors, may justify an exercise of discretion resulting in an extraordinarily favorable outcome for the alien. Officers considering such action should carefully confirm the availability of such action under the law, weigh the factors as in every discretionary decision, consult with supervisors or counsel, and make a record of the analysis and consultation.

D. Documenting Discretionary Determinations

When issuing a decision that involves a discretionary determination, a careful explanation of the officer’s findings and analysis (communicating the positive and negative factors considered and how the officer weighed these factors) helps ensure that the decision is legally sufficient and appropriate. The discretionary determination gives the officer authority to ultimately approve a benefit or form of relief or deny a benefit or form of relief when the alien otherwise meets eligibility requirements. Officers, however, cannot exercise that authority arbitrarily or capriciously.

\textit{Favorable Exercise of Discretion}

If no negative factors are present, the officer may provide a simple statement in the file noting the absence of negative factors (for example, comments indicating that the alien is eligible, that there are no negative factors, and that therefore USCIS grants the benefit in the exercise of discretion).

If an officer grants a benefit in the exercise of discretion where negative factors are present but the positive factors outweigh the negative factors, the file should contain a record of the officer’s deliberations. The officer should clearly annotate the favorable factors in the file. The officer should also annotate the file regarding any consultations that supported the approval in complex or difficult cases. In some situations, the file annotation may be the only record or documentation for other officers to understand the reasons for the decision.

The officer should indicate the rationale for the decision in a clear manner so that it is easily understandable to others reviewing the file. This may include the officer addressing the discretionary issues in the written decision or by making an annotation in the file.

\textit{Unfavorable Exercise of Discretion}\footnote{72}

If negative factors outweigh the positive factors and USCIS denies the benefit request, the written decision
must contain an analysis of the factors considered in exercising discretion, where possible.\[73\]

Negative factors must never be analyzed in a generalized way. The decision must address negative factors on an individualized basis, applying the totality of the circumstances to the specific facts of the case. The decision should specify both the positive and negative factors that the officer identified and considered in support of the decision and should explain how the officer weighted the different factors. The denial notice should set forth the rationale for the decision so that the officer’s deliberation may be understood by the requestor as well as any administrative reviewer (such as the Administrative Appeals Office or immigration judge) and the federal courts.

**Articulating Analysis Separately for Discretion and Threshold Eligibility Requirements**

In cases involving the negative exercise of discretion, officers should generally articulate clearly the legal analysis of whether the alien meets the threshold eligibility requirements and then, separately, the discretionary analysis.

**Denying Benefit Requests as a Matter of Discretion**

If the officer denies a benefit request as a matter of discretion, the officer generally must, in the written notice to the requestor:\[74\]

- Indicate the decision to deny was made as a matter of discretion;
- Identify, specifically, each positive factor presented by the facts of the case;
- Identify, specifically, each negative factor;
- Explain the relative decisional weight given to each negative and positive factor; and
- Explain the cumulative weight given to the negative and positive factors, and reason for the outcome.

By including the appropriate articulation of discretionary determinations in USCIS decision-making, officers enhance the quality of adjudications and provide appropriate explanation to the requestor.

**Footnotes**

[^1] For purposes of this Policy Manual part, the term requestor means the person, organization, or business requesting an immigration benefit from USCIS. This may include an applicant or petitioner, depending on the request.


[^5] See, for example, *INA 245(a)* (adjustment of status).

[^7] See, for example, INA 316 (naturalization).


[^13] See Application for Temporary Protected Status (Form I-821). See INA 244 and 8 CFR 244.


[^17] See Petition for Alien Relative (Form I-130). See INA 203(a) and INA 204(a)(1)(A)-(D). See 8 CFR 204.

[^18] See Immigrant Petition for Alien Workers (Form I-140). See INA 203(b) and INA 204(a)(1)(E)-(G). See 8 CFR 204.

[^19] See Immigrant Petition by Alien Investor (Form I-526). See INA 203(b) and INA 204(a)(1)(H). See 8 CFR 204.

[^20] See Application to Register Permanent Residence or Adjust Status (Form I-485). For more information on how to conduct a discretionary analysis in the context of an adjustment application, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^21] See, for example, INA 245(a) and INA 209(b). Exceptions include adjustment of status based on Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160, 2193 (November 19, 1997); refugee-based adjustment under INA 209(a)(2); adjustment of status based on Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), Section 902 of Division A, Title IX of Pub. L. 105-277 (PDF), 112 Stat. 2681, 2681-538 (October 21, 1998); adjustment of status based on Liberian Refugee Immigration Fairness (LRIF) law, Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92 (PDF), 113 Stat. 1198, 2309 (December 20, 2019).

[^22] See Application to Register Permanent Residence or Adjust Status (Form I-485). See INA 249. See 8 CFR 249. For more information, see Volume 7, Adjustment of Status, Part O, Registration [7 USCIS-PM O].

[24] See Application for Waiver of Grounds of Inadmissibility (Form I-601). See Application for Provisional Unlawful Presence Waiver (Form I-601A). See Application by Refugee for Waiver of Grounds of Excludability (Form I-602). See, for example, INA 209(c), INA 212(a)(9)(B)(v), INA 212(a)(9)(C)(iii), and INA 212(g)-(i). For more information on how to conduct a discretionary analysis in the context of a waiver application, see Volume 9, Waivers and Other Forms of Relief, Part A, Waiver Policies and Procedures, Chapter 5, Discretion [9 USCIS-PM A.5].


[27] See Petition to Remove Conditions on Residence (Form I-751). See Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829). See INA 216 and INA 216A. See 8 CFR 216.

[28] When a family-based conditional permanent resident files a Petition to Remove Conditions on Residence (Form I-751) as a waiver request based on termination of marriage, battery or extreme cruelty, or extreme hardship, it is a discretionary decision. See INA 216(c)(4).

[29] See Application for Naturalization (Form N-400). See INA 316. For more information, see Volume 12, Citizenship and Naturalization [12 USCIS-PM].

[30] See Application for Certificate of Citizenship (Form N-600). See INA 301, INA 309 and INA 320. For more information, see Volume 12, Citizenship and Naturalization, Part K, Certificates of Citizenship and Naturalization [12 USCIS-PM K].


[34] See Subsection 4, Discretion [1 USCIS-PM E.8(B)(4)].

[35] Prosecutorial discretion is a decision to enforce or not enforce the law against someone. Prosecutorial discretion is exercised when an agency makes a decision with respect to enforcing the law. USCIS, along with other DHS agencies such as U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, has the authority to exercise prosecutorial discretion related to immigration enforcement actions it may take, particularly in the context of initiating removal proceedings through the issuance of a non-mandatory Notice to Appear. Prosecutorial discretion does not decrease USCIS’ commitment to enforcing the immigration laws. Rather, it is a means to use agency resources in a way that best accomplishes the mission of administering and enforcing the immigration laws of the United States.


[37] See Matter of Arai (PDF), 13 I&N Dec. 494, 496 (BIA 1970) (“In the absence of adverse factors, adjustment will ordinarily be granted, still as a matter of discretion.”). See Matter of Pula (PDF), 19 I&N Dec. 467, 474 (BIA 1987) (“In the absence of any adverse factors, however, asylum should be granted in the
exercise of discretion.”).

[^38] See INA 209(b).

[^39] As of March 1, 2003, in accordance with Section 1517 of the Homeland Security Act of 2002 (HSA), Pub. L. 107-296 (PDF), 116 Stat. 2135, 2311 (November 25, 2002), any reference to the Attorney General in a provision of the INA describing functions that were transferred from the Attorney General or other DOJ official to DHS by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. See 6 U.S.C. 557 (codifying Section 1517 of the HSA).


[^44] See Chapter 6, Evidence [1 USCIS-PM E.6].


[^48] See Matter of Mendez-Morales (PDF), 21 I&N Dec. 296, 301 (BIA 1996) (In the context of waivers of inadmissibility requiring a showing of extreme hardship: “... those found eligible for relief under section 212(h)(1)(B) will by definition have already established extreme hardship to qualified family members, which would be a factor favorable to the alien in exercising discretion.”).


[^59] USCIS generally does not exercise discretion favorably to grant adjustment where the adjustment applicant has an unexecuted removal order. For information on the effect of an unexecuted removal order of an arriving alien on adjustment of status, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion, Section B, Discretion, Subsection 2, Issues and Factors to Consider [7 USCIS-PM A.10(B)(2)].

[^60] For definitions of public safety and national security concerns, see Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (PDF), PM-602-0050.1, issued June 28, 2018.

[^61] The officer should not go behind the record of conviction to reassess an alien’s ultimate guilt or innocence, but rather inquire into the circumstances surrounding the commission of the crime in order to determine whether a favorable exercise of discretion is warranted. See Matter of Edwards (PDF), 20 I&N Dec. 191, 197 (BIA 1990).

[^62] USCIS considers findings of juvenile delinquency on a case-by-case basis, based on the totality of the evidence, to determine whether a favorable exercise of discretion is warranted. Therefore, an adjustment applicant must disclose all arrests and charges. If any arrest or charge was disposed of as a matter of juvenile delinquency, the applicant must include the court or other public record that establishes this disposition. See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 4,
Documentation, Section A, Initial Evidence, Subsection 7, Certified Copies of Arrest Records and Court Dispositions [7 USCIS-PM A.4(A)(7)]. For more information, see Volume 7, Adjustment of Status, Part B, 245(a) Adjustment [7 USCIS-PM B] and Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles, Section C, Eligibility Requirements, Subsection 4, Admissibility and Waiver Requirements [7 USCIS-PM F.7(C)(4)].

[^63] See Matter of Marin (PDF), 16 I&N Dec. 581, 584 (BIA 1978). See Matter of Lee (PDF), 17 I&N Dec. 275, 278 (Comm. 1978). See Matter of Buscemi (PDF), 19 I&N Dec. 628, 633 (BIA 1988). See Matter of Edwards (PDF), 20 I&N Dec. 191, 195 (BIA 1990). See Matter of Mendez-Morales (PDF), 21 I&N Dec. 296, 301 (BIA 1996). However, the BIA found that a record of immigration violations standing alone does not conclusively support a finding of lack of good moral character. Further, how recent the deportation was can only be considered when there is a finding of a poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience. In such circumstances, there must be a measurable reformation of character over a period of time in order to properly assess an applicant’s ability to integrate into society. In all other instances, when the cause for deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. See Matter of Lee (PDF), 17 I&N Dec. 275 (Comm. 1978).

[^64] Although this factor could lead to a statutory denial under INA 204(c).


[^69] See, for example, 8 CFR 212.7(d) (In adjudicating an application for a waiver of a criminal ground of inadmissibility involving a violent or dangerous crime, “depending on the gravity of the alien’s underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion . . . .”) For more information on discretion in the context of waivers of inadmissibility, see Volume 9, Waivers and Other Forms of Relief, Part A, Waiver Policies and Procedures, Chapter 5, Discretion [9 USCIS-PM A.5].

[^70] See 8 CFR 103.3(a).

[^71] Supervisory review is required in certain situations. The law provides for outcomes that may be
extraordinarily favorable for the alien but uphold principles of fairness and equity. See *Munoz v. Ashcroft*, 339 F.3d 950 (9th Cir. 2003) (stating, “It is true that equitable tolling is available in INA cases, as there is a 'presumption, read into every federal statute of limitation, that filing deadlines are subject to equitable tolling [and that] the same rebuttable presumption of equitable tolling ... applies in suits against private defendants and ... in suits against the United States’”, but concluding that the April 1, 1990 (asylum application deadline to qualify under the Nicaraguan Adjustment and Central American Relief Act, Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160 (November 19, 1997)) is a statute of repose that cannot be subject to equitable tolling). See *Mohawk Power Corp. v. Federal Power Commission*, 379 F.2d 153, 160 (D.C. Cir. 1967) (“Conceptions of equity are not a special province of the courts but may properly be invoked by administrative agencies seeking to achieve ‘the necessities of control in an increasingly complex society without sacrifice of fundamental principles of fairness and justice.’”)

[^72] These analytical steps amplify guidance concerning denial notices, and do not replace them.

[^73] See 8 CFR 103.3(a). In some cases, the officer may not be able to fully reveal negative discretionary factors if they are classified. Additionally, an exception may be made for denial letters issued to applicants for admissions as a refugee under the U.S. Refugee Admissions Program, which contain only summary reasons for denials and are not required to contain detailed analysis of the basis for negative decisions.

[^74] See 8 CFR 103.3(a). In some cases, the officer may not be able to fully reveal negative discretionary factors if they are classified. Additionally, an exception may be made for denial letters issued to applicants for admissions as a refugee under the U.S. Refugee Admissions Program, which contain only summary reasons for denials and are not required to contain detailed analysis of the basis for negative decisions.

Chapter 9 - Rendering a Decision [Reserved]

Part F - Motions and Appeals

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 10 - An Overview of the Adjudication Process (External) (PDF, 2.87 MB)

Part G - Notice to Appear

Volume 2 - Nonimmigrants

Part A - Nonimmigrant Policies and Procedures

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AFM Chapter 30 - Nonimmigrants in General (External) (PDF, 541.89 KB)

AFM Chapter 61 - Bonds (External) (PDF, 77.92 KB)

Chapter 1 - Purpose and Background

A. Purpose

A nonimmigrant is an alien who is admitted to the United States for a specific temporary period of time. Section 101(a)(15) of the Immigration and Nationality Act (INA) lists most categories of nonimmigrants; additionally, nonimmigrant categories may be authorized in legislation other than the INA [1] In order to be admitted to the United States as a nonimmigrant, an alien must generally have a permanent residence abroad and qualify for the nonimmigrant classification sought.

B. Background

The U.S. Department of State (DOS) issues nonimmigrant visas at U.S. embassies and consulates abroad. Background and history specific to each nonimmigrant visa is discussed in the category-specific parts of the Policy Manual.

C. Legal Authorities

- **INA 101(a)(15)** – Nonimmigrant classifications
- **INA 214; 8 CFR 214** – Admission of nonimmigrants and nonimmigrant classes; extension of stay
- **INA 248; 8 CFR 248** – Change of nonimmigrant classification

Footnote

[^1] For example, certain professional nonimmigrants are authorized under the North American Free Trade Agreement (NAFTA) and implementing legislation and regulations. See 8 CFR 214.6.

Chapter 2 - General Requirements [Reserved]

Chapter 3 - Maintaining Status [Reserved]

Chapter 4 - Extension of Stay and Change of Status
A. Nonimmigrants Seeking Extension of Stay or Change of Status

Generally, certain nonimmigrants present in the United States admitted for a specified period of time may request an extension of their admission period in order to continue to engage in those activities permitted under the nonimmigrant classification in which they were admitted.\[1\]

Also, certain nonimmigrants present in the United States may seek to change their status to another nonimmigrant classification if certain requirements are met.\[2\]

An application for an extension of stay (EOS) or change of status (COS) is generally filed on a Petition for a Nonimmigrant Worker (Form I-129) or Application to Extend/Change Nonimmigrant Status (Form I-539),\[3\] depending upon the nonimmigrant classification the applicant seeks to extend or change.\[4\]

Footnotes

[^1] See 8 CFR 214.1(a). See 8 CFR 214.1(c) for general requirements, such as those relating to passport validity and waivers of inadmissibility for an EOS.


[^3] See 8 CFR 214.1(c). The application should be filed in accordance with the form instructions.

[^4] The instructions for Form I-539 and Form I-129 provide detailed information regarding who may file each form. Supplemental Information for Application to Extend/Change Nonimmigrant Status (Form I-539A) or Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I-129CW) may also be filed where applicable.

Part B - Diplomatic and International Organization Personnel (A, G)

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AFM Chapter 30 - Nonimmigrants in General (External) (PDF, 541.89 KB)

Part C - Visitors for Business or Tourism (B)

Part D - Exchange Visitors (J)

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AFM Chapter 45 - Waiver of Section 212(e) Foreign Residence Requirement (External) (PDF, 178.03 KB)

Part E - Cultural Visitors (Q)

Chapter 1 - Purpose and Background

A. Purpose

The Immigration and Nationality Act (INA) provides a nonimmigrant classification for alien participants coming temporarily to the United States to participate “in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien’s nationality and who will be employed under the same wages and working conditions as domestic workers.”[^1]

B. Background

In 1990, Congress created new immigration classification for cultural visitors, commonly known as the “Q” visa category.[^2] The implementing regulation establishes the process by which DHS evaluates both the proposed international cultural exchange program and the prospective Q nonimmigrants.[^3] The cultural exchange program must have a cultural component that “is an essential and integral part of the international cultural exchange visitor’s employment or training.”[^4] The Q nonimmigrants must meet age, qualifications for the job, and communication requirements. Petitions seeking Q-1 status may be filed for multiple participants.[^5]

C. Legal Authorities

- INA 101(a)(15)(Q) – Definition of Q nonimmigrant classification
- 8 CFR 214.2(q) – Cultural visitors

Footnotes

Chapter 2 - Eligibility Requirements

A. Petitioner Requirements

1. Qualified Employer

A qualified employer is a United States or foreign firm, corporation, non-profit organization, or other legal entity, including its U.S. branches, subsidiaries, affiliates, and franchises, which:

- Is actively doing business in the United States; and
- Administers a DHS-designated international cultural exchange program.

Doing business means the regular, systematic, and continuous provision of goods or services (including lectures, seminars and other types of cultural programs) by a qualified employer which has employees, and does not include the mere presence of an agent or office of the qualifying employer.

To establish eligibility as a qualified employer, the petitioner must provide evidence that it maintains an established international cultural exchange program.

2. Agent

A designated agent may file the petition if he or she is employed by the employer on a permanent basis in an executive or managerial capacity and is a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien provided temporary residence status under INA 210 or INA 245A.

B. Program Requirements

1. Accessibility to the Public

The culture sharing must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. A private home or an isolated business setting that is not open to direct access by the public would not qualify.

2. Cultural Component

The program must have a cultural component that is an essential and integral part of the participant’s employment or training, and is designed to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the participant’s country of nationality. The cultural component may include structured instructional activities, such as:

- Seminars;
- Courses;
- Lecture series; or
3. Work Component

The participant’s employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component of the program. In other words, the participant’s work or training in the United States must be tied to the cultural component which is to exhibit or explain attitude, customs, history, heritage, philosophy or traditions of the participant's country of nationality.

The sharing of the culture of the participant’s country of nationality must result from his or her employment or training with the qualified employer in the United States.

4. Services in More than One Location

The participant may engage in employment or training in different locations for the same employer. If there are different locations, the petition must include an itinerary with the dates and locations of the services, labor, or training to be performed. The employment occurring at each location must meet the requirements of an international exchange program.

C. Participant Requirements

1. Participant Requirements

Participants in Q-1 cultural exchange programs must:

- Be at least 18 years of age at the time the petition is filed;
- Be qualified to perform the service or labor or receive the training stated in the petition; and
- Have the ability to communicate effectively about the cultural attributes of his or her country of nationality with the American public.

In addition, participants who have previously spent 15 months in the United States as a Q-1 nonimmigrant must have resided and been physically present outside the United States for the immediate prior year. Brief trips into the United States do not break the continuity of the 1-year foreign residency.

2. Family Members

The Q-1 nonimmigrant classification does not have a provision for any spouse or children to accompany or follow to join a Q-1 nonimmigrant. Therefore, any spouse or children wishing to enter the United States must qualify independently for a nonimmigrant classification.

Footnotes


Chapter 3 - Filing and Documentation

A. Filing Process

A qualified employer or its designated agent may file a Petition for a Nonimmigrant Worker (Form I-129), with the Q-1 Classification Supplement and required fee, generally within the 6-month period before the participant’s employment begins. A petitioner may include multiple participants on one petition. A participant may provide services, labor, or training for more than one employer at a time, provided each employer files a separate petition.

A petitioner must file a new petition on Form I-129, with the applicable fee, each time it wants to bring in additional international cultural exchange visitors. Each person named on an approved petition will be admitted only for the duration of the approved program. Replacement or substitution may be made for any person named on an approved petition, but only for the remainder of the approved program.

B. Evidence

1. Evidence Relating to the Employer
The petitioner must provide evidence that demonstrates that the employer:

- Has designated a qualified employee as a representative who will be responsible for administering the program and will serve as a liaison with USCIS;
- Is actively doing business in the United States (for example, the regular, systematic and continuous provisions of goods or services, including lectures, seminars and other types of cultural programs);
- Will offer the participant(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and
- Has the financial ability to remunerate the participant(s).

Evidence to demonstrate financial ability to remunerate the participants includes the organization’s most recent annual report, business income tax return, or other form of certified accountant’s report.

2. Evidence Relating to the Program

The petitioner must provide evidence that the employer maintains an established international exchange program that meets the factor listed in the Program Requirements section above. In addition to the position description, evidence that can show the program has a cultural component which is an essential and integral part of the participant’s employment or training may include:

- Catalogs;
- Brochures;
- Curriculum; or
- Any other evidence describing the program.

The program’s cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, traditions, or other cultural attributes (arts, literature, language) of the participant’s country of nationality. If there are different locations, the petition must include an itinerary with the dates and locations of the services, labor, or training to be performed.

Multiple Petitions in Same Calendar Year

When petitioning to repeat a previously approved international cultural exchange program, petitioners may submit a copy of the initial program approval notice in lieu of the documentation required with an initial filing. Officers should request additional documentation only if clarification is needed.

3. Evidence Relating to the Alien Participants

The record must contain documentation of the following information for each participant:

- Date of birth;
- Country of nationality;
- Level of education;
• Position title; and
• Job description. [10]

The petitioner must verify and certify that the participants are qualified to perform the service or labor, or receive the type of training, described in the petition.[11] In addition, the petitioner must report the participants’ wages and certify they are offered wages and working conditions comparable to those accorded to local domestic workers similarly employed.[12]

For petitions involving multiple participants, the petitioner must include the name, date of birth, nationality, and other identifying information required on the petition for each participant. The petitioner must also indicate the U.S. consulate at which each participant will apply for a Q-1 visa. For participants who are visa-exempt,[13] the petitioner must indicate the port of entry at which each participant will apply for admission to the United States.[14]

Finally, if the participant has spent an aggregate of 15 months in the United States as a Q-1 nonimmigrant, the petitioner must document that the participant has resided and been physically present outside the United States for the immediate prior year.[15]

Footnotes

[4] See 8 CFR 214.2(g)(4)(i)(B), (C), (D), and (E).
Chapter 4 - Adjudication

A. Approvals

If the petitioner properly filed the Petition for a Nonimmigrant Worker (Form I-129) and the officer is satisfied that the petitioner has met the required eligibility standards, the officer should approve the petition. The approval period should not exceed the maximum period of stay allowed, which is the length of the approved program, or 15 months, whichever is shorter.[1] The petitioner must demonstrate that the program will run 15 straight months in order to obtain a validity period of that length.[2]

1. Substitution of Beneficiaries

A petitioner may substitute or replace a participant named on an approved petition for the remainder of the program without filing a new Form I-129.[3] The substituting cultural exchange visitor must meet the qualifications for a participant.[4]

Petitioners seeking to substitute a participant must submit a letter to the consulate at which the participant will apply for the visa or at the port of entry in the case of a visa-exempt alien, along with a copy of the approval notice and the participant’s information.[5]

2. Revocation

The approval of any petition is automatically revoked if the qualifying employer:[6]

- Goes out of business;
- Files a written withdrawal of the petition; or
- Terminates the approved international cultural exchange program before its expiration date.

No further action or notice by USCIS is necessary in the case of automatic revocation.

A notice of intent to revoke (NOIR) is necessary upon a determination that:[7]

- The international cultural exchange visitor is no longer employed by the petitioner in the capacity specified in the petition, or if the international cultural exchange visitor is no longer receiving training as specified in the petition;
- The statement of facts contained in the petition was not true and correct;
- The petitioner violated the terms and conditions of the approved petition; or
- USCIS approved the petition in error.

The notice of intent to revoke should contain a detailed statement of the grounds for the revocation and the period of time allowed for the petitioner’s rebuttal. USCIS must consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition remains approved and USCIS sends a revised approval notice to the petitioner with the revocation notice.[8]
The petitioner may appeal the decision to revoke a petition (in whole or in part) to the Administrative Appeals Office (AAO) if USCIS revoked the petition on notice. Petitioners may not appeal an automatic revocation.\(^9\)

**B. Denials**

If the petitioner does not meet the eligibility requirements, the officer must deny the petition.\(^{10}\) The officer may deny a petition for multiple participants in whole or in part.\(^{11}\) If the officer denies the petition, he or she must prepare a final notice of action, which includes information explaining why the petition is denied.\(^{12}\) Additionally, officers should include information about appeal rights and the opportunity to file a motion to reopen or reconsider in the denial notice. The office that issued the decision has jurisdiction over any motion\(^{13}\) and the AAO has jurisdiction over any appeal.\(^{14}\)

**Footnotes**

\(^1\) See 8 CFR 214.2(q)(7)(iii).

\(^2\) See *Matter of R-C-C-S-D- (PDF, 356.08 KB)*, Adopted Decision 2016-04 (AAO Oct. 24, 2016).

\(^3\) See 8 CFR 214.2(q)(6).

\(^4\) See Chapter 2, Eligibility Requirements, Section C, Participant Requirements [2 USCIS-PM E.2(C)].

\(^5\) See 8 CFR 214.2(q)(6).

\(^6\) See 8 CFR 214.2(q)(9)(ii).

\(^7\) See 8 CFR 214.2(q)(9)(iii).

\(^8\) See 8 CFR 214.2(q)(9)(iv).

\(^9\) See 8 CFR 214.2(q)(9)(v).

\(^10\) See 8 CFR 103.2(b)(8).

\(^11\) See 8 CFR 214.2(q)(8)(ii)

\(^12\) See 8 CFR 103.2(b)(19). See 8 CFR 103.3. See 8 CFR 214.2(q)(8)(i).

\(^13\) See 8 CFR 103.5(a)(1)(ii).

\(^14\) See 8 CFR 103.3(a)(2).

**Chapter 5 - Admissions, Extensions of Stay, and Changes of Status**

**A. Admission and Limits on Extensions of Stay**

If approved for nonimmigrant international cultural exchange visitor (Q-1) classification and found otherwise
admissible, a beneficiary may be admitted as a Q-1 nonimmigrant for a period of up to 15 months from the date of initial admission.[1]

An officer should not approve petitions for participants who have an aggregate of 15 months in the United States as a Q-1 nonimmigrant, unless the participants have resided and been physically present outside the United States for the immediate prior year.[2]

B. Change of Status

Generally, a beneficiary in a current valid nonimmigrant status who has not violated his or her status is eligible to change status to a Q-1 nonimmigrant in the United States without having to return to his or her home country for a visa interview. USCIS may grant such a beneficiary Q-1 status for up to 15 months.[3]

To change nonimmigrant status, the petitioning employer or agent should file a Petition for a Nonimmigrant Worker (Form I-129) before the beneficiary’s current status expires and indicate the request is for a change of status.[4] The beneficiary cannot work in the new Q-1 nonimmigrant classification until USCIS approves the petition and the change of status request.

If USCIS determines that the beneficiary is eligible for Q-1 classification, but not a change of status, the beneficiary must depart the United States, apply for a Q-1 nonimmigrant visa at a U.S. consular post abroad (unless visa-exempt) and then be readmitted to the United States as a Q-1 nonimmigrant.[5]

C. Change of Employer

Q-1 nonimmigrants may change employers without leaving the United States. A new employer must file a petition with all required evidence establishing the existence of an international cultural exchange program. The total period of stay in the United States, however, remains limited to 15 months.[6] The beneficiary cannot work for the new employer until USCIS approves the petition and the change of status request.

Footnotes

[^5] There is no appeal from a change of status denial. See 8 CFR 248.3(g).

Part F - Students (F, M)

Part G - Treaty Traders and Treaty Investors (E-1, E-2)
In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 34 - Other Employment Authorized Nonimmigrants (E, I & R Classifications) (External) (PDF, 191.62 KB)

Part H - Specialty Occupation Workers (H-1B, E-3)

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AFM Chapter 30 - Nonimmigrants in General (External) (PDF, 541.89 KB)

AFM Chapter 31 - Petitions for Temporary Workers (H Classifications) (External) (PDF, 798.91 KB)

AFM Chapter 34 - Other Employment Authorized Nonimmigrants (E, I & R Classifications) (External) (PDF, 191.62 KB)

Part I - Temporary Agricultural and Non-Agricultural Workers (H-2)

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AFM Chapter 31 - Petitions for Temporary Workers (H Classifications) (External) (PDF, 798.91 KB)

Part J - Trainees (H-3)

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Chapter 1 - Purpose and Background

A. Purpose

The H-3 nonimmigrant visa category allows aliens to come temporarily to the United States as either a:

- *Trainee* who seeks to enter the United States at the invitation of an organization or person to receive training in any field of endeavor, other than graduate medical education or training.\[1\]
or

- *Special Education Exchange Visitor* who seeks to participate in a structured special education exchange visitor training program that provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.\[2\]

The H-3 nonimmigrant classification is not intended for productive employment. Rather, the H-3 program is designed to provide an alien with job-related training that is not available in his or her country for work that will ultimately be performed outside the United States.

B. Background

The Immigration and Nationality Act (INA) of 1952 contained the precursor to today’s H-3 nonimmigrant classification: “an alien having a residence in a foreign country which he has no intention of abandoning . . . who is coming temporarily to the United States as an industrial trainee.”\[3\]

In 1970, Congress expanded the class of aliens eligible for nonimmigrant classification by deleting the word “industrial” as a modifier of “trainee” in the statute.\[4\] However, Congress narrowed the H-3 classification in 1976 by inserting the following language into the statute: “other than to receive graduate medical education or training.”\[5\]

Finally, the Immigration Act of 1990 both limited and expanded the H-3 classification. Congress limited the H-3 nonimmigrant classification by adding the following language to the statute: “in a training program that is not designed primarily to provide productive employment.”\[7\] However, Congress indirectly expanded the classification by creating the Special Education Exchange Visitor Program,\[8\] which the legacy Immigration and Naturalization Service placed within the H-3 category.\[9\] Congress has not amended the statute since 1990.\[10\]

C. Legal Authorities


Chapter 2 - H-3 Categories

A. Trainees[1]

H-3 trainees are aliens who have been invited to participate in a training program in the United States by a person, a business, or an organization. The training must be unavailable in the alien’s home country. There


are no numerical limits on the number of people who can be granted H-3 visas as trainees each year.

An H-3 trainee cannot engage in productive employment in the United States unless such work is incidental and necessary to the training and must not be placed in a position which is in the petitioning entity’s normal operation and in which citizens and resident workers are regularly employed. Finally, the training must benefit the alien pursuing a career outside the United States.

An H-3 trainee must be invited by a person or organization for the purpose of receiving training (except as a physician), in any field including:

- A purely industrial establishment
- Agriculture
- Commerce
- Communications
- Finance
- Government
- Transportation
- Other professions

1. **Externs**

A hospital approved by the American Medical Association (AMA) or the American Osteopathic Association (AOA) for either an internship or residency program may petition to classify a medical student attending a medical school abroad as an H-3 trainee if the student’s training will be done as an extern during his or her medical school vacation. The hospital must also satisfy the H-3 trainee petition requirements.

2. **Nurses**

A petitioner may seek H-3 classification for a nurse if:

- The nurse-beneficiary does not have H-1 status;
- Such training is designed to benefit both the nurse-beneficiary and the overseas employer upon the nurse’s return to his or her country of origin; and
- The petitioner establishes that there is a genuine need for the nurse-beneficiary to receive a brief period of training that is unavailable in his or her native country.

Additionally, the petitioner must:

- Satisfy the H-3 trainee requirements;
- Establish that the nurse-beneficiary has a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained a nursing education or that such education was obtained in the United States or Canada; and

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• Include a statement certifying that the nurse-beneficiary is fully qualified under the laws governing the place where the training will be received and that under those laws the petitioner is authorized to give the beneficiary the desired training.[8]

B. Special Education Exchange Visitors[9]

H-3 special education exchange visitors are participants in a structured special education program that provides practical training and experience in the education of physically, mentally, or emotionally disabled children. This category is limited to an 18-month period of stay and to 50 visas per fiscal year.[10]

Footnotes

1. [^] The H-3 nonimmigrant classification is defined in INA 101(a)(15)(H)(iii) as, “an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designated primarily to provide productive employment … ” The regulations impose additional requirements on the extern and nurse subcategories that do not apply to the general trainee category. See 8 CFR 214.2(h)(7)(i).

2. [^] See 8 CFR 214.2(h)(7).


Chapter 3 - Trainee Program Requirements

A. Training Program Conditions

An H-3 petitioner is required to submit evidence demonstrating that:[1]
United States citizen and resident workers are regularly employed;

- The trainee will not engage in productive employment unless it is incidental and necessary to the training; and

- The training will benefit the trainee in pursuing a career outside the United States. [2]

**B. Training Program Description**

Each petition for a trainee must include a statement which: [3]

- Describes the type of training and supervision to be given, and the structure of the training program;

- Sets forth the proportion of time that will be devoted to productive employment;

- Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

- Describes the career abroad for which the training will prepare the nonimmigrant;

- Indicates the reasons why such training cannot be obtained in the trainee’s country and why it is necessary for the alien to be trained in the United States; and

- Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training. [4]

**C. Training Program Restrictions**

A training program for a trainee may not be approved if it: [5]

- Deals in generalities with no fixed schedule, objectives, or means of evaluation;

- Is incompatible with the nature of the petitioner’s business or enterprise;

- Is on behalf of a trainee who already possesses substantial training and expertise in the proposed field of training; [6]

- Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

- Will result in productive employment beyond that which is incidental and necessary to the training;

- Is designed to recruit and train nonimmigrants for the ultimate staffing of domestic operations in the United States;

- Does not establish that the petitioner has the physical plant and sufficiently trained workforce to provide the training specified; or

- Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student. [7]
D. Filing

The petitioner files the H-3 petition on the Petition for a Nonimmigrant Worker (Form I-129). Multiple trainees may be requested on a single petition if the trainees will be receiving the same training for the same period of time and in the same location.[8]

Officers will review each piece of evidence for relevance, probative value, and credibility to determine whether the petitioner submitted sufficient evidence establishing that the petition is approvable.[9] The table below serves as a quick, non-exhaustive reference guide listing the forms and evidence required when filing a petition for an H-3 trainee.

<table>
<thead>
<tr>
<th>Trainee (H-3) Petition Forms and Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Petition for a Nonimmigrant Worker (Form I-129), Including H supplement</strong></td>
</tr>
<tr>
<td><strong>If the beneficiary is outside the United States, a copy of his or her passport</strong></td>
</tr>
<tr>
<td><strong>Application To Extend/Change Nonimmigrant Status (Form I-539) for dependents of an H-3 who are also in the U.S. dependents should fill out and sign this form, not the petitioner for the H-3 beneficiary (one Form I-539 and fee covers all dependents)</strong></td>
</tr>
<tr>
<td><strong>Copies of each dependent’s I-94 or other proof of lawful immigration status and proof of the family relationship with the primary H-3 beneficiary (such as marriage and birth certificates)</strong></td>
</tr>
<tr>
<td><strong>Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) (if applicable)</strong></td>
</tr>
</tbody>
</table>

**All Trainees Except Special Education Exchange Visitors Must Provide:**
## Trainee (H-3) Petition Forms and Documentation

A detailed written statement from the petitioner containing:

- The overall schedule, including the type of training and supervision;
- The structure of the training program;
- The number of hours per week which will involve productive employment, if any;
- The number of hours per week in classroom study;
- The number of hours per week in on-the-job training;
- What skills the beneficiary will acquire (and how these skills relate to pursuing a career abroad); and
- The source of any remuneration.

Evidence that the beneficiary will not be placed in a position which, in the normal operation of the business, U.S. citizen and resident workers are regularly employed.

Proof that the petitioner has the physical facility and sufficiently trained staff to provide the training described in the petition.

An explanation from the petitioner regarding benefits it will obtain by providing the training, including why it is willing to incur the cost of the training.

An explanation as to why the training must take place in the United States, instead of in the beneficiary’s country along with evidence that similar training is not available in beneficiary’s home country.

A summary of the beneficiary’s prior relevant training and experience, such as diplomas and letters from past employers.

If the beneficiary is a nonimmigrant student, evidence that the proposed training was not designed to extend the total allowable period of practical training.

Petitioners seeking H-3 status for a nurse must also provide proof:

- That the beneficiary has a full and unrestricted nursing license to work in the country where his or her nursing education was obtained, or
- That the education took place in the United States or Canada.
Trainee (H-3) Petition Forms and Documentation

In addition, petitioners seeking H-3 status for a nurse must also include a statement certifying:

- That the beneficiary is qualified under the laws governing the place where the training will be received;
- That under those laws the petitioner is authorized to provide the training;
- That there is a genuine need for the nurse to receive the training;
- That the training is designed to benefit the beneficiary upon returning to his or her country of origin; and
- That the training is designed to benefit the beneficiary’s overseas employer.

Hospitals petitioning for externs must also:

- Provide proof that the hospital has been approved by the American Medical Association (AMA) or the American Osteopathic Association (AOA) for either an internship or residence program, and
- Provide proof that the extern is currently attending medical school abroad.

If Requesting Premium Processing:

Request for Premium Processing Service (Form I-907) (see USCIS website for current fees)

Footnotes


[^2] H-3 beneficiaries must also establish that they intend to return to their foreign residence upon the termination of their H-3 status. See INA 214(b) and INA 101(a)(15)(H)(iii).


[^5] See 8 CFR 214.2(h)(7)(iii). Additionally, externs and nurses have further requirements. A hospital petitioning for an H-3 extern must also demonstrate that: It has been approved by either the American Medical Association (AMA) or the American Osteopathic Association (AOA) for either an internship or residency program; the beneficiary is currently attending medical school abroad; and that the beneficiary will engage in employment as an extern for the petitioner during his or her medical school vacation. See 8 CFR 214.2(h)(7)(ii)(A). A petitioner seeking H-3 classification for a nurse must also provide a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to benefit the beneficiary upon returning to his or her country of origin; and that the training is designed to benefit the beneficiary’s overseas employer.
engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the
desired training. See 8 CFR 214.2(h)(7)(i).

[^6] A trainee may already be a professional in his or her own right and possess substantial knowledge in a
field; however, such person may be using a training to further his or her skills or career through companyspecific training that is only available in the United States. As always, the totality of the evidence must be
examined and all other requirements must be met.

[^7] For additional information about the training program and factors to consider during adjudications, see
Chapter 6, Factors to Consider [2 USCIS-PM J.6(B)].


[^9] The standard of proof applied in most USCIS adjudications, including H-3 petitions, and administrative
immigration proceedings is the “preponderance of the evidence” standard. Therefore, if the petitioner submits
relevant, probative, and credible evidence that leads USCIS to believe that the claim is “probably true” or
“more likely than not,” the applicant or petitioner has satisfied the standard of proof. See U.S. v. Cardozo-
Fonesca, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of
something occurring). If the officer can articulate a material doubt, it is appropriate for the officer to either
request additional evidence or, if that doubt leads the officer to believe that the claim is probably not true,
deny the application or petition. See Matter of Chawathe, 25 l&N Dec. 369, 376 (AAO 2010) (citing Matter

Chapter 4 - Special Education Exchange Visitor Program Requirements

There are requirements for H-3 petitions involving special education exchange visitors that are distinct from
H-3 trainees. [1] An H-3 beneficiary in a special education training program must be coming to the United
States to participate in a structured program which provides for practical training and experience in the
education of children with physical, mental, or emotional disabilities. No more than 50 visas may be
approved in a fiscal year, [2] and participants may remain in the United States for no more than 18 months. [3]

The petition must be filed by a facility which has: a professionally trained staff; and a structured program for
providing:

- Education to children with disabilities; and
- Training and hands-on experience to participants in the special education exchange visitor program. [4]

The petition should include a description of:

- The training the alien will receive;
- The facility’s professional staff; and
- The beneficiary’s participation in the training program. [5]

In addition, the petition must show that the special education exchange visitor:

- Is nearing the completion of a baccalaureate or higher degree program in special education;
- Has already earned a baccalaureate or higher degree in special education; or

AILA Doc. No. 19060633. (Posted 3/26/21)
• Has extensive prior training and experience teaching children with physical, mental, or emotional
disabilities. [6]

Any custodial care of children must be incidental to the beneficiary’s training.

Officers review each piece of evidence for relevance, probative value, and credibility to determine whether
the petitioner submitted sufficient evidence establishing that the petition is approvable. [7] The table below
serves as a quick, non-exhaustive, reference guide listing the forms and evidence required when filing a
petition for an H-3 special education exchange visitor.

<table>
<thead>
<tr>
<th>Special Education Exchange Visitor H-3 Petition Forms and Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Petition for a Nonimmigrant Worker (Form I-129), Including H supplement</strong></td>
</tr>
</tbody>
</table>
| If the beneficiary is in the United States, a copy of the I-94 or other proof of current lawful, unexpired
  immigration status (Note that Canadians who enter as a B-1 or a B-2 will not typically have an I-94) |
| Filing fee; see [USCIS’ website](https://www.uscis.gov/) for current fees |
| Application To Extend/Change Nonimmigrant Status (Form I-539) for dependents of an H-3 who are also
  in the U.S. dependents should fill out and sign this form, not the petitioner for the H-3 beneficiary (one
  Form I-539 and fee covers all dependents) |
| Copies of each dependent’s I-94 or other proof of lawful immigration status and proof of the family
  relationship with the primary H-3 beneficiary (such as marriage and birth certificates) |
| Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) (if applicable) |
| A copy of his or her passport, if the beneficiary is outside the United States |
| A description of the structured training program for providing education to children with disabilities and
  for providing hands-on experience to participants in the special education program, including noting the
  professionally trained staff, facilities, and how the exchange visitor will participate in the program |
| Evidence that any custodial care of children will be incidental to the training program |
Special Education Exchange Visitor H-3 Petition Forms and Documentation

Evidence that participant has nearly completed a baccalaureate or higher degree in special education, already has a baccalaureate degree or higher degree in special education, or has extensive prior training and experience in teaching children with disabilities

If Requesting Premium Processing:

Request for Premium Processing Service (Form I-907) (see USCIS’ website for current fees)

Footnotes


[^7] The standard of proof applied in most USCIS adjudications, including H-3 petitions, and administrative immigration proceedings is the “preponderance of the evidence” standard.

Chapter 5 - Family Members of H-3 Beneficiaries

An H-3 nonimmigrant’s spouse and unmarried minor children may accompany the H-3 nonimmigrant to the United States as H-4 nonimmigrants. H-4 dependents of H-3 nonimmigrants are not permitted to work in the United States. [^1]

Footnote


Chapter 6 - Adjudication

AILA Doc. No. 19060633. (Posted 3/26/21)
A. Adjudicative Issues

Officers must carefully review each petition for an H-3 trainee to ensure compliance with the intent of the H-3 category to train aliens who will return to their home countries. Unless specifically provided otherwise, officers should apply a “preponderance of the evidence” standard when evaluating eligibility for the benefit sought. The burden of proving eligibility for the benefit sought rests entirely with the petitioner.

B. Factors to Consider

1. Career Abroad

The description of the training program should include a specific explanation of the position and duties for which the training will prepare the trainee. The trainee must demonstrate that the proposed training will prepare the beneficiary for an existing career outside the United States.

Trainings can be to prepare the trainee for something that is new and unavailable anywhere in the trainee’s country. For instance, a trainee may already be a professional in his or her own right and possess knowledge in the field of proposed training, but will be using the training to further his or her skills or career through company-specific training that a corporate organization makes available in the United States. This could include cases of mid-level and senior-level employees who possess knowledge in their field, but seek to further develop their skills in the proposed field of training. As always, the totality of the evidence is evaluated for each case and all other requirements must be met.

Example: A U.S. company develops a new product for which training is unavailable in another country. The U.S. company may petition to train people to use that product, which will enable the trainees to train others to use the new product in their home country.

2. Instruction

Classroom-based Instruction

In cases where the program is entirely classroom-based, officers should review the evidence to ensure that the petitioner establishes by a preponderance of the evidence that the training cannot be made available in the beneficiary’s home country.

If a petitioner claims that the classroom training portion of their proposed training programs will take place online, the petition must provide an explanation as to why the training cannot take place in the beneficiary’s own country. Officers should also investigate whether the online training would be provided by an academic or vocational institution.

Online Instruction

In cases where the program is entirely online, officers must review each case and ensure that the petitioner has met their burden of proof (preponderance of the evidence) demonstrating that the training cannot be made available in the beneficiary’s home country.

3. Description of the Training Program

The petitioner must specify the type of training, the level of supervision, and the structure of the training.
program. The petitioner should provide the officer with sufficient information to establish what the beneficiary will actually be doing, and should link the various tasks to specific skills that the beneficiary will gain by performing them.

*On-The-Job Training Hours*

The petitioner must specify the number of hours both supervised and unsupervised. The unsupervised work should be minimal and the supervised work should always be oriented toward training.

*Shadowing*

There are limited circumstances where a proposed training program that consists largely or entirely of on-the-job training may be approved. Officers should carefully evaluate the totality of the evidence against a preponderance of the evidence standard, including whether a U.S. worker is being displaced and if the on-the-job training would allow the trainee to be placed into a position which is in the normal operation of the business and in which U.S. citizens and legal residents are regularly employed.

4. Remuneration

The petitioner must indicate the source of remuneration received by the trainee, and explain any training program benefits accrued by the petitioning company. Remuneration may come from any source, domestic or international. When assessing remuneration, the officer may consider whether the salary is in proportion to the training position.

5. Placement into Normal Operation of Business

Officers should consider whether the beneficiary will be placed in a position which is in the normal operations of the business, and U.S. citizens and residents are regularly employed. Factors to consider include:

- Whether training that familiarizes the beneficiary with the individual operations of the petitioning company is similar to the training that would be expected of any new employee,
- Indications that the beneficiary may remain in the United States working with the petitioner, and
- Training where the beneficiary is trained alongside U.S. workers.

6. Practical Training

Petitioners frequently assert that beneficiaries will spend a certain amount of time in “practical training.” This assertion needs to be supported with a clear explanation of the type and degree of supervision that the beneficiary will receive during such periods. If the officer determines that the “practical training” would actually be productive employment, then the petitioner must establish that it would be incidental to and necessary to the training.

7. Productive Employment

The proportion of time that will be devoted to productive employment must be specified. Productive employment should be minimal because the beneficiary should be training and not performing productive
work that displaces U.S. citizens or legal residents. [19] A training program which devotes a significant percentage of time to productive employment should be closely scrutinized. [20]

8. Substantial Training and Expertise in Field of Training

In order to establish that the beneficiary does not already possess substantial training and expertise in the proposed field of training, [21] the petitioner should submit as much information regarding the beneficiary’s credentials as possible. If related to the proposed H-3 training program, copies of the beneficiary’s diplomas and transcripts should be submitted, including any training and education received in the United States, copies of any relevant forms (for example, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-For Academic and Language Students (Form I-20), Certificate of Eligibility for Exchange Visitor (J-1) Status(Form DS-2019)). If possible, letters from prior employers detailing the beneficiary’s work experience should also be submitted.

9. Sufficiently Trained Staff

In order to establish that it has sufficiently trained staff to provide the training specified in the petition, [22] the petitioner should provide the names and credentials of the persons who will provide the training. The petitioner should specify the amount of time each trainer will spend training the beneficiary. The petitioner should also explain how the trainers’ normal responsibilities will be performed while they are training the beneficiary (this is especially important in cases involving relatively small entities, as larger percentages of their workforces will presumably be diverted in order to provide the training). [23]

10. Unavailability of the Training in Beneficiary’s Country

The petitioner must establish that the trainee cannot obtain the training in his or her country and demonstrate why it is necessary for the trainee to be trained in the United States. [24]

C. Approvals

If all documentary requirements have been met and the petition appears approvable, officers should endorse the action block on the petition. The approval period should coincide with the period of training requested by the petitioner, but only up to 2 years for trainees and up to 18 months for special education training program participants. [25]

When approving a special education training program participant, officers need to enter H-3B in CLAIMS and annotate H-3B on the petition. Because of the numerical limitations applicable to the H-3 Special Education Exchange Visitor category, officers must contact the USCIS Service Center Operations office to obtain authorization before approving an H-3 Special Education Exchange Visitor petition. The number assigned should be recorded on the front of the petition in the "Remarks" section. The approved petition should also be annotated "Approved Pursuant to Sec. 223 of Pub. L. 101-649."

D. Denials

If documentary requirements have not been met and the petition is not approvable, officers should prepare and issue a notice of denial and advise the petitioner of the right of appeal to the Administrative Appeals Office.
E. Transmittal of Petitions

USCIS sends all approved petitions to the Kentucky Consular Center (KCC). The KCC scans and uploads the documentation into the Consular Consolidated Database (CCD). Consular officers and Customs and Border Protection officers have access to the CCD to verify and review documents.

Footnotes


[^3] Generalized assertions that the proposed training will expand the trainee’s skill set or make him or her more desirable to prospective employers are usually not sufficient to demonstrate the proposed training will prepare the beneficiary for an existing career abroad. See 8 CFR 214.2(h)(7)(iii).

[^4] Even if a new employee or current employee possesses knowledge in the proposed field of training, he or she could be considered a trainee if the company or organization decides he or she needs the training, so long as all other requirements are met (for example, so long as beneficiary does not possess substantial training and expertise in the proposed field of training).

[^5] Although 8 CFR 214.2(h)(7)(iii)(C) states that a training program may not be approved if it is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training, this provision does not automatically prohibit professionals from participating in a training program. It remains the petitioner’s burden to demonstrate by a preponderance of the evidence that the training program is approvable.


[^8] If the petitioner does not meet the burden of demonstrating that the online training cannot be made available in the beneficiary’s home country, officers may consider issuing a Request for Evidence (RFE).


[^10] See 8 CFR 214.2(h)(7)(ii)(B)(3). See *Matter of Frigon*, 18 I&N Dec. 164, 166 (court noting that the number of hours devoted to on-the-job training without supervision is one of the factors to be considered).

[^11] See *Matter of St. Pierre*, 18 I&N Dec. 308 (Reg. Comm. 1982) (holding that even though training will consist primarily of on-the-job training, the subject matter by its very nature can only be learned in that setting and since the beneficiary will not receive any payment from the petitioner, and will merely be observing field tests and not actively conducting them, he will not be engaging in productive employment which would displace a resident worker).
See 8 CFR 214.2(h)(7)(ii)(B)(6). See Matter of International Transportation Company, 12 I&N Dec. 389 (Reg. Comm. 1967) (even though training will be 75% on-the-job training, any “productive gain” received by the company from such work will be “offset by the time spent by employees in the training of the beneficiary”).

See Matter of Kraus Periodicals, Inc., 11 I&N Dec. 63 (Reg. Comm. 1964) (H-3 petition was denied where the petitioner failed to set forth a training program, the specific position, duties, or skills in which the beneficiary is to be trained, and where the substantial salary the beneficiary would have received suggested that the training position was productive employment which may displace a U.S. citizen). See 8 CFR 214.2(h)(7)(ii)(B)(6).


If the job description and the proffered wage seem suspect, the officer may request more specific information from the petitioner as described in 8 CFR 214.2(h)(7)(ii)(B).


The regulations prohibit the approval of a petition involving a training program that will result in productive employment beyond that which is incidental and necessary to the training. See 8 CFR 214.2(h)(7)(iii)(E). Further, a significant percentage of time devoted to productive employment indicates that the beneficiary may be placed in a position which is in the normal operation of the business and in which U.S. workers are regularly employed. See 8 CFR 214.2(h)(7)(ii)(A)(3), 8 CFR 214.2(h)(7)(iii)(E), and 8 CFR 214.2(h)(7)(ii)(F). See Matter of Miyazaki Travel Agency, Inc., 11 I&N Dec. 424, 425 (Reg. Comm. 1964) (“An industrial trainee shall not be permitted to engage in productive employment if such employment will displace a United States resident”). See Matter of Sasano, 11 I&N Dec. 363, 364 (Reg. Comm. 1965) (“[I]t is concluded [that] the beneficiary would be involved in full-time productive employment and that any training received would be incidental thereto”). See Matter of St. Pierre, 18 I&N Dec. 308, 310 (Reg. Comm. 1982) (“The petitioner has established that the beneficiary will not be engaged in productive employment that might displace a resident worker”).

See 8 CFR 214.2(h)(7)(iii)(C). See Matter of Masauyama, 11 I&N Dec. 157, 158 (Reg. Comm. 1965) (“It is conceded that practical day-to-day experience will increase proficiency in any line of endeavor. However, the statute involved here is one that contemplates the training of a person rather than giving him further experience by day-to-day application of his skills”). See Matter of Koyama, 11 I&N Dec. 424, 425 (Reg. Comm. 1965) (“While it is conceded that practical experience will increase a person’s efficiency in any line of endeavor, the intent of the statute involved here is to train rather than to gain experience”).

See 8 CFR 214.2(h)(7)(iii)(G).

There are, of course, situations where allocation of a significant percentage of the company’s resources to train a single person would be reasonable and credible. As noted above, the regulation at 8 CFR 214.2(h)(7)(ii)(B)(6) requires the petitioner to describe “any benefit that will accrue to [it] for providing the training.”

See 8 CFR 214.2(h)(7)(ii)(B)(5). See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972) (rejecting petitioner’s argument that he only needs to go on record as stating that training is not available outside the United States).
Chapter 7 - Admissions, Extensions of Stay, and Change of Status

A. Admissions

H-3 trainees and externs should be admitted for the length of the training program, but for no longer than 2 years. [1] H-3 visa special education exchange visitors should be admitted for the length of the training program, but for no longer than 18 months.

H-3 trainees and special education exchange visitors who respectively, have spent 2 years or 18 months in the United States, in either H-visa or L-visa classifications may not seek extension of, change of status to, or be readmitted in, either H-visa or L-visa status unless they have resided outside the United States for the previous six months. [2]

There are limited exceptions to this rule. For example, the limitation does not apply to an H-3 nonimmigrant whose H or L status was seasonal, intermittent, or lasted for an aggregate of 6 months or less per year. [3]

Additionally, time spent as an H-4 dependent does not count against the maximum allowable periods of stay available to principals in H-3 status (or vice-versa). Thus, an alien who was previously granted H-4 dependent status and subsequently is granted H-3 classification, or an alien who was previously granted H-3 classification and subsequently is granted H-4 dependent status, may be eligible to remain in the United States for the maximum period of stay applicable to the classification.

For example, a husband and wife who come to the United States as a principal H-3 and dependent H-4 spouse may maintain status for one year, and then change status to H-4 and H-3 respectively, as long as the change of status application is properly filed before the principal H-3 has spent the maximum allowable period of stay in the United States. [4]

B. Extensions of Stay

H-3 trainees and externs can only extend their stay if their original stay was less than 2 years, and the total period of stay, together with the extension period, does not exceed 2 years. H-3 special education exchange visitors can extend their stay in the United States only if their total period of stay does not exceed 18 months. [5]

To file for an extension, the petitioner must file another Petition for a Nonimmigrant Worker (Form I-129) and H Classification Supplement to Form I-129, fully documented in the same manner as the first petition, and also include:

- A letter from the petitioner requesting an extension of status for the trainee, with an explanation of why the training has not yet been completed;
- A copy of the beneficiary’s Arrival/Departure Record (Form I-94); and
- A copy of the beneficiary’s first Notice of Action (Form I-797).
If the H-3 beneficiary has a dependent (a spouse, or unmarried child under the age of 21) in the United States, those dependents will need to submit an Application To Extend/Change Nonimmigrant Status (Form I-539).

C. Change of Status

Certain categories of nonimmigrants are eligible to change status to that of an H-3 nonimmigrant, including certain students and other temporary visa holders. [6] Such change of status requests must establish that:

- The beneficiaries entered the United States legally;
- The beneficiaries have never worked in the United States illegally, or otherwise violated the terms of their visa; and
- The expiration date on the beneficiary’s I-94 has not passed. [7]

Footnotes

[^4] Maintenance of H-4 status continues to be tied to the principal’s maintenance of H status. Thus, H-4 dependents may only maintain such status as long as the principal maintains the relevant principal H status.
[^6] Certain categories generally cannot change status if they are in the United States, including nonimmigrants who entered the United States with the following visas: C, Travel without a Visa, D, K-1 or K-2, J-1, or M-1. Other nonimmigrants, such as B-1 and B-2, may change status to H-3.
[^7] See 8 CFR 248.1(b) for information on timely filing and maintenance of status, and circumstances when failure to file timely may be excused in the discretion of USCIS.

Part K - Media Representatives (I)

Chapter 1 - Purpose and Background

A. Purpose

The foreign information media representative nonimmigrant visa classification, commonly known as the “I” visa category, is intended to be used by representatives of the foreign media, including members of the following industries:

- Press;
- Radio;
- Film; and
- Print.

In addition, certain employees of independent production companies may also be eligible for a foreign information media representative visa classification under certain conditions.

**B. Background**

The foreign information media representative visa classification was created by the Immigration and Nationality Act (INA) of 1952[^1] in order to facilitate the exchange of information among nations. Foreign information media representatives do not require a visa petition approved by USCIS. Consular officers with the U.S. Department of State primarily adjudicate benefit requests for foreign information media representatives during the nonimmigrant visa application process. USCIS generally only receives a request for this visa classification when a nonimmigrant applies for a change of status or an extension of stay as a foreign information media representative.

**C. Legal Authorities**

- **INA 101(a)(15)(I)** – Representatives of foreign media
- **8 CFR 214.2(i)** – Representatives of information media

**Footnote**


**Chapter 2 - Eligibility**

A foreign media representative is an alien who:

- Is a bona fide representative of the foreign press, radio, film, or other foreign information media;
- Has a home office in a foreign country whose government grants reciprocity for similar privileges to representatives with home offices in the United States; and
- Seeks to enter or remain in the United States solely to engage in such a vocation.[^1]

Aliens who meet the above definition may be eligible for classification as a foreign information media representative. Foreign information media representative nonimmigrants are admitted for the duration of their employment with the same foreign media organization in the same information medium. Foreign information media representatives must obtain authorization from USCIS to change employers or work in a different medium. [^2]

*Independent Production Companies [^3]*

Employees of independent production companies may also be eligible for foreign information media
representative nonimmigrant status if, in addition to the above:

- The employee holds a credential issued by a professional journalistic association;
- The film or video footage produced will be used by a foreign-based television station or other media to disseminate information or news to a foreign audience; and
- The film or video footage will not be used primarily for a commercial entertainment or advertising purpose.

Footnotes

[^1] See 9 FAM 402.11, Information Media Representatives - I Visas. See Department of State’s website, indicating that “[a]ctivities in the United States must be informational in nature and generally associated with the news gathering process and reporting on current events.” See Chapter 3, Distinction between News and Entertainment [2 USCIS-PM K.3].


[^3] See 9 FAM 402.11-6, Film/Video Work, for information on employees of independent production companies.

Chapter 3 - Distinction between News and Entertainment

A. Entertainment and Advertising

Camera persons and other workers engaged in producing films for entertainment or advertising purposes do not qualify under the foreign information media representative visa classification and should seek another visa classification for which they may qualify. For example, an alien intending to work on entertainment-oriented materials may be better suited to apply for nonimmigrant status on the basis of extraordinary ability or achievement; as an entertainer; or, if applicable, on the basis of providing essential support to certain O or P nonimmigrants. [H1]

Even if a camera person or other workers receive no payment from sources in the United States and the film or video footage produced is solely for foreign distribution as entertainment or advertisement, applicants under such circumstances may not qualify under the foreign information media representative visa classification.

B. Nonfiction Documentaries

Increasingly, because of the growing popularity of documentary-type biographies and similar nonfiction film productions, the distinction between commercial filmmaking for entertainment and genuine news gathering is less clear. For example, filmed biographies may be regarded as documentary filmmaking or as news gathering. In adjudicating such cases, the officer should consider whether the intended use is journalistic, informational, or educational, as opposed to entertainment. The officer should also consider the foreign distribution of the film or video footage in addition to other factors, including the timeliness of the project relative to the subject event.

AILA Doc. No. 19060633. (Posted 3/26/21)
C. Intended Use

An officer should examine the type of organization that employs the foreign information media representative and the proposed foreign distribution of the film or other produced material. Applicants should not use the foreign information media representative visa classification as a way of avoiding mandatory consultation required to obtain visa classification on the basis of extraordinary ability or achievement or as an entertainer. [2]

Footnotes


Chapter 4 - Family Members

A foreign information media representative’s spouse and unmarried children (under age 21) may accompany the foreign media representative and be admitted under the “I” nonimmigrant visa classification. [1] If approved, such dependents may attend school in the United States without changing to F-1 nonimmigrant student status. However, the dependents are not authorized to work in the United States while in the foreign information media representative dependent status.

Footnote

[^1] Note that there is no separate classification for dependents of foreign media representative nonimmigrants (for example, there is no I-2 classification). See codes of admission in Chapter 5, Adjudication, Section B, Approvals [2 USCIS-PM K.5(B)].

Chapter 5 - Adjudication

A. Extension of Stay or Change of Status

USCIS officers may receive an application for a change of status to that of a foreign information media representative nonimmigrant, or a request from a foreign information media representative nonimmigrant to change employers or information medium.

The applicant applies for a change of status or extension of stay by filing an Application To Extend/Change Nonimmigrant Status (Form I-539) together with evidence of current status and evidence from the employing media organization describing the employment and establishing that the applicant is a bona fide representative of that foreign media organization.

When reviewing a Form I-539 application involving a foreign information media representative, the officer must ensure the applicant:
• Meets or continues to meet all the eligibility requirements for the foreign information media representative visa classification;

• Is admissible to the United States; [1] and

• Has not violated any terms or conditions of his or her current nonimmigrant status. [2]

B. Approvals

If the applicant properly filed the Form I-539 application, meets all the eligibility requirements, and satisfies all the admission requirements, the officer may approve the application.

The table below provides a list of the classifications for foreign information media representatives. The code of admission is “I-1” for all eligible classes of applicants.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Information Media Representative (Principal)</td>
<td>I-1</td>
</tr>
<tr>
<td>Spouse of a Principal Foreign Information Media Representative</td>
<td>I-1</td>
</tr>
<tr>
<td>Child of a Principal Foreign Information Media Representative</td>
<td>I-1</td>
</tr>
</tbody>
</table>

C. Denials, Motions to Reopen, and Motions to Reconsider

If the applicant does not provide sufficient evidence to establish eligibility for status as a foreign information media representative, the officer prepares a denial notice explaining the specific reasons for the denial. If USCIS denies an application, the applicant may file a Motion to Reopen and/or Reconsider (Form I-290B).

There is no appeal from a denial of an application to change status or extend stay as a foreign information media representative. [3] In certain situations, USCIS may certify the matter to the Administrative Appeals Office. [4]

Footnotes


Part L - Intracompany Transferees (L)

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 32 - Petitions for Intracompany Transferees (L Classification) (External) (PDF, 387.96 KB)

Part M - Aliens of Extraordinary Ability or Achievement (O)

Chapter 1 - Purpose and Background

A. Purpose

The Immigration and Nationality Act (INA) and implementing regulations provide that certain employers or agents may petition in the O-1 visa category for nonimmigrant aliens who have extraordinary ability in the sciences, arts, education, business, or athletics, which has been demonstrated by sustained national or international acclaim.\[1\] The O-1 visa category may also include those who have a demonstrated a record of extraordinary achievement in the motion picture and television industry.\[2\]

The INA and implementing regulations also provide that certain employers or agents may petition for accompanying aliens (O-2 classification) who seek to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by the O-1 artist or athlete.\[3\]

B. Background

The Immigration Act of 1990 added the O nonimmigrant classification, providing for the admission of persons of extraordinary ability.\[4\] However, because of the passage of the Armed Forces Immigration Adjustment Act, implementation of certain O classification provisions were delayed until April 1, 1992.\[5\] Before Congress enacted these laws, artists, athletes, and other performers were admitted under the H-1 (distinguished merit and ability), H-2, or B-1 visa categories.

C. Legal Authorities

- [INA 101(a)(15)(O)] - Definition of O nonimmigrant classification
- [INA 101(a)(46)] - Definition of extraordinary ability in the arts
- [INA 214] - Admission of nonimmigrants
- [8 CFR 214.2(o)] - Special requirements for admission, extension, and maintenance of status (aliens of extraordinary ability or achievement)
Chapter 2 - Eligibility for O Classification

A. General

The O nonimmigrant classification allows the following aliens to enter the United States or change status from another nonimmigrant category:

- Aliens of extraordinary ability in the sciences, arts, education, business, or athletics (O-1 nonimmigrants);
- Aliens of extraordinary achievement in the motion picture or television industry (O-1 nonimmigrants); and
- Certain aliens accompanying and assisting an O-1 nonimmigrant (O-2 nonimmigrants).

B. Eligibility Requirements

In general, the beneficiary of a petition for O nonimmigrant classification must meet certain eligibility requirements, among others, as applicable:

**O-1 Extraordinary Ability in Sciences, Education, Business, or Athletics (commonly referred to as O-1A)**

- The beneficiary has extraordinary ability in the sciences, education, business, or athletics, which has been demonstrated by sustained national or international acclaim; and
- The beneficiary seeks to enter the United States to continue work in the area of extraordinary ability.\[1\]

**O-1 Extraordinary Ability in Arts (commonly referred to as O-1B (Arts))**

- The beneficiary has extraordinary ability in the arts, which has been demonstrated by sustained national or international acclaim; and
- The beneficiary seeks to enter the United States to continue work in the area of extraordinary ability.\[2\]

**O-1 Extraordinary Achievement in Motion Picture or Television Industry (commonly referred to as O-1B (MPTV))**

[\[1\]: See INA 101(a)(15)(O)(i).
[\[5\]: See Pub. L. 102-110 (PDF), 105 Stat. 555 (October 1, 1991).]
The beneficiary has a demonstrated record of extraordinary achievement in motion picture or television productions; and

The beneficiary seeks to enter the United States to continue work in the area of extraordinary achievement.[3]

**O-2 Accompanying Alien (Essential Support Personnel)**

- The O-2 beneficiary seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an O-1 beneficiary who is admitted for a specific event or events;

- Is an integral part of such actual performance(s) or event(s);

- Has critical skills and experience with the O-1 beneficiary, which are not of a general nature and are not possessed by a U.S. worker; and

- Has a foreign residence which the O-2 has no intention of abandoning.

In cases involving a motion picture or television production, the O-2 beneficiary must also have skills and experience with the O-1 beneficiary that are not of a general nature and are critical either:

- Based on a pre-existing longstanding working relationship; or

- With respect to a specific production because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the O-2 beneficiary is essential to the successful completion of the production.[4]

**Footnotes**


**Chapter 3 - Petitioners**

**A. Eligible Petitioners**

A U.S. employer may file an O-1 or O-2 Petition for a Nonimmigrant Worker (Form I-129). A U.S. agent may also file such a petition when it involves workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A U.S. agent may be:

- The actual employer of the beneficiary;
• The representative of both the employer and the beneficiary; or

• A person or entity authorized by the employer to act for, or in place of, the employer as its agent.[1]

An O beneficiary may not petition for himself or herself. [2]

B. Petitioner Obligations

In the case of an O-1 or O-2 beneficiary whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner (if different from the employer) are jointly and severally liable for the reasonable cost of return transportation of the beneficiary to his or her last place of residence prior to his or her entry into the United States. [3]

A petitioner must immediately notify USCIS of any changes in the terms and conditions of employment of a beneficiary that may affect eligibility under INA 101(a)(15)(O) and 8 CFR 214.2(o). The petitioner should file an amended petition when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner must send a letter explaining the change(s) to the USCIS office that approved the petition. [4]

C. Agents[5]

A U.S. agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A U.S. agent may be:

• The actual employer of the beneficiary;

• The representative of both the employer and the beneficiary; or

• A person or entity authorized by the employer to act for, or in place of, the employer as its agent.[6]

A petition filed by an agent is subject to several conditions. A petition involving multiple employers may be filed by a person or company in business as an agent that acts as an agent for both the employers and the beneficiary, if:

• The supporting documentation includes a complete itinerary of the event or events;

• The itinerary specifies the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed;

• The contracts between the employers and the beneficiary are submitted; and

• The agent explains the terms and conditions of the employment and provides any required documentation.[7]

An agent may be the actual employer of the beneficiary. In order to be eligible to file a petition on behalf of the beneficiary as his or her agent and on behalf of other (multiple) employers of the beneficiary, the petitioner must meet the conditions described above and establish that it is "in business as an agent" (as...
The regulations do not specify the evidence for establishing that the petitioner of multiple employers is "in business as an agent." Officers consider evidence that shows that it is more likely than not that the petitioner is in business as an agent for the series of events, services, or engagements that are the subject of the petition. The focus is on whether the petitioner can establish that it is authorized to act as an agent for the other employers for purposes of filing the petition. This means that the petitioner does not have to demonstrate that it normally serves as an agent outside the context of the petition.

The petitioner seeking to serve as an agent for the beneficiary or for other employers must establish that it is duly authorized to act as their agent. An officer may determine that this requirement has been satisfied if, for example, the petitioner presents a document signed by the beneficiary's other employer(s) that states that the petitioner is authorized to act in that employer's place as an agent for the limited purpose of filing the petition with USCIS.[8]

Other examples of probative evidence that may demonstrate that the petitioner "is in business as an agent" may include:

- A statement confirming the relevant information (itinerary, names and addresses of the series of employers) signed by the petitioner and the series of employers;
- Other types of agency representation contracts;
- Fee arrangements; or
- Statements from the other employers regarding the nature of the petitioner's representation of the employers and beneficiary.

While evidence of compensation could help establish that the petitioner is in business as an agent, compensation is not a requirement to establish an agency. Again, the officer must evaluate each case based on the facts presented.

Assuming that the petition is approvable and the petitioner has established that it is authorized to act as an agent in order to file the petition on behalf of the other employers, the validity period should last for the duration of the qualifying events, not to exceed the maximum allowable validity period for the classification being sought.[9] If the petition is approvable but the petitioner has not established that it is authorized by the other employers to file the petition on behalf of the other employers (including after responding to a Request for Evidence), the validity period should be limited to the qualifying events for which the petitioner will be directly employing the beneficiary. The validity period cannot exceed the maximum allowable validity period for the classification being sought.

**Footnotes**

Much of the USCIS policy relating to agents derives from USCIS Memorandum, PM HQ 70/6.2.18, HQ 70/6.2.19, “Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications (PDF, 790.07 KB),” issued on November 20, 2009.

See 8 CFR 214.2(o)(2)(iv)(E). For more information on agents, see the O Nonimmigrant Classifications: Question and Answers webpage.


No particular form or specific language is required to be submitted with a petition to establish agency. Officers should not issue Requests for Evidence requiring a particular form or specific language in the agency agreement, but should focus on whether the petitioning agent has shown that it has obtained authorization from the other employer(s) to file a petition on their behalf.


Chapter 4 - O-1 Beneficiaries

A. Standard for Classification

In order to qualify as a person of “extraordinary ability” in the sciences, education, business, or athletics (commonly referred to as O-1A), or in arts (commonly referred to as O-1B (Arts)), a beneficiary must have “sustained national or international acclaim.”[1] With regard to motion picture and television productions, a beneficiary (commonly referred to O-1B (MPTV)) must have a demonstrated record of extraordinary achievement.[2] In all cases, an O-1 beneficiary’s achievements must have been recognized in the field through extensive documentation.[3]

The regulations define “extraordinary ability” as applied to the O-1 classification as follows:

- In the field of science, education, business, or athletics: a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.[4]

- In the field of arts: distinction, defined as a high level of achievement in the field of arts, as evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.[5]

“Extraordinary achievement” in reference to persons in the motion picture or television industry (including both performers and others) means a very high level of accomplishment in the motion picture or television industry, as evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.[6]

B. Determining Eligibility for O-1 Classification

For an O-1 Petition for a Nonimmigrant Worker (Form I-129), the officer must determine whether the alien meets the relevant standard outlined in the statute and regulations."[7] The regulations describe the various
types of evidence the petitioner must submit in support of a petition for each type of O-1 beneficiary. In
general, the petition must be accompanied by either evidence of receipt of (or in some categories nomination
for) a qualifying award, or at least three alternate forms of evidence. However, an officer cannot make a
favorable determination simply because the petitioner has submitted the forms of documentation described in
the regulations.

As explained in the preamble to the final rule, the evidentiary requirements are not the standard for the
classification, but are instead the mechanism for establishing whether the standard is met.[8] Accordingly, the
fact that the petitioner has produced evidence satisfying at least three evidentiary criteria does not necessarily
establish that the beneficiary is eligible for the O-1 classification.[9] Rather, USCIS must determine eligibility
based on whether the totality of the evidence submitted demonstrates that the beneficiary meets the relevant
standard.

More specifically, an officer first determines whether the petitioner has submitted evidence meeting the
minimum number of criteria or submitted evidence that the beneficiary received a qualifying award (or
nomination, if applicable). If the petitioner meets the evidentiary requirements, the officer must then consider
all the evidence in the record in its totality to determine if the beneficiary is an alien of extraordinary ability
or achievement as defined in INA 101(a)(15)(O)(i) and 8 CFR 214.2(o).

Satisfying the Evidentiary Requirements

The analysis in this step is limited to determining whether the evidence submitted is comprised of either a
qualifying award (or nomination, if applicable), or at least three of the applicable alternate criteria. In
determining whether an evidentiary criterion is met, an officer should evaluate the evidence to determine if it
falls within the parameters of the applicable regulation. While an officer should consider whether the
submitted evidence meets the language of the regulations to determine whether a particular regulatory
criterion has been met, no determination is made during this step as to whether or not the evidence is
indicative that the beneficiary meets the applicable definitional standard for the classification.[10]

Totality Determination

Providing required evidence does not, in itself, establish that the beneficiary meets the standard for
classification as an alien of extraordinary ability or extraordinary achievement. Accordingly, when the
evidentiary requirements specified above are satisfied, an officer proceeds to evaluate the totality of all the
evidence in the record to determine whether it establishes that the:

- O-1A beneficiary has sustained national or international acclaim and is one of the small percentage
  who have arisen to the very top of his or her field;[11]

- O-1B (Arts) beneficiary has sustained national or international acclaim and has achieved distinction in
  the field of arts;[12] or

- O-1B (MPTV) beneficiary has a record of extraordinary achievement in the motion picture and
  television industry such that he or she has a very high level of accomplishment in the motion picture or
  television industry evidenced by a degree of skill and recognition significantly above that ordinarily
  encountered to the extent that the person is recognized as outstanding, notable, or leading in the
  field.[13]

If the officer determines that the petitioner has failed to meet these standards, the officer should articulate the
specific reasons as to why the petitioner, by a preponderance of the evidence, has not demonstrated that the
beneficiary is an alien of extraordinary ability or achievement based on the relevant statutory and regulatory
In support of an O-1A Petition for a Nonimmigrant Worker (Form I-129), the petitioner must establish that the beneficiary:

- Has extraordinary ability in the sciences, education, business, or athletics, which has been demonstrated by sustained national or international acclaim;
- Has achievements that have been recognized in the field through extensive documentation; and
- Is coming to continue work in the area of extraordinary ability (but not necessarily that the particular duties to be performed require someone of such extraordinary ability).[14]

The supporting documentation for an O-1A petition must include evidence that the beneficiary has received a major internationally recognized award (such as the Nobel Prize) or at least three of the following forms of evidence:

- Documentation of the beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- Documentation of the beneficiary's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- Published material in professional or major trade publications or major media about the beneficiary, relating to the beneficiary's work in the field for which classification is sought, which must include the title, date, and author of such published material, and any necessary translation;
- Evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization for which classification is sought;
- Evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field;
- Evidence of the beneficiary's authorship of scholarly articles in the field, in professional journals, or other major media;
- Evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation; or
- Evidence that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, as evidenced by contracts or other reliable evidence.[15]

If these criteria are not readily applicable to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.[16]

Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary’s occupation.[17] However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary’s occupation, the petitioner may then submit evidence that is not specifically...
described in that criterion but is comparable to that criterion.\[18\]

A petitioner is not required to show that all or a majority of the criteria does not readily apply to the beneficiary’s occupation before USCIS will accept comparable evidence. Instead, for comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to the beneficiary’s occupation, as well as why the submitted evidence is “comparable” to that criterion. A general unsupported assertion that the listed criterion does not readily apply to the beneficiary’s occupation is not probative. However, a statement alone can be sufficient if it is detailed, specific, and credible. Officers do not consider comparable evidence if the petitioner submits evidence in lieu of a particular criterion that is readily applicable to the beneficiary’s occupation simply because the beneficiary cannot satisfy that criterion.\[19\]

A petitioner relying on evidence that is comparable to one or more of the criteria listed at 8 CFR 214.2(o)(3)(iii)(B) must still meet at least three separate evidentiary criteria to satisfy the evidence requirements, even if one or more of those criteria are met through evidence that is not specifically described in the regulation but is comparable.\[20\] While a petitioner relying on comparable evidence is not limited to the kinds of evidence listed in the criteria, the use of comparable evidence does not change the standard for the classification. It remains the petitioner’s burden to establish that the beneficiary has extraordinary ability in his or her field of endeavor.

When the evidentiary requirements specified above are satisfied, an officer proceeds to evaluate the totality of all the evidence in the record to determine whether the beneficiary has extraordinary ability with sustained national and international acclaim, as described in the O statute and regulations.\[21\]

**D. O-1B Beneficiaries in the Arts**

In support of an O-1B (Arts) Petition for a Nonimmigrant Worker (Form I-129), the petitioner must establish that the beneficiary:

- Has extraordinary ability in the arts which has been demonstrated by sustained national or international acclaim;
- Has achievements that have been recognized in the field through extensive documentation; and
- Is coming to work in the area of extraordinary ability (but not necessarily that the particular duties to be performed require someone of such extraordinary ability).\[22\]

The supporting documentation for an O-1B (Arts) petition must include evidence that the beneficiary has received, or been nominated for, a significant national or international award in the particular field (such as an Academy Award, Emmy, Grammy, or Director’s Guild Award) or at least three of the following forms of evidence:

- Evidence that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation, as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
- Evidence that the beneficiary has achieved national or international recognition for achievements, as evidenced by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications;
- Evidence that the beneficiary has performed, and will perform, in a lead, starring, or critical role for
organizations and establishments that have a distinguished reputation, as evidenced by articles in newspapers, trade journals, publications, or testimonials;

- Evidence that the beneficiary has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

- Evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the beneficiary is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the beneficiary's achievements; or

- Evidence that the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.[23]

If these criteria are not readily applicable to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.[24]

Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary’s occupation.[25] However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary’s occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion.

A petitioner is not required to show that all or a majority of the criteria does not readily apply to the beneficiary’s occupation before USCIS will accept comparable evidence. Instead, for comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to the beneficiary’s occupation as well as why the submitted evidence is “comparable” to that criterion. A general unsupported assertion that the listed criterion does not readily apply to the beneficiary’s occupation is not probative. However, a statement alone can be sufficient if it is detailed, specific, and credible. Officers do not consider comparable evidence if the petitioner submits evidence in lieu of a particular criterion that is readily applicable to the beneficiary’s occupation simply because the beneficiary cannot satisfy that criterion.[26]

A petitioner relying on evidence that is comparable to one or more of the criteria listed at 8 CFR 214.2(o) (3)(iv)(B) must still meet at least three separate evidentiary criteria to satisfy the evidence requirements, even if one or more of those criteria are met through evidence that is not specifically described in the regulation but is comparable.[27] While a petitioner relying on comparable evidence is not limited to the kinds of evidence listed in the criteria, the use of comparable evidence does not change the standard for the classification. It remains the petitioner’s burden to establish that the beneficiary has extraordinary ability in his or her field of endeavor.

When the evidentiary requirements specified above are satisfied, an officer proceeds to evaluate the totality of all the evidence in the record to determine whether the beneficiary has extraordinary ability with sustained national and international acclaim, as described in the O statute and regulations.[28]

E. O-1B Beneficiaries in Motion Picture or Television
In support of an O-1B (MPTV) Petition for a Nonimmigrant Worker (Form I-129), the petitioner must establish that the beneficiary has demonstrated a record of extraordinary achievement in motion picture or television productions and is coming to continue to work in such productions. However, the productions need not require someone with a record of extraordinary achievement.

The supporting documentation for an O-1B (MPTV) petition must include evidence that the beneficiary has received, or been nominated for, a significant national or international award in the particular field (such as an Academy Award, Emmy, Grammy, or Director’s Guild Award) or at least three of the following forms of evidence:

- Evidence that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events that have a distinguished reputation, as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

- Evidence that the beneficiary has achieved national or international recognition for achievements, as evidenced by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications;

- Evidence that the beneficiary has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation, as evidenced by articles in newspapers, trade journals, publications, or testimonials;

- Evidence that the beneficiary has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

- Evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the beneficiary’s field. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the beneficiary's achievements; or

- Evidence that the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.[29]

Petitioners for beneficiaries working in motion picture or television productions must submit evidence that applies to the criteria listed above; they may not rely on comparable evidence.[30]

When the evidentiary requirements mentioned above are satisfied, an officer proceeds to evaluate the totality of all the evidence in the record in order to determine whether the beneficiary has extraordinary achievement in the motion picture and television industry as described in the O statute and regulations.[31]

Footnotes

[^1] See INA 101(a)(15)(O)(i). “Sustained” national or international acclaim means that a beneficiary’s acclaim must be maintained. (According to Black’s Law Dictionary (11th ed. 2019), the definition of sustain is “(1) to support or maintain, especially over a long period of time; … (6) To persist in making (an effort) over a long period.”) However, the word “sustained” does not imply an age limit on the beneficiary. A beneficiary may be very young in his or her career and still be able to show sustained acclaim. There is also
no definitive time frame on what constitutes “sustained.” If an alien was recognized for a particular achievement, the officer should determine whether the alien continues to maintain a comparable level of acclaim in the field of expertise since the alien was originally afforded that recognition. An alien may have achieved national or international acclaim in the past but then failed to maintain a comparable level of acclaim thereafter.


[^9] See Matter of Chawathe (PDF), 25 I&N Dec. 369, 376 (AAO 2010) (“[T]ruth is to be determined not by the quantity of evidence alone but by its quality. Therefore, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

[^10] For example, authorship of scholarly articles in the field in professional journals or other major media, alone, regardless of caliber, would satisfy the criterion at 8 CFR 214.2(o)(3)(iii)(B)(6). Analysis of whether those publications are consistent with a finding that the beneficiary has sustained acclaim and is among the small percentage at the top of the field would be addressed and articulated in the totality determination.


[^12] See INA 101(a)(15)(O)(i). See INA 101(a)(46). See 8 CFR 214.2(o)(3)(ii) (“Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts”).


[^18] The comparable evidence provision was intended as a “catch-all” to allow for additional evidence to be considered when the other enumerated criteria do not readily apply, in whole or in part, when evaluating whether the beneficiary has extraordinary ability. See 59 FR 41818, 41820 (August 15, 1994). While alternative interpretations of the regulation are possible, USCIS believes that the best interpretation as a matter of policy is to allow for consideration of comparable evidence on a criterion-by-criterion basis.
interpretation is supported by the fact that the O regulations do not explicitly mandate a showing that a certain number of criteria do not apply before a petitioner may submit comparable evidence. These provisions do not include a qualifier such as “all” or “the majority of” before “criteria.” It is unclear if the use of the term “criteria” was intended to require a showing that all or a majority of the criteria do not readily apply, or if the use of the word “criteria” was merely a reference to the multiple evidentiary options listed in the regulations. This interpretive policy resolves that ambiguity.

[^19] Consistent with a plain language reading, “readily” means “easily” or “without much difficulty.” See Merriam-Webster Dictionary’s definition of “readily.” The term “occupation” is defined as “the principal business of one’s life.” A criterion need not be entirely inapplicable to the beneficiary’s occupation. Rather, comparable evidence is allowed if the petitioner shows that a criterion is not easily applicable to the beneficiary’s job or profession.

[^20] For example, a petitioner who establishes that 8 CFR 214.2(o)(3)(iii)(B)(2) is not readily applicable to the beneficiary’s occupation may submit evidence showing that two other criteria under 8 CFR 214.2(o)(3)(iii)(B) have been met, along with an additional form of evidence of comparable significance to that in 8 CFR 214.2(o)(3)(iii)(B)(2), to establish sustained acclaim and recognition.

[^21] See Section B, Determining Eligibility for O-1 Classification [2 USCIS-PM M.4(B)]. The same totality analysis described in Section B applies regardless of whether comparable evidence was relied upon to satisfy the evidentiary requirements.


[^26] Consistent with a plain language reading, “readily” means “easily” or “without much difficulty.” See Merriam-Webster Dictionary’s definition of “readily.” The term “occupation” is defined as “the principal business of one’s life.” A criterion need not be entirely inapplicable to the beneficiary’s occupation. Rather, comparable evidence is allowed if the petitioner shows that a criterion is not easily applicable to the beneficiary’s job or profession.

[^27] For example, a petitioner who establishes that 8 CFR 214.2(o)(3)(iv)(B)(2) is not readily applicable to the beneficiary’s occupation may submit evidence showing that two other criteria under 8 CFR 214.2(o)(3)(iv)(B) have been met, along with an additional form of evidence of comparable significance to that in 8 CFR 214.2(o)(3)(iv)(B)(2), to establish sustained acclaim and recognition.

[^28] See Section B, Determining Eligibility for O-1 Classification [2 USCIS-PM M.4(B)]. The same totality analysis described in Section B applies regardless of whether comparable evidence was relied upon to satisfy the enumerated evidentiary requirements.


[^31] See Section B, Determining Eligibility for O-1 Classification [2 USCIS-PM M.4(B)].
Chapter 5 - O-2 Beneficiaries

A. General

USCIS may classify beneficiaries who are essential to an O-1 beneficiary’s artistic or athletic performance and are coming solely to assist in that performance as O-2 accompanying beneficiaries. The O-2 beneficiary must be an integral part of the actual performance or event and possess critical skills and experience with the O-1 that are not of a general nature and that U.S. workers do not possess.

If the O-2 beneficiary is accompanying an O-1 beneficiary in the television or motion picture industry, he or she must have skills and experience with the O-1 beneficiary that are not of a general nature and skills that are critical, due to a pre-existing or long-standing working relationship with the O-1 beneficiary. If he or she is accompanying the O-1 beneficiary for a specific production only, the person may be eligible for an O-2 classification because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the O-2 beneficiary is essential to the successful completion of the production.

USCIS may not grant O-2 classification for beneficiaries to support O-1 beneficiaries with extraordinary ability in fields of business, education, or science.

The O-2 beneficiaries may not work separate or apart from the O-1 beneficiaries they support and may change employers only in conjunction with a change of employer by the O-1 beneficiary. Although multiple beneficiaries may be included on a single O-2 Petition for a Nonimmigrant Worker (Form I-129), they cannot be included on the O-1 beneficiary’s petition.

B. Documentation and Evidence

A petition for an O-2 beneficiary who will accompany an O-1A (athlete) or O-1B (artist) of extraordinary ability must be supported by evidence that the O-2 beneficiary is coming to the United States to assist in the performance of the O-1 beneficiary. The O-2 beneficiary must be an integral part of the actual performance and have critical skills and experience with the O-1 beneficiary that are not of a general nature and not possessed by a U.S. worker.

A petition for an O-2 beneficiary who will accompany an O-1B (MPTV) beneficiary of extraordinary achievement must be supported by:

- Evidence of the current essentiality, critical skills, and experience of the O-2 beneficiary with the O-1 beneficiary and evidence that the O-2 beneficiary has substantial experience performing the critical skills and essential support services for the O-1 beneficiary; or

- In the case of a specific motion picture or television production, evidence that significant production has taken place outside the United States and will take place inside the United States, and that the continuing participation of the O-2 beneficiary is essential to the successful completion of the production.

Footnotes
Chapter 6 - Family Members

The spouse and unmarried children under 21 years old of a principal O-1 or O-2 nonimmigrant may qualify for dependent O-3 nonimmigrant status if they are accompanying or following to join the O-1 or O-2 in the United States.\[^1\] The O-3 spouse and unmarried children under 21 receive nonimmigrant status for the same period of time and subject to the same conditions as the O-1 or O-2 principal.\[^2\] An O-3 dependent may not accept employment in the United States pursuant to such status.\[^3\]

Footnotes

\[^1\] See 8 CFR 214.2(o)(6)(iv).
\[^2\] See 8 CFR 214.2(o)(6)(iv).
\[^3\] See 8 CFR 214.2(o)(6)(iv).

Chapter 7 - Documentation and Evidence

A. General

USCIS requires a petitioning employer or agent to file the Petition for a Nonimmigrant Worker (Form I-129) and required fee for all beneficiaries seeking classification as an O-1 or O-2 nonimmigrant.\[^1\] The petition must be filed in accordance with DHS regulations and the form instructions, and with the required fees.\[^2\] The petitioner may not file the petition more than 1 year before the actual need for the beneficiary's services.\[^3\]

An O-1 or O-2 beneficiary may work for more than one employer at the same time.\[^4\] When the beneficiary works for more than one employer, each employer must properly file a separate petition along with the required documentation and fees unless an established agent files the petition.\[^5\]

More than one O-2 accompanying beneficiary may be included on a petition if they are assisting the same O-1 beneficiary for the same events or performances, during the same period of time, and in the same location.\[^6\] An employer or agent may not include multiple O-1 beneficiaries on the same petition.\[^7\]

B. Documentation and Evidence
1. Required Evidence

A petitioner must include the following with the petition:

- Evidence specific to the particular classification sought;[8]
- Copies of any written contracts between the petitioner and the beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary will be employed;
- An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities;[9] and
- A written advisory opinion(s) from the appropriate consulting entity or entities.[10]

2. Form of Evidence

The evidence submitted with the petition must conform to the following:

- Affidavits, contracts, awards, and similar documentation must reflect the nature of the beneficiary's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability or extraordinary achievement of the beneficiary must specifically describe the beneficiary's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.
- The petitioner may submit a legible photocopy of a document in support of the petition in lieu of the original. However, the original document must be submitted if requested by USCIS.[11]

3. Contracts

The regulation requires the submission of any written contracts between the petitioner and the beneficiary but allows for the submission of a summary of the terms of an oral agreement where there is no written contract.[12] Evidence of an oral agreement may include, but is not limited to, emails between the contractual parties, a written summation of the terms of the agreement, or any other evidence that demonstrates that an oral agreement was created.

The summary of the oral agreement must contain:

- The terms offered by the petitioner (employer); and
- The terms accepted by the beneficiary (employee).

The summary does not have to be signed by both parties to establish the oral agreement.[13]

4. Consultations

A statutorily mandated consultation process exists for all O nonimmigrant petitions.[14] The source and contents of the consultation vary, depending upon the type of O petition.
### Consultation Process for O Nonimmigrants

<table>
<thead>
<tr>
<th>Petition Type</th>
<th>Source and Contents of Consultations</th>
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<tbody>
<tr>
<td><strong>O-1A and O-1B (Arts)</strong></td>
<td>The petitioner must provide a consultation in the form of an advisory opinion from a U.S. “peer group” in the area of the beneficiary’s ability (which may include a labor organization) or a person or persons with expertise in the area of the beneficiary’s ability. The contents should, if favorable, describe the beneficiary's ability and achievements in the field of endeavor, describe the nature of the duties to be performed, and state whether the position requires the services of an alien of extraordinary ability, or may state “no objection.” If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If an advisory opinion is submitted from a group other than a labor organization, USCIS must submit a copy of the petition and supporting documents to the national office of the appropriate union (if any exists). If the labor organization does not respond, USCIS renders a decision on the evidence of record. If the petitioner establishes that no appropriate peer group exists, including a labor organization, USCIS renders a decision on the evidence of record.</td>
</tr>
<tr>
<td><strong>O-1B (MPTV)</strong></td>
<td>The petitioner must provide consultations in the form of advisory opinions from both the union representing the beneficiary’s occupational peers and a management organization in the area of the beneficiary’s ability. The contents may include statements describing the beneficiary’s achievements in motion picture or television productions and whether the proposed position requires the services of an alien of extraordinary achievement, or may state “no objection.” If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the petitioner establishes that no appropriate group exists, including a labor organization, USCIS renders a decision on the evidence of record.</td>
</tr>
<tr>
<td><strong>O-2</strong></td>
<td>The petitioner must provide a consultation in the form of an advisory opinion from the labor organization having expertise in the skill area. If the O-2 is sought for employment in the motion picture or television industry, opinions must be provided from both a labor union and a management organization. The opinion may include information regarding the beneficiary’s particular skills, his or her experience working with the O-1 beneficiary, and whether the project involves a situation that includes work both inside and outside the United States (if applicable), or may state “no objection.” If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. Generally, if the petitioner establishes that an appropriate labor organization does not exist, USCIS renders a decision on the evidence of record.</td>
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USCIS maintains a list of organizations that provide advisory opinions on O-1 and O-2 beneficiaries.
The O regulations specify mandatory response times for advisory opinions requested by USCIS in routine and expedited cases and prescribe action to be taken when a requested opinion is not received. The consultations are advisory in nature only and are not binding on USCIS. A negative advisory opinion does not automatically result in the denial of the petition, as decisions must be based on the totality of the evidence. Accordingly, USCIS may favorably consider evidence submitted by the petitioner to overcome a negative advisory opinion.

Use of Prior Consultation

USCIS may waive the consultation requirement for aliens of extraordinary ability in the field of arts if the beneficiary seeks readmission to the United States to perform similar services within 2 years of the date of a previous advisory opinion. After USCIS grants the waiver, USCIS forwards a copy of the petition and documentation to the national office of an appropriate labor organization within 5 days. Petitioners desiring to avail themselves of the waiver should submit a copy of the prior consultation with the petition.

Footnotes


[^2] See 8 CFR 103.2(a)(1). For information on filing, see the USCIS website.


[^8] See Chapter 4, O-1 Beneficiaries, Section C, O-1A Beneficiaries in Sciences, Education, Business, or Athletics [2 USCIS-PM M.4(C)]; Section D, O-1B Beneficiaries in the Arts [2 USCIS-PM M.4(D)]; and Section E, O-1B Beneficiaries in Motion Picture or Television [2 USCIS-PM M.4(E)]; and Chapter 5, O-2 Beneficiaries [2 USCIS-PM M.5].

[^9] A petition which requires the beneficiary to work in more than one location must include an itinerary with the dates and locations of work. See 8 CFR 214.2(o)(2)(iv)(A). There are no exceptions to the itinerary requirement when the petition is filed by an agent performing the function of an employer. However, USCIS does give some flexibility to how detailed the itinerary must be and does take into account industry standards when determining whether the itinerary requirement has been met. As such, the itinerary should at a minimum indicate what type of work the beneficiary will be engaged, where, and when this work will take place.


Chapter 8 - Adjudication

Officers must carefully review each Petition for a Nonimmigrant Worker (Form I-129) to determine whether the petitioner has established eligibility based on the applicable requirements for the type of O classification being sought. Officers must apply a "preponderance of the evidence" standard when evaluating eligibility for the O nonimmigrant classification. The burden of proving eligibility for the benefit sought rests entirely with the petitioner.

A. Decision

Approvals

If the petitioner properly filed the petition and the officer is satisfied that the petitioner has met the required eligibility standards, the officer approves the petition. The approval period must not exceed the maximum period of stay allowed. Furthermore, USCIS should not deny a petition on the basis of the approval of a permanent labor certification or the filing of a preference petition for the O-1 beneficiary.

The table below provides a list of the classifications for nonimmigrant aliens of extraordinary ability or achievement, those accompanying and assisting the principal alien’s artistic or athletic performance, and dependents.

<table>
<thead>
<tr>
<th>Classes of Beneficiaries and Corresponding Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beneficiary</strong></td>
</tr>
<tr>
<td>Alien of extraordinary ability in the sciences, education, business, or athletics (principal)</td>
</tr>
<tr>
<td><strong>Beneficiary</strong></td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Alien of extraordinary ability in the arts (principal)</td>
</tr>
<tr>
<td>Alien of extraordinary achievement in the motion picture or television industry (principal)</td>
</tr>
<tr>
<td>Accompanying alien who is coming to the United States to assist in the performance of certain O-1s</td>
</tr>
<tr>
<td>Spouse or child of an O-1 or O-2</td>
</tr>
</tbody>
</table>

Once USCIS approves the petition, USCIS notifies the petitioner of the approval using a Notice of Action (Form I-797).[5]

**Denials**

If the petitioner does not meet the eligibility requirements, the officer denies the petition.[6] If the officer denies the petition, he or she must notify the petitioner of the denial in writing. The written decision must explain why USCIS denied the petition and must include information about appeal rights and the opportunity to file a motion to reopen or reconsider.[7] The office that issued the decision has jurisdiction over any motion and the Administrative Appeals Office (AAO) has jurisdiction over any appeal.[8]

**B. Revocation**

USCIS may revoke an approved petition at any time, even after the validity of the petition has expired. USCIS automatically revokes the petition if the petitioner ceases to exist or files a written withdrawal of the petition.[9]

USCIS may also revoke an O petition approval on notice. USCIS sends the petitioner a Notice of Intent to Revoke (NOIR) if it is determined that:

- The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- The statement of facts contained in the petition was not true and correct;
- The petitioner violated the terms and conditions of the approved petition;
- The petitioner violated the statute or regulations; or
- The approval of the petition violated the regulations or involved gross error.[10]

The NOIR must contain a detailed statement of the grounds for the revocation and the period allowed for the
petitioner’s rebuttal. USCIS considers all relevant evidence presented in deciding whether to revoke the petition.

The petitioner may appeal the decision to revoke a petition to the AAO if USCIS revoked the petition on notice. Petitioners may not appeal an automatic revocation.\footnote{11}

**Footnotes**


\[^3\] See Chapter 9, Admissions, Extensions of Stay, and Changes of Status [2 USCIS-PM M.9].

\[^4\] See 8 CFR 214.2(o)(13).

\[^5\] See 8 CFR 103.2(b)(19).

\[^6\] See 8 CFR 103.2(b)(8).

\[^7\] See 8 CFR 103.2(b)(19). See 8 CFR 103.3. See 8 CFR 214.2(o)(7).

\[^8\] See 8 CFR 103.3(a)(2).


\[^10\] See 8 CFR 214.2(o)(8)(iii).

\[^11\] See 8 CFR 214.2(o)(9)(ii).

**Chapter 9 - Admission, Extension of Stay, Change of Status, and Change of Employer**

**A. Admission**

If approved for classification as an O nonimmigrant and found otherwise admissible, a beneficiary may be admitted for a period determined to be necessary to accomplish the event or activity, not to exceed 3 years.\footnote{11}

*Validity Period*

If approved after the date the petitioner indicated services would begin, the validity period generally commences with the date of approval. The validity period must not exceed the period determined by USCIS to be necessary to complete the event or activity and must not exceed 3 years.

A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may engage in employment only during the validity period of the petition.\footnote{2}
Nonimmigrants described in the O classification are "seek[ing] to enter the United States to continue to work in the area of extraordinary ability," and may be authorized for a period of stay necessary "to provide for the event (or events) for which the nonimmigrant is admitted."[3] The O classification is for a beneficiary coming to the United States "to perform services relating to an event or events."[4]

The O regulations define an event as an activity such as, but not limited to: a scientific project, conference, convention, lecture, series, tour, exhibit, business project, academic year, or engagement.[5] In addition, a job that may not have a specific engagement or project may also fall under this definition if the job is the "activity" within the beneficiary's area of extraordinary ability. Such activities may include short vacations, promotional appearances, and stopovers that are incidental or related to the event. Therefore, the regulations clearly indicate that USCIS may approve a petition to cover not only the actual event or events but also services and activities in connection with the event or events.

There is no statutory or regulatory authority for the proposition that a gap of a certain number of days automatically indicates a “new event,” nor is there a requirement for a "single event.” Rather, the focus is on whether the beneficiary will work in the area of extraordinary ability.[6]

The regulations define the evidentiary standard for identifying the services or activities relating to the event(s) by requiring "an explanation of the nature of the events or activities and a copy of any itinerary for the events or activities."[7] Unlike other nonimmigrant categories that have a specified time limit, a temporal period is not specified for O nonimmigrants. The regulations state that the validity period must be that which is "necessary to accomplish the event or activity, not to exceed 3 years."[8]

If the activities on the itinerary are related in such a way that they could be considered an event, the petition should be approved for the requested validity period. For example, a series of events that involve the same performers and the same or similar performance, such as a tour by a performing artist in venues around the United States, would constitute an event. In another example, if there is a break in between events in the United States and the petitioner indicates the beneficiary will be returning abroad to engage in activities that are incidental or related to the work performed in the United States, it does not necessarily interrupt the original event.

The burden is on the petitioner to demonstrate that the activities listed on the itinerary relate to the event despite gaps in which the beneficiary may travel abroad and return to the United States. Those gaps may include time in which the beneficiary attends seminars, vacations, or travels between engagements.[9] Those gaps would not be considered to interrupt the original event, and the full period of time requested may be granted as the gaps are incidental to the original event. If a review of the itinerary does not establish an event or activity or a series of connected events and activities that would allow the validity period requested, or if the petitioner is requesting a validity period beyond the last established event or activity, the officer may, in his or her discretion, issue a Request for Evidence (RFE). The RFE provides the petitioner an opportunity to provide additional documentation to establish the requested validity period.

Officers evaluate the totality of the evidence submitted under the pertinent statute and regulations to determine if the events and activities on the itinerary are connected in such a way that they would be considered an event for purposes of the validity period. If the evidence establishes that the activities or events are related in such a way that they could be considered an event, the officer approves the petition for the length of the established validity period.

Even though USCIS may consider a group of related activities to be an event, speculative employment or freelancing are not allowed.[10] A petitioner must establish that there are events or activities in the beneficiary's field of extraordinary ability for the validity period requested. Evidence of such events or activities could include an itinerary for a tour, contract or summary of the terms of the oral agreement under

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which the beneficiary will be employed, or contracts between the beneficiary and employers if an agent is being used.

**Maintaining Status**

USCIS does not consider a beneficiary in O-1 status to have failed to maintain nonimmigrant status solely because of the cessation of the employment on which the visa classification was based for a period of up to 60 days or until the end of the authorized validity period, whichever is shorter. USCIS may shorten or eliminate this 60-day grace period as a matter of discretion. Unless otherwise authorized under 8 CFR 274a.12, the alien may not work during such a period.[11]

Although the O-2 accompanying beneficiary must obtain his or her own classification, this classification does not entitle him or her to work separate and apart from the O-1 beneficiary to whom he or she provides support.[12]

**B. Extension of Stay**

A petitioner may request an extension of stay for an O-1 or O-2 nonimmigrant beneficiary by filing a new Petition for a Nonimmigrant Worker (Form I-129).[13] O-3 dependents may request an extension of stay or change of status by filing an Application to Extend/Change Nonimmigrant Status (Form I-539), and, when applicable, Supplemental Information for Application to Extend/Change Nonimmigrant Status (Form I-539A).

USCIS may authorize an extension of stay in increments of up to 1 year for an O-1 or O-2 beneficiary to continue or complete the same event or activity for which he or she was admitted, plus an additional 10 days to allow the beneficiary to get his or her personal affairs in order.[14] There is no limit to the number of extensions of stay a petitioner can file for the same beneficiary.

USCIS should not deny requests for extensions of stay filed by the initial petitioner solely on the basis that the event that supported the initial petition has changed. USCIS also should not deny such requests filed by subsequent petitioners solely on the basis that the event or employer has changed. Furthermore, USCIS should not deny such requests on the basis of the approval of a permanent labor certification or the filing of a preference petition for the O-1 beneficiary.[15]

**C. Change of Status**

Generally, a beneficiary in a current valid nonimmigrant status who has not violated his or her status is eligible to change status to that of an O nonimmigrant without having to depart the United States.[16]

To change to O nonimmigrant status, the petitioning employer or agent should file a Petition for a Nonimmigrant Worker (Form I-129) before the beneficiary’s current status expires and indicate the request is for a change of status.[17] The beneficiary cannot work in the new nonimmigrant classification until USCIS approves the petition and the change of status request. If USCIS determines that the beneficiary is eligible for the O classification, but not a change of status, the beneficiary must depart the United States, apply for a nonimmigrant visa at a U.S. consular post abroad (unless visa exempt), and then be readmitted to the United States in O-1 or O-2 status.[18]

USCIS should not deny an application for change of status on the basis of the approval of a permanent labor certification or the filing of a preference petition for the O-1 beneficiary.[19]
D. Change of Employer

If an O nonimmigrant in the United States seeks to change employers, the new employer or agent must file a Petition for a Nonimmigrant Worker (Form I-129) to authorize the new employment and, if applicable, request to extend the beneficiary’s stay. An O-2 beneficiary may change employers only in conjunction with a change of employers by the principal O-1 beneficiary. If an agent filed the petition, the agent must file an amended petition with evidence relating to the new employer.\[20\]

In the case of a professional O-1 athlete traded from one organization to another, employment authorization for the player automatically continues for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Petition for a Nonimmigrant Worker (Form I-129). If a new petition is not filed within 30 days, employment authorization ceases. If a new petition is filed within 30 days, the professional athlete is deemed to be in valid O-1 status, and employment continues to be authorized, until the petition is adjudicated. If USCIS denies the new petition, employment authorization ceases.\[21\]

Footnotes


[^9] Activities engaged in during the beneficiary's trips outside the United States should not by themselves be used to limit a validity period. An officer should primarily focus on the relatedness of the activities inside the United States to determine whether the beneficiary is engaged in an event for purposes of the validity period.

[^10] Pursuant to 8 CFR 214.2(o)(2)(iv)(D), in the case of a petition filed for an artist or entertainer, a petitioner may add additional performances or engagements during the validity period of the petition without filing an amended petition, provided the additional performances or engagements require an alien of O-1 caliber.


[^13] See 8 CFR 214.1(l)(1). Where a petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of USCIS. There is no appeal from the denial of a request for extension of stay. See
8 CFR 214.1(c)(5).


[^16] See INA 248. See 8 CFR 248.1(a). An example of a violation of status is if, generally, the nonimmigrant’s current status expires before filing a Petition for a Nonimmigrant Worker (Form I-129) with USCIS or by working without authorization.


[^18] There is no appeal from a change of status denial. See 8 CFR 248.3(g).


Part N - Athletes and Entertainers (P)

Chapter 1 - Purpose and Background

A. Purpose

The Immigration and Nationality Act (INA) and implementing regulations provide that qualifying nonimmigrant athletes and entertainers may be approved for P nonimmigrant classification.

B. Background

The Immigration Act of 1990 added the O and P nonimmigrant classes to INA 101(a)(15).[^1] These new classes provided for the admission of artists, athletes, entertainers, and other persons of extraordinary ability. However, as a result of the passage of the Armed Forces Immigration Adjustment Act of 1991, the use of the O and P classifications was delayed until April 1, 1992.[^2] Before the enactment of these laws, artists, athletes, and other performers were admitted under the H-1 (distinguished merit and ability), H-2 (temporary agricultural or non-agricultural), or B-1 (temporary business visitor) categories. The 1990 amendments also revised the H classifications, effectively barring their continued use by most performing artists and athletes.

C. Legal Authorities

- INA 101(a)(15)(P) - Definition of P nonimmigrant classification
- INA 204(i) - Professional athletes
- INA 214(a)(2)(B) - Admission of or period of stay for P nonimmigrants
- INA 214(c)(1) - Importing employer
Chapter 2 - Eligibility Requirements

A. P-1 Nonimmigrant Classification

1. Internationally Recognized Athlete (P-1A Nonimmigrant)

The P-1A nonimmigrant classification includes individual athletes with an internationally recognized reputation and members of an athletic team that is internationally recognized.\[1]\ The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team with an international reputation.\[2]\ 

The regulatory requirements that the prospective competitions have a “distinguished reputation” and “require” the participation or services of an internationally recognized athlete or team derive from the statutory language stating that a qualifying athlete is one who performs “at an internationally recognized level of performance.”\[3]\ Accordingly, USCIS interprets this regulatory language consistent with the statutory reference to athletes performing at an “internationally recognized level of performance.” More specifically, the relevant statutory and regulatory provisions do not require that an athlete or team be coming to participate in a competition that is limited to internationally recognized participants. Rather, it is sufficient for the petitioner to show that the competition is at an internationally recognized level of performance such that it requires that caliber of athlete or team to be among its participants or that some level of participation by internationally recognized athletes is required to maintain its current distinguished reputation in the sport.

Relevant considerations for determining whether competitions are at an internationally recognized level of performance such that they require the participation of an internationally recognized athlete or team include, but are not limited to:

- The level of viewership, attendance, revenue, and major media coverage of the events;
- The extent of past participation by internationally recognized athletes or teams;

Footnotes


• The international ranking of athletes competing; or
• Documented merits requirements for participants.

If the record shows the participation of internationally recognized caliber competitors is currently unusual or uncommon, this may indicate that the event may not currently be at an internationally recognized level of performance. In addition, while not necessarily determinative, the fact that a competition is open to competitors at all skill levels may be a relevant negative factor in analyzing whether it is at an internationally recognized level of performance. If the event includes differentiated categories of competition based on skill level, the focus should be on the reputation and level of recognition of the specific category of competition in which the athlete or team seeks to participate.\[4\]

Individual athletes who are internationally recognized may also be coming to the United States to join a U.S.-based team.\[5\] When a petition is for a foreign athletic team, each member of an internationally recognized athletic team may be granted P-1A classification based on that relationship, but may not perform services separate and apart from the athletic team.\[6\]

2. COMPETE Act [Reserved]

3. Member of Internationally Recognized Entertainment Group (P-1B Nonimmigrant)

The P-1B nonimmigrant classification for entertainers applies to:

• Members of an internationally recognized entertainment group coming to the United States; and
• A person coming to the United States to join, as a member, an internationally recognized group, which can be based in the United States or abroad.\[7\]

A member of an internationally-recognized entertainment group may be granted P-1B classification based on that relationship, but may not perform services separate and apart from the entertainment group. The P-1B nonimmigrant who is a member of an internationally recognized entertainment group must be coming to the United States to perform with the group as a unit. In addition, the entertainment group must be internationally recognized as outstanding for a sustained and substantial period of time, and 75 percent of the group must have had a sustained and substantial relationship with the group for at least 1 year.\[8\] The P-1B nonimmigrant classification is not appropriate for a person performing as a solo entertainer.

Provisions for Certain Entertainment Groups

The regulations allow for three special provisions for certain entertainment groups:

• A waiver of the international recognition and 1-year group membership requirement for circus personnel (both those who perform and those who constitute an integral and essential part of the performance), provided that they are coming to join a circus or circus group that has been recognized nationally as outstanding for a sustained and substantial period of time;

• A waiver of the international recognition requirement, in consideration of special circumstances, for some entertainment groups recognized nationally as being outstanding in its discipline for a sustained and substantial period of time; and

• A waiver of the 1-year sustained and substantial relationship requirement for 75 percent of the group due to exigent circumstances.\[9\]
**Group – Defined**

The term "group" is defined as two or more persons established as one entity or unit to perform or to provide a service.\[^{[10]}\] “Member of a group” means a person who is actually performing the entertainment services.\[^{[11]}\] It does not include persons who assist in the presentation who are not on the stage (such as lighting or sound technicians). These support aliens would need to be petitioned for as essential support (P-1S) and a separate petition must be filed for them.\[^{[12]}\]

If a solo artist or entertainer traditionally performs on stage with the same group of aliens, such as back-up singers or musicians, the act may be classified as a group. This group would then need to meet the “75 percent rule.” The “75 percent rule” means that 75 percent of the members of the group must have been performing entertainment services for the group for a minimum of 1 year or more.\[^{[13]}\] If the group does not meet the 75 percent rule, the artist or entertainer would need to qualify for another classification, such as an O-1 nonimmigrant (rather than P-1B) and the back-up band as O-2 nonimmigrants.

**B. Performers Under Reciprocal Exchange or Culturally Unique Programs**

1. **Individual Performer or Part of a Group Performing Under a Reciprocal Exchange Program (P-2 Nonimmigrant)**

A P-2 nonimmigrant is an alien coming to the United States to perform as an artist or entertainer, individually or as part of a group and who seeks to perform under a reciprocal exchange program which is between organization(s) in the United States and organization(s) in one or more foreign states.\[^{[14]}\]

2. **Artist or Entertainer as Part of Culturally Unique Program (P-3 Nonimmigrant)**

A P-3 nonimmigrant is an alien coming to the United States solely to perform, teach, or coach under a commercial or noncommercial program that is culturally unique.\[^{[15]}\]

**C. Essential Support Personnel**

Essential support personnel are eligible for a P-1S, P-2S, or P-3S nonimmigrant classification if the petitioner can establish that they are an integral part of the performance of the P-1, P-2, or P-3 athlete, team, entertainer, or entertainment group because he or she performs support services that cannot be readily performed by a U.S. worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien.\[^{[16]}\]

**D. Treatment of Family Members**

The spouse and unmarried children may qualify for P-4 derivative classification. They are entitled to the same period of admission and limitations as the beneficiary of the P petition. They are not allowed to accept employment unless they have been independently granted employment authorization. If the spouse or unmarried child is in the United States in another nonimmigrant classification, he or she must separately file an Application to Extend/Change Nonimmigrant Status (Form I-539) and, if applicable, Supplemental Information for Application to Extend/Change Nonimmigrant Status (Form I-539A) to request a change of status to P-4. The spouse or unmarried child must also separately file Form I-539 if seeking an extension of
stay based on the principal alien’s stay being extended.

**Footnotes**


[^4] For instance, some of the top marathons allow members of the public to participate in the general event, but also include a category of elite runners who compete against each other for prize money. In such a case, if an athlete is seeking to enter the United States to participate in the elite category, it is appropriate for an officer to consider whether the elite competition is at an internationally recognized level of performance such that it requires the participation of an internationally recognized athlete.


[^7] See 8 CFR 214.2(p)(1)(ii)(A)(2). The P-1B classification should not be limited to individual entertainers coming to the United States to join only foreign-based entertainment groups. Rather, as the regulation at 8 CFR 214.2(p)(3) focuses on whether the group is “internationally recognized,” which is defined as “having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country,” the P-1B classification should include individual entertainers coming to the United States to join U.S.-based internationally recognized entertainment groups.


**Chapter 3 - Petitioners**
A petitioner seeking to classify an alien as a P nonimmigrant must submit a Petition for a Nonimmigrant Worker (Form I-129) on his or her behalf. The petition must be properly filed with the required fee in accordance with the Form I-129 filing instructions. If the beneficiary will work for more than one employer within the same time period, each employer must file a separate petition unless an agent files the petition and certain requirements are met.

A request for an extension of stay for a P nonimmigrant or change of status for an alien who is present in the United States in another nonimmigrant classification must be filed on Form I-129. If the alien is already in the United States in a P nonimmigrant status and a new employer wishes to petition for him or her, that new employer must use Form I-129 to file for a change of employer or to add an employer, and to request an extension of stay for the person.

If there are any material changes in the terms or conditions of the P nonimmigrant’s employment, the petitioner must file an amended petition. However, a petitioner may add additional, similar performances, engagements, or competitions during the validity period without filing an amended petition.

### A. Eligible Petitioners

The following petitioners may submit Form I-129 seeking to classify an alien as a P nonimmigrant:

- Petitions for P-1 nonimmigrants may be filed by a U.S. employer, a U.S. sponsoring organization, a U.S. agent, or a foreign employer through a U.S. agent;

- Petitions for P-2 nonimmigrants may be filed by the U.S. labor organization which negotiated the reciprocal exchange agreement, the sponsoring organization, or a U.S. employer; and

- Petitions for P-3 nonimmigrants may be filed by the sponsoring organization or a U.S. employer.

### Agents as Petitioners

A U.S. agent may file a P-1 petition in the case where the beneficiary is in an occupation where workers are generally self-employed or use agents to arrange short-term employment with multiple employers, or where a foreign employer authorizes a U.S. agent to act on its behalf.

### B. Multiple Beneficiaries

In some circumstances, outlined below, a petitioner may file for multiple beneficiaries on the same petition.

#### P-1 Petition

A petitioner may file for multiple P-1A beneficiaries. In addition, a petitioner may file for multiple beneficiaries that are members of a group seeking classification based on the reputation of the group. However, a separate petition must be submitted for the essential support (non-performing) personnel. More than one P-1 essential support personnel may be included on a petition.

#### P-2 Petition

P-2 group members can be included on a single petition. A separate petition must be submitted for the essential support personnel.
**P-3 Petition**

P-3 group members can be included on a single petition. A separate petition must be submitted for the essential support personnel.\[^{12}\]

**Footnotes**

[^1]: Information on filing locations can be found on the [Direct Filing Addresses for Form I-129, Petition for a Nonimmigrant Worker](https://www.uscis.gov/book/export/html/68600) webpage.


[^3]: See 8 CFR 214.1(c)(1).


[^8]: See INA 214(c)(4)(G).


**Chapter 4 - Documentation and Evidence**

**A. Evidence for P-1 Classification**

A P-1 petition for classification as an internationally recognized athlete, team, or entertainment group must be supported by evidence that the person, group, or team is internationally recognized as outstanding in the discipline and is entering to perform services which require such a level of performance.\[^1\] If the petition is for a group of entertainers, the petition must contain evidence that at least 75 percent of the group have been performing with the group for at least 1 year.\[^2\] The petitioner must submit a consultation from a labor organization, if one exists.\[^3\]

*Internationally Recognized Individual Athlete or Athletic Team*
For a team, the petitioner must submit evidence that the team as a unit is internationally recognized. For an individual athlete, the petitioner must submit evidence that the athlete has achieved international recognition in the sport based on his or her reputation.[4]

A petition for an athletic team or individual athlete must include a tendered contract with a “major United States sports league or team” or tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport.[5] USCIS interprets “major United States sports league” as a league that has a distinguished reputation that is commensurate with an internationally recognized level of performance, and “major United States sports team” as a team that participates in such a league, consistent with the statutory standard for internationally recognized athletes.[6]

Therefore, under this interpretation, the league (or the team within the league) may be one where the level of competition in the league is such that the league (or a team within the league) would not be able to remain competitive or maintain its current distinguished reputation in the sport without the services of at least some internationally recognized caliber athletes.

Factors that may be considered include, but are not limited to: information about the structure of the league or the differentiated categories of competition; documentation showing a pattern of participation by internationally recognized athletes; level of viewership, attendance, revenue, and major media coverage about the league or its teams or competitions; international ranking of athletes competing; or documented merits requirements for league participants.[7]

The petitioner must also submit documentation of at least two forms of the following:[8]

- Evidence of significant participation in a prior season with a major U.S. sports league;[9]
- Evidence of participation in international competition with a national team;
- Evidence of significant participation in a prior season for a U.S. college or university in intercollegiate competition;
- A written statement from an official of the governing body of the sport detailing the alien’s or team’s international recognition;
- A written statement from a recognized expert or member of the sports media detailing the alien’s or team’s international recognition;
- Evidence that the alien or team is ranked if the sport has international rankings; or
- Evidence the alien or team has received a significant honor or award in the sport.

**Entertainment Group**

In general, the petitioner must submit evidence of the group's nomination or receipt of significant international awards or prizes for outstanding achievement in its field or three forms of the following types of documentation:[10]

- Critical reviews, advertisements, publicity releases, publications, contracts, or endorsements showing that the group has performed and will perform as a starring or leading entertainment group in productions or events with a distinguished reputation;
- Reviews in major newspapers, trade journals, magazines, or other published material showing the
group’s international recognition and acclaim for outstanding achievement in its field;

- Articles in newspapers, trade journals, publications, or testimonials showing that the group has performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation;

- Ratings, standing in the field, box office receipts, recording or video sales, and other achievements in the field, as reported in articles in major newspapers, trade journals, or other publications showing major commercial or critically acclaimed success;

- Testimonials showing that the group has achieved significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field; or

- Contracts or other reliable evidence that the group has either commanded or will command a high salary or other substantial remuneration for services comparable to others similarly situated in the field.

Circus Group

The petitioner must submit evidence the beneficiary is coming to join (perform in) a circus that has been recognized nationally as outstanding for a sustained and substantial period or as part of such a circus.[11]

Essential Support Personnel

The petitioner must submit a statement describing the support personnel’s prior essentiality and skills and experience with the principal beneficiary, group, or team.[12]

B. Evidence for P-2 Nonimmigrant Classification

A petition filed on behalf of an alien seeking P-2 nonimmigrant classification should be submitted with the following supporting evidence: the consultation,[13] a copy of the reciprocal agreement, and evidence that the beneficiaries are subject to the reciprocal exchange.[14] A list of negotiated P-2 reciprocal agreements is maintained on the P-2 Individual Performer or Part of a Group Entering to Perform Under a Reciprocal Exchange Program webpage. If a reciprocal agreement is submitted other than those listed, the officer must review the agreement to determine if the agreement adheres to the regulatory standard.[15]

C. Evidence for P-3 Nonimmigrant Classification

A petition filed on behalf of an alien seeking P-3 nonimmigrant classification should be submitted with the following supporting evidence:[16]

- Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien’s or the group’s skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien’s or group’s skill; or

- Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

In addition, the petition must be submitted with evidence that all of the performances or presentations will be culturally unique events.
D. Consultation Requirement

1. Statutorily Mandated Consultation Process

Along with the supporting documentation, a statutorily mandated consultation process exists for all P petitions.[17] This consultation must be from an appropriate labor organization and address the nature of the work to be done and the alien’s qualifications or, for certain classifications, the organization may indicate it has no objection to approval of the petition.[18] The petitioner has the burden of furnishing a consultation.

The source and contents of the consultation varies, depending upon the type of petition as shown in the table below.

<table>
<thead>
<tr>
<th>Petition</th>
<th>Source and Contents of Consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>P-1</td>
<td>Consultation with an appropriate labor organization is required if one exists. The consultation must evaluate the alien's (group's) qualifications and state whether the services or performances are appropriate for an internationally recognized athlete or entertainment group.[19] The labor organization may also issue a letter of no objection.</td>
</tr>
<tr>
<td>P-2</td>
<td>Consultation with an appropriate labor organization to verify that a bona fide reciprocal agreement exists.[20]</td>
</tr>
<tr>
<td>P-3</td>
<td>Consultation with an appropriate labor organization to evaluate the cultural uniqueness of the entertainer(s) and whether the performances are in a cultural program appropriate for the P-3 classification.[21] The labor organization may also issue a letter of no objection.</td>
</tr>
<tr>
<td>Essential Support Personnel</td>
<td>Consultation with an appropriate labor organization. Consultation must evaluate the essential character of the work, the relationship between the principal and support workers, and the availability of U.S. workers to do the job.[22] The labor organization may also issue a letter of no objection.</td>
</tr>
</tbody>
</table>

The regulations specify mandatory response times for consultations for expedited cases and prescribe action to be taken when a requested opinion is not received.[23] The consultations are advisory in nature only and are not binding on USCIS.[24] A negative consultation does not automatically result in the denial of the petition, as decisions must be based on the totality of the evidence. Accordingly, if the petitioner submits evidence that overcomes a negative advisory opinion and which establishes the merits of the alien, USCIS may approve the petition.

2. Petitions Meriting Expedited Processing

If USCIS has determined that a petition merits expeditious handling, USCIS contacts the appropriate labor
organization and requests an advisory opinion if one is not submitted by the petitioner. The organization then has 24 hours to respond to the request. If no response to the request is received, then USCIS renders a decision on the petition without an advisory opinion.[25]

Footnotes


[^ 6] See INA 214(c)(4)(A)(i)(I) and INA 101(a)(15)(P)(i). USCIS provided this interpretation in its policy guidance on March 26, 2021 in order to provide increased clarity for USCIS officers, to promote consistent adjudications, and to increase transparency for prospective petitioners. While alternative interpretations of the undefined regulatory phrase “major United States sports league or team” are possible, USCIS believes that this interpretation most closely aligns with the statute being interpreted, which requires that internationally recognized athletes perform “at an internationally recognized level of performance.” In addition, the interpretation is consistent with USCIS’ longstanding adjudicative focus on that statutory requirement.

[^ 7] For more information, see the discussion of internationally recognized athletes in Chapter 2, Eligibility Requirements, Section A, P-1 Nonimmigrant Classification [2 USCIS-PM N.2(A)].


[^ 9] See previous discussion regarding the interpretation of “major United States sports league or team.”


Chapter 5 - Adjudication

A. Approvals

If the necessary required evidence has been submitted and all requirements have been met, the officer approves the petition and issues a Notice of Action (Form I-797) showing the period of validity and the alien beneficiary’s name and classification.

1. Validity Period of Petition for Athletes and Entertainers

The approval period for a P nonimmigrant petition must conform to the limits outlined in the table below.

<table>
<thead>
<tr>
<th>Nonimmigrant Classification</th>
<th>Validity Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>P-1 (individual athlete)</td>
<td>Up to 5 years$^1$</td>
</tr>
<tr>
<td>P-1 (team or entertainment group)</td>
<td>Period of time determined by USCIS to be necessary to complete the event or activity, but not to exceed 1 year$^2$</td>
</tr>
</tbody>
</table>
### Nonimmigrant Classification

<table>
<thead>
<tr>
<th>Classification</th>
<th>Validity Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>P-2</td>
<td>Period of time determined by USCIS to be necessary to complete the event or activity, but not to exceed 1 year[^3]</td>
</tr>
<tr>
<td>P-3</td>
<td>Period of time determined by USCIS to be necessary to complete the event or activity, but not to exceed 1 year[^4]</td>
</tr>
</tbody>
</table>

If the petition is approved after the date the petitioner indicated services would begin, the approved petition shows a validity period commencing with the date of approval and up to the date requested by the petitioner, not to exceed the maximum period described above.[^5]

If the petitioner filed Form I-129 to extend the validity of the original petition in order to continue or complete the same activities or events specified in the original petition, an extension of stay may be authorized in increments of up to 1 year. P-1 individual athletes may be extended for up to 5 years, not to exceed 10 years in total.[^6]

A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.[^7]

### 2. Validity Period of Petition for Essential Support Personnel

Current DHS regulations provide that an approved P-1 petition for an individual athlete (also known as a P-1A) are valid for a period of up to 5 years.[^8] The general rule for the approval period of a P-1 petition for essential support personnel (also known as P-1S) states that the approved petition must only be valid for a period of time determined by USCIS to be necessary to complete the event for which the P-1 is admitted, not to exceed 1 year.[^9]

The exception to that general rule is the period for an extension of stay to continue or complete the same event or activity for essential support personnel of a P-1A individual athlete, which may be approved for a period of up to 5 years, for a total period of stay not to exceed 10 years.[^10] USCIS interprets this exception at 8 CFR 214.2(p)(14) consistent with its plain language, such that the 5-year extension of stay for a P-1S for an individual athlete is only available when the petitioner requests an extension of stay (and not consulate notification) to continue or complete the same event or activity for a beneficiary who is in the United States in P-1S status at the time the petition extension is properly filed, and the extension of stay request is approved.[^11]

Therefore, while the initial validity period of a P-1 petition for essential support personnel is limited to 1 year or less, the validity period of an extension of stay of essential support personnel of a P-1A individual athlete may exceed 1 year thereafter, provided that:

- The purpose is to continue or complete the same event or activity for which they were admitted; and
- The extension of stay validity period does not exceed the period of time necessary to complete the
event (not to exceed 5 years, or a total period of stay of 10 years).

## B. Denials

If the requirements have not been met, the officer should deny the petition. The petitioner must be notified of the decision, the reasons for denial, and the right to appeal the denial.[12] The denial of a petition to classify an alien as a P nonimmigrant may be appealed to the Administrative Appeals Office. The appeal must be filed on a Notice of Appeal or Motion (Form I-290B) within 30 days of the decision.[13] There is no appeal from a decision to deny an extension of stay to the alien.[14]

If the officer decides to incorporate into the denial decision a negative advisory opinion which USCIS has obtained (separate from one submitted by the petitioner), he or she must disclose the nature of the advisory opinion to the petitioner in a Notice of Intent to Deny (NOID) and give the petitioner an opportunity for rebuttal.

## Footnotes


[^11] See 8 CFR 214.2(p)(14)(i), which requires a petitioner seeking an extension to file both an extension of the petition and an extension of stay, and also states that the nonimmigrant applies for a visa at a consular office abroad if the nonimmigrant leaves the United States while the extension requests are pending.


[^14] See 8 CFR 214.1(c)(5). While requests to extend petition validity and the alien’s stay for P
nonimmigrants are combined on the petition, USCIS makes a separate determination on each request. See 8
CFR 214.2(p)(14)(i).

Chapter 6 - Post-Adjudication Actions

A. Substitution of Beneficiaries

A petitioner may request a substitution for one or more members of a group on an approved petition by
sending a letter requesting substitution and a copy of the petitioner’s approval notice to a consular officer
where the alien will apply for a visa or immigration officer at a port of entry where the alien will apply for
admission. A petitioner may not request substitutions for support personnel; rather, the petitioner must
submit a new petition.

If a group is already in the United States performing with approved P-1 classification and the group now
needs to add or substitute members, the additions or substitutes should be petitioned for as P-1s. In such
instances, the petitioner must provide evidence of the original approval and the required consultation. In
situations involving illness or exigent circumstances, USCIS may waive the 1 year relationship
requirements.

B. Revocations

The petitioner should immediately notify USCIS of any changes in the terms and conditions of employment
of the beneficiary that may affect eligibility. USCIS may revoke a petition at any time, even after the validity
of the petition has expired.

1. Automatic Revocation

The approval of an unexpired petition is automatically revoked if the petitioner, or the employer in a petition
filed by an agent, goes out of business, files a written withdrawal of the petition, or notifies USCIS that the
beneficiary is no longer employed by the petitioner.

2. Revocation on Notice

When there is no provision that would result in automatic revocation, USCIS may issue a Notice of Intent to
Revoke (NOIR) the approval of the petition, such as in cases where:

- The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- The statement of facts contained in the petition was not true and correct;
- The petitioner violated the terms or conditions of the approved petition;
- The petitioner violated the statutory or regulatory provisions for P nonimmigrant classification; or
- The approval of the petition violated the regulations or involved gross error.

The NOIR should contain a detailed description of the grounds for the revocation and the time period allowed
for the petitioner’s rebuttal. USCIS considers all relevant evidence presented in determining whether to
revoke the petition. A petition that has been revoked on notice may be appealed to the Administrative Appeals Office. A petition that is automatically revoked may not be appealed.

**Footnotes**


**Part O - Religious Workers (R)**

**Chapter 1 - Purpose and Background**

**A. Purpose**

The Immigration and Nationality Act (INA) provides separate immigration classifications for religious workers depending on whether they seek to work in the United States on a permanent or a temporary basis. Aliens working in the United States temporarily as a minister or in a religious vocation or occupation are eligible for the nonimmigrant religious worker (R-1) classification.

**B. Background**

In 1990, Congress created new immigration classifications for religious workers, including the R-1 nonimmigrant classification and a special immigrant religious worker classification.

In 2005, the USCIS Office of Fraud Detection and National Security (FDNS) conducted a Benefit Fraud Assessment of the special immigrant religious worker program by randomly selecting and reviewing pending and approved cases. As a result, USCIS issued a report finding significant fraud in the use of this classification. This led USCIS to reconsider how it administered the special immigrant religious worker program.

In 2008, USCIS promulgated regulations that added requirements to establish eligibility for the special immigrant and nonimmigrant religious worker programs. In part, the regulations introduced a requirement that a beneficiary’s prospective employer submit a petition for all R-1 nonimmigrants, including those outside of the United States. The regulations also provided USCIS with discretionary authority to visit the petitioning employer’s facility before issuing a decision.
C. Legal Authorities

- **INA 101(a)(15)(R)** - Definition of R nonimmigrant classification
- **8 CFR 214.2(r)** - Religious workers

Footnotes

[^1] See INA 101(a)(27)(C) and INA 101(a)(15)(R). See 8 CFR 204.5(m). The INA affords permanent religious workers a special immigrant status. Ministers and non-ministers in religious vocations and occupations may immigrate to or adjust status in the United States for the purpose of performing religious work in a full-time, compensated position under the employment-based 4th-preference visa classification. See INA 101(a)(27)(C). For more information about adjusting to lawful permanent residence as a special immigrant religious worker, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 2, Religious Workers [7 USCIS-PM F.2].


[^6] Previously, a prospective nonimmigrant outside the United States could apply at a consular office overseas or, if visa-exempt, seek initial admission into the United States. See 72 FR 20442, 20444 (Apr. 25, 2007).

Chapter 2 - General Requirements

A. Overview

The temporary nonimmigrant religious worker (R-1) classification allows religious workers to enter the United States, or change status from another nonimmigrant category, in order to temporarily perform services as a minister of religion or in a religious occupation or vocation.[1]

An alien cannot self-petition for R-1 classification.[2] A U.S. employer must file a Petition for a Nonimmigrant Worker (Form I-129), seeking to classify a beneficiary as an R-1 nonimmigrant. In general, the petitioning R-1 employer must submit evidence demonstrating that:

- The petitioner is either a bona fide non-profit religious organization, or a bona fide organization that is affiliated with the religious denomination;[3]
- The beneficiary has been a member of the same type of religious denomination as that of the petitioner for the 2 years immediately preceding the time of application for admission;[4] and
The beneficiary is entering the United States for the purpose of undertaking a compensated (either salaried or non-salaried) position or, in certain circumstances, an uncompensated position that is part of an established program for temporary, uncompensated missionary work.\[^5\]

**B. Filing Process**

USCIS requires a petitioning employer to file the Petition for a Nonimmigrant Worker (Form I-129), with the R-1 Classification Supplement and required fee, for all aliens seeking an R-1 nonimmigrant classification.\[^6\] This petition requirement also applies to visa-exempt religious workers, such as Canadian citizens.\[^7\]

To qualify for R-1 nonimmigrant classification, the petitioning U.S. employer must submit the R-1 Employer Attestation that is included in the R-1 Classification Supplement and evidence documenting that the petitioner and beneficiary meet the requirements set forth below.\[^8\]

The petitioner should list all locations where the R-1 nonimmigrant will be working on the Petition for a Nonimmigrant Worker (Form I-129).\[^9\] If it is anticipated that the R-1 nonimmigrant will be moved between different locations within a larger organization, that larger organization should petition for the worker. For example, a minister may move from ministry to ministry within a denomination, including at a different or additional unit of the religious denomination with a different federal tax number if the petitioning organization oversees all of these locations.

An R-1 nonimmigrant may work for more than one bona fide religious organization at the same time.\[^10\] However, except as described in the previous paragraph (involving a larger employer overseeing multiple locations), when the beneficiary works for more than one employer, each employing organization must submit a separate Form I-129 and R-1 Classification Supplement, including the R-1 Employer Attestation, along with the appropriate documentation and fees.\[^11\]

If a petitioner believes that one of the requirements for this classification substantially burdens the organization’s exercise of religion, it may seek an exemption under the Religious Freedom Restoration Act of 1993 (RFRA).\[^12\] A written request for the exemption from a provision’s requirement should accompany the initial filing, and it must explain how the provision:

- Requires participation in an activity prohibited by a sincerely held religious belief; or
- Prevents participation in conduct motivated by a sincerely held religious belief.

The petitioner must support the request with relevant documentation.\[^13\] The petitioner bears the burden of showing that it qualifies for an RFRA exemption. USCIS decides exemption requests on a case-by-case basis.

**Footnotes**

[^1]: In some circumstances, another nonimmigrant classification, such as the business visitor (B-1) classification, may be more appropriate for certain members of religious and charitable activities. Discussion of the B-1 visa is beyond the scope of this Part, but the B-1 classification may include religious ministers who are on an evangelical tour or who are exchanging pulpits with U.S. counterparts, certain missionary workers, or participants in certain voluntary service programs. See [9 FAM 402.16-12, B Visas for Certain Religious Activity](https://www.uscis.gov/book/export/html/68662). See also [9 FAM 402.2-5(C)(1), Ministers of Religion and Missionaries](https://www.uscis.gov/book/export/html/68662).
While special immigrant religious workers may self-petition, R-1 nonimmigrants may not do so. See 73 FR 72276 (PDF) (Nov. 26, 2008).

See 8 CFR 214.2(r)(3).

See 8 CFR 214.2(r)(3) and 8 CFR 214.2(r)(8)(ii).

See 8 CFR 214.2(r)(1) and 8 CFR 214.2(r)(11).

See 8 CFR 103.2(a)(1).

See 8 CFR 214.2(r)(4)(i).

The R-1 Classification Supplement is part of the Petition for a Nonimmigrant Worker (Form I-129).

See 8 CFR 214.2(r)(8)(x).

See 8 CFR 214.2(r)(2).

See 8 CFR 214.2(r)(1)(v) and 8 CFR 214.2(r)(2). For information on fees, see the Fee Schedule (Form G-1055 (PDF, 263.18 KB)).


See 8 CFR 103.2(b).

Chapter 3 - Petitioner Requirements

A. Qualifying Organization

The petitioner must attest it is either a bona fide non-profit religious organization or a bona fide organization that is affiliated with a religious denomination and is exempt from taxation. The authorizing official must sign the attestation, certifying that the attestation is true and correct.[1]

Bona Fide Non-profit Religious Organization[2]

A religious organization seeking to qualify as a “bona fide non-profit” religious organization in the United States is required to submit evidence that:

- The organization is exempt from federal tax requirements as described in Section 501(c)(3) of the Internal Revenue Code (IRC) of 1986;[3] and

- The organization has a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.[4]

In some cases, the petitioning entity may fall within the umbrella of a parent organization that has received a group tax exemption from the IRS. In these group tax-exempt cases, the petitioner may use the parent organization’s IRS determination letter, provided it submits that letter and presents evidence that it is covered under the group exemption granted to the parent organization and it is authorized by the parent organization to use its group tax exemption.
Examples on what may be submitted to show that a petitioner may use a group tax exemption letter from a parent organization include, but are not limited to:

- A letter from the organization holding a group exemption as evidence that the petitioner is covered by such exemption; the letter from the organization named in the exemption must specifically acknowledge that the petitioner falls under the group exemption;

- Copies of pages from a directory for the parent organization showing the petitioner as a member of the group;[^5]

- The parent organization’s website that lists the petitioner as a member of the group covered by the exemption; and

- An IRS letter confirming the petitioner’s coverage under the parent organization exemption.

While the IRS does not require religious organizations to obtain a determination letter, USCIS regulations require petitioners to submit a determination letter with the R-1 petition. USCIS reviews the information contained within the letter to determine if the IRS classified the organization as a religious organization, or as other than a religious organization. Determination letters from the IRS do not expire, but the IRS can revoke them. The IRS offers a web-based [Tax Exempt Organization Search](https://www.irs.gov) tool to verify an organization’s tax-exempt status. An organization may use this tool for its own purposes to obtain a printout showing its currently valid tax-exemption. However, such a printout does not satisfy the requirement for submission of an IRS determination letter.

**Bona Fide Organization Affiliated with Religious Denomination[^6]**

A petitioner qualifies as a bona fide organization that is affiliated with a religious denomination if:

- The organization is closely associated with the religious denomination;

- The organization is exempt from federal tax requirements as described in IRC 501(c)(3); and

- The organization has a currently valid determination letter from the IRS confirming such exemption.[^7]

**B. Petitioner Attestations[^8]**

The petitioner must provide information and specifically attest to the following (in addition to attesting that it is a qualifying R-1 employer):

- The number of members of the petitioning employer’s organization;

- The number of employees who work at the same location where the religious worker will be employed, and a summary of those employees’ responsibilities;

- The number of religious workers holding special immigrant religious worker status or R-1 nonimmigrant status currently employed or employed within the past 5 years by the petitioning employer’s organization;

- The number of special immigrant religious worker and R-1 nonimmigrant petitions and applications filed by or on behalf of any religious workers for employment by the petitioning employer in the past 5 years;
• The title of the position offered to the beneficiary;

• Detailed description of the beneficiary’s proposed daily duties;

• The particulars of the salaried or non-salaried compensation or self-support for the position;

• A statement that beneficiary will be employed at least 20 hours per week;

• The specific location(s) of employment;

• The beneficiary will not be engaged in secular employment;

• The beneficiary is qualified to perform the duties of the offered position; and

• The beneficiary has been a member of the denomination for at least 2 years.

C. Verification and Inspections

USCIS may conduct on-site inspections either before or after USCIS makes a final decision on the petition. The purpose of the inspection is to verify the evidence submitted in support of the R-1 petition such as, but may not be limited to, the petitioner’s attestations and qualifications as a religious organization, the location(s) where the beneficiary will work, the organization’s facilities (including places of worship, where applicable), and the nature of the beneficiary’s proposed position.

The petitioner cannot use a foreign address, as the employer must be in the United States in order to petition for religious workers.

1. Pre-approval Inspection

Through the Administrative Site Visit and Verification Program (ASVVP), USCIS conducts pre-approval compliance reviews on all petitioners for religious workers. USCIS closely monitors the site visit program to ensure that it does not cause undue delays in the adjudication process. Satisfactory completion of the pre-approval compliance review, which can include an on-site inspection, is a condition for approval of the petition. The inspection may include:

• A tour of the organization’s facilities (including places of worship, if applicable) and, if appropriate, the organization’s headquarters or satellite locations;

• An interview with the organization’s officials;

• A review of the organization’s records related to compliance with immigration laws and regulations; and

• Any other interviews or review of any other records that USCIS considers pertinent to the integrity of the organization.

2. Post-adjudication Inspection

In addition, as part of the compliance review process, USCIS may conduct a post-adjudication inspection of the beneficiary’s work location to verify the beneficiary’s work hours, compensation, and duties or where the petitioner has undergone substantial changes since its last filing. USCIS may also conduct “for cause” inspections at any time during the beneficiary’s period of stay.
post-adjudication inspection in cases where there is suspected fraud.

D. Documentation and Evidence

General Evidence Required

An R-1 petitioner is required to provide the following documentation and evidence to show the petitioner is a qualifying religious organization:[15]

- A properly completed current version of the Petition for a Nonimmigrant Worker (Form I-129) and R-1 Classification Supplement;
- A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;[16] and
- Verifiable evidence of how the petitioner intends to compensate the beneficiary, including whether or not the beneficiary will be self-supporting.

Additional Evidence Required – Group Tax-Exempt Religious Organizations

In addition to the general evidence requirements, a group tax-exempt religious organization is required to provide evidence that it is included under the group exemption granted to a parent organization.[17] USCIS also requires evidence that the parent organization has authorized the petitioning entity to use its tax-exempt status.

Furthermore, an organization whose IRS determination letter does not identify its tax exemption as a religious organization must establish its religious nature and purpose. Such evidence may include the entity’s articles of incorporation or bylaws, flyers, articles, brochures, or other literature that describes the religious purpose and nature of the organization.

Additional Evidence Required – Organization Affiliated with Religious Denomination

In addition to the general evidence requirements, a bona fide organization that is affiliated with the religious denomination is also required to submit a Religious Denomination Certification signed by an authorized official of the religious denomination, certifying that the petitioning organization is affiliated with the religious denomination.[18]

If the affiliated organization was granted tax-exempt status under IRC 501(c)(3) under a category other than religious organization, in addition to the general requirements, the petitioner must also provide:

- Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization; and
- Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization.[19]

Table Summarizing Evidentiary Requirements

The table below serves as a quick reference guide for the evidence required depending on the type of R-1 nonimmigrant petitioner.
## Summary of Evidence Requirements Relating to the R-1 Nonimmigrant Petition

<table>
<thead>
<tr>
<th>Type of Petitioner</th>
<th>Required Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tax-Exempt 501(c)(3) Religious Organization</strong></td>
<td>• A currently valid determination letter from the IRS establishing that the organization is tax-exempt.</td>
</tr>
<tr>
<td><strong>Group Tax-Exempt Religious Organization</strong></td>
<td>• A currently valid determination letter from the IRS establishing that the group is tax-exempt.</td>
</tr>
<tr>
<td></td>
<td>• Documentation that the organization is covered under the group tax exemption, including, for example, a letter from the parent organization authorizing the petitioner to use its group tax exemption, a directory for that organization listing the petitioner as a member of the group, a membership listing on the parent organization’s website that confirms coverage under its exemption, or a letter from the IRS confirming the coverage.</td>
</tr>
<tr>
<td></td>
<td>• If the submitted IRS determination letter does not identify the organization’s tax exemption as a religious organization, then evidence establishing its religious nature and purpose. Such evidence may include, but is not limited to, the entity’s articles of incorporation or bylaws, flyers, articles, brochures, or other literature that describes the religious purpose and nature of the organization.</td>
</tr>
<tr>
<td><strong>Bona Fide Organization Affiliated with Religious Denomination</strong></td>
<td>• A currently valid determination letter from the IRS establishing that the organization is tax-exempt.</td>
</tr>
<tr>
<td></td>
<td>• If the organization was granted tax-exempt status under IRC 501(c)(3) as something other than a religious organization, then:</td>
</tr>
<tr>
<td></td>
<td>• documentation that establishes the religious nature and purpose of the organization, including, but not limited to, a copy of the organizing instrument that specifies the purposes of the organization, organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization.</td>
</tr>
<tr>
<td></td>
<td>• A Religious Denomination Certification signed by the religious denominational entity (not the petitioner) that the petitioner is affiliated with, which is part of the Petition for a Nonimmigrant Worker (Form I-129), R-1 Classification Supplement, certifying that the petitioning organization is affiliated with the religious denomination.</td>
</tr>
</tbody>
</table>

### E. Employer Obligations[20]

AILA Doc. No. 19060633. (Posted 3/26/21)
The beneficiary’s employer must notify DHS within 14 calendar days if:

- The beneficiary is working less than the required number of hours;
- The beneficiary has been released from the employment; or
- The beneficiary has otherwise terminated employment before the expiration of a period of authorized R-1 nonimmigrant stay.

**F. Compensation Requirement**[21]

An R-1 nonimmigrant must receive either salaried or non-salaried compensation, or provide his or her own support as a missionary under an established missionary program. The petitioner is required to state either how it intends to compensate the R-1 nonimmigrant or how the R-1 nonimmigrant will be self-supporting as part of an established missionary program, and to submit the corresponding, verifiable evidence described below.[22] To the extent that the R-1 nonimmigrant will receive funds or other benefits (such as housing) from a third party, this arrangement does not constitute compensation from the petitioner.[23]

**1. Salaried or Non-salaried Compensation**

Compensation may be salaried or non-salaried. Salaried means receiving traditional pay such as a paycheck. Non-salaried means any of the following (separately or in combination): receiving support such as room, board, medical care, and transportation instead of or in addition to a paycheck.

The petitioner must submit IRS documentation of compensation, such as IRS Forms W-2 or tax returns, if available. If IRS documentation is unavailable, then the petitioning employer must explain why it is unavailable and submit comparable verifiable documentation.[24]

When the beneficiary will receive salaried or non-salaried compensation, the petitioning employer may also submit verifiable evidence such as:[25]

- Documentation of past compensation for similar positions;
- Budgets showing monies set aside for salaries, leases, etc.;
- Documentary evidence demonstrating that room and board will be provided; or
- Other evidence acceptable to USCIS.[26]

While the regulation does not require audited financial reports, unaudited budgets or financial statements should be accompanied by supporting evidence that is verifiable. For example, budgets should be generally consistent with past revenue and supported by bank statements showing listed cash balances. When relying on bank statements, they should show an availability of sufficient funds to cover the beneficiary’s salaried compensation over a sufficient period of time.

Further, USCIS does not consider salaried or non-salaried support deriving from a third party as a portion of the beneficiary’s required compensation. The regulation requires that compensation derive from the petitioner.[27] Room and board at a church member’s home, or provided by any other church, is a form of third-party compensation. Unless the church reimburses the other party for this room and board, such arrangements are not a qualifying form of non-salaried compensation. A petitioner may also submit evidence
such as proof that it owns the property or a lease showing it pays for the residential space to establish that it is the entity providing non-salaried compensation.

2. Self-Support

Self-support means that the position the beneficiary will hold is part of an established program for temporary, uncompensated missionary work, and part of a broader international program of missionary work the denomination sponsors.\[28\]

An established program for temporary, uncompensated missionary work, is defined to be a missionary program in which:

- Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;
- Missionary workers are traditionally uncompensated;
- The organization provides formal training for missionaries; and
- Participation in such missionary work is an established element of religious development in that denomination.\[29\]

If the beneficiary will be self-supporting, the petitioner must provide:

- Evidence demonstrating that the petitioner has an established program for temporary, uncompensated missionary work;
- Evidence demonstrating that the denomination maintains missionary programs both in the United States and abroad;
- Evidence of the beneficiary’s acceptance into the missionary program;
- Evidence demonstrating the religious duties and responsibilities associated with the traditionally uncompensated missionary work; and
- Copies of the beneficiary’s bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination’s churches) or other verifiable evidence acceptable to USCIS.\[30\]

3. Multiple Beneficiaries

A petitioner is required to attest to the number of special immigrant religious worker and R-1 nonimmigrants it currently employs, the number it has employed within the last 5 years, as well as the number of petitions and applications filed by or on behalf of any special immigrant religious worker and R-1 nonimmigrant for employment by the prospective employer within the last 5 years.\[31\] Where the petitioner has filed for multiple beneficiaries, the petitioner may be required to demonstrate that it has the ability to compensate all of its employees, including R-1 nonimmigrants.

Footnotes

[^1] See 8 CFR 214.2(r)(8)(i) and the R-1 Classification Supplement in Petition for a Nonimmigrant Worker
See 8 CFR 214.2(r)(3).


[^4] See 8 CFR 214.2(r)(9). For a religious organization that is recognized as tax-exempt under a group tax exemption, a petition should include a currently valid determination letter from the IRS establishing that the group is tax exempt. See 8 CFR 214.2(r)(9)(iii).

[^5] For instance, if a Roman Catholic Church petitions for a priest, the church may submit the group tax-exempt letter issued to the U.S. Conference of Catholic Bishops along with a copy of the Catholic Directory to satisfy the tax exemption requirement.


[^9] This attestation is derived from 8 CFR 214.2(r)(8)(vii) and relates to all R-1 petitions, including beneficiaries coming to perform a religious vocation. See 8 CFR 214.2(r)(8)(vii). Post-adjudication site visits focusing on R-1 beneficiaries cannot verify the beneficiary’s work hours, compensation, and duties consistent with supporting the integrity of the R-1 classification if the petition provides only a vague description of the beneficiary’s proposed duties.

[^10] See Chapter 4, Beneficiary Requirements [2 USCIS-PM O.4].


[^15] See 8 CFR 103.2(a) and 8 CFR 103.2(b)(1).

[^16] Although an IRS-issued tax-exempt determination letter does not expire, a letter that the IRS has revoked cannot be used to meet the regulatory requirement.


To qualify for a temporary nonimmigrant religious worker (R-1) classification, the beneficiary must:

- Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least the 2 years immediately preceding the filing of the petition;
- Be coming to the United States to work at least in a part-time position (at least 20 hours per week);
- Be coming solely as a minister or to perform a religious vocation or occupation;
- Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- Not work in the United States in any capacity not approved in a DHS-approved petition.[1]

The beneficiary must also intend to depart the United States upon the expiration or termination of his or her nonimmigrant status. However, a nonimmigrant petition, application for initial admission, change of status, or extension of stay in R classification may not be denied solely on the basis of a filed or an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.[2]

### A. Qualifying Employment

The beneficiary must be coming to engage in a religious vocation or in a religious occupation, or as a minister of religion.

**Religious Worker**[3]

For the purpose of the R-1 nonimmigrant classification, a religious worker is someone who:

- Is a member of the religious denomination that has a bona fide non-profit religious organization in the United States, and was a member in the same type of religious denomination for at least 2 years immediately preceding the time of application for admission;
- Is coming to the United States to work at least part-time (at least 20 hours per week);

- Is coming to the United States solely to perform a religious vocation or occupation in either a professional or nonprofessional capacity, or as a minister;

- Is coming to or remaining in the United States at the request of the petitioner to work for the petitioner;

- Will not work in the United States in any capacity other than that of a religious worker; and

- Is engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

**Religious Vocation**

A religious vocation is a formal lifetime commitment through vows, investitures, ceremonies, or similar indications to a religious way of life. People within a religious vocation dedicate their lives to religious practices and functions, as distinguished from secular members of a denomination.[4] The regulations state that the religious denomination must have a class of persons whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion.

**Religious Occupation**[^5]

In order for USCIS to consider the employment a religious occupation, the title of the position is not determinative; rather, USCIS looks at whether the occupation meets all of the following requirements:

- The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;

- The duties must be primarily related to, and must clearly involve, inculcating (teaching and instilling in others) or carrying out the religious creed and beliefs of the denomination;

- The duties do not include positions which are primarily administrative or supportive in nature, although limited administrative duties that are only incidental to religious functions are permissible[^6] and

- Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training, incident to status, while in the United States as an R-1 nonimmigrant.

**Minister**[^7]

For the purpose of R-1 nonimmigrant classification, a minister is someone who:

- Is fully authorized by and trained in the religious denomination to conduct religious worship, and perform other duties usually performed by authorized members of the clergy of the denomination;

- Performs activities rationally related to being a minister;

- Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister; and

- Is not a lay preacher or a person not authorized to perform clergy’s duties.
B. Religious Denomination

A religious denomination is a religious group or community of believers that have a common type of ecclesiastical government that governs or administers and includes one or more of the following:

- A recognized common creed or statement of faith shared among the denomination’s members;
- A common form of worship;
- A common formal code of doctrine and discipline;
- Common religious services and ceremonies;
- Common established places of religious worship or religious congregations; or
- Comparable indications of a bona fide religious denomination.[8]

The R-1 nonimmigrant beneficiary must have at least 2 years, immediately preceding the filing of the petition, of membership in a religious denomination.[9] Such membership must be in the same type of religious denomination in which the beneficiary will work in the United States.[10]

C. Nonimmigrant Intent

To be eligible for R-1 nonimmigrant classification, the beneficiary must maintain an intention to depart the United States upon the expiration or termination of such R-1 nonimmigrant status, if granted.[11] However, a nonimmigrant petition, application for initial admission, change of status, or extension of stay in R-1 nonimmigrant classification may not be denied solely based on the beneficiary’s pursuit of permanent residence in the United States (for example, evidence of a filed or approved request for permanent labor certification or immigrant petition on the beneficiary’s behalf).[12]

D. Documentation and Evidence

The petitioner must submit evidence to establish that the beneficiary meets the requirements for R-1 nonimmigrant classification.[13]

Ministers

For a beneficiary who is a minister, the petitioner must submit the following:

- A copy of the beneficiary’s certificate of ordination or similar documents;
- Documents reflecting acceptance of the beneficiary’s qualifications as a minister in the religious denomination; and
- Evidence that the beneficiary has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination.[14]

For denominations that do not require a theological education, rather than document such education, the
The petitioner must instead submit evidence of:

- The denomination’s requirements for ordination to minister;
- Duties allowed to be performed by virtue of ordination;
- The denomination’s levels of ordination, if any; and
- The beneficiary’s completion of the denomination’s requirements for ordination.[15]

Religious Vocations and Occupations

For a beneficiary who will work in a religious vocation or occupation, the petitioner must submit evidence of the following:

- The beneficiary is entering the United States to perform a religious vocation or occupation, defined above (in either a professional or nonprofessional capacity);[16]
- The beneficiary is qualified for the religious occupation or vocation according to the denomination’s standards.[17]

E. Family Members

1. Initial Petition

The spouse and unmarried children under 21 years old of a principal R-1 nonimmigrant may qualify for dependent R-2 status if their primary purpose in coming to the United States is to join or accompany the principal R-1 nonimmigrant.[18]

In general, the spouse and children are granted R-2 nonimmigrant status for the same period of time and subject to the same conditions as the principal R-1 nonimmigrant, regardless of the amount of time the spouse and children may already have spent in the United States in R-2 status.[19]

2. Request to Extend or Change Nonimmigrant Status

R-2 dependents may request an extension of stay or change of status by filing an Application to Extend/Change Nonimmigrant Status (Form I-539).

3. Employment Authorization Prohibited

An R-2 dependent may not accept employment in the United States.[20]

Footnotes

Chapter 5 - Adjudication

Officers must carefully review each petition for a nonimmigrant religious worker (R-1) to ensure compliance with the intent of the R-1 nonimmigrant category to allow religious workers to temporarily work in the United States. Officers should apply a “preponderance of the evidence” standard when evaluating eligibility for the benefit sought.[1] The burden of proving eligibility for the benefit sought rests entirely with the petitioner.[2]

A. Decision

1. Approvals

If the petitioner properly filed the Petition for a Nonimmigrant Worker (Form I-129) and the officer is
satisfied that the petitioner has met the required eligibility standards, the officer should approve the petition. The approval period should not exceed the maximum period of stay allowed.\footnote{3}

The table below provides a list of the classifications for R nonimmigrants.

<table>
<thead>
<tr>
<th>Beneficiary</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Religious Worker (Principal)</td>
<td>R-1</td>
</tr>
<tr>
<td>Spouse of a Principal Religious Worker</td>
<td>R-2</td>
</tr>
<tr>
<td>Child of a Principal Religious Worker</td>
<td>R-2</td>
</tr>
</tbody>
</table>

Once USCIS approves the petition, the officer must notify the petitioner of the action taken using a Notice of Action (Form I-797).\footnote{4}

\section*{2. Denials}

If the petitioner does not meet the eligibility requirements, the officer must deny the petition.\footnote{5} If the officer denies the petition, he or she must prepare a final notice of action, which includes information explaining why the petition is denied.\footnote{6} Additionally, officers should include information about appeal rights and the opportunity to file a motion to reopen or reconsider in the denial notice. The office that issued the decision has jurisdiction over any motion and the Administrative Appeals Office (AAO) has jurisdiction over any appeal.\footnote{7}

\section*{B. Revocations\footnote{8}}

USCIS may revoke the approval of a petition at any time. USCIS automatically revokes the approval of the petition if the petitioner ceases to exist or files a written withdrawal of the petition.\footnote{9} A notice of intent to revoke (NOIR) is necessary where there is no regulatory provision that would allow for an automatic revocation, such as where:

- The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- The statement of facts contained in the petition was not true and correct;
- The petitioner violated the terms and conditions of the approved petition;
- The petitioner violated the statutory or regulatory requirements; or
- The approval of the petition violated the regulations or involved gross error.\footnote{10}
The NOIR should contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner’s rebuttal. USCIS must consider all relevant evidence presented in deciding whether to revoke the approval of the petition.\[11\]

The petitioner may appeal the decision to revoke the approval of a petition to the AAO if the petition’s approval was revoked on notice. Automatic revocations may not be appealed.\[12\]

**Footnotes**


**Chapter 6 - Admissions, Extensions of Stay, and Changes of Status**

**A. Admission**

If approved for nonimmigrant religious worker (R-1) classification and found otherwise admissible, a beneficiary may be admitted as an R-1 nonimmigrant for an initial period of up to 30 months from the date of initial admission.\[1\]

**Maintaining Status**

A religious worker may only work per the terms of the approved petition. While holding R-1 status, nonimmigrants may not work in the United States in any other capacity but as a religious worker, and cannot change capacities between a minister or other types of religious worker unless specifically approved.\[2\] An R-1 nonimmigrant may be considered to have violated his or her nonimmigrant status, and therefore not be in
lawful immigration status, if he or she works for an employer who has not obtained prior approval of such employment through the filing of a petition and appropriate supplement, supporting documents, and appropriate fees.\[3\]

**B. Extension of Stay**

An employer may request an extension of stay for an R-1 nonimmigrant on the Petition for a Nonimmigrant Worker (Form I-129).\[4\] The extension may be for the validity period of the extension request, up to 30 months, for a maximum period of stay for up to 5 years.\[5\]

The petitioner must include the following with the Form I-129:

- R-1 Classification Supplement, including the R-1 Employer Attestation;
- Supporting documents to establish eligibility under the R-1 nonimmigrant classification, including documentation of salaried or non-salaried compensation; and
- Initial evidence of the previous R-1 employment, such as financial or other records to establish that the person worked as an R-1 nonimmigrant.\[6\]

**1. Compensation Documentation**\[7\]

*Salaried Compensation*

Any request for an extension of stay as an R-1 nonimmigrant must include initial evidence of the previous employment as a religious worker. If the beneficiary received salaried compensation, then the petitioner must submit Internal Revenue Service (IRS) documentation of salaried compensation, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding 2 years.\[8\]

If the beneficiary was admitted for less than 2 years in the R-1 nonimmigrant status, the petitioner may provide evidence of work and compensation in that status for the duration of the beneficiary’s authorized admission.\[9\]

*Non-Salaried Compensation*

If the beneficiary is requesting an extension of stay as an R-1 nonimmigrant and previously received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.\[10\] If no IRS documentation is available, the petitioner must explain the lack of IRS documentation and submit verifiable evidence of all financial support, including information on:

- Stipends;
- Room and board;
- Other support for the beneficiary along with a description of the location where the beneficiary lived (for example, a lease for the beneficiary); or
- Other evidence acceptable to USCIS.
Self-Support

If the beneficiary is applying for an extension of stay as an R-1 nonimmigrant and was previously supporting him or herself financially and not receiving any compensation from the religious organization, the petitioner must provide verifiable documents to show how the beneficiary is self-supporting. Documentation may include:

- Audited financial statements;
- Financial institution records;
- Brokerage account statements;
- Trust documents signed by an attorney; or
- Other evidence acceptable to USCIS.

The table below summarizes the evidence required depending on the type of compensation.

### Extension of Stay Requests: Evidence of Beneficiary’s Compensation

<table>
<thead>
<tr>
<th>Beneficiary’s Previous Compensation</th>
<th>Required Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary</td>
<td>The petitioner must submit IRS documentation showing that the beneficiary received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns reflecting such work and compensation for the preceding 2 years or the period of stay if less than 2 years.</td>
</tr>
</tbody>
</table>
| Non-Salary                         | If IRS documentation is available, the petitioner must submit IRS documentation of the non-salaried compensation.  
If IRS documentation is not available, the petitioner must explain the lack of IRS documentation and submit verifiable evidence of all financial support, such as stipends, room and board, or other support for the beneficiary along with a description of the location where the beneficiary lived, or a lease for the beneficiary. The petitioner may also submit other evidence acceptable to USCIS. |
| No Salary, But Provided Own Support| Provide verifiable documents to show how support was maintained, such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS. |

2. Requests for Evidence
With regard to a beneficiary’s eligibility for an extension of stay, an officer may issue a request for evidence (RFE) to the petitioner if it appears that the beneficiary has not maintained his or her status due to the following reasons:

- Termination – USCIS has been notified that the beneficiary was terminated from the employment before the expiration of a period of authorized R-1 stay;
- Released from Employment – USCIS has been notified that the beneficiary has been released from employment before the expiration of a period of authorized R-1 stay; or
- Worked Less Than Required Hours – USCIS has been notified that the beneficiary is working less than the required number of hours for the employment.\[^{13}\]

## C. Change of Status

Generally, a beneficiary in a current valid nonimmigrant status who has not violated his or her status is eligible to change status to an R-1 nonimmigrant in the United States without having to return to his or her home country for a visa interview.\[^{14}\] Such a beneficiary may be granted R-1 status for an initial period of up to 30 months.\[^{15}\]

To change nonimmigrant statuses, the petitioning employer should file a Petition for a Nonimmigrant Worker (Form I-129) before the beneficiary’s current status expires and indicate the request is for a change of status. The beneficiary cannot work in the new R-1 nonimmigrant classification until USCIS approves the petition and the change of status request. If USCIS determines that the beneficiary is eligible for R-1 nonimmigrant, but not a change of status, the beneficiary must apply for an R-1 nonimmigrant visa at a U.S. consular post abroad and then be readmitted to the United States as an R-1 nonimmigrant.\[^{16}\]

## D. Change of Employer

USCIS considers any unauthorized change to a new employer a failure to maintain status. If the R-1 nonimmigrant is to be employed by a different or additional unit of the religious denomination (if it has a different federal tax number), the employer must file a new Form I-129. Such a circumstance would be considered new employment.

However, an example of a permissible employment location change that would not require a new petition would be a petition filed on behalf of a minister who moves from ministry to ministry within a denomination so long as the organization that oversees all of these locations is the petitioner for that minister.\[^{17}\]

## Footnotes

\[^{1}\] See 8 CFR 214.2(r)(4).


\[^{3}\] See 8 CFR 214.2(r)(13).

\[^{4}\] See 8 CFR 214.1(c)(1). Where a petitioner demonstrates eligibility for a requested extension, it may be granted at USCIS’ discretion. Petitioners may not appeal denials of an application for extension of stay. See 8
Chapter 7 - Period of Stay

A. Maximum Period of Stay

An eligible alien may be admitted as a nonimmigrant religious worker (R-1) or may change status to R-1 nonimmigrant classification for a period of up to 30 months from the date of initial admission. USCIS may grant one extension for up to 30 months, but with the total period of stay not to exceed the statutory maximum of 5 years (60 months) if the R-1 nonimmigrant is otherwise eligible.

An R-1 nonimmigrant may be subject to removal if he or she violates the terms of his or her status, such as remaining in the United States longer than the period of his or her authorized stay.

B. Exceptions to Limitation on Total Stay

A beneficiary who has spent 5 years in the United States in R-1 nonimmigrant status may not be readmitted to or receive an extension of stay in the United States under the R-1 nonimmigrant classification, unless such a beneficiary subsequently has resided abroad and been physically present outside the United States for the immediate prior year. However, this 5-year limitation does not apply to beneficiaries who:

[3]
- Did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of 6 months or less per year; or
- Reside abroad and regularly commute to the United States to engage in part-time employment.

Petitioners and beneficiaries must meet all qualifications for the exception to the limitation on total stay, and must provide clear and convincing evidence that they qualify for the exception. Such proof may include arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

C. Recapture Time

USCIS only counts time physically spent in the United States in the R-1 nonimmigrant status towards the maximum 5 years of authorized stay. Officers should count only time spent physically in the United States in valid R-1 status toward the 5-year maximum period of stay.

When requesting an extension, the petitioner, on behalf of the R-1 nonimmigrant, may request that full calendar days spent outside the United States during the period of petition validity be recaptured and added back to his or her remainder of the total maximum period of stay, regardless of whether the R-1 nonimmigrant is currently in the United States or abroad and regardless of whether he or she currently holds R-1 nonimmigrant status.

It is the burden of the petitioner, on behalf of the beneficiary, to demonstrate continuing eligibility for the classification and that the beneficiary is entitled to recapture time with appropriate evidence. The reason for the absence is not relevant to whether the time may be recaptured. Any trip of at least one 24-hour calendar day outside the United States for any purpose, personal or professional, can be recaptured.

1. Evidence

The burden of proof remains with the R-1 petitioner, on behalf of the beneficiary, to submit evidence documenting periods of physical presence outside the United States when seeking an extension of petition validity and extension of stay as an R-1 nonimmigrant. The R-1 nonimmigrant is in the best position to organize and submit evidence of his or her departures from and readmissions to the United States. While a summary, charts of travel, or both are often submitted to facilitate review of the accompanying documentation, independent documentary evidence, such as photocopies of passport stamps, Arrival/Departure Records (Form I-94), and plane tickets establishing that the R-1 beneficiary was outside the United States during all of the days, weeks, or months that he or she seeks to recapture is always required.

The fact that the burden may not be met for some claimed periods generally has no bearing on other claimed periods for which the burden has been met. Any periods for which the burden has been met may be added to the eligible period of admission upon approval of the application for extension of status. An R-1 beneficiary may not be granted an extension of stay for periods that are not supported by independent documentary evidence. It is not necessary to issue a request for evidence (RFE) for any claimed periods unsupported by independent documentary evidence.

2. Applicability to R-2 Dependents

The status of an R-2 dependent of a principal R-1 nonimmigrant is subject to the same period of admission and limitations as the principal beneficiary, regardless of the time such spouse and children may have spent in the United States in R-2 status. For example, if an R-1 nonimmigrant is able to recapture a 2-week missionary trip abroad, then his or her R-2 dependents, if seeking an extension of stay, should be given an
extension of stay up to the new expiration of the R-1 nonimmigrant’s period of stay.

3. Seasonal or Intermittent Employment Exception

An R-1 nonimmigrant is eligible for the exception to the limitation of stay requirements by demonstrating that he or she:

- Did not reside continually in the United States and that his or her employment in the United States was seasonal or intermittent or was for an aggregate of 6 months or less per year; or
- Resides abroad and regularly commutes to the United States to engage in part-time employment.

To qualify for this exception, the petitioner and the beneficiary must provide clear and convincing proof that the beneficiary qualifies for such an exception. Such proof generally consists of evidence such as: Arrival/Departure Records (Form I-94), transcripts of processed income tax returns, and records of employment abroad.

Footnotes


Part P - NAFTA Professionals (TN)

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 30 - Nonimmigrants in General (External) (PDF, 541.89 KB)

Part Q - Nonimmigrants Intending to Adjust Status (K, V)

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Part F - Parolees

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AFM Chapter 21 - Family-based Petitions and Applications (External) (PDF, 2.86 MB)

Part G - Deferred Action

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AFM Chapter 21 - Family-based Petitions and Applications (External) (PDF, 2.86 MB)

Part H - Humanitarian Emergencies

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AFM Chapter 38 - Temporary Protected Status and Deferred Enforced Departure (External) (PDF, 271.96 KB)

Part I - Temporary Protected Status

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**AFM Chapter 38 - Temporary Protected Status and Deferred Enforced Departure (External) (PDF, 271.96 KB)**

**Volume 4 - Refugees and Asylees**

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**AFM Chapter 21 - Family-based Petitions and Applications (External) (PDF, 2.86 MB)**

**Volume 5 - Adoptions**

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**AFM Chapter 21 - Family-based Petitions and Applications (External) (PDF, 2.86 MB)**

**Volume 6 - Immigrants**

**Part A - Immigrant Policies and Procedures**

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

**AFM Chapter 20 - Immigrants in General (External) (PDF, 385.41 KB)**
Part B - Family-Based Immigrants

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Chapter 1 - Purpose and Background

A. Purpose

The Immigration and Nationality Act (INA) provides that U.S. citizens and lawful permanent residents (LPRs) may petition for certain alien relatives to immigrate to the United States.\[^1\] If the petitioners and the beneficiaries of such petitions meet the eligibility requirements, beneficiaries may then pursue LPR status by applying for an immigrant visa at a U.S. embassy or consulate (otherwise known as consular processing), or, if already in the United States, by applying for adjustment of status.\[^2\]

B. Background [Reserved]

C. Legal Authorities

- INA 201 – Worldwide level of immigration
- INA 202 – Numerical limitations on individual foreign states
- INA 203 – Allocation of immigrant visas
- INA 204; 8 CFR 204 – Procedure for granting immigrant status

Footnotes

\[^1\] In addition, Congress provided that certain alien relatives may self-petition in limited circumstances.

\[^2\] For more information, see Volume 7, Adjustment of Status [7 USCIS-PM].

Chapter 2 - Principles Common to Family-Based Petitions [Reserved]
Chapter 3 - Filing

A U.S. citizen or lawful permanent resident (LPR) may file a petition on behalf of a relative using the Petition for Alien Relative (Form I-130), in accordance with the form’s instructions. In certain cases, alien relatives may self-petition by filing the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).[1]

Generally, family-sponsored petitions must be filed with USCIS.[2] However, there are some limited circumstances in which the U.S. Department of State (DOS) may accept and adjudicate Form I-130. USCIS no longer accepts and adjudicates routine Form I-130 petitions at its remaining international field offices.[3]

A. When Department of State is Authorized to Accept and Adjudicate Form I-130

USCIS has delegated authority to DOS to accept and adjudicate a Form I-130 filed by a U.S. citizen petitioner for an immediate relative[4] if the petitioner establishes exceptional circumstances or falls under blanket authorization criteria defined by USCIS. This policy applies even in countries with a USCIS presence. Without such delegation, DOS has no authority to permit a U.S. embassy or consulate to accept a local Form I-130 filing abroad.

If a consular officer in a U.S. embassy or consulate encounters an individual case that the officer believes has need of immediate processing of a Form I-130, the consular officer may, but is not required to, accept the local filing in exceptional circumstances, in accordance with the guidance below.

Exceptional Circumstances

Examples of exceptional circumstances include:

- Military emergencies – A U.S. service member, who is abroad but who does not fall under the military blanket authorization for U.S. service members stationed abroad on military bases, becomes aware of a new deployment or transfer with little notice. This exception generally applies in cases where the U.S. service member is provided with exceptionally less notice than normally expected.

- Medical emergencies – A petitioner or beneficiary is facing an urgent medical emergency that requires immediate travel.

- Threats to personal safety – A petitioner or beneficiary is facing an imminent threat to personal safety. For example, a petitioner and beneficiary may have been forced to flee their country of residence due to civil strife or natural disaster and are in precarious circumstances in a different country outside of the United States.

- Close to aging out – A beneficiary is within a few months of aging out of eligibility.

- Petitioner has recently naturalized – A petitioner and family member(s) have traveled for the immigrant visa interview, but the petitioner has naturalized and the family member(s) requires a new petition based on the petitioner’s citizenship.

- Adoption of a child – A petitioner has adopted a child abroad and has an imminent need to depart the country. This type of case should only be considered if the petitioner has a full and final adoption decree on behalf of the child and the adoptive parent(s) has had legal custody of and jointly resided
with the child for at least 2 years.

- Short notice of position relocation – A U.S. citizen petitioner, living and working abroad, has received a job offer in or reassignment to the United States with little notice for the required start date.

Discretion

The list of examples provided above is not exhaustive. DOS may exercise its discretion to accept local Form I-130 filings for other emergency or exceptional circumstances of a non-routine nature, unless specifically noted below. However, such filings must be truly urgent and otherwise limited to situations when filing with USCIS online or domestically with an expedite request would likely not be sufficient to address the time-sensitive and exigent nature of the situation.

DOS may consider a petitioner’s residency within the consular district when determining whether to accept a filing, but it is not required.[5]

B. When Department of State is Not Authorized to Accept and Adjudicate Form I-130

DOS may not exercise discretion to accept local filings in certain scenarios. USCIS does not authorize DOS to accept a local filing abroad when a petitioner based in the United States seeks to travel and file abroad in order to expedite processing. DOS acceptance of Form I-130s abroad is intended to assist petitioners living abroad who demonstrate exceptional circumstances as described above.

In addition, USCIS does not authorize DOS to accept a local filing abroad if the petitioner has already filed a Form I-130 domestically for the same beneficiary. If exigent circumstances exist, the petitioner should request expedited processing for an electronic or domestically-filed petition. Local consular or USCIS staff should inform the petitioner of the process to request expedited adjudication.[6]

C. Blanket Filing Authorizations

USCIS[7] may issue a blanket authorization for DOS to exercise its discretion to accept locally-filed Form I-130 immediate relative petitions for certain filing categories. Petitioners in these categories do not need to reside in the country of the U.S. embassy or consulate, but they must meet the blanket exception criteria described below in order to file a Form I-130 with DOS.

Temporary Blanket Authorizations

In instances of prolonged or severe civil strife or a natural disaster, USCIS may authorize a blanket exception for DOS to accept Form I-130 immediate relative petitions from petitioners directly affected by such events.

Temporary blanket authorizations do not require DOS to accept a filing, but rather allow DOS to use its discretion to accept a Form I-130 filed at a U.S. embassy or consulate. Although DOS may accept a local filing by a petitioner who does not reside within the post’s jurisdiction, the intent of the temporary blanket authorization is to assist those directly affected by the disruptive event, not to speed up the process for those petitioners who are not directly affected.

U.S. Military Assigned to Military Bases Abroad

USCIS has granted DOS blanket authorization to accept Form I-130 immediate relative petitions filed by
U.S. citizen military service members stationed abroad even in countries with a USCIS presence. This blanket authorization does not apply to service members assigned to non-military bases, such as U.S. embassies, international organizations, or civilian institutions, or to service members on temporary duty orders. Qualifying petitioners do not need to establish exceptional circumstances. This blanket authorization is not time-limited, but USCIS may revoke the authorization if warranted.

D. Procedures for Local Filings

DOS may accept and adjudicate a local Form I-130 filing by a U.S. citizen petitioner for an immediate relative if the petitioner establishes exceptional circumstances or meets blanket authorization criteria defined by USCIS.

If DOS declines to accept a local filing, DOS should inform the petitioner of its decision and of the process for filing the Form I-130 at a USCIS lockbox or online in accordance with the USCIS filing instructions.

The petitioner does not have the right to appeal, motion, or otherwise request reconsideration of a USCIS or DOS decision to decline acceptance of a local filing. Although this local filing process is designed to facilitate expedited processing of cases abroad in exceptional circumstances, it is not the only way to file a petition or seek expedited adjudication. If not permitted to file locally abroad, a petitioner may still file a Form I-130 petition with a USCIS lockbox or online and may request expedited processing for that petition in accordance with the published USCIS expedite process and criteria.[8]

DOS may approve only those Form I-130 petitions that are clearly approvable. If DOS determines a petition is not clearly approvable, DOS forwards the petition to the USCIS office designated to adjudicate the not clearly approvable petitions. This USCIS office is generally a USCIS service center.[9]

If DOS approves a Form I-130 petition but that U.S. embassy or consulate does not issue immigrant visas, the Consular Section coordinates with the appropriate embassy or consulate with jurisdiction to issue a visa in accordance with DOS guidelines.

Although USCIS has delegated authority to DOS to accept Form I-130 petitions in all locations abroad in the limited instances described above, USCIS retains authority to accept and adjudicate a local Form I-130 filing abroad or conduct an in-person interview abroad as warranted, regardless of where or how the petition was filed.

Footnotes

[^1] For more information on self-petitioner categories, see the instructions to Form I-360. Form I-360 is also used for a number of other (non-relative) special immigrant classifications, which are discussed in other Policy Manual parts.

[^2] See instructions to the Petition for Alien Relative (Form I-130).

[^3] The USCIS field offices in Accra, Ghana and London, United Kingdom will continue to accept and adjudicate Form I-130 petitions filed by U.S. citizens residing in-country who are filing on behalf of their spouse, unmarried child under the age of 21, or parent (if the U.S. citizen is 21 years of age or older) through March 31, 2020.

[^4] Immediate relative refers to a U.S. citizen’s spouse, unmarried child under the age of 21, or parent (if the U.S. citizen is over the age of 21). See INA 201(b)(2)(A)(i). Other Form I-130 filing categories, which
may be filed by either U.S. citizens or LPRs and are also referred to as preference category petitions, must be filed with a domestic USCIS lockbox or online in accordance with the filing instructions. See 8 CFR 103.2(a)(1).


[^7] Currently, this is handled by the Refugee, Asylum and International Operations Directorate.

[^8] For more information, see Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 5, Requests to Expedite Applications or Petitions [1 USCIS-PM A.5]. See the How to Make an Expedite Request web page.


Part C - Adam Walsh Act

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 21 - Family-based Petitions and Applications (External) (PDF, 2.86 MB)

Part D - Surviving Relatives

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 10 - An Overview of the Adjudication Process (External) (PDF, 2.87 MB)

AFM Chapter 21 - Family-based Petitions and Applications (External) (PDF, 2.86 MB)

Part E - Employment-Based Immigration

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have
moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 22 - Employment-Based Petitions, Entrepreneurs and Special Immigrants (External) (PDF, 755.15 KB)

Chapter 1 - Purpose and Background [Reserved]

Chapter 2 - Eligibility Requirements [Reserved]

Chapter 3 - Successor-in-Interest in Permanent Labor Certification Cases [Reserved]

Chapter 4 - Ability to Pay [Reserved]

Chapter 5 - Business Structure [Reserved]

Chapter 6 - Permanent Labor Certification [Reserved]

Chapter 7 - Schedule A Designation Petitions

A. Background

The U.S. Department of Labor (DOL) adjudicates Applications for Permanent Employment Certification (ETA Form 9089 (PDF)), also referred to as permanent labor certifications. For certain occupations, DOL has predetermined there are not sufficient U.S. workers who are able, willing, qualified, and available pursuant to regulation.[1] These occupations are referred to as Schedule A occupations. DOL has also determined that sheepherders are eligible for special processing.[2]

For these two types of cases, the U.S. employer submits an uncertified application for permanent labor certification to USCIS at the time of filing the Immigrant Petition for Alien Workers (Form I-140), and USCIS reviews the application for permanent labor certification during the adjudication of the petition. USCIS applies DOL’s regulations to the application for permanent labor certification regarding whether or not the employer and beneficiary have met certain requirements, and USCIS’ regulations to the petition.

DOL requirements for Schedule A occupations and sheepherders are different from the normal requirements for other employment-based immigrant visa classifications. The fact that a petitioner can establish eligibility under DOL’s regulations only means that the permanent labor certification requirement is met. It does not mean that the beneficiary is eligible for the requested immigrant visa classification.[3]

B. Eligibility for Schedule A Designation

In order to obtain an employment-based visa classification based on a Schedule A occupation, the petitioning
The employer must meet the eligibility requirements outlined in the table below.[4]

### Eligibility Requirements for Schedule A Designation

<table>
<thead>
<tr>
<th>Requirement</th>
<th>For More Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>The employer must offer full-time permanent employment to the alien beneficiary.</td>
<td>20 CFR 656.3 (definitions of employer and employment)</td>
</tr>
<tr>
<td>The employment must be in one of the occupations categorized as a Schedule A occupation.</td>
<td>Section C, Schedule A Occupations [6 USCIS-PM E.7(C)]</td>
</tr>
<tr>
<td>The employer must offer the beneficiary at least the prevailing wage.</td>
<td>Section D, Prevailing Wage Determinations and Notices of Filing [6 USCIS-PM E.7(D)]</td>
</tr>
<tr>
<td>The employer must provide notice of the position(s) it seeks to fill to the employer’s bargaining representative, if applicable, or its employees.</td>
<td>Section D, Prevailing Wage Determinations and Notices of Filing [6 USCIS-PM E.7(D)]</td>
</tr>
<tr>
<td>The beneficiary must meet the specific USCIS eligibility requirements.</td>
<td>8 CFR 204.5</td>
</tr>
</tbody>
</table>

### C. Schedule A Occupations

For certain occupations, DOL has predetermined that there are not sufficient U.S. workers who are able, willing, qualified, and available. These occupations are referred to as Schedule A occupations, and the process to satisfy the permanent labor certification requirement is referred to as “blanket” labor certification. DOL has predetermined that the wages and working conditions of U.S. workers similarly employed will not be adversely affected by the employment of aliens in those occupations.

The following occupations comprise Schedule A:[6]

- Group I – physical therapists and professional nurses; and
- Group II – aliens of exceptional ability in the sciences or arts, including college and university teachers, and aliens of exceptional ability in the performing arts.

Because of the occupational shortage of these U.S. workers, DOL has “pre-certified” Schedule A occupations. This means that an employer who wishes to hire an alien for a Schedule A occupation is not required to conduct a test of the labor market and apply for a permanent labor certification with DOL. Rather, this employer must apply for Schedule A designation by submitting an application for permanent labor certification to USCIS in conjunction with the petition.
D. Prevailing Wage Determinations and Notices of Filing

1. Prevailing Wage Determination

An employer must obtain a valid prevailing wage determination from DOL’s National Prevailing Wage Center (NPWC) before it can file the petition with USCIS. The prevailing wage determination ensures that the wages offered to the beneficiary are reflective of the wages offered for comparable positions at the location where the job offer exists before the petitioner files the petition. In situations where there are multiple worksites (for example, the employer is a staffing agency), if the employer knows where they will place the beneficiary, the prevailing wage is the wage applicable to the area of intended employment where the worksite is located. If an employer with multiple clients does not know where they will place the beneficiary among its multiple clients, the prevailing wage is derived from the area of its headquarters. The wage offered to the beneficiary must be no less than 100 percent of the prevailing wage.

To obtain a prevailing wage determination, the employer must file an Application for Prevailing Wage Determination (Form ETA-9141 (PDF)) with the NPWC. The NPWC processes prevailing wage determination requests under DOL regulations and guidance and provides the employer with an appropriate prevailing wage rate on Form ETA-9141.

Form ETA-9141 must contain the NPWC’s determination date, as well as the validity period of the prevailing wage determination. The validity period may not be less than 90 days or more than 1 year from the determination date. An employer must file a petition within the validity period in order to use the prevailing wage rate provided by the NPWC.

2. Notice of Filing

Notice to Employees

Before an employer can file a petition, it must have also provided a notice of the position(s) it is seeking to fill under Schedule A, Group I or II, to the employer’s bargaining representative. Alternatively, if there is no such representative, then the employer must provide notice to its employees. Such notice must be posted for at least 10 consecutive business days in a clearly visible location at the facility or location of employment.

Notice for Every Occupation or Job Classification

An employer must post a separate notice for every occupation or job classification that is the subject of a request for Schedule A designation. However, regulations do not require a separate notice for every petition seeking designation under Schedule A. For example, an employer would post separate notices for a home health nurse and an emergency room nurse because the nurses have different job duties and wage rates. An employer can satisfy the notice of posting requirements with respect to several persons in each job classification with a single notice of posting, if the title, wage, requirements, and job location are the same for each person.

Applications Filed by Private Households

In the case of a private household, notice of filing is required only if the household employs one or more U.S. workers at the time the ETA Form 9089 is filed.
Evidence of Compliance

An employer must be able to document that it complied with the notice of posting requirements.\[17\]

If the employer notified its bargaining representative, then it may submit as evidence a copy of both the letter and the ETA Form 9089 sent to the bargaining representative(s). If the employer notified its employees, the documentation requirement may be satisfied by providing a copy of the posted notice and stating where it was posted, and by providing copies of all the in-house media, whether electronic or print, that were used to distribute notice of the application in accordance with the procedures used for similar positions within the employer's organization.\[18\]

3. Notice of Filing: Posting Requirements\[19\]

Visible and Unobstructed

During the requisite posting period, a notice to the employees must be clearly visible and unobstructed while it is posted, and it must be posted in conspicuous places where the employer’s U.S. workers can easily read the posted notice on their way to or from their place of employment. Appropriate locations include locations in the immediate vicinity of DOL-required wage and hour notices or occupational safety and health notices.\[20\]

Description of Job and Rate of Pay

The notice must contain a description of the job and rate of pay and indicate that it is provided as a result of the filing of an application for permanent employment certification for the relevant position.\[21\] The rate of pay must meet or exceed the prevailing wage at the time of posting. If the notice contains a range of wages, the lowest wage rate must meet or exceed the prevailing wage at the time of posting.\[22\]

DOL Certifying Officer Contact Information

In addition, a notice to the employees must also state that any person may provide documentary evidence bearing on the Schedule A labor certification application to the appropriate DOL Certifying Officer holding jurisdiction over the location where the beneficiary would be physically working.\[23\] The notice must also provide the address of the appropriate Certifying Officer.\[24\]

Period of Posting

Finally, the notice must be posted for at least 10 consecutive business days (including weekend days and holidays if these days are regular business days for the employer, that is, the employer is “open for business” on these days). In all cases, the burden is on the employer not only to establish that they posted the notice for 10 consecutive business days, but also that it was in an area that was accessible to its employees on each of these business days.

The notice must have been posted between 30 days and 180 days before the employer filed the petition.\[25\] The last day of the posting must fall at least 30 days before filing in order to provide sufficient time for interested persons to submit, if they so choose, documentary evidence bearing on the application to DOL. Officers should deny the petition and any concurrently filed Form I-485 if the notice was not posted between 30 and 180 days before the petition’s filing.

“Business Day” for Purposes of Notice
The term “business day” typically means Monday through Friday, except for federal holidays. However, where an employer is open for business on Saturdays, Sundays, or holidays, the employer may include the Saturday, Sunday, or holiday in its count of the 10 consecutive business day period required for the posting of the notice of filing.[26]

The employer, however, must demonstrate that it was open for business on those days and employees had access to the area where they could view the notice. Similarly, where an employer is not open for business on any day of the week, including Monday through Friday, the employer should not include any such days in its count of the 10 consecutive business days period required for the posting of the notice.

“Open for Business” for Purposes of Notice

If an employer must demonstrate that it was open for business on a Saturday, Sunday, or a holiday at the time of posting, the employer must provide documentation which establishes that on those days:

- Employees were working on the premises and engaged in normal business activity;
- The worksite was open and available to clients or customers, if applicable, as well as to employees; and
- Employees had access to the area where the notice of filing was posted.

4. Notice of Filing: Posting Locations[27]

Posting at Worksite

If the employer knows where the beneficiary will be placed, then the employer must post the notice at the worksite(s) where the beneficiary will perform the work, and publish the notice internally using in-house media (whether electronic or print) according to the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question. The prevailing wage indicated in the notice is the wage applicable to the area of intended employment where the worksite is located.

If the employer currently employs relevant workers at multiple locations and does not know where the beneficiary will be placed, then the employer must post the notice at the worksite(s) of all of its locations or clients where relevant workers currently are placed, and publish the notice of filing internally using in-house media (whether electronic or print) according to the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question.

The situation of multiple work locations may arise in, but is not limited to, a scenario when the employer is a staffing agency which has clients under contract at the time that the employer seeks to post a timely notice of filing. In support of the petition, the employer may provide a copy of one posting notice supported by a list of all locations where the notice was posted and dates of posting in each location. The employer does not have to submit a copy of each notice.[28]

Officers might encounter cases in which the employment is not full-time, permanent employment[29] or where the worksite(s) is unknown and the employer has no current locations or clients. In those cases, the officer may deny the petition because no bona fide job opportunity exists.[30]

In-house Media

An employer is required to publish the notice in all in-house media, whether electronic or print, that the
employer normally uses to announce similar positions within its organization. The employer must submit as evidence a copy of all in-house media that was used to distribute notice of the application according to the procedures used for similar positions within the employer's organization.

E. Physical Therapists and Registered Nurses (Group I)

1. General Eligibility

A physical therapist is a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders, and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or a surgeon).

A professional nurse is a person who applies the art and science of nursing which reflects comprehension of principles derived from the physical, biological, and behavioral sciences. Professional nursing generally includes making clinical judgments involving the observation, care and counsel of persons requiring nursing care; administering of medicines and treatments prescribed by the physician or dentist; and participation in the activities for the promotion of health and prevention of illness in others.

A program of study for professional nurses generally includes theory and practice in clinical areas such as obstetrics, surgery, pediatrics, psychiatry, and medicine. Officers should compare the duties of the proffered position with the duties stated in the definition of “professional nurse” in determining whether the proffered position qualifies as that of a professional nurse. The classification for which the nurse is eligible depends on whether the position requires, and the beneficiary has, an advanced degree.

2. Bona Fide Job Offer

For Schedule A petitions, the petitioner must demonstrate that it is more likely than not that the petitioner is offering a bona fide full-time, permanent position. When considering this question, however, officers may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth in the regulations. Specifically, there is no evidentiary requirement in the relevant and guiding statute or regulations that requires the petitioner to provide all contracts between the petitioner and its third-party clients for petitions generally and for Schedule A cases specifically. Officers may, however, review the terms of the job offer and documentation relevant to the other requirements.

The terms of the job offer are derived from the petition and ETA Form 9089. The headquarters’ worksite location and all of the potential client worksites to which the beneficiary could be assigned should be evident from the prevailing wage request and posting notice and other descriptive materials the petitioner voluntarily submits.

Other evidence related to the bona fide nature of the job offer includes that submitted to document the petitioner’s ability to pay the proffered wage. The record should also contain evidence of the beneficiary’s qualifications for the classification and any special requirements required by the job offer on the ETA Form 9089. Such evidence should illustrate that it is more likely than not that there is a bona fide job offer. An officer should be able to articulate a reasonable concern based on evidence either within or outside of the record to form the basis for a fraud referral for further investigation.

F. Evidence
1. Group I Occupations

For Group I, registered nurse occupations, the employer must submit evidence to establish that the beneficiary currently has (and had at the time of filing):

- A full, unrestricted permanent license to practice nursing in the state of intended employment;
- A certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS); or
- Evidence that the beneficiary has passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) as of the date of filing.[41]

For Group I, physical therapist occupations, the employer must submit evidence to establish that the beneficiary currently has (and had at the time of filing) a permanent license to practice in the state of intended employment. Minimum requirements must meet all state licensure requirements. In the alternative, the employer may submit a letter or statement signed by an authorized state physical therapy licensing official in the state of intended employment. This letter must indicate that the beneficiary is qualified to take the written licensing examination for physical therapists.[42]

2. Group II Occupations

Aliens of Exceptional Ability in the Sciences or Arts

To show that an alien beneficiary is an alien of exceptional ability in the sciences or arts (excluding performing arts), the employer must submit documentary evidence testifying to the widespread acclaim and international recognition accorded to the beneficiary by recognized experts in the beneficiary’s field. In addition, the employer must submit documentation showing that the beneficiary’s work in that field during the past year did, and the intended work in the United States will, require exceptional ability. Finally, the employer must submit documentation concerning the beneficiary from at least two of the following seven categories, where “field” refers to the one in which the petitioner seeks certification for the beneficiary:

- Documentation of the beneficiary's receipt of internationally recognized prizes or awards for excellence in the field;
- Documentation of the beneficiary's membership in international associations, in the field, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;
- Published material in professional publications about the beneficiary, about the beneficiary's work in the field, which must include the title, date, and author of such published material;
- Evidence of the beneficiary's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization;
- Evidence of the beneficiary's original scientific or scholarly research contributions of major significance in the field;
- Evidence of the beneficiary's authorship of published scientific or scholarly articles in the field, in international professional journals or professional journals with an international circulation; and
- Evidence of the display of the beneficiary's work, in the field, at artistic exhibitions in more than one country.[43]
Aliens of Exceptional Ability in the Performing Arts

To show that an alien is an alien of exceptional ability in the performing arts, the employer must submit documentary evidence that the beneficiary’s work experience during the past 12 months did, and the intended work in the United States will, require exceptional ability.[44] Finally, the employer must submit sufficient documentation to show this exceptional ability, such as:

- Documentation attesting to the current widespread acclaim and international recognition accorded to the beneficiary, and receipt of internationally recognized prizes or awards for excellence;
- Published material by or about the beneficiary, such as critical reviews or articles in major newspapers, periodicals, or trade journals (the title, date, and author of such material must be indicated);
- Documentary evidence of earnings commensurate with the claimed level of ability;
- Playbills and star billings;
- Documents attesting to the outstanding reputation of theaters, concert halls, night clubs, and other establishments in which the beneficiary has appeared or is scheduled to appear; or
- Documents attesting to the outstanding reputation of theaters or repertory companies, ballet troupes, orchestras, or other organizations in which or with which the beneficiary has performed during the past year in a leading or starring capacity.[45]

G. Eligibility for Employment-based Immigrant Visa Classification

1. Physical Therapists and Professional Nurses (Group I)

For Schedule A, Group I occupations, an employer may seek to classify the beneficiary as a skilled worker or professional (employment-based 3rd preference or EB-3 category).[46] Occasionally, an employer may seek to classify the position as an advanced degree professional (employment-based 2nd preference or EB-2 category).[47]

The minimum requirement for professional nursing occupations is generally less than a bachelor’s degree and these occupations are therefore considered under the skilled worker classification.[48] However, the minimum requirement for certain advanced or specialized professional nursing occupations may be a bachelor’s degree. These occupations may be properly considered under the professional classification. In some cases, the minimum requirements may even be an advanced degree. Those occupations may be properly considered under the advanced degree classification. Officers may refer to The Occupational Information Network (O*NET)[49] to determine the minimum educational requirements for professional nursing occupations.

According to O*NET, most physical therapist occupations require graduate school. O*NET classifies the position as a “Job Zone Five” with “extensive preparation needed.” Based on the state where the beneficiary will practice, these occupations may require a master’s degree, and some may even require a Doctor of Physical Therapy (DPT). Therefore, physical therapist occupations may be properly considered under the advanced degree professional classification if the employer can show that, based on the duties and education requirements on the ETA Form 9089, the position requires an advanced degree.

EB-2 classification is appropriate even if the state of intended employment issues physical therapist licenses to those persons who possess less than an advanced degree based on when the therapist obtained the degree (sometimes referred to as “grandfathering”). As explained below, some states will license a person who only
possess a minimum of a bachelor’s degree (and not an advanced degree) as a physical therapist based on the date the person obtained that degree. As long as an employer can show that the position requires, at a minimum, an advanced degree (including the regulatory equivalence of a bachelor of physical therapy followed by 5 years of progressive experience), for a worker to satisfactorily perform the job duties, and the physical therapist holds an advanced degree or its equivalent, then a petition may be properly considered under the advanced degree professional classification.

It is not unusual for an employer to require that the position’s duties and requirements exceed the state’s minimum licensing requirements. For example, the employer may require that the beneficiary possess an advanced degree even though the state only requires a bachelor’s degree to obtain licensure as a physical therapist. In this case, a petition may be properly considered under the advanced degree professional classification.

It is possible that the employer does not require that the position’s duties and requirements exceed the state’s minimum licensing requirements. For example, the employer may only require that the beneficiary possess a bachelor’s degree since the state only requires a bachelor’s degree to obtain licensure as a physical therapist. Since the minimum requirements are less than an advanced degree, a petition may be properly considered under the professional classification (and not under the advanced degree classification). However, the employer cannot require that the position’s duties and requirements be less than the state’s minimum licensing requirements.

An advanced degree is commonly the minimum requirement for licensure for the occupation of physical therapist. Previously, a bachelor’s degree was the minimum requirement for licensure in the occupation. As noted above, many states have “grandfathering” clauses that allow those who obtained a bachelor’s degree under the previous licensing requirements to continue working in the field. If a “grandfathered” beneficiary can show that he or she has 5 years of progressive experience following receipt of the bachelor’s degree, then he or she may be able to qualify under the advanced degree professional classification.

USCIS defines an advanced degree as any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor’s degree. USCIS considers an academic or professional degree above that of a bachelor’s degree an advanced degree if the occupation requires that degree. Therefore, a U.S. or foreign equivalent bachelor’s degree would not qualify a beneficiary for the advanced degree professional classification, unless the beneficiary also possesses 5 years of progressive experience following the award of the bachelor’s degree. The beneficiary must have obtained both the bachelor’s degree and the 5 years of progressive experience before the filing date of the permanent labor certification. In addition, USCIS does not consider training certifications and similar documents that are not academic or professional as advanced degrees.

2. Aliens of Exceptional Ability (Group II)

For Schedule A, Group II occupations, an employer may seek to classify the position as an advanced degree professional or alien of exceptional ability. However, it is possible that an employer may seek to classify the position as a skilled worker or professional if the position does not require an advanced degree or an alien of exceptional ability.

Officers should not confuse the requirements to designate a beneficiary under Schedule A, Group II (aliens of exceptional ability in the sciences or arts, including performing arts) with the requirements to classify an alien under the EB-2 category (for aliens of exceptional ability in the sciences, arts, or business). Though both DOL and USCIS regulations refer to aliens of “exceptional ability,” each regulation defines the term “exceptional ability” differently.
DOL defines “exceptional ability” for Schedule A, Group II designation as “widespread acclaim and international recognition accorded the alien by recognized experts in the alien’s field.” USCIS defines exceptional ability for purposes of the EB-2 category as “a degree of expertise significantly above that ordinarily encountered in the sciences, arts or business.” DOL’s standard for Schedule A, Group II designation is therefore somewhat similar to that used to classify an alien under the employment-based 1st preference (EB-1A) category (for aliens of extraordinary ability). Despite this similarity, the standard for the EB-1A category is different than the standard for Schedule A, Group II designation. Therefore, officers should take care not to erroneously apply the standard for the EB-1A category to a request for Schedule A, Group II designation.

The granting of Schedule A, Group II designation is separate from the adjudication of the immigrant visa petition. Eligibility for Schedule A, Group II designation does not guarantee approval of the petition itself, which must be adjudicated under the relevant regulations. Meeting the requirements for Schedule A designation only means that the petition met the permanent labor certification requirement. Officers must still make a separate determination on whether the position and the beneficiary meet the requirements for the requested classification. Conversely, meeting the eligibility requirements for the classification under the USCIS definition does not establish eligibility for Schedule A, Group II designation under DOL’s regulations.

Minimum Job Requirements

Officers should ensure that the actual education, training, and experience needed to perform the job listed in Item H of ETA Form 9089 reflect the true minimum requirements of the position.

For Schedule A positions, the petitioner submits an uncertified ETA Form 9089 concurrently with the petition directly with USCIS. Therefore, in Schedule A cases, USCIS, and not DOL, reviews the ETA Form 9089 using DOL regulations. The duties shown on the permanent labor certification should be appropriate for a Schedule A occupation (such as a position that requires licensure as a professional nurse, licensure as a physical therapist, or performance of a worker of exceptional ability). If necessary, the officer may issue a Request for Evidence to confirm the precise minimum job requirements.

Self-Petitions Not Allowed

An alien may not self-petition for Schedule A, Group II designation. Each request for Schedule A designation requires a job offer, and a petition that includes a request for such designation filed by a U.S. employer.

H. Filing Requirements

For all Schedule A occupations, an employer must apply for permanent labor certification with USCIS. A USCIS denial is conclusive and is not reviewable by the Board of Alien Labor Certification Appeals (BALCA) under the review procedures provided in regulations. DOL does not certify any occupation that is a Schedule A, Group I occupation under the basic permanent labor certification process. However, if USCIS denies a permanent labor certification application filed by an employer for a Schedule A, Group II occupation, the employer may then apply for a permanent labor certification from DOL using the basic permanent labor certification process.

Required Documentation

In order to apply for Schedule A designation for petitions filed on or after March 28, 2005, the petitioning employer must complete and submit:
- A properly filed Immigrant Petition for Alien Workers (Form I-140), with appropriate filing fees;[^1]
- An uncertified Application for Permanent Employment Certification (ETA Form 9089 (PDF)), with the employer and beneficiary’s original signatures (along with any representative’s signature, if relevant);
- A prevailing wage determination issued by DOL’s NPWC, in which the validity period is not less than 90 days or more than 1 year from the determination date and the petition is filed during that validity period;[^2]
- A copy of the notice sent to an appropriate collective bargaining unit, if applicable, or a copy of the notice posted at the facility or location of the employment,[^3] documenting posting for at least 10 consecutive business days and within the period between 30 and 180 days before the employer filed the petition;
- Copies of all in-house media, whether electronic or printed, in accordance with the normal procedures used in the employer’s organization for the recruitment of positions similar to that specified on ETA Form 9089;
- Evidence that the beneficiary meets the specific DOL requirements for Schedule A designation;[^4] and
- All other documentation required to show eligibility for the employment-based immigrant visa classification sought, such as evidence of its ability to pay and evidence that the beneficiary meets any additional requirements specified on the ETA Form 9089.

An employer must offer full-time permanent employment to a beneficiary. If USCIS has a reasonable and articulable reason to believe that it is more likely than not that the petitioning employer is not offering a bona fide job offer, officers may request additional evidence, such as copies of the employer’s contracts with worksites or clients.[^5] An employer that cannot offer full-time permanent employment as a beneficiary’s actual employer is ineligible to petition for the beneficiary.[^6]

I. Adjudication

If an employer meets all requirements for Schedule A designation and the petition is approvable, USCIS retains the ETA Form 9089 with the petition. If an employer did not meet all requirements for Schedule A designation, or the petition is not approvable, USCIS retains the permanent labor certification application with the petition. The officer does not complete Section O of the permanent labor certification.

The petitioner retains the right to file an appeal of USCIS’ decision with the Administrative Appeals Office (AAO).[^7] In addition, an employer which cannot meet the requirements for Schedule A, Group II may then apply for a permanent labor certification from DOL using the basic permanent labor certification process.[^8] However, DOL does not consider applications for permanent labor certifications for Schedule A, Group I occupations under the basic permanent labor certification process.[^9]

Footnotes


See 20 CFR 656. For more information, see Chapter 2, Eligibility Requirements [6 USCIS-PM E.2].

These requirements are in addition to the general eligibility requirements for employment-based visa classification. See Chapter 2, Eligibility Requirements [6 USCIS-PM E.2].

The employer must also submit all other documentation required to show eligibility for the employment-based immigrant visa classification sought, such as evidence of its ability to pay, that the beneficiary and position qualify for the classification sought, and that the beneficiary meets the job requirements of the blanket labor certification.

See 20 CFR 656.5.

Before January 1, 2010, the State Workforce Agency (SWA) having jurisdiction over the area of intended employment processed prevailing wage determinations.

See the Office of Foreign Labor Certification (OFLC)’s Frequently Asked Questions and Answers webpage.

While the Schedule A regulations require that the employer obtain a prevailing wage determination that is valid at the time the employer files the petition, there is no requirement that the prevailing wage determination be obtained before the employer posts a notice of the position. In addition, there is no requirement that the wage on the posting notice must match the proffered wage, only that both must meet the prevailing wage.

See generally OFLC’s Frequently Asked Questions and Answers webpage regarding the notice of filing.

See Appendix: Sample Notice of Filing.
See 20 CFR 656.10(d)(3)(iii). Before June 1, 2008, there were two addresses depending on the location of the petitioning business: Atlanta or Chicago. On or after June 1, 2008, the following address must be listed on the posting notice: U.S. Department of Labor, Employment and Training Administration, Atlanta National Processing Center, Harris Tower, 233 Peachtree Street, Suite 410, Atlanta, Georgia 30303. However, see DOL Employment and Training Administration (ETA) OFLC’s National Federal Processing Centers Contact webpage for any changes to the current mailing address for the appropriate Certifying Officer.

See 20 CFR 656.10(d)(3)(iv).


For all petitions filed after March 20, 2006 (or motions to reopen filed after March 20, 2006 to reopen a petition that was filed and denied after March 28, 2005), employers must comply with these posting requirements.

USCIS established a policy for officers to issue a Request for Evidence (RFE) to provide an employer with the opportunity to comply with the posting requirements if the petition was pending on March 20, 2006 (or was denied and a timely filed motion to reopen or reconsider was pending on March 20, 2006), and the employer timely posted a notice but not in the correct location(s) of intended employment as described above. If all posting requirements are met and the notice was posted the requisite 10 business days before the date of the RFE response, USCIS considers the notice of posting timely for adjudication purposes.

See 20 CFR 656.3.

See Section B, Eligibility for Schedule A Designation [6 USCIS-PM E.7(B)]. See OFLC’s Frequently Asked Questions and Answers webpage.

See 20 CFR 656.10(d)(1)(ii).


See 20 CFR 656.5(a)(3)(i). DOL’s use of the term “professional” in 20 CFR 656.5(a)(3)(ii) has no bearing on the determination of whether a nurse qualifies as a professional or skilled worker under 8 CFR 204.5(l)(2).


See 20 CFR 656.20(c)(10). See 20 CFR 656.3.

See Love Korean Church v. Chertoff, 549 F.3d 749, 758 (9th Cir. 2008). See Kazarian v. INS, 596 F.3d 1115, 1121 (9th Cir. 2010).

Even for Schedule A staffing agency scenarios, the applicable regulatory criteria do not include employment contracts as required evidence. See OFLC’s Frequently Asked Questions and Answers webpage, which explains that petitioners are not required to submit employment contracts. For the situation of nurse staffing agencies and “roving” employees (for example, foreign health care workers the petitioner will assign to work at third-party client worksites still to be determined as of the date of filing), DOL advised only that the petitioner should submit a prevailing wage determination for the headquarters location and posting notices at all of its clients’ worksites.

See Chapter 8, Documentation and Evidence [6 USCIS-PM E.8].
See Part F, Employment-Based Classifications [6 USCIS-PM F].

The requirements on the ETA Form 9089 should line up with those reflected on the Application for Prevailing Wage Determination (Form ETA-9141 (PDF)) and posting notice.

See 20 CFR 656.15(c)(2). The NCLEX-RN is administered by the National Council of State Boards of Nursing.

See 20 CFR 656.15(c)(1).

See 20 CFR 656.15(d)(1).

See Matter of Allied Concert Services, Inc., 88–INA–14 (BALCA 1988), which provides an example of how DOL previously evaluated the evidence for Schedule A Group II cases.

See 20 CFR 656.15(d)(2).

See INA 203(b)(3).

See INA 203(b)(2).

Skilled worker positions require 2 years of training or experience, which can include relevant post-secondary education, such as an associate’s degree. See 8 CFR 204.5(l)(2) (definition of skilled worker).

O*NET Online is sponsored by DOL’s Employment and Training Administration, and developed by the National Center for O*NET Development.

Officers must differentiate “grandfathering” for purposes of obtaining licensure and the requirements for obtaining EB-2 classification. States that permit a person to obtain licensure with less than an advanced degree specify the date by which the person would have had to obtain his or her baccalaureate degree to be considered “grandfathered.” In order to be eligible for EB-2 preference classification, even a grandfathered alien would have to demonstrate that he or she obtained the baccalaureate degree and has at least 5 years of progressive post-baccalaureate experience in the field.

See 8 CFR 204.5(k)(2) (definition of advanced degree).


See INA 203(b)(2).

See 8 CFR 204.5(k)(2) (definition of exceptional ability).

For example, Schedule A, Group II designation requires an employer to file the petition and does not allow for the submission of comparable evidence in place of the regulatory criteria.


On December 27, 2004, DOL published a final rule entitled Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System, which significantly restructured the permanent labor certification process. See 69 FR 77325 (Dec. 27, 2004). For information on Schedule A requirements before March 28, 2005, see prior 20 CFR 656.10 (PDF) and 20 CFR 656.22 (PDF).

See 20 CFR 656.10. See 20 CFR 656.15.

For information on filing fees, see the Form I-140 webpage.

If the petition was filed before January 1, 2010, then the prevailing wage determination would have been issued by the applicable State Workforce Agency (SWA).

For guidance on the appropriate posting location(s) for cases involving multiple worksites, see OFLC’s Frequently Asked Questions and Answers webpage.

See 20 CFR 656.5 and 20 CFR 656.15.

If the beneficiary will be assigned to other third-party worksites, that may impact the required contents of the notice of posting, the location of that notice, prevailing wage determination, ETA Form 9089, and the petition.

See 20 CFR 656.3. See Chapter 2, Eligibility Requirements [6 USCIS-PM E.2].

See 20 CFR 656.15(e) (the denial of a Schedule A case cannot be appealed through BALCA). DHS delegated the authority to adjudicate appeals to the AAO under the authority vested in the Secretary through the Homeland Security Act of 2002, Pub. L. 107-296 (PDF) (November 25, 2002). See Delegation Number 0150.1 (effective March 1, 2003). See 8 CFR 2.1. The AAO exercises appellate jurisdiction over matters described in 8 CFR 103.6(f)(3) (in effect February 28, 2003), including decisions on petitions for an immigrant visa based on employment.


See 20 CFR 656.15(f). See Section H, Filing Requirements [6 USCIS-PM E.7(H)].

Chapter 8 - Documentation and Evidence [Reserved]

Chapter 9 - Evaluation of Education Credentials [Reserved]

Chapter 10 - Decision and Post-Adjudication [Reserved]

Part F - Employment-Based Classifications

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these
Part G - Investors

Chapter 1 - Purpose and Background

A. Purpose

The Immigration and Nationality Act (INA) makes visas available to qualified immigrant investors who will contribute to the economic growth of the United States by investing in U.S. businesses and creating jobs for U.S. workers. Congress created this employment-based fifth preference immigrant visa category (EB-5) to benefit the U.S. economy by providing an incentive for foreign capital investment that creates or preserves U.S. jobs.

The INA authorizes approximately 10,000 visas each fiscal year for immigrant investors (along with their spouses and unmarried children under the age of 21) who have invested or are actively in the process of investing in a new commercial enterprise and satisfy the applicable job creation requirements. Three thousand of the visas are set aside for immigrants, and their eligible family members, who invest in a new commercial enterprise within a USCIS-designated regional center. Regional centers are organized in the United States for the promotion of economic growth, including increased export sales, improved regional productivity, job creation, or increased domestic capital investment.

The INA establishes a threshold investment amount of $1,000,000 U.S. dollars per investor and provides the ability to raise the amount by regulation. On July 24, 2019, DHS published the EB-5 Immigrant Investor Program Modernization rule, which raised the investment amount for petitions filed on or after November 21, 2019. Beginning October 1, 2024, the investment amount automatically adjusts every 5 years for petitions filed on or after each adjustment’s effective date to an amount determined by a prescribed method and calculation. DHS may also update the investment amount by publishing a technical amendment in the Federal Register.

To encourage investment in new enterprises located in areas that would most benefit from employment creation, the INA also sets aside at least 3,000 of the approximately 10,000 EB-5 visas annually for qualified immigrants who invest in new commercial enterprises that will create employment in targeted employment areas (TEA), which includes rural areas and areas with high unemployment. The minimum amount for investing in a TEA was previously set at 50 percent of the standard minimum investment amount, $500,000 U.S. dollars per investor, but increased to $900,000 for petitions filed on or after November 21, 2019. As with the standard minimum investment amount, beginning on October 1, 2024, and every 5 years thereafter, the TEA amount automatically adjusts for petitions filed on or after each adjustment’s effective date, to be equal to 50 percent of the standard minimum investment amount described above.

The minimum investment amounts by filing date and investment location are:

AILA Doc. No. 19060633. (Posted 3/26/21)
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<tbody>
<tr>
<td>Before November 21, 2019</td>
<td>$1,000,000</td>
<td>$500,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>On or After November 21, 2019[10]</td>
<td>$1,800,000</td>
<td>$900,000</td>
<td>$1,800,000</td>
</tr>
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</table>

Upon adjustment of status or admission to the United States, immigrant investors and their derivative family members receive conditional permanent resident status for a 2-year period. Ultimately, if the applicable requirements have been satisfied, USCIS removes the conditions and the immigrants become lawful permanent residents (LPRs) of the United States without conditions.

**B. Background**

**1. EB-5 Category Beginnings**

In 1990, Congress created the EB-5 immigrant visa category. [11] The legislation envisioned LPR status, initially for a 2-year conditional period, for immigrant investors who established, [12] invested (or were actively in the process of investing) in, and engaged in the management of job-creating or job-preserving for-profit enterprises. [13] Congress placed no restriction on the type of the business if the immigrant investor invested the required capital and directly created at least 10 jobs for U.S. workers.

**2. Creation of the Regional Center Program**

In 1992, Congress expanded the allowable measure of job creation for the EB-5 category by launching the Immigrant Investor Pilot Program (referred to in this guidance as the Regional Center Program). [14] Congress designed this program to determine the viability of pooling investments in designated regional centers. [15] Currently, the jurisdiction of a regional center is based on the regional center proposal submitted to and approved by USCIS.

The Regional Center Program is different from the direct job creation (stand-alone) model because it allows for the use of reasonable economic or statistical methodologies to demonstrate job creation. Reasonable methodologies are used, for example, to credit indirect (including induced) jobs to immigrant investors. Indirect jobs are jobs held outside the enterprise that receives immigrant investor capital.

**3. Program Extensions**

Congress initially approved the Regional Center Program as a trial pilot program, set to expire after 5 years. Congress has extended the program several times. [16]
## Evolution of EB-5 Program

<table>
<thead>
<tr>
<th>Act</th>
<th>Statutory Provisions</th>
</tr>
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</table>
| **Sections 121(a)-(b) of the Immigration Act of 1990** [17]           | • Congress creates the employment-based fifth preference immigrant visa category (EB-5).  
• EB-5 provides a path to permanent resident status, initially on a 2-year conditional basis, to qualified immigrant investors who contribute to U.S. economic growth by investing in domestic businesses and creating employment.  
• Intends for immigrant investors to establish, invest in, and engage in the management of job-creating commercial enterprises. |
| **Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993** [18] | • Congress creates an Immigrant Investor Pilot Program (Regional Center Program) to have a number of the available EB-5 visas set aside each fiscal year for immigrant investors (and eligible family members) who invest in a commercial enterprise associated with a designated Regional Center.  
• Regional centers designated for the promotion of economic growth.  
• The Regional Center Program allows foreign investors to claim credit for direct and indirect job creation. [19] |
| **Sections 11035-37 of the 21st Century Department of Justice Appropriations Authorization Act** [20] | • Includes a specific reference to limited partnerships as commercial enterprises and eliminates the requirement that immigrant investors prove they have established a commercial enterprise themselves. Investors need only show they have invested or are actively in the process of investing in a commercial enterprise, among other requirements.  
• Defines full-time employment as employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.  
• Allows regional center proposals to be based on general but economically and statistically sound predictions submitted with the proposal concerning the kinds of enterprises that will receive capital from immigrant investors, the jobs that will be created directly or indirectly as a result of the investments, and other positive economic effects of the investments. |
<table>
<thead>
<tr>
<th>Act</th>
<th>Statutory Provisions</th>
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<tbody>
<tr>
<td>Section 1 of Pub. L. 112-176 (PDF) [21]</td>
<td>• Eliminates the word pilot from the name of the Regional Center Program.</td>
</tr>
</tbody>
</table>

C. Legal Authorities

- **INA 203(b)(5); 8 CFR 204.6** – Employment creation immigrants
- **INA 216A; 8 CFR 216.6** – Conditional permanent resident status for certain alien entrepreneurs, spouses, and children
- **8 CFR 216.3** – Termination of conditional permanent resident status
- **Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993** [22]

Footnotes

[^1] See **INA 203(b)(5).**


[^3] See 84 FR 35750 (PDF) (July 24, 2019),


[^5] See **INA 203(b)(5)(B)-(C).** See 8 CFR 204.6(e)-(f)(2).


[^8] See 8 CFR 204.6(f)(2). See 8 CFR 204.6(f)(2) (PDF) (as in effect before November 21, 2019).

[^9] See 8 CFR 204.6(f)(3). See 8 CFR 204.6(f)(3) (PDF) (as in effect before November 21, 2019).

[^10] These amounts automatically adjust on October 1, 2024. USCIS will update this Part accordingly.


Chapter 2 - Eligibility Requirements

The immigrant investor category requires three main elements:

- An investment of capital;
- In a new commercial enterprise;
- Which creates jobs.

Each element is explained in this chapter in the context of both the stand-alone program and the Regional Center Program.

For the general requirements, the term immigrant investor in this Part of the Policy Manual refers to any EB-5 investor-petitioner, whether investing through the stand-alone program or the Regional Center Program. Where distinctions between the two programs exist, the term non-regional center immigrant investor refers to petitioners using the stand-alone program, and the term regional center immigrant investor refers to petitioners using the Regional Center Program.

A. Investment of Capital

Congress created the immigrant investor category so the U.S. economy can benefit from an immigrant’s contribution of capital. This benefit is greatest when capital is at risk and invested in a new commercial enterprise that, because of the investment, creates at least 10 full-time jobs for U.S. workers. The regulations that govern the category define the terms capital and investment with this economic benefit in mind.\footnote{For a discussion on indirect jobs, see Chapter 2, Eligibility Requirements, Section D, Creation of Jobs \[6 USCIS-PM G.2(D)].}

1. Capital
The word capital does not mean only cash. Instead, the broad definition of capital takes into account the many different ways in which a person can make a contribution of financial value to a business. Capital includes cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the immigrant investor, provided the immigrant investor is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital must be valued at fair market value in U.S. dollars.

The immigrant investor must establish that he or she is the legal owner of the capital invested and has obtained the capital through lawful means. Any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. To establish that the capital was obtained through lawful means, the immigrant investor’s petition must include (if applicable):

- Foreign business registration records;
- Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this list), and personal tax returns, including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within 5 years with any taxing jurisdiction in or outside the United States by or on behalf of the immigrant investor;
- Evidence identifying any other source(s) of capital; or
- Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the immigrant investor from any court in or outside the United States within the past 15 years.

**Promissory Notes**

Capital can include the immigrant investor’s promise to pay (a promissory note), as long as the immigrant investor is personally and primarily liable for the promissory note debt and his or her assets adequately secure the note. Any security interest must be perfected to the extent provided for by the jurisdiction in which the asset is located. Further, the assets securing the promissory note:

- Cannot include assets of the company in which the immigrant is investing;
- Must be specifically identified as securing the promissory note; and
- Must be fully amenable to seizure by a U.S. noteholder.

The fair market value of a promissory note depends on its present value, not the value at any different time. In addition, to qualify as capital, nearly all of the money due under a promissory note must be payable within 2 years, without provisions for extensions.

**Using Loan Proceeds as Capital**

Proceeds from a loan may qualify as investment capital provided the requirements placed on indebtedness are satisfied.

When using loan proceeds as capital, an immigrant investor must demonstrate:

- The immigrant investor is personally and primarily liable for the debt;
• The indebtedness is secured by assets the immigrant investor owns; and
• The assets of the new commercial enterprise are not used to secure any of the indebtedness.

The immigrant investor must have primary responsibility, under the loan documents, for repaying the debt used to satisfy his or her minimum required investment amount.

The immigrant investor must also demonstrate that his or her own collateral secures the debt, and that the value of the collateral is sufficient to secure the amount of debt that satisfies the immigrant investor’s minimum required investment amount. A loan secured by the immigrant investor’s assets qualifies as capital only up to the fair market value of the immigrant investor’s pledged assets.

2. Investment

The immigrant investor is required to invest his or her own capital. The petitioner must document the path of the funds to establish that the investment was made, or is actively in the process of being made, with the immigrant investor’s own funds.[11]

To invest means to contribute capital. A loan from the immigrant investor to the new commercial enterprise does not count as a contribution of capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the immigrant investor and the new commercial enterprise is not a capital investment.[12]

To qualify as an investment, the immigrant investor must actually place his or her capital at risk. The mere intent to invest is not sufficient.[13]

Purchasing a share of a business from an existing shareholder, without more, will not qualify, since the payment goes to the former shareholder rather than to the new commercial enterprise.

Guaranteed Returns

If the immigrant investor is guaranteed a return, or a rate of return on all or a portion of his or her capital, then the amount of any guaranteed return is not at risk.[14] For the capital to be at risk there must be a risk of loss and a chance for gain.

Additionally, if the investor is guaranteed the right to eventual ownership or use of a particular asset in consideration of the investor’s contribution of capital into the new commercial enterprise, the expected present value of the guaranteed ownership or use of such asset will count against the total amount of the investor’s capital contribution in determining how much money was placed at risk. For example, if the immigrant investor is given a right of ownership or use of real estate, the present value of that real estate will not be counted as investment capital put at risk of loss.[15]

Nothing prevents an immigrant investor from receiving a return on his or her capital in the form of a distribution of profits from the new commercial enterprise. This distribution of profits may happen during the conditional residency period and may happen before creating the required jobs. However, the distribution cannot be a portion of the investor’s minimum qualifying investment and cannot have been guaranteed to the investor.

Redemption Language

The regulatory definition of “invest” excludes capital contributions that are “in exchange for a note, bond,
convertible debt, obligation, or any other debt arrangement.”

An agreement evidencing a preconceived intent to exit the investment as soon as possible after removing conditions on permanent residence may constitute an impermissible debt arrangement. Funds contributed in exchange for a debt arrangement do not constitute a qualifying contribution of capital. In general, the petitioner may not enter into the agreement knowing that he or she has a willing buyer at a certain time and for a certain price.

Any agreement between the immigrant investor and the new commercial enterprise that provides the investor with a contractual right to repayment is an impermissible debt arrangement. In such a case, the investment funds do not constitute a qualifying contribution of capital. Mandatory redemptions and options exercisable by the investor are two examples of agreements where the investor has a right to repayment. The impermissibility of such an arrangement cannot be remedied with the addition of other requirements or contingencies, such as conditioning the repurchase of the securities on the availability of funds; the delay of the repurchase until a date in the future (including after the adjudication of the Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829)); or the possibility that the investor might not exercise the right. In other words, repayment does not need to be guaranteed in order to be impermissible. It is the establishment of the investor’s right to demand a repurchase, regardless of the new commercial enterprise’s ability to fulfill the repurchase, that constitutes an impermissible debt arrangement.

The following table describes certain characteristics that might be present in agreements and explains whether their inclusion creates an impermissible debt arrangement.

<table>
<thead>
<tr>
<th>Characteristic of Redemption Provisions</th>
<th>Description</th>
<th>Impermissible Agreement?</th>
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<tr>
<td>Mandatory redemptions</td>
<td>Arrangements that require the new commercial enterprise to redeem all or a portion of the petitioner’s equity at a specified time or upon the occurrence of a specified event (for example, once the conditions are removed on the petitioner’s permanent resident status) and for a specified price (whether fixed or subject to a specified formula).</td>
<td>USCIS considers this an impermissible debt arrangement. Such impermissible obligations are not subject to the discretion of the new commercial enterprise (although it may have some discretion regarding the timing and manner in which the redemption is performed).</td>
</tr>
<tr>
<td>Options exercisable by the investor</td>
<td>Arrangements that grant the petitioner the option to require the new commercial enterprise to redeem all or a portion of his or her equity at a specified time or upon the occurrence of a specified event (for example, once the conditions are removed on the petitioner’s permanent resident status) and for a specified price</td>
<td>USCIS considers this an impermissible debt arrangement.</td>
</tr>
<tr>
<td>Type of Provision</td>
<td>Description</td>
<td>Impermissible Agreement?</td>
</tr>
<tr>
<td>-------------------</td>
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<tr>
<td>(whether fixed or subject to a specified formula).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option exercisable by the new commercial enterprise</td>
<td>A redemption agreement between the immigrant investor and the new commercial enterprise that does not provide the investor with a right to repayment. One example of such an agreement is a discretionary option held by the new commercial enterprise to repurchase investor shares. These options are typically structured similarly to options exercisable by the investor, except that the option is held and may be exercised by the new commercial enterprise. When executed, these options require an investor to sell all or a portion of his or her ownership interest back to that entity.</td>
<td>USCIS generally does not consider these arrangements to be impermissible debt arrangements. However, such an option may be impermissible if there is evidence the parties construct it in a manner that effectively converts it to a mandatory redemption or an option exercisable by the investor (considered a debt arrangement). For example, an arrangement would be impermissible if ancillary provisions or agreements obligate the new commercial enterprise to either (a) exercise the option (at a specified time, upon the occurrence of a specified event, or at the request of the investor) or (b) if it chooses not to exercise the option, liquidate the assets and refund the investor a specific amount.</td>
</tr>
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</table>

**Business Activity**

An immigrant investor must provide evidence of the actual undertaking of business activity. Merely establishing and capitalizing a new commercial enterprise and signing a commercial lease are not sufficient to show that an immigrant investor has placed his or her capital at risk. Without some evidence of business activity, no assurance exists that the funds will be used to carry out the business of the commercial enterprise.

**Made Available**

The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based. In the regional center context, the immigrant investor must establish that the capital was invested into the new commercial enterprise and that the full amount was subsequently made available to the job-creating entity or entities, if separate.

In cases with a separate job-creating entity or entities, the payment of administrative fees, management fees, attorneys’ fees, finders’ fees, syndication fees, and other types of expenses or costs by the new commercial enterprise that erode the amount of capital made available to the job-creating entity do not count toward the minimum required investment amount. The payment of these fees and expenses must be in addition to the minimum required capital investment amount.

**Sole Proprietors and Funds in Bank Accounts**
A non-regional center investor who is operating a new commercial enterprise as a sole proprietor cannot consider funds in his or her personal bank account as capital committed to the new commercial enterprise. Funds in a personal bank account are not necessarily committed to the new commercial enterprise. The funds must be in business bank accounts.[28] However, even a deposit into a business account over which petitioner exercises sole control, without more, may not satisfy the at-risk requirement.[29]

Escrow Accounts

An immigrant investor’s money may be held in escrow until the investor has obtained conditional permanent resident status if the immediate and irrevocable release of the escrowed funds is contingent only upon:

- Approval of the Immigrant Petition by Alien Investor (Form I-526); and
- Visa issuance and admission to the United States as a conditional permanent resident, or approval of the investor’s Application to Register Permanent Residence or Adjust Status (Form I-485).

An immigrant investor’s funds may be held in escrow within the United States to avoid any evidentiary issues that may arise with respect to issues such as significant currency fluctuations[30] and foreign capital export restrictions.

Use of foreign escrow accounts is not prohibited as long as the petition establishes that it is more likely than not that the minimum qualifying capital investment will be transferred to the new commercial enterprise in the United States upon the investor obtaining conditional permanent resident status.

When adjudicating the immigrant investor’s petition to remove conditions,[31] USCIS requires evidence verifying that the escrowed funds were released and that the investment was sustained in the new commercial enterprise for the period of the immigrant investor’s residence in the United States.

Deployment of Capital

Before the job creation requirement is met, a new commercial enterprise may deploy capital directly or through any financial instrument so long as applicable requirements are satisfied, including the following:

- The immigrant investor must have placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk;
- There must be a risk of loss and a chance for gain;
- Business activity must actually be undertaken;
- The full amount of the investment must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based;[32] and
- A sufficient relationship to commercial activity (namely, engagement in commerce, that is, the exchange of goods or services) exists such that the enterprise is and remains commercial.[33]

The purchase of financial instruments traded on secondary markets generally does not satisfy these requirements because such secondary market purchases generally:

- Are not related to the actual undertaking of business activity;
- Do not make capital available to the job-creating business; and
• Represent an activity that is solely or primarily financial rather than commercial in nature.

Further Deployment After the Job Creation Requirement is Satisfied

Once the job creation requirement has been met and the investment capital is returned or otherwise available to the new commercial enterprise, the new commercial enterprise may further deploy such capital within a reasonable amount of time, in order to satisfy applicable requirements for continued eligibility. The capital may be further deployed, as described above, into any commercial activity that is consistent with the purpose of the new commercial enterprise to engage in the “ongoing conduct of lawful business,” including as may be evidenced in any amendments to the offering documents made to describe the further deployment into such activities.

Consistent with precedent case decisions and existing regulatory requirements, further deployment must continue to meet all applicable eligibility requirements within the framework of the initial bases of eligibility, including the same new commercial enterprise and regional center. In addition, because a regional center has “jurisdiction over a limited geographic area,” further deployment must occur within the regional center’s geographic area, including any amendments to its geographic area approved before the further deployment. The further deployment, however, does not need to remain with the same (or any) job creating entity or in a targeted employment area.

For example, if a new commercial enterprise associated with a regional center loaned pooled investment capital to a job-creating entity that created sufficient jobs through the construction of a residential building in a targeted employment area, the new commercial enterprise, upon repayment of the loan that resulted in the required job creation, may generally further deploy the repaid capital anywhere within the regional center’s geographic area (regardless of whether it would qualify as a targeted employment area) into any commercial activity that satisfies applicable requirements such as one or more similar loans to other entities.

3. Required Amount of Investment

The immigrant investor must invest at least the standard minimum investment amount in capital in a new commercial enterprise that creates not fewer than 10 jobs for U.S. workers. An exception exists if the immigrant investor invests his or her capital in a new commercial enterprise that is principally doing business in and creates jobs in a targeted employment area. In such a case, the immigrant investor must invest a minimum of 50 percent of the standard minimum investment amount in capital.

This means that the present fair market value, in U.S. dollars, of the immigrant investor’s lawfully-derived capital must be at least $1,000,000, or $500,000 if investing in a targeted employment area for petitions filed before November 21, 2019. For petitions filed on or after November 21, 2019, those amounts are $1,800,000 or $900,000 respectively, and automatically increase October 1, 2024, and every 5 years thereafter.

An immigrant investor may diversify his or her investment across a portfolio of businesses or projects, but only if the minimum investment amount is first placed in a single new commercial enterprise. In such a case, it is necessary to show how eligibility has been established (for example, the minimum investment amount, evidence of an at-risk investment, and job creation) with respect to each job-creating entity at the time of filing.

For non-regional center investors, the capital may be deployed into a portfolio of wholly owned businesses, so long as all capital is deployed through a single commercial enterprise and all jobs are created directly within that commercial enterprise or through the portfolio of businesses that received the capital through that
commercial enterprise.

For example, for a petition filed before November 21, 2019, based on an investment in an area in which the minimum investment amount is $1,000,000, the non-regional center investor can satisfy the statute by investing in a commercial enterprise that deploys $600,000 of the investment toward one business that the commercial enterprise wholly owns, and $400,000 of the investment toward another business that the commercial enterprise wholly owns.\[^{45}\] In this example, the two wholly owned businesses would have to create an aggregate of 10 new jobs between them. However, a non-regional center investor cannot qualify by investing $600,000 in one commercial enterprise and $400,000 in a separate commercial enterprise, since these are not wholly owned by a single commercial enterprise.

In the regional center context, where indirect jobs may be counted, the commercial enterprise may create jobs indirectly through multiple investments in corporate affiliates or in unrelated entities, but the regional center investor cannot qualify by investing directly in those multiple entities. Instead, the regional center investor’s capital must still be invested in a single commercial enterprise, which can then deploy that capital to multiple job-creating entities as long as the portfolio of businesses or projects can create the required number of jobs.

### 4. Lawful Source of Funds

The immigrant investor must demonstrate by a preponderance of the evidence that the capital invested, or actively in the process of being invested, in the new commercial enterprise was obtained through lawful means.\[^{46}\] Any assets acquired directly or indirectly by unlawful means, such as criminal activity, are not considered capital.\[^{47}\] In establishing that the capital was acquired through lawful means, the immigrant investor must provide evidence demonstrating the direct and indirect source of his or her investment capital.\[^{48}\]

As evidence of the lawful source of funds, the immigrant investor’s petition must be accompanied, as applicable, by:

- Foreign business registration records;
- Corporate, partnership, or any other entity in any form which has filed in any country or subdivision thereof any return described in this list, and personal tax returns, including income, franchise, property (whether real, personal, intangible), or any other tax returns of any kind filed within 5 years, with any taxing jurisdiction in or outside the United States by or on behalf of the immigrant investor;
- Evidence identifying any other source(s) of capital; or
- Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the immigrant investor from any court in or outside the United States within the past 15 years.\[^{49}\]

The immigrant investor is required to submit evidence identifying any other source of capital. Such evidence may include:

- Corporate, partnership, or other business entity annual reports;
- Audited financial statements;
- Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence
of borrowing which is secured by the immigrant investor’s own assets, other than those of the new commercial enterprise, and for which the immigrant investor is personally and primarily liable;

- Evidence of income such as earnings statements or official correspondence from current or prior employers stating when the immigrant investor worked for the company and how much income the immigrant investor received during employment;

- Gift instrument(s) documenting gifts to the immigrant investor;

- Evidence, other than tax returns, of payment of individual income tax, such as an individual income tax report or payment certificate, on the following:
  - Wages and salaries;
  - Income from labor and service or business activities;
  - Income or royalties from published books, articles, photographs, or other sources;
  - Royalties or income from patents or special rights;
  - Interest, dividends, and bonuses;
  - Rental income;
  - Income from property transfers;
  - Any incidental income or other taxable income determined by the relevant financial department;

- Evidence of property ownership, including property purchase or sale documentation; or

- Evidence identifying any other source of capital.

5. Targeted Employment Area

A targeted employment area (TEA) is a rural area or an area that has experienced high unemployment. A rural area is any area other than an area within a standard metropolitan statistical area (MSA) (as designated by the Office of Management and Budget) or within the outer boundary of any city or town having a population of 20,000 or more based on the most recent decennial census of the United States. A high unemployment area is an area that has experienced unemployment of at least 150 percent of the national average rate.

Congress provided for a reduced investment amount in a TEA to encourage investment in new commercial enterprises principally doing business in and creating jobs in areas of greatest need. For the lower capital investment amount to apply, the new commercial enterprise into which the immigrant invests or the actual job-creating entity must be principally doing business in the TEA.

A new commercial enterprise is principally doing business in the location where it regularly, systematically, and continuously provides goods or services that support job creation. If the new commercial enterprise provides such goods or services in more than one location, it will be principally doing business in the location most significantly related to the job creation.

Factors considered in determining where a new commercial enterprise is principally doing business include,
but are not limited to, the location of:

- Any jobs directly created by the new commercial enterprise;
- Any expenditure of capital related to the creation of jobs;
- The new commercial enterprise’s day-to-day operation; and
- The new commercial enterprise’s assets used in the creation of jobs.[54]

Investments through regional centers allow the immigrant investor to seek to establish indirect job creation. In these cases, principally doing business will apply to the job-creating entity rather than the new commercial enterprise. The job-creating entity must be principally doing business in the TEA for the lower capital investment amount to apply.[55]

To demonstrate that the area of the investment is a TEA, the immigrant investor must demonstrate that the TEA meets the statutory and regulatory criteria by submitting:

- Evidence that the area is not located within any MSA as designated by the Office of Management and Budget, nor within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States;[56]
- For petitions filed before November 21, 2019, either:
  - A letter from the state government designating a geographic or political subdivision located outside a rural area but within its own boundaries as a high unemployment area;[57] or
  - Unemployment data for the relevant MSA or county;[58] or
- For petitions filed on or after November 21, 2019, either:
  - Unemployment data for the relevant MSA, specific county within an MSA, county in which a city or town with a population of 20,000 or more is located, or the city or town with a population of 20,000 or more which is outside an MSA;[59] or
  - A description of the boundaries and unemployment statistics that allows USCIS to make a case-specific designation as an area of high unemployment.[60] The area must consist of the census tract or contiguous census tract(s) in which the new commercial enterprise is principally doing business, and may also include any or all census tracts directly adjacent to such census tract(s).[61] The immigrant investor must demonstrate that the weighted average of the unemployment rate for the subdivision (that is, the area comprised of multiple census tracts), based on the labor force employment measure for each census tract, is at least 150 percent of the national average unemployment rate.[62]

To promote predictability in the capital investment process, an officer identifies the appropriate date to examine in order to determine that the immigrant investor’s capital investment qualifies for the lower capital investment amount according to the following table:

AILA Doc. No. 19060633. (Posted 3/26/21)
### Targeted Employment Area (TEA) Analysis

<table>
<thead>
<tr>
<th>If the Investment of Capital…</th>
<th>Then…</th>
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<tbody>
<tr>
<td>Is made in to the new commercial enterprise, and made available to the job-creating entity in the case of investment through a regional center, before the filing of the Immigrant Petition by Alien Investor (Form I-526).</td>
<td>The TEA analysis should focus on whether the area in which the new commercial enterprise, or job-creating entity in the case of investment through a regional center, is principally doing business qualifies as a TEA at the time of the investment.</td>
</tr>
<tr>
<td>Has yet to be made in to the new commercial enterprise, or made available to the job-creating entity in the case of investment through a regional center, at the time of the Form I-526 petition filing.</td>
<td>The TEA analysis should focus on whether the area in which the new commercial enterprise, or job-creating entity in the case of investment through a regional center, is principally doing business qualifies as a TEA at the time of the filing of the Form I-526 petition.</td>
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A geographic area that once qualified as a TEA may no longer qualify as employment rates or population increase over time. Immigrant investors occasionally request eligibility for the reduced investment threshold based on the fact that other immigrant investors who previously invested in the same new commercial enterprise qualified for the lower capital investment amount. The immigrant investor must establish, however, that at the time of investment or at the time of filing the immigrant petition, as applicable, the geographic area in question qualified as a TEA. An immigrant investor cannot rely on previous TEA determinations made based on facts that have subsequently changed.

The area in question may qualify as a TEA at the time the investment is made or the Form I-526 immigrant petition is filed, whichever occurs first, but may cease to qualify by the time the Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829) is filed. The investor is not required to demonstrate that the area in question remains a TEA at the time the Form I-829 petition is filed. Changes in population size or unemployment rates within the area during the period of conditional permanent residence are acceptable, since increased job creation is a primary goal, which has been met if the area was a TEA at the time the investment was made, or the Form I-526 was filed.

### A State’s Designation of a Targeted Employment Area Before November 21, 2019

A state government’s designation of a geographic or political subdivision within its boundaries as a TEA will not satisfy evidentiary requirements for petitions filed on or after November 21, 2019. For petitions filed before November 21, 2019, a state government could designate a geographic or political subdivision within its boundaries as a TEA based on high unemployment. Before the state could make such a designation, an official of the state must have notified USCIS of the agency, board, or other appropriate state governmental body that would be delegated the authority to certify that the geographic or political subdivision was a high unemployment area. The state was then able to send a letter from the authorized body of the state certifying that the geographic or political subdivision of the MSA or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business had been designated a high unemployment area.

Consistent with the regulations in effect before November 21, 2019, USCIS deferred to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the TEA. However, for all TEA designations, USCIS still ensured compliance with the statutory requirement that the proposed area
designated by the state had an unemployment rate of at least 150 percent above the national average. To do this, USCIS reviewed state determinations of the unemployment rate and assessed the method or methods by which the state authority obtained the unemployment statistics.

Acceptable data sources for calculating unemployment included U.S. Census Bureau data (including data from the American Community Survey) and data from the Bureau of Labor Statistics (including data from Local Area Unemployment Statistics).

There has never been a provision allowing a state to designate a rural area.

**B. Comprehensive Business Plan**

A comprehensive business plan should contain, at a minimum, a description of the business, its products or services (or both), and its objectives.[65]

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition’s products and pricing structures, and a description of the target market and prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources.

The plan should detail any contracts executed for the supply of materials or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business’s organizational structure and its personnel’s experience. It should explain the business’s staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the basis of such projections.

Most importantly, the business plan must be credible.[66]

USCIS reviews business plans in their totality. An officer must determine if it is more likely than not that the business plan is comprehensive and credible. A business plan is not required to contain all of the detailed elements, but the more details the business plan contains, the more likely it is that the plan will be considered comprehensive and credible.[67]

**C. New Commercial Enterprise**

A new commercial enterprise is any commercial enterprise established after November 29, 1990.[68] Therefore, the immigrant investor can invest the required amount of capital in a commercial enterprise established after November 29, 1990, provided the remaining eligibility criteria are met.

A commercial enterprise is any for-profit activity formed for the ongoing conduct of lawful business.[69] This broad definition is consistent with the realities of the business world and the many different forms and structures that job-creating activities can have.

Types of commercial enterprises include, but are not limited to:

- Sole proprietorship;
- Partnership (whether limited or general);
Holding company;

Joint venture;

Corporation;

Business trust; or

Other entity, which may be publicly or privately owned.[70]

A commercial enterprise can consist of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. Noncommercial activities, including owning and operating a personal residence, do not qualify.[71]

The commercial enterprise must be formed to make a profit, unlike, for example, some charitable organizations.

1. Enterprise Established On or Before November 29, 1990

A new commercial enterprise also includes a commercial enterprise established on or before November 29, 1990, if the enterprise will be restructured or expanded through the immigrant’s investment of capital.

Purchase of an Existing Business that is Restructured or Reorganized

The immigrant investor can invest in a business that existed on or before November 29, 1990, provided that the existing business is simultaneously or subsequently restructured or reorganized such that a new commercial enterprise results.[72] Cosmetic changes to the décor, a new marketing strategy, or a simple change in ownership do not qualify as restructuring.[73]

However, a business plan that modifies an existing business, such as converting a restaurant into a nightclub or adding substantial crop production to an existing livestock farm, could qualify as a restructuring or reorganization.

Expansion of an Existing Business

The immigrant investor can invest in a business that existed on or before November 29, 1990, provided a substantial change in the net worth or number of employees results from the investment of capital.[74] Substantial change is defined as a 40 percent increase either in the net worth or in the number of employees, so that the new net worth or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees.[75]

Investment in a new commercial enterprise in this manner does not exempt the immigrant investor from meeting the requirements relating to the amount of capital that must be invested and the number of jobs that must be created.[76]

2. Pooled Investments in Original EB-5 Program

A new commercial enterprise may be used as the basis for the petitions of more than one non-regional center immigrant investor. Each non-regional center immigrant investor must invest the required amount of capital and each immigrant investor’s investment must result in the required number of jobs. Furthermore, the new
commercial enterprise can have owners who are not immigrant investors provided that the sources of all capital invested are identified and all invested capital has been derived by lawful means.[77]

3. Establishment of New Commercial Enterprise

To show that the new commercial enterprise has been established, the immigrant investor must present the following evidence, in addition to any other evidence that USCIS deems appropriate:

- As applicable, articles of incorporation, certificate of merger or consolidation, partnership agreement, certificate of limited partnership, joint venture agreement, business trust agreement, or other similar organizational document for the new commercial enterprise;

- A certificate evidencing authority to do business in a state or municipality or, if the form of the business does not require any such certificate or the state or municipality does not issue such a certificate, a statement to that effect; or

- Evidence that, after November 29, 1990, the required amount of capital for the area in which an enterprise is located has been transferred to an existing business, and that the investment has resulted in a substantial increase in the net worth or number of employees of the business to which the capital was transferred.

This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records, or any similar instruments, agreements, or documents evidencing the investment in the commercial enterprise and the resulting substantial change in the net worth or number of employees.[78]

4. Investment in New Commercial Enterprise

To show that the immigrant investor has committed the required amount of capital to the new commercial enterprise, the evidence presented may include, but is not limited to, the following:

- Bank statements showing amounts deposited in U.S. business accounts for the enterprise;

- Evidence of assets which have been purchased for use in the U.S. enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

- Evidence of property transferred from abroad for use in the U.S. enterprise, including U.S. Customs and Border Protection commercial entry documents, bills of lading, and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

- Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder’s request; or

- Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing secured by the immigrant investor’s assets, other than those of the new commercial enterprise, and for which the immigrant investor is personally and primarily liable.[79]

5. Engagement in Management of New Commercial Enterprise
The immigrant investor must be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial responsibility or through policy formulation.\[80\]

To show that the immigrant investor is or will be engaged in the exercise of day-to-day managerial control or policy formulation, the immigrant investor must submit:

- A statement of the position title that the immigrant investor has or will have in the new enterprise and a complete description of the position’s duties;\[81\]

- Evidence that the immigrant investor is a corporate officer or a member of the corporate board of directors;\[82\]

- For petitions filed before November 21, 2019, if the new enterprise is a partnership, either limited or general, evidence that the immigrant investor is engaged in either direct management or policymaking activities. The immigrant investor is sufficiently engaged in the management of the new commercial enterprise if the investor is a limited partner and the limited partnership agreement provides the investor with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act;\[83\] or

- For petitions filed on or after November 21, 2019, evidence that the petitioner is engaged in policymaking activities, including evidence that the petitioner is an equity holder in the new commercial enterprise and the organizational documents of the new commercial enterprise provide the petitioner with certain rights, powers, and duties normally granted to equity holders of the new commercial enterprise’s type of entity in the jurisdiction in which the new commercial enterprise is organized\[84\]

**D. Creation of Jobs**

The creation of jobs for U.S. workers is a critical element of EB-5. It is not enough that the immigrant investor invests funds into the U.S. economy. The investment of the required amount of capital must be in a new commercial enterprise that creates\[85\] at least 10 jobs for qualifying employees. It is important to recognize that while the investment must result in the creation of jobs for qualifying employees, it is the new commercial enterprise that creates the jobs.\[86\]

*Example: Non-Regional Center*

Ten non-regional center immigrant investors seek to establish a hotel as their new commercial enterprise. The establishment of the new hotel requires capital to pay financing costs to unrelated third parties, purchase the land, develop the plans, obtain the licenses, build the structure, maintain the grounds, staff the hotel, as well as many other types of expenses involved in the development and operation of a new hotel.

The non-regional center immigrant investor’s capital can be used to pay part or all of these expenses. Each non-regional center immigrant investor’s investment of capital helps the new commercial enterprise (the new hotel) create 10 jobs. The 10 immigrants’ investments must result in the new hotel’s creation of 100 jobs (10 jobs for each investor’s capital investment) for qualifying employees.\[87\]

**1. Bridge Financing**

A developer or principal of a new commercial enterprise, either directly or through a separate job-creating entity, may use interim, temporary, or bridge financing, in the form of either debt or equity, prior to receipt of
immigrant investor capital. If the project starts based on the interim or bridge financing prior to receiving immigrant investor capital and subsequently replaces that financing with immigrant investor capital, the new commercial enterprise may still receive credit for the job creation under the regulations.

Generally, the replacement of temporary or bridge financing with immigrant investor capital should have been contemplated prior to acquiring the original temporary financing. However, even if the immigrant investor financing was not contemplated prior to acquiring the temporary financing, as long as the financing to be replaced was contemplated as short-term temporary financing that would be subsequently replaced by more permanent long-term financing, the infusion of immigrant investor financing could still result in the creation of, and credit for, new jobs.

For example, if traditional financing originally contemplated to replace the temporary financing is no longer available to the commercial enterprise, a developer is not precluded from using immigrant investor capital as an alternative source. Immigrant investor capital may replace temporary financing even if this arrangement was not contemplated prior to obtaining the bridge or temporary financing.

The full amount of the immigrant’s investment must be made available to the business or businesses most closely responsible for creating the jobs upon which eligibility is based. In the regional center context if the new commercial enterprise is not the job-creating entity, then the full amount of the capital must be invested first in the new commercial enterprise and then made available to the job-creating entity or entities.[88]

2. Multiple Job-Creating Entities

If invested in a single new commercial enterprise and where the offering and organizational documents provide, an investor’s full investment may be distributed to more than one job-creating entity in a portfolio investment strategy. The record must demonstrate that the new commercial enterprise will create the requisite jobs through the portfolio of projects. In addition, each investor must demonstrate that the full amount of money is made available to the business(es) most closely responsible for creating the employment upon which the petition is based, which may be one or multiple job-creating entities in a portfolio.

3. Full-Time Positions for Qualifying Employees

The investment into a new commercial enterprise must create full-time positions for not fewer than 10 qualifying employees.[89] An employee is defined as a person who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. In the case of the Regional Center Program, an employee also means a person who provides services or labor in a job that has been created indirectly through investment in the new commercial enterprise.[90]

**Qualifying Employee**

For the purpose of the job creation requirement, the employee must be a qualifying employee. A qualifying employee is a U.S. citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized for employment in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the immigrant investor, the immigrant investor’s spouse, sons, daughters, or any nonimmigrant.[91]

**Full-Time Employment**

For the purpose of the job creation requirement, the position must be a full-time employment
position.\[^{[92]}\] Full-time employment is defined as employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.\[^{[93]}\] In the case of the Regional Center Program, full-time employment also means employment of a qualifying employee in a position that has been created indirectly that requires a minimum of 35 working hours per week.

Two or more qualifying employees can fill a full-time employment position in a job sharing arrangement. Job sharing is permissible so long as the 35 working hours per week requirement is met. However, the definition of full-time employment does not include combinations of part-time positions, even if those positions when combined meet the hourly requirement per week.\[^{[94]}\]

A job-sharing arrangement whereby two or more qualifying employees share a full-time position shall count as full-time employment provided the hourly requirement per week is met. To demonstrate that a full-time position is shared by more than one employee, the following evidence, among others, may be relevant:

- A written job-sharing agreement;
- A weekly schedule that identifies the positions subject to a job sharing arrangement and the hours to be worked by each employee under the job sharing arrangement; and
- Evidence of the sharing of the responsibilities or benefits of a permanent, full-time position between the employees subject to the job sharing arrangement.

Jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as permanent full-time jobs. However, jobs that are expected to last at least 2 years are generally not considered intermittent, temporary, seasonal, or transient in nature.

### 4. Measuring Job Creation

The immigrant investor seeking to enter the United States through the EB-5 Program must invest the required amount of capital in a new commercial enterprise that will create full-time positions for at least 10 qualifying employees. There are three methods of measuring job creation depending on the new commercial enterprise and where it is located.

#### Troubled Business

The U.S. economy benefits when the immigrant investor’s capital helps preserve the troubled business’s existing jobs. If the immigrant investor is investing in a new commercial enterprise that is a troubled business, he or she must show that the number of existing employees in the troubled business is being, or will be, maintained at no less than the pre-investment level for a period of at least 2 years.\[^{[95]}\] This applies in the regional center context as well.

The troubled business regulatory provision does not decrease the number of jobs required. An immigrant investor who invests in a troubled business must still demonstrate that 10 jobs have been preserved, created, or some combination of the two. For example, an investment in a troubled business that creates four qualifying jobs and preserves all six pre-investment jobs would satisfy the job creation requirement.

The regulatory definition of a troubled business is a business that has:

- Been in existence for at least 2 years;
- Has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the 12-month or 24-month period prior to the priority date on the
Immigrant Petition by Alien Investor (Form I-526); and

- Had a loss for the same period at least equal to 20 percent of the troubled business’s net worth prior to the loss.[96]

For purposes of determining whether or not the troubled business has been in existence for 2 years, successors-in-interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.[97]

**New Commercial Enterprise Not Located Within a Regional Center**

For a new commercial enterprise not located within a regional center, the full-time positions must be created directly by the new commercial enterprise to be counted. This means that the new commercial enterprise (or its wholly owned subsidiaries) must itself be the employer of the qualifying employees.[98]

**New Commercial Enterprise Located Within a Regional Center**

Full-time positions can be created either directly or indirectly by a new commercial enterprise located within a designated regional center.[99] The general EB-5 program requirements still apply to investors investing in new commercial enterprises in the regional center context except that they may rely on indirect job creation. Employees filling indirect jobs do not work directly for the new commercial enterprise. Immigrant investors must use reasonable methodologies to establish the number of indirect jobs created.[100]

Direct jobs are those jobs that establish an employer-employee relationship between the new commercial enterprise and the persons it employs. Indirect jobs are those that are held outside of the new commercial enterprise but are created as a result of the new commercial enterprise. For example, indirect jobs can include, but are not limited to, those held by employees of the job-creating entity (when the job-creating entity is not the new commercial enterprise) as well as employees of producers of materials, equipment, or services used by the new commercial enterprise or job-creating entity.

In addition, a sub-set of indirect jobs, known as induced jobs, are created when the new direct and indirect employees spend their earnings on consumer goods and services. Indirect jobs can qualify and be counted as jobs attributable to a new commercial enterprise associated with a regional center, based on reasonable methodologies, even if the jobs are located outside of the geographic boundaries of a regional center.

Due to the nature of accepted job creation modeling practices, USCIS relies upon reasonable economic models to determine that it is more likely than not that the indirect jobs are created. USCIS may request additional evidence that the indirect jobs created, or to be created, are full time. USCIS may also request additional evidence to verify that the direct jobs (those held at the new commercial enterprise) will be or are full-time and permanent, which may include a review of W-2 forms or similar evidence.

**Multiple Investors**

When there are multiple investors in a new commercial enterprise, the total number of full-time positions created for qualifying employees will be allocated only to those immigrant investors who have used the establishment of the new commercial enterprise as the basis for their immigrant petition. An allocation does not need to be made among persons not seeking classification through the employment based fifth preference category. Also, jobs need not be allocated to non-natural persons, such as corporations investing in a new commercial enterprise.[101] Full-time positions will be allocated to immigrant investors based on the date their petition to remove conditions was filed, unless otherwise stated in the relevant documents.[102]
In general, multiple immigrant investors may not claim credit for the same job. An immigrant investor may not seek credit for the same specifically identified job position that has already been allocated to another immigrant investor in a previously approved case.

5. Evidence of Job Creation

To show that a new commercial enterprise will create not fewer than 10 full-time positions for qualifying employees, an immigrant investor must submit the following evidence:

- Documentation consisting of photocopies of relevant tax records, Employment Eligibility Verification (Form I-9), or other similar documents for 10 qualifying employees, if such employees have already been hired; or

- A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than 10 qualifying employees will result within the next 2 years and the approximate dates employees will be hired.[103]

The 2-year period[104] is deemed to begin 6 months after adjudication of Form I-526. The business plan filed with the immigrant petition should reasonably demonstrate that the requisite number of jobs will be created by the end of this 2-year period.

Troubled Business

In the case of a troubled business, a comprehensive business plan must accompany the other required evidentiary documents.[105]

Regional Center Investors

In the case of a new commercial enterprise within a regional center, the direct or indirect job creation may be demonstrated by the types of documents identified in this section along with reasonable methodologies.[106] If a regional center immigrant investor seeks to rely on jobs that will be created to satisfy the job creation requirement, a comprehensive business plan is required.

Additionally, if the regional center immigrant investor seeks to demonstrate job creation through the use of an economic input-output model, USCIS requires the investor to demonstrate that the methodology is reasonable. For example, if the inputs into the input-output model reflect jobs created directly at the new commercial enterprise or job-creating entity, USCIS requires the investor to demonstrate that the direct jobs input is reasonable. Relevant documentation may include Form I-9, tax or payroll records or if the jobs are not yet in existence, a comprehensive business plan demonstrating how many jobs will be created and when the jobs will be created.

If the inputs into the model reflect expenditures, USCIS requires the investor to demonstrate that the expenditures input is reasonable. Relevant documentation may include receipts and other financial records for expenditures that have occurred and a detailed projection of sales, costs, and income projections such as a pro-forma cash flow statement associated with the business plan for expenditures that will occur.

If the inputs into the model reflect revenues, USCIS requires the investor to demonstrate that the revenues input is reasonable. Relevant documentation may include tax or other financial records for revenues that have occurred or a detailed projection of sales, costs, and income projections such as a pro-forma income statement associated with the business plan for revenues that will occur.

In reviewing whether an economic methodology is reasonable, USCIS analyzes whether the multipliers and...
assumptions about the geographic impact of the project are reasonable. For example, when reviewing the geographic level of the multipliers used in an input-output model, the following factors, among others, may be considered:

- The area’s demographic structure (for example, labor pool supply, work force rate, population growth, and population density);
- The area’s contribution to supply chains of the project; and
- Connectivity with respect to socioeconomic variables in the area (for example, income level and purchasing power).

6. Rescission of Guidance on Tenant Occupancy Methodology

As of May 15, 2018, USCIS rescinded its prior guidance on tenant occupancy methodology. That update applies to all USCIS employees with respect to determinations of all Immigrant Petitions by Alien Investors (Form I-526), Petitions by Investors to Remove Conditions on Permanent Resident Status (Form I-829), and Applications for Regional Center Designation Under the Immigrant Investor Program (Form I-924) filed on or after that date. USCIS also gives deference to Form I-526 and Form I-829 petitions directly related to projects approved before May 15, 2018, absent material change, fraud or misrepresentation, or legal deficiency of the prior determination.[107]

Previously, on December 20, 2012, USCIS had issued policy guidance defining the criteria to be used in the adjudication of applications and petitions relying on tenant occupancy to establish indirect jobs.[108] In November 2016, USCIS published consolidated policy guidance on immigrant investors in this Policy Manual, including guidance on the tenant occupancy methodology. That guidance provided that investors could (1) map a specific amount of direct, imputed, or subsidized investment to new jobs, or (2) use a facilitation-based approach to demonstrate the project would remove a significant market-based constraint.

The first method requires mapping a specific amount of direct, imputed, or subsidized investment to new jobs such that there is an equity or direct financial connection between the EB-5 capital investment and the employees of prospective tenants. In practice, however, the construction of standard office or retail space alone does not lead to a sufficient connection for this type of mapping such that tenant jobs can be credited to the new commercial enterprise. The existence of numerous other factors, such as the identity of future tenants and demand for that type of business, makes it difficult to relate individual jobs to a specific space.

The second method looks at whether the investment removes a significant market-based constraint, referred to in the 2012 guidance as the “facilitation based approach.” In providing this approach as an option, USCIS explicitly allowed applicants and petitioners to avoid having to establish an equity or direct financial connection between the EB-5 capital investment and the employees of prospective tenants. As of May 15, 2018, however, USCIS determined that that allowance was ill-advised, because a direct financial connection between the EB-5 capital investment and the job creation is necessary to determine a sufficient nexus between the two. Reliance on a showing of constraint on supply or excess of demand by itself does not establish a causal link between specific space and a net new labor demand such that it would overcome the lack of a sufficient nexus.

Moreover, allowing applicants and petitioners to use prospective tenant jobs as direct inputs into regional growth models to generate the number of indirect and induced jobs that result from the credited tenant jobs leads to a more attenuated and less verifiable connection to the investment. There is also no reasonable test to confirm that jobs claimed through either tenant-occupancy methodology are new rather than relocated jobs such that they should qualify as direct inputs in the first place.

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In sum, tenant-occupancy methodologies described in the 2012 Operational Guidance and previously incorporated into the Policy Manual result in a connection or nexus between the investment and jobs that is too tenuous[109] and thus are no longer considered reasonable methodologies or valid forecasting tools under the regulations.[110]

E. Burden of Proof

The petitioner or applicant must establish each element by a preponderance of the evidence.[111] The petitioner or applicant does not need to remove all doubt. Even if an officer has some doubt as to the truth, if the petitioner or applicant submits relevant, probative, and credible evidence that leads to the conclusion that the claim is more likely than not (that is, probably true), the petitioner or applicant has satisfied the preponderance of evidence standard.

F. Priority Dates

Under certain circumstances, the petitioner may use the priority date of a previously approved Immigrant Petition by Alien Investor (Form I-526) for purposes of a subsequent Form I-526 filed on or after November 21, 2019, for which the petitioner qualifies.[112]

Footnotes

[^1] See 8 CFR 204.6(e).
[^2] See 8 CFR 204.6(e).
[^5] See 8 CFR 204.6(j)(3).
[^6] Perfecting a security interest relates to the additional steps required to make a security interest effective against third parties or to retain its effectiveness in the event of default by the grantor of the security interest.
[^10] See 8 CFR 204.6(e).
[^12] See 8 CFR 204.6(e).

The full definition of invest is provided at 8 CFR 204.6(e).


EB-5 regulations contain two basic requirements in order to have a legitimate qualifying investment: (1) 8 CFR 204.6(e) defines “invest” to require a qualifying (that is, non-prohibited) contribution of capital; and (2) 8 CFR 204.6(j)(2) requires a qualifying use of such capital (placing such capital at risk for the purpose of generating a return). In order to satisfy the evidentiary requirement set forth at 8 CFR 204.6(j)(2), an investor must first properly contribute capital in accordance with the definition of invest at 8 CFR 204.6(e). If the contribution of capital fails to meet the definition of invest, it is not a qualifying investment, even if it is at risk for the purpose of generating a return.


See Matter of Izummi (PDF), 22 I&N Dec. 169, 188 (Assoc. Comm. 1998). Matter of Izummi (PDF) addressed redemption agreements in general, and not only those where the investor holds the right to repayment. USCIS generally disfavors redemption provisions that indicate a preconceived intent to exit the investment as soon as possible, and notes that one district court has drawn the line at whether the investor holds the right to repayment. See Chang v. USCIS, 289 F.Supp.3d 177 (D.D.C. Feb. 7, 2018).


A job-creating entity is most closely responsible for creating the employment upon which the petition is based. See Matter of Izummi (PDF), 22 I&N Dec. 169, 179 (Assoc. Comm. 1998). In some circumstances, the new commercial enterprise may also be the job-creating entity.


See 8 CFR 204.6(j)(2).


When funds are held in escrow outside the United States, USCIS reviews currency exchange rates at the time of adjudicating the Form I-526 petition to determine if it is more likely than not that the petitioner will make the minimum qualifying capital investment. With the Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829), USCIS reviews the evidence in the record, including currency exchange rates at the time of transfer, to determine that, when the funds were actually transferred to the United States, the petitioner actually made the minimum qualifying capital investment.

See Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829).

[33] See 8 CFR 204.6(e).

[34] Based on an internal review and analysis of typical EB-5 capital deployment structures, USCIS generally considers 12 months to be a reasonable amount of time to further deploy capital for most types of commercial enterprises but will consider evidence showing that a longer period was reasonable for a specific type of commercial enterprise or into a specific commercial activity under the totality of the circumstances.

[35] The requirement to make the full amount of capital available to the business or businesses most closely responsible for creating the employment upon which the petition is based is generally satisfied through the initial deployment of capital resulting in the creation of the required number of jobs.

[36] See 8 CFR 204.6(e) for the definition of commercial enterprise.

[37] This clarification is meant to address potential confusion among stakeholders regarding prior language about the “scope” of the new commercial enterprise while remaining consistent with applicable eligibility requirements.


[39] See INA 203(b)(5)(A), which refers to a single new commercial enterprise: “Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise.”

[40] See 8 CFR 204.6(j) which refers to a single regional center: “In the case of petitions submitted under the Immigrant Investor . . . Program, a petition must be accompanied by evidence that the alien has invested, or is actively in the process of investing, capital . . . within a regional center designated by the Service.” See 8 CFR 204.6(m)(7) which refers to a single regional center: “An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor . . . Program must demonstrate that his or her qualifying investment is within a regional center.”


[42] See INA 203(b)(5)(C). See 8 CFR 204.6(e)-(f).

[43] See 8 CFR 204.6(f). See 84 FR 35750, 35808 (PDF) (July 24, 2019).

[44] The full amount of money must be made available to the business(es) most closely responsible for creating the employment upon which the petition is based. See Matter of Izummi (PDF), 22 I&N Dec. 169, 179 (Assoc. Comm. 1998).

[45] See 8 CFR 204.6(e).


[47] See 8 CFR 204.6(e).

[48] See 8 CFR 204.6(e) and 8 CFR 204.6(j)(3).
See 8 CFR 204.6(j)(3).

As required under 8 CFR 204.6(j)(3)(ii).

See INA 203(b)(5)(B)(ii).

See INA 203(b)(5)(B)(iii). See 8 CFR 204.6(e).

See INA 203(b)(5)(B)(ii). See 8 CFR 204.6(e).


See 8 CFR 204.6(j)(6)(i).

See 8 CFR 204.6(j)(6)(ii)(B) (PDF) (in effect before November 21, 2019).

See 8 CFR 204.6(j)(6)(ii)(A) (PDF) (in effect before November 21, 2019).

See 8 CFR 204.6(j)(6)(ii)(A).

USCIS makes designations as part of the petition adjudication and does not issue separate designation notices. See 84 FR 35750, 35809 (PDF) (July 24, 2019). See 8 CFR 204.6(j)(6)(ii)(A).

See 8 CFR 204.6(j)(6)(i). See 8 CFR 204.6(j)(6)(ii)(B).

See 8 CFR 204.6(j)(6)(i).

See 8 CFR 204.6(j)(6)(i) (PDF) (in effect before November 21, 2019).

See 8 CFR 204.6(j)(6)(ii)(B) (PDF) (in effect before November 21, 2019).


See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(h)(2).


See 8 CFR 204.6(h)(3).

See 8 CFR 204.6(h)(3).
See 8 CFR 204.6(h)(3).

See 8 CFR 204.6(g).

See 8 CFR 204.6(j)-(j)(1).

See 8 CFR 204.6(j)(2)(i)-(v).

See 8 CFR 204.6(j)(5).

See 8 CFR 204.6(j)(5)(i).

See 8 CFR 204.6(j)(5)(ii).

See 8 CFR 204.6(j)(5)(iii) (PDF) (as in effect before November 21, 2019). As explained in the EB-5 Immigrant Investor Program Modernization Notice of Proposed Rulemaking (NPRM), 82 FR 4738 (PDF) (Jan. 13, 2017), clarifications were necessary to conform this clause—as well as other parts of 8 CFR 204.6(j)(5)—with amendments made by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273 (PDF) (November 2, 2002) to INA 203(b)(5). In particular, the amendment made by Public Law 107-273 to INA 203(b)(5) expressly permitting limited partnerships as new commercial enterprises was not intended to restrict investor choice with respect to the type of entity used in investment structuring, but was intended to permit flexibility in the administration of the EB-5 program with respect to the use of different entity types (including the longstanding use of limited liability companies with structures analogous to limited partnerships). Accordingly, 8 CFR 204.6(j)(5) was revised to clarify and conform existing regulations with the statutory requirements of INA 203(b)(5), as amended by Public 107-273.

See 84 FR 35750, 35809 (PDF) (July 24, 2019). See 8 CFR 204.6(j)(5)(iii).

Job maintenance is also permitted under certain circumstances. See Subsection 4, Measuring Job Creation [6 USCIS-PM G.2(D)(4)].

See 8 CFR 204.6(j)(4)(i).

See 8 CFR 204.6(j). (It is the new commercial enterprise that will create the 10 jobs).


See 8 CFR 204.6(j).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See INA 203(b)(5)(A)(ii).

See INA 203(b)(5)(D). See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).

See 8 CFR 204.6(e).
Chapter 3 - Regional Center Designation, Reporting, Amendments, and Termination

The goal of the Regional Center Program is to stimulate economic growth in a specified geographic area. The regional center model can offer an immigrant investor already defined investment opportunities, thereby reducing the immigrant investor’s responsibility to identify acceptable investment vehicles. If the new commercial enterprise is located within the geographic area, and falls within the economic scope of the defined regional center, reasonable methodologies can be used to demonstrate indirect job creation. A regional center can be associated with one or more new commercial enterprises.

A regional center seeking to participate in the Regional Center Program must submit a proposal using the Application For Regional Center Under the Immigrant Investor Program (Form I-924).

USCIS may designate a regional center based on a general proposal for the promotion of economic growth,
including increased export sales, improved regional productivity, job creation, or increased domestic capital investment. The statute further provides that a regional center shall have jurisdiction over a limited geographic area, which shall be described in the proposal and consistent with the purpose of concentrating pooled investment in defined economic zones.

In addition, the establishment of a regional center may be based on general predictions, contained in the proposal, concerning the kinds of commercial enterprises that will receive capital from immigrant investors, the jobs that will be created directly or indirectly as a result of such capital investments, and the other positive economic effects such capital investments will have on the area. [2]

The regulations state that the proposal must:

- Clearly describe how the regional center focuses on a geographical region of the United States and how it will promote economic growth through increased export sales, improved regional productivity, job creation, and increased domestic capital investment;

- Provide in verifiable detail how jobs will be created directly or indirectly;

- Provide a detailed statement regarding the amounts and sources of capital which have been already committed to the regional center;

- Provide a description of the promotional efforts taken and planned by the sponsors of the regional center;

- Include a detailed prediction [3] how the regional center will have a positive impact on the regional or national economy based on factors such as increased household earnings, greater demand for business services, utilities, maintenance and repair, and construction both within and without the regional center; and

- Be supported by economically or statistically valid forecasting tools, including, but not limited to, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, or multiplier tables. [4]

The level of verifiable detail required for a Form I-924 to be approved and provided deference may vary depending on the nature of the application filing. [5]

A. Regional Center Application Proposals

The regional center proposal must include a management and operational plan to administer, oversee, and manage the proposed regional center, including but not limited to how the regional center:

- Will be promoted to attract immigrant investors, including a description of the budget for promotional activities;

- Will identify, assess, and evaluate proposed immigrant investor projects and enterprises;

- Characterizes the structure of the investment capital it will sponsor; for example, whether the investment capital to be sought for job-creating companies will consist solely of immigrant investor capital or a combination of immigrant investor capital and domestic capital, and how the distribution of the investment capital will be structured (for example, loans to developers or venture capital); and
Will oversee all investment activities affiliated with, through, or under the sponsorship of the proposed regional center.

**Geographic Area**

An officer reviews the proposed geographic boundaries of a new regional center to determine if they are acceptable. USCIS considers geographic boundaries acceptable if the regional center applicant can establish by a preponderance of the evidence that the proposed economic activity will promote economic growth in the proposed area. The determination is fact-specific, and the law does not require any particular form of evidence, such as a county-by-county analysis.

In addition, a regional center’s geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones. To demonstrate that the proposed geographic area is limited, the regional center applicant should submit evidence demonstrating the linkages between proposed economic activities within the proposed area based on different variables. Examples of variables to demonstrate linkages between economic activities can include but are not limited to:

- Regional connectivity;
- The labor pool and supply chain; and
- Interdependence between projects.

Moreover, in assessing the likelihood that the proposed economic activity will promote economic growth in the proposed geographic area, an officer reviews the impact of the activity relative to relevant economic conditions. The size of the proposed area should be limited and consistent with the scope and scale of the proposed economic activity, as the regional center applicant is required to focus on a geographical region of the United States. The regional center applicant must present an economic analysis of its proposed economic activity in the proposed geographic area that is supported by economically or statistically valid forecasting tools. The Form I-924 instructions provide further information regarding the requirements of the economic analysis.

**B. Types of Regional Center Projects**

An actual project refers to a specific project proposal that is supported by a Matter of Ho (PDF) compliant business plan.

A hypothetical project refers to a project proposal that is not supported by a Matter of Ho (PDF) compliant business plan.

The term exemplar refers to a sample Immigrant Petition by Alien Investor (Form I-526), filed with Form I-924 for an actual project. This type of regional center proposal contains copies of the commercial enterprise’s organizational and transactional documents, which USCIS reviews to determine if they are in compliance with established eligibility requirements.

**1. Hypothetical Projects**

If the Form I-924 projects are hypothetical projects, general proposals and general predictions may be sufficient to determine that the proposed regional center will more likely than not promote economic growth, improved regional productivity, job creation, and increased domestic capital investment. A regional center applicant seeking review of a hypothetical project should clarify in the Form I-924 submission that the
project is hypothetical. General proposals and predictions may include a description of the project parameters, such as:

- Proposed project activities, industries, locations, and timelines;
- A general market analysis of the proposed job creating activities and explanation regarding how the proposed project activities are likely to promote economic growth and create jobs; and
- A description, along with supporting evidence, of the regional center principals’ relevant experience and expertise.

While hypothetical project submissions are sufficient for regional center designation, previous determinations based on hypothetical projects will not receive deference. Actual projects will receive a de novo officer review during subsequent filings (for example, through the adjudication of an amended Form I-924 application, including the actual project details or the first Form I-526 immigrant investor petition).

Organizational and transactional supporting documents are not required for a hypothetical project. If a regional center applicant desires a compliance review of organizational and transactional documents, the application must include an actual project with a Matter of Ho (PDF) compliant business plan and an exemplar immigrant investor petition.

2. Actual Projects

Applications for regional center designation based on actual projects may require more details than a hypothetical project to demonstrate that the proposal contains verifiable details and is supported by economically or statistically sound forecasting tools. A regional center applicant seeking review of an actual project should clarify in the Form I-924 submission that the project is actual.

Actual projects require a Matter of Ho (PDF) compliant comprehensive business plan that provides verifiable detail on how jobs will be created. Absent fraud, willful misrepresentation, or a legal deficiency, USCIS defers to prior determinations based on actual projects when evaluating subsequent filings under the project involving the same material facts and issues.

Organizational and transactional documents for the new commercial enterprise are not required. If a regional center applicant desires review of organizational and transactional documents for program compliance, the regional center application must be accompanied by an exemplar Form I-526 immigrant investor petition.

If regional center applicants opt not to file a Form I-924 amendment, the investor should identify his or her Form I-526 immigrant investor petition as an actual project being presented for the first time. Additionally, the immigrant petition should contain an affirmative statement signed by a regional center principal confirming that the regional center is aware of the specific project being presented for the first time as part of the immigrant investor petition.

In cases where the regional center application is filed based on actual projects that do not contain sufficient verifiable detail, USCIS may approve the projects as hypothetical projects if they contain the requisite general proposals and predictions. The projects approved as hypotheticals, however, do not receive deference in subsequent filings.

In cases where some projects are approvable as actual projects, and others are not approvable or only approvable as hypothetical projects, the approval notice should identify which projects have been approved as actual projects and will be accorded deference. The approval notice should also identify projects that have been approved as hypothetical projects but will not be accorded deference.

AILA Doc. No. 19060633. (Posted 3/26/21)
3. Exemplar Filings

Regional center applications, based on actual projects, including a Form I-526 immigrant investor exemplar petition, require more details than a hypothetical or actual project submitted without an exemplar. A regional center applicant seeking review of an exemplar should state that the project is an actual project with a Form I-526 exemplar.

Exemplar filings require a Matter of Ho (PDF) compliant comprehensive business plan that provides verifiable detail on how jobs will be created, as well as organizational and transactional documents for the new commercial enterprise.

Absent fraud, willful misrepresentation, or a legal deficiency, officer determinations based on exemplar filings are accorded deference in subsequent filings under the project with the same material facts and issues.

While an amended Form I-924 is not required to perfect a hypothetical project once the actual project details are available, some applicants may choose to file an amended Form I-924 application with a Form I-526 exemplar to obtain a favorable determination. These exemplar filings are accorded deference in subsequent related filings, absent material change, fraud, willful misrepresentation, or a legally deficient determination.

C. Regional Center Annual Reporting

Designated regional centers must file a Supplement to Form I-924 (Form I-924A) annually that demonstrates continued eligibility for designation as a regional center in the EB-5 Program. The regional center must file the form within 90 days of the end of the fiscal year (between October 1 and December 29). The Form I-924A instructions specifically list required information that must be submitted.

If the regional center fails to file the required annual report, USCIS issues a Notice of Intent to Terminate (NOIT) to the regional center for failing to provide the required information. This may ultimately result in the termination of the regional center’s designation if the regional center fails to respond or does not file a response which adequately demonstrates continued eligibility.

D. Regional Center Amendments

Because businesses’ strategies constantly evolve, with new opportunities identified and existing plans improved, a regional center may amend a previously approved designation. The Form I-924 instructions provide information regarding the submission of regional center amendment requests.

To improve processing efficiencies and predictability in subsequent filings, many regional centers may seek to amend the Form I-924 approval to reflect changes in economic analysis and job creation estimates. Such amendments, however, are not required in order for individual investors to proceed with filing the immigrant petitions or petitions to remove conditions on residence based on the additional jobs created, or to be created, in additional industries.

Formal amendments to an approved regional center’s designation are not required when a regional center changes its industries of focus, business plans, or economic methodologies; however, a regional center may find it advantageous to seek USCIS approval of such changes before they are adjudicated in individual immigrant investor petitions.

Requests to Change Geographic Area

AILA Doc. No. 19060633. (Posted 3/26/21)
When a regional center requests to expand its geographic area, the proposed geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones. [15]

Any requests for geographic area expansion made on or after February 22, 2017 are adjudicated under the current guidance in the Form I-924 instructions which requires that a Form I-924 amendment must be filed, and approved, to expand the regional center’s geographic area. The Form I-924 amendment must be approved before an I-526 petitioner may demonstrate eligibility at the time of filing his or her petition based on an investment in the expanded area.

If the regional center’s geographic area expansion request was submitted either through a Form I-924 amendment or Form I-526 petition filed prior to February 22, 2017, and the request is ultimately approved, USCIS will continue to adjudicate additional Form I-526 petitions associated with investments in that area under prior policy guidance issued on May 30, 2013. [16] That policy did not require a formal amendment to expand a regional center’s geographic area, and permitted concurrent filing of the Form I-526 prior to approval of the geographic area amendment.

E. Termination of a Regional Center Designation

USCIS issues a NOIT if:

- USCIS determines that a regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment; or

- The regional center fails to submit required information to USCIS. [17]

The NOIT will provide the grounds for termination and provide at least 30 days from receipt of the NOIT for the regional center to respond to the allegations in the NOIT. The regional center may offer evidence to contest the allegations in the NOIT. If the regional center overcomes the allegations in the NOIT, USCIS issues a Notice of Reaffirmation that affirms the regional center’s designation.

If the regional center fails to overcome the allegations in the NOIT, USCIS terminates the regional center’s participation in the Regional Center Program. In this case, USCIS notifies the regional center of the termination, the reasons for termination, and the right to file a motion, appeal, or both. The regional center may appeal the decision to USCIS’ Administrative Appeals Office within 30 days after service of notice (33 days, if the notice was mailed). [18]

Footnotes

[^1] For a definition of indirect jobs, see Chapter 2, Eligibility Requirements, Section D, Creation of Jobs, Subsection 4, Measuring Job Creation [6 USCIS-PM G.2(D)(4)].


[^3] An applicant can submit a general prediction which addresses the prospective impact of the capital investment projects sponsored by the regional center, regionally or nationally. See Form I-924 instructions.
Chapter 4 - Immigrant Petition by Alien Investor (Form I-526)

An immigrant investor must file an initial immigrant petition and supporting documentation to receive EB-5 immigrant classification. The immigrant investor will be a conditional permanent resident upon adjustment of status or admission to the United States.

The petitioner must establish he or she meets the following eligibility requirements when filing the Immigrant Petition by Alien Investor (Form I-526):

- The required amount of capital has been invested or is actively in the process of being invested in the new commercial enterprise;
• The investment capital was obtained by the investor through lawful means;

• The new commercial enterprise will create at least 10 full-time positions for qualifying employees; and

• The immigrant investor is or will be engaged in the management of the new commercial enterprise.

If the immigrant investor seeks to qualify based on a reduced (50 percent of the standard minimum) investment amount, it is necessary to show the new commercial enterprise or job-creating entity, as applicable, is principally doing business in a TEA.

At the preliminary Form I-526 filing stage, the immigrant investor must demonstrate his or her commitment to invest the capital, but does not need to establish the required capital already has been fully invested. The investment requirement is met if the immigrant investor demonstrates that he or she is actively in the process of investing the required capital. However, evidence of a mere intent to invest or of prospective investment arrangements entailing no present commitment will not suffice. [3]

At this preliminary stage, the immigrant investor does not need to establish the required jobs have already been created. The job creation requirement is met by the immigrant investor demonstrating it is more likely than not the required jobs will be created. [4]

A. Petitions Associated with Regional Centers

Each regional center investor must demonstrate that he or she has invested, or is actively in the process of investing, lawfully obtained capital in a new commercial enterprise located within a designated regional center in the United States. The investor must also demonstrate that this investment will create at least 10 direct or indirect full-time jobs for qualifying employees.

As part of the determination of whether a regional center investor has invested, or is actively in the process of investing, in a new commercial enterprise located within a regional center, an officer reviews the regional center’s geographic boundaries. If the regional center has requested to expand its geographic area, USCIS adjudicates the petition based on the following:

• Any requests for geographic area expansion made on or after February 22, 2017 are adjudicated under the current guidance in the Form I-924 instructions which require that a Form I-924 amendment must be filed, and approved, to expand the regional center’s geographic area. The Form I-924 amendment must be approved before an I-526 petitioner may demonstrate eligibility at the time of filing his or her petition based on an investment in the expanded area.

• If the regional center’s geographic area expansion request was submitted either through a Form I-924 amendment or Form I-526 petition filed prior to February 22, 2017, and the request is ultimately approved, USCIS will continue to adjudicate additional Form I-526 petitions associated with investments in that area under prior policy guidance issued on May 30, 2013. [5] That policy did not require a formal amendment to expand a regional center’s geographic area, and permitted concurrent filing of the Form I-526 prior to approval of the geographic area amendment.

The immigrant investor must provide a copy of the regional center’s most recently issued approval letter. In addition, if the immigrant investor is relying on previously approved project-specific documentation (including the comprehensive business plan, economic analysis, and organizational and transactional documents) to satisfy his or her burden of proof, the immigrant investor must submit this documentation with his or her Form I-526 petition. This is required even though the regional center previously submitted and
USCIS reviewed the documentation with a regional center’s Application for Regional Center Under the Immigrant Investor Program (Form I-924).

When USCIS has evaluated and approved certain aspects of an EB-5 investment, USCIS generally defers to that favorable determination at a subsequent stage in the EB-5 process. USCIS does not, however, defer to a previously favorable decision in later proceedings when, for example, the underlying facts upon which a favorable decision was made have materially changed, there is evidence of fraud or misrepresentation, or the previously favorable decision is determined to be legally deficient.\[6\]

**B. Stand-Alone Petitions**

An immigrant investor not associated with a regional center must, together with the petition, demonstrate that he or she has invested, or is actively in the process of investing, lawfully obtained capital in a new commercial enterprise located within the United States that will create at least 10 direct full-time jobs for qualifying employees.

**C. Material Change**

A petitioner must establish eligibility at the time of filing and a petition cannot be approved if, after filing, the immigrant investor becomes eligible under a new set of facts or circumstances. Changes that are considered material that occur after the filing of an immigrant investor petition will result in the investor’s ineligibility if the investor has not obtained conditional permanent resident status.\[7\]

If material changes occur after the approval of the immigrant petition, but before the investor has obtained conditional permanent resident status, such changes would constitute good and sufficient cause to issue a notice of intent to revoke and, if not overcome, would constitute good cause to revoke the approval of the petition. A change is material if the changed circumstances would have a natural tendency to influence or are predictably capable of affecting the decision.\[8\]

Changes that occur in accordance with a business plan and other supporting documents as filed will generally not be considered material. For example, if at the time of filing the immigrant petition, no jobs have yet been created, but after approval of the immigrant petition and before the investor has obtained conditional permanent resident status, the investment in the new commercial enterprise results in the creation of 10 jobs in accordance with the investor’s business plan as filed, such a change would not be considered material.

If the organizational documents for a new commercial enterprise contain a liquidation provision, that does not otherwise constitute an impermissible debt arrangement, the documents may generally be amended to remove such a provision in order to allow the new commercial enterprise to continue to operate through the regional center immigrant investor’s period of conditional permanent residence. Such an amendment would generally not be considered a material change because facts related to the immigrant investor’s Form I-526 eligibility would not change.

If, at the time of adjudication, the investor is asserting eligibility under a materially different set of facts that did not exist when he or she filed the immigrant petition, the investor must file a new Form I-526 immigrant petition.

Further, if a regional center immigrant investor changes the regional center with which his or her immigrant petition is associated after filing the Form I-526 petition, whether occurring during an initial or further deployment of capital, the change constitutes a material change to the petition. Similarly, the termination of a regional center associated with a regional center immigrant investor’s Form I-526 petition constitutes a...
material change to the petition.\[^9\]

For petitions filed before November 21, 2019, amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based on regulatory changes effective on November 21, 2019, do not independently result in denial or revocation of a petition, provided that the petitioner:

- Was eligible for classification as an employment-based 5th preference immigrant\[^10\] at the time the petition was filed; and

- Is currently eligible for classification as an employment-based 5th preference immigrant, including having no right to withdraw or rescind the investment or commitment to invest into such offering, at the time of adjudication of the petition.\[^11\]

**Footnotes**

[^1] See 8 CFR 204.6(a). See 8 CFR 103.2(b).

[^2] See INA 216A(a). For information regarding removal of the conditional basis of the investor’s permanent resident status, see Chapter 5, Removal of Conditions [6 USCIS-PM G.5].


[^6] Legally deficient includes objective mistakes of law or fact made as part of the USCIS adjudication.


[^9] See 8 CFR 204.6(j). See 8 CFR 204.6(m)(7).


**Chapter 5 - Removal of Conditions**

To seek removal of the conditions on permanent resident status, the immigrant investor must file a Petition by Investor to Remove Conditions on Permanent Resident Status (**Form I-829**) within 90 days prior to the 2-year anniversary of the date conditional permanent resident status was granted (for example, adjustment of status application was approved or investor admitted into the United States on an immigrant visa).

The immigrant investor must submit the following evidence with his or her petition to remove conditions:

- Evidence that the immigrant investor invested, or was actively in the process of investing the required capital and sustained the investment throughout the period of the immigrant investor’s residence in the United States; and
• Evidence that the new commercial enterprise created or can be expected to create, within a reasonable time, at least 10 full-time positions for qualifying employees. In the case of a troubled business, the investor must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident.

A. Evidence of Investment and Sustainment

1. Investment

The petition must be accompanied by evidence that the immigrant investor invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement or other probative evidence.

2. Sustainment of the Investment

The immigrant investor must provide evidence that he or she sustained the investment throughout the period of his or her status as a conditional permanent resident of the United States.

USCIS considers the immigrant investor to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement and continuously maintained his or her capital investment over the sustainment period. When filing a petition to remove conditions, the full amount of required capital does not need to have been invested, but the immigrant investor must provide evidence that he or she has substantially met the requirement. The evidence may include, but is not limited to:

• Bank statements;
• Invoices;
• Receipts;
• Contracts;
• Business licenses;
• Federal or state income tax returns; and
• Federal or state quarterly tax statements.

B. Evidence of Job Creation

The immigrant investor can meet the job creation requirement by showing that at least 10 full-time positions for qualifying employees have been created, or will be created within a reasonable time. The non-regional center investor must show that the new commercial enterprise directly created these full-time positions for qualifying employees. The regional center investor may show that these jobs were directly or indirectly created by the new commercial enterprise. The evidence to prove job creation may include, but is not limited to the following:

• For direct jobs created as a result of the immigrant investor’s investment, evidence such as payroll
records, relevant tax documents, and Employment Eligibility Verification (Form I-9) showing employment by the new commercial enterprise;

- For direct jobs maintained or created in a troubled business, evidence such as payroll records, relevant tax documents, and Form I-9 showing employment at the time of investment and at the time of filing the petition to remove the conditions on residence; or

- For jobs created indirectly as a result of an investment in the regional center context, reasonable methodologies, including multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices.

If the regional center investor seeks to demonstrate job creation through the use of an economic input-output model, the investor must demonstrate that the methodology is reasonable. Further, the investor must submit relevant documents previously submitted with the Immigrant Petition by Alien Investor (Form I-526), including the comprehensive business plan and economic impact analysis, if he or she is relying on such documents to meet his or her burden of proof. This information is necessary to indicate whether there are material changes that would impact deference.

Where the inputs into the model reflect jobs created directly at the new commercial enterprise or job-creating entity, the investor must demonstrate that the direct jobs input is reasonable. Relevant documentation may include Form I-9, tax or payroll records, or if the jobs are not yet in existence, a comprehensive business plan demonstrating how many jobs will be created and when the jobs will be created.

If the inputs into the model reflect expenditures, the investor must demonstrate that the expenditures input is reasonable. Relevant documentation may include receipts and other financial records for expenditures that have occurred and a detailed projection of sales, costs, and income projections such as a pro-forma cash flow statement associated with the business plan for expenditures that will occur.

If the inputs into the model reflect revenues, the investor must demonstrate the revenues input is reasonable. Relevant documentation may include tax or other financial records for revenues that have occurred or a detailed projection of sales, costs, and income projections such as a pro-forma income statement associated with the business plan for revenues that will occur.

In making the determination as to whether or not the immigrant investor has created the requisite number of jobs, USCIS does not require that the jobs still be in existence at the time of the petition to remove conditions adjudication in order to be credited to the investor. Instead, the job creation requirement is met if the investor can show that at least 10 full-time jobs for qualifying employees were created by the new commercial enterprise as a result of his or her investment and such jobs were considered to be permanent jobs when created.\[^{16}\]

Full-time positions will be allocated to immigrant investors based on the date their petition to remove conditions was filed, unless otherwise stated in the relevant documents.\[^{17}\] For example, if the new commercial enterprise creates 25 jobs, yet there are three immigrant investors associated with the new commercial enterprise, and the record is silent on the issue of allocation, the first two immigrant investors to file the petition to remove conditions will each get to count 10 of the 25 jobs. The third immigrant investor to file the petition to remove conditions is allocated the remaining five jobs.

Direct jobs that are intermittent, temporary, seasonal, or transient in nature do not qualify as permanent full-time jobs. However, jobs that are expected to last for at least 2 years generally are not considered intermittent, temporary, seasonal, or transient in nature.
Although employment in some industries such as construction or tourism can be intermittent, temporary, seasonal or transient, officers should not exclude jobs simply because they fall into such industries. The focus of the adjudication will continue to be on whether the position, as described in the petition, is continuous full-time employment.

For example, if a petition reasonably describes the need for general laborers in a construction project that is expected to last several years and would require a minimum of 35 hours per week over the course of that project, the positions would meet the full-time employment requirement. However, if the same project called for electrical workers to provide services during a small number of 5-week periods over the course of the project, such positions would be deemed intermittent and not meet the definition of full-time employment.

1. Position Focused, Not Employee Focused

The full-time employment criterion focuses on the position, not the employee. Accordingly, the fact that the position may be filled by more than one employee does not exclude the position from consideration as full-time employment. For example, the positions described in the preceding paragraph would not be excluded from being considered full-time employment if the general laborers needed to fill the positions varied from day-to-day or week-to-week as long as the need for the positions remain constant.

2. Within a Reasonable Time Standard

A petitioner may demonstrate that jobs will be created within a reasonable period of time after adjudication of the Form I-829 petition. This permits a degree of flexibility to account for the realities and unpredictability of starting a business venture, but it is not an open-ended allowance. The business plan submitted with the Form I-526 immigrant petition must establish a likelihood of job creation within the next 2 years, demonstrating an expectation that EB-5 projects will generally create jobs within such a timeframe.

USCIS may determine, based upon a totality of the circumstances, that a lengthier timeframe is reasonable. USCIS has latitude under the law to request additional evidence concerning those circumstances. Because 2 years is the expected baseline period in which job creation will take place, jobs that will be created within a year of the 2-year anniversary of the immigrant investor’s admission as a conditional permanent resident or adjustment to conditional permanent resident may generally be considered to be created within a reasonable period of time.

Jobs projected to be created more than 3 years after the immigrant investor’s admission in, or adjustment to, conditional permanent resident status usually will not be considered to be created within a reasonable time unless extreme circumstances are presented.

Not all of the goals of capital investment and job creation need to be fully realized before the conditions on the immigrant investor’s status have been removed. The investor must establish that it is more likely than not that the investor is in substantial compliance with the capital requirements and that the jobs will be created within a reasonable time.

C. Material Change

USCIS recognizes the process of carrying out a business plan and creating jobs depends on a wide array of variables of which an investor may not have any control. In order to provide flexibility to meet the realities of the business world, USCIS permits an immigrant investor who has been admitted to the United States on a conditional basis to remove those conditions when circumstances have changed.
An immigrant investor may proceed with the petition to remove conditions and present documentary evidence demonstrating that, notwithstanding the business plan contained in the initial Form I-526 immigrant petition, the requirements for the removal of conditions have been satisfied. USCIS does not deny petitions to remove conditions based solely on the failure to adhere to the business plan contained in the Form I-526 immigrant petition. An immigrant investor may pursue alternative business opportunities within an industry category not previously approved for the regional center.

Therefore, during the conditional residence period, an investment may be further deployed in a manner not contemplated in the initial Form I-526, as long as the further deployment otherwise satisfies the requirement to sustain the capital at risk. In addition, further deployment may be an option during the conditional residence period in various circumstances. For example, further deployment may be possible in cases where the requisite jobs were created by the investment in accordance with the business plan, as well as in cases where the requisite jobs were not created in accordance with the original business plan, and even if further deployment had not been contemplated at the time of the Form I-526 filing. For petitions filed before November 21, 2019, amendments or supplements to any offering necessary to maintain compliance with applicable securities laws based upon regulatory changes effective on November 21, 2019, may not be considered material.

The initial Form I-526 immigrant petition must be filed in good faith and with full intention to follow the plan outlined in that petition. If the immigrant investor does not demonstrate that he or she filed the immigrant petition in good faith, USCIS may conclude that the investment in the commercial enterprise was made as a means of evading the immigration laws. Under these circumstances, USCIS may terminate the immigrant investor’s conditional status.

While USCIS allows this flexibility in Form I-829 filings, nothing in this policy relieves an immigrant investor from the requirements for removal of conditions. Therefore, even in the event of a change in course, an immigrant investor must always be able to demonstrate that:

- The required funds were placed at risk throughout the period of the petitioner’s conditional permanent residence in the United States;
- The required amount of capital was made available to the business or businesses most closely responsible for creating jobs (unless the job creation requirement has already been satisfied);
- This at-risk investment was sustained throughout the period of the petitioner’s conditional permanent residence in the United States; and
- The investor created (or maintained, if applicable), or can be expected to create within a reasonable period of time, the requisite number of jobs.

Accordingly, if an immigrant investor fails to meet any of these requirements, he or she would not be eligible for removal of conditions.

Further, with respect to the impact of regional center termination, an immigrant investor’s conditional permanent resident status, if already obtained, is not automatically terminated if he or she has invested in a new commercial enterprise associated with a regional center that USCIS terminates. The conditional permanent resident investor will continue to have the opportunity to demonstrate compliance with EB-5 program requirements, including through reliance on indirect job creation.

**D. Extension of Conditional Permanent Residence While Form I-829 is Pending**

AILA Doc. No. 19060633. (Posted 3/26/21)
USCIS automatically extends the conditional permanent resident status of an immigrant investor and certain dependents for 1 year upon receipt of a properly filed Form I-829.[14] The receipt notice along with the immigrant’s permanent resident card provides documentation for travel, employment, or other situations in which evidence of conditional permanent resident status is required.

Within 30 days of the expiration of the automatic 1-year extension, or after expiration, a conditional permanent resident with a pending Form I-829 may take his or her receipt notice to the nearest USCIS field office and receive documentation showing his or her status for travel, employment, or other purposes.

In such a case, an officer confirms the immigrant’s status and provides the relevant documentation. USCIS continues to extend the conditional permanent resident status until the Form I-829 is adjudicated.

An immigrant investor whose Form I-829 has been denied may seek review of the denial in removal proceedings. [15] USCIS issues the immigrant a temporary Form I-551 until an order of removal becomes administratively final. An order of removal is administratively final if the decision is not appealed or, if appealed, when the appeal is dismissed by the Board of Immigration Appeals.

Footnotes

4. [^ 4] See 8 CFR 216.6(c)(1)(iii). The sustainment period is the investor’s 2 years of conditional permanent resident status. USCIS reviews the investor’s evidence to ensure sustainment of the investment for 2 years from the date the investor obtained conditional permanent residence. An investor does not need to maintain his or her investment beyond the sustainment period.
7. [^ 7] USCIS recognizes any reasonable agreement made among immigrant investors with regard to the identification and allocation of qualifying positions. See 8 CFR 204.6(g)(2).
10. [^ 10] For example, force majeure.
Chapter 6 - Deference

There are distinct eligibility requirements at each stage of the EB-5 immigration process. Where USCIS has previously evaluated and approved certain aspects of an investment, USCIS generally defers to that favorable determination at a later stage in the process. This deference policy promotes predictability for immigrant investors, new commercial enterprises, and their employees. Deference also conserves scarce agency resources, which should not ordinarily be used to duplicate previous efforts.

As a general matter, USCIS does not reexamine determinations made earlier in the EB-5 process, and such earlier determinations will be presumed to have been properly decided. When USCIS has previously concluded that an economic methodology is reasonable to project future job creation as applied to the facts of a particular project, USCIS defers to this determination for all related adjudications directly linked to the specific project for which the economic methodology was previously approved.

For example, if USCIS approves an Application For Regional Center Under the Immigrant Investor Program (Form I-924) or an Immigrant Petition by Alien Investor (Form I-526) presenting a Matter of Ho (PDF) compliant business plan and a specific economic methodology, USCIS will defer to the earlier finding that the methodology was reasonable in subsequent adjudications of Form I-526 presenting the same related facts and methodology. However, USCIS will still conduct a de novo review of each prospective immigrant investor’s lawful source of funds and other individualized eligibility criteria.

Conversely, USCIS does not defer to a previously favorable decision in later proceedings when, for example, the underlying facts, upon which a favorable decision was made, have materially changed, there is evidence of fraud or misrepresentation, or the previously favorable decision is determined to be legally deficient. A change is material if it would have a natural tendency to influence, or is predictably capable of affecting, the decision. [1]

When a new filing involves a different project from a previous approval, or the same previously approved project with material changes to the project plan, USCIS does not defer to the previous adjudication.

Since prior determinations will be presumed to have been properly decided, a prior favorable determination will not be considered legally deficient for purposes of according deference unless the prior determination involved an objective mistake of fact or an objective mistake of law evidencing ineligibility for the benefit sought, but excluding those subjective evaluations related to evaluating eligibility. Unless there is reason to believe that a prior adjudication involved an objective mistake of fact or law, officers should not reexamine determinations made earlier in the EB-5 process. Absent a material change in facts, fraud, or willful misrepresentation, officers should not re-adjudicate prior agency determinations that are subjective, such as whether the business plan is comprehensive and credible or whether an economic methodology estimating job creation is reasonable.

Footnote


Part H - Designated and Special Immigrants
Chapter 1 - Purpose and Background

A. Purpose

A special immigrant is an alien who may qualify for lawful permanent residence under certain provisions of the Immigration and Nationality Act (INA). Special immigrants are eligible to apply for lawful admission as a permanent resident or adjustment of status to permanent residence.

B. Background

The INA defines the term “special immigrant” to include various categories of aliens, such as religious workers, special immigrant juveniles, and employees and former employees of the U.S. government or others who have benefited or faithfully served the U.S. government abroad. Congress also created additional special immigrant classifications through public laws not incorporated in the INA. Special immigrant classifications are subject to the numerical limitations on admissions set forth in the INA. Certain special immigrant classifications are exempt from these numerical limits, to include: Iraqis employed by or on behalf of the U.S. government; Afghans employed by or on behalf of the U.S. government; and Iraqi and Afghan translators and interpreters.

C. Scope

This Policy Manual (PM) Part addresses the following classes of special immigrants:

- Religious workers
- Panama Canal Zone employees
- Certain physicians
- Certain G-4 or NATO-6 employees and their family members
- Members of the U.S. armed forces
- Certain broadcasters
- Certain Iraqi nationals
- Certain Afghan nationals and
- Certain Iraqi and Afghan translators and interpreters

Part H does not address the following classes of special immigrants:

- An immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad
- An immigrant who was a citizen of the United States who may apply for reacquisition of citizenship
• Certain employees or retired employees of the U.S. government abroad,[17] and
• Certain dependents of a juvenile court or immigrants otherwise under certain legal commitment or state custody orders.[18]

D. Legal Authorities

• **INA 101(a)(27)** – Special immigrant classifications
• **INA 203(b)(4)** – Certain special immigrants
• **8 CFR 204.5** – Petitions for employment-based immigrants
• **8 CFR 204.9** – Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years
• Section 1059 of the National Defense Authorization Act for Fiscal Year 2006, as amended – Special immigrant status for persons serving as translators and interpreters with the U.S. armed forces[19]
• Section 1244 of the National Defense Authorization Act for Fiscal Year 2008, as amended – Special immigrant status for certain Iraqis[20]
• Section 602(b) of the Afghan Allies Protection Act of 2009, as amended – Special immigrant status for certain Afghans[21]

Footnotes

[^1] See **INA 101(a)(27)**.
[^8] See **INA 101(a)(27)(H)**.


[^17] See INA 101(a)(27)(D) (allowing for special immigrant status for an alien (and derivatives) who is an employee or is an honorably retired employee of the U.S. government outside the United States).

[^18] For information about special immigrant juveniles defined by INA 101(a)(27)(J), see Part J, Special Immigrant Juveniles [6 USCIS-PM J].


[^21] See Section 602(b) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8 (PDF), 123 Stat. 524, 807 (March 11, 2009), as amended by Section 1219 of the NDAA for Fiscal Year 2014, Pub. L. 113-66 (PDF), 127 Stat. 672 (December 26, 2013), by Section 7034(o) the Consolidated Appropriations Act...
Chapter 2 - Religious Workers

A. General Requirements

1. General Eligibility

A U.S. employer (petitioner) or an alien (self-petitioner) may file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) for special immigrant religious worker classification. If applicable, the petitioner must submit a Religious Denomination Certification that is also a part of the petition. For at least 2 years preceding the filing of the petition, the religious worker must have been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States. The religious worker must be coming to the United States to work:

- Solely as a minister of the U.S. employer’s denomination;
- In a religious vocation either in a professional or nonprofessional capacity; or
- In a religious occupation either in a professional or nonprofessional capacity.

The religious worker must have been carrying on, after the age of 14 years, such work continuously for at least 2 years preceding the filing of the petition.

Religious workers in a religious vocation or occupation are included in the special immigrant religious worker program by statute on a temporary basis, the end date of which has been extended several times. Accordingly, such workers must enter the United States with a valid immigrant visa or adjust to permanent resident status (have an approved Application to Register Permanent Residence of Adjust Status (Form I-485)) before the expiration date stated in the most recent statutory renewal. USCIS provides the most recent expiration date for non-minister religious workers on the USCIS website. There is no fixed expiration date for ministers.

2. Definitions

Detailed explanations of the definitions for special immigrant religious workers may be found at 8 CFR 204.5(m). Eligibility for this classification is based on the following definitions:
Bona Fide Nonprofit Religious Organization in the United States

A bona fide nonprofit religious organization is a religious organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Service (IRS) Code. The organization must have a currently valid determination letter from the IRS confirming the tax exemption. Tax-exempt organization is defined below. The petitioner may submit an individual 501(c)(3) determination letter if the religious organization has its own ruling from the IRS or a letter for the group if it is covered under a group ruling.[7]

Bona Fide Organization That is Affiliated with the Religious Denomination

A bona fide organization that is affiliated with the religious denomination is an organization that is closely associated with a religious denomination. Religious denomination is defined below. The organization must be exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code. The organization must have a currently valid determination letter from the IRS confirming the tax exemption. The petitioner must also submit additional documentation.[8]

Religious Denomination

A religious denomination is a religious group or community of believers that is governed or administered under a common type of ecclesiastical government with one or more of the following:

- Recognized common creed or statement of faith shared among the denomination’s members;
- Common form of worship;
- Common formal code of doctrine and discipline;
- Common religious services and ceremonies;
- Common established places of religious worship or religious congregations; or
- Comparable evidence of a bona fide religious denomination.

Denominational Membership

Denominational membership is defined as membership during at least the 2-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the U.S. religious organization where the religious worker will work.

Minister

A minister position can take the form of various names or titles, depending on the religion, such as priest, minister, rabbi, and imam, among others, and is a person who, according to the denomination’s standards:

- Is fully authorized by a religious denomination, and fully trained according to the denomination’s standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- Performs activities with a rational relationship to the religious calling of the minister; and
- Works solely as a minister in the United States, which may include administrative duties incidental to
the duties of a minister.

Religious Occupation

A religious occupation is one that meets all of the following requirements within the religious denomination’s standards:

- The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
- The duties must be primarily related to, and must clearly involve, instilling or carrying out the religious creed and beliefs of the denomination;
- The duties do not include positions which are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and
- Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious Vocation

A religious vocation involves a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of persons whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of religious vocations include nuns, monks, and religious brothers and sisters.

Religious Worker

A religious worker is a person engaged in and, according to the denomination’s standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

Tax Exempt Organization

A tax exempt organization is one that has received a determination letter from the IRS establishing that it, or a group that it belongs to is exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

B. Petitioner Requirements

1. Attestation and Denomination Certification

As part of the Form I-360, an authorized official of the prospective U.S. employer must complete, sign, and date the Employer Attestation and, if applicable, an authorized official of the denomination must complete the Religious Denomination Certification. The authorized official must sign the attestation, certifying under penalty of perjury that the attestation is true and correct.

If the religious worker is a self-petitioner and is also an authorized official of the prospective U.S. employer, the self-petitioner may sign the attestation.

On the Employer Attestation portion of the Form I-360, the prospective employer must specifically attest to
the following:[12]

- The prospective employer’s status as a bona fide non-profit religious organization or a bona fide organization that is affiliated with a religious denomination and is exempt from taxation;
- The number of members of the prospective employer’s organization;
- The number of employees who work at the same location where the religious worker will be employed and a summary of those employees’ responsibilities;
- Number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past 5 years;
- Number of petitions for special immigrant and nonimmigrant religious workers for employment with the prospective employer filed on Form I-360 and Petition for a Nonimmigrant Worker (Form I-129) within the past 5 years;
- The title of the position offered to the religious worker;
- The complete package of salaried or non-salaried compensation being offered;
- A detailed description of the religious worker’s proposed daily duties;
- The compensated position being offered to the religious worker requires an average of at least 35 hours per week of work;
- The specific location(s) of the proposed employment;
- The religious worker is qualified to perform the duties of the offered position;
- The religious worker’s membership in the prospective employer’s denomination for at least 2 years prior to admission to the United States;
- The religious worker will not be engaged in secular employment and any compensation for religious work will be paid to the religious worker by the attesting employer; and
- The prospective employer’s ability and intention to compensate and otherwise support (through housing, for example) the religious worker at a level at which the religious worker and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

2. Verification of Evidence

USCIS may verify the submitted evidence through any means that USCIS determines as appropriate, up to and including an on-site inspection. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such an inspection will be a condition for approval of any petition.[13] The inspection may include:

- A tour of the organization’s facilities, which may include inspection of the organization’s headquarters, satellite locations, or the work or living locations proposed for the religious worker;
- An interview with the organization’s officials;
- A review of the organization’s records related to compliance with immigration laws and regulations; and
- An interview with any other persons or review of any other records that USCIS considers pertinent to the integrity of the organization.

3. Evidence of Tax Exempt Status

There are three different ways to establish an organization’s tax-exempt status to support a special immigrant religious worker filing on Form I-360.[14]

If the religious organization has its own determination from the IRS as a tax-exempt organization, the petitioner must submit a copy of the valid 501(c)(3) determination letter.

Individual Religious Organization Covered Under a Group Tax Exempt Ruling[16]

If the religious organization is recognized as tax exempt under group IRS tax-exempt determination, the petitioner must submit a copy of a currently valid 501(c)(3) determination letter for the group and evidence that the religious organization is covered under the group exemption.

Individual tax-exempt organization affiliated with a religious denomination[17]

If the organization is an individual tax-exempt organization affiliated with a religious organization, in addition to a copy of its valid 501(c)(3) determination letter, the petitioner must also submit:

- Documentation establishing its religious nature and purpose, such as a copy of the organizing instrument, specifying the nature and purpose of its own organization;
- Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of its activities; and
- A religious denomination certification.

4. Compensation Requirement

A religious worker must receive salaried or non-salaried compensation[18] Salaried means receiving a traditional form of compensation (that is, paycheck). Non-salaried compensation includes support such as, but not limited to, room, board, medical care, or transportation.

The petitioner must submit verifiable evidence of how it intends to compensate the religious worker[19] The evidence may include:

- Past evidence of compensation for similar positions;
- Budgets showing monies set aside for salaries, leases, etc.;
- Documentation that food, housing, medical care, or transportation will be provided; and
- If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is unavailable, the petitioner must explain why it is unavailable and submit comparable verifiable documentation.[20]

C. Religious Worker Requirements

1. Evidence of Religious Worker’s Prior Employment

The religious worker’s qualifying experience during the 2 years immediately preceding the petition (or preceding any acceptable break in the continuity of the religious work) must have occurred after the age of 14.[21]
If Religious Worker Received Salaried Compensation

If the religious worker was employed in the United States during the 2 years immediately preceding the filing of the petition and received salaried compensation, the petitioner must submit IRS documentation that the religious worker received a salary, such as an IRS Form W-2 or certified copies of income tax returns.[22]

If Religious Worker Received Non-salaried Compensation

If the religious worker was employed in the United States during the 2 years immediately preceding the filing of the petition and received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.[23]

If Religious Worker Received No Salary but Provided His or Her Own Support

If the religious worker was employed in the United States during the 2 years immediately preceding the filing of the petition and received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.[24]

If the religious worker was employed outside the United States during the 2 years immediately preceding the filing of the petition, the petitioner must submit comparable evidence of the religious work.[25]

If Religious Worker Had Unacceptable Break During 2-year Period Preceding Petition

A break in the continuity of the work during the preceding 2 years will not affect eligibility so long as:

- The beneficiary was still employed as a religious worker;
- The break did not exceed 2 years; and
- The nature of the break was for further religious training or for sabbatical. However, the religious worker must have been a member of the petitioner’s denomination throughout the 2 years of qualifying employment.[26]

Additionally, events such as sick leave, pregnancy leave, spousal care, and vacations are typical in the normal course of any employment; USCIS does not consider these events a break of the 2-year requirement as long as the religious worker is still considered employed during that time.

If the religious worker was employed in the United States and there was a break in the continuity of the work that affected eligibility during the 2 years immediately preceding the filing of Form I-360, the 2-year clock must restart. The subsequent 2-year period of qualifying employment may be completed in or outside the United States.

2. Evidence Related to a Minister

If filing on behalf of a minister, the petitioner must submit the following additional initial evidence:[27]

- A copy of the religious worker’s certificate of ordination or similar documents reflecting acceptance of the religious worker’s qualifications as a minister in the religious denomination;[28] and
- Documents reflecting the religious worker’s completion of any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious
denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination.[29]

For denominations that do not require a prescribed theological education, rather than document such education, the petitioner must instead submit evidence of:

- The denomination’s requirements for ordination to minister;
- The duties allowed to be performed by virtue of ordination;
- The denomination’s levels of ordination, if any; and
- Documentation to establish the religious worker’s completion of the denomination’s requirements for ordination.[30]

D. Derivative Beneficiaries

A spouse or child accompanying or following to join a principal immigrant who has requested benefits under this section may be accorded the same special immigrant classification as the principal alien.[31]

Footnotes

[^1] See 8 CFR 204.5(m)(6). As of November 8, 2010, the Form I-360 petition for the special immigrant religious worker classification may no longer be filed concurrently with that special immigrant religious worker’s adjustment of status application, Form I-485, pursuant to the order of the Ninth Circuit Court of Appeals in Ruiz-Diaz v. United States, 618 F.3d 1055 (9th Cir. Aug. 20, 2010). The Ninth Circuit’s decision vacated the District Court’s permanent injunction allowing for concurrent filing for special immigrant religious workers. Any I-485 application where the underlying basis is an I-360 petition seeking the classification of special immigrant religious worker must be filed based on an approved I-360 petition. See the legal settlement notice (PDF) (PDF, 44.09 KB). For more information on adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 2, Religious Workers [7 USCIS-PM F.2].


[^7] See 8 CFR 204.5(m)(8).


H.2(B)(3)].


[^14] See 8 CFR 204.5(m)(8).


[^16] See 8 CFR 204.5(m)(8)(ii).


[^18] See 8 CFR 204.5(m)(2) and 8 CFR 204.5(m)(10).

[^19] See 8 CFR 204.5(m)(10). A self-petitioning religious worker must submit evidence of how the prospective employer intends to provide such compensation. See 8 CFR 204.5(m)(7)(xi) and 8 CFR 204.5(m)(7)(xii).

[^20] See 8 CFR 204.5(m)(10).

[^21] See 8 CFR 204.5(m)(11). The regulations at 8 CFR 204.5(m)(4) and (11) specify that any qualifying employment an alien performs in the United States must have occurred while the alien was in a lawful immigration status. However, the U.S. Court of Appeals in *Shalom Pentecostal Church v. Acting Secretary DHS*, 783 F.3d 156 (3rd Cir. 2015), found this regulatory requirement to be inconsistent with the statute. As a result of this decision and a growing number of Federal courts reaching the same conclusion, USCIS decided to apply the Shalom Pentecostal decision nationally. As of July 2015, USCIS does not deny special immigrant religious worker petitions based on the lawful status requirements at 8 CFR 204.5(m)(4) and 8 CFR 204.5(m)(11). Therefore, any employment in the United States can be used to qualify an alien under the special immigrant religious worker requirements, regardless of whether the alien was in a lawful or unlawful immigration status.

[^22] See 8 CFR 204.5(m)(11)(i).


[^26] See 8 CFR 204.5(m)(4).

[^27] See 8 CFR 204.5(m)(9).

[^28] See 8 CFR 204.5(m)(9)(i).

[^29] See 8 CFR 204.5(m)(9)(ii).

Chapter 3 - Panama Canal Zone Employees

Certain former employees of the Panama Canal Zone and their spouses and children may receive special immigrant status. Such employees include those employed for at least 1 year by the Zone or Zone government and who were employees on the date the treaty transferring the Canal to Panama took effect, June 16, 1978. Retired former employees who were employed for 15 years, or 5 years in the case of an employee whose personal safety is endangered because of such employment, are also eligible.

Footnote

[^31] See INA 203(d).


Chapter 4 - Certain Physicians [Reserved]

Chapter 5 - Certain G-4 or NATO-6 Employees and their Family Members [Reserved]

Chapter 6 - Members of the U.S. Armed Forces

The Armed Forces Immigration Adjustment Act of 1991 provided special immigrant status to a limited number of aliens who have served honorably on active duty status in the U.S. armed forces.

A. Filing

An alien who is a U.S. armed forces enlistee or veteran may file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) for U.S. armed forces special immigrant status on his or her own behalf. The petitioner must file Form I-360 with the proper fee, according to the form instructions.

B. Eligibility

In order to be eligible for the U.S. armed forces enlistee or veteran classification, the petitioner must establish that:

- He or she served honorably on active duty after October 15, 1978;
- He or she lawfully enlisted outside the United States under a treaty or agreement that was in effect on October 1, 1991;
- The service period or periods of active duty amount to an aggregate of a minimum of 12 years or, in the case of a petitioner currently on active duty, a minimum of 6 years with proof of re-enlistment for the required number of years to incur a total active duty service obligation of 12 years;
- If now separated from service, he or she was never separated except under honorable conditions; and
The executive department under which the petitioner served or serves has recommended the granting of special immigrant status.

C. Documentation and Evidence

The petitioner must submit the following documentation with the petition in order to establish eligibility for the benefit sought:

- His or her birth certificate which establishes that he or she is a national of an independent state that maintained a treaty or agreement that was in effect on October 1, 1991, and allowed nationals of that state to enlist in the U.S. armed forces;

- Certified proof of his or her re-enlistment (after 6 years of active duty service), or certification of his or her past active duty status of 12 years, from the appropriate military official (local command level or higher), which certifies that the applicant has the required honorable active duty service and commitment[^5] and

- A recommendation that the petitioner be granted special immigrant status from the appropriate military official (local command level or higher).[^6]

D. Derivative Beneficiaries

A spouse or child accompanying or following to join a principal immigrant who has requested benefits under this section may be accorded the same special immigrant classification as the principal alien.[^7]

E. Revocation

If a petitioner ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge before being lawfully admitted as a permanent resident or adjusting status to permanent residence, the petition can be automatically revoked.[^8] In order to do so, however, USCIS must obtain a current Certificate of Release or Discharge from Active Duty (Form DD-214) from the appropriate military office to verify that the petitioner is no longer eligible for special immigrant status.[^9]

Footnotes


[^2] For current information about filing locations, fees, and other information about how to file, see uscis.gov/i-360.

[^3] See INA 101(a)(27)(K) and 8 C.F.R. 245.8

[^4] See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 8, Members of the U.S. Armed Forces [7 USCIS-PM F.8]. Those eligible under treaties in effect on October 1, 1991, include nationals of the Philippines; the Federated States of Micronesia; the Republic of Palau; and the Republic of the Marshall Islands.
USCIS accepts letters issued by the command under which the petitioner is serving or has served as the certification and recommendation. Such a letter must include all required information: dates of service and place of enlistment, type of discharge (if applicable), and the recommendation of special immigrant status by the authorizing official.

USCIS accepts letters issued by the command under which the petitioner is serving or has served as the certification and recommendation. Such a letter must include all required information: dates of service and place of enlistment, type of discharge (if applicable), and the recommendation of special immigrant status by the authorizing official.

See INA 101(a)(27)(K)(ii)

See INA 205.

See 8 CFR 204.9(f).

Chapter 7 - Certain Broadcasters [Reserved]

Chapter 8 - Certain Iraqi Nationals

The National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), which included the Refugee Crisis in Iraq Act of 2007 (RCIA), was signed into law on January 28, 2008. Section 1244 of this legislation entitled “Special Immigrant Status for Certain Iraqis,” created a new category of special immigrant visas for Iraqi nationals who have provided faithful and valuable service to the U.S. government, while employed by or on behalf of the U.S. government in Iraq, for not less than 1 year beginning on or after March 20, 2003, and who have experienced or are experiencing an ongoing serious threat as a consequence of that employment.

A. Number of Visas

In prior legislation, Congress established a numerical limitation of 5,000 principal aliens who may be provided special immigrant status under this program per year for Fiscal Years 2008 through 2012. The unused number from Fiscal Year 2012 was allocated toward Fiscal Year 2013. Subsequent legislation extended this program until December 31, 2013. Subsequently, Congress allowed for an additional 2,500 visas to be approved after January 1, 2014, provided that the service occurred between March 20, 2003 and September 30, 2013, and that the alien submitted an application for Chief of Mission (COM), the principal officer in charge of a diplomatic mission, approval by September 30, 2014. Since then, Congress has not modified the deadline or authorized additional visa numbers for Iraqis, effectively terminating the RCIA once all eligible applicants have been issued visas.

B. Filing

An Iraqi citizen or national who has worked for or on behalf of the U.S. government may file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) on his or her own behalf. The petitioner must file Form I-360 with the proper fee, according to the form instructions.
C. Eligibility

To obtain approval of a petition for special immigrant status as an Iraqi who worked for or on behalf of the U.S. government under the RCIA, the petitioner must establish that he or she:

- Is a citizen or national of Iraq;
- Was employed by, or on behalf of, the U.S. government in Iraq on or after March 20, 2003, and before September 30, 2013, for a period of not less than 1 year;
- Provided faithful and valuable service to the U.S. government;
- Has experienced or is experiencing an ongoing serious threat as a consequence of the petitioner’s employment by the U.S. government;
- Has cleared a background check and appropriate screening as determined by the Secretary of Homeland Security; and
- Is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence.

D. Documentation and Evidence

The petitioner must submit the following evidence along with a completed Form I-360:

- A copy of the petitioner’s passport, nationality or birth certificate, or national identification card showing that the petitioner is a citizen or national of Iraq, along with a certified English translation, if the document is in a foreign language;
- A positive recommendation from:
  - U.S. citizen or national who is the petitioner’s senior supervisor;
  - U.S. citizen or national who occupies the supervisor’s position;
  - U.S. citizen or national who is more senior if the senior supervisor has left the employer or has left Iraq; or
  - The alien’s senior supervisor, provided the U.S. citizen or national responsible for the contract co-signs the letter, confirming employment of not less than 1 year beginning on or after March 20, 2003, and ending before September 30, 2013, if it is not possible to obtain a recommendation from a supervisor who is a U.S. citizen or national;
- Proof of COM approval based on an independent review of this recommendation conducted by the COM, Embassy Baghdad, or his or her designee, of records maintained by the U.S. government or hiring organization or entity, to confirm employment and faithful and valuable service to the U.S. government;
- Proof of risk assessment conducted by the COM, Embassy Baghdad, or his or her designee, establishing that the petitioner has experienced or is experiencing an ongoing serious threat as a consequence of his or her employment by the U.S. government; and
If the petition is filed by a petitioner in the United States, a copy of the front and back of the petitioner’s Arrival/Departure Record (Form I-94).

E. Derivative Beneficiaries

The spouse and unmarried child(ren) younger than 21 years old accompanying or following to join a principal immigrant may be accorded the same special immigrant classification as the principal alien. Visas issued to derivative spouses and children do not count toward the cap on special immigrant visas for nationals of Iraq.

If the petition of the principal alien was revoked or terminated after its approval due to the death of the petitioning alien, the spouse or child may be eligible still for a special immigrant visa. This provision is applicable to a petition that included the alien as an accompanying spouse or child, and which, due to the death of the principal alien, was revoked or terminated, but would have been a basis for visa issuance if the principal alien had survived.[11]

Footnotes


[^7] Current information about filing locations, fees, and other information about how to file can be found at uscis.gov/i-360.


[^9] In the determination of such admissibility, the grounds for inadmissibility specified in INA 212(a)(4) relating to “public charge” do not apply.


Chapter 9 - Certain Afghan Nationals

Section 602(b) of the Afghan Allies Protection Act of 2009 (AAPA),[1] created a new special immigrant category for Afghan nationals who worked for or on behalf of the U.S. government in Afghanistan. The President signed the AAPA into law on March 11, 2009.

A. Number of Visas

The AAPA for Afghans who worked for or on behalf of the U.S. government initially provided for a limit of 1,500 immigrant visas for principal aliens for each fiscal year from 2009 through 2013. However, for each fiscal year from 2010 through 2013, the total number was increased by the difference between 1,500 and the number of visas actually used during the immediately prior fiscal year. For example, if the numerical limitation for fiscal year 2013 is not reached, any unused numbers from that year may be used in fiscal year 2014.

Subsequently, the program has been extended multiple times and additional visas have been added. Most recently, Congress amended the AAPA to add another 4,000 visas and to extend the program through 2020.[2] To date, Congress has authorized the issuance of 22,500 visas, and the program will end when all the visas have been issued.[3]

B. Filing

An Afghan citizen or national who has worked for or on behalf of the U.S. government may file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) on his or her own behalf. The petitioner must file Form I-360 with the proper fee, according to the form instructions.[4]

C. Eligibility

To obtain approval of a petition for special immigrant status as an Afghan who worked for or on behalf of the U.S. government under the AAPA, the petitioner must establish that he or she:

- Is a citizen or national of Afghanistan;

- Was or is employed by, or on behalf of, the U.S. government in Afghanistan on or after October 7, 2001, and before December 31, 2020, for a period of not less than 1 year or 2 years for petitioners submitting COM applications after September 30, 2015:[5]

- Provided faithful and valuable service to the U.S. government;

- Has experienced or is experiencing an ongoing serious threat as a consequence of the petitioner’s employment by the U.S. government;

- Has cleared a background check and appropriate screening as determined by the Secretary of Homeland Security; and

- Is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence.[6]
D. Documentation and Evidence

The petitioner must submit the following evidence along with a completed Form I-360:

- A copy of the petitioner’s passport, birth certificate, or national identification card showing that the petitioner is a citizen or national of Afghanistan, along with a certified English translation, if the document is in a foreign language;

- A positive recommendation from:
  - U.S. citizen or national who is the petitioner’s senior supervisor;
  - U.S. citizen or national who occupies the supervisor’s position; or
  - U.S. citizen or national who is more senior if the senior supervisor has left the employer or has left Afghanistan, confirming employment of not less than 2 years beginning on or after October 7, 2001, if it is not possible to obtain a recommendation from a supervisor who is a U.S. citizen or national.[7]

- Proof of COM approval based on an independent review of this recommendation conducted by the COM, Embassy Kabul, or his or her designee, of records maintained by the U.S. government or hiring organization or entity, to confirm employment and faithful and valuable service to the U.S. government;

- Proof of risk assessment conducted by the COM, Embassy Kabul, or his or her designee, establishing that the petitioner has experienced or is experiencing an ongoing serious threat as a consequence of his or her employment by the U.S. government; and

- If the petition is filed by a petitioner in the United States, a copy of the front and back of the petitioner’s Arrival/Departure Record (Form I-94).

E. Derivative Beneficiaries

The spouse and unmarried child(ren) younger than 21 years old accompanying or following to join a principal immigrant may be accorded the same special immigrant classification as the principal alien. Visas issued to derivative spouses and children do not count toward the cap on special immigrant visas for nationals of Afghanistan.

Deceased Principal

A surviving spouse and children continue to remain eligible for special immigrant status if the principal alien had a visa petition approved under Section 602(b) of the AAPA but died after the approval. The eligibility of the surviving spouse and children is also affected by INA 204(l).[8] since the surviving spouse and children are derivative beneficiaries of an employment-based immigrant visa petition.[9] In light of the interrelationship between Section 602(b)(2)(C) of the AAPA and INA 204(l):

- A pending visa petition under Section 602(b) may be approved, despite the death of the principal alien while the petition is pending; and

- After the death of the principal alien, USCIS may favorably exercise discretion to reinstate the approval of a visa petition under Section 602(b).
Footnotes


[^3] For program extensions and visa number information, see the Department of State website. This website is updated periodically but may not reflect the latest updates.

[^4] Current information about filing locations, fees, and other information about how to file can be found at uscis.gov/i-360.

[^5] NDAA 2020 amended the definition of “principal alien” to revert the definition to the original, namely employed “by, or on behalf of, the United States Government[.]” See Section 1219(a) of NDAA 2020, Pub. L. 116-92 (PDF), 113 Stat. 1198, 1636 (December 20, 2019).

[^6] In the determination of such admissibility, the grounds for inadmissibility specified in INA 212(a)(4) relating to “public charge” do not apply.

[^7] Under Department of State policy, the COM will approve the recommendation only if made by a U.S. citizen or national (or endorsed by the U.S. citizen or national responsible for the contract under which the petitioner’s service was provided). See 9 FAM 502.5-12(B), Certain Iraqi and Afghan Nationals Employed by or on Behalf of the U.S. Government in Iraq or Afghanistan, and Certain Afghan Nationals Employed by the International Security Assistance Force or a Successor Mission.


Chapter 10 - Certain Iraqi and Afghan Translators and Interpreters

A. Number of Visas

Section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (NDAA 2006), entitled “Special Immigrant Status for Persons Serving as Translators with United States Armed Forces,” authorized the issuance of up to 50 special immigrant visas per fiscal year to Iraqi and Afghan translators and interpreters working for the U.S. government.\[1\] Congress increased the total number of special immigrant visas issued under the interpreter and translator program to a total of 500 principal applicants per year for Fiscal Years 2007 and 2008 only.\[2\]

B. Filing

Iraqi and Afghan nationals who worked directly with the U.S. armed forces or under Chief of Mission (COM) authority at the U.S. Embassy Baghdad or U.S. Embassy Kabul as translators or interpreters may file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) on their own behalf. The petitioner must file Form I-360 with the proper fee, according to the form instructions.\[3\]
C. Eligibility

To obtain approval of a petition for special immigrant status as an Iraqi or Afghan translator or interpreter under the NDAA 2006, the petitioner must establish that he or she:

- Is a national of Iraq or Afghanistan;
- Worked directly as a translator or interpreter with the U.S. armed forces, or under COM authority, for a period of at least 12 months;
- Has obtained a favorable written recommendation from the COM or a general or flag officer in the chain of command of the U.S. armed forces unit supported by the translator or interpreter;
- Has cleared a background check and appropriate screening as determined by the COM or a general or flag officer in the chain of command of the U.S. armed forces unit supported by the translator or interpreter; and
- Is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence.[4]

D. Automatic Conversion for Approved Translators and Interpreters

A petitioner with an approved petition for special immigrant status as an Afghan or Iraqi translator or interpreter under Section 1059 of NDAA 2006, for whom a visa under such section is not immediately available, is eligible for conversion of the approved petition to that of an Iraqi or Afghan employed by or on behalf of the U.S. government under Section 1244 of the National Defense Authorization Act of Fiscal Year 2008,[5] with respect to petitions that are filed on or before September 30, 2008. In such cases, the approval will be counted against available section 1244 visa numbers, but in all substantive respects eligibility is determined under Section 1059 rather than under the different eligibility requirements of Section 1244.[6]

E. Documentation and Evidence

The petitioner must submit the following evidence along with a completed Form I-360:

- A copy of the petitioner’s passport or nationality or birth certificate showing that the petitioner is a national of Iraq or Afghanistan, along with a certified English translation, if the document is in a foreign language;
- Proof, issued by the U.S. armed forces or the COM, of working as a translator or interpreter for at least 12 months;
- Proof of background check and screening by the U.S. armed forces or the COM;
- A letter of recommendation from the COM, or a general or flag officer in the chain of command of the U.S. armed forces unit supported by the translator or interpreter; and
- If the petition is filed by a petitioner in the United States, a copy of the front and back of the petitioner’s Arrival/Departure Record (Form I-94).
F. Derivative Beneficiaries

The spouse and unmarried child(ren) younger than 21 years old accompanying or following to join a principal immigrant may be accorded the same special immigrant classification as the principal alien. Visas issued to derivative spouses and children do not count toward the cap on special immigrant visas for Iraqi or Afghan translators and interpreters.

If the petition of the principal alien was revoked or terminated after its approval due to the death of the petitioning alien, the spouse or child may be eligible still for a special immigrant visa. This provision is applicable to a petition that included the alien as an accompanying spouse or child, and which, due to the death of the principal alien, was revoked or terminated, but would have been a basis for visa issuance if the principal alien had survived.[7]

Footnotes


[^3] For current information about filing locations, fees, and other information about how to file, see uscis.gov/i-360.

[^4] In the determination of such admissibility, the grounds for inadmissibility specified in INA 212(a)(4) relating to “public charge” do not apply.


Chapter 11 - Decision and Post-Adjudication

During adjudication, USCIS may issue a Request for Evidence or Notice of Intent to Deny. USCIS considers any evidence timely submitted in accordance with the notice’s instructions prior to issuing a decision.

A. Approval

If the alien meets the eligibility requirements set forth above, the officer approves the petition under the correct classification and USCIS notifies the petitioner of the approval.

B. Denial

If the petitioner fails to establish eligibility for the benefit sought, the officer denies the petition. If the
petition is denied, USCIS informs the petitioner of the reasons for denial. The decision must include information about appeal rights and the opportunity to file a motion to reopen or reconsider.

C. Motions and Appeals

The petitioner may appeal the denial to the Administrative Appeals Office (AAO) or may file a motion to reopen or reconsider by filing a Notice of Appeal or Motion (Form I-290B).[1]

D. Validity of Approved Petitions

An approved petition is valid indefinitely, unless the approval is revoked under INA 203(g) or INA 205.[2]

E. Adjustment of Status

Adjustment of status based on classification as a special immigrant is addressed separately in this Policy Manual.[3]

Footnotes

[^1] Current information about filing locations, fees, and other information about how to file a motion or appeal can be found at uscis.gov/i-290b.


[^3] See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment [7 USCIS-PM F].

Part I - Family-Based Conditional Permanent Residents

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 25 - Petitions for Removal of Conditions on Conditional Residence (External) (PDF, 256.35 KB)

Part J - Special Immigrant Juveniles

Chapter 1 - Purpose and Background
A. Purpose

Congress initially created the special immigrant juvenile (SIJ) classification to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care. This protection evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. While there is no longer a requirement that a child be found eligible for long-term foster care, a juvenile court determination that reunification with one or both parents is not viable is still required for SIJ classification.

Children in a variety of different circumstances who are residing in the United States may be eligible for SIJ classification, including but not limited to:

- Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subjected to similar maltreatment by a parent prior to their arrival in the United States, or while in the United States;
- Children in federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement, Unaccompanied Children’s Services Program;
- Children in the state child welfare system in the custody of a state agency (for example, foster care), or in the custody of a person or entity appointed by a state or juvenile court.

B. Background

Congress first established the SIJ immigrant visa classification in 1990. Since then, Congress has enacted several amendments. The table below provides an overview of major legislation related to SIJ classification.

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<tr>
<td>The Immigration Act of 1990 [4]</td>
<td>• Established an SIJ classification for children declared dependent on a juvenile court in the United States, eligible for long-term foster care, and for whom it would not be in their best interest to return to their country of origin</td>
</tr>
</tbody>
</table>
| Miscellaneous and Technical Immigration and Nationality Amendments of 1991 [5] | • Provided that children with SIJ classification were considered paroled for the purpose of adjustment of status to lawful permanent residence  
  • Provided that alien children cannot apply for admission or be admitted to the United States in order to obtain SIJ classification |
<table>
<thead>
<tr>
<th>Acts and Amendments</th>
<th>Key Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Immigration and Nationality Technical Corrections Act of 1994</td>
<td>• Expanded eligibility from those declared dependent on a juvenile court to children whom such a court has legally committed to, or placed under the custody of, a state agency or department</td>
</tr>
</tbody>
</table>
| The 1998 Appropriations Act | • Limited eligibility to children declared dependent on the court because of abuse, neglect, or abandonment  
• Provided that children are eligible only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the grant of classification  
• Prohibited juvenile courts from determining the custody status or placement of a child who is in the custody of the federal government, unless the Attorney General (later changed to the Secretary of the Department of Health and Human Services) specifically consents to the court’s jurisdiction |
| Violence Against Women Act of 2005 | • Prohibited compelling an SIJ petitioner to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for SIJ classification |
| The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008) | • Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law  
• Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court  
• Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner’s age at the time of adjudication  
• Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order  
• Altered the “specific consent” function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services, rather than the Secretary of the Department of |
Homeland Security

- Added a timeframe for adjudication: USCIS shall adjudicate SIJ petitions within 180 days of filing

C. Legal Authorities

- **INA 101(a)(27)(J); 8 CFR 204.11[^1]** – Special immigrant status for certain children declared dependent on a juvenile court (special immigrant juvenile)
- **INA 203(b)(4)** – Certain special immigrants
- **INA 204(a)(1)(G)(i)** – Petitioning procedure
- **INA 245(h)** – Adjustment of special immigrant juveniles
- **INA 287(h)** – Protecting abused juveniles
- **8 CFR 205.2** – Revocation on notice

Footnotes

[^1] The term “determination” refers to a conclusion of law. See 8 CFR 204.11(a) (defining “juvenile court” to be one in the United States with jurisdiction under state law to make judicial determinations regarding juveniles).

[^2] There is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.


Chapter 2 - Eligibility Requirements

Special immigrant juvenile (SIJ) classification is available to children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. If a juvenile court has made certain judicial determinations and issued orders under state law on dependency or custody, parental reunification, and the best interests of the child, then the child may be eligible for SIJ classification.

USCIS determines if the petitioner meets the requirements for SIJ classification by adjudicating a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).[1] USCIS' adjudication of the SIJ petition includes review of the petition, the juvenile court order(s), and supporting evidence to determine if the petitioner is eligible for SIJ classification. USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about the best interest of the juvenile and abuse, neglect, abandonment, or a similar basis under state law.

A. General

A petitioner must satisfy the following requirements to qualify for SIJ classification:

<table>
<thead>
<tr>
<th>General Eligibility Requirements for SIJ Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physically present in the United States</td>
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<tr>
<td>Unmarried</td>
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<tr>
<td>Under the age of 21 on the date of filing the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)</td>
</tr>
<tr>
<td>Juvenile court order(s) issued in the United States that meets the specified requirements</td>
</tr>
<tr>
<td>U.S. Department of Homeland Security consent</td>
</tr>
<tr>
<td>U.S. Department of Health and Human Services (HHS) consent, if applicable</td>
</tr>
</tbody>
</table>

B. Age-out Protections for Filing with USCIS

In general, a juvenile may seek SIJ classification if he or she is under 21 years of age and unmarried at the time of filing the petition with USCIS.[2] However, state law is controlling as to whether a petitioner is considered a “child” or any other equivalent term for a juvenile subject to the jurisdiction of a state juvenile court.
court for custody or dependency proceedings.\[^{[3]}\]

If a petitioner was under 21 years of age on the date of the proper filing of the Form I-360, and all other eligibility requirements under the statute are met, USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.\[^{[4]}\]

C. Juvenile Court Order

For purposes of SIJ classification, a juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations on the custody and care of juveniles.\[^{[5]}\] This means the court must have the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law at the time the order was issued.\[^{[6]}\] Depending on the circumstances, such a determination generally would be expected to remain in place until the juvenile reached the age of majority, or until the goal of a child welfare permanency plan, such as adoption, or other protective relief ordered by the juvenile court has been reached.\[^{[7]}\]

The title and the type of court that may meet the definition of a juvenile court varies from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and youthful offender courts.

Not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification. For example, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting as a juvenile court for SIJ purposes. The burden is on the petitioner to establish that the court is acting as a juvenile court at the time that the order is issued.\[^{[8]}\]

To be eligible for SIJ classification, the petitioner must submit a juvenile court order(s) with the following determinations and provide evidence that there is a reasonable factual basis\[^{[9]}\] for each of the determinations:

- **Dependency or Custody** – Declares the petitioner dependent on the court, or legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court;

- **Parental Reunification** – Declares, under the state child welfare law, that the petitioner cannot reunify with one or both of the petitioner’s parents due to abuse, neglect, abandonment, or a similar basis under state law; and

- **Best Interests** – Determines that it would not be in the petitioner’s best interest to be returned to the petitioner’s, or his or her parents’, country of nationality or last habitual residence. The best interest determination may be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court.

1. Dependency or Custody

The petitioner must be the subject of a juvenile court order that declares him or her dependent on a juvenile court, or legally commits to or places the petitioner under the custody of either an agency or department of a state, or a person or entity appointed by a state or juvenile court.

*Dependency*\[^{[10]}\]
A determination of dependency requires that the petitioner be declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency. The petitioner must be in the United States and under the jurisdiction of the court. The term dependent child, as used in state child welfare laws, generally means a child subject to the jurisdiction of a juvenile court because the court has determined that allegations of parental abuse, neglect, abandonment, or similar maltreatment concerning the child are sustained by the evidence and are legally sufficient to support state intervention on behalf of the child. Dependency proceedings may include abuse, neglect, dependency, termination of parental rights, or other matters in which the court intervenes to provide relief from abuse, neglect, abandonment, or a similar basis under state law.

Custody

Placing the petitioner “under the custody of” a natural person or entity generally encompasses both legal and physical custody. Commitment to, or placement under the custody of a person may include certain types of guardianship, conservatorship, or adoption. When the court places the petitioner under the custody of a specific person, the court order should identify that person by name. A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, abandonment or similar maltreatment of the petitioner.

2. Parental Reunification

The juvenile court must determine that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state child welfare laws. Lack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent(s) remains in effect until the child ages out of the juvenile court’s jurisdiction. The temporary unavailability of a child’s parent(s) does not meet the eligibility requirement that family reunification is not viable. However, actual termination of parental rights is not required.

The juvenile court order should contain the factual basis for this determination, which includes naming the petitioner’s parents, and the record must establish that the court determined the named person(s) to be the petitioner’s parents. USCIS may request additional evidence if this is not established. For example, if the court’s determinations are based on a father not listed on the petitioner’s birth certificate, a determination that the claimed father is the father should be recognized in the juvenile court order.

3. Best Interests

Juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country. However, it must be determined by the juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or his or her parents. This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations. While the standards for making best interest determinations may vary between states, the court may consider a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s). The child's safety and well-being are typically the paramount concern.

The court’s determination that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that being returned to the petitioner’s (or petitioner’s parents’) country of nationality or last habitual residence would not be in the child’s best
interest. However, if for example the court places the child with a person in the United States pursuant to state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent. The analysis would not change even if the chosen caregiver is a parent. USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.

The juvenile court may make the required determination that it is not in the petitioner’s best interest to be returned to the petitioner’s or his or her parents’ country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court, such as a state child welfare agency, may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a determination from that process may satisfy this requirement.

4. Validity of Order

Jurisdiction under State Law

All determinations in the juvenile court order must have been properly issued under state law to establish eligibility for SIJ classification. This includes the need for the juvenile court to have jurisdiction under state law to make the required judicial determinations about the custody and care and/or dependency of the juvenile. For example, a state juvenile court may not be able to take jurisdiction and issue a qualifying dependency or custody order for a person who is no longer a juvenile under the state’s dependency or custody laws even though the federal statute allows a petitioner to file for SIJ classification until the age of 21. The state law definition of juvenile is controlling on the dependency or custody proceedings before the juvenile court. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.

Continuing Jurisdiction

In general, the petitioner must remain under the jurisdiction of the juvenile court at the time of the filing and adjudication of the SIJ petition, subject to some exceptions discussed below. If the petitioner is no longer under the jurisdiction of the juvenile court for a reason related to their underlying eligibility for SIJ classification, the petitioner is not eligible for SIJ classification. This may include cases in which the petitioner is no longer under the jurisdiction of the court because:

- The court vacated or terminated its determinations that made the petitioner eligible because of subsequent evidence or information that invalidated the determinations; or
- The court reunified the petitioner with the parent with whom the court previously deemed reunification was not viable because of abuse, neglect, abandonment, or a similar basis under state law.

However, this requirement does not apply if the juvenile court jurisdiction ended solely because:

- The petitioner was adopted, or placed in a permanent guardianship; or
- The petitioner was the subject of a valid order that was terminated based on age before or after filing the SIJ petition (provided the petitioner was under 21 years of age at the time of filing the SIJ petition).
A juvenile court order does not necessarily terminate because of a petitioner’s move to another court’s jurisdiction, and a juvenile leaving the court-ordered placement without permission or authorization does not by itself affect SIJ eligibility. In general, a court maintains jurisdiction when it orders the juvenile placed in a different state or makes a custody determination and the juvenile and the legal custodian relocate to a new jurisdiction. If, however, a juvenile permanently relocates to a new state and is not living in a court-ordered placement, then the petitioner must submit:

- Evidence that the court is still exercising jurisdiction over the petitioner; or
- A new juvenile court order from the court that has jurisdiction.

If the original order is terminated due to the relocation of the child but another order is issued in a new jurisdiction, USCIS considers the dependency or custody to have continued through the time of adjudication of the SIJ petition, even if there is a lapse between court orders.

D. USCIS Consent

The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008) simplified but did not remove the DHS consent requirement. In order to consent to the grant of SIJ classification, USCIS must review the juvenile court order and any supporting evidence submitted to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to protect the child and provide relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. USCIS therefore looks to the nature and purpose of the juvenile court proceedings and whether the court order was sought in proceedings granting relief from abuse, neglect, or abandonment beyond an order with factual findings to enable a person to file a petition for SIJ classification. Generally, the court-ordered dependency or custodial placement of the child is the relief being sought from the juvenile court, and the factual basis of each of the required determinations is evidence that the request for SIJ classification is bona fide.

USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law. In order to exercise the statutorily mandated DHS consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the determinations necessary for SIJ classification.

Under the Saravia Settlement Agreement, USCIS does not withhold consent based in whole or in part on the fact that the state court did not consider or sufficiently consider evidence of the petitioner’s gang affiliation when deciding whether to issue a predicate order or in making its determination that it was not in the best interest of the child to return to his or her home country. USCIS does not use its consent authority to reweigh the evidence that the juvenile court considered when it issued the predicate order.

USCIS recognizes that there may be some immigration motive for seeking the juvenile court order. For example, the court may make determinations in separate hearings and the petitioner may request an order that compiles the determinations of several orders into one order to establish eligibility for SIJ classification. A special order issued to help clarify the determinations that were made so that USCIS can determine the petitioner’s eligibility for SIJ classification does not mean that the order is not bona fide.

E. U.S. Department of Health and Human Services Consent

If a petitioner is currently in the custody of the U.S. Department of Health and Human Services (HHS) and
seeks a juvenile court order that also alters his or her custody status or placement, HHS must consent to the juvenile court’s jurisdiction. HHS consent is not required if the order simply restates the juvenile’s current placement.

F. Inadmissibility and Waivers

Grounds of inadmissibility do not apply to the adjudication of the SIJ petition. Therefore, a petitioner does not need to apply for a waiver of any applicable grounds of inadmissibility in order to be eligible for SIJ classification.

G. Family Members

Unlike some other immigrant visa petitions, SIJ classification does not allow the petitioner’s family members to be included on the petition as derivative beneficiaries. SIJ petitioners that have adjusted status to that of a lawful permanent resident may petition for family members through the family-based immigration process. However, a petitioner who adjusts status as a result of an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents, even after naturalization. This prohibition applies to a custodial parent when the juvenile court has found reunification is not viable with the other parent.

Footnotes

[^1] USCIS also adjudicates the Application to Register Permanent Residence or Adjust Status (Form I-485), which determines eligibility for adjustment of status to lawful permanent residence. See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile.


[^3] See INA 101(a)(27)(J)(i). See 8 CFR 204.11(a), (d)(2)(i) and (iii). See Matter of A-O-C- (PDF, 308.67 KB), Adopted Decision 2019-03 (AAO Oct. 11, 2019), clarifying that juveniles must have been subject to a dependency or custody order issued by a “juvenile court,” which is defined as a court “in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles”.


[^8] For more information on what evidence is sufficient to establish that the court is acting as a juvenile court for SIJ purposes, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 1, Qualifying Juvenile Court Determinations [6 USCIS-PM J.3(A)(1)].

[^9] For information on what evidence may suffice to establish a reasonable factual basis, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 3, Factual Basis and USCIS Consent [6 USCIS-PM J.3(A)(3)].


[^11] See 8 CFR 204.11(c)(3). See Matter of E-A-L-O- (PDF, 304.17 KB), Adopted Decision 2019-04 (AAO Oct. 11, 2019) (clarifying the requirement that a juvenile court dependency declaration is not sufficient for USCIS’ to consent to SIJ classification absent evidence that the dependency declaration actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law). For an example of state law governing declarations of dependency, see California Welfare and Institutions Code Section 300, et seq.

[^12] Intervention by a juvenile court on behalf of a dependent child generally involves a determination regarding the care and custody of the child or the provision of child welfare services or both. If a custodial placement is being made, the order should state where or with whom the child is being placed. If the court is providing relief through child welfare services, the order or supplemental evidence should reference what type of services or supervision the child is receiving from the court. For example, court-ordered child welfare services may include psychiatric, psychological, educational, occupational, medical or social services, services providing protection against trafficking or domestic violence, or other supervision by the court or a court appointed entity. See, for example, U.S. Department of Health and Human Services, Child Welfare Information Gateway, How the Child Welfare System Works (PDF). See Budhathoki v. Nielsen (PDF), 898 F.3d 504, 513 (5th Cir. 2018) (concluding “that before a state court ruling constitutes a dependency order, it must in some way address custody or at least supervision”).


[^14] SIJ is generally not an appropriate option for those children who come to the United States for the primary purpose of adoption. Although it does not apply to all SIJ cases involving adoption, SIJ classification is not meant to provide a way to circumvent the Hague Adoption Convention or other requirements for receiving legal status via adoption. See Hague Conference on Private International Law, Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134, Art. 2, 28. See 8 CFR 204.301 and 8 CFR 204.303.

[^15] The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term “eligible for long-term foster care” is defined at 8 CFR 204.11(a), as requiring that family reunification no longer be viable and that this determination would be expected to remain in place until the child reached the age of majority. USCIS interprets the TVPRA changes as a clarification that petitioners do not need to be eligible for or placed in foster care and that they may be reunified with one parent or other family members. However, USCIS requires that the reunification no longer be a viable option with at least one parent, and USCIS maintains that the court’s determination generally is meant to be in place until the

[^16] The term “parent” does not encompass a step-parent unless the step-parent is recognized as the petitioner’s legal parent under state law, such as when a step-parent has adopted the petitioner.

[^17] See INA 101(a)(27)(J)(i). See Matter of D-Y-S-C- (PDF, 305.57 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (interpreting section 101(a)(27)(J)(i) to mean that that a qualifying reunification finding must include a judicial determination that the juvenile was subjected to such parental maltreatment by one or both parents under state law).

[^18] For example, when parental reunification is no longer the goal of the child welfare authority’s plan for a permanent living situation for the child (known as a “permanency plan”). See U.S. Department of Health and Human Services, Child Welfare Information Gateway, How the Child Welfare System Works (PDF).


[^20] In circumstances where the judge does not make a final determination on parentage or makes a determination as to alleged or purported parentage, the order will not meet the statutory requirements for SIJ classification.


[^23] See 8 CFR 204.11(d)(2)(iii). The burden is on the petitioner to prove that the other judicial or administrative body is authorized or recognized by a juvenile court to make best interest determinations. See Matter of A-O-C- (PDF, 308.67 KB), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (providing, consistent with decisions in R.F.M. v. Nielsen, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and INA 101(a)(27)(J)(i), that the definition of juvenile court at 8 CFR 204.11(a) means a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles). Evidence to support this may include, but is not limited to, copies of the relevant state law(s) or court documents indicating that the judicial or administrative body is authorized to make such determinations.

[^24] As defined in this Section D, Juvenile Court Order [6 USCIS-PM J.2(D)].

[^25] For an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the custody and care and/or dependency of juveniles. See 8 CFR 204.11(a). See Perez-Olano v. Holder (PDF, 5.34 MB), Case No. CV 05-3604 (C.D. Cal. 2010) at paragraph 8.

Some states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact for the Placement of Children (ICPC). The UCCJEA is a Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws. The UCCJEA is effective only upon adoption by state legislatures. See Sections 201-204 of UCCJEA available at the Uniform Law Commission website on UCCJEA. ICPC is a binding contract between member jurisdictions. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children. Each state and the District of Columbia have enacted the provisions of the ICPC under state law.

See 8 CFR 204.11(c)(5) (stating that an alien is eligible for SIJ classification if he or she continues to be dependent on the juvenile court).


See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. 105-405 (PDF), p. 130 (1997). See Matter of D-Y-S-C- (PDF, 305.57 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (clarifying SIJ classification may only be granted upon USCIS’ consent to juveniles who meet all other eligibility criteria and establish that they sought the requisite juvenile court or administrative determinations in order to gain relief from parental abuse, neglect, abandonment, or similar basis under state law, and not primarily to obtain an immigration benefit).


See Perez-Olano v. Holder (PDF, 5.34 MB), Case No. CV 05-3604 (C.D. Cal. 2010).

For discussion on the applicability of inadmissibility grounds to SIJ-based applicants for adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7].


Chapter 3 - Documentation and Evidence

A petitioner seeking special immigrant juvenile (SIJ) classification must submit all of the following documentation to USCIS:

- Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360);[1]
- A copy of the petitioner’s birth certificate or other evidence of the petitioner’s age;[2]
- Copies of the juvenile court order(s) and administrative document(s), as applicable, that establish eligibility and evidence of the factual basis for the juvenile court’s determinations; and
- A copy of U.S. Department of Health and Human Services (HHS) consent, if applicable.

The petitioner may file Form I-360 alone or concurrently with his or her Application to Register Permanent Residence or Adjust Status (Form I-485), if there is an immigrant visa currently available for the SIJ immigrant classification and he or she is otherwise eligible.[3]
A. Juvenile Court Order(s) and Administrative Documents

1. Qualifying Juvenile Court Determinations

The juvenile court order(s) must provide the required judicial determinations regarding dependency or custody, parental reunification, and best interests. These determinations may be made in a single juvenile court order or in separate juvenile court orders. The order(s) should use language establishing that the specific judicial determinations were made under state law. This requirement may be met if the order(s) cite those state law(s), or if the petitioner submits supplemental evidence which could include, for example, a copy of the petition with state law citations, excerpts from relevant state statutes considered by the state court prior to issuing the order, or briefs or legal arguments submitted to the court. USCIS looks at the documents submitted in order to ascertain the role and actions of the court and to determine whether the proceedings provided relief to the child under the relevant state law(s). Mere copies of, or references to, state law(s), and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, may not be sufficient unless supported by evidence that the court actually relied on those laws when making its determinations. The juvenile court order may use different legal terms than those found in the Immigration and Nationality Act (INA) as long as the determinations have the same meaning as the requirements for SIJ classification (for example, “guardianship” or “conservatorship” may be equivalent to custody). Orders that just mirror or cite to federal immigration law and regulations are not sufficient.

There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.

Similar Basis under State Law

The language of the order may vary based on individual state child welfare law due to variations in terminology and local state practice in making child welfare decisions. If a juvenile court order makes the determinations based upon a state law similar to abuse, neglect, or abandonment, the petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. This requirement may be met if the elements of the state law are contained in the order, by providing a copy of the law the court relied upon and a description of how the elements of the similar basis are equivalent, or by showing that the child is entitled to equivalent juvenile court protection and intervention based on the court’s determination of the similar basis to abuse, neglect, or abandonment.

The fact that one or both parents is deceased is not itself a similar basis to abuse, abandonment or neglect under state law. A legal conclusion from the juvenile court is required that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law.

2. Final Orders

A court order for dependency or custody that clearly indicates that the order was issued for a limited purpose (for example, medical guardianship) or expires before the child reaches the age of majority is generally not sufficient for SIJ eligibility. However, the title of the court order is not necessarily controlling. For example, an order entitled “temporary” may, in fact reach the legal conclusion that reunification is not viable and is legally binding on the parties until the age of majority. In such a case, the order should generally contain language to that effect or the SIJ petitioner should submit evidence that the court intended the order to be legally in effect until the age of majority. Such evidence could include, for example, the underlying petition or copies of relevant state law.
A court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent for a time-limited period,[7] is generally not considered a custodian for purposes of establishing SIJ eligibility.[8] However, a child may be placed with a temporary caregiver in the context of a dependency proceeding (for example, when placed with a foster parent) and still meet the criteria for being dependent on a juvenile court.

3. Factual Basis and USCIS Consent

Orders that have the necessary determinations and include, or are supplemented by, the factual basis for the court’s determinations (for example, the judicial findings of fact) are usually sufficient to establish eligibility and to demonstrate that the request for SIJ classification is bona fide.[9] Where the factual basis for the court’s determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from abuse, neglect, abandonment, or a similar basis under state law, USCIS generally consents to the grant of SIJ classification.[10] If a petitioner cannot obtain a court order that includes facts that establish a factual basis for all of the required determinations, USCIS may request evidence of the factual basis for the court’s determinations. USCIS does not require specific documents to establish the factual basis or the entire record considered by the court. However, the burden is on the petitioner to provide the factual basis for the court’s determinations. Examples of documents that a petitioner may submit to USCIS that may support the factual basis for the court order include:

- Any supporting documents submitted to the juvenile court, if available;
- The petition for dependency or complaint for custody or other documents which initiated the juvenile court proceedings;
- Court transcripts;
- Affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and
- Affidavits or records that are consistent with the determinations made by the court.[11]

4. Supporting Evidence

The order or supporting evidence should specifically indicate:

- What type of relief the court is providing, such as child welfare services or custodial placement;
- With whom the child is placed, if the court has appointed a specific custodian or guardian, (for example, the name of the person, or entity, or agency) and the factual basis for this finding;
- Which of the specific grounds (abuse, neglect, abandonment, or similar basis under state law) apply to which of the parent(s) and the factual basis for the court’s determinations on non-viability of parental reunification; and
- The factual basis for the determination that it is not in the petitioner’s best interest to return to the petitioner’s or his or her parents’ country of nationality or last habitual residence (for example, addressing family reunification with family that remains in the child’s country of nationality or last habitual residence).
B. Limitations on Additional Evidence

USCIS is mindful that there are often confidentiality rules that govern disclosure of records from juvenile-related proceedings. For this reason, officers generally do not request information or documents from sources other than the SIJ petitioner or his or her legal representative.\[^{12}\]

Children often do not share personal accounts of their family life with an unknown adult until they have had the opportunity to form a trusting relationship with that adult. Therefore, officers should exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the determinations made by the juvenile court.

Additionally, the juvenile court may make child welfare placement, custody, and best interest decisions that differ from the child’s stated intentions at the time of apprehension. However, if there is significant contradictory information in the file that the juvenile court was likely not aware of or that may impact whether a reasonable factual basis exists for the court’s determinations, officers may request additional evidence from the petitioner or his or her legal representative.

However, officers may not require or request an SIJ petitioner to contact the person or family members of the person who allegedly abused, neglected, or abandoned the SIJ petitioner.\[^{13}\]

Footnotes

\[^{1}]\ See Instructions for Form I-360. There is no fee to file Form I-360 to seek SIJ classification.

\[^{2}]\ For more information on evidence that can be used to provide proof of age see 8 CFR 204.11(d)(1).

\[^{3}]\ For information on SIJ-based adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7].

\[^{4}]\ See 8 CFR 204.11(d)(2); Matter of D-Y-S-C- (PDF, 305.57 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (explaining that petitioners bear the burden of establishing the state law applied in the reunification, dependency or custody, and best-interest determinations).

\[^{5}]\ See INA 101(a)(27)(J).

\[^{6}]\ For example, under Connecticut law, a child may be found “uncared for” if the child is “homeless” or if his or her “home cannot provide the specialized care that the physical, emotional or mental condition of the child requires.” See Conn. Gen. Stat. Ann. section 46b-120(9). “Uncared for” may be similar to abuse, neglect, or abandonment because children found “uncared for” are equally entitled to juvenile court intervention and protection. The outcomes for children found “uncared for” are the same as they are for children found abused, neglected, or abandoned. See Conn. Gen. Stat. Ann. section 46b-120(8),(9); 121(a).

\[^{7}]\ See Black’s Law Dictionary (10th ed. 2014) (defining “in loco parentis”).

\[^{8}]\ A department or agency of a State, or a person or entity appointed by a state court or juvenile court located in the United States, acting in loco parentis, must not be considered a legal guardian for purposes of this section or Section 462 of the Homeland Security Act of 2002 (codified at 6 U.S.C. 279). See Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008).

[^10] See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. 105-405 (PDF), p. 130 (1997); see also Matter of D-Y-S-C- (PDF, 305.57 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (requiring that, for USCIS’ consent to be warranted, the judicial determination to find that the juvenile was subjected to such maltreatment by one or both parents under state law); Matter of E-A-L-O- (PDF, 304.17 KB), Adopted Decision 2019-04 (AAO Oct. 11, 2019) (clarifying that, for USCIS’ to consent to SIJ classification, a juvenile court dependency declaration must be issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law).

[^11] Such affidavits or records will be assigned low evidentiary value unless they are accompanied by evidence that the court considered the information contained therein in the course of issuing its judicial determinations.

[^12] USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.


Chapter 4 - Adjudication

A. Jurisdiction

USCIS has sole jurisdiction over petitions for special immigrant juvenile (SIJ) classification[^1]. Provided the petitioner is otherwise eligible, classification as an SIJ establishes eligibility to apply for adjustment of status[^2].

B. Expeditious Adjudication

The Trafficking Victims Protection and Reauthorization Act of 2008 provides that SIJ petitions be adjudicated by USCIS within 180 days[^3]. The 180-day timeframe begins on the Notice of Action (Form I-797) receipt date. If the petitioner has not submitted sufficient evidence to establish his or her eligibility for SIJ classification, the clock stops the day USCIS sends a request for additional evidence and resumes the day USCIS receives the requested evidence from the petitioner[^4].

The 180-day timeframe applies only to the initial adjudication of the SIJ petition. The requirement does not extend to the adjudication of any motion or appeal filed after a denial of a SIJ petition.

C. Interview

1. Determining Necessity of Interview

USCIS has discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition[^5]. USCIS recognizes the vulnerable nature of SIJ petitioners and generally conducts interviews of SIJ petitioners only when an interview is deemed necessary. USCIS conducts a full review of the petition and supporting evidence to determine whether an interview may be warranted. USCIS generally does not require an
interview if the record contains sufficient information and evidence to approve the petition without an in-person assessment. However, USCIS retains the discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition, as appropriate.

2. Conducting the Interview

Given the vulnerable nature of SIJ petitioners and the hardships they may face because of the loss of parental support, USCIS strives to establish a child-friendly interview environment if an interview is scheduled. During an interview, officers avoid questioning the petitioner about the details of the abuse, neglect, or abandonment suffered, because these issues are handled by the juvenile court. Officers generally focus the interview on resolving issues related to the eligibility requirements, including age.

The petitioner may bring a trusted adult to the interview in addition to an attorney or representative. The trusted adult may serve as a familiar source of comfort to the petitioner, but should not interfere with the interview process or coach the petitioner during the interview. Given potential human trafficking and other concerns, officers assess the appropriateness of the adult’s attendance in the interview and observe the adult’s interaction with the child. When appropriate, the officer may interview the child without that adult present.

D. Requests for Evidence

Additional evidence may be requested at the discretion of the officer if needed to determine eligibility. To provide petitioners an opportunity to address concerns before issuing a denial, officers generally issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID), where the evidence is insufficient to adjudicate the petition. The officer may request additional evidence for reasons such as, but not limited to:

- The record lacks the required dependency or custody, parental reunification, or best interest determinations;
- It is unclear if the order was made by a juvenile court or in accordance with state law;
- The evidence provided does not establish a reasonable factual basis for the determinations or indicate what protective relief was granted by the court;
- The record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for the court order; or
- Additional evidence is needed to determine eligibility.

E. Fraud

There may be cases where the officer suspects or determines that a petitioner has committed fraud in attempting to establish eligibility for SIJ classification. In these cases, officers follow current procedures when referring a case to Fraud Detection and National Security (FDNS).

F. Decision

1. Approval

SIJ classification may not be granted absent the consent of the Secretary of Homeland Security. DHS
delegates this authority to USCIS. Therefore, USCIS approval of the SIJ petition is evidence of DHS consent. USCIS notifies petitioners in writing upon approval of the petition.

2. Denial

If the petitioner does not provide necessary evidence or does not meet the eligibility requirements, USCIS denies the Form I-360 petition. If USCIS denies the SIJ petition, USCIS provides the petitioner with a written denial notice which includes a detailed basis for the denial. An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision. The denial notice includes instructions for filing a Notice of Appeal or Motion (Form I-290B).

3. Revocation

**Automatic Revocation**

An approved SIJ petition is automatically revoked as of the date of approval if any one of the circumstances below occurs before USCIS issues a decision on the petitioner’s application for adjustment of status:

- Marriage of the petitioner;
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under state law;
- Reversal by the juvenile court of the determination that it would not be in the petitioner’s best interest to be returned to the petitioner’s, or his or her parents’, country of nationality or last habitual residence.

USCIS issues a notice to the petitioner of such revocation of the SIJ petition.

**Revocation on Notice**

In addition, USCIS, with notice, may revoke an approved petition for SIJ classification for good and sufficient cause such as fraud, or if USCIS determines the petition was approved in error. In these instances, USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.

Under the Saravia Settlement Agreement, USCIS does not revoke a petition for SIJ classification based in whole or in part on the fact that the state court’s best interest determination was not made with consideration of the petitioner’s gang affiliation.

Footnotes


[^2] See Application to Register Permanent Residence or Adjust Status (Form I-485). Generally, an applicant may only apply to USCIS for adjustment of status if there is a visa number available for the special
immigrant classification (EB-4), and the applicant is not in removal proceedings. If an SIJ is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the adjustment application. Conversely, the applicant may seek adjustment of status with the immigration court based on USCIS’ approval of the SIJ petition. For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A], Part B, 245(a) Adjustment [7 USCIS-PM B], and Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [7 USCIS-PM F.7].


[^7] A referral to FDNS does not change the 180-day timeframe for adjudication. However, the timeframe for processing will stop or be suspended for delays caused by the petitioner. See 8 CFR 103.2(b)(10).


[^12] Revocation does not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.

[^13] The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044 (December 23, 2008), replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term “eligible for long-term foster care” is defined at 8 CFR 204.11(a) as requiring that family reunification no longer be viable. USCIS interprets this change as clarifying that the child does not need to be eligible for or placed in foster care. USCIS also views this change as modifying the regulation that requires auto-revocation upon the termination of the beneficiary’s eligibility for long-term foster care. A petition is subject to revocation if reunification with the parent is now viable where a juvenile court previously deemed reunification with that parent not viable. See Section 235(d)(1)(A) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5079 (December 23, 2008).


[^16] See 8 CFR 205.2(b).

A petitioner may submit a Notice of Appeal or Motion (Form I-290B), with the appropriate filing fee or a request for a fee waiver, to file:[1]

- An appeal with the Administrative Appeals Office (AAO);
- A motion to reconsider a USCIS decision (made by the AAO, a field office, or the National Benefits Center); or
- A motion to reopen a USCIS decision (made by the AAO, a field office, or the National Benefits Center).

The petitioner must file the appeal or motion within 30 days of the denial or dismissal, or 33 days if the denial or dismissal decision was sent by mail.[2] If the appeal relates to a revocation of an approved special immigrant juvenile (SIJ) petition, the appeal must be filed within 15 calendar days after service of the decision, or 18 days if the decision was sent by mail.[3] There is no exception to the filing period for appeals and motions to reconsider.

For a motion to reopen, USCIS may excuse the petitioner’s failure to file before this period expires where the petitioner demonstrates that the delay was reasonable and beyond his or her control.[4]

Footnotes

[^ 3] See 8 CFR 205.2(d) (revocation appeals) and 8 CFR 103.8(b) (effect of service by mail).

Chapter 6 - Data

USCIS compiles, and makes available to the public, annual reports disclosing the number of special immigrant juvenile (SIJ) petitions received, approved, and denied.[1] The number is limited to properly filed SIJ petitions. To ensure accuracy of information, officers must promptly enter all decisions on all petitions and motions related to SIJ into the relevant systems.

Footnote

[^ 1] See the USCIS website for Data Set: Form I-360 Petition for Special Immigrant Juveniles.

Part K - CNMI Resident Status

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have
moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in
the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in
the Policy Manual prevails. If you have questions or concerns about any discrepancies among these
resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 36 - Commonwealth of the Northern Mariana Islands (External) (PDF, 176.53 KB)

Volume 7 - Adjustment of Status

Part A - Adjustment of Status Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

Lawful permanent resident (LPR) status confers several significant privileges, rights, and responsibilities[1]
that invoke a commitment to greater assimilation in the United States and offers a pathway to U.S.
citizenship. These privileges, rights, and responsibilities include:

- Living permanently in the United States, provided the LPR does not commit any actions that would
  make the LPR removable under immigration law;

- Working in the United States in any legal capacity of the LPR’s qualification and choosing;

- Being protected by all laws of the United States, including state of residence and local jurisdictions;

- Obeying all laws of the United States and localities;

- Filing income tax returns and reporting income to the U.S. Internal Revenue Service and state tax
  authorities;

- Supporting the democratic form of government of the United States;[2]

- Registering with the Selective Service, if male and age 18 through 25;

- Petitioning for a spouse, unmarried children, and unmarried son(s) or daughter(s) to receive permanent
  residence; and

- Applying for U.S. citizenship once eligible.

There are two general paths to LPR status. Aliens who are outside of the United States and who are
beneficiaries of approved immigrant petitions can apply for an immigrant visa at an overseas consular office
of the U.S. Department of State. Once issued an immigrant visa, if an alien is found admissible, he or she
may be admitted into the United States as an LPR.

Aliens who are present in the United States and who are beneficiaries of approved immigrant petitions may
generally file an application with USCIS to adjust their status to that of an LPR, or they may depart the
United States and apply for an immigrant visa abroad. One reason Congress created the adjustment of status
provision was to enable certain aliens physically present in the United States to become LPRs without
incurring the expense and inconvenience of traveling abroad to obtain an immigrant visa. Congress has added
additional adjustment of status provisions to:

- Ensure national security and public safety;
- Advance economic growth and a robust immigrant labor force;
- Promote family unity; and
- Accommodate humanitarian resettlement.

B. Background

Adjustment of status to lawful permanent residence describes the process by which an alien obtains U.S. LPR status while physically present in the United States. USCIS issues a permanent resident card (Form I-551) (commonly called a green card) to the successful adjustment applicant as proof of such immigrant status.

Most adjustment of status approvals are granted based on family or employment relationships. Unlike immigrant visa petition processing where the focus is on the relationship between the petitioner and beneficiary, the focus on an adjustment application is on the applicant’s eligibility and admissibility.

The following overview provides a brief history of permanent immigration and adjustment of status, along with a summary of major developments in U.S. immigration law over the years.

1. Early Immigration Laws

Prior to the late 19th century, immigration was essentially unregulated. At that time, Congress imposed the first qualitative restrictions, which barred certain undesirable immigrants such as criminals and those with infectious diseases from entering the country.

During the 1920s, Congress established annual quotas that imposed the first numerical restrictions on immigration. This was known as the National Origins Quota System. The system limited immigration from each country to a designated percentage of foreign-born persons of that nationality who resided in the United States according to the 1910 census. These quotas did not apply to spouses and children (unmarried and under 21 years old) of U.S. citizens.

These immigration laws required all intending immigrants to obtain an immigrant visa at a U.S. embassy or consulate abroad and then travel to the United States and seek admission as LPRs. As such, these laws provided no legal procedure by which an alien already physically present in the United States could become a permanent resident without first leaving the country to obtain the required immigrant visa.

By 1935, the administrative process of pre-examination was developed so that an alien already temporarily in the United States could obtain permanent resident status more quickly and easily. In general, the pre-examination process consisted of an official determination in the United States of the alien’s immigrant visa eligibility, followed by a trip to Canada or another country for an arranged immigrant visa appointment at a U.S. consulate, and a prompt return and admission to the United States as a permanent resident. The government processed over 45,000 pre-examination cases from 1935 to 1950.

Near the onset of World War II, the U.S. government became increasingly concerned about the possibility of hostile foreign enemies living in the United States. In response, Congress enacted the Alien Registration Act of 1940, which required foreign-born persons 14 years of age and older to report to a U.S. post office, and
later to an immigration office, to be fingerprinted and register their presence in the United States. Those found to have no legal basis to remain in the United States were required to leave or were removed. Those with a valid claim to permanent residency received an Alien Registration Card.

2. Immigration and Nationality Act of 1952

The passage of the Immigration and Nationality Act (INA) of 1952 organized all existing immigration laws into one consolidated source. The INA retained a modified system of both qualitative and numerical restrictions on permanent immigration. The INA established a revised version of the controversial National Origins Quota System, limiting immigration from the eastern hemisphere while leaving immigration from the western hemisphere unrestricted.

The INA also introduced a system of numerically limited immigrant preference categories, some based on desirable job skills and others based on family reunification. Spouses and children (unmarried and under 21 years old) of U.S. citizens remained exempt from any quota restrictions.

In addition, the INA established a formal system of temporary (or nonimmigrant) categories under which aliens could come to the United States for various temporary purposes such as to visit, study, or work. For the first time, the INA also provided a procedure for aliens temporarily in the United States to adjust status to permanent resident status without having to travel abroad and undergo consular processing.

Although it has since been amended many times, the INA remains the foundation of current immigration law in the United States.

3. Post-1952 Developments

Congress amended the INA in 1965 to abolish the National Origins Quota System, creating in its place separate quotas for immigration from the eastern and western hemispheres. These amendments also established a revised preference system of six categories for family-based and employment-based categories, and added a seventh preference category for refugees. Finally, the law introduced an initial version of what has evolved into today’s permanent labor certification program.

Further amendments in 1976 and 1978 ultimately combined the eastern and western hemisphere quotas into a single worldwide quota system which limited annual immigration from any single country to 20,000 and established an overall limit of 290,000 immigrants per year.

The Refugee Act of 1980 established a separate immigration program for refugees, eliminating the existing seventh preference category, and formally adopted the legal definition of “refugee” used by the United Nations.

The Immigration Reform and Control Act (IRCA) of 1986 provided a pathway for obtaining permanent resident status to certain agricultural workers and undocumented aliens who had been continuously present in the United States since before January 1, 1982. IRCA also increased immigration enforcement at U.S. borders and established a program which, for the first time in history, required U.S. employers to verify all newly hired employees’ work authorization in the United States. This is sometimes called the employer sanctions program or the I-9 program.

Congress next enacted the Immigration Marriage Fraud Amendments of 1986 (IMFA) with the goal of deterring immigration-related marriage fraud. IMFA’s key provision stipulated that aliens who obtain immigrant status based on a marriage existing for less than 2 years be granted lawful permanent residence
initially on a conditional basis. This conditional status may be converted to full permanent resident status after 2 years, generally upon a showing that the conditional resident and his or her U.S. citizen spouse entered into the marriage in good faith and continued to share a life together.

4. Immigration Act of 1990

Congress made the most sweeping changes to the original INA by passing the Immigration Act of 1990 (IMMACT 90). Key provisions adopted by IMMACT 90 include:

- Significantly increased the worldwide quota limits on permanent immigration from 290,000 to 675,000 per year (plus up to another 125,000 for refugees);
- Established separate preference categories for family-based and employment-based immigration, including moving several special immigrant categories into the employment-based preferences and adding a new category for immigrant investors;
- Established the Diversity Visa Program, making immigrant visas available to randomly selected aliens coming from countries with historically low rates of immigration;
- Created several new nonimmigrant work visa categories: O, P, Q, and R; and
- Reorganized and expanded the types of qualitative bars to U.S. entry, known as inadmissibility or exclusion grounds.

Congress continued to refine the U.S. immigration system by enacting two laws in 1996, the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which in part were intended to improve border control, expand worksite enforcement of the employer sanctions program, and enhance removal of criminal and other deportable aliens. These laws also introduced the concept of unlawful presence as an exclusion ground, expanded the definition of aggravated felon, and eliminated or greatly restricted the scope of judicial review involving certain administrative actions and decisions by U.S. immigration authorities.

5. Other Adjustment of Status Provisions

Over the years, Congress has created several adjustment programs otherwise different from general adjustment that apply to relatively small numbers of aliens who meet highly particularized criteria. Most of these programs are found in laws that are not part of the INA.

C. Legal Authorities

- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- INA 209; 8 CFR 209 – Adjustment of status of refugees

Footnotes

LPRs cannot vote in federal elections. LPRs cannot vote in state or local elections unless otherwise permitted by state and local authorities.


[^3] This process is known as “consular processing.”


[^7] This Act is also referred to as the McCarran-Walter Act, Pub. L. 82-414 (PDF) (June 27, 1952).


[^16] This is not an exhaustive list of the legal foundations of adjustment of status. Each part of this volume contains extensive lists of legal authorities relevant to the specific adjustment of status provisions discussed.

Chapter 2 - Eligibility Requirements

A. Who Is Eligible to Adjust Status

The Immigration and Nationality Act (INA) and certain other federal laws provide over forty different ways for aliens to adjust status to lawful permanent residence. Aliens may only adjust under a particular basis if they meet the eligibility requirements for that basis at the time of filing the Application to Register Permanent Residence or Adjust Status (Form I-485). Eligibility requirements vary, depending on the specific basis for adjustment.[1]

Immigrant Categories
Aliens eligible for adjustment of status generally may apply based on one of the following immigrant categories or basis for adjustment:

- Immediate relative of a U.S. citizen; [2]
- Other relative of a U.S. citizen or relative of a lawful permanent resident under a family-based preference category; [3]
- Person admitted to the United States as a fiancé(e) of a U.S. citizen;
- Widow(er) of a U.S. citizen;
- Violence Against Women Act (VAWA) self-petitioner;
- Alien worker under an employment-based preference category; [4]
- Alien investor;
- Special immigrant; [5]
- Human trafficking victim;
- Crime victim;
- Person granted asylum status;
- Person granted refugee status;
- Person qualifying under certain special programs based on certain public laws; [6]
- Diversity Visa program;
- Private immigration bill signed into law;
- Other eligibility under a special program not listed above (for example, Nicaraguan Adjustment and Central American Relief Act (NACARA)) [7];
- Adjustment of status under INA 245(i); or
- Derivative applicant (filing based on a principal applicant).

Specific eligibility requirements for each immigrant category are discussed in the program-specific parts of this volume.

**B. Who is Not Eligible to Adjust Status**

Aliens are generally not eligible for adjustment of status if one or more of the following bars to adjustment or grounds of inadmissibility apply. However, adjustment bars do not apply to every type of adjustment pathway. Furthermore, different inadmissibility grounds may apply to different adjustment pathways.

Therefore, applicants may still be able to adjust under certain immigrant categories due to special exceptions or exemptions from the adjustment bars, inadmissibility grounds, or access to program-specific waivers of...
inadmissibility or other forms of relief.

1. Bars to Adjustment

Depending on how an alien entered the United States or if an alien committed a particular act or violation of immigration law, he or she may be barred from adjusting status. With certain exceptions, some aliens ineligible for adjustment of status under INA 245 include any alien who:

- Last entered the United States without being admitted or paroled after inspection by an immigration officer; [9]

- Last entered the United States as a nonimmigrant crewman; [10]

- Is now employed or has ever been employed in the United States without authorization; [11]

- Is not in lawful immigration status on the date of filing his or her application; [12]

- Has ever failed to continuously maintain a lawful status since entry into the United States, unless his or her failure to maintain status was through no fault of his or her own or for technical reasons; [13]

- Was last admitted to the United States in transit without a visa; [14]

- Was last admitted to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor under the Guam or CNMI Visa Waiver Program and who is not a Canadian citizen; [15]

- Was last admitted to the United States as a nonimmigrant visitor without a visa under the Visa Waiver Program; [16]

- Is deportable due to involvement in a terrorist activity or group; [17]

- Is seeking employment-based adjustment of status and who is not maintaining a lawful nonimmigrant status on the date of filing this application; [18]

- Has ever violated the terms of his or her nonimmigrant status; [19]

- Is a conditional permanent resident; [20] and

- Was admitted as a nonimmigrant fiancé(e), but did not marry the U.S. citizen who filed the petition or any alien who was admitted as the nonimmigrant child of a fiancé(e) whose parent did not marry the U.S. citizen who filed the petition. [21]

2. Grounds of Inadmissibility

Generally, an adjustment applicant is inadmissible to the United States and ineligible for adjustment of status if one or more of the grounds of inadmissibility apply to him or her. [22] However, if the adjustment applicant is eligible for and is granted a waiver of the ground of inadmissibility or another form of relief, the applicant may remain eligible for adjustment. [23]

3. Other Eligibility Requirements
Government Officials and Specialty Workers

Foreign government officials, representatives to international organizations, treaty traders and treaty investors (A, E, and G nonimmigrants) may have certain rights, privileges, immunities and exemptions not granted to other nonimmigrants. If such a nonimmigrant seeks adjustment of status, he or she must waive those rights, privileges, immunities and exemptions by filing a waiver application (Request for Waiver of Certain Rights, Privileges, Exemptions and Immunities (Form I-508)).

An Australian specialty occupation worker (E-3 nonimmigrant) has no special rights, privileges, immunities or exemptions to waive and therefore is not required to submit the waiver. Although these workers can be classified as a treaty trader,[24] the waiver requirement was established prior to the creation of the Australian specialty occupation worker classification.

In addition, any applicant admitted in an A, G, or NATO nonimmigrant status must file an Interagency Record of Request – A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status (Form I-566) with the Department of State.

Forms I-508 and I-566 may be concurrently filed with the adjustment application.

Certain Exchange Visitors[25]

Certain exchange visitors (J-1 and J-2 nonimmigrants)[26] admitted to the United States are subject to a 2-year foreign residence requirement.[27] These exchange visitors generally must reside and be physically present in the country of their last residence or the country of their nationality for a cumulative total period (in the aggregate) of at least 2 years after the end of their exchange program and after leaving the United States before they can apply for permanent residence. If such exchange visitors do not return to the country of their last residence or country of nationality for at least 2 years, in the aggregate, after the end of their exchange program, they may be ineligible for adjustment of status. However, certain exchange visitors may be eligible for a waiver of the requirement through an Application for Waiver of the Foreign Residence Requirement (Form I-612).[28]

Officers should first adjudicate the waiver request, as denial of the waiver necessarily renders the applicant ineligible for adjustment of status. Officers should not hold adjustment cases while waiting for either the applicant to submit a waiver application or the Department of State to make a recommendation on a waiver application and instead should deny the adjustment application for ineligibility based on the evidence of record.

Footnotes

[^1] For more information, see Chapter 6, Adjudicative Review [7 USCIS-PM A.6]. See Part B, 245(a) Adjustment [7 USCIS-PM B].

[^2] Spouses, unmarried children under 21 years of age, and parents (if the U.S. citizen is 21 years of age or older). See INA 201(b)(2).

[^3] This category includes the following family-based preference immigrant classifications: unmarried sons and daughters, 21 years of age and older, of U.S. citizens; spouses and unmarried children, under 21 years of age, of lawful permanent residents; unmarried sons and daughters, 21 years of age and older, of lawful permanent residents; married sons and daughters of U.S. citizens; and brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age or older). See INA 203(a).
This includes priority workers (including aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers); members of the professions holding advanced degrees or aliens of exceptional ability; or skilled workers, professionals, and other workers. See INA 203(b).

This includes religious workers, special immigrant juveniles, certain Afghans and Iraqis, certain international broadcasters, certain G-4 international organization employee or family member or NATO-6 employee or family member, certain U.S. armed forces members, Panama Canal Zone employees, certain employees or former employees of the U.S. government abroad, and certain physicians. See INA 101(a)(27).


See Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160, 2193 (November 19, 1997).

See INA 245(a)-(k) for a full list. Some of the adjustment bars listed may not apply to all applicants. For example, certain adjustment bars do not apply to immediate relatives, VAVA-based applicants, certain special immigrants, or employment-based immigrants.

See 8 CFR 245.1(b)(3).

See INA 245(c)(1). See 8 CFR 245.1(b)(2).

See INA 245(c)(2) and 8 CFR 245.1(b)(4). See INA 245(c)(8) and 8 CFR 245.1(b)(10). Immediate relatives, as defined in INA 201(b), and certain special immigrants are exempt from these bars.

See INA 245(c)(2). See 8 CFR 245.1(b)(5). Immediate relatives, as defined in INA 201(b), and certain special immigrants are exempt from this bar.

See INA 245(c)(2). See 8 CFR 245.1(b)(6). Immediate relatives, as defined in INA 201(b), and certain special immigrants are exempt from this bar. For information on fault of the applicant or technical reasons, see 8 CFR 245.1(d)(2).

See 8 CFR 245.1(b)(1).

See INA 245(c)(4). See 8 CFR 245.1(b)(7). Immediate relatives, as defined in INA 201(b), are exempt from this bar.

See INA 245(c)(4). See 8 CFR 245.1(b)(8). Immediate relatives, as defined in INA 201(b), are exempt.
from this bar.

[^17] See INA 245(c)(6).


[^19] See INA 245(c)(8). See 8 CFR 245.1(b)(10). Immediate relatives, as defined in INA 201(b), and certain special immigrants are exempt from this bar.


[^22] See INA 212. See Volume 8, Admissibility [8 USCIS-PM].

[^23] See Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


[^27] See INA 212(e). See 8 CFR 245.1(c)(2). Even when the J-1 nonimmigrant visa is obtained through fraud, the alien may still be subject to the foreign residency requirement. See Espejo v. INS, 311 F.3d 976 (9th Cir. 2002), and Matter of Park (PDF), 15 I&N 472 (BIA 1975). The foreign residence requirement does not apply to a J-2 spouse or child of a J-1 nonimmigrant who naturalized under the Military Accessions Vital to the National Interest (MAVNI) program. See Volume 12, Citizenship and Naturalization, Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329), Section G, Department of Defense Military Accessions Vital to National Interest Program, Subsection 3, Other Factors to Consider [12 USCIS-PM I.3(G)(3)].

[^28] Some waivers do not involve the filing of a form or fee, such as waivers based on requests by a U.S. government agency or state department of public health, or based on an official statement by the alien’s country that it does not object to waiving the 2-year foreign residence requirement.

Chapter 3 - Filing Instructions

A. Form Instructions

An alien typically applies for adjustment of status using the Application to Register Permanent Residence or Adjust Status (Form I-485). An applicant must file the adjustment application according to the instructions and regulations in existence at the time of filing. The form instructions have the same force as a regulation and provide detailed information an applicant must follow.[1] Therefore, an applicant should access the most recent version of the form on USCIS.gov prior to filing.

B. Definition of Properly Filed[2]

An applicant must properly file the adjustment application. Properly filed refers to an adjustment application filed:

AILA Doc. No. 19060633. (Posted 3/26/21)
At the correct filing location;
With the correct filing fees unless granted a waiver;
With the proper signature of the applicant; and
When an immigrant visa is immediately available.\[3\]

If the application is filed without meeting these requirements, USCIS rejects and returns the application. The application is not considered properly filed until it has been given a receipt date (stamped to show the actual date of receipt) by the proper location with jurisdiction over the application, including a USCIS Lockbox. Applications that are rejected and returned to the applicant do not retain a filing date.\[4\]

1. Filing Location

The filing location for an adjustment application is based on the filing category of the applicant. An applicant must verify the filing location by accessing current instructions on USCIS.gov prior to filing. USCIS may relocate an application filed at the wrong location at its discretion or reject the application for improper filing.

2. Fees

An adjustment of status applicant must submit the proper fees for both the application and collection of biometrics as specified in the form instructions, unless a fee waiver has been granted.\[5\] Biometrics fees are not required for applicants under 14 years of age or 79 years of age or older at time of filing. If an applicant turns 14 after the adjustment application is submitted but prior to final adjudication, USCIS notifies the applicant of the requirement to submit the biometric fee.

In order to lessen the financial burden on families with multiple family members applying for adjustment at the same time, children under 14 years of age filing together with at least one parent pay a lower fee. Adjustment applicants filing based on their refugee status are not required to pay any fees.\[6\]

Fee Waivers

While adjustment application fees are not generally waived, adjustment applicants in certain categories may apply for a fee waiver due to their inability to pay.\[7\] An applicant seeking a fee waiver should submit, with the adjustment application, a Request for Fee Waiver (Form I-912) or a written request, along with any required evidence of the applicant’s inability to pay the filing fee.\[8\]

Refugees adjusting status are automatically exempt from paying the adjustment of status filing fee and biometric services fee and are not required to demonstrate inability to pay.\[9\]

If USCIS denies a fee waiver request, USCIS rejects the application as improperly filed.

3. Signature Requirements

All applications must be properly signed by the applicant.\[10\]
## Acceptable and Unacceptable Signatures

<table>
<thead>
<tr>
<th>Acceptable</th>
<th>Unacceptable</th>
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<tbody>
<tr>
<td>• Original signature</td>
<td>• Typed name on signature line</td>
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<tr>
<td>• Handwritten “X,” or similar mark, in ink (including a fingerprint, if</td>
<td>• Signature by an attorney or representative signing for the requestor or</td>
</tr>
<tr>
<td>unable to write)</td>
<td>requestor’s child</td>
</tr>
<tr>
<td>• Abbreviated signature, if that is the normal signature</td>
<td>• Signature created by a typewriter, word processor, stamp, auto-pen, or</td>
</tr>
<tr>
<td>• Signature of parent or legal guardian of benefit requestor if</td>
<td>similar device[13]</td>
</tr>
<tr>
<td>requestor is under 14 years of age</td>
<td></td>
</tr>
<tr>
<td>• Signature by the benefit requestor’s legal guardian, surrogate, or</td>
<td></td>
</tr>
<tr>
<td>person with a valid durable power of attorney or similar legally binding</td>
<td></td>
</tr>
<tr>
<td>• An original signature on the benefit request that is later photocopied,</td>
<td></td>
</tr>
<tr>
<td>scanned, faxed, or similarly reproduced, unless otherwise required by</td>
<td></td>
</tr>
<tr>
<td>form instructions</td>
<td></td>
</tr>
<tr>
<td>• Electronic signature[12]</td>
<td></td>
</tr>
</tbody>
</table>

### 4. Visa Availability Requirement

Generally, aliens seeking adjustment under [INA 245(a)] may only file an adjustment application when an immigrant visa number is available in the classification under which they qualify.[14]

Immediate relatives of U.S. citizens are not subject to numerical limitations. Therefore, an immigrant visa is always immediately available to immediate relatives at the time they file an adjustment application.

In contrast, applicants seeking adjustment under an employment-based or family-based preference category must generally wait until a visa is immediately available before they may file their adjustment application.[15] These applicants can determine if a visa is available and when to file their adjustment application by referring to the U.S. Department of State (DOS) Visa Bulletin.

A new Visa Bulletin is published on a monthly basis. DOS posts two charts per visa preference category in each month’s DOS Visa Bulletin:

- Application Final Action Dates chart, which provides dates when visas may finally be issued; and
- Dates for Filing Applications chart, which provides the earliest dates when applicants may be able to apply.

In general, adjustment applicants must use the Application Final Action Dates chart to determine whether a visa is available. However, if USCIS determines there are immigrant visas available for the filing of additional adjustment applications, the Dates for Filing Applications chart may be used to determine when to file an adjustment of status application with USCIS.[16] USCIS and DOS provide information on which chart
should be used in a particular month on the USCIS website and DOS Visa Bulletin.

C. Concurrent Filings

In general, the beneficiary of an immigrant visa petition may file for adjustment of status only after USCIS has approved the petition and a visa is available. In certain instances, the beneficiary may file an adjustment application together or concurrently with the underlying immigrant petition.

Concurrent filing of the adjustment application is possible only where approval of the underlying immigrant petition would make a visa number immediately available. Concurrent filing of the adjustment application is permitted in the following immigrant categories:

- Family-based immigrants, including immediate relatives, and widow(er)s of a U.S. citizen;
- Violence Against Women Act (VAWA) self-petitioner;
- Employment-based immigrants in the 1st, 2nd, or 3rd preference categories;
- Special immigrant Amerasians;
- Special immigrant juveniles;
- G-4 international organization employees, NATO-6 employees, and certain family members; and
- Certain members of the U.S. armed forces.

D. Jurisdiction

USCIS has the legal authority to adjudicate most adjustment of status cases. An immigration judge (IJ) of the Executive Office for Immigration Review (EOIR) has jurisdiction in certain situations. Except if the applicant is an "arriving alien," the IJ (and not USCIS) has jurisdiction if an applicant is in removal proceedings, even if the proceedings have been administratively closed or if there is a final order of deportation or removal which has not yet been executed.

The IJ does not have jurisdiction of applications filed by aliens in deportation or removal proceedings if they are determined to be arriving aliens. However, there is one exception to this general rule as well. The IJ has jurisdiction over an adjustment application filed by an arriving alien in deportation or removal proceedings if all of the following apply:

- The adjustment application was properly filed with USCIS while the arriving alien was in the United States;
- The applicant departed from and returned to the United States based on a grant of an advance parole document to pursue the previously filed adjustment application;
- USCIS denied the adjustment application;
- DHS placed the arriving alien in removal proceedings either upon return to the United States on the advance parole document or after USCIS denied the adjustment application; and
- The applicant is seeking to renew his or her previously denied application for adjustment of status in
proceedings.

The IJ has jurisdiction only with respect to the application filed before the applicant left with the advance parole document. If the applicant is pursuing a new application for adjustment of status based on a new ground such as a new petition, the IJ does not have jurisdiction over the new claim. USCIS has jurisdiction over the application, even if the applicant was placed in proceedings after having been paroled into the United States to pursue a previously filed application for adjustment of status that was ultimately denied by USCIS.

USCIS has jurisdiction to adjudicate an adjustment application when the IJ does not have jurisdiction, including when arriving aliens do not meet all of the above criteria. USCIS continues to retain jurisdiction over such an arriving alien’s adjustment application even if the applicant has an unexecuted final order of removal. A removal order is considered executed once immigration authorities remove the alien from the United States or the alien departs from the United States.

Effect of Departure

In general, an adjustment applicant who departs the United States abandons his or her application unless USCIS previously granted them advance parole for such absences.

Footnotes


[^7] See 8 CFR 103.7(c). Biometrics fees may also be waived.

[^8] For more information, see the USCIS website.


[^10] For more information on signature requirements, see Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 2, Signatures [1 USCIS-PM B.2].

[^11] Must contain evidence (such as a physician's statement) indicating that the durable POA is in effect as a result of the person's disability.

[^12] For benefit requests filed electronically as permitted by form instructions, USCIS accepts signatures in an electronic format. Benefit requestors must follow the instructions provided to properly sign electronically, see 8 CFR 103.2(a)(2).
In certain instances, a stamped signature may be allowed as provided by the form instructions. For more information, see Chapter 6, Adjudicative Review, Section C, Verify Visa Availability. USCIS rejects adjustment applications filed before a visa number is available. USCIS considers several factors to determine if there is a greater supply of visas than the demand for those visas. To determine visa availability, USCIS compares the number of visas available for the remainder of the fiscal year with documentarily qualified visa applications reported by DOS; pending adjustment of status applications reported by USCIS; and historical drop-off rate of applicants for adjustment of status (for example, denials, withdrawals, and abandonments).

A TPS beneficiary who obtains USCIS’ authorization to travel abroad temporarily (as evidenced by an advance parole document issued under 8 CFR 244.15(a)) and who returns to the United States in accordance with such authorization “shall be inspected and admitted in the same immigration status the alien had at the time of departure” unless the alien is determined to be inadmissible based on certain criminal and security bars (TPS bars) listed in INA 244(c)(2)(A)(iii). See Section 304(c)(1)(A)(ii) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended. Therefore, unless those TPS bars apply, the TPS beneficiary, upon return to the United States, resumes the exact same immigration status and circumstances as when he or she left the United States. For example, if the TPS beneficiary had an outstanding, unexecuted final order of removal at the time of departure, then he or she, upon lawful return, remains a TPS beneficiary who continues to have an outstanding, unexecuted final order of removal. Similarly, if the TPS beneficiary was in removal proceedings at the time of departure but did not have a final order of removal, then he or she remains a TPS beneficiary in removal proceedings upon lawful return, unless those proceedings have been otherwise terminated. See Section 304(c)(1)(A)(ii) of MTINA, Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended.

A Record of Proceeding (ROP) is created when an adjustment application is received. While not every ROP contains the same exact information or documents, all ROPs are created in the same format and documents are placed in the file from top to bottom.
A. Initial Evidence

When reviewing an adjustment of status application, the officer must verify that the following evidence is contained in the A-file and is placed in ROP order on the left side of the file.

1. Photographs

Two passport-style photographs must be included. The photographs must be:

- 2” x 2” in color with full face, frontal view;
- On a white to off-white background, printed on thin paper with a glossy finish; and
- Be un-mounted and un-retouched.

The photographs must have been taken within 30 days of filing. [1]

2. Application to Register Permanent Residence or Adjust Status (Form I-485)

Aliens apply for permanent resident status by filing Form I-485 at the appropriate time with the correct fee and necessary documentation to establish eligibility.

3. Birth Certificate

A copy of the applicant’s foreign birth certificate or sufficient secondary evidence of birth must be submitted to establish the applicant’s country of citizenship for visa chargeability, identity, and existence of derivative relationships. [2] Each foreign birth certificate must include a certified English translation. [3]

Officers should check the Department of State’s Country Reciprocity Schedule to determine availability of birth certificates as well as acceptable secondary evidence of birth for specific countries.

4. Evidence of Admission or Parole

In most cases, an adjustment applicant is required to provide evidence of inspection and admission or parole. [4] Typical documents that prove inspection and admission or parole include:

- Copy of the entry or parole stamps in the applicant’s passport issued by U.S. Customs and Border Protection (CBP);
- Arrival/Departure Record (Form I-94);
- Form I-94 issued by USCIS at the bottom of a Notice of Action (Form I-797); or
- Authorization for Parole of an Alien into the United States (Form I-512 or I-512L).

If an applicant appears at an interview with none of the above evidence but claims to have been “waved in” at the port of entry (POE), the applicant may still be considered to have been inspected and admitted in some cases. [5] The burden of proof is on the applicant to provide sufficient evidence to establish eligibility. [6]

5. Affidavit of Support and Related Forms (Form I-864, I-864A, and I-864EZ)
An affidavit of support is required for most immediate relative and family-based immigrants. The affidavit of support is also required for any employment-based immigrant whose petitioner is the applicant’s spouse, parent, child, adult son or daughter, or sibling and in which the applicant’s family has 5% or more ownership in the business. The purpose of this form is to show the applicant has adequate means of financial support and is unlikely to become a public charge.[7]

6. Report of Medical Examination and Vaccination Record (Form I-693)

Form I-693 is required for adjustment of status applicants who either did not receive a medical examination prior to their admission to the United States or who do not have evidence of an overseas medical examination in their file. A medical examination and vaccination record must be documented for most adjustment of status applications and completed as closely as possible to submission of the adjustment application.[8] If not completed overseas, the medical examination must be completed by a designated civil surgeon in the United States and documented on this form.[9]

7. Certified Copies of Arrest Records and Court Dispositions

All applicants that have previously been arrested are required to submit original or court-certified copies of the arrest records, court dispositions or both. If an applicant’s fingerprints reveal an arrest record, the applicant’s A-file should contain a Record of Arrest and Prosecution (RAP) sheet.

If there is an arrest record, the applicant must submit an original or certified copy of the official arrest report or other statement by the arresting agency and official court records showing the disposition of all arrests, detentions, or convictions regardless of where in the world the arrest occurred. Applicants are not required to submit records for minor traffic violations, records that are not drug or alcohol-related, did not result in an arrest, or in which the only penalty was a fine of less than $500 or points on a driver’s license.

8. Evidence of Underlying Basis to Adjust Status[10]

An officer should verify the immigrant category indicated on Form I-485 as the basis for adjustment. The applicant can attach:

- A copy of the Form I-797 Approval Notice for an approved underlying immigrant visa petition;
- The underlying immigrant visa petition together with the Form I-485, if concurrently filing; or
- A copy of the Form I-797 Receipt Notice for an underlying immigrant visa petition that remains pending.

Certain adjustment applicants, however, are not required to have an underlying petition. These applicants include:

- Asylees;
- Refugees;
- Applicants eligible for certain adjustment of status programs based on certain public laws;[11]
- Persons born under diplomatic status in the United States;[12]
- Persons applying for Creation of Record; and
• Applicants who obtain relief through a private immigration bill signed into law.

In these cases, the officer should review any specific eligibility and evidentiary requirements that apply to the program or law to ensure the applicant is eligible to adjust on that basis.

9. Additional Evidence for Eligibility

Additional evidence is required for certain applicants in order to meet specific eligibility requirements. For instance, an applicant may need to submit marriage certificates or divorce decrees to establish the required relationship for the classification. Additionally, applicants under most preference categories may need to submit evidence that they are not subject to any bars to adjustment as a result of failing to maintain their nonimmigrant status, working without authorization, or otherwise violating the terms of their nonimmigrant status.

B. Unavailability of Records and the Use of Affidavits

There are certain situations where an applicant may not be able to provide the required primary evidence but may be able to submit secondary evidence. When submitting secondary evidence, an applicant must establish that the required primary document is unavailable or does not exist. [13]

1. Establishing Required Primary Document Is Unavailable or Does Not Exist [14]

To establish that a required primary document is unavailable or does not exist, an applicant must submit letters of certification of non-existence issued by the appropriate civil authority. These letters must:

• Be an original written statement from a civil authority on official government letterhead;
• Establish the nonexistence or unavailability of the document;
• Indicate the reason the record does not exist; and
• Indicate whether similar records for the time and place are available.

Certification of non-existence from a civil authority is not required where the Department of State’s Reciprocity Schedule indicates this type of document generally does not exist. An officer should consult the Reciprocity Schedule before issuing a Request for Evidence (RFE) for a missing document that is required.

If an applicant is unable to obtain a letter of certification of non-existence issued by the appropriate civil authority, the applicant or petitioner may submit evidence that repeated good faith attempts were made to obtain the required documentation.

2. Secondary Evidence

Once an applicant has demonstrated that a required primary document is unavailable, the applicant may submit appropriate secondary evidence, such as church or school records pertaining to the facts at issue.

3. Affidavits

If an applicant has demonstrated unavailability of both a required primary and secondary document, the applicant must submit at least two affidavits, or sworn written statements, pertaining to the facts at issue.
Such affidavits must be given by:

- Persons who are not parties to the underlying petition; and
- Persons who have direct personal knowledge of the events and circumstances in question.[15]

In order for an applicant to meet his or her burden of proof, the officer must examine the evidence for its probative value and credibility. For these reasons, an affidavit should include:

- The full name, address, and contact information of the affiant (person giving the sworn statement), including his or her own date and place of birth, and relationship (if any) to the applicant;
- A copy of the affiant’s government-issued identification, if available;
- Full information concerning the facts at issue; and
- An explanation of how the affiant has direct personal knowledge of the relevant events and circumstances.

Affidavits that cannot be verified carry no weight in proving the facts at issue.

Persons submitting affidavits may be relatives of the applicant and do not necessarily have to be U.S. citizens.[16]

C. Requests for Evidence (RFE)

An officer must review all documents submitted and contained within the applicant’s A-file to:

- Determine acceptability;
- Ensure all required documents are present; and
- Avoid issuing an RFE requesting information already available in the A-file.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Officer Action</th>
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</thead>
<tbody>
<tr>
<td>Any required initial evidence is incomplete, missing, or raises eligibility concerns</td>
<td>• Prepare and issue an RFE to provide the applicant an opportunity to establish his or her eligibility; or</td>
</tr>
<tr>
<td></td>
<td>• Deny the application.[17]</td>
</tr>
<tr>
<td>All required initial evidence is submitted, but the evidence submitted does not establish eligibility</td>
<td>• Prepare and issue an RFE for additional information;</td>
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<td></td>
<td>• Prepare and issue a Notice of Intent to Deny (NOID) with the basis for the proposed denial and require the applicant to submit a response; or</td>
</tr>
<tr>
<td>Scenario</td>
<td>Officer Action</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| A family member’s A-file contains a document required to establish eligibility | - Make a copy of the required document;  
- Place the copy in the applicant’s A-file in the proper ROP order; and  
- Return the original document to the family member’s A-file, in proper ROP order. |

Originals of applications and petitions must be submitted unless previously filed with USCIS. Documents typically submitted as originals with the adjustment application may include a concurrently filed petition, the medical examination report, and affidavits.

An applicant only needs to submit original documents required by regulation or form instructions and necessary to support the application. An official original document issued by USCIS or by legacy INS does not need to be submitted, unless requested. Unless otherwise required by applicable regulations or form instructions, a legible photocopy of any other supporting document may be submitted.

An officer, however, may request an original document if there is reason to question the authenticity of the document for which a photocopy has been submitted. If originals are requested to validate a photocopy, they should be returned to the applicant after review and verification unless regulations require the originals to be submitted and retained. Failure to submit a requested original document may result in denial or revocation of the underlying application or benefit. An officer may check available systems to validate evidence submitted by the applicant, as well as to verify claimed entries, prior deportations, visa issuance, and criminal history.

**Footnotes**


[^7] See [INA 213A](https://www.uscis.gov/book/export/html/68600). For detailed information on the requirements of the Affidavit of Support, see Chapter 6, Adjudicative Review, Section D, Determine Admissibility, Subsection 2, Affidavit of Support Under Section
213A of the Act (Form I-864) [7 USCIS-PM A.6(D)(2)].

[^8] For more information, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3].

[^9] For more information, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

[^10] For more information, see Chapter 6, Adjudicative Review, Section A, Verify Underlying Basis to Adjust Status [7 USCIS-PM A.6(A)].


[^16] See 8 CFR 103.2(b)(2) for more information on submitting secondary evidence and affidavits.


Chapter 5 - Interview Guidelines

All adjustment of status applicants must be interviewed by an officer unless the interview is waived by USCIS. The decision to waive the interview should be made on a case-by-case basis. The interview enables USCIS to verify important information about the applicant to determine eligibility for adjustment. For family-based applications, USCIS generally requires the Form I-130 petitioner to appear for the interview with the principal adjustment of status applicant. In addition, derivatives are also required to appear.
regardless of the filing category.

During the interview, the officer verifies that the applicant understood the questions on the application and provides the applicant with an opportunity to revise any answers completed incorrectly or that have changed since filing the application. Any unanswered questions or incomplete answers on the application are resolved at the interview. If information is added or revised, the applicant should re-sign and date the application at the conclusion of the interview.[2]

**A. Waiving the Interview**

**1. General Waiver Categories**

USCIS officers may determine, on a case-by-case-basis, that it is unnecessary to interview certain adjustment of status applicants. When determining whether to waive an interview, an officer must consider all relevant evidence in the applicant’s record.

The following list includes, but is not limited to, categories of cases where officers may decide to waive an interview:[3]

- Applicants who are clearly ineligible;[4]
- Unmarried children (under 21 years of age) of U.S. citizens if they filed a Form I-485 on their own (or filed a Form I-485 together with their family’s adjustment applications and every applicant in that family is eligible for an interview waiver);
- Parents of U.S. citizens; and
- Unmarried children (under 14 years of age) of lawful permanent residents if they filed a Form I-485 on their own (or filed a Form I-485 together with their family’s adjustment applications and every applicant in that family is eligible for an interview waiver).

If USCIS determines, however, that an interview for an applicant in any of the above categories is necessary, an officer conducts the interview. Likewise, if USCIS determines that an interview of an applicant in any other category not listed above is unnecessary, then USCIS may waive the interview.[5]

**2. Military Personnel Petitioners**

USCIS may waive the personal appearance of the military spouse petitioner; however, the adjustment applicant must appear for an interview. USCIS makes every effort to reschedule these cases so that both the petitioner and adjustment applicant can attend the interview before deployment. The adjustment applicant may choose to proceed while the petitioner is abroad.

**3. Incarcerated Petitioners**

USCIS may waive the personal appearance of a U.S. citizen spouse petitioner who is incarcerated and unable to attend the adjustment of status interview. In these situations, the adjustment applicant must appear for an interview. An officer must take all the facts and evidence surrounding each case into consideration on a case-by-case basis when deciding whether to waive the U.S. citizen spouse petitioner’s appearance.

**4. Illness or Incapacitation**
An officer may encounter instances in which it may be appropriate to waive the personal appearance of an applicant or petitioner due to illness or incapacitation. In all such instances, an officer must obtain supervisory approval to waive the interview.

**B. Relocating Cases for Adjustment of Status Interviews**

Unless USCIS determines that an interview is unnecessary, the case should be relocated to the field office with jurisdiction over the applicant’s place of residence once the case is ready for interview.

The reasons for requiring an interview may include:

- Need to confirm the identity of the applicant;
- Need to validate the applicant’s immigration status;
- The applicant entered the United States without inspection, or there are other unresolved issues regarding the applicant’s manner of entry;
- There are known criminal inadmissibility or national security concerns that cannot be resolved at a service center;
- There are fraud concerns and the service center recommends an interview;
- The applicant’s fingerprints have been rejected twice;
- The applicant has a Class A medical condition that the service center cannot resolve through a Request for Evidence (RFE);
- The applicant answered “Yes” to any eligibility question on the adjustment application, and the service center cannot determine eligibility through an RFE; or
- The service center has not been able to obtain an applicant’s A-File, T-File, or receipt file (when the applicant has multiple files).

**C. Interpreters**

An applicant may not be fluent in English and may require use of an interpreter for the adjustment interview. At the adjustment interview, the interpreter should:

- Present his or her valid government-issued identity document and complete an interpreter’s oath and privacy release statement; and
- Translate what the officer and the applicant say word-for-word to the best of his or her ability without adding the interpreter’s own opinion, commentary, or answer.

In general, a disinterested party should be used as the interpreter. An officer may exercise discretion, however, to allow a friend or relative of the applicant to act as interpreter. If the officer is fluent in the applicant’s preferred language, the officer may conduct the examination in that language without use of an interpreter.

USCIS reserves the right to disqualify an interpreter provided by the applicant if the officer believes the integrity of the examination is compromised by the interpreter’s participation or the officer determines the
intermediate is not competent to translate.

**Footnotes**

[^1] See 8 CFR 209.1(d), 8 CFR 209.2(e), and 8 CFR 245.6.


[^3] See 8 CFR 245.6. USCIS is not required to waive the interview, even if an applicant falls within one of the categories listed in 8 CFR 245.6 or in this section.

[^4] See 8 CFR 245.6 (refers to adjustment applicants clearly ineligible for adjustment of status based on INA 245(c) and 8 CFR 245.1).

[^5] Before waiving an interview for any adjustment applicant, officers should ensure that the record does not meet any of the criteria for requiring an interview. See Section B, Relocating Cases for Adjustment of Status Interviews [7 USCIS-PM A.5(B)].

**Chapter 6 - Adjudicative Review**

This chapter provides steps that should be used as a general guideline for file review when determining if an applicant is eligible for adjustment of status:

<table>
<thead>
<tr>
<th>General Guidelines for Adjudication of Adjustment of Status Application</th>
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<tbody>
<tr>
<td>• Verify underlying basis</td>
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<tr>
<td>• Determine ongoing eligibility</td>
</tr>
<tr>
<td>• Verify visa availability (if applicable)</td>
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<tr>
<td>• Determine admissibility</td>
</tr>
<tr>
<td>• Determine if favorable discretion is warranted (if applicable)</td>
</tr>
</tbody>
</table>

**A. Verify Underlying Basis to Adjust Status**

To adjust status to a lawful permanent resident, an applicant must first be eligible for one of the immigrant visa categories established by the Immigration and Nationality Act (INA) or another provision of law. The officer must verify the status of any underlying immigrant visa petition or other basis for immigrating prior to adjudicating the adjustment application.
In many cases, an underlying petition is used to form the basis for adjustment. Petitions are often already adjudicated and approved by the time the officer adjudicates the adjustment application. [1] If the underlying immigrant visa petition is still pending, the officer is responsible for determining if the beneficiary of the petition is eligible for the classification sought and adjudicating the petition prior to considering the adjustment application.

While an applicant may have only submitted a Notice of Action (Form I-797) with his or her adjustment application that referenced the underlying petition, the petition itself should be contained within the A-file and must be reviewed prior to adjudicating the adjustment application. As a matter of procedure, any underlying petition is typically ordered prior to any interview and before final adjudication of Form I-485.

There may be instances in which an adjustment applicant’s file is sent forward to the adjudicating officer prior to locating the petition. In this case, the officer should hold the final adjudication of the adjustment application in abeyance in order to locate the underlying petition and then verify that the petition is still valid and the applicant remains eligible for the classification.

There may be instances where a petition is lost. For example, there may be proof the petition was filed but USCIS cannot locate the petition, and the petition was not forwarded to the National Visa Center. If a petition is lost, the applicant must recreate the petition at no additional fee. The officer then verifies the underlying basis of adjustment or adjudicates the replacement petition if the original was still pending. A recreated petition retains the same priority date as the original lost petition.

**Security Checks and National Security Concerns**

USCIS conducts background checks on all applicants for adjustment of status to enhance national security and protect the integrity of the immigration process by ensuring that USCIS grants lawful permanent resident status only to those applicants eligible for the requested benefit. The officer must ensure that all security checks are completed, unexpired, and resolved as necessary prior to adjudicating an adjustment application.

In general, a national security concern exists when a person or organization has been determined to have a link to past, current, or planned involvement in an activity or organization involved in terrorism, espionage, sabotage, or the illegal transfer of goods, technology, or sensitive information. [2]

**B. Determine Ongoing Eligibility**

After determining the classification requested, the officer should review all the eligibility requirements for that particular classification to ensure the applicant remains eligible. As with all applications, an applicant must remain eligible for adjustment of status from the time of filing through final adjudication. [3]

If an underlying immigrant visa petition provides the basis for adjustment and has already been approved, the officer should confirm that a valid qualifying relationship continues to exist in a family-based case or that a qualifying job offer still exists in an employment-based case. While specific family-based, employment-based, and special immigrant considerations are covered in detail in other parts of this volume, the officer should note that changes to marital status or age-out issues may impact family-based or derivative cases just as changes in employment, withdrawal of a job offer, or the failure of a petitioner’s business may affect employment-based cases.

The officer should also confirm that the applicant continues to meet all eligibility requirements through the date of final adjudication, including reviewing the following:

1. **Violations of Status and Other Bars to Adjustment**
If applying under INA 245(a), an applicant must have been either inspected and admitted, or inspected and paroled, and must not be subject to any of the bars to adjustment specified in INA 245(c). These bars preclude certain aliens from adjusting status, including those who have violated their status, failed to maintain valid status, or worked without authorization. Most applicants must maintain their status up until the date of filing for adjustment of status, with the exception of those adjusting as immediate relatives and certain special immigrants. [4]

Some employment-based adjustment applicants may overcome adjustment bars under the provisions of INA 245(k). In addition, some aliens who entered without inspection or are otherwise subject to adjustment bars may still be eligible to adjust status under the provisions of INA 245(i).

2. Qualifying Family Relationship Continues to Exist

If the applicant claims a family relationship on the immigrant visa petition, that relationship must remain intact until a decision on the adjustment application, in most circumstances. [5] The officer must confirm that the applicant remains eligible to adjust status based on the relationship claimed on the underlying immigrant visa petition. Failure to maintain the relationship disqualifies the applicant in most cases or, if not disqualifying, may be a negative discretionary factor in certain types of cases.

The officer should review documentation to establish that the relationship continues. This review may include Child Status Protection Act (CSPA) age calculations to confirm that the applicant remains a child by definition. [7]

In cases of derivatives following-to-join, the derivative’s qualifying relationship to the principal applicant must have existed when the principal beneficiary obtained lawful permanent resident status and continue to exist through final adjudication of the derivative’s adjustment application for the derivative applicant to remain eligible. [8]

If the principal beneficiary becomes a permanent resident and loses his or her permanent resident status or naturalizes prior to the derivative’s adjustment, the derivative is no longer eligible for the classification as an accompanying or following-to-join family member. [9] Furthermore, a derivative may not be granted permanent resident status prior to the principal beneficiary’s obtaining permanent resident status, because the derivative has no right or eligibility for the classification apart from the eligibility of the principal beneficiary’s status, with the exception of U nonimmigrants, asylees, and refugees. [10]

3. Continuing Validity of the Employment-based Petition

The officer should verify that the employment-based adjustment applicant’s Immigrant Petition for Alien Worker (Form I-140) remains valid. The officer should determine that the applicant is either employed by the petitioner or the job offer still exists, that the employer continues to have the financial means to employ the applicant. In addition, the officer should determine that the employer continues to be a viable business, including possessing a valid business license in the county, state or jurisdiction within which it is operating.

If the adjustment application has been pending for 180 days or more, the applicant may be eligible for adjustment portability. [11] Portability allows the applicant to accept an offer of employment with either the petitioner or a different employer in the same or similar occupational classification as the position for which the petition was approved.

C. Verify Visa Availability
The Immigration and Nationality Act (INA) limits the number of immigrant visas that may be issued to aliens seeking to become U.S. permanent residents each year. U.S. Department of State (DOS) is the agency that allocates immigrant visa numbers. In most cases, an immigrant visa must be available at the time of filing the adjustment application and at the time of final adjudication, if approved.

1. Immediate Visa Availability

Congress gave immigration priority to immediate relative immigrants, defined as:

- The spouses of U.S. citizens;
- The children (unmarried and under 21 years of age) of U.S. citizens;
- The parents of U.S. citizens at least 21 years old; and
- Widows or widowers of U.S. citizens if the spouse files a petition within 2 years of the citizen’s death.\(^{[12]}\)

Immigrant visas for immediate relatives of U.S. citizens are unlimited, so the visas are always available. In other words, immediate relatives are exempt from the numerical restrictions of other immigrant categories; an immigrant visa is always immediately available at the time they file an adjustment application and at the time of final adjudication, if approved.

Below are additional categories of aliens who are exempt from numerical restrictions and may file an adjustment of status application at any time or during the time period allowed by the applicable provision of law, provided they are otherwise eligible:\(^{[13]}\)

- Persons adjusting status based on refugee or asylee status;\(^{[14]}\)
- Persons adjusting status based on T nonimmigrant (human trafficking victim) status;\(^{[15]}\)
- Persons adjusting status based on U nonimmigrant (crime victims) status;
- Persons adjusting status based on Special Agricultural Worker or Legalization provisions;\(^{[16]}\)
- Persons adjusting status based on public laws with certain adjustment of status programs;\(^{[17]}\) and
- Persons who obtain relief through a private immigration bill signed into law.

Except for human trafficking victims and Section 13 adjustment based applicants, an officer does not need to review visa availability for applicants filing in the above categories at the time of final adjudication. This includes applicants who are immediate relatives.

2. Numerically Limited Visa Availability

Immigrant visa numbers for family-based and employment-based immigrant preference categories as well as the Diversity Visa program are limited, so they are not always immediately available.

Family-sponsored preference visas are limited to a minimum of 226,000 visas per year and employment-based preference visas are limited to a minimum of 140,000 visas per year.\(^{[18]}\) By statute, these annual visa limits can be exceeded where certain immigrant visa numbers from the previous fiscal year’s allocation were...
not fully used. Both categories are further divided into several sub-categories, each of which receives a certain percentage of the overall visa numbers as prescribed by law. In addition, there are limits to the percentage of visas that can be allotted based on an immigrant’s country of birth.\[19\]

A visa queue (waiting list or backlog) forms when the demand is higher than the supply of visas for a given year in any category or country. To distribute the visas among all preference categories, DOS allocates the visas by providing visa numbers according to the prospective immigrant’s:

- Preference category;
- Country to which the visa will be charged (usually the country of birth);\[20\] and
- Priority date.

Therefore, the length of time an applicant must wait in line before being eligible to file an adjustment application depends on:

- The demand for and supply of immigrant visa numbers;
- The per-country visa limitations; and
- The number of visas allocated for the immigrant’s preference category.\[21\]

3. Priority Dates

The priority date is used to determine an immigrant’s place in the visa queue. The priority date is generally the date when the applicant’s relative or employer properly filed the immigrant visa petition on the applicant’s behalf with USCIS. A prospective immigrant’s priority date can be found on Notice of Action (Form I-797) for the petition filed on his or her behalf.\[22\] The officer should verify the priority date by reviewing the actual immigrant petition or permanent labor certification application.

Priority Dates for Family-Sponsored Preference Cases

For family-sponsored immigrants, the priority date is the date that the Petition for Alien Relative (Form I-130), or in certain instances the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), is properly filed with USCIS.

Priority Dates for Employment-Based Preference Cases

For employment-based immigrants, the priority date is established on the earliest of:

- The date the petition was properly filed with USCIS;\[23\] or
- The date the permanent labor certification application\[24\] was accepted for processing by the Department of Labor (DOL), when a labor certification is required.\[25\]

Classification Conversion

If applicable, an officer must take special priority date and visa classification rules into consideration when determining visa availability. There are some instances in which a petition filed and approved under one classification automatically converts to a new category due to circumstances that occurred since filing.\[26\] Although this does not affect the applicant’s priority date, it can affect visa availability. In addition,
for certain family-based cases, the applicant can elect to opt-out of the classification conversion when it is advantageous to do so and when eligible.

**Using Earlier Priority Dates**

An applicant may intend to use an earlier priority date than the one indicated on his or her latest petition. This situation may occur when the same petitioner in a family-based category has filed more than one petition on behalf of an alien for the same classification.\[27]\ It may also occur in certain employment-based categories. Specifically, in the event that an applicant is the beneficiary of multiple approved employment-based petitions filed under 1st, 2nd, or 3rd preference, the applicant is entitled to the earliest priority date.\[28]\ Similarly, an applicant with an approved Form I-526 filed on or after November 21, 2019, is entitled to the priority date of a previously approved 5th preference immigrant investor petition, including petitions whose approval was revoked on grounds other than those set forth below.\[29]\

The applicant typically alerts the officer of the intention to use the benefit of an earlier priority date by including an approval notice for the previous petition in the adjustment application packet.

**When Earlier Priority Dates May Not Be Used**

In general, an adjustment of status applicant may not be able to use an earlier priority date from a previous petition if any of the following occurs:

- The petition was denied, terminated, or revoked for fraud, willful misrepresentation, or material error;\[30]\[
- The beneficiary is no longer eligible for the classification for which the petition was filed and does not qualify for automatic conversion;
- DOS terminated the registration of an applicant who failed to timely file for an immigrant visa, thereby automatically revoking the petition;\[31]\ or
- The beneficiary has already used the petition to immigrate.

Applicants in the employment-based 1st, 2nd, and 3rd preference categories may not retain a priority date from an earlier approved petition to support a subsequent petition, if USCIS revoked the approval of the earlier petition because: the petition was approved in error, DOL revoked the labor certification associated with the petition, USCIS or DOS invalidated the labor certification associated with the petition, or due to fraud or the willful misrepresentation of a material fact.\[32]\

**For Employment-Based 5th Preference Cases**

As discussed above, the priority date may not be retained or conferred to any subsequently filed 5th preference immigrant petition if the alien was lawfully admitted to the United States for permanent residence using the priority date of the earlier approved petition or if USCIS revoked the approval of that petition based on a material error. Unique to the 5th preference, revocation of an approved petition for fraud or willful misrepresentation of a material fact is only a bar to priority date retention if the petitioner engaged in fraud or willfully misrepresented a material fact.\[33]\

**4. Department of State Visa Bulletin**

DOS publishes a monthly report of visa availability referred to as the Visa Bulletin. The monthly Visa
Bulletin serves as a guide for issuing visas at U.S. consulates and embassies. USCIS also uses this guide to determine whether an Application to Register Permanent Residence or Adjust Status (Form I-485) may be accepted for filing and receive final adjudication. A visa must be available both at the time an applicant files Form I-485 and at the time USCIS approves the application.[34]

DOS, in coordination with USCIS, revises the Visa Bulletin each month to estimate immigrant visa availability for prospective immigrants.[35]

The officer should consult the Department of State’s Visa Bulletin to determine whether a visa was available at time of filing and at time of final adjudication and approval. The following table provides more information on how the officer should use the Visa Bulletin.

### Using DOS Visa Bulletin to Determine Visa Availability

<table>
<thead>
<tr>
<th>Numerically Limited Visa Preference Category</th>
<th>Relevant Visa Bulletin Chart at Time of Filing</th>
<th>Relevant Visa Bulletin Chart at Time of Final Adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Family-Based Preference Categories</strong></td>
<td>See Visa Bulletin in effect at the time the adjustment application was filed to determine which chart controls <strong>(Dates for Filing Family-Sponsored Visa Applications OR Application Final Action Dates for Family-Sponsored Preference Cases chart)</strong></td>
<td>Application Final Action Dates for Family-Sponsored Preference Cases chart that is current at the time the application is approved</td>
</tr>
<tr>
<td><strong>Employment-Based Preference Categories (including Special Immigrant-Based Categories)</strong></td>
<td>See Visa Bulletin in effect at the time the adjustment application was filed to determine which chart controls <strong>(Dates for Filing Employment-Based Visa Applications OR Application Final Action Dates for Employment-Based Preference Cases chart)</strong></td>
<td>Application Final Action Dates for Employment-Based Preference Cases chart that is current at the time the application is approved</td>
</tr>
</tbody>
</table>

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**Understanding the Visa Bulletin Charts**

If the demand for immigrant visas is more than the supply for a particular immigrant visa preference category and country of chargeability, DOS considers the category and country oversubscribed and must impose a cut-off date to keep the allocation of visas within the statutory limits.

Visas are available for a prospective immigrant when the immigrant’s priority date is earlier than the cut-off date shown in the relevant Visa Bulletin chart for his or her preference category and country of birth (and chargeability).

For example, if the Visa Bulletin shows a date of 15DEC07 for China in the family-based 1st preference category (F1), visas are currently available for those immigrants who have a priority date earlier.
than Dec. 15, 2007. Sometimes the demand for immigrant visas is less than the supply in a particular immigrant visa preference category and country of birth (or country of chargeability). In this situation, the Visa Bulletin shows that category as “C.” This means that immigrant visa numbers are currently (or immediately) available to all qualified adjustment applicants and overseas immigrant visa applicants in that particular preference category and country of birth (and chargeability).

If the Visa Bulletin shows “U” in a category, this means that immigrant visa numbers are temporarily unavailable to all applicants in that particular preference category and country of birth (or country of chargeability).

5. Visa Retrogression

Sometimes a priority date that is current one month will not be current the next month, or the cut-off date will move backwards to an earlier date. This is called visa retrogression, which occurs when more people apply for a visa in a particular category than there are visas available for that month. Visa retrogression generally occurs when the annual limit for a category or country has been used up or is expected to be used up soon. When the new fiscal year begins on October 1, a new supply of visa numbers is available for allocation. Usually, but not always, the new supply returns the cut-off dates to where they were before retrogression.

In the past, DOS has notified USCIS that several visa preference categories have become fully subscribed within days of publication of the monthly Visa Bulletin. Despite this fact, applicable regulations[36] prevent USCIS from rejecting applications within that particular month, regardless of the actual availability of visa numbers.

If an officer encounters a case in which a visa was available at time of filing but is not available at time of final adjudication, the case should be retained, pre-processed, and adjudicated up to the point of final approval. If a particular applicant is ineligible for adjustment due to an issue not related to visa availability, the case may be denied accordingly because visa availability is not relevant.

All otherwise approvable employment-based and family-based cases located at a USCIS field office that do not have a visa available at the time of adjudication must be transferred to the appropriate USCIS office or Service Center once the case has been adjudicated up to the point of final adjudication. The officer should ensure that the interview and all other processing requirements, including resolution of security checks, have been completed prior to shipping the otherwise approvable case.

Final adjudication cannot be completed until a visa has been requested and DOS approves the visa request. Once a visa number becomes available, a USCIS officer will complete a final review of the adjustment application to ensure the applicant continues to meet eligibility requirements at time of final adjudication. This includes updating any expired security checks and may also include issuing a Request for Evidence (RFE) if it is unclear whether the applicant is still eligible for the particular classification or may be subject to a bar to adjustment or an inadmissibility ground, particularly in those cases that have had a long-delayed final adjudication.

6. Derivatives

In order to prevent the separation of families, the spouse or children of a preference immigrant can accompany or follow to join the principal beneficiary of an immigrant visa petition.[37] Because the spouse and children do not independently have a basis to adjust status outside of their relationship to the principal immigrant, they derive their status from the principal and are therefore known as derivatives of the principal.
“Accompany” and “follow to join” are terms of art and not defined within the INA. DOS generally considers the derivative spouse or child to be accompanying the principal when issued an immigrant visa or adjusting status within six months of the date DOS issues a visa to the principal or the date the principal adjusts status in the United States. In contrast, there is no specific time period during which a derivative must follow to join the principal.

**Derivative Spouse**

In general, the derivative spouse of a principal beneficiary may be accorded the same priority date and classification as the principal provided that:

- The marriage between the principal and the derivative spouse existed at the time the principal either adjusted status or was admitted to the United States as a lawful permanent resident (LPR);  
- The marriage continues to exist at the time of the derivative’s adjustment of status; and  
- The principal remains in LPR status at the time the derivative adjusts status.

**Derivative Child**

The derivative child of a principal beneficiary may be accorded the same priority date and classification as the principal provided that:

- The derivative child was acquired prior to the time the principal either adjusted status or was admitted to the United States as an LPR;  
- The child continues to qualify as a child under the statutory definition (unmarried and under 21 years old) or otherwise under the provisions of the CSPA, if applicable; and  
- The principal remains in LPR status at the time the derivative adjusts status.

A principal’s natural child born after the principal’s LPR admission or adjustment may accompany or follow to join the principal as a derivative if born of a marriage that existed at the time of the principal’s admission or adjustment to LPR status. For purposes of this rule, such a child is considered to have been acquired prior to the principal’s obtaining LPR status and is entitled to the principal’s priority date.

An adopted child who was not able to accompany the principal because the two-year legal custody and joint residence requirements had not yet been met when the principal immigrated may become eligible to follow to join the principal. This may apply in cases where the child still qualifies as a “child” once the legal custody and joint residence requirements are met. Residing with either adoptive parent will meet the joint residence requirement with respect to each adoptive parent.

**Derivative Spouse and Child**

Other than exceptions for U nonimmigrants, asylee derivatives, and refugee derivatives adjusting status, USCIS cannot approve the Form I-485 for a derivative applicant until the principal applicant has been granted lawful permanent resident status.

In addition, there are a few special categories where certain additional family members qualify as derivative applicants and may adjust status. These include:

- Adjustment applicants in T or U nonimmigrant status;
• Applicants under Section 13 or the Act of September 11, 1957 (Public Law 85-316); and
• Those applying as dependents under HRIFA.

More information is provided in the program-specific parts of this volume.

7. Cross-Chargeability

In certain situations, an applicant may benefit from the charging of their visa to their spouse’s or parent’s country of birth rather than their own. This is known as cross-chargeability.

In practice, cross-chargeability is used where the preference quota category is backlogged for one spouse’s country of chargeability but is current for the other spouse’s country of chargeability. The principal applicant may cross-charge to the derivative spouse’s country, and the derivative spouse may cross-charge to the principal’s country. [49]

Derivative children may cross-charge to either parent’s country as necessary. [50] Parents may not cross-charge to a child’s country. In other words, the principal applicant or derivative spouse may never use their child’s country of birth for cross-chargeability.

Whenever possible, cross-chargeability should be applied to preserve family unity and allow family members to immigrate together. [51]

Eligibility

In order to benefit from cross-chargeability, both applicants must be eligible to adjust status. A derivative using the principal’s country of chargeability may adjust status with the principal or at any time thereafter. When a principal uses the derivative spouse’s country of chargeability, both applicants are considered principal applicants: one for the purpose of conferring immigrant status and the other for the purpose of conferring a more favorable chargeability. [52] As such, the officer should approve both adjustment applications at the same time.

The following situations are examples of when applicants are eligible for cross-chargeability:

<table>
<thead>
<tr>
<th>Examples of Eligibility for Cross-Chargeability</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>If a Visa is</strong> …</td>
</tr>
<tr>
<td>Available for principal applicant</td>
</tr>
<tr>
<td>Not available for principal applicant</td>
</tr>
<tr>
<td>Available for principal applicant and derivative spouse</td>
</tr>
</tbody>
</table>
**Processing Requests for Cross-Chargeability**

If a principal applicant is filing along with a derivative spouse or child and a visa appears unavailable at first glance, the officer should check the A-files for possible cross-chargeability eligibility. Often, an applicant will affirmatively request use of cross-chargeability when filing the application. In all cases where cross-chargeability provisions apply, the files should be forwarded to the adjudicating officer with a notation that indicates possible cross-chargeability. The files should be kept together in a family pack.

**D. Determine Admissibility**

Immigration laws specify acts, conditions, and conduct that can make aliens ineligible for adjustment of status. These acts, conditions, and conduct are outlined in INA 212 and are called “grounds of inadmissibility.”

Admissibility requirements may vary based on the adjustment of status category sought. If the officer determines that the applicant is not inadmissible under any applicable grounds, then the officer may move on to other aspects of the adjudication. If the officer determines the applicant is inadmissible, the applicant may need a waiver or other form of relief to address the inadmissibility. The officer must confirm that the applicant is admissible to the United States or that any inadmissibilities are waived before making a final determination on an adjustment application. [53]

**1. Report of Medical Examination and Vaccination Record (Form I-693)**

Adjustment applicants who must show they are not inadmissible on health-related grounds are typically required to undergo an immigration medical examination performed by a USCIS-designated civil surgeon in the United States. [54] The civil surgeon records the results of the medical exam on the Report of Medical Examination and Vaccination Record (Form I-693), which is then reviewed by the officer upon adjudication of the adjustment application. Some adjustment applicants may have already undergone a medical exam overseas. In this case, the adjustment applicant may not need to repeat the medical exam in the United States or may only need to undergo the vaccination assessment.

If Form I-693 is required, the officer should carefully review the form to ensure it is properly completed and that the results of the immigration medical examination documented on the form are still valid for adjustment purposes. [54]

If Form I-693 is properly completed and the medical results still valid, the officer should review the form to assess whether the applicant is inadmissible based on any health-related ground. [56]

**2. Affidavit of Support Under Section 213A of the INA (Form I-864)** [57]

Most immediate relative and family-based immigrants, and some employment-based immigrants, are inadmissible as likely to become a public charge unless they submit an Affidavit of Support (Form I-864) with their adjustment application. The instructions for Form I-864 provide detailed information about who is required to submit an Affidavit of Support.

The officer must review the Affidavit of Support documentation to ensure the applicant and his or her sponsor meets the Affidavit of Support requirements, including that:
• The sponsor(s) signed the Affidavit of Support;

• The sponsor’s income meets or exceeds 125% of the Federal Poverty Guidelines;[58]

• The sponsor submitted his or her most recent year’s tax returns (Note: Older years are not acceptable in lieu of the most recent year’s tax return. If a copy of a tax return is submitted, then copies of W-2s or 1099s must also be submitted. If an IRS transcript is submitted, then W-2s or 1099s are not needed.);

• There is an affidavit of support from both sponsors, if there is a joint sponsor;

• Sponsor and joint sponsor provided proof of citizenship or permanent resident status; and

• Sponsor and joint sponsor must be domiciled in the United States or a U.S. territory or possession.

In addition, if a sponsor is using assets to meet the requirements, the assets must total:

• For a spouse: Three times the difference in the sponsor’s income and the 125% needed according to the poverty guidelines.

• For any other relative: Five times the difference in the sponsor’s income and the 125% needed according to the poverty guidelines.

If the officer determines that required documentation is missing or that the petitioner fails to execute a sufficient Form I-864 or Form I-864EZ that meets the requirements of INA 213A, the officer may issue an RFE requesting the missing evidence, including the need for a joint sponsor to execute a Form I-864 when applicable.

An applicant is exempt from the Affidavit of Support requirement and need not submit Form I-864 if:

• The applicant has earned or can be credited with 40 qualifying quarters (credits) of work in the United States under the Social Security Act (Note: For this purpose: A spouse can be credited with quarters of coverage earned by the other spouse during the marriage. A child can be credited with any quarters of coverage earned by each parent before the child’s 18th birthday.);

• The applicant is an intending immigrant child who will become a U.S. citizen immediately upon entry under the Child Citizenship Act of 2000 (CCA);[59]

• The applicant is the widow(er) of a U.S. citizen; or

• The applicant is a Violence Against Women Act (VAWA) self-petitioner or derivative child.

Other applicants are also exempt from filing an Affidavit of Support if they filed a Form I-485 prior to December 19, 1997[60] or if they qualify:

• Diversity Visa immigrants;[61]

• Special immigrant juveniles;[62]

• Refugees and asylees at time of adjustment of status;[63]

• Employment-based immigrants (other than those for whom a relative either filed an Immigrant Petition for Alien Worker (Form I-140) or owns 5% or more of the firm that filed the Form I-140);[64]
- Aliens granted T nonimmigrant status (human trafficking victims);
- Aliens granted U nonimmigrant status (crime victim); and
- Certain qualified aliens as described under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Applicants in these categories need not file Form I-864.

**E. Security Checks and National Security Concerns**

USCIS conducts background checks on all applicants for adjustment of status to enhance national security and protect the integrity of the immigration process by ensuring that USCIS grants lawful permanent resident status only to those applicants eligible for the requested benefit. The officer must ensure that all security checks are completed, unexpired, and resolved as necessary prior to adjudicating an adjustment application.

A national security concern exists when a person or organization has been determined to have a link to past, current, or planned involvement in an activity or organization involved in terrorism, espionage, sabotage, or the illegal transfer of goods, technology, or sensitive information, among others.

An officer must consider activities, aliens, and organizations described in statute, to determine if a national security concern exists. These include but are not limited to:

- Espionage activity;
- Illegal transfer of goods, technology, or sensitive information;
- Activity intended to oppose, control, or overthrow the U.S. Government by force, violence, or other unlawful means;
- Terrorist activity; and
- Association with terrorist organizations.

The officer should consider the totality of the circumstances to determine whether an articulable link exists between the alien (or organization) and prior, current, or planned involvement in, or association with an activity, any alien (or organization) described in any of these sections.

Applications with national security concerns require specific handling in accordance with USCIS policy and procedures.

**Footnotes**

[^1] The approval of a visa petition provides no rights to the beneficiary of the petition, as approval of a visa petition is a preliminary step in the adjustment of status process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa and adjustment of his or her status. See *Matter of Ho (PDF)*, 19 I&N Dec. 582 (BIA 1988).

(4)(B).


[^5] See INA 204(l) for exceptions due to death of the petitioner or principal beneficiary.


[^8] For more information, see Section C, Verify Visa Availability, Subsection 6, Derivatives [7 USCIS-PM A.6(C)(6)].


[^13] See INA 201(b) for a complete listing.


[^15] Although a visa is immediately available to T nonimmigrant-based adjustment applicants at the time of filing, there is an annual cap on the number of adjustments allowed each year. Up to 5,000 T nonimmigrants are allowed to adjust status each year. This does not include immediate family members. See INA 245(l).

[^16] See INA 210 and 245A.

immediately available to Section 13-based adjustment applicants at the time of filing, there is an annual cap on the number of adjustments allowed each year. Only 50 visas per year, including both principal applicants and their immediate family members, are allotted each year.

[^ 18] See [INA 201(c)] and [INA 201(d)].

[^ 19] See [INA 202(a)(2)].

[^ 20] For exceptions to this general rule, see [22 CFR 42.12].

[^ 21] For more information, see the [USCIS website].

[^ 22] Form I-797 is contained in the A-file.

[^ 23] Immigrant Petition for Alien Worker ([Form I-140]); Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360]); or Immigrant Petition by Alien Investor ([Form I-526]).

[^ 24] See the [Department of Labor’s website] to access this form. The previous version of this form was ETA Form 750.

[^ 25] See [8 CFR 204.5(d)].

[^ 26] See [INA 204(k)]. See [8 CFR 204.2(a)(4)] and [8 CFR 204.2(i)].

[^ 27] See [8 CFR 204.2(h)].

[^ 28] See [8 CFR 204.5(e)].

[^ 29] See [84 FR 35750, 35808 (PDF) (July 24, 2019)]. See [8 CFR 204.6(d)].

[^ 30] For employment-based 5th preference cases, only fraud committed by the petitioner will prevent the petitioner relying on an earlier priority date. See [8 CFR 204.6(d)]. See [84 FR 35750, 35808 (PDF) (July 24, 2019)].

[^ 31] See [INA 203(g)]. See [8 CFR 205.1(a)(1)].

[^ 32] See [8 CFR 204.5(e)(2)].

[^ 33] See [8 CFR 204.6(d)]. See [84 FR 35750, 35808 (PDF) (July 24, 2019)].

[^ 34] See [INA 245(a)(3)] and [8 CFR 245.2(a)(2)(i)(A)]. See [8 CFR 103.2(b)(1)]. For more information on determining whether a visa was available at time of filing, see Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)].

[^ 35] USCIS also provides information about the current Visa Bulletin on the [USCIS website].

[^ 36] See [8 CFR 245.1(g)(1)].

[^ 37] See [INA 203(d)].

[^ 38] See [22 CFR 40.1(a)(1)].

[^ 39] See [9 FAM 502.1-1(C)(2)], Derivative Applicants/Beneficiaries. The distinction between “accompany” and “follow to join” is relevant for certain visa classifications that may allow for one but not the other. For
instance, derivatives of certain special immigrants under INA 101(a)(27)(D)-(H) may accompany but not follow to join the principal applicant.

[^40] See 22 CFR 42.53(c). See 9 FAM 503.3-2(D), Priority Date for Derivative Spouse/Child.


[^42] See INA 201(b).

[^43] See 9 FAM 503.3-2(D), Priority Date for Derivative Spouse/Child. See Chapter 7, Child Status Protection Act [7 USCIS-PM A.7].

[^44] For instance, the principal beneficiary did not lose LPR status or did not naturalize, thereby removing the principal’s ability to confer LPR status to the derivative. See 9 FAM 502.1-1(C)(2), Derivative Applicants/Beneficiaries.

[^45] See 22 CFR 42.53(c).


[^50] See INA 202(b)(1).

[^51] See 9 FAM 503.2-4(A), Derivative Chargeability.

[^52] See 9 FAM 503.2-4(A), Derivative Chargeability.

[^53] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

[^54] For more information, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3].

[^55] For detailed information on reviewing Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Documentation, Section C, Documentation Completed by Civil Surgeon [8 USCIS-PM B.4(C)].

[^56] For more information, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].


[^58] If the sponsor is on active duty with the U.S. armed forces and is petitioning for a spouse or child, only 100% of the Federal Poverty Guidelines must be met. See Poverty Guidelines (Form I-864P).

[^59] See INA 320. An Affidavit of Support under Section 213A of the INA is not required for children who will automatically acquire citizenship under section 320 of the INA.

AILA Doc. No. 19060633. (Posted 3/26/21)
Chapter 7 - Child Status Protection Act

A. Purpose of the Child Status Protection Act

The core purpose of the Child Status Protection Act (CSPA)[1] was to alleviate the hardships faced by certain aliens who were previously classified as children for immigrant visa purposes, but who, due to the time required to adjudicate petitions, had turned 21 years old and consequently became ineligible to receive such immigrant visas.[2]

Section 101(b)(1) of the Immigration and Nationality Act (INA) defines a child as a person who is unmarried and under 21 years old.[3] CSPA does not alter this definition. Instead, CSPA provides methods for calculating an alien’s age for immigrant visa purposes. The resulting age is known as the alien’s “CSPA age.”
CSPA does not change the requirement that the alien must be unmarried in order to remain eligible for classification as a child for immigration purposes.

B. Child Status Protection Act Applicability

Aliens Covered by Child Status Protection Act

CSPA applies only to those aliens specified in the statute:

- Immediate relatives (IRs);
- Family-sponsored preference principals and derivatives;
- Violence Against Women Act (VAWA) self-petitioners and derivatives;[^4]
- Employment-based preference derivatives;[^5]
- Diversity immigrant visa (DV) derivatives;
- Derivative refugees;[^6] and
- Derivative asylees.

CSPA provisions vary based on the immigrant category of the applicant. Certain provisions of the CSPA apply to some categories of immigrants but not others. Such provisions and details regarding eligibility are described in the following subsections.[^7] CSPA only covers those immigrants explicitly listed in the statute; it does not apply to any other immigrants or nonimmigrants.

CSPA applies to both aliens abroad who are applying for an immigrant visa through the Department of State (DOS) and aliens physically present in the United States who are applying for adjustment of status through USCIS. This chapter primarily focuses on the impact of CSPA on adjustment applicants, though the same principles generally apply to aliens seeking an immigrant visa through DOS.^[8]

Effective Date

CSPA went into effect on August 6, 2002. Adjustment applicants are eligible for CSPA consideration if either the qualifying application (Application to Register Permanent Residence or Adjust Status ([Form I-485])) or one of the following underlying forms was filed or pending on or after the effective date:

- Petition for Alien Relative ([Form I-130]);
- Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360]);
- Immigrant Petition for Alien Worker ([Form I-140]);
- Application for Asylum and for Withholding of Removal ([Form I-589]);
- Registration for Classification as a Refugee (Form I-590); or
- Refugee/Asylee Relative Petition ([Form I-730]).[^9]

CSPA does not apply to adjustment applications that were subject to a final determination prior to the
effective date. However, if the qualifying underlying form was approved prior to the effective date, an applicant who applies for adjustment of status after the effective date may still qualify for CSPA coverage.\[10\]

**Certain Preference Applicants with No Adjustment Application Pending on the Effective Date**

CSPA may also still apply to a preference applicant whose immigrant petition was approved prior to August 6, 2002, and who did not have an adjustment application pending on August 6, 2002, but who subsequently applied for adjustment and was denied solely for aging out. The applicant may file an untimely motion to reopen or reconsider without a filing fee if:

- The applicant would have been considered under the age of 21 under applicable CSPA rules;
- The applicant applied for adjustment of status within 1 year of visa availability; and
- USCIS denied the adjustment application solely because the applicant had aged out.

**Impact of USA Patriot Act**

Special rules apply in cases where an adjustment applicant would otherwise age out on or after August 6, 2002. Under Section 424 of the USA PATRIOT Act, if a qualifying form was filed before September 11, 2001, then the applicant is afforded an additional 45 days of eligibility.\[11\]

### C. Immediate Relatives

#### 1. Applicability

In order to qualify for CSPA:

- The adjustment applicant must have had one of the following pending on or after the CSPA’s effective date: a qualifying Petition for Alien Relative (Form I-130), Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), or Application to Register Permanent Residence or Adjust Status (Form I-485);
- The applicant must have been under the age of 21 and unmarried at the time the qualifying Form I-130 or Form I-360 was filed; and
- The applicant must remain unmarried.

If the petitioner of a pending or approved IR spousal petition dies, the spousal Form I-130 automatically converts to a widow(er)’s Form I-360.\[12\] The widow(er)’s child(ren), if any, must be under the age of 21 and unmarried at the time of the petitioner’s death to be classified as derivatives on the automatically converted Form I-360, regardless of whether the child(ren) had a separate pending or approved Form I-130 at the time of the petitioner’s death.\[13\]

#### 2. Determining Child Status Protection Act Age

For IRs and IR self-petitioners or derivatives under VAWA, a child’s age is frozen on the date the Form I-130 or Form I-360 is filed. For derivatives of widow(er)s, a child’s age is frozen on the date the Form I-360 is filed or the spousal Form I-130 is automatically converted to a widow(er)’s Form I-360 (in other words, the date of the petitioner’s death). If the adjustment applicant was under the age of 21 at the time the petition was filed.
filed or automatically converted, the applicant is eligible for CSPA and will not age out.

D. Derivative Asylees

CSPA allows children who turn 21 years old after an asylum application is filed but prior to adjudication to continue to be classified as children and remain eligible for derivative asylum status and adjustment of status.

1. Applicability

In order to qualify for CSPA:

- The adjustment applicant must have had one of the following pending on or after the CSPA’s effective date: a qualifying Refugee/Asylee Relative Petition (Form I-730), principal applicant’s Application for Asylum and for Withholding of Removal (Form I-589), or Application to Register Permanent Residence or Adjust Status (Form I-485);

- The applicant must have been under the age of 21 and unmarried at the time the principal asylum applicant’s Form I-589 was filed; and

- The applicant must be unmarried at the time he or she seeks adjustment of status.

2. Determining Child Status Protection Act Age

For derivative asylees, an adjustment applicant’s CSPA age is his or her age on the date the principal applicant’s Form I-589 is filed. In other words, the applicant’s age is frozen on the date the Form I-589 is filed. If the applicant was under the age of 21 at the time of filing, the applicant is eligible for CSPA and will not age out.

Generally, in order to establish eligibility, a derivative asylee must have been listed on the principal applicant’s Form I-589 prior to a final decision on the principal’s asylum application. However, the derivative asylee may overcome this by providing evidence establishing the parent-child relationship, including evidence of the child’s age, and a reasonable explanation as to why the derivative was not included on the principal’s Form I-589.[14]

E. Derivative Refugees

CSPA allows children who turn 21 years old after a refugee application is filed but prior to adjudication to continue to be classified as children and remain eligible for derivative refugee status. For purposes of adjustment of status of a derivative refugee, CSPA protection is not needed because a derivative refugee does not need to remain the child of the principal refugee in order to adjust status under INA 209.[15]

1. Applicability

In order to qualify for CSPA:

- The applicant must have had a qualifying Registration for Classification as a Refugee (Form I-590) or Refugee/Asylee Relative Petition (Form I-730) pending on or after the CSPA effective date; and

- The applicant must have been under the age of 21 and unmarried at the time the qualifying Form I-590
was filed.\textsuperscript{[16]}

While the child must have been unmarried in order to qualify for refugee derivative status, he or she does not need to remain unmarried in order to adjust status under INA 209.\textsuperscript{[17]}

2. Determining Child Status Protection Act Age

For derivative refugees, an adjustment applicant’s CSPA age is his or her age on the date the principal applicant’s Form I-590 is filed. The date a Form I-590 is considered filed is the date of the principal refugee parent’s interview with a USCIS officer. The applicant’s age is frozen on the date of the refugee parent’s interview. So long as the child was under 21 on the date of the interview, he or she will not age out of eligibility for derivative refugee status or adjustment of status.

Generally, in order to qualify, the derivative refugee must be listed as a child on the principal applicant’s Form I-590 prior to a final decision. However, the derivative refugee may overcome this by providing evidence establishing the parent-child relationship, including evidence of the child’s age, and a reasonable explanation as to why the derivative was not included on the principal’s Form I-590.\textsuperscript{[18]}

F. Family and Employment-Based Preference and Diversity Immigrants

1. Applicability

CSPA applies differently to family and employment-based preference and DV adjustment applicants than it does to refugee, asylee, and IR applicants. Instead of freezing the age of the applicant on the filing date, CSPA provides a formula by which the applicant’s CSPA age is calculated that takes into account the amount of time the qualifying petition was pending. Furthermore, the applicant’s eligibility depends not only on the CSPA age calculation but also on whether the applicant sought to acquire lawful permanent residence within 1 year of visa availability.\textsuperscript{[19]}

In order for a family or employment-based preference or DV applicant to qualify for CSPA, he or she must meet the following requirements:

- The applicant must have had a qualifying petition\textsuperscript{[20]} or adjustment application pending on or after the CSPA effective date;

- The applicant’s calculated CSPA age must be under 21 years old;

- The applicant must remain unmarried; and

- The applicant must have sought to acquire lawful permanent residence within 1 year of visa availability, absent extraordinary circumstances.\textsuperscript{[21]}

2. Child Status Protection Act Age Calculation

For family (including VAWA)\textsuperscript{[22]} and employment-based preference and DV categories, an adjustment applicant’s CSPA age is calculated by subtracting the number of days the petition on which the applicant seeks to adjust status was pending (pending time) from the applicant’s age on the date the immigrant visa becomes available to him or her (age at time of visa availability).\textsuperscript{[23]} The formula for calculating CSPA age is
as follows:

Age at time of visa availability - Pending time = CSPA Age

While an applicant must file an adjustment application or otherwise seek lawful permanent resident status in order to benefit from CSPA, the date the applicant files an adjustment application is not relevant for the CSPA age calculation.\[24\]

Example

The applicant is 21 years and 4 months old when an immigrant visa becomes available to him or her. The applicant’s petition was pending for 6 months. The applicant’s CSPA age is calculated as follows:

21 years and 4 months - 6 months = 20 years and 10 months

Therefore, the applicant’s CSPA age is under 21.

If an applicant has multiple approved petitions, the applicant’s CSPA age is calculated using the petition underlying the adjustment of status application.

Example

An applicant is listed as a derivative on an approved Form I-140 filed by his or her parent’s employer. The employer rescinds the parent’s job offer, but the parent receives a job offer from a second employer. The second employer files a new Form I-140 for the parent, and the applicant is listed as a derivative on this second approved Form I-140. The parent files an adjustment of status application based on the second Form I-140 and is approved.

The derivative applicant’s CSPA age is calculated using the petition underlying the principal beneficiary’s adjustment of status application, in other words, the second Form I-140. The derivative may be eligible to retain the priority date from the first Form I-140, but the CSPA calculation uses the second petition, because this is the petition through which the principal beneficiary obtained adjustment of status.

3. Determining Length of Time Petition Was Pending

For family and employment-based preference adjustment applicants, the length of time a petition was pending (pending time) is the number of days between the date that it is properly filed (filing date)\[25\] and the approval date. The formula for determining the length of time the petition was pending is as follows:

Approval Date - Filing Date = Pending Time

Example

The applicant’s mother filed a petition on the applicant’s behalf on February 1, 2016. USCIS approved the petition on August 1, 2016.

August 1, 2016 - February 1, 2016 = 6 months (or 182 days)

Therefore, the applicant’s petition pending time is 6 months (or 182 days).

Pending time includes administrative review, such as motions and appeals, but does not include consular returns.
For DV applicants, the number of days the petition was pending is the period of time between the first day of the DV application period for the program year in which the principal applicant qualified and the date on which notifications that entrants have been selected become available. In other words, the pending time is the period of time between the start of the DV Program registration period to the date of the DV Selection Letter.

Example

The DV Program registration period began on October 1, 2012, and the DV Selection Letter is dated May 1, 2013.

May 1, 2013 - October 1, 2012 = 7 months

Therefore, the applicant’s pending time is 7 months.

4. Determining Age at Time of Visa Availability

In order to calculate an adjustment applicant’s CSPA age according to the formula above, the officer must first determine the age at time of visa availability.

In order for the immigrant visa to be considered available, two conditions must be met:

- The petition must be approved; and
- The visa must be available for the immigrant preference category and priority date.

Therefore, the date the visa is considered available for family and employment-based preference applicants is the later of these two dates:

- The date of petition approval; or
- The first day of the month of the DOS Visa Bulletin that indicates availability for that immigrant preference category and priority date.

For DVs, the date a visa is considered available is the first day on which the principal applicant’s rank number is current for visa processing.

Determining When an Applicant May File an Adjustment Application

Adjustment applicants can determine when to file their applications by referring first to the USCIS website and then to the DOS Visa Bulletin.

In September 2015, DOS and USCIS announced a revision to the Visa Bulletin, which created two charts of dates. DOS publishes a new Visa Bulletin on a monthly basis. Since October 2015, the Visa Bulletin has featured two charts per immigrant preference category:

- Dates for Filing chart; and
- Final Action Dates chart.

USCIS designates one of the two charts for use by applicants each month. Applicants must check the USCIS website to see which chart to use in determining when they may file adjustment applications.
Applicants cannot rely on the DOS Visa Bulletin alone because the Visa Bulletin merely publishes both charts; it does not state which chart can be used. The DOS Visa Bulletin website contains a clear warning to applicants to consult with the USCIS website for guidance on whether to use the Dates for Filing chart or Final Action Dates chart.

Visa Bulletin Final Action Dates Chart used for Child Status Protection Act Age Determination

While an adjustment applicant may choose to file an adjustment application based on the Dates for Filing chart, USCIS uses the Final Action Dates chart to determine the applicant’s age at the time of visa availability for CSPA age calculation purposes. Age at time of visa availability is the applicant’s age on the first day of the month of the DOS Visa Bulletin that indicates availability according to the Final Action Dates chart.

An applicant who chooses to file an adjustment application based on the Dates for Filing chart may ultimately be ineligible for CSPA if his or her calculated CSPA age is 21 or older at the time his or her visa becomes available according to the Final Action Dates chart.

5. Impact of Visa Retrogression on Child Status Protection Act Age Determination

The impact of visa retrogression depends on:

- Whether the adjustment applicant filed the application before or after the retrogression, and
- Whether the applicant filed the application based on the Dates for Filing or the Final Action Dates chart.

Retrogression After Applicant Filed Adjustment Application

If an eligible adjustment applicant filed an adjustment application but the visa availability date subsequently retrogresses, USCIS holds the application until the visa becomes available again and the application can be adjudicated.

If the applicant filed an adjustment application based on the Final Action Dates chart, and his or her CSPA age at the time of filing the application was under 21, then the applicant’s CSPA age is locked in through final adjudication of the application. However, if the applicant filed based on the Dates for Filing chart, the applicant’s age is not immediately locked in at the time of filing. Rather, the applicant’s CSPA age is calculated and locked in when his or her visa becomes available according to the Final Action Dates chart.

Example 1: Application Filed Based on Dates for Filing Chart

The applicant files an adjustment application in March based on the Dates for Filing chart. However, it is not until May 1 that the Final Action Dates chart indicates availability for the applicant’s immigrant preference category and priority date (based on the Final Action Dates chart). In July, the visa retrogresses.

In this case, USCIS calculates the applicant’s CSPA age using May 1 as the visa availability date. If the applicant’s calculated CSPA age was under 21, his or her CSPA age is locked in through final adjudication and USCIS holds the application until the visa becomes available again (based on the Final Action Dates chart).

Example 2: Application Filed Based on Final Action Dates Chart

In May, the Final Action Dates chart indicates availability for the applicant’s immigrant preference category and priority date. The applicant files an adjustment application in June, and then the visa retrogresses in July.
(based on the Final Action Dates chart). In this case, USCIS calculates the applicant’s CSPA age using May 1 as the visa availability date (based on the Final Action Dates chart). If the applicant’s calculated CSPA age was under 21, his or her CSPA age is locked in through final adjudication and USCIS holds the application until the visa becomes available again.

For both examples, if the applicant’s calculated CSPA age was 21 or older using the May 1 visa availability date, the applicant has already aged out and will not be eligible when the visa becomes available again. In these cases, USCIS denies the application.

Retrogression Before Applicant Files Adjustment Application

If a visa initially becomes available (based on the Final Action Dates chart) and then retrogresses before the adjustment applicant has filed an adjustment application, the applicant’s age is not locked in. When the visa becomes available again (based on the Final Action Dates chart), the applicant’s age is calculated based on the new visa availability date. If the applicant’s CSPA age is over 21 at the time of subsequent visa availability, he or she is no longer eligible for CSPA. Therefore, it is always in the applicant’s best interest to apply for adjustment of status as soon as possible when a visa first becomes available according to the Final Action Dates chart, so as to lock in his or her CSPA age.

Example 3: Retrogression Before Filing

In May, the Final Action Dates chart indicates availability for the applicant’s immigrant preference category and priority date. In July, the visa retrogresses before the applicant has filed an adjustment application. Because the applicant has not yet filed an adjustment application, his or her age is not locked in and will be calculated based upon the next visa availability date.

G. Sought to Acquire Requirement

In order for family-sponsored and employment-based preference and DV adjustment applicants to benefit from the CSPA age calculation, they must seek to acquire lawful permanent residence within 1 year of visa availability. This requirement does not apply to refugee derivatives, asylee derivatives, and IRs.

1. Satisfying the Sought to Acquire Requirement

An adjustment applicant may satisfy the sought to acquire requirement by any one of the following:

- Properly filing an Application to Register Permanent Residence or Adjust Status (Form I-485);
- Submitting a completed Immigrant Visa Electronic Application (Form DS-260), Part I to the Department of State (DOS);
- Paying the immigrant visa fee to DOS;
- Paying the Affidavit of Support (Form I-864) review fee to DOS (provided the applicant is listed on the Affidavit of Support); or
- Having a properly filed Application for Action on an Approved Application or Petition (Form I-824) filed on the applicant’s behalf.

Actions an applicant might take prior to filing an adjustment application, such as contacting an attorney or organization about initiating the process for obtaining a visa that has become available or applying for
permanent residence, are not equivalent to filing an application and do not fulfill the sought to acquire requirement. However, USCIS may excuse the applicant from the requirement as an exercise of discretion if the applicant is able to establish that the failure to satisfy the sought to acquire requirement within 1 year was the result of “extraordinary circumstances.”[41]

From the date of visa availability, the applicant has 1 year to fulfill the sought to acquire requirement. If the applicant does not seek to acquire within 1 year of visa availability, he or she cannot benefit from the age-out protections of the CSPA. Officers should review the comprehensive list of final action dates broken out by year on the DOS Visa Bulletin website to determine whether the applicant had a prior 1-year period of visa availability. Officers may use the comprehensive list to track movement of dates over time but should confirm consequential dates in the relevant monthly bulletin.

2. Visa Availability and the Sought to Acquire 1-Year Period

The date of visa availability is the date of petition approval or the first day of the month of the DOS Visa Bulletin that indicates availability for that immigrant preference category and priority date according to the Final Action Dates chart, whichever is later.[42] From the date of visa availability, family and employment-based preference and DV adjustment applicants have 1 year in which to seek to acquire permanent resident status in order to qualify for CSPA coverage.[43]

While the Final Action Dates chart determines the date of visa availability and the 1-year sought to acquire period for CSPA purposes, an applicant may choose to file an adjustment application based on the Dates for Filing chart. In this case, the applicant will have filed prior to the date of visa availability according to the Final Action Dates chart. If an applicant files based on the Dates for Filing chart prior to the date of visa availability according to the Final Action Dates chart, the applicant still will meet the sought to acquire requirement. However, the applicant’s CSPA age calculation is dependent on visa availability according to the Final Action Dates chart.[44] Applicants who file based on the Dates for Filing chart may not ultimately be eligible for CSPA if their calculated CSPA age based on the Final Action Dates chart is 21 or older.

Impact of Visa Retrogression on the 1-Year Sought to Acquire Requirement

When visa availability retrogresses before a continuous 1-year period has elapsed, the applicant has another 1-year period to seek to acquire when the visa once again becomes available. The adjustment applicant then has 1 year from the subsequent date of visa availability to seek to acquire.

If a continuous 1-year period of visa availability elapsed and the applicant did not seek to acquire during the 1-year period, the applicant cannot benefit from the age-out protections of the CSPA. The applicant already had a continuous 1-year period in which to seek to acquire.

For purposes of CSPA, only retrogression in the Final Action Dates chart is relevant. The applicant has 1 year to meet the sought to acquire requirement when a visa becomes available according to the Final Action Dates chart. Any retrogression in the Dates for Filing chart is not considered retrogression for CSPA purposes and does not affect the 1-year sought to acquire period.

Example 1

A visa initially becomes available to the applicant according to the Final Action Dates chart on March 1, 2016. Four months later, on July 1, 2016, visa availability according to the Final Action Dates chart retrogresses. The visa subsequently becomes available again the following year on May 1, 2017. Since the applicant only had 4 months of time in which to seek to acquire during the initial period of availability, the applicant has a full 1-year period beginning May 1, 2017 in which he or she may seek to acquire.
Example 2

A visa initially becomes available to the applicant according to the Final Action Dates chart on March 1, 2016. Thirteen months later, on April 1, 2017, visa availability according to the Final Action Dates chart retrogresses. Two months later, on June 1, 2017, the visa becomes available again according to the Final Action Dates chart. Under these facts, the applicant will not have another 1-year period to seek to acquire in this case. It does not matter that a visa became available again on June 1 because the applicant has already had the opportunity to seek to acquire for a continuous 1-year period. The applicant cannot benefit from the age-out protections of the CSPA.

3. Extraordinary Circumstances

Adjustment applicants who fail to fulfill the sought to acquire requirement within 1 year of visa availability may still be able to benefit from CSPA if they can establish that their failure to meet the requirement was the result of extraordinary circumstances.

In order to establish extraordinary circumstances, the applicant must demonstrate that:

- The circumstances were not created by the applicant through his or her own action or inaction;
- The circumstances directly affected the applicant’s failure to seek to acquire within the 1-year period; and
- The delay was reasonable under the circumstances.

Examples of extraordinary circumstances that may warrant a favorable exercise of discretion include, but are not limited to:

- Serious illness or mental or physical disability of the applicant during the 1-year period;
- Legal disability, such as instances where the adjustment applicant suffered from a mental impairment, during the 1-year period;
- Instances where a timely adjustment application was rejected by USCIS as improperly filed and was returned to the applicant for corrections where the deficiency was corrected and the application re-filed within a reasonable period thereafter;
- Death or serious illness or incapacity of the applicant’s attorney or legal representative or a member of the applicant’s immediate family; and
- Ineffective assistance of counsel, when certain requirements are met.

An applicant may only establish extraordinary circumstances due to ineffective assistance of counsel (the applicant’s legal representative or attorney) if he or she completes the following:

- The applicant must submit an affidavit explaining in detail the agreement that was entered into with counsel regarding the actions to be taken and what information, if any, counsel provided to the applicant regarding such actions;
- The applicant must demonstrate that he or she has made a good faith effort to inform counsel whose integrity or competence is being questioned of the allegations brought against him or her and that counsel has been given an opportunity to respond; and
The applicant must indicate whether a complaint has been filed with the appropriate disciplinary authorities about any violations of counsel’s legal or ethical responsibilities, or explain why a complaint has not been filed.

When considering a claim of extraordinary circumstances, the officer should weigh the totality of the circumstances and the connection between the circumstances presented and the failure to meet the sought to acquire requirement within the 1-year period, as well as the reasonableness of the delay. In order to warrant a favorable exercise of discretion, the circumstances must truly be extraordinary and beyond the adjustment applicant’s control.

Commonplace circumstances, such as financial difficulty, minor medical conditions, and circumstances within the applicant’s control (such as when to seek counsel or begin preparing the application package), are not considered extraordinary. Furthermore, the fact of being or having been a child is common to all applicants seeking protection under the CSPA and does not constitute extraordinary circumstances.

When an applicant seeks to acquire after the 1-year period of visa availability has elapsed and does not provide an explanation or evidence of extraordinary circumstances, the officer issues a Notice of Intent to Deny (NOID) to give the applicant an opportunity to rebut the apparent ineligibility.

4. Remedies for Certain Adjustment Applicants Who Failed to Seek to Acquire

Motions to Reopen Following Matter of O. Vazquez

Denials that were based on the failure to seek to acquire and issued prior to the decision in Matter of O. Vazquez[46] were proper based on the law in effect at the time of the decision. However, USCIS considers untimely motions to reopen for denials issued after the Matter of O. Vazquez precedent (June 8, 2012), but only if the denial was based solely on the adjustment applicant’s failure to seek to acquire within 1 year.

Applicants must file the Notice of Appeal or Motion (Form I-290B) with the proper fee and should present their claim that the finding in Matter of O. Vazquez constitutes changed circumstances justifying the reopening of the adjustment application. Officers consider new evidence of extraordinary circumstances submitted with the motion to reopen, consistent with the guidance in this section.

Certain Preference Applicants Who Did Not Have an Adjustment Application Pending on the Effective Date

CSPA may still apply for a preference applicant who did not have an adjustment application pending on August 6, 2002, and who did not timely seek to acquire. A preference applicant whose visa became available on or after August 7, 2001 who did not seek to acquire within 1 year of such visa availability but who would have qualified for CSPA coverage had he or she applied, but for prior policy guidance concerning the CSPA effective date, may still apply for adjustment of status.

H. Summary of Child Status Protection Act Applicability

The following table outlines immigrant categories covered by CSPA, methods by which CSPA age is calculated, whether the sought to acquire requirement applies, and references to legal authorities and additional guidance.
### Summary of CSPA Applicability

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<tbody>
<tr>
<td><strong>Derivative Refugees</strong>[47]</td>
<td>CSPA age is frozen on the date the principal refugee parent’s Form I-590 is filed (the date of the parent’s interview with USCIS)</td>
<td>No</td>
<td>See INA 207(c)(2)(B) and INA 209(a)(1). See Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section F, Special Considerations for Refugee Adjustment of Status Applicants, Subsection 2, Child Status Protection Act Provisions [7 USCIS-PM L.2(F)(2)].</td>
</tr>
<tr>
<td><strong>Derivative Asylees</strong></td>
<td>CSPA age is frozen on the date the principal asylee parent’s Form I-589 is filed.</td>
<td>No</td>
<td>See INA 208(b)(3)(B). See Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section C, Derivative Asylee Continues to be the Spouse of Child of the Principal Asylee, Subsection 2, Derivative Asylees Ineligible for Adjustment of Status [7 USCIS-PM M.2 (C)(2)].</td>
</tr>
<tr>
<td><strong>Immediate Relatives (including VAWA)</strong>[48]</td>
<td>CSPA age is frozen on the date the Form I-130 or Form I-360 is filed.</td>
<td>No</td>
<td>See INA 201(f). See AFM 21.2(e) (PDF, 2.86 MB), The Child Status Protection Act of 2002.</td>
</tr>
<tr>
<td><strong>Derivatives of Widow(er)s</strong></td>
<td>CSPA age is frozen on the date the Form I-360 is filed or the date the Form I-130 is automatically converted to a widow(er)’s Form I-360.</td>
<td>No</td>
<td>See INA 201(f).</td>
</tr>
<tr>
<td><strong>Family-</strong></td>
<td>CSPA age is calculated by Yes. To benefit from See INA 203(h).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

[47]: USCIS-PM L.2(F)(2)

[48]: USCIS-PM M.2 (C)(2)
<table>
<thead>
<tr>
<th>Immigrant Category</th>
<th>CSPA Age Determination</th>
<th>Does Sought to Acquire Requirement Apply?</th>
<th>Legal Authorities and Additional Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sponsored Preference Principals and Derivatives (including VAWA)</td>
<td>subtracting the number of days the petition was pending from the applicant’s age on the date an immigrant visa becomes available to the applicant.</td>
<td>the CSPA age determination, applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.</td>
<td>See AFM 21.2(e) (PDF, 2.86 MB), The Child Status Protection Act of 2002.</td>
</tr>
<tr>
<td>Employment-Based Preference Derivatives</td>
<td>CSPA age is calculated by subtracting the number of days the petition was pending from the applicant’s age on the date an immigrant visa becomes available to the applicant.</td>
<td>Yes. To benefit from the CSPA age determination, applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.</td>
<td>See INA 203(h).</td>
</tr>
<tr>
<td>Diversity Immigrant Visa Derivatives</td>
<td>CSPA age is calculated by subtracting the number of days the petition was pending from the applicant’s age on the date an immigrant visa becomes available to the applicant.</td>
<td>Yes. To benefit from the CSPA age determination, applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.</td>
<td>See INA 203(h).</td>
</tr>
</tbody>
</table>

### Footnotes


[^2] The situation in which aliens can no longer be classified as children for immigrant visa purposes due to turning 21 is commonly referred to as “aging out.”


Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act (PDF, 104.96 KB), issued August 17, 2004.

[^5] Eligible derivatives of special immigrants are covered by CSPA as their immigrant visas fall under the employment-based fourth preference visa category. For more information, see Part F, Special Immigrant-Based (EB-4) Adjustment [7 USCIS-PM F].

[^6] The CSPA protects a derivative refugee from aging out prior to his or her refugee admission, but such protection is not needed at the adjustment stage because a derivative refugee does not need to remain the spouse or child of the principal refugee in order to adjust status under INA 209. See INA 209(a)(1).

[^7] See Section H, Summary of Child Status Protection Act Applicability [7 USCIS-PM A.7(H)] for a condensed guide to basic provisions for each category of CSPA-eligible immigrants.


[^9] Pending time may also include administrative review, such as motions and appeals, but does not include consular returns.


[^13] A child of a widow(er) who is ineligible to be included as a derivative may be eligible for consideration under INA 204(l) or humanitarian reinstatement under 8 CFR 205.1(a)(3)(i)(C)(2). See Chapter 9, Death of Petitioner or Principal Beneficiary [7 USCIS-PM A.9] for more information.

[^14] See Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section C, Derivative Asylee Continues to be the Spouse or Child of the Principal Asylee [7 USCIS-PM M.2(C)].


[^16] The date a Form I-590 is considered filed is the date of the principal refugee parent’s interview with a USCIS officer.


[^19] See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)] for detailed information.

[^20] Qualifying underlying forms include Petition for Alien Relative (Form I-130); Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360); and Immigrant Petition for Alien Worker (Form I-140). For DVs, the qualifying petition is the DV Program electronic entry form. See 9 FAM 502.6-4, Diversity Visa Processing.
See INA 203(h) and 204(k).

In addition to CSPA protections, VAWA self-petitioners and derivatives who turn 21 prior to adjusting status may be eligible for age-out protections provided in the Victims of Trafficking and Violence Protection Act (VTPVA) of 2000, Pub. L. 106-386 (PDF) (October 28, 2000). VAWA self-petitioners and derivatives who do not qualify for CSPA may qualify for age-out relief under VTPVA. See INA 204(a)(1)(D)(i)(I) and INA 204(a)(1)(D)(i)(III). Officers should follow guidance in Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act (PDF, 104.96 KB), issued August 17, 2004.

For CSPA purposes, the age at time of visa availability is the applicant’s age when his or her visa is available according to the Final Action Dates chart in the DOS Visa Bulletin. See Subsection 4, Determining Age at Time of Visa Availability [7 USCIS-PM A.7(F)(4)]. VAWA derivatives who age out prior to adjusting status are considered self-petitioners for preference status and retain the priority date of their parents’ Form I-360 VAWA petition. See INA 204(a)(1)(D)(i)(III).

See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)] for detailed information.

While the priority date is often the same as the filing date (also referred to as the receipt date), there are instances in which the priority date is not the same, such as in employment-based cases based on the filing of a labor certification. The priority date should not be used for purposes of determining CSPA eligibility. Instead, the filing date (receipt date) is the appropriate date.

For DVs, the qualifying petition is the DV Program electronic entry form. See 9 FAM 502.6-4, Diversity Visa Processing.

In addition to providing the individual monthly visa bulletins, the DOS Visa Bulletin website also provides a comprehensive list of final action dates broken out by year. Officers may use the comprehensive list to track movement of dates over time but should confirm consequential dates in the relevant monthly bulletin.

The rank number is the number following the two-letter region code and should correspond with cut-off numbers available in the Visa Bulletin.

For more information, see Chapter 3, Filing Instructions, Section B, Definition of Properly File, Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)]. DV applicants also use the DOS Visa Bulletin to determine visa availability.

See USCIS.gov news release.

USCIS typically designates one of the two charts within 1 week of the publication of the Visa Bulletin.

Applicants in the F2A category who are ineligible for CSPA according to the Final Action Dates chart may continue to pursue their adjustment of status applications based on the petition automatically converting to the F2B or F1 category. See INA 203(h)(3).

In order to qualify under CSPA, the applicant must also remain unmarried through final adjudication and must seek to acquire within 1 year of availability. See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)].

Seek or sought to acquire is used as shorthand in this chapter to refer to this requirement.
VAWA preference cases are subject to the sought to acquire requirement, but VAWA IRs are not.

See Chapter 3, Filing Instructions, Section B, Definition of Properly File [7 USCIS-PM A.3(B)].

Submitting a Form DS-260 that covers only the principal applicant does not meet the sought to acquire requirement for a derivative child.


Applicants may file the Form I-824 concurrently with the adjustment application. A previously filed Form I-824 that was denied because the principal applicant's adjustment application had not yet been approved may serve as evidence of having “sought to acquire.” See 9 FAM 502.1-1(D)(6). Sought to Acquire LPR Status Provision, for more information regarding how overseas applicants may satisfy the sought to acquire requirement in the consular processing context.

For more information, see Subsection 3, Extraordinary Circumstances [7 USCIS-PM A.7(G)(3)].

For DVs, the date a visa is considered available is the first day on which the principal applicant’s rank number is current for visa processing.

Though the CSPA technically requires DV derivatives to seek to acquire within 1 year, this requirement does not generally affect DV derivatives, as they are only eligible to receive a visa through the end of the specific fiscal year in which the principal applicant was selected under INA 203(c). See INA 204(a)(1)(I).

For more information, see Section F, Family and Employment-Based Preference and Diversity Immigrants, Subsection 4, Determining Age at Time of Visa Availability [7 USCIS-PM A.7(F)(4)].

In Matter of O. Vazquez, the Board of Immigration Appeals (BIA) ruled that extraordinary circumstances could warrant the exercise of discretion to excuse an applicant who failed to meet the sought to acquire requirement during the 1-year period. See Matter of O. Vazquez (PDF), 25 I&N Dec. 817 (BIA 2012).

In Matter of O. Vazquez, the BIA ruled that extraordinary circumstances could warrant the exercise of discretion to excuse an applicant who failed to meet the sought to acquire requirement during the 1-year period. See Matter of O. Vazquez (PDF), 25 I&N Dec. 817 (BIA 2012).

This includes Form I-730 beneficiaries.

For more detailed guidance on CSPA applicability and VAWA, see INA 204(a)(1)(D)(i) and Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act (PDF, 104.96 KB), issued August 17, 2004.

For more detailed guidance on CSPA applicability and VAWA, see INA 204(a)(1)(D)(i) and Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act (PDF, 104.96 KB), issued August 17, 2004.

Chapter 8 - Transfer of Underlying Basis

An adjustment of status applicant whose application is based on a particular immigrant category occasionally
prefers to have the pending application considered under another category. Examples include:

- An applicant who originally applied for adjustment based on a pending or approved employment-based petition and later married a U.S. citizen now prefers to adjust based on a family-based petition filed by the new U.S. citizen spouse.

- An applicant who originally applied for adjustment as the spouse of a U.S. citizen, but now prefers to adjust under an employment-based category in order to avoid the conditional residence requirements. [1]

- An applicant who applied for adjustment concurrently with a pending employment-based petition in one preference category and subsequently had another employment-based petition filed by a different (future) employer in a different preference category.

- An applicant who applied for adjustment based on a pending or approved special immigrant petition and now wishes to adjust based on a subsequently filed family or employment-based petition.

- An applicant who applied for adjustment based on an approved or pending immigrant petition, but is now a Diversity Visa Program lottery winner.

The decision to grant or deny a transfer request is always discretionary. There are several factors to consider when determining whether to grant a transfer request.

### A. Eligibility Requirements

When considering a request to transfer the basis of an adjustment application, the officer should consider the following guidance.

#### 1. Continuing Eligibility to Adjust Status

In order to transfer an adjustment application from one basis to another, there must be no break in the continuity of the applicant’s underlying eligibility to adjust prior to submitting the transfer request. If an applicant does not maintain eligibility up until the transfer is requested, a transfer cannot be granted. The date the transfer request is received is the controlling date for determining whether the eligibility continued, not the date the actual transfer request is reviewed or granted.

**Example: Transfer Request Involving Break in Continuity of Underlying Eligibility**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 16, 2010</td>
<td>An applicant has a family-based petition approved based on marriage to a lawful permanent resident.</td>
</tr>
<tr>
<td>June 16, 2010</td>
<td>The applicant applies for adjustment of status based on the approved petition.</td>
</tr>
<tr>
<td>August 4, 2010</td>
<td>The applicant divorces his permanent resident spouse.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>--------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>October 1, 2010</td>
<td>The applicant’s new spouse files a petition for the applicant based on the new marriage.</td>
</tr>
<tr>
<td>November 10, 2010</td>
<td>The applicant appears for an adjustment of status interview with a divorce decree from the first marriage, a marriage certificate from the current marriage, and receipt notice of the petition filed October 1, 2010. The applicant requests a transfer.</td>
</tr>
</tbody>
</table>

In this case, the applicant failed to maintain continuity of eligibility because the first petition approval was automatically revoked at the moment the first marriage was dissolved. Accordingly, the adjustment application cannot be transferred and the applicant must file a new adjustment application for the new petition.

Adjustment Application Supported by Petition or Basis At All Times

The replacement petition must be properly filed and designated as the new basis for the pending adjustment application before the initial petition supporting the adjustment application is withdrawn, denied, or revoked. Additionally, if the new basis requires that the underlying petition first be approved prior to filing an adjustment application, a transfer request will be denied unless the replacement petition was approved prior to the request. [2]

If the petition upon which the pending adjustment application was initially based has been revoked [3] before the applicant makes a proper request for a transfer, then the applicant cannot meet the continuing eligibility requirement. In some cases, revocation of a petition is automatic and takes effect as soon as a triggering event occurs. [4]

In other cases, USCIS must follow a formal revocation process before the revocation takes effect. [5] Continuing eligibility ends upon revocation. If the new basis of eligibility is not sought (in other words, the transfer request has not been received and approved by USCIS) before the revocation takes effect, the adjustment application cannot be transferred.

Fraud

If the original adjustment application was based on a petition determined to have been filed fraudulently or with willful misrepresentation, the principal adjustment applicant or the beneficiary of that petition is considered to have never been eligible for adjustment of status and therefore cannot meet the continuing eligibility requirement.

Likewise, anyone whose adjustment application is dependent upon that principal adjustment applicant’s eligibility is also ineligible. If a principal’s adjustment application is denied based on a determination of fraud, any accompanying derivative’s application must also be denied.
2. Continuing Pendency of the Adjustment Application

An adjustment application cannot be transferred from one basis to another if there are any breaks in the continuity of the application, including if the applicant chooses to withdraw the application or the application is denied because the applicant failed to appear for a scheduled interview without sufficient justification.

A transfer cannot be granted once a final decision has been made on an adjustment application, whether granted, denied, or withdrawn, even if USCIS reopens or reconsiders the final decision.

3. Eligibility for Substituted Category

The applicant must provide evidence of eligibility for the new immigrant category in support of the request to transfer to a new eligibility basis. Evidence required can be found on the adjustment application’s filing instructions. The transfer request should be treated as if it were a new filing and the applicant should provide the necessary documentation to establish eligibility for the new adjustment category.

The burden of proof for establishing eligibility under the new immigrant category is on the applicant. An officer does not need to make a full eligibility determination or pre-adjudicate the adjustment application prior to making a decision on the request, even though establishing eligibility may positively impact the decision as to whether to grant the request.

*Inadmissibility and INA 245(c) Bars to Adjustment*

The officer should consider that an applicant seeking to transfer the basis of a pending adjustment application may become subject to inadmissibility grounds or adjustment bars under that new basis. This could arise when the applicant is transferring from a basis that is exempt from certain inadmissibility grounds or adjustment bars to a basis that is not exempt from the same inadmissibility grounds or bars to adjustment. As a matter of discretion, the officer may deny a transfer request in these circumstances.

**Example: Transfer Subjecting Applicant to Inadmissibility Grounds or Adjustment Bars**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 18, 2011</td>
<td>An applicant applies for adjustment of status as the spouse of a U.S. citizen after recently getting married.</td>
</tr>
<tr>
<td>July 23, 2011</td>
<td>An employer petitions for the applicant.</td>
</tr>
<tr>
<td>September 3, 2011</td>
<td>The employer’s employment-based petition is approved.</td>
</tr>
<tr>
<td>October 21, 2011</td>
<td>The applicant requests a transfer to adjust status based on the employment-based petition instead of as the spouse of a U.S. citizen.</td>
</tr>
</tbody>
</table>

In this case, the applicant requested the transfer to avoid the conditional residence requirements. Because the applicant is no longer seeking to adjust as the spouse of a U.S. citizen (immediate relative), the applicant would no longer qualify for the special exemptions from adjustment bars applicable to immediate relatives.
relatives. As a result, the applicant may become subject to any applicable bars, unless an INA 245(k) exemption applies. An officer may exercise discretion to deny the transfer request in such cases.

4. Visa Immediately Available

When an applicant requests a transfer of the adjustment application from one basis to another, the priority date must be current for the category the applicant wishes to use. In order to transfer an adjustment application to a new basis involving a preference classification, the applicant must be the beneficiary of a pending or approved visa petition which has a visa available.

The date on which the transfer request is filed controls for purposes of determining whether an immigrant visa number is available, not the date on which the initial petition supporting the adjustment application was filed. For example, in order for an applicant who concurrently files an adjustment application with a preference petition filed by Employer A on March 3, 2013 to transfer the pending adjustment application to another preference petition on August 25, 2014, an immigrant visa number must be immediately available on August 25, 2014, under the new basis.

**Priority Date**

With limited exceptions, a priority date is not transferable from one petition to another. [6]

In general, the priority date of the replacement petition attaches to the pending adjustment application. This is done regardless of whether the priority date is earlier or later than the priority date of the initial petition supporting the adjustment application, except where applicable regulations permit retention of priority dates (allowing for use of the earliest priority date) in certain employment-based 1st, 2nd, and 3rd preference cases. [7]

**Choosing Between Numerically Limited Category and Non-Numerically Limited Category**

In general, an officer should adjust the applicant under the non-numerically limited category in order to leave a visa preference number available for other immigrants in cases where an applicant is eligible to adjust status under both a numerically limited category and a non-numerically limited category.

5. Exercise of Discretion

Whether to grant or deny a transfer request is a matter of discretion. Except for simple transfers between the first three employment-based categories, the adjustment applicant should not assume that transfer requests will be automatically granted. Other than the general eligibility requirements listed above, an officer may consider the effects of additional processing time required to gather evidence to support the applicant’s new claim. The officer may look more favorably on those requests that include submission of all required initial evidence that supports the new basis for adjustment.

In addition, the officer may consider the following:

- The reason(s) for the request;
- The availability or unavailability of documentation to support the new claim;
- The degree of difficulty in obtaining needed receipt files from other USCIS offices;
- The degree of difficulty in determining the applicant’s continued eligibility from the first underlying petition or basis; and
• The extent of processing steps already taken on the adjustment application.

All of these factors may result in processing delays which may be unacceptable to USCIS or the applicant. Requests that involve jurisdiction constraints or difficulties, or that are projected to greatly lengthen the processing time of the adjustment application, may result in the request being denied.

6. Other Eligibility Consideration

Transfer to INA 245(i) as New Underlying Basis for Adjustment

If an applicant initially filed for adjustment under INA 245(i) and paid the required additional $1000 fee, then the applicant need not pay again when requesting a transfer as long as continuity of eligibility is maintained during the transfer. However, if the applicant’s initial adjustment application was not under the provisions of INA 245(i), and the applicant is now seeking a transfer to a basis which qualifies under INA 245(i), then the applicant must pay the additional $1,000 and file Supplement A to Form I-485.

Special Programs Containing Filing Deadlines

Certain programs require that an applicant apply for adjustment of status by a given statutory deadline. In order to transfer the basis of an adjustment application to one of these special programs, the applicant would have to make the request no later than the filing deadline of the special program.

B. Filing Requirements

1. New Application or Fee Not Required

An applicant may submit a transfer request, in writing, to the USCIS office with jurisdiction over the application if eligibility can be established. Generally, no new adjustment application or filing fee is required. As noted above, however, a request to convert to a INA 245(i) adjustment would require payment of the additional $1,000 fee and filing of Supplement A to Form I-485.

2. Request Must Be Made in Writing

The adjustment applicant must request in writing that USCIS transfer his or her pending adjustment application from one basis to another.

If an applicant verbally requests transfer of an adjustment application, for instance, during the adjustment interview, an applicant should sign and date a written statement to that effect. The interview could then proceed without further delay provided the applicant remains eligible to immediately adjust under the new classification.

C. Petition Considerations

Prior to adjudication of an adjustment application, USCIS may allow the applicant to transfer a pending adjustment application to a different petition or basis regardless of whether the petition that forms the new basis for the pending adjustment application has already been approved or is pending, if allowable by law or regulation and provided certain requirements are met.

Only one petition may form the basis of an adjustment application at any given time. The applicant must
clearly designate in writing which petition serves as the new basis of the adjustment application. Several steps are required to ensure that the petition that forms the new basis for the pending adjustment application is properly matched with a pending adjustment application.

If concurrent filing is allowed, then transfer applicants are generally instructed to:

- Submit the new petition (with proper filing fee and signature) with a signed letter requesting that his or her pending adjustment application be transferred to the new petition. Include a cover sheet (preferably highlighted with colored paper) stating, “REQUEST FOR TRANSFER OF PENDING FORM I-485 (CASE #) TO ENCLOSED PETITION.”

- Include a copy of the adjustment application’s receipt notice with the new petition filing.

- Include evidence of eligibility for the new immigrant category in support of the transfer request to transfer to a new eligibility basis. A new adjustment application and fee are not required (see INA 245(i) exception above).

If concurrent filing is not allowed, then transfer applicants are generally instructed to wait until the new petition is approved before submitting a signed letter requesting the pending adjustment application be transferred, with the other documentation mentioned above.

Once an applicant makes a request to transfer a pending adjustment application from one basis to another and if the transfer request is granted, the original petition no longer supports the adjustment application. This rule applies even if the original petition is approved. The transfer request must be made sufficiently ahead of the time of adjudication of the adjustment application in order to give USCIS reasonable time to match up the replacement petition with the pending adjustment application. An officer must deny transfer requests received on or after the date the adjustment application is finally adjudicated.

1. Approved Petition to an Approved Petition

The beneficiary of an approved petition with a pending adjustment application may replace the approved petition with a different approved petition as the basis for the pending adjustment application.

2. Approved Petition to a Pending Petition

The beneficiary of an approved petition with a pending adjustment application may replace the approved petition with a pending petition as the new basis for the pending adjustment application in certain categories. The new basis must allow for filing of an adjustment application prior to approval of the petition (concurrent filing), or the transfer cannot occur and should be denied.

3. Pending Petition to an Approved Petition

An adjustment applicant with a concurrently filed and pending immigrant petition may replace the pending petition with a subsequently filed and approved petition as the basis for the pending adjustment application.

4. Pending Petition to a Pending Petition

An adjustment applicant with a concurrently filed and pending petition may request to transfer the adjustment application to another pending petition, provided that the new basis allows for the filing of the adjustment application prior to approval of the underlying petition.
D. Portability Provisions

The portability provisions of the American Competitiveness in the Twenty-First Century Act (AC21)[11] allow certain adjustment applicants with approved employment-based immigrant visa petitions in the 1st, 2nd, and 3rd preference categories to change jobs and employers if the adjustment application has been pending for 180 days or more, provided that the applicant’s new job offer is in the same or similar occupational classification as the job for which the petition was initially filed. Adjustment applicants are not eligible for portability if their approved immigrant visa petitions are based on classification as an alien with extraordinary ability or alien for whom USCIS has waived the job offer and labor certification requirements in the national interest.[12]

If an employment-based applicant requests to transfer the adjustment application to a different employment-based category based on a new Form I-140, the applicant may not utilize the portability provisions, if applicable, until 180 days or more after making the transfer request. The applicant’s new job offer must be in the same or similar occupational classification as the job for which the petition was initially filed. In essence, transferring the basis of the adjustment application resets the adjudication clock for purposes of portability eligibility.[13]

National Interest Waiver Physicians

Physicians, including specialty care physicians who work in a Physician Scarcity Area, with an approved immigrant petition based on a national interest waiver (NIW) may be employed by a petitioning employer or self-employed. These physicians agree to work full-time in clinical practice in either a Veterans Affairs (VA) health care facility or in a geographical area or areas designated by the Secretary of Health and Human Services as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area.[14] NIW physicians are not eligible for portability under the provisions of AC21.

NIW physicians may change employers or become self-employed while retaining the priority date of the initial approved immigrant petition. To do this, NIW physicians with an approved immigrant petition and a pending application for adjustment of status may either self-petition based on an intent to establish their own medical practice or become the beneficiary of a second petition from a different employer.[15] In order to continue to be eligible for the NIW, the new employment must take place in a VA health care facility or in a geographical area or areas designated by the Secretary of Health and Human Services as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area.[16] If USCIS approves the new petition (including a self-petition), USCIS matches the new petition with the pending adjustment of status application, and the NIW physician retains the priority date from the initial immigrant petition.[17]

Some physicians with an approved immigrant petition based on an NIW may be subject to the 2-year home residence requirement of INA 212(e). Due to this 2-year home residence requirement and its related waiver, there are additional restrictions on the eligibility of such a physician to transfer his or her adjustment application to a new NIW immigrant petition. Such physicians may seek a waiver of the 2-year home residence requirement under INA 214(l) by agreeing to practice medicine full-time for not less than 3 years in a medically underserved area or a VA health care facility (or engage in medical research or training with a federal agency).[18] This agreement is a contract with a specific health facility or health care organization; if the physician fails to fulfill the terms of that contract, then he or she would again be subject to the 2-year home residence requirement.[19]

An NIW physician may satisfy the requirements to waive the 2-year home residence requirement and the 5
years of service for the NIW at the same time, if the physician’s employment meets the criteria for each.

USCIS only allows the transfer of the adjustment application to a new NIW immigrant petition[20] if the NIW physician has already fulfilled the required service for the waiver of INA 212(e) or has obtained a waiver in some other way.

E. Decision on Transfer Request

If the transfer request is granted, the applicant is not permitted to withdraw the request or request transfer of the adjustment application to a third basis at a later time except for possible transfers between the first three employment-based categories.

F. Derivative Beneficiaries’ Adjustment Applications

In order to transfer a derivative beneficiary’s adjustment application, the principal adjustment applicant must maintain eligibility up until the time of the transfer request and the relationship between the principal and dependent must continue to exist. If there is a break in either the principal’s eligibility or in the relationship, the derivative’s application cannot be transferred to a new basis. In addition, if the principal transfers his or her adjustment application to another basis that does not allow for derivatives, the derivative loses eligibility for adjustment of status at the time of the transfer and the derivative’s adjustment application must be denied.

In the case of a derivative whose principal continues to maintain eligibility for adjustment and in which the relationship between the principal and derivative continues to exist, the derivative may request a transfer of the adjustment application from one basis to another and is not limited to transferring to another derivative category. For example, an applicant who meets all the other considerations could transfer from applying for adjustment as the dependent spouse of the sibling of a U.S. citizen to applying for adjustment as a principal applicant under an employment-based category.

Footnotes


[^2] See Section C, Petition Considerations, Subsection 2, Approved Petition to a Pending Petition [7 USCIS-PM A.8(C)(2)] and Subsection 4, Pending Petition to a Pending Petition [7 USCIS-PM A.8(C)(4)].


[^6] See 8 CFR 204.2(h)(2) and 8 CFR 204.5(e) for exceptions.


[^8] For example, adjustment under Division A, Section 902 of the Haitian Refugee Immigration Fairness Act (HRIFA), Pub. L. 105-277 (PDF), 112 Stat. 2681, 2681-538 (October 21, 1998), or the Nicaraguan Adjustment and Central American Relief Act (NACARA), Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160, 2193 (November 19, 1997).
If, instead of requesting a transfer request, an applicant files a second adjustment application under a new basis, any fee paid by the applicant should not be refunded. However, if the applicant or his or her legal representative was advised by USCIS or legacy INS that a new application and fee were required in order to transfer from one adjustment basis to another, the applicant may request and USCIS may approve a refund of any fees paid for the second adjustment application.

See Section A, Eligibility Requirements [7 USCIS-PM A.8(A)] and Section B, Filing Requirements [7 USCIS-PM A.8(B)].

See Pub. L. 106-313 (PDF) (October 17, 2000).

See 8 CFR 204.5(e)(5). See INA 204(j). Although these aliens are not eligible for AC21 portability, they are permitted to change employers, including becoming self-employed. Aliens of extraordinary ability do not require a job offer, but must show clear evidence that they intend to work in the area of their expertise. See 8 CFR 204.5(h)(5). Aliens for whom USCIS has waived the job offer and labor certification requirements in the national interest must file a new Form I-140 if they desire to change employers or establish their own practice. See 8 CFR 204.12(f).

Portability of an underlying employment-based petition should not be confused with the transfer of the adjustment application to a new petition or basis. Applicants who wish to avail themselves of AC21 portability need not request transfer of the adjustment application.


See 8 CFR 204.12(f)(1)-(2).

See 8 CFR 204.12(f)(1)-(2).

See INA 214(l)(1)(D).

See INA 214(l)(2)(B).

A self-petition or a petition filed by a new employer.

Chapter 9 - Death of Petitioner or Principal Beneficiary

A. General

In the past, a petition could not be approved if the petitioner died while the petition remained pending. In 2009, Congress addressed this scenario with a new statutory provision, INA 204(l). This provision gave aliens the ability to seek an immigration benefit through a deceased qualifying relative in certain circumstances.

An officer may approve an adjustment application, certain petitions, and related applications adjudicated on or after October 28, 2009, if:

- The applicant resided in the United States when the qualifying relative died;
The applicant continues to reside in the United States on the date of the decision on the pending application; and

The applicant is at least one of the following:

- A beneficiary of a pending or approved immediate relative immigrant visa petition;
- A beneficiary of a pending or approved family-based immigrant visa petition, including both the principal beneficiary and any derivative beneficiaries;
- Any derivative beneficiary of a pending or approved employment-based immigrant visa petition;
- The beneficiary of a pending or approved Refugee/Asylee Relative Petition (Form I-730);
- An alien admitted as a derivative T or U nonimmigrant; or
- A derivative asylee.[4]

This applies to an adjustment of status application adjudicated on or after October 28, 2009, even if the qualifying relative died before October 28, 2009. If a petition or application was denied on or after October 28, 2009, without considering the effect of INA 204(l), and INA 204(l) could have permitted approval, USCIS must, on its own motion, reopen the case for a new decision in light of this new law.

1. Qualifying Relatives

An alien’s deceased relative must meet the definition of qualifying relative in order for the alien to be eligible to continue to seek an immigration benefit through that person.

Although Congress did not expressly define “qualifying relative” in this situation, it did provide a list of those who may continue to seek an immigration benefit through the qualifying relative.[5] Therefore, for purposes of seeking adjustment of status, USCIS infers that qualifying relative means a person who immediately before death was:

- The petitioner of an immediate relative immigrant visa petition;[6]
- The petitioner or principal beneficiary of a family-sponsored immigrant visa petition;
- The principal beneficiary of a widow(er)’s self-petition;
- The principal beneficiary of an employment-based immigrant visa petition;
- The petitioner of a Refugee/Asylee Relative Petition (Form I-730);[7]
- The principal alien admitted as a T nonimmigrant;
- A VAWA self-petitioner;[8] or
- The principal asylee granted asylum.

2. Residency Requirement

An applicant must have resided in the United States when the qualifying relative died, and continues to reside...
in the United States to adjust status based on the deceased qualifying relative.\(^\text{[9]}\)

INA 204(l) defines an applicant’s residence as his or her “principal, actual dwelling place in fact, without regard to intent.”\(^\text{[10]}\) If the applicant’s residence was in the United States at the required times, the applicant meets the residency requirement.

An applicant who was temporarily abroad when the qualifying relative died does not need to prove that he or she still resides in the United States. Further, the statutory definition of residence does not require the applicant to show that his or her presence in the United States is lawful. Execution of a removal order, however, terminates an alien’s residence in the United States.

3. Derivatives

For purposes of derivative beneficiaries,\(^\text{[11]}\) as long as any one surviving beneficiary of a covered petition meets the residence requirement, then the petition may be approved despite the death of the qualifying relative. All the beneficiaries may immigrate to the same extent that would have been permitted if the qualifying relative had not died.\(^\text{[12]}\) It is not necessary for each beneficiary to meet the residence requirements in order to remain eligible to adjust.

B. Effect on Adjustment Application

The officer may approve an adjustment application that was pending when the qualifying relative died if:

- The applicant meets the residency requirement;\(^\text{[13]}\)
- The underlying petition is approved before the death of the qualifying relative, the underlying petition is approved under INA 204(l), the pre-death approval of the underlying petition is reinstated;\(^\text{[14]}\) or the alien was admitted as a derivative T nonimmigrant or as a derivative asylee under INA 208(b)(3); and
- The applicant meets all other adjustment requirements.

If a beneficiary was eligible to adjust at the time of filing, that eligibility remains despite the subsequent death of a qualifying relative.

Applicants who seek adjustment based on a derivative asylum grant or as a derivative T nonimmigrant may also still be eligible to apply for adjustment in light of INA 204(l), despite the death of the qualifying relative. However, the applicant must establish eligibility for adjustment apart from the qualifying relative’s death.

INA 204(l) does not limit or waive any other eligibility requirements or adjustment bars that apply, other than the requirement for a petitioner or principal beneficiary. Therefore, the applicant must have been eligible to apply for adjustment at the time of filing and at final adjudication, including admissibility and visa availability, if applicable.\(^\text{[15]}\) In addition, the applicant must not be barred from adjusting status.\(^\text{[16]}\)

For example, the death of the qualifying relative does not relieve an applicant seeking adjustment under INA 245(a) of the need to establish a lawful inspection and admission or inspection and parole, among other requirements for 245(a) adjustment.\(^\text{[17]}\)

The applicant may request the approval or reinstatement of a petition, or adjustment of status notwithstanding the death of a qualifying relative under the following circumstances:
• If the applicant had not yet filed for adjustment at the time the qualifying relative died, the beneficiary may either apply for adjustment once USCIS approves or reinstates approval of the underlying petition, if applicable, or the applicant may include a request for INA 204(l) relief with the adjustment application, or
• If there was a properly filed adjustment application pending at the time the qualifying relative died, the applicant should notify USCIS of the death before USCIS adjudicates the adjustment application.

1. Admissibility and Waivers

INA 204(l) does not automatically waive any ground of inadmissibility that may apply to an adjustment applicant. The applicant must be admissible, or must obtain a waiver of inadmissibility or other form of relief available, before adjustment may be granted.

Affidavit of Support and Public Charge Considerations

The death of the qualifying relative does not relieve the applicant of the need to have a valid and enforceable Affidavit of Support (Form I-864), if required. The Affidavit of Support establishes that the sponsored applicant is not likely to become a public charge and therefore is not inadmissible on such ground.

If the petitioner dies, the applicant typically must obtain a substitute sponsor to continue to be eligible for adjustment of status. A substitute sponsor is needed even if the deceased petitioner has completed the Affidavit of Support.

However, the death of the principal beneficiary has no bearing, by itself, on the sufficiency of the Affidavit of Support. In these cases, if the Affidavit of Support has not been filed but is required, then the original petitioner must still file an Affidavit of Support for the derivative applicants to be able to adjust.

Effect of Death of Qualifying Relative on Waiver Adjudication

Even though INA 204(l) does not impact adjustment requirements related to admissibility and waivers, the provision does “remove ineligibility based solely on the lack of a qualifying family relationship.” Since INA 204(l) affects not only the visa petition and adjustment application but also any related application, USCIS has determined that INA 204(l) provides the discretion to grant a waiver or other form of relief from inadmissibility to a qualifying applicant, even if the qualifying relationship that would have supported the waiver has ended through death. It is not necessary for the waiver or other relief application to have been pending when the qualifying relative died.

A waiver or other relief application may be approved despite the death of the qualifying relative if:

• A petition or adjustment application was pending or approved when the qualifying relative died; and

• The applicant meets the residency requirement.

If a pending petition or application to which INA 204(l) applies is denied despite INA 204(l), the applicant may not obtain approval of a waiver or other relief under INA 204(l).

Some waivers require a showing of extreme hardship to a qualifying relative, who must be either a U.S. citizen or lawful permanent resident (LPR). Since the legislation intends to have INA 204(l) extend not only to the approval of the pending petition, but also to any related applications, the fact that the qualifying relative has died should be noted in the waiver decision. If the qualifying relative who died is the same qualifying relative to whom extreme hardship must be established in order to grant a waiver, USCIS treats the

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qualifying relative’s death as the functional equivalent of a finding of extreme hardship. However, for this to apply, the deceased relative must have been a U.S. citizen or LPR at the time of death.\[25\]

A finding of extreme hardship permits, but does not compel, a favorable exercise of discretion.\[26\] As with any other discretionary waiver application, the officer should weigh the favorable factors against any adverse factors. Extreme hardship is just one positive factor to be weighed in the discretionary determination.\[27\] The conduct that made the alien inadmissible is itself an adverse factor.\[28\] For example, if the alien is inadmissible based on criminal grounds, the officer considers the nature, seriousness, and underlying circumstances of the crime to determine the weight given to this adverse factor.

## 2. Conditional Residency

If an adjustment applicant would have received permanent residence on a conditional basis due to the recent nature of the marriage to the petitioning spouse, but the petitioning spouse dies before adjustment is granted, then the adjustment applicant should receive permanent residence without condition.

Even if the adjustment applicant obtained conditional permanent residence, the fact that the marriage was terminated due to death would make the applicant eligible to apply for a waiver of certain requirements associated with conditional permanent resident (CPR) status.\[29\] The officer may grant an eligible applicant permanent residence without conditions if the officer determines the marriage was bona fide and entered into in good faith while the qualifying relative was alive.\[30\]

## 3. Discretionary Denials

INA 204(l) gives USCIS discretion to deny a petition or application that may be approved despite the qualifying relative’s death if USCIS finds, as a matter of discretion, that approval would not be in the public interest.\[31\] This exercise of discretion is unreviewable.\[32\]

Before denying a visa petition or adjustment application as a matter of discretion on the ground that approval would not be in the public interest, an officer must consult with the appropriate USCIS headquarters office or directorate through appropriate channels.

Consultation is not required if the officer will deny the case solely on the traditional discretionary factors that would have applied to the particular case, even if the qualifying relative were still alive. For example, fraud or criminal grounds of inadmissibility that have not or cannot be waived, or security grounds, may warrant denial as a matter of discretion under ordinary circumstances. Consultation is not required in such a case.

## C. Motions to Reopen

INA 204(l) does not require USCIS to reopen or reconsider any decision denying a petition or application, if the denial had already become final before October 28, 2009. For a case denied before that date, an applicant may file (with proper fee) an untimely motion to reopen the petition, adjustment application, or waiver application that was denied if INA 204(l) allows approval of a still-pending petition or application.

The applicant should present new evidence, including:

- Proof of the relative’s death;
- Proof that the applicant was residing in the United States when the relative died; and
Proof that the applicant continues to reside in the United States.

If the applicant establishes the proof required, an officer may favorably exercise discretion to reopen the petition or application, and make a new decision in light of the law.

An alien present in the United States unlawfully does not accrue unlawful presence while a properly filed adjustment application is pending. If USCIS grants a motion to reopen a denied adjustment application under this section, the application will be pending again and is deemed to be pending from the original date of filing. Therefore, reopening an adjustment application under INA 204(l) will cure any unlawful presence that may have accrued between the original denial and the new decision. The result is that the applicant will not have accrued any unlawful presence from the original filing of the adjustment application until there is a final decision.

If the applicant is otherwise inadmissible because of unlawful presence accrued before applying for adjustment, the applicant must seek a waiver or other form of relief to address the inadmissibility.[33]

Footnotes


[^2] See Section 568(d) of Pub. L. 111-83 (PDF), 123 Stat. 2142, 2187 (October 28, 2009). See INA 204(l). The law does not expressly define the “qualifying relative.” From the list of aliens to whom the new INA 204(l) applies, however, USCIS infers that “qualifying relative” means a person who, immediately before death was: (1) the petitioner in an immediate relative or family-based immigrant visa petition under INA 201(b)(2)(A)(i) or INA 203(a); or (2) the principal beneficiary in a widow(er)’s immediate relative or family-based visa petition case under INA 201(b)(2)(A)(i) or INA 203(a).

[^3] INA 204(l) applies to cases filed before October 28, 2009, and cases in which the qualifying relative died before October 28, 2009, as long as the case is adjudicated on or after October 28, 2009.


[^6] Immediate relatives includes widow(er)s, who may also seek relief as self-petitioners. See INA 201(b)(2)(A)(i).

[^7] For Form I-730 petitions, the qualifying relationship ceases to exist upon the death of the petitioner if the follow-to-join beneficiary has not been approved and traveled to the United States. See 8 CFR 207.7(c) and 8 CFR 208.21(c). An approved beneficiary present in the United States acquires refugee or asylee status and may be eligible to adjust status, notwithstanding the death of the petitioner. See 8 CFR 207.7(a) and 8 CFR 208.21(a). A beneficiary of a pending Form I-730 petition who resides in the United States when the petitioner dies may remain eligible for follow-to-join status under INA 204(l).


[^9] See INA 204(l).
The surviving derivative beneficiaries may retain the classification and priority date from the underlying petition and adjust status despite the principal beneficiary's death.

If the qualifying relative is the principal beneficiary, the officer should also ensure the underlying petition has not been withdrawn by the petitioner. Although INA 204(l) allows a derivative beneficiary the ability to continue to seek adjustment despite the death of the principal beneficiary, INA 204(l) does not require the petitioner to continue to sponsor the applicant. An immigrant visa petitioner may withdraw a pending petition at any time before the admission or adjustment of the beneficiary. See 8 CFR 103.2(b)(6).

Unless the applicant qualifies under INA 245(i) adjustment.

For information on how to request humanitarian reinstatement, see the Humanitarian Reinstatement webpage.

For information on how to request INA 204(l) relief, see the Basic Eligibility for Section 204(l) Relief for Surviving Relatives webpage.


If an applicant was not eligible to receive a waiver because the applicant did not have the requisite U.S. citizen or LPR qualifying relative, INA 204(l) would not make the applicant eligible.

The analysis of the marriage should be the same as the analysis conducted when determining whether to remove conditions to permanent residence under INA 216.

See INA 204(l)(1).
Chapter 10 - Legal Analysis and Use of Discretion

A. Burden of Proof and Standard of Proof

In matters involving immigration benefits, the applicant always has the burden of proving that he or she is eligible to receive the immigration benefit sought.\[1\]

The standard of proof applied in adjustment of status proceedings should not be confused with the burden of proof.\[2\] The standard of proof relates to the persuasiveness of the evidence necessary to meet the eligibility requirements for a particular benefit. If the applicant is unable to prove his or her eligibility for the immigration benefit by a preponderance of the evidence, the officer may request additional evidence or deny the application.\[3\]

In the adjustment of status context, the standard of proof is generally a preponderance of the evidence, proving a claimed fact is more likely than not to be true.\[4\] However, in cases in which admissibility is required, if the officer determines that the applicant may be inadmissible, the applicant must demonstrate that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible.\[5\]

Certain adjustment of status provisions are non-discretionary. That is, if the applicant satisfies all statutory and regulatory eligibility requirements, USCIS must approve the application without considering whether the applicant warrants a favorable exercise of discretion. The following table is a non-exhaustive list of non-discretionary adjustment provisions.

<table>
<thead>
<tr>
<th>Non-Discretionary Adjustment of Status Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)[6]</td>
</tr>
<tr>
<td>Refugee adjustment[7]</td>
</tr>
<tr>
<td>Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)[8]</td>
</tr>
<tr>
<td>Liberian Refugee Immigration Fairness (LRIF)[9]</td>
</tr>
</tbody>
</table>

B. Adjustment of Status Applications Involving Discretion\[10\]

Most adjustment of status applicants may only be granted lawful permanent resident (LPR) status in the

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discretion of USCIS. That is, even if the applicant meets all of the other statutory and regulatory requirements, USCIS only approves the application if the applicant demonstrates that he or she warrants a favorable exercise of discretion. The following table is a non-exhaustive list of discretionary adjustment case types.

<table>
<thead>
<tr>
<th>Adjustment of Status Provisions Involving Discretion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family-based, employment-based, and diversity visa adjustment</td>
</tr>
<tr>
<td>Special immigrant-based adjustment (EB-4)</td>
</tr>
<tr>
<td>Trafficking victim-based adjustment[^12]</td>
</tr>
<tr>
<td>Crime victim-based adjustment[^13]</td>
</tr>
<tr>
<td>Asylee adjustment[^14]</td>
</tr>
<tr>
<td>Cuban Adjustment Act[^15]</td>
</tr>
<tr>
<td>Former Soviet Union, Indochinese, or Iranian parolees (Lautenberg parolees)</td>
</tr>
<tr>
<td>Diplomats or high-ranking officials unable to return home (Section 13 of the Act of September 11, 1957)[^16]</td>
</tr>
</tbody>
</table>

### 1. Determining Whether Favorable Exercise of Discretion is Warranted

The favorable exercise of discretion and the approval of a discretionary adjustment of status application is a matter of administrative grace, which means that the application is worthy of favorable consideration.[^17]

An applicant who meets the other eligibility requirements contained in the law is not automatically entitled to adjustment of status. The applicant still has the burden of proving that he or she warrants a favorable exercise of discretion.[^18] To determine whether adjustment is warranted, an applicant should supply information that is relevant and material.[^19]

An officer must first determine whether the applicant otherwise meets the statutory and regulatory eligibility requirements. For example, in adjudicating an application for adjustment of status under INA 245(a), the officer first determines if the applicant is barred from applying for adjustment, is eligible to receive an immigrant visa, is admissible to the United States, and if a visa number (if required) is immediately available.
If the officer finds that the applicant otherwise meets the eligibility requirements, the officer then determines whether the application should be approved as a matter of discretion. Given the significant privileges, rights, and responsibilities granted to LPRs, an officer must consider and weigh all relevant evidence in the record, taking into account the totality of the circumstances to determine whether or not an approval of an applicant’s adjustment of status application is in the best interest of the United States.\[20\]

If there is no evidence that the applicant has negative factors present in his or her case, or if the officer finds that the applicant's positive factors outweigh the negative factors such that the applicant’s adjustment is warranted and in the interest of the United States, the officer generally may exercise favorable discretion and approve the application.\[21\] If the officer finds that the applicant’s negative factors outweigh the positive factors, such that a favorable exercise of discretion is not warranted in the applicant’s case, the officer must deny the application.\[22\]

2. Issues and Factors to Consider in the Totality of the Circumstances

The following table provides a non-exhaustive list of factors or factual circumstances that officers generally should consider in exercising discretion with respect to an application for adjustment of status to that of LPR.

Non-Exhaustive List of Issues and Factors to Consider Related to the Exercise of Discretion in Adjustment Applications

<table>
<thead>
<tr>
<th>Issue</th>
<th>Positive Factors</th>
<th>Negative Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility Requirements</td>
<td>• Meeting the eligibility requirements for adjustment of status.[23]</td>
<td>• Not meeting the eligibility requirements may still be considered as part of a discretionary analysis.[24]</td>
</tr>
<tr>
<td>Family and Community Ties</td>
<td>• Family ties to the United States and the closeness of the underlying relationships.[25]</td>
<td>• Absence of close family, community, and residence ties.[28]</td>
</tr>
<tr>
<td></td>
<td>• Hardship to the applicant or close relatives if the adjustment application is denied.[26]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Length of lawful residence in the United States, status held and conduct during that residence, particularly if the applicant began his or her residency at a young age.[27]</td>
<td></td>
</tr>
<tr>
<td>Immigration Status and History</td>
<td>• Compliance with immigration laws and the conditions of any immigration status held.</td>
<td>• Violations of immigration laws and the conditions of any immigration status held.[30]</td>
</tr>
<tr>
<td></td>
<td>• Approved humanitarian-based</td>
<td>• Current or previous instances of fraud</td>
</tr>
<tr>
<td>Issue</td>
<td>Positive Factors</td>
<td>Negative Factors</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Immigrant or nonimmigrant</td>
<td>immigrant or nonimmigrant petition, waiver of inadmissibility, or other form of relief and the underlying humanitarian, hardship, or other factors that resulted in the approval.[29]\</td>
<td>or false testimony in dealings with USCIS or any government agency.[31]\</td>
</tr>
<tr>
<td>petition, waiver of inadmissibility, or other form of relief and the underlying humanitarian, hardship, or other factors that resulted in the approval.[29]\</td>
<td></td>
<td>• Unexecuted exclusion, deportation, or removal orders.[32]\</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business, Employment, and</td>
<td>• Property, investment, or business ties in the United States.[33]\</td>
<td>• History of unemployment or underemployment.[35]\</td>
</tr>
<tr>
<td>Skills</td>
<td>• Employment history, including type, length, and stability of the employment.[34]\</td>
<td>• Unauthorized employment in the United States.[36]\</td>
</tr>
<tr>
<td></td>
<td>• Education, specialized skills, and training obtained from an educational institution in the United States relevant to current or prospective employment and earning potential in the United States.</td>
<td>• Employment or income from illegal activity or sources, including, but not limited to, income gained illegally from drug sales, illegal gambling, prostitution, or alien smuggling.[37]\</td>
</tr>
<tr>
<td>Issue</td>
<td>Positive Factors</td>
<td>Negative Factors</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Community Standing and Moral Character    | • Respect for law and order, and good moral character (in the United States and abroad) demonstrated by a lack of a criminal record and evidence of good standing in the community.  
• Honorable service in the U.S. armed forces or other evidence of value and service to the community.                                                                                                                           | • Moral depravity or criminal tendencies (in the United States and abroad) reflected by a single serious crime or an active or long criminal record, including the nature, seriousness, and recent occurrence of criminal violations.                                                                 |
|                                           | • Compliance with tax laws.                                                                                                                                                                                                                                                                                                                                 | • Lack of reformation of character or rehabilitation.                                                                                                                                                                                                                                |
|                                           | • Current or past cooperation with law enforcement authorities.                                                                                                                                                                                                                                                                                      | • Public safety or national security concerns.                                                                                                                                                                                                                                                         |
|                                           | • Demonstration of reformed or rehabilitated criminal conduct, where applicable.                                                                                                                                                                                                                                                                         | • Failure to meet tax obligations.                                                                                                                                                                                                                                                                     |
|                                           | • Community service beyond any imposed by the courts.                                                                                                                                                                                                                                                                                                   | • Failure to pay child support.                                                                                                                                                                                                                                                                       |
|                                           |                                                                                                                                                                                                                                                                                                                                                      | • Failure to comply with any applicable civil court orders.                                                                                                                                                                                                                                           |
| Other                                     | • Absence of significant undesirable or negative factors and other indicators of good moral character in the United States and abroad.                                                                                                                                                                                                         | • Other indicators adversely reflecting the applicant’s character and undesirability as an LPR of this country.                                                                                                                                                                                   |

### 3. Proper Use of Discretion Relative to Adjustment of Status

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent on intangible or imagined circumstances. At the same time, the exercise of discretion does not involve a calculation or bright line test that is outcome determinative.

The officer should review the entire record and give appropriate weight to the negative and positive factors relative to the privileges, rights, and responsibilities of LPR status. Once the officer has weighed each factor, the officer should consider all of the factors cumulatively to determine whether the positive factors outweigh the negative ones. If the officer determines that the positive factors outweigh the negative factors, the officer may find that the applicant warrants a favorable exercise of discretion. As negative factors grow more serious though, a favorable exercise of discretion may not be warranted without additional offsetting favorable factors, which in some cases may have to involve the existence of unusual or outstanding equities.

Officers should discuss discretionary decisions that involve complex or unusual facts with their supervisors.
as needed, particularly those involving criminality or national security issues, regardless of whether the outcome is favorable or unfavorable to the applicant.\[47\] As appropriate, supervisors may raise issues and consult USCIS counsel.

## C. Summary of Adjudication Involving Discretion

The following tables provide a general guideline for how eligibility requirements and discretion play a role in the decision on an adjustment application.\[48\]

<table>
<thead>
<tr>
<th>Has Applicant Otherwise Met Eligibility Requirements?</th>
<th>Does Applicant Warrant a Favorable Exercise of Discretion?</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes, the positive factors outweigh the negative factors.</td>
<td>Approve the application. Eligibility requirements are met, including that a favorable exercise of discretion is warranted.</td>
</tr>
<tr>
<td>Yes</td>
<td>No, the negative factors outweigh the positive factors.</td>
<td>Deny the application. Eligibility requirements are otherwise met but a favorable exercise of discretion is not warranted. The officer should explain the reasons why USCIS is not exercising discretion in the applicant’s favor. The officer should clearly set forth the positive and negative factors considered and why the negative factors outweigh the positive factors.</td>
</tr>
<tr>
<td>No</td>
<td>No, even if the positive factors outweigh the negative factors.</td>
<td>Deny the application. Eligibility requirements are not met. The officer should explain the reasons why the applicant has not met the eligibility requirements. Even if the positive factors outweigh the negative factors, discretion cannot be used to approve an application if the applicant does not meet the other statutory or regulatory requirements.</td>
</tr>
<tr>
<td>No</td>
<td>No, the negative factors outweigh the positive factors.</td>
<td>Deny the application. Eligibility requirements are not met and a favorable exercise of discretion is not warranted. It is generally preferable to describe both the statutory and discretionary reasons for the denial,</td>
</tr>
</tbody>
</table>

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Has Applicant Otherwise Met Eligibility Requirements?

<table>
<thead>
<tr>
<th>Does Applicant Warrant a Favorable Exercise of Discretion?</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>but an officer is not required to discuss the discretionary grounds where the other statutory or regulatory that are the basis for the denial grounds are clear. If the determination on other statutory or regulatory eligibility requirements might be overturned (for example, where there is an unsettled area of law), an officer should also explain the discretionary basis for denying the case. (Officers may consult with USCIS counsel for additional guidance in a specific case.) The officer should explain the reasons why USCIS is not exercising discretion in favor of the applicant. The officer should clearly describe the positive and negative factors considered and why the negative factors outweigh the positive factors.</td>
</tr>
</tbody>
</table>

Footnotes


[^2] The person who bears the burden of proof must submit evidence to satisfy the applicable standard of proof.


[^10] The exercise of discretion in individual cases is described as a balancing of negative factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations present on his or


[^22] Before making a final decision, the officer may ask the applicant directly why he or she warrants a favorable exercise of discretion. The officer documents the response, or lack thereof, in the record. See Volume 1, General Policies and Procedures, Part E, Adjudication, Chapter 8, Discretionary Analysis, Section D, Documenting Discretionary Determinations [1 USCIS-PM E.8(D)]. See Volume 7, Part A, Adjustment of Status Policies and Procedures, Chapter 11, Decision Procedures [7 USCIS-PM A.11].

[^23] In the process of determining whether the applicant has otherwise met the eligibility requirements for adjustment of status, the officer might find that certain facts related to eligibility may be relevant to a discretionary decision. See Matter of Mendez-Moralez (PDF), 21 I&N Dec. 296, 301 (BIA 1996) (In the context of waivers of inadmissibility requiring a showing of extreme hardship: “. . . those found eligible for relief under section 212(h)(1)(B) will by definition have already established extreme hardship to qualified family members, which would be a factor favorable to the alien in exercising discretion.”).

[^24] In cases where USCIS has determined that the applicant has not met the statutory or regulatory requirements for adjustment of status, officers may still add a discretionary analysis to a denial. See Volume 1, General Policies and Procedures, Part E, Adjudication, Chapter 8, Discretionary Analysis, Section C, Adjudicating Discretionary Benefits [1 USCIS-PM E.8(C)].


^28 Based on the totality of the circumstances, the absence of family, community, and residence ties, by itself, may not warrant an unfavorable exercise of discretion, but officers consider the lack of sufficient equities to offset other negative factors when making discretionary decisions that are in the best interest of the United States. See Matter of Marin (PDF), 16 I&N Dec. 581, 587 (BIA 1978).


^30 See Matter of Marin (PDF), 16 I&N Dec. 581, 584 (BIA 1978). See Matter of Lee (PDF), 17 I&N Dec. 275, 278 (Comm. 1978). See Matter of Buscemi (PDF), 19 I&N Dec. 628, 633 (BIA 1988). See Matter of Edwards (PDF), 20 I&N Dec. 191, 195 (BIA 1990). See Matter of Mendez-Moralez (PDF), 21 I&N Dec. 296, 301 (BIA 1996). However, the Board of Immigration Appeals (BIA) found that a record of immigration violations standing alone does not conclusively support a finding of lack of good moral character. Further, how recent the violation was can only be considered when there is a finding of a poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience. In such circumstances, there must be a measurable reformation of character over a period of time in order to properly assess an applicant’s ability to integrate into society. In all other instances, when the cause for deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. See Matter of Lee (PDF), 17 I&N Dec. 275 (Comm. 1978).

^31 Fraud or false testimony may be considered as a matter of discretion regardless of materiality.

^32 In cases where a removal order does not impact eligibility or jurisdiction over adjustment of status, for example, where a removal order has been issued to an “arriving alien” but not executed, USCIS generally does not exercise favorable discretion. The USCIS officer may consult with the local U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) office concerning the merits and equities of the case and whether the removal order might be withdrawn. If ICE withdraws or rescinds the removal order or obtains a withdrawal or rescission of the removal order from the Executive Office for Immigration Review (EOIR), USCIS adjudicates the case as appropriate. If the removal order is not withdrawn or rescinded, the removal order should be considered a significant adverse factor and any denial of adjustment may include the grounds cited in the removal order.

In Matter of Marin (PDF), 16 I&N Dec. 581, 585 (BIA 1978), the BIA considered that a history of stable employment is a positive factor used to determine whether discretion should be favorably exercised. Conversely, officers should consider a history of long unemployment or underemployment, absent any disabilities or age in relation to employability, as a factor to determine whether or not approving the adjustment of status application is in the best interest of the United States.

Even if an exemption applies to an applicant who would otherwise be barred from adjustment of status, the officer may consider unauthorized employment in the totality of the circumstances.

This includes employment that is illegal under federal law even when state laws have decriminalized such conduct, including employment in the marijuana industry. Illegal industries under federal law include, but are not limited to, possession, manufacture or production, or distribution or dispensing of marijuana. See 21 U.S.C. 841(a) (“unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.”). See 21 U.S.C. 844 (simple possession). See 21 U.S.C. 802(15) (defining manufacture) and 8 U.S.C. 802(22) (defining production).

The officer should not go behind the record of conviction to reassess an alien’s ultimate guilt or innocence, but rather inquire into the circumstances surrounding the commission of the crime in order to determine whether a favorable exercise of discretion is warranted. See Matter of Edwards (PDF), 20 I&N Dec. 191, 197 (BIA 1990).

For definitions of public safety and national security concerns, see Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (PDF), PM-602-0050.1, issued June 28, 2018.
See Matter of Arai (PDF), 17 I&N Dec. 494, 496 (BIA 1970). See Matter of Patel (PDF), 17 I&N Dec. 597, 601 (BIA 1980). For example, USCIS generally does not favorably exercise discretion in certain cases involving violent or dangerous crimes except in extraordinary circumstances. Another example relates to applicants seeking adjustment based on T or U nonimmigrant status: Depending on the nature of the adverse factors, applicants may be required to clearly demonstrate that denial of adjustment would result in exceptional and extremely unusual hardship. Even if the applicant makes such a showing, however, USCIS may still find favorable exercise of discretion is not warranted in certain cases. See 8 CFR 245.23(e)(3).

For more information, see Volume 1, General Policies and Procedures, Part E, Adjudication, Chapter 8, Discretionary Analysis, Section C, Adjudicating Discretionary Benefits, Subsection 4, Supervisory Review [1 USCIS-PM E.8(C)(4)].

For a full discussion on writing discretionary decisions, see Volume 1, General Policies and Procedures, Part E, Adjudication, Chapter 8, Discretionary Analysis, Section D, Discretion in Decision Writing [1 USCIS-PM E.8(D)].

Chapter 11 - Decision Procedures

A. Approvals

If the adjustment application is properly filed, the applicant meets all eligibility requirements, a visa number is immediately available, and the applicant is admissible to the United States, then an officer may approve the application.

1. Effective Date of Permanent Residence

For the majority of adjustment cases, the effective date of permanent residence is the date the adjustment application is approved. Certain sections of law, however, allow for the date of admission to roll back to an earlier date.

2. Class of Admission

Each approved case is given a class of admission (COA) that identifies the section of law the applicant used to adjust status to a lawful permanent resident. For abbreviation purposes, a symbol or code represents that classification.

Written notice of approval is mailed to the applicant and attorney or authorized representative, as applicable. Upon approval, the officer must confirm that the information is up-to-date and accurate in the relevant systems to ensure accurate statistical reporting and card production. In cases where an officer approved both the underlying petition and adjustment application, the officer should verify that the underlying petition shows as being approved in the system before approving the adjustment application.

If the officer determines that the case is approvable during the interview and the applicant anticipates immediate emergency travel, the officer may place a stamp as proof of temporary permanent resident status in the applicant’s passport, per local office guidelines. The stamp must have a dry seal affixed to be valid for travel.

B. Notices of Intent to Deny

AILA Doc. No. 19060633. (Posted 3/26/21)
If an officer is basing a decision in whole or in part on information of which the applicant is unaware or could not reasonably be expected to be aware, the officer must issue a Notice of Intent to Deny (NOID). [1] The NOID provides the applicant an opportunity to review and respond to the information, unless the information is classified. [2]

C. Denials

An adjustment application must be denied for ineligibility. The application may also be denied for discretionary reasons, if applicable. Upon denial of a case, the officer must update ICMS and CLAIMS, and issue a notice of denial. Automatic denial notices are not issued by the systems.

Denial on Basis of Ineligibility or for Discretionary Reasons

<table>
<thead>
<tr>
<th>Basis of Denial</th>
<th>Denial Notice Should …</th>
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</thead>
<tbody>
<tr>
<td>Ineligibility</td>
<td>Explain what eligibility requirements are not met and why they are not met</td>
</tr>
<tr>
<td>Discretionary Reasons</td>
<td>Explain the positive and negative factors considered, the relative weight given to each factor individually and collectively, and why the negative factors outweigh the positive factors</td>
</tr>
</tbody>
</table>

In addition, a denial notice should:

- Provide the reasons for the denial in clear language that the applicant can understand;
- Cite to the relevant sections of law, regulations, and precedent decisions (if any); and
- Explain that there is no right to appeal the denial but that the applicant may file a motion to reopen or reconsider.

With rare exception, there is no appeal from the denial of adjustment of status. [3] USCIS, however, may certify the case for review by the Administrative Appeals Office (AAO). [4] The applicant also may renew the adjustment application in any subsequent removal proceedings. [5]

Footnotes

[1] For example, investigative reports, information from informants, school records, or employment records not provided by the applicant.


[3] See 8 CFR 245.2(a)(5)(ii). However, see 8 CFR 245.3 providing the right of appeal for applicants under Section 13 of the Act of September 11, 1957, Pub. L. 85-316 (PDF), and 8 CFR 245.23(i) providing the right of appeal for applicants based on T nonimmigrant status.
Part B - 245(a) Adjustment

Chapter 1 - Purpose and Background

A. Purpose

Section 245 of the Immigration and Nationality Act (INA) allows certain aliens who are physically present in the United States to adjust status to that of a lawful permanent resident (LPR). Most adjustment applicants file their adjustment of status applications based on INA 245(a).

B. Background

The Immigration Act of 1924 required all intending immigrants to obtain an immigrant visa at a U.S. embassy or consulate abroad (commonly known as “consular processing”). An alien physically present in the United States could not become an LPR without leaving the United States to consular process abroad.

By 1935, immigration authorities had developed an administrative process of “pre-examination” that enabled an alien temporarily in the United States to obtain LPR status more quickly and easily. Pre-examination consisted of an official determination in the United States of the alien’s eligibility for an immigrant visa, the immigrant’s travel to Canada or elsewhere for an arranged immigrant visa appointment at a U.S. consulate, and the immigrant’s prompt return and admission to the United States as a LPR. From 1935 to 1950, the government processed over 45,000 pre-examination cases.

In 1952, Congress made the pre-examination process unnecessary by creating INA 245, which allowed eligible aliens to obtain LPR status through adjustment of status without leaving the United States. Congress indicated that adjustment should be used for purposes of family unity or otherwise be in the public interest.

Over time, Congress revised and consolidated the eligibility requirements for adjustment of status into the current INA 245(a). The bars, restrictions, and special considerations to adjustment are found in INA 245(c) through INA 245(k). Applicable inadmissibility grounds, including public safety and security concerns are found in INA 212.

C. Scope

The guidance in this Policy Manual part only addresses adjustment of status under INA 245(a). Certain aliens may be eligible to adjust under other provisions of law, as detailed in other parts of this volume.

D. Legal Authorities
Footnotes


[^6] There are many statutory bases for adjustment. For instance, refugees and asylees may adjust status under INA 209(c), which outlines slightly different rules and requirements for adjustment than under INA 245(a). The basis under which an applicant seeks adjustment of status is therefore key in determining the eligibility requirements for adjustment as well as exceptions, exemptions, waivers, and any other program-specific laws or benefits that may apply.

Chapter 2 - Eligibility Requirements

An alien must meet certain eligibility requirements to adjust status to that of a lawful permanent resident (LPR).

<table>
<thead>
<tr>
<th>INA 245(a) Adjustment of Status Eligibility Requirements</th>
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<tbody>
<tr>
<td>The applicant must have been:</td>
</tr>
<tr>
<td>• Inspected and admitted into the United States; or</td>
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<tr>
<td>• Inspected and paroled into the United States.</td>
</tr>
<tr>
<td>The applicant must properly file an adjustment of status application.</td>
</tr>
<tr>
<td>The applicant must be physically present in the United States.</td>
</tr>
</tbody>
</table>
INA 245(a) Adjustment of Status Eligibility Requirements

The applicant must be eligible to receive an immigrant visa.

An immigrant visa must be immediately available when the applicant files the adjustment of status application[1] and at the time of final adjudication.[2]

The applicant must be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.[3]

A. “Inspected and Admitted” or “Inspected and Paroled”

In 1960, Congress amended INA 245(a) and made adjustment of status available to any otherwise eligible applicant who has been “inspected and admitted or paroled” into the United States.[4] Since 1960, the courts, legacy Immigration and Naturalization Service, and USCIS have read the statutory language “inspected and admitted or paroled” as:

- Inspected and admitted into the United States; or
- Inspected and paroled into the United States.

This requirement must be satisfied before the alien applies for adjustment of status.[5] If an applicant has not been inspected and admitted or inspected and paroled before filing an adjustment application, the officer must deny the adjustment application.[6]

The inspected and admitted or inspected and paroled requirement does not apply to the following aliens seeking adjustment of status:

- INA 245(i) applicants; and
- Violence Against Women Act (VAWA) applicants.[7]

Special immigrant juveniles (SIJ) and other special immigrants are not exempt from this requirement. However, statutory provisions expressly state that these special immigrants are considered paroled for adjustment eligibility purposes. Accordingly, the beneficiaries of approved SIJ petitions meet the inspected and admitted or inspected and paroled requirement, regardless of their manner of arrival in the United States.[8] Certain special immigrants also meet this requirement.[9]

1. Inspection

Authority
Per delegation by the Secretary of Homeland Security, U.S. Customs and Border Protection (CBP) has jurisdiction over and exclusive inspection authority at ports-of-entry.[10]

**Definition and Scope**

Inspection is the formal process of determining whether an alien may lawfully enter the United States. Immigration laws as early as 1875 specified that inspection must occur prior to an alien’s landing in or entering the United States and that prohibited aliens were to be returned to the country from which they came at no cost or penalty to the conveyor or vessel.[11] Inspections for air, sea, and land arrivals are now codified in the Immigration and Nationality Act (INA), including criminal penalties for illegal entry.[12]

To lawfully enter the United States, an alien must apply and present himself or herself in person to an immigration officer at a U.S. port of entry when the port is open for inspection.[13] An alien who arrives at a port of entry and presents himself or herself for inspection is an applicant for admission. Through the inspection process, an immigration officer determines whether the alien is admissible and may enter the United States under all the applicable provisions of immigration laws.

As part of the inspection, the alien must:

- Present any and all required documentation, including fingerprints, photographs, other biometric identifiers, documentation of status in the United States, and any other requested evidence to determine the alien’s identity and admissibility; and
- Establish that he or she is not subject to removal under immigration laws, Executive Orders, or Presidential Proclamations.[14]

In general, if the alien presents himself or herself for questioning in person, the inspection requirement is met.[15] Nonetheless, if the alien enters the United States by falsely claiming U.S. citizenship, the alien is not considered to have been inspected by an immigration officer. In addition, the entry is not considered an admission for immigration purposes.[16]

**Inspection Outcomes**

Upon inspection, the officer at the port of entry typically decides one of the following outcomes for the alien:

- The officer admits them;
- The officer paroles them;
- The officer allows them to withdraw his or her application for admission and depart immediately from the United States;[17]
- The officer denies them admission into the United States; or
- The officer defers the inspection to a later time at either the same or another CBP office or a port of entry.[18]

**2. Admission[19]**

An alien is admitted if the following conditions are met: [20]
The alien applied for admission as an “alien” at a port of entry; and

An immigration officer inspected the applicant for admission as an “alien” and authorized him or her to enter the United States in accordance with the procedures for admission.[21]

An alien who meets these two requirements is admitted, even if the alien obtained the admission by fraud.[22] Likewise, the alien is admitted, even if the CBP officer performed a cursory inspection.

As long as the alien meets the procedural requirements for admission, the alien meets the inspected and admitted requirement for adjustment of status.[23] Any type of admission can meet the inspected and admitted requirement, which includes, but is not limited to, admission as a nonimmigrant, an immigrant, or a refugee.

Notwithstanding, if the alien makes a false claim to U.S. citizenship or to U.S. nationality at the port of entry and an immigration officer permits the alien to enter the United States, the alien has not been admitted.[24] A U.S. citizen arriving at a port of entry is not subject to inspection; therefore, an alien who makes a false claim to U.S. citizenship is considered to have entered without inspection.[25]

Similarly, an alien who entered the United States after falsely claiming to be a returning LPR is not considered to have been procedurally inspected and admitted because a returning LPR generally is not an applicant for admission.[26] An LPR returning from a temporary trip abroad would only be considered to be seeking admission or readmission to the United States if any of the following factors applies:

- The LPR has abandoned or relinquished his or her LPR status;
- The LPR has been absent from the United States for a continuous period in excess of 180 days;
- The LPR has engaged in illegal activity after having departed the United States;
- The LPR has departed from the United States while under legal process seeking his or her removal from the United States, including removal proceedings under the INA and extradition proceedings;
- The LPR has committed an offense described in the criminal-related inadmissibility grounds, unless the LPR has been granted relief for the offense;[27] or
- The LPR is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.[28]

Evidence of Admission

An Arrival/Departure Record (Form I-94), including a replacement[29] when appropriate, is the most common document evidencing an alien’s admission.[30] The following are other types of documentation that may be accepted as proof of admission into the United States:

- Admission stamp in passport, which may be verified using DHS systems;
- Employment Authorization Card (Form I-688A), for special agricultural worker applicants, provided it was valid during the last claimed date of entry on the adjustment application;
- Temporary Resident Card (Form I-688), for special agricultural workers or legalization applicants granted temporary residence, provided it was valid during the last claimed date of entry on the adjustment application; and
- Border Crossing Card (Form I-586 or Form DSP-150[31]), provided it was valid on the date of last claimed entry.

When inspected and admitted to the United States, the following nonimmigrants are exempt from the issuance of an Arrival/Departure Record:[32]

- A Canadian citizen admitted as a visitor for business, visitor for pleasure, or who was permitted to directly transit through the United States;

- A nonimmigrant residing in the British Virgin Islands who was admitted only to the United States Virgin Islands as a visitor for business or pleasure;[33]

- A Mexican national admitted with a B-1/B-2 Visa and Border Crossing Card (Form DSP-150) at a land or sea port of entry as a visitor for business or pleasure for a period of 30 days to travel within 25 miles of the border; and

- A Mexican national in possession of a Mexican diplomatic or official passport.[34]

In these situations, an applicant should submit alternate evidence to prove his or her inspection and admission to the United States. This may include a Border Crossing Card, plane tickets evidencing travel to the United States, or other corroborating evidence.

3. Parole

Authority

The Secretary of Homeland Security delegated parole authority to USCIS, CBP, and U.S. Immigration and Customs Enforcement (ICE).[35]

Definition and Scope

An alien is paroled if the following conditions are met:

- They are seeking admission to the United States at a port of entry; and

- An immigration officer inspected them as an “alien” and permitted them to enter the United States without determining whether they may be admitted into the United States.[36]

A grant of parole is a temporary and discretionary act exercised on a case-by-case basis. Parole, by definition, is not an admission.[37]

Paroled for Deferred Inspection[38]

On occasion, CBP grants deferred inspection to arriving aliens found inadmissible during a preliminary inspection at a port of entry. Deferred inspection is generally granted only after CBP:

- Verifies the alien’s identity and nationality;

- Determines that the alien would likely be able to overcome the identified inadmissibility by obtaining a waiver or additional evidence; and

- Determines that the alien does not present a national security risk to the United States.
The decision to defer inspection is at the CBP officer’s discretion.

If granted deferred inspection, CBP paroles the alien into the United States and defers completion of the inspection to a later time. An alien paroled for a deferred inspection typically reports for completion of inspection within 30 days of the deferral[39] to a CBP office with jurisdiction over the area where the alien will be staying or residing in the United States.[40]

The grant of parole for a deferred inspection satisfies the “inspected and paroled” requirement for purposes of adjustment eligibility.[41]

_Urgent Humanitarian Reasons or Significant Public Benefit_

DHS may parole an alien based on urgent humanitarian or significant public benefit reasons.[42] DHS may grant urgent humanitarian or significant public benefit parole only on a case-by-case basis.[43] Any type of urgent humanitarian, significant public benefit, or deferred inspection-directed parole meets the “paroled into the United States” requirement.[44]

_Parole in Place: Parole of Certain Aliens Present Without Admission or Parole_

An alien who is present in the United States without inspection and admission or inspection and parole is an applicant for admission.[45] DHS can exercise its discretion to parole such an alien into the United States.[46] In general, USCIS grants parole in place only sparingly.

The fact that an alien is a spouse, child, or parent of an active duty member of the U.S. armed forces, a member in the Selected Reserve of the Ready Reserve, or someone who previously served in the U.S. armed forces or the Selected Reserve of the Ready Reserve ordinarily weighs heavily in favor of parole in place. Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such an alien.

If DHS grants parole before the alien files an adjustment application, the alien meets the “inspected and paroled” requirement for adjustment. Parole in place does not permit approval of an adjustment application that was filed before the grant of parole.[47]

Parole in place does not relieve the alien of the need to meet all other eligibility requirements for adjustment of status and the favorable exercise of discretion.[48] For example, except for immediate relatives and certain other immigrants, an alien must have continuously maintained a lawful status since entry into the United States.[49]

_Conditional Parole_

Conditional parole is also known as release from custody. This is a separate and distinct process from parole and does not meet the “inspected and paroled” requirement for adjustment eligibility.[50]

_Evidence of Parole_

Evidence of parole includes:

- A parole stamp on an advance parole document;[51]
- A parole stamp in a passport; or
An Arrival/Departure Record (Form I-94) endorsed with a parole stamp.[52]

4. Commonwealth of the Northern Mariana Islands

A Commonwealth of the Northern Mariana Islands (CNMI) applicant who is granted parole meets the inspected and paroled requirement. On May 8, 2008, the Consolidated Natural Resources Act was signed into law, which replaced the CNMI’s prior immigration laws and extended most U.S. immigration law provisions to the CNMI for the first time in history.[53] The transition period for implementation of U.S. immigration law in the CNMI began on November 28, 2009.

As of that date, all aliens present in the CNMI (other than LPRs) became present in the United States by operation of law without admission or parole. In recognition of the unique situation caused by the extension of U.S. immigration laws to the CNMI, all aliens present in the CNMI on or after that date who apply for adjustment of status are considered applicants for admission[54] to the United States and are eligible for parole.

Because of these unique circumstances, USCIS grants parole to applicants otherwise eligible to adjust status to serve as both an inspection and parole for purposes of meeting the requirements for adjustment. Under this policy, the USCIS Guam Field Office or the USCIS Saipan Application Support Center grants parole to an applicant otherwise eligible for parole and adjustment immediately prior to approving the adjustment of status application.

5. Temporary Protected Status

Temporary Protected Status is Generally Not an Admission for INA 245(a) Adjustment Purposes

Temporary protected status (TPS) is not an admission for purposes of adjustment under INA 245(a), except in those circuits where a circuit court has ruled otherwise.[55]

Therefore, an alien who entered the United States without having been inspected and admitted or inspected and paroled, and who is subsequently granted TPS, does not meet the inspected and admitted or inspected and paroled requirement under INA 245(a) for adjustment.[56]

For purposes of adjustment of status under INA 245, an alien in TPS is considered as being in and maintaining lawful status as a nonimmigrant only during the period that TPS is in effect.[57] Absent circuit court precedent to the contrary, TPS does not satisfy the separate INA 245(a) requirement of being inspected and admitted or inspected and paroled, nor does it cure any previous failure to maintain continuously a lawful status in the United States.

Congress made clear that TPS was intended to be a temporary form of relief and not a path to permanent residence.[58] There is no statutory language or legislative history to suggest that Congress intended a grant of TPS to be considered an admission or parole for adjustment purposes. Therefore, it is USCIS’ long-held position that a grant of TPS does not cure an alien’s entry without inspection or constitute an inspection and admission of the alien.[59] The federal appellate courts for the Third and Eleventh Circuits have affirmed USCIS’ interpretation that a grant of TPS is not an admission for adjustment purposes.[60]

Temporary Protected Status is Considered an Admission for INA 245(a) Adjustment Purposes in the Sixth and Ninth Circuits Only

Despite USCIS’ and legacy Immigration and Naturalization Service (INS)’s longstanding interpretation, the
federal appellate courts in the Sixth Circuit in *Flores v. USCIS* and the Ninth Circuit in *Ramirez v. Brown* have ruled that, for purposes of adjustment of status, an alien who enters the United States without inspection and who is subsequently granted TPS meets the inspected and admitted requirement under INA 245(a). Therefore, if the applicant resides in the Sixth or Ninth Circuits, the applicant is deemed admitted for purposes of adjustment of status under INA 245(a), but only so long as the applicant remains in TPS on the date that USCIS adjudicates his or her application for adjustment of status.

USCIS does not consider *Flores* and *Ramirez* to extend to aliens who may have once had TPS, including those whose TPS was withdrawn by USCIS or the U.S. Department of Justice due to ineligibility, or for whom a country’s TPS designation has been terminated by DHS.

USCIS does not apply *Flores* outside the Sixth Circuit or *Ramirez* outside the Ninth Circuit.

A TPS beneficiary in the Sixth and Ninth Circuits must still be otherwise eligible for adjustment of status and warrant a favorable exercise of discretion. The TPS beneficiary must still have a visa number available, must be admissible to the United States, and may not be barred from adjustment. For example, a TPS beneficiary may be ineligible based on a failure to maintain continuously a lawful status during any period before the grant of TPS, unless eligible for an exemption from this bar to adjustment. Also, an alien who last entered the United States as an alien crewman is barred from adjustment of status under INA 245(a), notwithstanding the subsequent grant of TPS.

*Return Following Departure from United States with Prior Consent*

TPS beneficiaries may travel abroad temporarily with the prior consent of DHS pursuant to INA 244(f)(3). If a TPS beneficiary travels abroad temporarily, with prior consent from DHS, he or she may return to the United States in accordance with the terms of DHS’s authorization in the same immigration status that he or she had at the time of departure, with certain exceptions. Upon return, the alien resumes the same immigration status and the same incidents of status that the alien possessed before departure. The departure and return of the alien pursuant to INA 244(f)(3) makes no change at all to any aspect of the alien’s prior immigration status in the United States. Travel authorization for a TPS beneficiary “is a unique form of travel authorization and operates as a legal fiction that restores the alien to the status quo ante as if the alien had never left the United States.”

Since the purpose of Section 304(c) of the Miscellaneous and Technical Immigration and Nationality Amendments Act of 1991 (MTINA) is to return the TPS beneficiary to the “same immigration status the alien had at the time of departure,” this provision of MTINA “cannot be interpreted to put TPS recipients in a better position than they had been upon their physical departure from the United States.” The TPS beneficiary’s travel and return “does not alter their immigration status for purposes of adjustment of status.”

When DHS provides prior consent to a TPS beneficiary for his or her travel abroad, it documents that consent by providing an advance parole document (Form I-512) to the alien, as required by regulation. DHS issues an advance parole document for this purpose solely as a matter of administrative convenience. TPS travel authorization is unique and affords the TPS beneficiary only what is provided for under MTINA by restoring the alien to “the same immigration status the alien had at the time of departure.” The travel authorization for the TPS beneficiary allows the alien “to return to the United States in a procedurally regular fashion after foreign travel[.]” However, “[a] status quo ante return cannot create a condition needed to establish eligibility for a benefit for which the alien” would not have been eligible at the time of departure. TPS beneficiaries who depart and return to the United States with the prior consent of DHS...
pursuant to INA 244(f)(3) are neither admitted nor paroled upon return, but simply resume the same immigration status they had before departing. “The same immigration status” encompasses not only that status of an alien who may be present without inspection and admission or inspection and parole, but all other legal incidents of status, such as an alien’s status in deportation, exclusion, or removal proceedings.

This is consistent with the clear intent of Congress in passing INA 244 and implementing TPS. INA 244(h) provides that a supermajority vote is required for Congress to provide TPS recipients with LPR status. Therefore, TPS travel authorization under INA 244(f)(3) and Section 304(c) of MTINA cannot be construed to circumvent Congress’ intent that TPS not provide a direct path to permanent residence. Congress clearly proscribed its own ability to confer permanent residency on TPS recipients, and nothing in MTINA reflects a change of that intent.

The holding of Matter of Z-R-Z-C- recognized the applicant’s reliance interests on past practices and guidance and therefore the holding was not applied to that applicant. Similarly, applicants who have previously received consent to travel and have traveled with DHS consent pursuant to INA 244(f)(3) are likely to have relied upon the past practices and guidance. Accordingly, the statutory construction announced by Matter of Z-R-Z-C- only applies to TPS recipients who departed and returned to the United States under INA 244(f)(3) after the date of the AAO's Adopted Decision, August 20, 2020. Matter of Z-R-Z-C- does not impact TPS recipients who adjusted status to lawful permanent residence under the past practice or prior guidance. Such aliens, when applying for naturalization, may not be denied based on INA 318 grounds for being adjusted under past practice or prior guidance.

6. Asylum

An asylee whose adjustment application is based on his or her asylee status adjusts under INA 209(b). An asylee, however, may seek to adjust under INA 245(a) if the asylee prefers to adjust on a basis other than the asylee’s status. This may arise in cases where, for example, an asylee marries a U.S. citizen and subsequently seeks to adjust status as an immediate relative of a U.S. citizen rather than under the asylee provision. In order to adjust under INA 245(a), however, the asylee must meet the eligibility requirements that apply under that provision.

There may be circumstances where asylees are not able to meet certain requirements for adjustment under INA 245(a). For instance, an alien who enters without inspection and is subsequently granted asylum does not satisfy the inspected and admitted or inspected and paroled requirement. On the other hand, an asylee who departs the United States and is admitted or granted parole upon return to a port of entry meets the inspected and admitted or inspected and paroled requirement.

7. Waved Through at Port-of-Entry

In some cases, an alien may claim that he or she arrived at a port of entry and presented himself or herself for inspection as an alien, but the inspector waved (allowed to pass) him or her through the port of entry without asking any questions.

Where an alien physically presents himself or herself for questioning and makes no knowing false claim to U.S. citizenship, the alien is considered to have been inspected even though he or she volunteers no information and is asked no questions by the immigration authorities. Such an alien satisfies the inspected and admitted requirement of INA 245(a) as long as the alien sufficiently proves that he or she was indeed waved through by an immigration official at a port of entry.

An officer may find that an adjustment applicant satisfies the inspected and admitted requirement based on a
claim that he or she was waved through at a port of entry if:

- The applicant submits evidence to support the claim, such as third-party affidavits from those with personal knowledge of the facts stated in the affidavits and corroborating documentation; and

- The officer determines that the claim is credible.[90]

The burden of proof is on the applicant to establish eligibility for adjustment of status.[91] Accordingly, the applicant must support and sufficiently establish the claim that he or she was admitted as an alien and not as a presumed U.S. citizen. For example, if the applicant was in a car with U.S. license plates and with U.S. citizens onboard, the applicant should submit persuasive evidence to establish he or she physically presented himself or herself to the inspector and was admitted as an alien.[92]

**B. Properly Filing an Adjustment Application**

To adjust status, an alien must file an Application to Register Permanent Residence or Adjust Status (Form I-485) in accordance with the form instructions. The adjustment application must be properly signed and accompanied by the appropriate fee.[93] The application must be filed at the correct filing location, as specified in the form instructions. USCIS rejects adjustment applications if the application is:

- Filed at an incorrect location;

- Not filed with the correct fee, unless granted a fee waiver;

- Not properly signed; or

- Filed when an immigrant visa is unavailable.[94]

**C. Eligible to Receive an Immigrant Visa**

**1. General Eligibility for an Immigrant Visa**

An adjustment applicant must be eligible to receive an immigrant visa. An applicant typically establishes eligibility for an immigrant visa through an immigrant petition in one of the categories listed in the table below.

<table>
<thead>
<tr>
<th>Immigrant Category</th>
<th>Petition</th>
<th>Who May Qualify</th>
</tr>
</thead>
</table>
| Family-Based       | Petition for Alien Relative (Form I-130) | • Immediate relatives of U.S. citizens[95]  
• Unmarried sons and daughters of U.S. citizens (21 years of age and older)  
• Spouses and unmarried children (under 21 years of age) of LPRs  
• Unmarried sons and daughters of LPRs  
• Married sons and daughters of U.S. |

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<table>
<thead>
<tr>
<th>Immigrant Category</th>
<th>Petition</th>
<th>Who May Qualify</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>citizens</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age or older)</td>
</tr>
<tr>
<td>Family-Based</td>
<td>Petition for Alien Fiancé(e) (Form I-129F)</td>
<td>• Fiancé(e) of a U.S. citizen</td>
</tr>
<tr>
<td>Family-Based</td>
<td>Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)</td>
<td>• Widow or widower of a U.S. citizen</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• VAWA self-petitioners</td>
</tr>
<tr>
<td>Employment-Based</td>
<td>Immigrant Petition for Alien Worker (Form I-140)</td>
<td>• Priority workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Members of the professions holding an advanced degree or persons of exceptional ability</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Skilled workers, professionals, and other workers</td>
</tr>
<tr>
<td>Employment-Based</td>
<td>Immigrant Petition by Alien Investor (Form I-526)</td>
<td>• Investors</td>
</tr>
<tr>
<td>Special Immigrants</td>
<td>Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)</td>
<td>• Religious workers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Certain international employees</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Panama Canal Zone employees</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Certain physicians</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• International organization officers and employees</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Special immigrant juveniles</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Certain U.S. armed forces members</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Certain broadcasters</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Certain Afghanistan and Iraq nationals</td>
</tr>
<tr>
<td>Diversity Immigrant Visa[96]</td>
<td>Not applicable (Diversity visas do not require a USCIS-filed petition)</td>
<td>• Diversity immigrants</td>
</tr>
</tbody>
</table>

2. Dependents

The spouse and children of certain family-based, employment-based, and Diversity Immigrant Visa
adjustment applicants may also obtain LPR status through their relationship with the principal applicant. Because the spouse and children do not have an independent basis to adjust status apart from their relationship to the principal immigrant, they are “dependents” of the principal for purpose of eligibility for adjustment of status.

Dependents do not have their own underlying immigrant petition and may only adjust based on the principal’s adjustment of status. In general, dependent applicants must have the requisite relationship to the principal both at the time of filing the adjustment application and at the time of final adjudication.[97]

3. Concurrent Filing

The immigrant petition establishing the underlying basis to adjust is typically filed before the alien files the adjustment application. In some instances, the applicant may file the adjustment application at the same time the immigrant petition is filed.[98]

D. Immigrant Visa Immediately Available at Time of Filing and at Time of Approval

In general, an immigrant visa must be available before an alien can apply for adjustment of status.[99] An immigrant visa is always available to aliens seeking adjustment as immediate relatives. Visas are numerically limited for most other immigrant categories eligible to adjust; applicants in these numerically limited categories may need to wait until a visa is available before they can file an adjustment application. Furthermore, an immigrant visa must be available for issuance on the date USCIS approves any adjustment application.[100]

E. Admissible to the United States

An adjustment of status applicant must be admissible to the United States.[101] An applicant who is inadmissible may apply for a waiver of the ground of inadmissibility, if a waiver is available, or another form of relief. The applicable grounds of inadmissibility and any available waivers depend on the immigrant category under which the applicant is applying.[102]

F. Bars to Adjustment of Status

An applicant may not be eligible to apply for adjustment of status if one or more bars to adjustment applies.[103] The bars to adjustment of status may apply to aliens who either entered the United States in a particular status or manner, or committed a particular act or violation of immigration law.[104] The table below refers to aliens ineligible to apply for adjustment of status, unless otherwise exempt.[105]

<table>
<thead>
<tr>
<th>Alien</th>
<th>INA Section</th>
<th>Entries and Periods of Stay to Consider</th>
<th>Exempt from Bar</th>
</tr>
</thead>
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</tr>
</thead>
<tbody>
<tr>
<td>Crewman[^106]</td>
<td>245(c)(1)</td>
<td>Only most recent permission to land, or admission prior to filing for adjustment</td>
<td>VAWA-based applicants</td>
</tr>
<tr>
<td>In Unlawful Immigration Status on the Date the Adjustment Application is Filed OR Who Failed to Continuously Maintain Lawful Status Since Entry into United States[^107] OR Who Continues in, or Accepts, Unauthorized Employment Prior to Filing for Adjustment</td>
<td>245(c)(2)[^108]</td>
<td>All entries and time periods spent in the United States (departure and return does not remove the ineligibility)[^109]</td>
<td>VAWA-based applicants Immediate relatives[^110] Certain special immigrants[^111] 245(k) eligible[^112]</td>
</tr>
<tr>
<td>Admitted in Transit Without a Visa (TWOV)</td>
<td>245(c)(3)</td>
<td>Only most recent admission prior to filing for adjustment</td>
<td>VAWA-based applicants</td>
</tr>
<tr>
<td>Admitted as a Nonimmigrant Without a Visa under a Visa Waiver Program[^113]</td>
<td>245(c)(4)</td>
<td>Only most recent admission prior to filing for adjustment</td>
<td>VAWA-based applicants Immediate relatives</td>
</tr>
<tr>
<td>Admitted as Witness or Informant[^114]</td>
<td>245(c)(5)</td>
<td>Only most recent admission prior to filing for adjustment</td>
<td>VAWA-based applicants</td>
</tr>
<tr>
<td>Who is Deportable Due to Involvement in Terrorist Activity or Group[^115]</td>
<td>245(c)(6)</td>
<td>All entries and time periods spent in the United States</td>
<td>VAWA-based applicant[^116]</td>
</tr>
<tr>
<td>Alien</td>
<td>INA Section</td>
<td>Entries and Periods of Stay to Consider</td>
<td>Exempt from Bar</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td>-------------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Seeking Adjustment in an Employment-based Immigrant Category and Not in a Lawful Nonimmigrant Status</td>
<td>245(c)(7)</td>
<td>Only most recent admission prior to filing for adjustment</td>
<td>VAWA-based applicants</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Immediate relatives and other family-based applicants</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Special immigrant juveniles</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>245(k) eligible</td>
</tr>
<tr>
<td>Who has Otherwise Violated the Terms of a Nonimmigrant Visa</td>
<td>245(c)(8)</td>
<td>All entries and time periods spent in the United States (departure and return does not remove the ineligibility)</td>
<td>VAWA-based applicants</td>
</tr>
<tr>
<td>OR</td>
<td></td>
<td></td>
<td>Immediate relatives</td>
</tr>
<tr>
<td>Who has Ever Engaged in Unauthorized Employment</td>
<td></td>
<td></td>
<td>Certain special immigrants</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>245(k) eligible</td>
</tr>
</tbody>
</table>

In all cases, the alien is subject to any and all applicable grounds of inadmissibility even if the alien is not subject to any bar to adjustment, or is exempt from any or all the bars to adjustment.

1. Overlapping Bars

Some bars to adjustment may overlap in their application, despite their basis in separate sections of the law. For example, an alien admitted under the Visa Waiver Program who overstays the admission is barred by both INA 245(c)(2) and INA 245(c)(4). Because some bars overlap, more than one bar can apply to an applicant for the same act or violation. In such cases, the officer should address each applicable adjustment bar in the denial notice.

2. Exemptions from the Bars

Congress has provided relief from particular adjustment bars to certain categories of immigrants such as VAWA-based adjustment applicants, immediate relatives, and designated special immigrants.

Furthermore, INA 245(k) exempts eligible applicants under the employment-based 1st, 2nd, 3rd and certain 4th preference categories from the INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8) bars. Specifically, an eligible employment-based adjustment applicant may qualify for this exemption if the applicant failed to
maintain a lawful status, engaged in unauthorized employment, or violated the terms of his or her nonimmigrant status (admission under a nonimmigrant visa) for 180 days or less since his or her most recent lawful admission. [128]

Footnotes

[^1] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed [7 USCIS-PM A.3(B)].


[^4] As originally enacted, INA 245(a) made adjustment available only to an alien who “was lawfully admitted...as a bona fide nonimmigrant and who is continuing to maintain that status.” See Immigration and Nationality Act of 1952, Pub. L. 82-414 (PDF), 66 Stat. 163, 217 (June 27, 1952). Admission as a bona fide nonimmigrant remained a requirement until 1960. See Pub. L. 86-648 (PDF) (July 14, 1960). Congress amended that threshold requirement several times. The 1960 amendment removed the requirement of admission as a bona fide nonimmigrant.


[^6] See legacy Immigration and Naturalization Service (INS) General Counsel Opinion 94-28, 1994 WL 1753132 (“Congress enacted INA 245 in such a manner that persons who entered the U.S. without inspection are ineligible to adjust”). See S. Rep. 86-1651, 1960 U.S.C.C.A.N. 3124, 3136 (“This legislation will not benefit the alien who has entered the United States in violation of the law”) and 3137 (“The wording of the amendments is such as not to grant eligibility for adjustment of status to alien crewmen and to aliens who entered the United States surreptitiously”). See Matter of Robles (PDF), 15 I&N Dec. 734 (BIA 1976) (explaining that entry into the United States after intentionally evading inspection is a ground for deportation under (then) INA 241(a)(2)).


[^8] See INA 245(h)(1), which states that SIJ-based applicants are considered paroled into the United States for purposes of INA 245(a).

[^9] See INA 245(g), which holds that certain special immigrants, as defined under INA 101(a)(27)(k), are considered paroled into the United States for purposes of INA 245(a).


[^12] See INA 231-235 and INA 275. See Matter of Robles (PDF), 15 I&N Dec. 734 (BIA 1976) (holding that entry into the United States after intentionally evading inspection is a ground for deportation under (then) INA 241(a)(2)).
See 8 CFR 235.1(a). See Matter of S- (PDF), 9 I&N Dec. 599 (BIA 1962) (inspection is the process that determines an alien’s initial right to enter the United States upon presenting himself or herself for inspection at a port of entry). See Ex Parte Saadi, 23 F.2d 334 (S.D. Cal. 1927).


See Matter of Areguillin (PDF), 17 I&N Dec. 308 (BIA 1980), and Matter of Quilantan (PDF), 25 I&N Dec. 285 (BIA 2010), which held that an alien who had physically presented himself or herself for questioning and made no knowing false claim of citizenship had satisfied the inspected and admitted requirement of INA 245(a); alternatively, an alien who gains admission to the U.S. upon a knowing false claim to U.S. citizenship cannot be deemed to have been inspected and admitted. See Matter of Pinzon (PDF), 26 I&N Dec. 189 (BIA 2013).

See Reid v. INS, 420 U.S. 619, 624 (1975) (an alien who enters the United States based on a false claim to U.S. citizenship is excludable under former INA 212(a)(19), or INA 212(a)(6)(C) today, and considered to have entered without inspection).

Deferred inspection is a form of parole. An alien who is deferred inspection is paroled into the United States for the period of time necessary to complete the inspection. See 8 CFR 235.2(c). For more information on deferred inspection, see Subsection 3, Parole [7 USCIS-PM B.2(A)(3)].

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended the statute by changing the concept of “entry” to “admission” and “admitted.” See Section 301(a) of IIRIRA, Division C of Pub. L. 104-208 (PDF), 110 Stat. 3009, 3009-575 (September 30, 1996). INA 101(a)(13)(B) clarifies that parole is not admission.

“The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”. Legislative history does not elaborate on the meaning of “lawful.”

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See Matter of Areguillin (PDF), 17 I&N Dec. 308 (BIA 1980). See INA 291 (burden of proof). See Emokah v. Mukasey, 523 F.3d 110 (2nd Cir 2008). While it is an “admission,” procuring admission by fraud or willful misrepresentation is illegal and has several consequences. For example, the alien may be inadmissible and removable. See INA 212(a)(6)(C) and INA 237(a)(1)(A).

The alien is not inadmissible as an illegal entrant under INA 212(a)(6)(A)(i). For more information on admissibility, see Volume 8, Admissibility [8 USCIS-PM].

See Matter of Pinzon (PDF), 26 I&N Dec. 189 (BIA 2013) (an alien who enters the United States by falsely claiming U.S. citizenship is not deemed to have been inspected by an immigration officer, so the entry is not an “admission” under INA 101(a)(13)(A)).

See Reid v. INS, 420 U.S. 619, 624 (1975). See Matter of S- (PDF), 9 I&N Dec. 599 (BIA 1962). An alien who makes a false claim to U.S. citizenship is inadmissible for making the claim (INA 212(a)(6)(C)(ii)). The alien may also be inadmissible for presence without admission or parole (INA 212(a)(6)(A)(i)) and unlawful presence after previous immigration violations (INA 212(a)(9)(C)).

Such aliens are inadmissible for presence without admission or parole and may be inadmissible for
unlawful presence after previous immigration violations. See INA 212(a)(6)(A)(i) and INA 212(a)(9)(C).

[^27] See INA 212(a)(2). See INA 212(h) and INA 240A(a).

[^28] See INA 101(a)(13)(C). See generally Matter of Collado-Munoz, 21 I&N Dec. 1061 (BIA 1997). The alien who enters by making a false claim to LPR status at a port of entry and who is permitted to enter is inadmissible for presence without admission or parole (INA 212(a)(6)(A)(i)) and fraud and misrepresentation (INA 212(a)(6)(C)(i)). The alien may also be inadmissible for unlawful presence after previous immigration violations. See INA 212(a)(9)(C).

[^29] This will typically be documented by an approved Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I-102).

[^30] CBP or USCIS can issue an Arrival/Departure Record (Form I-94). If admitted to the United States by CBP at an airport or seaport after April 30, 2013, CBP may have issued an electronic Form I-94 to the applicant instead of a paper Form I-94. To obtain a paper version of an electronic Form I-94, visit the CBP Web site. CBP does not charge a fee for this service. Some travelers admitted to the United States at a land border, airport, or seaport, after April 30, 2013, with a passport or travel document and who were issued a paper Form I-94 by CBP may also be able to obtain a replacement Form I-94 from the CBP website without charge. Applicants may also obtain Form I-94 by filing an Application for Replacement/Initial Nonimmigrant Arrival-Departure Record (Form I-102), with USCIS. USCIS charges a fee for this service.

[^31] U.S. Department of State Form DSP-150.


[^33] See 8 CFR 212.1(b).

[^34] See 8 CFR 212.1(c).

[^35] See Delegation to the Bureau of Citizenship and Immigration Services, DHS Delegation No. 0150.1; Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement, DHS Delegation No. 7030.2; Delegation of Authority to the Commissioner of U.S. Customs and Border Protection, DHS Delegation No. 7010.3.


[^37] See INA 101(a)(13)(B) and 212(d)(5)(A).

[^38] See 8 CFR 235.2.

[^39] CBP generally issues a Notice to Appear 30 days after an alien’s non-appearance for the deferred inspection, so an officer should review the relevant case and lookout systems for any entries related to CBP.

[^40] CBP generally creates either an A-file or T-file to document the deferred inspection.

[^41] See legacy Immigration and Naturalization Service (INS) General Counsel Opinion 94-28, 1994 WL 1753132 (whether deferred inspection constitutes parole for purposes of adjustment of status under INA 245).

[^42] See INA 212(d)(5).

[^43] See INA 212(d)(5).

[^44] Only parole under INA 212(d)(5)(A) meets this requirement.


[^47] As with any immigration benefit request, eligibility for adjustment must exist when the application is filed and continue through adjudication. See 8 CFR 103.2(b)(1).

[^48] For example, parole does not erase any periods of prior unlawful status. Therefore, an alien who entered without inspection will remain ineligible for adjustment of status, even after a grant of parole, unless he or she is an immediate relative or falls within one of the other designated exceptions to INA 245(c)(2) or INA 245(c)(8).

[^49] See INA 245(c)(2). See Chapter 4, Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM B.4].


[^51] See Authorization for Parole of an Alien into the United States (Form I-512 or I-512L).

[^52] See 8 CFR 235.1(h)(2). If an alien was admitted to the United States by CBP at an airport or seaport after April 30, 2012, the alien may have been issued an electronic Form I-94 by CBP, instead of a paper Form I-94. For more information, see the CBP website.


[^54] See INA 235(a)(1).

[^55] See INA 244. See 8 CFR 244.


and U.S. District Courts (PDF).


[^65] The *Flores* decision is only binding on cases within the jurisdiction of the Sixth Circuit. The *Ramirez* decision is only binding on cases within the jurisdiction of the Ninth Circuit.

[^66] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10] and Volume 1, General Policies and Procedures, Part E, Adjudication, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

[^67] As required under INA 245(a)(3). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^68] See INA 212. In some cases, an adjustment of status applicant might be able to overcome certain grounds of inadmissibility by obtaining a waiver or other form of relief. If an alien is granted a waiver of a ground of inadmissibility in connection with the Application for Temporary Protected Status (*Form 1-821*), the waiver is only valid for the TPS application and any subsequent TPS re-registration applications. It does not apply to any other immigration benefit requests, such as adjustment of status. For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

[^69] See INA 245(c)(1)-(8). Some adjustment bars do not apply to aliens classified as immediate relatives, certain special immigrants, and certain employment-based immigrants. Also, aliens ineligible for adjustment under INA 245(a) due to the adjustment bars may be eligible for adjustment under INA 245(i). For more information, see Chapter 3, Unlawful Immigration Status at Time of Filing (INA 245(c)(2)) [7 USCIS-PM B.3] through Chapter 8, Inapplicability of Bars to Adjustment [7 USCIS-PM B.8].

[^70] For example, an alien classified as an immediate relative is exempt from this bar to adjustment. See INA 245(c)(2). See Chapter 4, Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM B.4]. See *Melendez v. McAleenan*, 928 F.3d 425 (5th Cir. 2019). See *Duron v. Stul*, 724 F. Appx. 791 (11th Cir. 2018). See *Matter of H-G-G- (PDF)*, 27 I&N Dec. 617 (AAO 2019).

[^71] See INA 245(c)(1). See Chapter 7, Other Barred Adjustment Applicants, Section A, Crewmen [7 USCIS-PM A.7(A)]. INA 244(f)(4) “cannot alter the historical circumstances” of entry as a crewman on which the INA 245(c)(1) bar depends. See *Guerrero v. Nielsen*, 742 Fed. Appx. 793 (5th Cir. 2018).


[^73] See Section 304(c) of the Miscellaneous and Technical Immigration and Naturalization Amendments Act of 1991 (MTINA), Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended. TPS beneficiaries subject to certain criminal, national security, and related grounds of inadmissibility as described in INA 244(c)(2)(A)(iii) may not be eligible to return in the same immigration status they had at the time of departure.

[^74] See legacy INS General Counsel Opinion 92-10. Status, in such a case, would be that of an alien in TPS. Incidents of status include, but are not limited to, the manner of the alien’s most recent entry into the United States, pending removal orders, ongoing removal proceedings, applicable adjustment bars described in INA 245(c), and grounds of inadmissibility.

[^75] See *Matter of Z-R-Z-C- (PDF, 268.36 KB)*, Adopted Decision 2020-02 (AAO Aug. 20, 2020) (“A status quo ante return cannot create a condition needed to establish eligibility for a benefit for which the alien...
would not have been entitled at the time of departure. To conclude otherwise would contravene the Congressional intent that the alien be returned to the same status the alien had at the time of departure.”).


[^78] See 8 CFR 244.10(f)(2)(iii) and 8 CFR 244.15(a) which in turn provide that permission to travel abroad is sought and provided “pursuant to the Service’s advance parole provisions.”


[^83] See Sanchez v. Sec'y United States Dep't of Homeland Sec., No. 19-1311, 2020 WL 4197523 (3rd Cir. 2020) (“Absent a clear statutory directive, a program that provides ‘limited, temporary’ relief should not be read to facilitate permanent residence for aliens who entered the country illegally.”).


[^86] See 8 CFR 209.2. For more information on asylee adjustment, see Part M, Asylee Adjustment [7 USCIS-PM M].

[^87] Due to the different statutory bases, different eligibility requirements, exceptions, and waivers apply to applicants seeking adjustment based on their asylum status compared to those seeking adjustment under INA 245(a).


[^90] Any documentary evidence of admission should be consistent with entry information provided in the adjustment application or in oral testimony and should not contradict any other admission or departure evidence in DHS records. For example, when there is no Arrival/Departure Record or passport with an admission stamp, an officer may rely on information in DHS records, information in the applicant’s file, and the applicant’s testimony to make a determination on whether the applicant was inspected and admitted or inspected and paroled into the United States.


[^92] For more information, see Subsection 2, Admission [7 USCIS-PM B.2(A)(2)].
See 8 CFR 103.2(a) and 8 CFR 103.2(b). The applicant may submit a fee waiver request. See Request for Fee Waiver (Form I-912).

In addition, USCIS should process a fee refund when an adjustment application is accepted in error because a visa was unavailable at the time of filing and the error is recognized before interview or adjudication. For more information on the definition of “properly filed” and fee refunds, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions.

Immediate relatives of a U.S. citizen include the U.S. citizen’s spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and aliens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.

Diversity visas do not rely on a USCIS-filed petition to obtain a visa. The diversity visa lottery is conducted by the U.S. Department of State.


See INA 245(a)(3). 8 CFR 245.1(g)(1), 8 CFR 245.2(a)(5)(ii), and 8 CFR 103.2(b)(1). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability.

If one or more of the grounds listed in INA 212 applies to an applicant then the applicant may be inadmissible. For more information, see Volume 8, Admissibility and Volume 9, Waivers and Other Forms of Relief.

See Volume 9, Waivers and Other Forms of Relief.

See INA 245(c).

Even if aliens are barred from adjusting under INA 245(a), they may still adjust under another statutory basis as long as they meet the applicable eligibility requirements.

An immigrant category may exempt an applicant or make an applicant eligible for a waiver of certain adjustment bars and grounds of inadmissibility. Even if an exemption applies to an applicant who would otherwise be barred from adjustment of status, the applicant may still be denied adjustment as a matter of discretion. For more information on discretion, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion.

It is service as a crewman that triggers the bar to adjustment, not the actual nonimmigrant status. This bar applies if the alien was actually permitted to land under the D-1 or D-2 visa category. The bar also applies if the alien was a crewman admitted as a C-1 to join a crew, or as a B-2 if serving on a crew.

This does not apply to aliens who failed to maintain lawful status through no fault of their own or
solely for technical reasons, as defined in 8 CFR 245.1(d)(2).

[^108] The INA 245(c)(2) bar addresses three distinct types of immigration violations.


[^110] See INA 201(b). Immediate relatives of a U.S. citizen include the U.S. citizen’s spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and aliens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.


[^112] If an adjustment applicant is eligible for the 245(k) exemption, then he or she is exempted from the INA 245(c)(2) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^113] See INA 212(l) and INA 217.

[^114] See INA 101(a)(15)(S) and INA 245(j). The applicants are beneficiaries of a request by a law enforcement agency to adjust status (Inter-Agency Alien Witness and Informant Record (Form I-854)).


[^116] Although VAWA-based applicants are exempt from all INA 245(c) bars per statute, a VAWA-based applicant may still be determined to be removable (INA 237(a)(4)(B)) or inadmissible (INA 212(a)(3)) due to egregious public safety risk and on security and related grounds.

[^117] INA 245(c)(7) does not apply to VAWA-based applicants, immediate relatives, family-based applicants, or special immigrant juveniles because these aliens are not seeking adjustment as employment-based applicants. See 8 CFR 245.1(b)(9).

[^118] If an employment-based adjustment applicant is eligible for the INA 245(k) exemption, then he or she is exempted from the INA 245(c)(7) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^119] This is also referred to as an alien who has violated the terms of his or her nonimmigrant status.

[^120] There are no time restrictions on when such a violation must have occurred while physically present in the United States. Violations either before or after the filing of Form I-485 will render an alien ineligible to adjust status under INA 245(a). An alien seeking employment during the pendency of his or her adjustment applicant must fully comply with the requirements of INA 274A and 8 CFR 274a. See 62 FR 39417 (PDF) (Jul. 23, 1997).

[^121] The INA 245(c)(8) bar addresses two distinct types of immigration violations.


[^123] USCIS interprets the exemption listed in INA 245(c)(2) for immediate relatives and certain special immigrants as applying to the 245(c)(8) bar in addition to the 245(c)(2) bar. See 62 FR 39417 (PDF) (Jul. 23, 1997).

[^124] If an adjustment applicant is eligible for the 245(k) exemption, then he or she is exempted from the
INA 245(c)(8) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^125] See INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8).

[^126] See Chapter 8, Inapplicability of Bars to Adjustment [7 USCIS-PM B.8].

[^127] This applies to religious workers only.

[^128] Notwithstanding INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8), the officer should treat an alien who meets the conditions set forth in INA 245(k) in the same manner as an applicant under INA 245(a).

Chapter 3 - Unlawful Immigration Status at Time of Filing (INA 245(c)(2))

An alien is barred from adjustment of status if the alien is in an unlawful immigration status on the date of filing the adjustment application. [1] This bar to adjustment does not apply to:

- Immediate relatives; [2]
- Violence Against Women Act (VAWA)-based applicants;
- Certain alien doctors and their accompanying spouse and children; [3]
- Certain G-4 international organization employees, NATO-6 employees, and their family members; [4]
- Special immigrant juveniles; [5]
- Certain members of the U.S. armed forces and their spouses and children; [6] or
- Employment-based applicants who meet the INA 245(k) exemption.

A. Lawful Immigration Status [7]

Aliens in the United States who are considered to be in lawful immigration status generally include:

- Lawful permanent residents (LPR), including lawful temporary residents and conditional permanent residents;
- Nonimmigrants; [8]
- Refugees; [9]
- Asylees; [10]
- Parolees; [11]
- Aliens in temporary protected status (TPS); and
- Aliens lawfully present in the Commonwealth of the Northern Mariana Islands (CNMI) between November 28, 2009 and November 27, 2011 based on a valid, unexpired, and lawfully obtained period
of stay that was CNMI-authorized prior to November 28, 2009 that remains valid on the date of adjustment application.

Simply filing an application for an immigration benefit or having a pending benefit application generally does not put an alien in a lawful immigration status.\[12\] In general, once an immigrant benefit application is approved, an alien is in lawful immigration status as of the date of the filing of the application.

**B. Unlawful Immigration Status**

An alien is in unlawful immigration status if he or she is in the United States without lawful immigration status either because the alien never had lawful status or because the alien’s lawful status has ended.

Aliens in unlawful immigration status generally include those:

- Who entered the United States without inspection and admission or parole;\[13\] and
- Whose lawful immigration status expired or was rescinded, revoked, or otherwise terminated.\[14\]

**C. Time in Unlawful Immigration Status**

If in unlawful immigration status, the alien’s unlawful status generally begins:

- On the day the alien enters the United States without inspection;
- On the day the alien violates the terms or conditions of his or her nonimmigrant status;\[15\] or
- On the day after the alien’s authorized status has been violated, has expired, been rescinded, revoked, or otherwise terminated while he or she is physically present in the United States.\[16\]

Unlawful immigration status generally ends when either of the following events occur, whichever is earlier:

- The alien obtains lawful immigration status, or
- The alien departs the United States.

**D. Difference between Lawful Immigration Status and Period of Authorized Stay**

Lawful immigration status is distinct from being in a period of authorized stay. Periods of authorized stay are only relevant when determining an alien’s accrual of unlawful presence for inadmissibility purposes.\[17\] Although an alien in a lawful immigration status is also in a period of authorized stay, the opposite is not necessarily true. Those in a period of authorized stay may or may not be in a lawful immigration status.

Officers consider the difference between lawful immigration status and a period of authorized stay when determining whether an alien is in lawful immigration status for purposes of the **INA 245(c)(2)** adjustment bar.
E. Effect of Pending Application or Petition

A pending application to extend or change status (Form I-129 or Form I-539), a pending adjustment application, or a pending petition does not confer lawful immigration status on an alien. In addition, a pending application or petition does not automatically afford protection against removal if the alien’s status expires after submission of the application. The alien may have no actual lawful status in the United States and may be subject to removal proceedings unless and until the extension of stay (EOS) application, change of status (COS) application, adjustment application, or petition is approved.

1. Extension of Stay or Change of Status

An alien may file an adjustment application after expiration of his or her nonimmigrant status while the alien’s timely-filed EOS or COS application is pending. In such cases, the officer should defer adjudication of the adjustment application until USCIS adjudicates the EOS or COS application so long as there are no other grounds for denial.

If USCIS ultimately approves the EOS or COS application, then the alien is considered to be in lawful immigration status on the date the adjustment application is filed. If USCIS denies the EOS or COS application, then the alien is generally considered to be in unlawful immigration status as of the expiration of the alien’s current nonimmigrant status and likewise on the date the adjustment application is filed. In this instance, the INA 245(c)(2) bar would apply, unless an exemption is available.

The following scenario illustrates the distinction between lawful immigration status and a period of stay authorized by the Secretary of Homeland Security. The scenario provides an example of when an alien may be considered to be in unlawful immigration status after filing multiple applications to extend and change status.

**Example: Effect of Multiple Applications to Extend or Change Status**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 28, 2007</td>
<td>An alien is admitted to the United States as a B-2 nonimmigrant visitor.</td>
</tr>
<tr>
<td>March 16, 2008</td>
<td>An employer timely filed an L-1 petition (Petition for a Nonimmigrant Worker (Form I-129) for the B-2 nonimmigrant visitor, including a request on behalf of the nonimmigrant to change status to an L-1 nonimmigrant intracompany transferee nonimmigrant classification.</td>
</tr>
<tr>
<td>March 28, 2008</td>
<td>The B-2 nonimmigrant visitor’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
<tr>
<td>September 10, 2008</td>
<td>The alien untimely filed an application to extend B-2 nonimmigrant visitor status after the employer receives a Request for Evidence (RFE) on the L-1 petition.</td>
</tr>
</tbody>
</table>
### Date | Event
--- | ---
December 7, 2008 | The RFE goes unanswered and USCIS denies the L-1 petition and the accompanying COS application.
January 11, 2009 | The employer untimely files a second L-1 petition (Form I-129) for the alien.
February 8, 2009 | USCIS denies the alien’s application to extend B-2 nonimmigrant visitor status because it was filed after the expiration of his authorized stay.
February 11, 2009 | USCIS approves the second L-1 petition (Form I-129) for the alien but denies the accompanying application to change status from B-2 nonimmigrant visitor to L-1 because the alien was out of status at the time the petition was filed.

This example highlights that an alien seeking an EOS or COS cannot indefinitely avoid any time out of or in violation of lawful status just because of a pending application to extend or change status.

When USCIS denied the first L-1 petition and COS application on December 7, 2008, the applicant was out of B-2 status as of March 29, 2008. Even though USCIS ultimately denied the first L-1 petition and COS request, the petition was timely filed. Accordingly, the petition provided the alien a period of authorized stay while the petition was pending from March 16, 2008 through final adjudication on December 7, 2008.

Notwithstanding, the untimely filed application for extension of B-2 status did not provide the alien any period of authorized stay. In addition, the applications and petitions filed did not grant any lawful status to the alien or create a “bridge” of continuing lawful status stemming from the first timely filed petition.

### 2. Adjustment

A pending adjustment application does not put an alien in a lawful immigration status. For example, if USCIS previously denied adjustment of status to an applicant and the applicant reapplies for adjustment, the period the first application was pending does not count as time spent in lawful immigration status.

### 3. Petition

A pending or approved petition does not confer lawful immigration status on an alien. An immigrant petition merely classifies an alien in a particular immigrant visa category, which forms the basis for the alien’s adjustment application.

### Footnotes

^2] See INA 201(b). Immediate relatives of a U.S. citizen include the U.S. citizen’s spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and aliens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.


[^12] For more information, see Section E, Effect of Pending Application or Petition [7 USCIS-PM B.3(E)].

[^13] USCIS systems may indicate an entry without inspection as “EWI.”

[^14] For example, an alien who was admitted as a nonimmigrant is in an unlawful status if the alien has violated any of the terms or conditions of the nonimmigrant status – such as by engaging in unauthorized employment, termination of the employment that was the basis for the nonimmigrant status, failing to maintain a full course of study, or engaging in conduct specified in 8 CFR 212.1(e)-(g). The alien’s status also becomes unlawful if the alien remains in the United States after DHS terminates the alien’s nonimmigrant status under 8 CFR 214.1(d).

[^15] The relevant terms or conditions include those that apply to all nonimmigrants, such as 8 CFR 214.1(e)-(g), as well as those that apply to the specific nonimmigrant classification. For example, a B-2 visitor who worked without authorization and an F-1 student who failed to maintain a full course of study would both be out of status.

[^16] Extension of stay or change of status applications, once approved, may retroactively confer lawful immigration status. For more information, see Section E, Effect of Pending Application or Petition [7 USCIS-PM B.3(E)].

[^17] See INA 212(a)(9)(B) and INA 212(a)(9)(C). Those in a period of stay authorized are protected from accruing unlawful presence. For example, an alien whose adjustment of status application is pending is in a period of stay authorized and does not accrue unlawful presence. However, although an alien is in a period of stay authorized, it may be that the alien is in unlawful status. See Section E, Effect of a Pending Application or Petition [7 USCIS-PM B.3(E)].

[^18] In some cases, USCIS may excuse untimely filing and approve an extension of stay or change of status request. For more information, see Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and
INA 245(c)(8), Section E, Exceptions, Subsection 3, Effect of Extension of Stay and Change of Status [7 USCIS-PM B.4(E)(3)].

Chapter 4 - Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8))

Any adjustment applicant is ineligible to adjust status under INA 245(a) if, other than through no fault of his or her own or for technical reasons, he or she has ever:

- Failed to continuously maintain a lawful status since entry into the United States; or
- Violated the terms of his or her nonimmigrant status.

The INA 245(c)(2) and INA 245(c)(8) bars to adjustment do not apply to:

- Immediate relatives;
- Violence Against Women Act (VAWA)-based applicants;
- Certain physicians and their accompanying spouse and children;
- Certain G-4 international organization employees, NATO-6 employees, and their family members;
- Special immigrant juveniles; or
- Certain members of the U.S. armed forces and their spouse and children.

Employment-based applicants also may be eligible for exemption from this bar under INA 245(k).

A. Failure to Continuously Maintain Lawful Immigration Status

The bar to adjustment for failing to continuously maintain a lawful status since entry into the United States applies to an applicant for adjustment who has:

- Failed to maintain continuously a lawful status since their most recent entry; and
- An applicant who has ever been out of lawful status at any time since any entry.

Example: Failure to Continuously Maintain Lawful Status

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 1, 2010</td>
<td>An alien is admitted to the United States as a nonimmigrant student at a university.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>January 15, 2011</td>
<td>The nonimmigrant student takes a leave of absence from the university for a semester without the permission of the designated school official. The nonimmigrant student status is terminated as a result.</td>
</tr>
<tr>
<td>September 1, 2011</td>
<td>The alien departs the United States.</td>
</tr>
<tr>
<td>January 1, 2014</td>
<td>The alien is admitted to the United States as a nonimmigrant intracompany transferee for a company.</td>
</tr>
<tr>
<td>January 1, 2015</td>
<td>The company files an employment-based immigrant visa petition to classify the nonimmigrant as an employment-based first preference multinational manager. The nonimmigrant simultaneously files an adjustment of status application.</td>
</tr>
</tbody>
</table>

In this example, the nonimmigrant intracompany transferee is subject to the INA 245(c)(2) bar to adjustment due to the prior failure to continuously maintain nonimmigrant student status in 2011. The nonimmigrant transferee, however, may be exempt from that bar under INA 245(k). [11]

**B. Violation of Terms of Nonimmigrant Visa**

The bar for otherwise violating the terms of a nonimmigrant visa refers to a violation of the terms and conditions of an alien’s specific nonimmigrant status as set forth in relevant regulations. [12] This bar applies not only to applicants who violated the terms of their most recent nonimmigrant status but also to those who have ever violated the terms of a nonimmigrant status at any time during any prior periods of stay in the United States as a nonimmigrant. [13]

Terms of nonimmigrant status include, but are not limited to:

- Time limitations on the period of admission and any subsequent extensions or changes of status; [14]
- Compliance with applicable requirements; [15]
- Limitations on employment; [16]
- Compliance with any registration, photographing, and fingerprinting requirements, including National Security Entry Exit Registration System (NSEERS) registration, [17] that relate to the maintenance of nonimmigrant status; [18]
- Full and truthful disclosure of all information requested by USCIS; and [19]
- Obedience to all laws of U.S. jurisdictions which prohibit the commission of crimes of violence and for which a sentence of more than one-year imprisonment may be imposed. [20]
For example, an L-1B worker who works for an employer other than the employer authorized by the approved L-1B petition violates the terms of his or her nonimmigrant status and may be barred not only by INA 245(c)(8) but also INA 245(c)(2).

C. Effect of Departure

The departure and subsequent reentry of an applicant who has at any time failed to maintain a lawful immigration status or violated the terms of the nonimmigrant status on any previous entry into the United States does not erase the bar. Otherwise, an applicant who has failed to maintain lawful status or violated status could simply depart the United States, reenter immediately, and become eligible to file for adjustment of status. [21]

D. Periods of Time to Consider

Unless an exemption applies, an applicant is barred from adjusting status if the applicant commits either of these two violations at any time, no matter how long ago, and even if such violations occur only for one day.

Neither the INA nor USCIS places time restrictions on when the violation (or violations) must have occurred. Therefore, the violation is not required to have occurred during any particular period of time. For these reasons, USCIS counts any violation that occurs after any entry into the United States. [22] It does not matter how much time has passed since that entry or whether the person subsequently left the United States and returned lawfully.

An officer, therefore, must consider all of the alien’s entries and time spent inside the United States when considering these adjustment bars. The officer should disregard how much time has passed since each entry and whether the applicant subsequently left the United States and returned lawfully.

E. Exceptions

For purposes of INA 245(c)(2) and INA 245(c)(8), an applicant’s failure to maintain lawful immigration status or violation of nonimmigrant status may be excused only for the particular period of time under consideration if:

- The applicant was reinstated to F, M, or J status;

- The applicant’s failure to maintain status was through no fault of his or her own or for technical reasons; or

- The applicant was granted an extension of nonimmigrant stay or a change of nonimmigrant status. [23]

1. Reinstatement to F, M, or J Status

If USCIS reinstates a nonimmigrant to F or M student status or if the U.S. Department of State reinstates a nonimmigrant to J exchange visitor status, the reinstatement only excuses the particular period of time the nonimmigrant failed to maintain status. The reinstatement does not excuse any prior or future failure to maintain status. [24]

In order to qualify for reinstatement, a student or exchange visitor must establish that the violation resulted from circumstances beyond his or her control, such as a natural disaster, illness or closure of a school.
oversight or neglect by the designated school officer (DSO) or responsible officer (RO), or the reduction in
the student’s course load authorized by the DSO. The reinstatement is in effect the functional equivalent of
waiving the violation. In this instance, the violation subject to the reinstatement would not bar the alien from
adjusting status.

2. No Fault of His or Her Own or For Technical Reasons

No Fault Provision

An applicant’s failure to continuously maintain lawful immigration status or violation of nonimmigrant status
may be excused only for the particular period of time under consideration if the applicant’s failure or
violation was through no fault of his or her own or for technical reasons. [25]

The meaning of “other than through no fault of his or her own or for technical reasons” is limited to the
following circumstances:[26]

- Inaction of another person or organization designated by regulation to act on behalf of an applicant or
  over whose actions the applicant has no control, if the inaction is acknowledged by that person or
  organization; [27]
- Technical violation resulting from inaction of USCIS;
- Technical violation caused by the physical inability of the applicant to request an extension of
  nonimmigrant stay from USCIS in person or by mail; or
- Technical violation resulting from legacy Immigration and Naturalization Service (INS)’s application
  of the 5-year or 6-year period of stay for certain H-1 nurses, if the nurse was re-instated to H-1 status as
  a result of the Immigration Amendments of 1988. [28]

If an officer determines that the applicant was out of status based solely on any of the above circumstances,
the officer should annotate that determination on the adjustment application and adjudicate the
application. [29]

Inaction of Designated Official or Organization

Instances of qualifying inaction include the failure of a designated school official or
exchange visitor program sponsor to provide required notification to USCIS of an applicant’s continuation of
status or to forward a request for continuation of an applicant’s status to USCIS. The official or organization
designated to act on behalf of the applicant must notify USCIS and acknowledge responsibility for the
inaction. [30]

This exception does not include instances in which a petitioner delays completing required documents to give
to the applicant for submission to USCIS. [31]

This exception generally does not apply to most claims that an applicant’s attorney or representative provided
ineffective counsel or failed to file an application or other documents to USCIS on the applicant’s
behalf. [32] The applicant and the attorney or representative are both responsible for complying with all
applicable USCIS filing requirements and official correspondence or requests for information, and the
applicant has control over the actions of the representative.

Example: Failure to Continuously Maintain Status Due to Inaction of Designated Official
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 1, 2008</td>
<td>An alien is admitted as a nonimmigrant student authorized to attend a university full-time.</td>
</tr>
<tr>
<td>August 15, 2009</td>
<td>After a year of study, the nonimmigrant transfers to another university through appropriate procedures, including updating the Certificate of Eligibility for Nonimmigrant (F-1) Student Status (Form I-20 A-B). The Designated School Official (DSO) at the first university fails to properly update the Student and Exchange Visitor Information System (SEVIS), which now shows a large gap in the student’s attendance between the first and second universities.</td>
</tr>
<tr>
<td>October 1, 2010</td>
<td>During a benefit request review, a USCIS officer notices the potential violation of status and issues a Request for Evidence to the nonimmigrant student. In response, the nonimmigrant student submits a letter from the DSO at the first university explaining the school had failed to timely record the transfer in SEVIS. The student provides copies of her transcripts, showing full-time attendance as explained in the DSO’s letter.</td>
</tr>
</tbody>
</table>

In this example, the exception applies because the DSO failed to update SEVIS with the transfer information, and the failure was beyond the alien’s control. Conversely, the exception would not apply if the nonimmigrant student had withdrawn from school without DSO permission. Instead, such action would have resulted in a failure to maintain nonimmigrant student status.

**Technical Violation Resulting from Inaction of USCIS**

One example of the phrase “a technical violation resulting from the inaction of USCIS” is where an applicant ceases to have a lawful status because USCIS failed to adjudicate a properly and timely filed request to extend or change nonimmigrant status.

Often an officer can verify a technical violation resulting from USCIS inaction or oversight through review of USCIS systems and the Record of Proceeding. In other instances, an adjustment applicant who claims a technical violation of status based on USCIS’ failure to adjudicate a pending application must prove that:

- The applicant properly filed an application to extend or change nonimmigrant status prior to the expiration date of his or her nonimmigrant status;
- The applicant was a bona fide nonimmigrant at the time of filing his or her application to extend or change nonimmigrant status, which includes establishing intent consistent with the terms and conditions of the nonimmigrant status sought;
- The applicant filed an application to extend or change nonimmigrant status that was meritorious in fact, not frivolous or fraudulent, or otherwise designed to delay removal or departure from the United States;
- The applicant has not otherwise violated his or her nonimmigrant status;
- The applicant remained a bona fide nonimmigrant until the time he or she properly...
filed an adjustment application; and

- The applicant is not in removal proceedings.

Failure to maintain status because of a pending labor certification application with the U.S. Department of Labor or a pending immigrant visa petition with USCIS does not qualify under this exception. [34]

**Technical Violation Caused by the Physical Inability of the Applicant**

There may be instances when a nonimmigrant is physically unable to file an application to extend or change nonimmigrant status, such as when an alien is hospitalized with an illness or medical condition at the time the nonimmigrant status expires. [35]

An adjustment applicant who claims that he or she technically violated his or her status because of a physical inability to file an extension or change of status application must establish that:

- He or she was subject to a physical impairment such that the nature, scope, and duration of the physical impairment reasonably prevented the applicant from filing the extension or change of status application;
- He or she has not otherwise violated his or her nonimmigrant status;
- He or she remained a bona fide nonimmigrant until the time he or she properly filed an adjustment application; and
- He or she is not in removal proceedings.

The adjustment applicant must include a corroborating letter from the hospital, attending, or treating physician that explains the circumstances, nature, scope, and duration of the physical impairment.

**Technical Violation Involving Certain H-1 Nurses**

An adjustment applicant may claim that he or she was only out of status because of legacy INS’s application of the maximum period of stay for certain H-1 nurses. In this instance, the applicant must show that he or she was subsequently reinstated to H-1 status. [36] This special provision allowed for extension of H-1 status of certain registered nurses who held such status for at least five years and whose status expired in 1988 or 1989, or expired in 1987, but was under request for administrative extension. [37] While this exception still applies, it only covers a time period through December 31, 1989. Therefore, it is unlikely that an officer will encounter this exemption due to passage of time.

### 3. Effect of Extension of Stay and Change of Status [38]

At the time of adjustment, an officer must consider all of the applicant’s current and previous entries into and stays in the United States, including current and previous applications for extension of stay (EOS) or change of status (COS). [39] The following examples provide more detail on the effect of EOS and COS applications on a pending adjustment application.

**Timely Filed Application to Extend Stay Granted by USCIS**

When USCIS approves a nonimmigrant’s timely filed application to extend status, the start date of the extended status is retroactive to the expiration date of the initial or previously extended period of status. USCIS’ practice of making the approval effective as of the prior expiration date recognizes that the
nonimmigrant has been maintaining the same nonimmigrant status throughout the processing and adjudication of the extension application.

Example: Effect of Timely Filed Extension of Stay Application

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2009</td>
<td>An alien is admitted to the United States as a B-2 nonimmigrant visitor.</td>
</tr>
<tr>
<td>June 30, 2009</td>
<td>The B-2 nonimmigrant’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
<tr>
<td>June 1, 2009</td>
<td>The B-2 nonimmigrant timely files an application to extend visitor status.</td>
</tr>
<tr>
<td>August 1, 2009</td>
<td>The B-2 nonimmigrant files an adjustment application.</td>
</tr>
<tr>
<td>September 1, 2009</td>
<td>USCIS extends the B-2 nonimmigrant’s visitor status valid from June 30, 2009 to December 31, 2009.</td>
</tr>
</tbody>
</table>

In this scenario, USCIS considers the alien to have continuously maintained lawful status for purposes of adjusting status. In contrast, if USCIS denied the extension application, the alien would have fallen out of status as of June 30 and would be barred from adjusting status, unless an exemption applies.

Timely Filed Application to Change Status Granted by USCIS

When USCIS approves a nonimmigrant’s timely filed application to change status, the start date for the new nonimmigrant status is effective on the date of approval. The start date acknowledges the fact that USCIS only authorizes the nonimmigrant’s change of status as of the date of the approval.

If a gap of time exists between the expiration date of the previous nonimmigrant status and the start date of the new status, USCIS considers the nonimmigrant to have continued to maintain a lawful status only if:

- The nonimmigrant timely filed the COS application;
- USCIS granted the request to change status; and
- The nonimmigrant did not violate any terms and conditions of the initial status.

Example: Effect of TimelyFiled Change of Status Application

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 1, 2009</td>
<td>An alien is admitted as a B-1 nonimmigrant visitor.</td>
</tr>
</tbody>
</table>
### Date
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2009</td>
<td>An employer timely files a Petition for a Nonimmigrant Worker (Form I-129) on behalf of the B-1 nonimmigrant to change status to an L-1 nonimmigrant intracompany transferee.</td>
</tr>
<tr>
<td>August 1, 2009</td>
<td>The B-1 nonimmigrant’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
<tr>
<td>September 15, 2009</td>
<td>USCIS approves Form I-129 to change status and grants L-1 status as of September 15, 2009.</td>
</tr>
</tbody>
</table>

Even though there is a gap of nearly two months between the expiration date of the B-1 status and the date USCIS approved Form I-129, USCIS does not count the gap against the alien when determining if the alien maintained status. In this case, USCIS considers the alien to have maintained lawful status from February 1, 2009 through September 15, 2009 for purposes of adjusting status.

In contrast, if USCIS denied the application to change nonimmigrant status, the alien would have fallen out of valid status as of August 1 and would be barred from adjusting status, unless an exemption applies.

**Untimely Filed EOS or COS Application Excused and Granted by USCIS**

USCIS generally denies EOS and COS applications when the applicant failed to maintain nonimmigrant status or when the applicant’s status expired prior to filing the application.\(^{[40]}\)

If an applicant’s nonimmigrant status expires before he or she files an application to extend or change status, the application is not timely filed. USCIS has discretion to excuse the untimely filing and approve an EOS or COS application if the applicant can demonstrate that:

- The delay was due to extraordinary circumstances beyond the applicant’s control;
- The officer finds the delay commensurate with the circumstances;
- The applicant has not otherwise violated his or her nonimmigrant status;
- The applicant remains a bona fide nonimmigrant; and
- The applicant is not in removal proceedings.

As with a timely EOS or COS application, if USCIS approves an untimely filed application to extend or change status, the approval is effective as of the date of the expiration of the prior nonimmigrant admission period. For this reason, USCIS considers the applicant to have maintained lawful status despite the gap in time between the expiration of the prior nonimmigrant admission and the date of the approval.
### Example: Effect of Untimely Filed Extension of Stay Application Excused and Granted by USCIS

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2009</td>
<td>An alien is admitted to the United States as a B-2 nonimmigrant.</td>
</tr>
<tr>
<td>June 30, 2009</td>
<td>The B-2 nonimmigrant’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
<tr>
<td>August 5, 2009</td>
<td>The B-2 nonimmigrant untimely files a EOS application. The B-2 nonimmigrant explains that he was unable to file his extension request timely, because he was hospitalized with a debilitating medical condition when his B-2 status expired. He also provides corroborating evidence from the attending medical staff at the hospital.</td>
</tr>
<tr>
<td>September 1, 2009</td>
<td>USCIS excuses the untimely filing and approves the EOS application.</td>
</tr>
</tbody>
</table>

In this scenario, USCIS considers the alien to have continuously maintained lawful status for purposes of adjusting status. In contrast, if USCIS denied the EOS application, the alien would have fallen out of valid status as of June 30 and would be barred from adjusting status, unless an exemption applies.

### F. Temporary Protected Status and Maintenance of Status – INA 245(c)(2)

For purposes of adjustment of status, an alien in temporary protected status (TPS) is in and maintaining a lawful immigration status as a nonimmigrant during the period TPS is authorized. In addition, if an applicant was eligible to apply for TPS but was prevented by regulation from filing a late application for TPS registration, the applicant is considered as maintaining a lawful nonimmigrant status until the TPS benefit is granted.

Unless the applicant is otherwise exempt, the granting of TPS does not excuse or cure any other lapses or violations of lawful immigration status or forgive any unauthorized employment.

### G. Properly Filed Adjustment Application – INA 245(c)(2) and INA 245(c)(8)

For purposes of the bars to adjustment, a nonimmigrant only needs to maintain his or her nonimmigrant status until the time he or she properly files an adjustment application with USCIS so long as the nonimmigrant does not engage in any unauthorized employment after filing the adjustment application. An applicant does not violate the terms of his or her nonimmigrant status merely by filing an application to adjust status as long as the application was properly filed when the applicant was in lawful nonimmigrant status.
H. National Security Entry Exit Registration System and Violation of Visa – INA 245(c)(8)

Although the National Security Entry Exit Registration System (NSEERS) special registration requirements for nonimmigrants from designated countries effectively ended on April 28, 2011, USCIS continues to review whether nonimmigrants subject to the special registration requirements complied with the terms of the special registration when it was in effect. USCIS considers whether there was a willful failure to register and whether any failure to register was reasonably excusable. USCIS may consult with ICE to resolve any compliance or non-compliance issues. A willful failure to comply with the former NSEERS special registration provisions constitutes a failure to maintain nonimmigrant status.

I. Evidence to Consider

An officer may request and review any and all of the applicant’s Arrival/Departure Records (Forms I-94), approval notices (Forms I-797), USCIS records, current and expired passports, and other evidence or testimony that pertains to maintenance of lawful status and compliance with the terms and conditions of nonimmigrant status.

Footnotes

[^1] The language “…other than through no fault of his own or for technical reasons…” listed in INA 245(c)(2) also applies to INA 245(c)(8) and is defined in 8 CFR 245.1(d)(2).

[^2] See INA 245(c)(2). See 8 CFR 245.1(b)(6). This chapter only addresses one of the three immigration violations described in the INA 245(c)(2) bar. For more information on the other two immigration violations, see Chapter 3, Unlawful Immigration Status at Time of Filing – INA 245(c)(2) [7 USCIS-PM B.3] and Chapter 6, Unauthorized Employment – INA 245(c)(2) and INA 245(c)(8) [7 USCIS-PM B.6].

[^3] See INA 245(c)(8). An example of violating the terms of a nonimmigrant status would be if a B-2 visitor were to enroll in college and attend classes. This chapter only addresses one of the two immigration violations described in the INA 245(c)(8) bar. For more information on the other immigration violation, see Chapter 6, Unauthorized Employment – INA 245(c)(2) and INA 245(c)(8) [7 USCIS-PM B.6].

[^4] See INA 201(b). Immediate relatives of a U.S. citizen include the U.S. citizen’s spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and aliens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.


[^9] See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].
[^10] See INA 245(c)(2). See Section I, Evidence to Consider [7 USCIS-PM B.4(I)].


[^12] See INA 245(c)(8). The INA 245(c)(8) bar applies to an applicant “who has otherwise violated the terms of a nonimmigrant visa.” The related provision in INA 245(k)(2)(C) exempts an eligible applicant who has “otherwise violated the terms and conditions of the alien’s admission.” Based on the direct connection to the INA 245(c)(8) bar, it is clear that the use of the word “admission” in INA 245(k)(2)(C) is referring to admission under a nonimmigrant visa. Therefore, this adjustment bar is referred to as either “violated the terms of the applicant’s admission under a nonimmigrant visa” or as “violated the terms of the applicant’s nonimmigrant status.”

[^13] See Section D, Periods of Time to Consider [7 USCIS-PM B.4(D)].


[^16] See 8 CFR 214.1(g).


[^22] This may include violations that occur after the applicant files the adjustment application. For more information, see Section G, Properly Filed Adjustment Application – INA 245(c)(2) and INA 245(c)(8) [7 USCIS-PM B.4(G)].


[^25] See INA 245(c)(2). See INA 245(c)(8).


[^27] A parent who does not act on behalf of a child is not an instance of a qualifying inaction.


[^29] If the adjustment of status application is approved, any pending EOS or COS applications should be administratively closed, indicating that status was acquired through other means. If the officer determines that the applicant did not meet one of the four conditions, any properly and timely filed pending EOS or COS should be adjudicated without prejudice to the filing of the adjustment application and the officer may then proceed with the adjudication of the adjustment application.

There may be certain exceptions that apply. The longstanding case on ineffective counsel has been Matter of Lozada (PDF), 19 I&N Dec. 637 (BIA 1988). In this case, the Board of Immigration Appeals (BIA) ruled that the alien must establish that he or she was prejudiced by the action or inaction of counsel. The BIA also described the requirements for filing a motion to reopen deportation (now removal) proceedings based on a claim of ineffective counsel. The aliens’ motion should be supported by an affidavit attesting to the relevant facts. The alien’s affidavit should include a statement describing the agreement with counsel regarding specific actions to be taken and what counsel did or did not represent in that regard. The BIA also determined that former counsel must be informed of the allegations of ineffective assistance and be provided an opportunity to response. Lastly, per prior counsel’s handling of the case involved a violation of ethical or legal responsibilities, the alien’s motion should reflect whether a complaint has been filed with the appropriate disciplinary authorities. If not, the alien should explain the reason why.

For the terms of reinstatement, see Immigration Amendments of 1988, Pub. L. 101-658 (PDF) (November 15, 1988).

For Application to Extend/Change Nonimmigrant Status (Form I-539) or Petition for a Nonimmigrant Worker (Form I-129). If, for example, an alien would like to change his or her status from a visitor (B-1) to an L-1, a company or an organization would file Form I-129 on behalf of the alien.

Except in the case of an alien applying to obtain V nonimmigrant status. See INA 101(a)(15)(V).
Chapter 5 - Employment-Based Applicant Not in Lawful Nonimmigrant Status (INA 245(c)(7))

Any employment-based adjustment applicant who is not in a lawful nonimmigrant status at the time of filing for adjustment is barred from adjusting status, even if the applicant is lawfully present in the United States. [1] For example, a parolee is barred from seeking employment-based adjustment, because a parolee is not a lawful nonimmigrant status. [2]

Employment-based applicants may be eligible for exemption from this bar under INA 245(k). [3] The INA 245(c)(7) bar also does not apply to Violence Against Women Act (VAWA)-based applicants, immediate relatives, family-based applicants, special immigrant juveniles, or certain members of the U.S. armed forces because these aliens are not seeking adjustment as employment-based applicants. [4]

For purposes of this bar to adjustment, the term “lawful nonimmigrant status” refers to:

- An alien in a lawful status classified under the nonimmigrant statutory provisions; [5] and
- An alien in temporary protected status. [6]

Lawful nonimmigrant status does not include parolees, asylees, or certain other aliens who are otherwise authorized to be physically present in the United States.

Period of Time to Consider and Effect of Departure

In determining whether this adjustment bar applies, an officer should only consider the applicant’s immigration status on the date the applicant filed the current adjustment application. Any time the applicant was not in lawful status prior to filing the adjustment application is irrelevant for INA 245(c)(7) purposes.

Furthermore, this bar does not apply to aliens who were in a lawful nonimmigrant status at the time of filing for adjustment, subsequently left the United States, and returned using an approved advance parole travel document while the adjustment application remains pending. Advance parole simply allows the applicant to resume the processing of the adjustment application without abandoning the application because of a brief departure.

The examples below highlight when this adjustment bar applies and when it does not apply.

Example: Effect of Current and Prior Immigration Status on INA 245(c)(7) Bar

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 26, 2009</td>
<td>An alien is admitted as a B-2 nonimmigrant visitor and departs the United States on August 5, 2009.</td>
</tr>
<tr>
<td>September 2, 2009</td>
<td>The alien is paroled into the United States on public interest grounds until September 1, 2010.</td>
</tr>
</tbody>
</table>
The alien is approved as the beneficiary of a second-preference employment-based immigrant visa petition on December 20, 2009.

The alien files an adjustment of status application on January 7, 2010.

In this case, even though the alien had previously been a B-2 nonimmigrant, the alien was a parolee at the time of filing for adjustment of status. Therefore, INA 245(c)(7) bars the alien from adjustment of status as the beneficiary of an employment-based petition.

Example: Effect of No Lawful Status on INA 245(c)(7) Bar

An alien is admitted as an H-2B nonimmigrant.

The H-2B nonimmigrant’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).

A company files an employment-based immigrant visa petition for the alien concurrently with the filing of an adjustment of status application.

In this case, the alien stayed past the time authorized to remain in the United States and was not in a valid nonimmigrant status at the time his adjustment application is filed. INA 245(c)(7) bars the alien from adjusting status under an employment basis. The alien, however, may qualify for the INA 245(k) exemption.[7]

Example: Effect of Departure Following Grant of Advance Parole on INA 245(c)(7) Bar

An alien is admitted as an H-2B nonimmigrant.

A company files an employment-based petition for the H-2B nonimmigrant concurrently with the following applications: adjustment of status, advance parole, and employment authorization.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 1, 2008</td>
<td>The H-2B nonimmigrant has a family emergency and needs to travel back to her home country.</td>
</tr>
<tr>
<td>May 1, 2008</td>
<td>USCIS grants the H-2B nonimmigrant’s advance parole application.</td>
</tr>
<tr>
<td>June 1, 2008</td>
<td>The H-2B nonimmigrant returns to the United States using her advance parole document.</td>
</tr>
<tr>
<td>August 1, 2008</td>
<td>USCIS approves the H-2B nonimmigrant’s adjustment application.</td>
</tr>
<tr>
<td>January 1, 2009</td>
<td>The H-2B nonimmigrant’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
</tbody>
</table>

In this instance, the adjustment application is properly filed before expiration of the applicant’s H-2B nonimmigrant status. Even though the adjustment applicant departs and returns to the United States using the advance parole document, the INA 245(c)(7) bar does not apply to the applicant.

**Footnotes**


[^2] This bar does not apply to applicants who were in a lawful nonimmigrant status at the time of filing for adjustment, subsequently left the United States on advance parole, and subsequently were paroled into the United States upon return while the adjustment application remains pending. The parole simply allows the applicant to resume the processing of the adjustment application without having the application considered abandoned due to a brief departure. See 62 FR 39417, 39421 (PDF) (Jul. 23, 1997).

[^3] See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].


[^7] See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

**Chapter 6 - Unauthorized Employment (INA 245(c)(2) and INA 245(c)(8))**
With certain exceptions, an alien is barred from adjusting status if:

- He or she continues in or accepts unauthorized employment prior to filing an application for adjustment of status; [1] or
- He or she has ever engaged in unauthorized employment, whether before or after filing an adjustment application. [2]

These bars apply not only to unauthorized employment since an applicant’s most recent entry but also to unauthorized employment during any previous periods of stay in the United States. [3]

As previously discussed, the INA 245(c)(2) and INA 245(c)(8) bars to adjustment do not apply to:

- Immediate relatives;
- Violence Against Women Act (VAWA)-based applicants;
- Certain physicians and their accompanying spouse and children; [5]
- Certain G-4 international organization employees, NATO-6 employees, and their family members; [6]
- Special immigrant juveniles; [7] or
- Certain members of the U.S. armed forces and their accompanying spouse and children. [8]

Employment-based applicants also may be eligible for exemption from this bar under INA 245(k). [9]

An applicant employed while his or her adjustment application is pending final adjudication must maintain USCIS employment authorization and comply with the terms and conditions of that authorization. [10] The filing of an adjustment application itself does not authorize employment.

**A. Definitions**

**1. Unauthorized Employment**

Unauthorized employment is any service or labor performed for an employer within the United States by an alien who is not authorized by the INA or USCIS to accept employment or who exceeds the scope or period of the alien’s employment authorization. [11]

**Example: Unauthorized Employment Resulting in Adjustment Bar**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2, 2005</td>
<td>An alien is admitted as an H-1B nonimmigrant to work for an employer.</td>
</tr>
<tr>
<td>April 1, 2006</td>
<td>The alien takes a position with another employer who fails to file a nonimmigrant visa petition for the alien prior to employment.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>August 15, 2007</td>
<td>The new employer files an employment-based immigrant visa petition for the alien that is approved. The alien concurrently files an adjustment application.</td>
</tr>
<tr>
<td>September 15, 2007</td>
<td>USCIS approves an Employment Authorization Document (EAD) for the alien based on the pending adjustment application.</td>
</tr>
<tr>
<td>January 1, 2008</td>
<td>The H-1B nonimmigrant’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
</tbody>
</table>

In this example, the alien left his authorized H-1B employer in April 2006. The alien was not granted any H-1B status, EAD, or other USCIS employment authorization allowing him to work elsewhere until September 15, 2007. Therefore, the alien’s employment with the second employer was unauthorized from April 1, 2006, until September 15, 2007. The alien is barred from adjusting status based on **INA 245(c)(2)** and **INA 245(c)(8)** for the unauthorized employment violations. [12]

### 2. Authorized Employment

For purposes of these bars, an applicant is authorized to work while a properly filed adjustment application is pending if:

- The applicant applied for and USCIS authorized employment; [13]
- USCIS granted the applicant employment authorization prior to filing an adjustment application and the authorization does not expire while the adjustment application is pending; or
- The applicant did not need to apply for work authorization, because such authorization is incident to the applicant’s nonimmigrant status. [14]

Certain categories of nonimmigrants are authorized to engage in employment as an incident of status, subject to any restrictions stated in the regulations. [15] As long as the adjustment applicant complies with applicable terms and conditions of the nonimmigrant status, the applicant does not need to obtain an EAD to continue authorized employment during the time specified while the adjustment application is pending. These applicants, however, may apply for an EAD if they prefer.

In all other cases, an adjustment applicant must file an Application for Employment Authorization (Form I-765) concurrently with or subsequent to filing an Application to Register Permanent Residence or Adjust Status (Form I-485) and await USCIS issuance of the EAD before engaging in employment. [16] This includes refraining from employment after the applicant’s work-authorized status or previously approved EAD expires until USCIS issues the new EAD.

Finally, in all cases, if USCIS denies the adjustment application, any EAD granted based on that adjustment application may be subject to termination. [17]
B. Periods of Time to Consider and Effect of Departure

The INA 245(c)(2) bar applies to unauthorized employment prior to filing the adjustment application. The departure and subsequent reentry of an applicant who was employed without authorization in the United States prior to filing an adjustment application does not erase the this bar. Otherwise, an applicant who engaged in unauthorized employment could simply depart the United States, reenter immediately, and become eligible to file for adjustment of status. [18]

The INA 245(c)(8) bar applies to any time engaged in unauthorized employment while physically present in the United States regardless of whether it occurred before or after submission of the adjustment application. USCIS places no time restrictions on when unauthorized employment must have occurred, because the INA does not state that the unauthorized employment must have occurred during any particular period of time. [19]

An officer, therefore, should review an applicant’s entire employment history in the United States to determine whether the applicant has engaged in unauthorized employment. In addition to an applicant’s most recent entry and admission, an officer should examine all of the applicant’s previous entries and admissions into the United States. An officer should disregard how much time has passed since each entry and whether the applicant subsequently left the United States and returned lawfully.

C. Evidence to Consider

An officer may request, review, and consider the following documentation to determine whether the applicant may be barred from adjustment based on unauthorized employment under INA 245(c)(2) or INA 245(c)(8):

- Arrival/Departure Record (Form I-94);
- Notice of Action (Form I-797);
- Pay stubs;
- W-2 statements;
- Income tax records;
- Employment contracts; and
- Any additional documents, evidence, or testimony regarding the nature and scope of the applicant’s employment history in the United States.

Footnotes

[^1] See INA 245(c)(2).
[^2] See INA 245(c)(8).
[^3] See Section B, Periods of Time to Consider and Effect of Departure [7 USCIS-PM B.6(B)].
[^4] Both INA 245(c)(2) and INA 245(c)(8) bar applicants from adjusting if they have engaged in unauthorized employment. However, the language of INA 245(c)(2) includes a specific exclusion for
immediate relatives and certain special immigrants that is missing from the language of \textit{INA 245(c)(8)}. Applying traditional concepts of statutory construction, USCIS interprets the exemptions in \textit{INA 245(c)(2)} to apply to \textit{INA 245(c)(8)} as well. See \textit{62 FR 39417 (PDF)}, 39422 (Jul. 23, 1997). See \textit{8 CFR 245.1(b)(10)}. 


[^6] See \textit{INA 101(a)(27)(I)}. This group is exempt from \textit{INA 245(c)(2)}, \textit{INA 245(c)(7)}, and \textit{INA 245(c)(8)}. 


[^9] See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) \textit{[7 USCIS-PM B.8(E)]}. 


[^12] While there is an exemption under \textit{INA 245(k)} for employment-based applicants who have worked without authorization, the applicant is not eligible to claim that exemption because “the applicant’s unauthorized employment exceeded the 180-day limitation. \textit{INA 245(k)} only applies to certain applicants whose immigration violations, if any, do not exceed the 180-day limit. 


[^15] Examples of nonimmigrants authorized to work incident to status include E-1, E-2, E-3, H-1B, H-3, L-1, O-1, P-1, and R-1, among others. 

[^16] See \textit{8 CFR 274a.12(c)(9)}. 

[^17] See \textit{8 CFR 274a.14(b)}. 

[^18] See \textit{52 FR 6320, 6320-21 (PDF)} (Mar. 3, 1987). See Chapter 8, Inapplicability of Bars to Adjustment \textit{[7 USCIS-PM B.8]}. 


\textbf{Chapter 7 - Other Barred Adjustment Applicants} 

There are additional classes of aliens barred from adjusting status. When determining whether the bars below apply, an officer should only consider the applicant’s current period of stay since the most recent admission into the United States prior to filing his or her adjustment application, unless the applicant is an alien removable for engagement in terrorist activity. 

When reviewing whether the bar for aliens removable for engagement in terrorist activity applies, an officer should examine every entry, admission, and time spent in the United States by the applicant. It is irrelevant how much time has passed since each entry or whether the applicant subsequently left the United States and returned lawfully.
A. Crewmen

A nonimmigrant crewman is barred from adjusting status. This bar applies to an alien serving as a crewman who is permitted to land as a D-1 or D-2 nonimmigrant, as shown on the alien’s Arrival/Departure Record (Form I-94) or Crewman’s Landing Permit (Form I-95), and by the corresponding visa contained in the crewman’s passport. The bar also applies to an alien who was admitted as a C-1 nonimmigrant to join a crew.

In addition, the alien’s service as a crewman is controlling regardless of the alien’s actual nonimmigrant status, if any. For example, an alien admitted in B-2 nonimmigrant visitor status while serving as a crewman is barred from adjustment. The bar applies even if the alien was not employed as a crewman in the sense of serving as a crewman for pay. The bar does not apply, however, to Violence Against Women Act (VAWA)-based applicants.

B. Alien Admitted in Transit Without Visa

Any alien admitted to the United States in transit without a visa (TWOV) is barred from adjusting status. This bar does not apply to an alien who was admitted as a transit alien with a C-1 or C-2 or C-3 nonimmigrant visa.

On August 2, 2003, DHS and the Department of State suspended the TWOV program. On August 7, 2003, DHS published an interim rule implementing the suspension. Aliens who transit through the United States after that date are required to obtain a C nonimmigrant visa. Thus, the bar does not apply to an alien (other than crewmen) admitted as a C-1 or C-2 or C-3 nonimmigrant if the alien had a C-1, C-2, or C-3 nonimmigrant visa in order to transit through the United States. Nevertheless, INA 245(c)(3) still bars an alien who, in fact, was admitted as a TWOV when he or she last came to the United States. The bar does not apply, however, to VAWA-based applicants.

C. Visa Waiver Programs

An alien admitted as a nonimmigrant without a visa under a Visa Waiver Program is barred from adjustment of status. Similarly, an alien admitted as a nonimmigrant without a visa to Guam or to the CNMI is barred from adjustment of status. These bars do not apply, however, to those seeking to adjust status as an immediate relative of a U.S. citizen or VAWA-based applicants.

D. Alien Admitted as Witness or Informant

An alien admitted to the United States as an informant of terrorist or criminal activity (S nonimmigrant) is barred from adjusting status. The state or federal law enforcement agency (LEA) that originally requested the alien’s S nonimmigrant status may request that the S nonimmigrant be allowed to adjust status to that of a lawful permanent resident. The LEA initiates this special process through a filing with the Department of Justice. Aliens admitted as S nonimmigrants are prohibited from seeking adjustment of status apart from this process. The bar does not apply, however, to VAWA-based applicants.

E. Alien Removable for Engagement in Terrorist Activity
An alien is barred from adjusting status if:

- He or she is deportable for having engaged in or incited terrorist activity;
- He or she has been a member of or received military training from a terrorist organization; or
- He or she has been associated with terrorist organizations, and he or she intends to engage in such activities while in the United States that could endanger the welfare, safety, or security of the United States. [12]

The officer should consider all entries and time periods spent inside the United States when determining whether this bar applies. Furthermore, any restricted activity, whether it occurs before or after an alien files the adjustment application, bars the alien from adjusting status. Finally, in addition to the adjustment bar, the alien may also be inadmissible for such activity. [13] While the bar does not apply to VAWA-based applicants, VAWA-based applicants may still be inadmissible for such activity.

F. Nonimmigrant Admitted as Fiancé(e) of U.S. Citizen

An alien fiancé(e) of a U.S. citizen cannot adjust status except on the basis of the marriage to the U.S. citizen who filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the fiancé(e). [14] Likewise, a child of the fiancé(e) may only adjust on the basis of his or her parent’s marriage to the U.S. citizen petitioner. [15]

The terms of the nonimmigrant fiancé(e) status require that the nonimmigrant fiancé(e) marry the petitioner within 90 days after becoming a nonimmigrant. [16] Furthermore, if the nonimmigrant has not been married for two years or more at the time of adjustment, the nonimmigrant fiancé(e) and any children of the fiancé(e) may only obtain permanent residence on a conditional basis. [17]

Marriage Legally Terminated

A nonimmigrant fiancé(e) who contracts a valid and bona fide marriage to the U.S. citizen petitioner within the requisite 90-day time period remains eligible to adjust status on that basis, even if the marriage is legally terminated (whether by death, dissolution, or divorce) prior to adjustment of status and regardless of whether the nonimmigrant fiancé(e) remarries thereafter. [18] The applicant remains subject to all conditional permanent residency requirements, if applicable. [19]

G. Conditional Permanent Residents

In general, an alien granted lawful permanent resident status on a conditional basis [20] is ineligible to adjust status on a new basis under the provisions of INA 245(a). [21] Instead, conditional permanent residents (CPRs) must generally comply with the requirements of INA 216 or 216A to remove the conditions on their lawful permanent resident status. [22]

This bar to adjustment, however, only applies to an alien in the United States in lawful CPR status. In Matter of Stockwell (PDF), [23] the Board of Immigration Appeals adopted a narrow interpretation of the regulation implementing this adjustment bar, [24] stating that the bar no longer applies if USCIS terminates the alien’s CPR status. [25]

USCIS can terminate CPR status for reasons specified in INA 216 or INA 216A. [26] Although the
immigration judge may review the termination in removal proceedings, the bar no longer applies upon USCIS terminating the CPR status; it is not necessary that an immigration judge have affirmed USCIS’ decision to terminate the alien’s CPR status before the alien may file a new adjustment application.

Therefore, under INA 245(a), USCIS may adjust the status an alien whose CPR status was previously terminated, if:[27]

- The alien has a new basis for adjustment;
- The alien is otherwise eligible to adjust;[28] and
- USCIS has jurisdiction over the adjustment application.[29]

When seeking adjustment of status again, the alien may not reuse the immigrant petition associated with the previous CPR adjustment or admission. Therefore, the alien must have a new basis to adjust.

An alien seeking to adjust status again who was admitted as a fiancé(e) (K nonimmigrant) may only re-adjust based on an approved Petition for Alien Relative (Form I-130) filed by the same U.S. citizen who filed the Petition for Alien Fiancé(e) (Form I-129F) on his or her behalf.[30]

The alien must also be otherwise eligible to adjust status including not being inadmissible or barred by INA 245(c).

**Adjudication and Decision**

If the alien successfully adjusts status on a new basis, USCIS generally considers the date of admission to be the date USCIS approved the subsequent adjustment application.[31] Time spent in the prior CPR status does not count toward the residency requirement for naturalization purposes.[32]

If USCIS determines the alien is not eligible to adjust, USCIS denies the application.[33] USCIS officials should follow current agency guidance on issuing a Notice to Appear after denying the application.[34]

**Footnotes**

[^1] See INA 245(c)(1).


[^10] See INA 245(c)(5).


[^18] See Matter of Sesay (PDF), 25 I&N Dec. 431 (2011). See Matter of Dixon (PDF), 16 I&N Dec. 355 (BIA 1977). See Matter of Blair (PDF), 14 I&N Dec. 153 (Reg. Comm.1972). The marriage upon which the alien obtained K nonimmigrant status must have been bona fide, even if it was terminated, in order to adjust status. See Lutwak v. United States, 344 U.S. 604 (1953). See Matter of Laureano (PDF), 19 I&N Dec. 1 (BIA 1983). If the evidence would permit a reasonable fact finder to conclude that the marriage was not bona fide, adjustment would properly be denied. It is necessary to follow the standard procedure in 8 CFR 103.2(b)(16) before denying adjustment based on evidence of which the applicant may not be aware.

[^19] See INA 245(d) and INA 216.

[^20] See INA 216 and INA 216A.

[^21] See INA 245(d) and INA 245(f). See 8 CFR 245.1(c)(5).

[^22] See Petition to Remove the Conditions on Residence (Form I-751) and Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829).


[^25] The same is also true if the alien loses his or her CPR status, for example, through abandonment, rescission, or the entry of an administratively final order of removal. See INA 246 and 8 CFR 1.2.

[^26] USCIS issues a Notice to Appear upon termination. See 8 CFR 216.3(a), 216.4(b)(3), 216.4(d)(2), 216.5(f), 216.6(a)(5), 216.6(b)(3), and 216.6(d)(2). An alien whose CPR status is terminated by USCIS may request an immigration judge review that termination decision during removal proceedings.

[^27] If an alien’s adjustment application was denied before the effective date of this guidance, November 21, 2019, the alien may file a new adjustment application (unless he or she is still able to timely file a motion to reopen or reconsider) for USCIS to adjudicate his or her application based on this guidance. See Notice of Appeal or Motion (Form I-290B) for more information.
For general information on eligibility for adjustment, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A].

Once removal proceedings have commenced, jurisdiction over an application for adjustment of status generally rests with the Executive Office for Immigration Review (EOIR). Therefore, USCIS generally does not have jurisdiction to adjudicate adjustment applications for applicants in removal proceedings, unless EOIR subsequently terminates those proceedings. Additionally, it is not necessary that an immigration judge have affirmed USCIS’ decision to terminate CPR status before the new adjustment application may be filed. For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdiction [7 USCIS-PM A.3(D)].

See INA 245(d) and 8 CFR 245.1(c)(6). See Caraballo-Tavera v. Holder, 683 F.3d 49 (2nd Cir. 2012). However, a K-1 nonimmigrant who is subsequently granted U nonimmigrant status (for victims of qualifying criminal activity) or T nonimmigrant status (for victims of a severe form of trafficking in persons) while in the United States may apply to adjust status based on any eligibility category that applies to him or her. See INA 248(b).

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 11, Decision Procedures, Section A, Approvals, Subsection 1, Effective Date of Permanent Residence [7 USCIS-PM A.11(A)(1)].

For more information, see Volume 12, Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3].

For more information on denials, see Part A, Adjustment of Status Policies and Procedures, Chapter 11, Section C, Denials [7 USCIS-PM A.11(C)].

See USCIS Policy Memorandum, Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (PDF) (June 28, 2018).

Chapter 8 - Inapplicability of Bars to Adjustment

Some or all of the INA 245(c) adjustment bars do not apply to certain categories of adjustment applicants. When adjudicating an adjustment application, an officer should carefully consider which bars apply.

A. VAWA Self-Petitioners and Beneficiaries

All bars to adjustment do not apply to a battered or abused spouse, child, or parent of a U.S. citizen or a battered or abused spouse or child of a lawful permanent resident with an approved Violence Against Women Act (VAWA) self-petition. [11]

B. Immediate Relatives

Certain adjustment bars do not apply to an immediate relative, including the spouse or child (unmarried and under 21 years old) of a U.S. citizen, and the parent of a U.S. citizen older than 21. [2]

An adjustment applicant applying as an immediate relative may be eligible to adjust status even if:

- The applicant is now employed or has ever been employed in the United States without authorization;
The applicant is not in lawful immigration status on the date he or she files the adjustment application;

The applicant has ever failed to continuously maintain a lawful status since entry into the United States;

The applicant was last admitted to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor under the Guam or CNMI Visa Waiver Program and is not a Canadian citizen;

The applicant was last admitted to the United States as a nonimmigrant visitor without a visa under the Visa Waiver Program; or

The applicant has ever violated the terms of his or her nonimmigrant status.

C. Certain Special Immigrants

Some adjustment bars to not apply to certain special immigrants (employment-based fourth preference category), depending on program-specific requirements. Specific information about some of these special immigrants and the adjustment bars that apply to them is provided below.

1. Religious Workers[3]

An adjustment applicant may be eligible to adjust status based on an approved religious worker petition even if:

- The applicant is now employed or has ever been employed in the United States without authorization;
- The applicant is not maintaining a lawful nonimmigrant status on the date he or she files the adjustment application;
- The applicant has ever failed to continuously maintain a lawful status since entry into the United States;
- The applicant has ever violated the terms of his or her nonimmigrant status.

2. Special Immigrant Juveniles[4]

The only adjustment bar that applies to a special immigrant juvenile adjustment applicant is the bar for being deportable due to involvement in a terrorist activity or group.[5] There is no exemption if this bar applies.


This immigrant visa category generally includes:

- Special immigrant Afghanistan or Iraq national who worked with the U.S. armed forces as a translator;
- Special immigrant Iraq national who was employed by or on behalf of the U.S. government; and
- Special immigrant Afghanistan national who was employed by or on behalf of the U.S. government or in the International Security Assistance Force (ISAF) in Afghanistan.

An adjustment applicant applying as a special immigrant Afghanistan or Iraq national may be eligible to...
adjust status even if:

- The applicant is now employed or has ever been employed in the United States without authorization;
- The applicant is not in lawful immigration status on the date he or she files the adjustment application;
- The applicant has ever failed to continuously maintain a lawful status since entry into the United States;
- The applicant is not maintaining a lawful nonimmigrant status on the date he or she files the adjustment application; or
- The applicant has ever violated the terms of his or her nonimmigrant status.

4. G-4 International Organization Employees, NATO-6 Employees, and Their Family Members

This immigrant visa category generally includes:

- Retired officer or employee of an international organization or a North Atlantic Treaty Organization (NATO) (and derivative spouse);
- Surviving spouse of a deceased officer or employee of an international organization or NATO; and
- Unmarried son or daughter of a current or retired officer or employee of an international organization or NATO.

An adjustment applicant applying as a NATO-6 employee or family member is ineligible for adjustment of status if any of the bars to adjustment of status apply. However, certain adjustment bars do not apply to G-4 international organization employees and family members. A G-4 international organization employee or family member may be eligible to adjust status even if:

- The applicant is now employed or has ever been employed in the United States without authorization;
- The applicant is not in lawful immigration status on the date he or she files the adjustment application;
- The applicant has ever failed to continuously maintain a lawful status since entry into the United States; or
- The applicant has ever violated the terms of his or her nonimmigrant visa.

If a G-4 special immigrant falls under any other adjustment bar, however, he or she is not eligible to adjust status.

More information on the adjustment bar applicability and exemptions available to special immigrants is provided in the program-specific parts of this Volume.

D. Applicants Eligible to Adjust under INA 245(i)

An applicant who is ineligible to adjust status under INA 245(a) or is barred from adjusting by INA 245(c) may be eligible to adjust status under INA 245(i).


E. Employment-Based Exemption under INA 245(k)

**INA 245(k)** provides certain employment-based adjustment applicants with an exemption from the **INA 245(c)(2)**, **INA 245(c)(7)**, and **INA 245(c)(8)** adjustment bars.

This exemption applies to an alien who has not failed to maintain a lawful status, engaged in unauthorized employment, or violated the terms and conditions of his or her admission for an aggregate period exceeding 180 days. When determining whether an applicant is eligible for the **INA 245(k)** exemption, USCIS only considers the time period following the applicant’s most recent lawful admission. Therefore, the exemption applies to:

- An eligible applicant who fails to maintain a lawful status, engages in unauthorized employment, or violates the terms and conditions of his or her nonimmigrant visa following his or her most recent admission, as long as the aggregate period of the violations is 180 days or less;

- An eligible applicant who does not commit any status, employment, or nonimmigrant visa violations following his or her most recent lawful admission but failed to maintain a lawful status, engaged in unauthorized employment, or violated the terms and conditions of his or her nonimmigrant visa following previous admissions or entries, regardless of the aggregate period of the violations; and

- An eligible applicant who has committed status, nonimmigrant visa, and employment violations following his or her previous admissions or entries and his or her most recent lawful admission, as long as the aggregate period of the violations following the most recent lawful admission is 180 days or less. The 180-day period can range from 0 days for no violations to a maximum of 180 days for multiple violations following the alien’s most recent admission.

The table below summarizes the effect of certain immigration violations on eligibility for the exemption.

**Certain Immigration Violations Committed During Various Time Periods in the United States and Their Effect on Eligibility for INA 245(k) Exemption**

<table>
<thead>
<tr>
<th>Following Most Recent</th>
<th>Following Previous Admissions or Entries</th>
<th>Eligible for Exemption?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commits status, employment, or nonimmigrant visa violations not exceeding 180 days</td>
<td>Does not commit any status, employment, or nonimmigrant visa violations OR Commits status, employment, or nonimmigrant visa violations, regardless of whether exceeds 180 days</td>
<td>Yes</td>
</tr>
<tr>
<td>Commits status, employment, or nonimmigrant visa violations exceeding 180 days</td>
<td>Does not commit any status, employment, or nonimmigrant visa violations OR Commits status, employment, or</td>
<td>No</td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
<table>
<thead>
<tr>
<th>Following Most Recent</th>
<th>Following Previous Admissions or Entries</th>
<th>Eligible for Exemption?</th>
</tr>
</thead>
<tbody>
<tr>
<td>nonimmigrant visa violations, regardless of whether exceeds 180 days</td>
<td>Commits status, employment, or nonimmigrant visa violations, regardless of whether exceeds 180 days</td>
<td>Yes</td>
</tr>
<tr>
<td>Does not commit any status, employment, or nonimmigrant visa violations</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. General Eligibility

An adjustment applicant must meet the following requirements to be eligible for the INA 245(k) exemption:

- The applicant must be eligible to adjust based on certain employment-based immigrant categories;
- The applicant must be physically present in the United States on the date he or she files the adjustment application pursuant to a lawful admission; and
- The applicant must not have committed certain immigration violations for more than 180 days in the aggregate following that last lawful admission.

2. Employment-Based Applicants

An adjustment applicant seeking the INA 245(k) exemption must be the beneficiary of an approved immigrant petition in one of the following employment-based categories:

- Aliens of extraordinary ability, outstanding professors and researchers, and certain multinational managers and executives (first preference, EB-1);
- Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability (second preference, EB-2);
- Skilled workers, professionals, and other workers (third preference, EB-3); or
- Religious workers. [8]

Eligible dependents of principal applicants described above may also benefit from the exemption in their own right if they meet the exemption requirements.

3. Violations Totaling More Than 180 Days

To be eligible for the exemption, an adjustment applicant must not have committed any of the following immigration violations for more than an aggregate of 180 days since the applicant’s most recent lawful admission:

- Failed to continuously maintain a lawful immigration status;
- Engaged in unauthorized employment; or
• Violated the terms of the applicant’s nonimmigrant status.

**Count Only Violations After Most Recent Lawful Admission**

When determining whether an applicant is eligible for the exemption, the law counts only status violations and unauthorized employment since the applicant’s most recent lawful admission. Any such violations the applicant committed during previous periods of stay in the United States are not counted.[9]

Therefore, regardless of how many days of immigration violations described in INA 245(c)(2), INA 245(c)(7), or INA 245(c)(8) an alien commits, if he or she leaves and is readmitted lawfully (and is an eligible employment-based adjustment applicant), the alien may qualify for an the exemption if the alien’s violations do not total more than 180 days in the aggregate since that most recent lawful admission.

**Example: Effect of Immigration Violations Committed During Previous Period of Stay**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2015</td>
<td>An alien is admitted as an F-1 nonimmigrant student authorized to attend a university full-time.</td>
</tr>
<tr>
<td>March 1, 2015</td>
<td>The alien stops attending the university.</td>
</tr>
<tr>
<td>December 1, 2015</td>
<td>The alien departs the United States.</td>
</tr>
<tr>
<td>January 1, 2016</td>
<td>The alien is admitted for one year as a B-2 nonimmigrant visitor.</td>
</tr>
<tr>
<td>June 1, 2016</td>
<td>The alien files an adjustment application with an employer’s immigrant petition seeking EB-2 classification for the alien.</td>
</tr>
</tbody>
</table>

In this example, the alien violated her nonimmigrant status when she stopped attending the university. This violation resulted in the alien’s failure to maintain lawful status from March 1 through November 30, a total of 275 days of immigration violations. When the alien applies for adjustment on June 1, 2016, however, she has committed no immigration violations since her most recent lawful admission.

Because the alien is an employment-based adjustment applicant and since her last lawful admission she has not exceeded the 180-day limit on immigration violations imposed by INA 245(k), the alien qualifies for the exemption. Therefore, the alien is exempted from the INA 245(c)(2) and INA 245(c)(8) bars that would otherwise have made her ineligible for adjustment. The 275 days of violations the alien committed during her prior stay in the United States are irrelevant and do not bar her from adjustment.

**Effect of Parole**

An adjustment applicant who entered the United States on parole is not “lawfully admitted” because parole is not an admission.[10] Therefore, entry or reentry based on parole does not restart the clock for purposes of calculating status or work violations under the exemption.

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For example, an alien who was lawfully admitted, worked without authorization for one year, and then departed and returned on parole does not qualify for the exemption. Because the parole is not an admission, the alien’s unauthorized employment still counts since it occurred following his last lawful admission. The one year of unauthorized employment exceeds the 180-day limit, making the alien ineligible for the exemption and therefore barred from adjustment by INA 245(c)(2) and INA 245(c)(8) based on the unauthorized employment.

4. Calculating Period of Violations

If an applicant has committed a status or employment violation following his or her most recent lawful admission, the phrase “aggregate period not exceeding 180 days” means the total of all types of violations taken together. The 180-day period is not counted separately for each type of violation, but altogether.

The officer should count each day in which one or more of these violations existed as one day. Any day in which more than one violation occurred should not be double-counted. Accordingly, an officer should add together any and all days in which there is one or more of the violations to determine if the violations, as a whole, exceed the 180-day limit.

Failed to Maintain Lawful Status or Violated Terms of Nonimmigrant Status

In most cases, the counting of days against the 180-day limit begins on the earliest of the following:

- The day the alien’s immigration status expired;
- The day the alien’s immigration status was revoked or rescinded; or
- The day the alien violated his or her immigration status.

The counting of days out of status usually stops on the earliest of the following:

- The day the alien properly files an adjustment application;
- The day the alien obtains lawful immigration status; or
- The day the alien departs the United States.

For example, if an alien enters the United States as a nonimmigrant and continues to stay in the United States after such nonimmigrant status expires, the alien has failed to continuously maintain a lawful status at the point the status expires. If the alien later acquires a new lawful status, for instance, temporary protected status, then the alien is no longer failing to maintain a lawful status. The time period between the two lawful statuses is counted towards the 180-day limit in determining if the alien is eligible for the exemption.

Unauthorized Employment

USCIS calculates the number of days an applicant engaged in unauthorized employment beginning on the first day of such employment and continuing until the earliest of the following:

- The day the applicant ceases the unauthorized employment;
- The day USCIS approves the applicant’s employment authorization document (EAD); [11] or
- The day USCIS approves the applicant’s adjustment application.
The filing of an adjustment application does not authorize employment or excuse unauthorized employment. As such, the adjustment filing does not stop the counting of days of unauthorized employment. [12]

USCIS counts each day an applicant engaged in unauthorized employment against the 180-day limit, regardless of whether the applicant unlawfully worked only a few hours on a given day, worked a part-time schedule, or worked a full-time schedule with leave benefits and weekends and holidays off. Absent evidence of interruptions in unauthorized employment, USCIS considers each day since the date the unauthorized employment began as a day of unauthorized work regardless of the applicant’s work schedule.

For example, if an applicant worked without authorization for four hours a day, Monday through Friday, throughout the month of April, all 30 days for that month must be counted as unauthorized employment.

For periods in which it appears that the applicant has engaged in unauthorized employment, the applicant bears the burden of establishing that work was authorized or that he or she did not in fact engage in unauthorized employment. Evidence of termination or interruption of unauthorized employment may include a letter of termination or other documentation from the applicant’s employer.

In addition, an applicant who works without authorization after filing an adjustment application does not stop the counting of time by departing the United States and re-entering on parole.

Special Considerations

The following situations do not count toward the 180-day limit:

- Any violations that occurred prior to the applicant’s last lawful admission;

- Any time period for which the applicant had USCIS authorization to engage in employment; [13]

- Any time period when the applicant had a pending application for extension of nonimmigrant status or change of nonimmigrant status, if USCIS ultimately approved the application;

- Any time period of unlawful status that USCIS determines was the result of a “technical violation” or through no fault of the applicant; [14]

- Any time period before or after completion of a nonimmigrant student’s educational objective or a nonimmigrant exchange visitor’s program as authorized by regulation, [15] if the nonimmigrant did not violate the terms and conditions of the status; and

- Any time period in violation of nonimmigrant student or exchange visitor status if the status was later reinstated, but only for the time covered by the reinstatement. [16]

Example: Effect of Unauthorized Employment on Eligibility for INA 245(k) Exemption

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2010</td>
<td>An alien is admitted as a B-2 nonimmigrant visitor for pleasure.</td>
</tr>
</tbody>
</table>
### Date Event

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1, 2010</td>
<td>The B-2 nonimmigrant begins work for an employer on a one-month contract, without first obtaining work authorization.</td>
</tr>
<tr>
<td>July 1, 2010</td>
<td>The B-2 nonimmigrant’s contract with the employer ends.</td>
</tr>
<tr>
<td>September 1, 2010</td>
<td>The B-2 nonimmigrant submits an adjustment application with the employer’s immigrant petition seeking EB-3 classification for the B-2 nonimmigrant.</td>
</tr>
<tr>
<td>February 28, 2011</td>
<td>The B-2 nonimmigrant’s authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
</tbody>
</table>

In this example, the alien’s work results in three separate immigration violations: The alien engaged in unauthorized employment, violated the terms and conditions of his nonimmigrant admission, and failed to continuously maintain a lawful status. Since these three violations occur on the same days, they are only counted once. Therefore, these immigration violations add up to 30 days, counting from June 1 through June 30.

Once the alien began to work without authorization on June 1, he stopped maintaining a lawful status. The failure to continuously maintain a lawful status continues until the alien files a properly filed adjustment application on September 1, totaling 92 days without lawful status. Because the time period from June 1 through June 30 was already counted for the three violations above, the failure to continuously maintain lawful status only adds 62 days, counting from July 1 through August 31.

If USCIS approves the alien’s petition for EB-3 immigrant visa classification, he is eligible for the **INA 245(k)** exemption. The alien’s immigration violations total 92 days and therefore do not exceed the 180-day limit. The alien meets the eligibility requirements for the exemption and is not barred from adjustment by **INA 245(c)(2)**, **INA 245(c)(7)**, or **INA 245(c)(8)** bars, which would otherwise apply.

**Example: Effect of Immigration Violations on INA 245(k) Exemption Eligibility where Violations Occurred During Different Periods of Stay**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 1, 2007</td>
<td>An alien is admitted to the United States as a B-2 nonimmigrant.</td>
</tr>
<tr>
<td>June 1, 2008</td>
<td>The alien’s B-2 nonimmigrant status expires, as evidenced by the Arrival/Departure Record.</td>
</tr>
<tr>
<td>September 10, 2008</td>
<td>The alien leaves the United States.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>January 1, 2009</td>
<td>An employer files an H-1B petition for the alien.</td>
</tr>
<tr>
<td>February 1, 2009</td>
<td>The alien is admitted as an H-1B nonimmigrant for three years.</td>
</tr>
<tr>
<td>January 31, 2012</td>
<td>The H-1B’s nonimmigrant authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).</td>
</tr>
<tr>
<td>May 1, 2012</td>
<td>An employment-based petition and adjustment application are concurrently filed for the alien.</td>
</tr>
<tr>
<td>July 15, 2012</td>
<td>Both the petition and the application are approved and the alien is adjusted to a permanent resident.</td>
</tr>
</tbody>
</table>

In this example, the alien’s initial period of admission as a B-2 nonimmigrant visitor expired more than three months prior to the initial departure. During the subsequent admission, the alien filed for adjustment three months after H-1B status terminated.

The time spent out of status during the alien’s first admission as a B-2 nonimmigrant was not calculated because the time spent out of status or in violation of status prior to the nonimmigrant’s last admission is not considered for **INA 245(k)** purposes. Since the alien is an employment-based adjustment applicant and his three-month violation following his last lawful admission did not exceed 180 days, the alien is exempted from the **INA 245(c)(2)** bar.

### 5. Evidence to Consider

An alien seeking the **INA 245(k)** exemption must properly file an adjustment application as specified in the form instructions, but he or she is not required to submit any additional forms or fees. If an officer determines that an **INA 245(c)(2)**, **INA 245(c)(7)**, or **INA 245(c)(8)** bar applies in a particular case, the officer should use the following evidence submitted in support of the adjustment application to analyze the alien’s eligibility for the exemption:

- Copies of all Arrival/Departure Records (Forms I-94) showing authorized admission into the United States;
- Copies of the biographic pages of any passports containing nonimmigrant visas along with the passport pages containing the visas;
- Copies of any passport pages showing recorded travel into or out of the United States, such as admission stamps;
- Copies of any documentation showing all places of residence dating back at least five years from the date of filing for adjustment and showing all periods of employment; and
• Receipt or Approval Notices (Forms I-797) for any immigration benefit, including nonimmigrant status, changes of nonimmigrant status or extensions of stay, and employment authorization.

If the evidence of record is insufficient to determine the applicant’s eligibility for the exemption, an officer should first attempt to obtain any missing information using authorized USCIS-approved databases. An officer also may issue a Request for Evidence or Notice of Intent to Deny.

6. Effect of Exemption

An applicant who qualifies under INA 245(k) is exempt from the INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8) adjustment bars. This does not, however, exempt an applicant from any other bar, eligibility requirement, or ground of inadmissibility. ^[17] Therefore, once an officer determines that the applicant qualifies for the exemption, the officer must next determine whether the applicant is otherwise eligible for adjustment.

Footnotes

^[1] See INA 245(c). See Chapter 2, Eligibility Requirements, Section F, Bars to Adjustment of Status [7 USCIS-PM B.2(F)].

^[2] See INA 201(b)(2)(A). Immediate relatives of a U.S. citizen include the U.S. citizen’s spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and aliens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions. See INA 245(c)(2), INA 245(c)(4), and INA 245(c)(8). See Chapter 2, Eligibility Requirements, Section F, Bars to Adjustment of Status [7 USCIS-PM B.2(F)].

^[3] See INA 101(a)(27)(C) and INA 245(k). For more information, see Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].


^[5] See INA 245(c)(6). Special immigrant juveniles are excluded from applicability of INA 245(c)(2) and, as previously mentioned, by applying traditional concepts of statutory construction, USCIS interprets the exclusion from INA 245(c)(2) to apply to INA 245(c)(8), as well. See 62 FR 39417 (PDF), 39422 (July 23, 1997) and 8 CFR 245.1(b)(5), 8 CFR 245.1(b)(6), and 8 CFR 245.1(b)(10). INA 245(c)(7) also does not apply. See 8 CFR 245.1(b)(9). See Chapter 5, Employment-Based Applicant Not in Lawful Nonimmigrant Status – INA 245(c)(7) [7 USCIS-PM B.5]. Finally, INA 245(c)(1), INA 245(c)(3), INA 245(c)(4), and INA 245(c)(5) also do not apply since a special immigrant juvenile is considered to be paroled into the United States and when reviewing these bars, USCIS focuses on the most recent admission. See INA 245(h)(1). See 8 CFR 245.1(a) and 8 CFR 245.1(e)(3).


[^7] See INA 245(c)(2) and INA 245(c)(8). See 8 CFR 245.1(b).


[^9] Although these specified violations committed during previous periods of U.S. stay are not relevant for purposes of eligibility for the INA 245(k) exemption, there may still be adverse immigration consequences for these violations. See INA 212(a)(9)(B)-(C) and INA 222(g). For example, if an alien accumulates more than 180 days of unlawful presence in the United States and subsequently departs, he or she may be inadmissible to the United States for three years or more after such departure, unless a waiver is granted or the alien is exempt. INA 222(g) also provides that an alien’s nonimmigrant visa is automatically void if the alien remains in the United States beyond the authorized period of stay.


[^11] Applicants for adjustment who have no other authorization to work and wish to work based on the pending application must first file an Application for Employment Authorization (Form I-765) and wait until it is approved before beginning work.

[^12] Therefore, it is possible for an applicant to accrue days of unauthorized employment against the 180-day limit after filing an adjustment application.

[^13] However, any unlawful employment that continues or begins after the applicant applies for adjustment is counted toward the 180-day period until USCIS approves work authorization.


[^17] For example, it would not exempt the applicant from an eligibility requirement such as the requirement that an applicant must have been inspected and admitted or inspected and paroled.

Part C - 245(i) Adjustment

Chapter 1 - Purpose and Background

A. Purpose

Certain aliens physically present in the United States may be ineligible to adjust status under INA 245(a) because they entered the United States without inspection, violated their nonimmigrant status, were employed in the United States without authorization, or are otherwise barred from adjustment by INA 245(c).[1] Congress enacted INA 245(i) to allow certain otherwise ineligible aliens a pathway to become lawful permanent residents provided they meet specific requirements.[2]
Congress initially enacted INA 245(i) in 1994 as a temporary measure providing certain aliens who were otherwise ineligible for adjustment with a pathway to adjust to permanent resident status. The law required that 245(i) applicants file an application and pay an additional statutory sum (sometimes also referred to as a “fee”) by the sunset date.

The law originally was scheduled to expire on October 1, 1997. After several short term extensions, Congress made INA 245(i) permanent by repealing the sunset date and replacing it with a requirement that an applicant be the beneficiary (including a spouse or child of the principal beneficiary, if otherwise eligible under INA 203(d)) of an immigrant visa petition or permanent labor certification application filed on or before January 14, 1998.

In 2000, Congress extended the deadline for filing the qualifying petition or application until April 30, 2001 and added a new requirement that an applicant basing his or her eligibility on being a beneficiary of a qualifying petition or application filed after January 14, 1998, establish that the principal beneficiary of the qualifying petition or application was physically present in the United States on December 21, 2000 in order to adjust status under INA 245(i).

C. Overcoming INA 245(a) Adjustment Ineligibility

Aliens may seek to adjust status under INA 245(i) if they are disqualified from adjusting status under INA 245(a). INA 245(i) may overcome any or all of the following reasons for 245(a) adjustment ineligibility, to include circumstances where the alien:

- Last entered the United States without being admitted or paroled after inspection by an immigration officer;
- Last entered the United States as a nonimmigrant crewman;
- Is now employed or has ever been employed in the United States without authorization;
- Is not in lawful immigration status on the date of filing the application for adjustment of status;
- Has ever failed to continuously maintain a lawful status since entry into the United States;
- Was last admitted to the United States in transit without a visa;
- Was last admitted to the United States as a nonimmigrant visitor without a visa under the Guam and Commonwealth of the Northern Mariana Islands Visa Waiver Program;
- Was last admitted to the United States as a nonimmigrant visitor without a visa under the Visa Waiver Program;
- Is seeking employment-based adjustment of status, and is not in a lawful nonimmigrant status on the date of filing the application for adjustment of status; and
- Has ever violated the terms of his or her nonimmigrant status.

D. Two-Step Adjudication
An **INA 245(i)** adjustment application differs from all other adjustment applications because it involves a two-step adjudication process.

### Overview of Adjudication of 245(i) Adjustment Applications

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Determine whether the 245(i) applicant qualifies as:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• A grandfathered alien, or</td>
</tr>
<tr>
<td></td>
<td>• A grandfathered alien’s current spouse or child.</td>
</tr>
</tbody>
</table>

| Step 2 | Determine whether the applicant is otherwise eligible to adjust under 245(i). |

In processing 245(i) adjustment of status applications, officers should follow the general adjustment guidelines for adjudication and final decision procedures.[18]

## E. Legal Authorities

- **INA 245(i); 8 CFR 245.10** - Adjustment in status of certain aliens physically present in the United States

## Footnotes

[1] See **INA 245(c)** and **8 CFR 245.1(a)-(b)**. See **Instructions to Form I-485 Supplement A (PDF, 559.26 KB)**. For further explanation of INA 245(a) eligibility requirements as well as the adjustment bars, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[2] Throughout this part, **INA 245(i)** is sometimes referred to as simply 245(i).


[6] Certain aliens are exempt from some of the bases of ineligibility under **INA 245(a)**. See **INA 245(c)** and **8 CFR 245.1(a)-(b)**. For further explanation of INA 245(a) eligibility requirements as well as the adjustment bars, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[7] See **8 CFR 245.1(b)**. See **Instructions to Form I-485 Supplement A (PDF, 559.26 KB)**.

[8] See **INA 245(a)**. See **8 CFR 245.1(b)(3)**.
Chapter 2 - Grandfathering Requirements

An officer must first determine whether an INA 245(i) applicant qualifies as a grandfathered alien or as the current spouse or child of a grandfathered alien at the time of adjustment.

A. Definition of Grandfathered Alien

A grandfathered alien is or was the principal or derivative beneficiary\(^1\) of:

- A qualifying immigrant visa petition; or
- A qualifying labor certification application.\(^2\)

If the qualifying immigrant visa petition or labor certification application was filed after January 14, 1998, the principal beneficiary must also have been physically present in the United States on December 21, 2000.

B. Qualifying Immigrant Visa Petition or Labor Certification Application

A qualifying immigrant visa petition or permanent labor certification application is defined as a petition or application that was both “properly filed” on or before April 30, 2001 and “approvable when filed.”\(^3\)

A qualifying immigrant visa petition\(^4\) may include any of the following forms:

- Petition for Alien Relative (Form I-130)
• Immigrant Petition for Alien Worker (Form I-140)
• Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)
• Immigrant Petition by Alien Entrepreneur (Form I-526)

A qualifying permanent labor certification application[5] refers to an Application for Alien Labor Certification (ETA Form 750).[6]

1. Properly Filed[7]

Qualifying Immigrant Visa Petition

For purposes of INA 245(i), an immigrant visa petition is considered properly filed if:

• The petition was physically received by legacy Immigration and Naturalization Service (INS)[8] on or before April 30, 2001, or, if mailed, postmarked on or before April 30, 2001, regardless of when INS received it; and

• The petition was submitted with the correct fees and proper signature.[9]

A petition received with either an illegible or missing postmark is timely filed if INS physically received the petition by May 3, 2001, and stamped it with a “Filed Prior to 245(i) Sunset” stamp.[10]

Qualifying Permanent Labor Certification Application

A permanent labor certification application is properly filed if it was filed on or before April 30, 2001 and accepted for processing according to the regulations of the Secretary of the U.S. Department of Labor (DOL) that existed at the time of filing.

During the INA 245(i) qualifying time period and under authority delegated by DOL, permanent labor certification applications were generally filed directly with the state workforce agency (SWA) (such as a State Employment Service Agency) in the state where the offered job was located. The SWA indicated the filing date or receipt date on the first page of the ETA Form 750, Part A in the “Endorsements” block located in the lower right corner, specifically in the area indicated as “L.O.” (which indicates “local office”).

Therefore, a permanent labor certification application is considered properly filed where the SWA date-stamped the application, thereby indicating the application was complete and accepted for processing. Such a complete application remains properly filed, notwithstanding any need for the employer to amend the application or provide additional documents and information as required by DOL to ultimately obtain a favorable adjudication of the application.[11]

Permanent labor certification applications received by a SWA that do not bear a “Filed Prior to 245(i) Sunset” stamp may meet INA 245(i) filing requirements if they were given a receipt date of no later than April 30, 2001. USCIS accepts the receipt date that the DOL or SWA ultimately assigned to the permanent labor certification application.

2. Approvable When Filed[12]

An immigrant visa petition or permanent labor certification application is considered “approvable when filed” if the petition or application was:
Properly filed;

Meritorious in fact; and

Non-frivolous.

Therefore, once the petition or application is determined to have been properly filed,[13] the petition or application is considered approvable when filed if it is both meritorious in fact and non-frivolous.

**Meritorious in Fact: Immigrant Visa Petition**

To be considered “meritorious in fact,” the beneficiary of an immigrant visa petition must have met all the substantive eligibility requirements at the time of filing for the specified immigrant category. Stated another way, the immigrant visa petition is meritorious in fact if the petition merited a legal victory upon filing had it been fully adjudicated, even if the petition was not fully processed or actually approved.[14]

For example, a beneficiary claiming to be the child of a U.S. citizen must have met the definition of a child[15] at the time the immigrant petition was filed. In the case of a marriage-based immigrant visa petition, the marriage must have been bona fide at its inception.[16] USCIS will consider all available evidence to determine if the beneficiary met all the eligibility requirements at the time of filing, including evidence of fraud.

**Meritorious in Fact: Permanent Labor Certification Application**

The standard for determining whether a permanent labor certification application is meritorious in fact is different than for immigrant petitions: whereas the substantive eligibility requirements for immigrant petitions are fixed at the time of filing, that is not the case for permanent labor certification applications. Specifically, the terms and conditions of employment stated in the original application (such as job qualifications and rate of pay) are subject to the requirements as stated on the application for permanent labor certification.

A permanent labor certification application is considered meritorious in fact if:

- The employer filing the application was extending a bona fide offer of employment;
- The employer had the apparent ability to hire the beneficiary; and
- There is no evidence of fraud.

Accordingly, a properly filed labor certification application is presumed to be meritorious in fact if the application is non-frivolous and if no apparent bars to approval existed at the time it was filed.[17]

**Factors for Determining Approvable When Filed**

Approval or denial of a qualifying immigrant visa petition or permanent labor certification application is not determinative. However, if an immigrant visa petition or permanent labor certification application was ultimately approved, the petition or application was generally approvable when filed.[18] Likewise, if the qualifying immigrant visa petition or labor certification application was ultimately denied or revoked, the petition or application is generally not considered “approvable when filed” unless it was denied due to circumstances that arose after the time of filing.[19]

In all cases, USCIS bases the determination of approvable when filed on the circumstances that existed at the
time the immigrant visa petition or permanent labor certification application was filed. For example, a petition or application may still be considered “approvable when filed” even if the employer filing the petition or application later went out of business.[20]

A petition or application that was properly filed on or before April 30, 2001, and was approvable when filed may grandfather the beneficiary even if the petition was later withdrawn, denied, or revoked due to circumstances that arose after the time of filing.[21] This same principle applies if the U.S. Department of State later terminates the beneficiary’s immigrant visa registration.[22]

Non-Frivolous

An immigrant visa petition or permanent labor certification application is “frivolous” if the petition or application is deemed to be “patently without substance.”[23] Therefore, a non-frivolous petition or application is one filed in good faith and is based on a reasonable belief that there is some basis in law or fact for approval; a frivolous filing is one completely lacking in legal merit and is expected to be denied.[24]

3. Used Petitions and Applications

Once a qualifying immigrant visa petition or permanent labor certification application has been used by an alien as the basis for obtaining lawful permanent resident (LPR) status,[25] the petition or application cannot be used again.[26] A qualifying petition or application does not grandfather a beneficiary if that beneficiary has previously obtained LPR status on the basis of that petition or application.[27] To determine whether a petition or application has been used previously, an officer should check available USCIS and DOL systems as needed.

C. Beneficiary of Qualifying Immigrant Visa Petition or Permanent Labor Certification Application

1. Special Considerations for Principal Beneficiaries

A principal beneficiary for purposes of INA 245(i) grandfathering is either:

- The alien named as the direct beneficiary on the qualifying immigrant visa petition; or
- The alien named on the qualifying permanent labor certification application as the person to whom the U.S. employer is extending an offer of employment.

Substituted Principal Beneficiary of a Permanent Labor Certification Application

An alien may be eligible to adjust under INA 245(i) if the employer who filed a qualifying permanent labor certification application properly substituted the alien as the beneficiary of the application effective on or before April 30, 2001. The substitution makes the original beneficiary ineligible for 245(i) adjustment based on that application.[28]

Example: Timely Substituted Principal Beneficiary of Qualifying Application

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 1, 1998</td>
<td>An employer properly files a permanent labor certification application for an employee that was approvable when filed and which DOL ultimately approved.</td>
</tr>
<tr>
<td>April 1, 2001</td>
<td>The employer substituted a new employee for the original employee because the employer no longer intended to use the approved labor certification application for the original employee. The employer files an employment-based immigrant visa petition for the new employee, requesting substitution and using the labor certification application initially approved for the original employee.</td>
</tr>
<tr>
<td>June 1, 2003</td>
<td>The new employee files an adjustment of status application based on the petition filed by the employer.</td>
</tr>
</tbody>
</table>

In this example, the new employee may seek to adjust as a principal beneficiary under INA 245(i) because the person was the properly substituted beneficiary of the approved labor certification application at the time the 245(i) filing period ended on April 30, 2001. The original employee may not seek 245(i) adjustment on the basis of this permanent labor certification application because the person was replaced as the beneficiary prior to April 30, 2001. However, an untimely substitution (that is, one occurring after April, 30, 2001) would not affect the original principal beneficiary’s eligibility to seek 245(i) adjustment.

**2. Special Considerations for Derivative Beneficiaries**

*Grandfathering Eligibility*

A qualifying immigrant visa petition or labor certification application may serve to grandfather the principal beneficiary’s immediate family members at the time the visa petition or labor certification application was filed (his or her spouse and child(ren)) as grandfathered derivative beneficiaries.[29] The spouse or child does not have to be named in the qualifying petition or application and does not have to continue to be the principal beneficiary’s spouse or child. As long as an applicant can demonstrate that he or she was the spouse or child (unmarried and under 21 years of age) of a grandfathered principal beneficiary on the date the qualifying petition or application was properly filed, the applicant is grandfathered and eligible to seek INA 245(i) adjustment in his or her own right.[30]

A derivative beneficiary who qualifies as a grandfathered alien may benefit from INA 245(i) in the same way as a principal beneficiary. If the derivative beneficiary meets all eligibility requirements, the beneficiary may adjust despite an entry without inspection or being subject to the specified adjustment bars.[31]

*Underlying Basis for Adjustment*

If a grandfathered derivative beneficiary[32] remains the spouse or child of the grandfathered principal beneficiary, the derivative beneficiary may accompany or follow to join the principal beneficiary, provided the principal beneficiary is adjusting status under INA 245(i). In this case, the grandfathered principal beneficiary is the principal adjustment applicant and the grandfathered derivative beneficiary is the derivative applicant.[33]
A grandfathered derivative beneficiary may also adjust under INA 245(i) in his or her own right, on some basis completely independent of the grandfathered principal beneficiary.\[^{34}\] This is true whether or not the grandfathered derivative beneficiary remains the grandfathered principal beneficiary’s spouse or child. For instance, a grandfathered derivative beneficiary spouse who becomes divorced from the grandfathered principal beneficiary after the qualifying petition or application is filed is still a grandfathered alien eligible to seek adjustment independently under 245(i). Similarly, a grandfathered derivative beneficiary child who marries or reaches 21 years of age after the qualifying petition or application is filed is still grandfathered and eligible to seek INA 245(i) adjustment on his or her own basis through a different petition.

Example: Derivative Beneficiary Eligible After Divorce from Principal Beneficiary

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2000</td>
<td>An employer files a permanent labor certification application on behalf of a married employee. The married employee is the principal beneficiary of the permanent labor certification application. The application is determined to be approvable when filed and the married employee alien is a grandfathered alien. As the employee was married at the time the labor certification application was filed, the employee’s spouse is the derivative beneficiary and is also a grandfathered alien.</td>
</tr>
<tr>
<td>January 1, 2003</td>
<td>The employee and spouse divorce.</td>
</tr>
<tr>
<td>Today</td>
<td>The employee’s former spouse is selected in the diversity visa program.</td>
</tr>
</tbody>
</table>

In this example, the employee is the grandfathered principal beneficiary for INA 245(i) adjustment because the qualifying permanent labor certification application was filed directly on the employee’s behalf before April 30, 2001. The employee’s former spouse is a grandfathered derivative beneficiary because they were married at the time the qualifying permanent labor certification application was filed. The qualifying application serves to grandfather both the principal and derivative beneficiaries. Therefore, as a grandfathered derivative beneficiary, the former spouse may apply for adjustment under 245(i) based on being selected in the diversity visa program, regardless of the grandfathered principal beneficiary’s basis for adjustment and regardless of the fact that their marital relationship no longer exists.

If a grandfathered derivative beneficiary is adjusting on a separate basis from the grandfathered principal beneficiary, the grandfathered derivative beneficiary becomes the principal adjustment applicant. As the principal applicant, the grandfathered derivative beneficiary’s current spouse and child(ren) may accompany (or follow-to-join) the applicant.\[^{35}\]

3. Determining Whether An Adjustment Applicant Qualifies as Grandfathered Alien for 245(i)

The following flowchart provides a step-by-step process for determining whether an adjustment applicant meets the definition of a grandfathered alien. In addition to being a grandfathered alien, INA 245(i) applicants must also meet all other eligibility requirements to adjust under 245(i).\[^{36}\]
### Step-by-Step Determination: Grandfathered Alien

<table>
<thead>
<tr>
<th>Step</th>
<th>If yes, then…</th>
<th>If no, then…</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1: Is the applicant a principal or derivative beneficiary of an immigrant visa petition?</td>
<td>Go to Step 3.</td>
<td>Go to Step 2.</td>
</tr>
<tr>
<td>Step 2: Is the applicant a principal or derivative beneficiary of a permanent labor certification application?</td>
<td>Go to Step 3.</td>
<td>The applicant is not eligible for 245(i) adjustment.</td>
</tr>
<tr>
<td>Step 3: Was the petition or application filed on or before April 30, 2001?</td>
<td>Go to Step 4.</td>
<td>The applicant is not eligible for 245(i) adjustment.</td>
</tr>
<tr>
<td>Step 4: Has the applicant previously obtained LPR status on the basis of the petition or application?</td>
<td>The applicant is not eligible for 245(i) adjustment.</td>
<td>Go to Step 5.</td>
</tr>
<tr>
<td>Step 5: Was the petition or application properly filed?</td>
<td>Go to Step 6.</td>
<td>The applicant is not eligible for 245(i) adjustment.</td>
</tr>
<tr>
<td>Step 6: Was the petition or application approvable when filed?</td>
<td>The applicant is a grandfathered alien.</td>
<td>The applicant is not eligible for 245(i) adjustment.</td>
</tr>
</tbody>
</table>

### 4. Effect of Grandfathering

Once a 245(i) adjustment applicant establishes that he or she is a grandfathered alien, the applicant remains grandfathered and future eligibility for adjustment under INA 245(i) is preserved until the applicant adjusts to LPR status. The applicant may use the qualifying petition or application as the basis for adjustment of status if the petition or application is still valid. In addition, the applicant may seek to adjust under another family-based, employment-based, special immigrant, or diversity visa immigrant category for which the applicant is eligible.

**Effect on Lawful Status and Unlawful Presence**

The fact that an alien is determined to be a grandfathered alien for INA 245(i) purposes does not confer any immigration status on the alien nor does it place the alien in a period of stay authorized by the Secretary of Homeland Security for purposes of stopping the accrual of any unlawful presence pursuant to INA 212(a) (9).
An alien’s nonimmigrant status is not affected by the fact that he or she is eligible to seek 245(i) benefits.[42]

D. Current Family Members of Grandfathered Aliens

In general, today’s principal adjustment applicant’s spouse or child(ren)[43] may also adjust status if “accompanying” or “following-to-join” the principal.[44] A spouse or child is “accompanying” the principal when seeking to adjust status together with the principal or within 6 months of when the principal became a permanent resident; the spouse or child is considered to be following-to-join if seeking to adjust more than 6 months after the principal became a permanent resident.[45]

The spouse and child(ren) as of the date of adjustment accompanying (or following-to-join) a principal INA 245(i) applicant (who is a grandfathered alien) are eligible to seek adjustment under 245(i) even though they are not grandfathered aliens in their own right. The spouse and child(ren) may also benefit from INA 245(i) provisions allowing applicants to adjust despite an entry without inspection or being subject to the specified adjustment bars.[46] If the spouse and child(ren) were properly inspected and admitted or inspected and paroled (and are not subject to the INA 245(c) bars) they do not need to file a Supplement A. The spouse and child(ren) may simply seek adjustment under INA 245(a) by filing only the Application to Register Permanent Residence or Adjust Status (Form I-485).

1. Grandfathered Principal Beneficiary’s Spouse and Children

An alien may be eligible to adjust as a grandfathered derivative beneficiary under INA 245(i) in his or her own right or as an accompanying (or following-to-join) spouse or child if:

- The alien demonstrates that he or she was the spouse or child (unmarried and under 21 years of age) of a grandfathered principal beneficiary at the time a qualifying petition or application was properly filed; and

- The alien is still the spouse or child of the principal beneficiary.[47]

An alien who became the spouse or child of a grandfathered principal beneficiary after the qualifying petition or application was filed may only seek INA 245(i) adjustment through the principal beneficiary as an accompanying (or following-to-join) immigrant.[48] These applicants do not qualify as grandfathered derivative beneficiaries who may adjust in their own right under INA 245(i).[49]

Example: Spouse and Child Acquired After Filing of Principal Beneficiary’s Qualifying Application

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 1998</td>
<td>An alien enters the United States without inspection.</td>
</tr>
<tr>
<td>January 1, 2000</td>
<td>An employer files a permanent labor certification application on behalf of the alien. The alien is unmarried at time of filing.</td>
</tr>
<tr>
<td>January 1, 2002</td>
<td>The alien marries an alien and has a child.</td>
</tr>
</tbody>
</table>
The employment-based immigrant visa petition filed on the alien’s behalf is approved. The alien applies for adjustment of status, as do the spouse and child. As a principal beneficiary of the qualifying permanent labor certification application, the alien is grandfathered and eligible to file for adjustment under INA 245(i). Because the alien married and had the child after the qualifying application was filed, the spouse and child are not grandfathered derivative beneficiaries and may not adjust in their own right under 245(i). The spouse and child, however, may still seek INA 245(i) adjustment (or INA 245(a) adjustment, if eligible) as the principal beneficiary’s accompanying (or following-to-join) spouse and child under INA 203(d).

**Eligibility of Grandfathered Principal Beneficiary’s Spouse or Child**

The following chart provides a summary of whether the spouse or child of a grandfathered principal beneficiary may be grandfathered in his or her own right or eligible to accompany or follow to join the grandfathered principal beneficiary.

<table>
<thead>
<tr>
<th>When Was Relationship Established?</th>
<th>Eligible as an Accompanying or Following-to-Join Applicant?</th>
<th>Eligible as a Grandfathered Derivative Beneficiary Who May Apply to Adjust Under INA 245(i) Independently from Principal?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before the qualifying petition or application was filed (on or before April 30, 2001)</td>
<td>Yes, if relationship continues to exist and principal beneficiary is granted LPR status (and remains an LPR)</td>
<td>Yes, on a different basis, whether or not relationship to principal beneficiary continues to exist[^50]</td>
</tr>
<tr>
<td>After April 30, 2001 but before principal beneficiary adjusts status</td>
<td>Yes, if relationship continues to exist and principal beneficiary is granted LPR status (and remains an LPR)</td>
<td>No</td>
</tr>
<tr>
<td>After principal beneficiary adjusts status</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

**2. Grandfathered Derivative Beneficiary’s Spouse and Children**

Derivative beneficiaries of a qualifying immigrant visa petition or labor certification application are grandfathered in their own right. These grandfathered derivative beneficiaries may adjust independently from the principal beneficiary of the grandfathering petition or application. Accordingly, their current spouse and children may be eligible to adjust under the usual accompanying or following-to-join rules.
Continuing Spouse or Child Relationship Required

The accompanying (or following-to-join) spouse or child must continue to have the qualifying relationship with the principal adjustment applicant (grandfathered derivative beneficiary) both at the time of filing and approval of their individual adjustment applications.[51]

Example: Child Derivative Beneficiary Now a Married Adult

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 1999</td>
<td>An alien enters the United States without inspection with his or her child.</td>
</tr>
<tr>
<td>April 30, 2001</td>
<td>A family-based 4th preference immigrant visa petition is properly filed on the alien’s behalf and was approvable when filed. The alien is the principal beneficiary of the immigrant petition. The alien’s child is a derivative beneficiary. For the purposes of adjustment of status under INA 245(i), both the alien and the alien’s child are grandfathered.</td>
</tr>
<tr>
<td>June 1, 2008</td>
<td>The child is now an adult and marries another alien.</td>
</tr>
<tr>
<td>March 1, 2010</td>
<td>USCIS approves an employment-based petition filed on behalf of the former child and the former child files an application for adjustment of status seeking to utilize INA 245(i).</td>
</tr>
</tbody>
</table>

In this example, the alien’s qualifying petition serves to grandfather both the alien and the alien’s child. After marrying, the child is no longer considered a child for classification purposes and therefore can no longer adjust with the grandfathered principal beneficiary as an accompanying (or following-to-join) child. However, as a grandfathered derivative beneficiary, the former child may independently adjust under a new basis. The former child’s spouse may seek to adjust as an accompanying (or following-to-join) spouse. The spouse, while not a grandfathered alien based on the 1999 petition in this example, may adjust under INA 245(i) as a derivative of his or her spouse[52] if necessary to overcome any applicable adjustment bars, or may adjust under INA 245(a) (if eligible).[53]

The following chart provides a summary of when the spouse or child of a grandfathered derivative beneficiary of a qualifying immigrant visa petition or permanent labor certification application may be eligible to accompany or follow-to-join under INA 245(i).

<table>
<thead>
<tr>
<th>When Was Relationship Established?</th>
<th>Eligible as an Accompanying or Following-to-Join Applicant?</th>
</tr>
</thead>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
When Was Relationship Established? | Eligible as an Accompanying or Following-to-Join Applicant?
--- | ---
Before grandfathered derivative beneficiary adjusts status | Yes, if relationship continues to exist and derivative beneficiary remains an LPR [54]
After grandfathered derivative beneficiary adjusts status | No

**E. Physical Presence Requirement**

If claiming to be a grandfathered alien based on a qualifying petition or application that was filed after January 14, 1998, the applicant must show that the principal beneficiary of the petition or application was physically present in the United States on December 21, 2000 to adjust under INA 245(i) [55].

Because this physical presence requirement applies only to the principal beneficiary, the physical presence of any derivative beneficiaries on December 21, 2000 is not relevant. Grandfathered derivative beneficiaries, however, must show that the grandfathered principal beneficiary was physically present on December 21, 2000, if the qualifying petition or application was filed after January 14, 1998.

The physical presence requirement does not apply to applicants who qualify for INA 245(i) based on immigrant visa petitions and permanent labor certification applications filed on or before January 14, 1998.

**Example: Principal Beneficiary**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1, 1999</td>
<td>An alien enters the United States without inspection.</td>
</tr>
<tr>
<td>April 30, 2001</td>
<td>A 3rd preference Petition for Alien Relative (Form I-130) is properly filed on behalf of the alien and which was approvable when filed.</td>
</tr>
</tbody>
</table>

In this example, the applicant is the principal beneficiary of a qualifying petition. Since the petition was filed after January 14, 1998, the alien must show that he or she was physically present in the United States on December 21, 2000, to be a grandfathered alien and adjust under INA 245(i).

**Example: Derivative Beneficiary Spouse Later Divorces**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 1999</td>
<td>A married couple enter the United States without inspection.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>February 1, 2000</td>
<td>A permanent labor certification application is properly filed on behalf of one spouse and was approvable when filed. That spouse becomes the principal beneficiary of the application, and the other spouse becomes the derivative beneficiary.</td>
</tr>
<tr>
<td>January 20, 2005</td>
<td>The married couple divorces.</td>
</tr>
<tr>
<td>October 12, 2005</td>
<td>The derivative beneficiary remarries an LPR.</td>
</tr>
<tr>
<td></td>
<td>The LPR files a petition for the derivative beneficiary as the spouse of an LPR.</td>
</tr>
</tbody>
</table>

In this example, the qualifying permanent labor certification application serves to grandfather the derivative beneficiary. The fact that the principal beneficiary and the derivative beneficiary are now divorced is not relevant for **INA 245(i)** purposes. The derivative beneficiary is a grandfathered alien in his or her own right and eligible to seek adjustment under INA 245(i) independently of the principal beneficiary, if the principal beneficiary was physically present in the United States on December 21, 2000.

## Footnotes

[^1] Grandfathered principal beneficiaries are also known as the direct beneficiary or named beneficiary. Grandfathered derivative beneficiaries are the principal beneficiary’s spouse or unmarried children under 21 years of age at the time the qualifying petition or application was filed. For more information, see Section C, Beneficiary of Qualifying Immigrant Visa Petition or Permanent Labor Certification Application [7 USCIS-PM C.2(C)].


[^6] This form is no longer in use. The form was replaced by Application for Permanent Employment Certification (**ETA Form 9089 (PDF)**).


[^8] “Legacy INS” refers to the predecessor agency of USCIS that existed during the time of the 245(i) qualifying filing period.

[^9] Field offices and service centers were required to retain evidence of the mailing date as part of the record of proceeding for all immigrant visa petitions received between May 1, 2001 and May 3, 2001. INS
also affixed a stamp stating “Filed Prior to 245(i) Sunset” on all immigrant visa petitions received on or after May 1, 2001 that qualified as timely filed.

[^10] It was not uncommon for there to be a discrepancy between the date INS physically received the filing and the filing date shown in INS electronic records (the latter being the date INS processed the check or money order for payment of the filing fee). In some offices, the sheer volume of petition filings delayed recording the system filing date by up to several weeks or even months. If the applicant is a derivative grandfathered beneficiary or accompanying (or following-to-join) spouse or child, an officer may need to resolve any discrepancy in the filing date by reviewing the principal grandfathered beneficiary’s A-file.


[^13] See Subsection 1, Properly Filed [7 USCIS-PM C.2(B)(1)].


[^18] USCIS will consider evidence of fraud and the potential revocation of the approved visa petition when considering whether an approved petition was approvable when filed.

[^19] See Chung Hou Hsiao v. Hazuda (PDF), 869 F.3d 1034 (9th Cir. 2017) and Echevarria v. Keisler (PDF), 505 F.3d 16 (1st Cir. 2007). Changed circumstances after filing may include: an employer going out of business or a valid, bona fide marriage ending in divorce before the alien could adjust status.


[^21] See 8 CFR 245.10(a)(3) and 8 CFR 245.10(i). Even though the withdrawn, denied, or revoked petition or application may still serve to grandfather the beneficiary, the petition or application cannot serve as the underlying basis for adjustment (unless the petition remains valid under INA 204(j)). The applicant must still have an approved petition or be selected for a diversity visa to establish an eligible basis for adjustment under INA 245(i). See Chapter 3, Eligibility and Filing Requirements, Section A, Adjustment Eligibility under INA 245(i) [7 USCIS-PM C.3(A)] and Chapter 4, Documentation and Evidence, Section D, Demonstrating Underlying Basis for Adjustment [7 USCIS-PM C.4(D)].

[^22] See INA 203(g) and 8 CFR 205.1(a)(1).


[^27] This is so because the alien has already acquired the only intended benefit of 245(i): LPR status. See 66 FR 16383, 16384 (March 26, 2001).


[^29] See INA 203(d). See INA 245(i)(1)(B). See 8 CFR 245.10(a)(1)(i). Under INA 245(i), spouses and children are only included as grandfathered derivative beneficiaries if they are “eligible to receive a visa under section 203(d).” Immediate relatives of U.S. citizens are not included.

[^30] Where the relationship was created after the qualifying petition or application was filed, the grandfathered principal beneficiary’s current spouse or child may still adjust under INA 245(i) as an accompanying (or following-to-join) adjustment applicant. See Section D, Current Family Members of Grandfathered Aliens, Subsection 1, Grandfathered Principal Beneficiary’s Spouse and Children [7 USCIS-PM C.2(D)(1)]. Such child or spouse would not be a grandfathered alien in his or her own right but would be eligible to use INA 245(i) as the derivative spouse or child of a grandfathered alien. See Matter of Estrada and Estrada (PDF), 26 I&N Dec. 180 (BIA 2013).

[^31] See Chapter 1, Purpose and Background, Section C, Overcoming INA 245(a) Adjustment Ineligibility [7 USCIS-PM C.1(C)].

[^32] For information about derivative family members acquired after the qualifying petition or labor certification application, see Section D, Current Family Members of Grandfathered Aliens [7 USCIS-PM C.2(D)].

[^33] See INA 203(d).

[^34] The derivative beneficiary is still required to seek adjustment under a family-based, employment-based, special immigrant, or diversity visa immigrant category. See Chapter 3, Eligibility and Filing Requirements, Section A, Adjustment Eligibility under INA 245(i) [7 USCIS-PM C.3(A)], and Chapter 4, Documentation and Evidence, Section D, Demonstrating Underlying Basis for Adjustment [7 USCIS-PM C.4(D)].


[^36] See Chapter 3, Eligibility and Filing Requirements, Section A, Adjustment Eligibility under INA 245(i) [7 USCIS-PM C.3(A)].

[^37] If the petition or labor certification application was filed after January 14, 1998, and on or before April 30, 2001, the principal beneficiary must have been physically present in the United States on December 21, 2000. See INA 245(i)(1)(C). See Section E, Physical Presence Requirement [7 USCIS-PM C.2(E)].

[^38] On the basis of the previously used petition or application. The applicant may be eligible for 245(i) adjustment on a different basis.


[^40] See 8 CFR 245.10(h).

[^41] See 8 CFR 245.10(m).
Lawful immigration status for a nonimmigrant is defined in 8 CFR 245.1(d)(1)(ii).

The child must be unmarried and under 21 years of age. See INA 101(b)(1).


See 9 FAM 503.2-4(A)(c), If Spouse or Child Acquired Prior to Admission, and 9 FAM 503.2-4(A)(d), If Spouse or Child Acquired Subsequent to Admission.

See Chapter 1, Purpose and Background, Section C, Overcoming INA 245(a) Adjustment Ineligibility [7 USCIS-PM C.1(C)].

For more information on adjusting as a grandfathered derivative beneficiary, see Section C, Beneficiary of Qualifying Immigrant Visa Petition or Permanent Labor Certification Application, Subsection 2, Special Considerations for Derivative Beneficiaries [7 USCIS-PM C.2(C)(2)].

Similarly, the spouse of a qualified principal beneficiary who married the principal beneficiary only after the principal beneficiary adjusted under INA 245(i) is not eligible to adjust as a grandfathered derivative beneficiary under 245(i). See Landin-Molina v. Holder (PDF), 580 F.3d 913 (9th Cir. 2009).

The spouse remains eligible to adjust (on a different basis) even if the spouse later became divorced from the principal beneficiary and the child remains eligible to adjust (on a different basis) even if the child has since married or turned 21 years of age.

Grandfathered derivative beneficiaries only need to establish the qualifying relationship existed at the time the qualifying petition or labor certification application was properly filed. This is a unique aspect of INA 245(i) adjustment. Grandfathered derivative beneficiaries do not need to show the qualifying relationship continues to exist at the time they seek adjustment unless they are adjusting as an accompanying or following-to-join spouse or child of the principal beneficiary. For more information on qualifying to adjust status as a principal applicant’s accompanying or following-to-join spouse or child, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

See INA 203(d).

Similarly, the spouse of a qualified principal beneficiary who married the principal beneficiary only after the principal beneficiary adjusted under INA 245(i) is not eligible to adjust as a grandfathered derivative beneficiary under 245(i). See Landin-Molina v. Holder (PDF), 580 F.3d 913 (9th Cir. 2009).

The spouse remains eligible to adjust (on a different basis) even if the spouse later became divorced from the principal beneficiary and the child remains eligible to adjust (on a different basis) even if the child has since married or turned 21 years of age.

In contrast, grandfathered derivative beneficiaries only need to establish the qualifying relationship existed at the time the qualifying petition or labor certification application was properly filed. This is a unique aspect of INA 245(i) adjustment. Grandfathered derivative beneficiaries do not need to show the qualifying relationship continues to exist at the time they seek adjustment unless they are adjusting as an accompanying or following-to-join spouse or child of the principal beneficiary. For more information on qualifying to adjust status as a principal applicant’s accompanying or following-to-join spouse or child, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

See INA 203(d).


See INA 245(i)(1)(C) and 8 CFR 245.10(n).

Chapter 3 - Eligibility and Filing Requirements

A. Adjustment Eligibility under INA 245(i)

Grandfathered aliens and their current spouse and children are eligible to adjust under INA 245(i) if they meet certain eligibility requirements.
# INA 245(i) Adjustment of Status Eligibility Requirements

The applicant must be included in the categories of restricted aliens under regulation.\(^1\)

The applicant must properly file:

- Application to Register Permanent Residence or Adjust Status (Form I-485), and
- Adjustment of Status Under Section 245(i) (Form I-485 Supplement A).\(^2\)

The applicant must pay the additional $1,000 statutory sum (unless exempt).\(^3\)

The applicant is physically present in the United States at the time of filing Form I-485 and Supplement A.

The applicant is a grandfathered alien or is the current spouse or child of a grandfathered alien.

If the qualifying petition or application was filed between January 14, 1998 and April 30, 2001, the principal beneficiary was physically present in the United States on December 21, 2000.

The applicant is eligible for an immigrant visa as the beneficiary of an immigrant visa petition or by qualifying under certain other immigrant categories.

The applicant has an immigrant visa immediately available at the time he or she files Form I-485 and at the time USCIS approves the applicant’s Form I-485 and Supplement A.

The applicant is admissible to the United States or is eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.\(^4\)

## B. Filing the Adjustment Application

### 1. Form I-485 Application and Supplement A

Applicants seeking adjustment of status under INA 245(i) must file both:

- Application to Register Permanent Residence or Adjust Status (Form I-485) with appropriate filing fee,
and

- Adjustment of Status Under Section 245(i) (Form I-485 Supplement A) with payment of the $1,000 sum (unless exempt).[5]

Each applicant must file a separate Form I-485 and Supplement A (if applying under 245(i)) regardless of whether the applicant is a grandfathered beneficiary or spouse or child accompanying (or following-to-join) a grandfathered beneficiary. Applicants must complete the form and Supplement A according to the form instructions.[6] If the applicant is required to pay the $1,000 statutory sum, the applicant must do so before USCIS adjudicates the Form I-485.[7] The statutory sum is an absolute statutory eligibility requirement, is not a fee, and may not be waived.

INA 245(i) only applies to adjustment applications filed on or after the original date of enactment on October 1, 1994. INA 245(i) does not apply to:

- Any adjustment application filed before October 1, 1994; or
- Any motions to reopen or reconsider an adjustment application filed before October 1, 1994.[9]

If USCIS denies an adjustment application filed prior to October 1, 1994, the applicant may file a new adjustment application to seek 245(i) benefits.[10]

The burden always remains on an alien applying to adjust under INA 245(i) to satisfy all filing requirements, including the filing of the Supplement A and paying the additional sum. While 8 CFR 245.10(d) requires the agency to issue a notice of intent to deny where an alien, who appears eligible under 245(i), has filed an application for adjustment without either the Supplement A or the additional sum, this regulation only applies to those applications that were pending on the effective date of the regulation, March 26, 2001.[11] Therefore, notice under 8 CFR 245.10(d) was only required for those applicants who appeared to be eligible for INA 245(i) at that time. That regulation (8 CFR 245.10(d)) does not require USCIS to issue a notice of intent to deny an alien who has applied for adjustment of status under INA 245(a) after March 26, 2001.

2. Filing by Grandfathered Beneficiaries

Grandfathered beneficiaries (whether principal or derivative) eligible to adjust under INA 245(i) may file Supplement A and pay the $1,000 sum, if required, either:

- At the same time as Form I-485; or
- Any time after filing Form I-485 while it remains pending.[12]

Applicants who file Supplement A after their Form I-485 should attach a copy of the Notice of Action (Form I-797) (fee receipt) for the pending Form I-485.

3. Filing by Family Members of Grandfathered Beneficiaries

The current spouse or child (unmarried and under 21 years of age) of a grandfathered beneficiary (whether principal or derivative) eligible to accompany or follow-to-join[13] that beneficiary may file Form I-485:

- Together with the principal applicant’s Form I-485;
- At any time while the principal applicant’s previously-filed Form I-485 remains pending; or
At any time after the principal applicant became a lawful permanent resident (LPR), provided the applicant’s relationship as the principal applicant’s spouse or child existed at the time the principal applicant became an LPR (and provided the principal applicant remains in LPR status).[14]

The accompanying (or following-to-join) spouse or child applicant may file Supplement A and pay the $1,000 sum, if required, either:

- At the same time as Form I-485; or
- Any time after filing Form I-485 while it remains pending.

Applicants who file Supplement A after their Form I-485 should attach the Notice of Action (Form I-797) (fee receipt) for the pending Form I-485.

If the accompanying (or following-to-join) spouse and children were properly inspected and admitted or paroled and are not subject to the INA 245(c) bars, the spouse and children need not file a Supplement A and may simply seek adjustment under INA 245(a) by filing only Form I-485.

Footnotes

[^ 1] See 8 CFR 245.10(b) and 8 CFR 245.1(b). See Instructions to Form I-485 Supplement A (PDF, 559.26 KB).

[^ 2] Form I-485 Supplement A is sometimes referred to simply as Supplement A.

[^ 3] See Chapter 4, Documentation and Evidence, Section B, Paying the Statutory $1,000 Sum [7 USCIS-PM C.4(B)].


[^ 5] See Chapter 4, Documentation and Evidence, Section B, Paying the Statutory $1,000 Sum [7 USCIS-PM C.4(B)].


[^ 7] See instructions to Supplement A. For detailed fee information, see the USCIS website.

[^ 8] See 8 CFR 245.10(b)(4) (Form I-485) and 8 CFR 245.10(b)(5) (Supplement A).


[^ 10] See 8 CFR 245.10(e) and (f)(2).


[^ 12] An applicant may not file Supplement A after USCIS adjudicates the Form I-485. If the applicant is required to pay the $1,000 statutory sum, the applicant must do so before USCIS adjudicates the Form I-485. See instructions to Supplement A.
Chapter 4 - Documentation and Evidence

INA 245(i) applicants must submit the forms and documentation generally required of all adjustment applicants.\[^1\] In addition, applicants should carefully review and follow the instructions for Supplement A, submit the appropriate application forms and fees, and provide documentation to prove eligibility for 245(i) adjustment.\[^2\]

The applicant has the burden of proving that he or she meets the eligibility requirements for INA 245(i) adjustment.\[^3\]

A. Documentation and Evidence

An applicant should submit the following documentation to adjust status under INA 245(i):\[^4\]

- Application to Register Permanent Residence or Adjust Status (Form I-485) with the correct fee;
- Adjustment of Status Under Section 245(i) (Form I-485 Supplement A) with additional $1,000 sum (unless exempt);\[^5\]
- Proof that the principal applicant is eligible to adjust status under 245(i) as a grandfathered beneficiary of a qualifying immigrant visa petition or permanent labor certification application (as discussed below);
- Copy of the Approval Notice (Form I-797) for the principal applicant’s immigrant petition or other basis for adjustment;
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of the applicant’s birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);\[^6\]
- Report of Medical Examination and Vaccination Record (Form I-693);
- Affidavit of Support (if applicable);
- Declaration of Self-Sufficiency (Form I-944) (if applicable);
- Certified police and court records of criminal charges, arrests, or convictions (if applicable);
• Application for Waiver of Grounds of Inadmissibility (Form I-601) (if applicable);

• Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) (if applicable);

• Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities (Form I-508) (for applicants holding A, G, or E nonimmigrant status); and

• Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who as a derivative of a grandfathered alien should submit the following:

• A copy of documentation showing relationship to the principal applicant (such as a marriage certificate, birth certificate, or adoption decree); and

• A copy of the approval notice or receipt (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).

B. Paying $1,000 Sum

Applicants seeking adjustment under INA 245(i) must submit the $1,000 sum required by law unless they are exempt. This sum is in addition to the required fees associated with Form I-485.[7]

All 245(i) applicants must pay the additional $1,000 except for applicants who are:

• Unmarried and under 17 years of age;

• The spouse of a legalized alien who qualifies for Family Unity Benefits and has filed an Application for Family Unity Benefits (Form I-817). (The applicant should attach a copy of the USCIS Approval Notice or Receipt (Form I-797) for the properly filed Application for Family Unity Benefits (Form I-817) as evidence); or

• The unmarried child under 21 years of age of a legalized alien who qualifies for Family Unity Benefits and who has filed an Application for Family Unity Benefits (Form I-817) (the applicant should attach a copy of the USCIS Approval Notice or Receipt (Form I-797) for the properly filed Application for Family Unity Benefits (Form I-817) as evidence).[8]

An alien applying for adjustment of status under INA 245(i) must file Supplement A and pay the $1,000 sum with each adjustment application that the alien files, unless they are exempt.[9]

C. Establishing Grandfathering Eligibility

1. Proof of Qualifying Immigrant Visa Petition

An applicant generally can prove the existence of a qualifying immigrant visa petition[10] by submitting a copy of the Form I-797 approval notice for the immigrant petition showing the principal beneficiary’s name and qualifying date of filing.

The following table outlines documentary evidence an applicant may submit to satisfy the three requirements
to prove he or she has a qualifying petition.

Proof of Qualifying Immigrant Visa Petition

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Beneficiary of an immigrant visa petition</td>
<td>• Receipt or Approval Notice (Form I-797) for a Form I-130, I-140, I-360, or I-526</td>
<td>On or before April 30, 2001</td>
</tr>
<tr>
<td>Petition was “properly filed”</td>
<td>• Receipt or Approval Notice (Form I-797) showing date petition filing was accepted</td>
<td>On or before April 30, 2001</td>
</tr>
<tr>
<td></td>
<td>• Petition stamped with “Filed Prior to 245(i) Sunset” stamp</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Postmarked envelope in the applicant’s A-file</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Petitions submitted with illegible or missing postmarks or submitted by private mail service were considered timely filed if physically received by May 3, 2001</td>
<td></td>
</tr>
<tr>
<td>Petition was “approvable when filed”</td>
<td>• Approval Notice (Form I-797) showing petition is approved</td>
<td>On or before April 30, 2001</td>
</tr>
<tr>
<td></td>
<td>• If petition is still pending or was withdrawn, denied, or revoked, applicant may submit other relevant evidence establishing eligibility for petition approval (see below)[12]</td>
<td></td>
</tr>
</tbody>
</table>

Absent an approved petition, an applicant may submit any relevant evidence to show the petition was approvable when filed, meaning the petition was meritorious in fact and non-frivolous (not patently without substance).

The following tables provide examples of evidence the applicant may submit to prove certain types of petitions were “approvable when filed.”

Examples of Evidence that Family-Based Petition[13] was Approvable When Filed

<table>
<thead>
<tr>
<th>Evidence</th>
<th>To Establish</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Birth certificates</td>
<td>Requisite relationship at time petition was filed.</td>
</tr>
<tr>
<td>• Marriage certificates</td>
<td></td>
</tr>
<tr>
<td>• Divorce decrees</td>
<td></td>
</tr>
</tbody>
</table>
### Evidence to Establish

<table>
<thead>
<tr>
<th>Evidence</th>
<th>To Establish</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank statements</td>
<td>Bona fide marital intent at the time the petition was filed (if a marriage-based case)[14]</td>
</tr>
<tr>
<td>Life, health, or auto insurance policies</td>
<td></td>
</tr>
<tr>
<td>Rental or mortgage receipts</td>
<td></td>
</tr>
</tbody>
</table>

#### Examples of Evidence that Employment-Based Petition[15] was Approvable When Filed

<table>
<thead>
<tr>
<th>Evidence</th>
<th>To Establish</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copy of educational degrees or training</td>
<td>Beneficiary had the requisite experience, skills, or education for the job.</td>
</tr>
<tr>
<td>Proof of qualifying experience</td>
<td></td>
</tr>
<tr>
<td>Trade certifications</td>
<td></td>
</tr>
<tr>
<td>Professional licenses</td>
<td></td>
</tr>
<tr>
<td>Copies of employer’s business license</td>
<td>Petitioning business existed, had bona fide intention to employ the beneficiary, and had the ability to pay the beneficiary (as of the time of filing).</td>
</tr>
<tr>
<td>W-2 forms or pay stubs</td>
<td></td>
</tr>
<tr>
<td>Employment records or tax records</td>
<td></td>
</tr>
<tr>
<td>Employer affidavits</td>
<td></td>
</tr>
</tbody>
</table>

It may be more difficult for an applicant to obtain documents from the original petitioning employer or family member with the passage of time. In many cases, however, applicants are able to obtain employment or legal documents through a state or county business licensing board, secretary of state’s office or state labor board, and other public records. An officer should consider the totality of the circumstances when determining whether a petition was “approvable when filed.”

USCIS makes this determination based on the circumstances that existed at the time the petition was filed. A petition that was approvable when filed but was later withdrawn, denied, or revoked due to circumstances that arose after the time of filing may still qualify the applicant for 245(i) adjustment if he or she is otherwise eligible.[16]

### 2. Proof of Qualifying Labor Certification Application

An applicant can generally prove the existence of a qualifying permanent labor certification application[17] by submitting a copy of the Application for Alien Labor Certification (ETA Form 750) showing the principal beneficiary’s name and bearing a state workforce agency’s date stamp, an agency letter, or other official DOL document specifying the date of receipt or filing.
The following table outlines documentary evidence an applicant may submit to satisfy the three requirements to prove he or she has a qualifying permanent labor certification application.

### Proof of Qualifying Labor Certification Application

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Documentary Evidence[18]</th>
<th>Filing Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beneficiary of a permanent labor certification application</td>
<td>• Form ETA 750&lt;br&gt;• Receipt from DOL or a State Wage Authority (SWA) for a Form ETA 750</td>
<td>On or before April 30, 2001</td>
</tr>
<tr>
<td>Application was “properly filed”</td>
<td>Receipt from DOL or SWA dated no later than April 30, 2001</td>
<td>On or before April 30, 2001</td>
</tr>
<tr>
<td>Application was “approvable when filed”</td>
<td>Evidence that application was accepted for filing (including receipt notice from DOL or SWA) and no evidence of fraud or ineligibility</td>
<td>On or before April 30, 2001</td>
</tr>
</tbody>
</table>

### 3. Proof of Physical Presence

Applicants whose INA 245(i) adjustment applications are based on a qualifying immigrant visa petition or permanent labor certification application filed after January 14, 1998, must prove that the principal beneficiary of that petition or application was physically present in the United States on December 21, 2000.[19]

In some cases, a single document may suffice to prove physical presence, but often applicants must submit several documents. USCIS ordinarily places the greatest weight on federal, state, or municipal government-issued documents. Examples of documents that applicants may submit copies of as evidence of physical presence include but are not limited to:

- Arrival-Departure Record (Form I-94);
- Nonimmigrant visa page from passport;
- Authorization for Parole of an Alien into the United States (Form I-512L) or other U.S. government-issued document showing parole into the United States after inspection by an immigration officer;
- Notice to Appear in Immigration Court;
- Official correspondence or other notices from a U.S. government agency;
- A state driver’s license;
- Income tax or property tax records, returns, or payments;
- School or college transcripts and records;
• Medical records;
• Lease agreements and rental receipts;
• Utility bill receipts; or
• Employment records, such as payroll records or pay stubs.[20]

Applicants who submit a personal affidavit attesting to physical presence must also submit documentation in support of the affidavit.[21] USCIS evaluates all documentation on a case-by-case basis.[22]

D. Demonstrating Underlying Basis for Adjustment

Applicants for INA 245(i) adjustment must be eligible for an immigrant visa under a family-based, employment-based, special immigrant, or diversity visa immigrant category. The applicant may adjust based on:

• The qualifying immigrant visa petition used to establish grandfathering, if the petition is still valid;
• The immigrant visa petition associated with the permanent labor certification application used to establish grandfathering, if the petition is still valid;
• A separate immigrant visa petition; or
• Selection in the diversity visa program.

For instance, an applicant may be a grandfathered alien based on a permanent labor certification application but ultimately adjust status through a petition filed on his or her behalf by his or her lawful permanent resident (LPR) spouse.[23]

Eligibility requirements vary depending on the immigrant visa category under which an applicant seeks to adjust. An officer should review the record for proof that the applicant is eligible for an immigrant visa in the category that forms the basis for the applicant’s adjustment. The Form I-485 instructions and the other category-specific parts of this volume provide detailed information on documentation and evidence applicants must submit with Form I-485, depending on their specific basis for adjustment.

E. Proof of Family Relationship

Applicants seeking INA 245(i) adjustment as a grandfathered derivative beneficiary[24] must show that the required relationship to the grandfathered principal beneficiary existed at the time the qualifying petition or application was properly filed. Grandfathered derivative beneficiaries do not, however, need to show that the relationship continues to exist at the time they file the adjustment application.

Applicants seeking adjustment as an accompanying (or following-to-join) spouse or child of a grandfathered beneficiary (who is the principal adjustment applicant) must show the spouse or child relationship currently exists.[25] Such applicants must also demonstrate that the grandfathered beneficiary is currently applying for, has already applied for, or was granted adjustment of status under INA 245(i) and remains an LPR.

An applicant can generally prove the required relationship by submitting a marriage certificate (for spouse) or birth certificate or adoption decree (for child).
An applicant can generally prove the grandfathered beneficiary is applying for or was granted adjustment of status by submitting a copy of the Approval Notice or Receipt (Form I-797) for that Form I-485, or a copy of the permanent resident card (Form I-551), if applicable.

F. Admissibility

Like other applicants for adjustment of status, INA 245(i) applicants must establish that they are admissible to the United States.

Because a fundamental aspect of INA 245(i) is to permit certain aliens to adjust status despite entry without inspection, the ground of inadmissibility related to aliens present in the United States without inspection and admission or inspection and parole does not apply to these applicants.

INA 245(i), however, does not protect applicants from other inadmissibility grounds. If an officer determines that an applicant is inadmissible, then the applicant is ineligible for 245(i) adjustment unless the applicant has obtained a waiver or some other form of relief from all applicable grounds of inadmissibility.

G. Relief from Adjustment Bars

In general, aliens are ineligible for adjustment of status under INA 245(a) if any of the statutory adjustment bars apply to them. INA 245(i) exempts eligible applicants from most of the INA 245(c) bars to adjustment of status. However, applicants described in the INA 245(c)(6) bar (deportable under INA 237(a)(4)(B) for having engaged in terrorist activities, as defined in INA 212(a)(3)(B)(iii)), are ineligible to adjust under INA 245(i) because such activities make the alien inadmissible.

Footnotes


[^2] See Chapter 3, Eligibility and Filing Requirements, Section A, Adjustment Eligibility under INA 245(i) [7 USCIS-PM C.3(A)]. See 8 CFR 103.2(b).


[^4] Documents that are not in English must be accompanied by a full, certified English translation. See 8 CFR 103.2(b)(3). Applicants should submit only photocopies of original documents unless USCIS specifically requests an original document.

[^5] See Section B, Paying the Statutory $1,000 Sum [7 USCIS-PM C.4(B)].

[^6] Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013 may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

[^7] If the applicant is required to pay the $1,000 sum, the applicant must do so before USCIS adjudicates.
the Form I-485. See instructions to Supplement A. For detailed fee information, see the USCIS website.

[^8] See 8 CFR 245.10(c).

[^9] See 8 CFR 245.10(c).

[^10] For a detailed discussion of what is considered a “qualifying” petition or labor certification application, see Chapter 2, Grandfathering Requirements, Section B, Qualifying Immigrant Visa Petition or Permanent Labor Certification Application [7 USCIS-PM C.2(B)].


[^12] Petitions that are withdrawn, denied, or revoked by USCIS, or whose visa registration has been terminated by the U.S. Department of State under INA 203(g), may still serve to grandfather the person as long as the qualifying petition was properly filed and approvable when filed. In such cases, the burden is on the applicant to submit evidence that the petition was properly filed and approvable when filed.

[^13] See Petition for Alien Relative (Form I-130) and Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).


[^15] See Immigrant Petition for Alien Worker (Form I-140), Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), and Immigrant Petition by Alien Entrepreneur (Form I-526).

[^16] See Chapter 2, Grandfathering Requirements, Section B, Qualifying Immigrant Visa Petition or Permanent Labor Certification Application, Subsection 2, Approvable When Filed [7 USCIS-PM C.2(B)(2)].

[^17] For a detailed discussion of what is considered a “qualifying” petition or labor certification application, see Chapter 2, Grandfathering Requirements, Section B, Qualifying Immigrant Visa Petition or Permanent Labor Certification Application [7 USCIS-PM C.2(B)].

[^18] These documents may only be contained in the principal grandfathered beneficiary’s A-file.

[^19] See INA 245(i)(1)(C) and 8 CFR 245.10(n). See Chapter 2, Grandfathering Requirements, Section E, Physical Presence Requirement [7 USCIS-PM C.2(E)].


[^22] For more information on evidence that demonstrates an applicant’s physical presence in the United States on a specific date, see 8 CFR 245.22.

[^23] See 8 CFR 245.10(k) (addressing employment-based applications).

[^24] See Chapter 2, Grandfathering Requirements, Section C, Beneficiary of Qualifying Immigrant Visa Petition or Permanent Labor Certification Application, Subsection 2, Special Considerations for Derivative Beneficiaries [7 USCIS-PM C.2(C)(2)].


[^27] See INA 245(c)-(e). For more information on the adjustment bars, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[^28] See Chapter 1, Purpose and Background, Section C, Overcoming INA 245(a) Adjustment Ineligibility [7 USCIS-PM C.1(C)].

[^29] Applicants described in the INA 245(c)(5) bar (admitted as a nonimmigrant witness or informant under INA 101(a)(15)(S)) are barred from adjustment unless they obtain an approved Inter-Agency Alien Witness and Informant Record (Form I-854). See 8 CFR 245.11.


Chapter 5 - Adjudication and Decision

A. General

When adjudicating INA 245(i) adjustment applications, officers should follow the general guidance for adjustment applications.[1]

As appropriate, officers may issue a Request for Evidence or Notice of Intent to Deny to provide the applicant an opportunity to submit additional documentation regarding adjustment eligibility or inadmissibility grounds.

B. Waiver of Interview

All adjustment of status applicants must be interviewed by an officer unless the interview is waived by USCIS.[2] The decision to waive the interview should be made on a case-by-case basis.[3] The interview enables USCIS to verify important information about the applicant to determine eligibility for adjustment. For family-based applications, USCIS generally requires the Form I-130 petitioner to appear for the interview with the principal adjustment of status applicant. In addition, derivatives are also required to appear regardless of the immigrant visa category.

C. Adjudication

The following table provides a step-by-step overview of an INA 245(i) adjudication.

<table>
<thead>
<tr>
<th>Step-by-Step Overview of Adjudication of INA 245(i) Adjustment Application</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1</strong></td>
</tr>
<tr>
<td>Determine that the applicant is either:</td>
</tr>
<tr>
<td>• A grandfathered alien (whether a principal or derivative beneficiary), including verifying that the qualifying immigrant visa petition or permanent labor certification application was properly filed on or before April 30, 2001 and was approvable when filed; or</td>
</tr>
<tr>
<td>• The current spouse or child accompanying (or following to join) a</td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
<table>
<thead>
<tr>
<th>Step-by-Step Overview of Adjudication of INA 245(i) Adjustment Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>grandfathered alien.</td>
</tr>
</tbody>
</table>

**Step 2**
If the qualifying petition or application was filed after January 14, 1998, verify that the grandfathered principal beneficiary was physically present in the United States on December 21, 2000.

**Step 3**
Verify the applicant has paid the $1,000 sum (unless exempt).

**Step 4**
Determine that the applicant is otherwise eligible to adjust under 245(i).

**Step 5**
Determine that the applicant is eligible for an immigrant visa in the family-based, employment-based, special immigrant, or diversity visa immigrant category (whether or not based on the qualifying petition or application).

**Step 6**
Determine that an immigrant visa is immediately available for the applicant’s underlying immigrant category.[4]

**Step 7**
Determine that the applicant is admissible to the United States or is eligible for a waiver of inadmissibility or other form of relief.

**Step 8**
Determine that the applicant merits the favorable exercise of discretion.

### D. Decision

#### 1. Approval

The officer must verify that the applicant meets all the relevant eligibility requirements, including that the applicant merits the favorable exercise of discretion, before approving the application to adjust status under INA 245(i).

The applicant becomes a lawful permanent resident as of the date USCIS approves the adjustment application.[5]

#### 2. Denial

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial.[6] Although there are no appeal rights for the denial of an INA 245(i) adjustment application, the applicant may file a motion to...
reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B). An applicant may also renew the adjustment application in any subsequent removal proceedings.\[^7\]

**Footnotes**


\[^2\] See 8 CFR 245.6.

\[^3\] See Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

\[^4\] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

\[^5\] The date of approval is shown on the Notice of Action (Form I-797) and on the permanent resident card (Form I-551).

\[^6\] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

\[^7\] See 8 CFR 245.2(a)(5)(ii).

**Part D - Family-Based Adjustment**

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 23 - Adjustment of Status to Lawful Permanent Resident (External) (PDF, 1.61 MB)

AFM Chapter 25 - Petitions for Removal of Conditions on Conditional Residence (External) (PDF, 256.35 KB)

**Part E - Employment-Based Adjustment**

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In 2000, Congress enacted the American Competitiveness in the Twenty-First Century Act of 2000[1] (AC21) which, in part, added INA 204(j). This provision allows certain employment-based adjustment of status applicants experiencing delays in the employment-based adjustment of status process some flexibility to change jobs or employers while their Application to Register Permanent Residence or Adjust Status (Form I-485) is pending.[2]

If eligible under INA 204(j), the Immigrant Petition for Alien Workers (Form I-140) (and underlying permanent labor certification, if applicable) may remain valid and the beneficiary of an approved employment-based immigrant visa petition in the 1st, 2nd, or 3rd preference category may transfer, or “port,” to a qualifying new job offer that is in the same or a similar occupational classification as the job offer for which the petition was filed. The new job offer may be through the same employer that filed the petition or a different employer.

These provisions are referred to as “portability.” Employment-based adjustment applicants who use such benefits are considered to have “ported” the petition filed on their behalf to the new job offer.

An applicant who successfully ports the petition on which the adjustment application[3] is based to a new job or employer retains the priority date of the underlying petition.

B. Eligibility Requirements

1. General Portability Requirements

To qualify for portability under INA 204(j), the adjustment applicant must meet the following eligibility requirements:

- The applicant is the beneficiary of an approved Form I-140 petition or of a pending petition that is ultimately approved;

- The petition is filed in the employment-based 1st, 2nd, or 3rd preference category;[4]
• The applicant’s properly filed adjustment application has been pending with USCIS for 180 days or more at the time USCIS receives the request to port.\[5\]

• The new job offer through which the applicant seeks to adjust status is in the same or similar occupational classification as the job specified in the petition; and

• The applicant submitted a request to port. If the applicant makes a request to port on or after January 17, 2017, the applicant must submit a Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j) (Form I-485 Supplement J). If the applicant requested to port before January 17, 2017, the applicant could have requested to port through a letter, since Form I-485 Supplement J did not go into effect until January 17, 2017.

The new job offer may be with the same petitioner or with an entirely new employer, including self-employment. Applicants can submit the portability request and evidence with the adjustment application or in any in-person interviews or in response to a request or other notice from USCIS.

2. Approved Petition Required

If USCIS has approved an applicant’s Form I-140 petition and the applicant’s adjustment application remained unadjudicated for 180 days or more (from the adjustment application receipt date), the approved petition remains valid unless the petition’s approval is later substantively revoked. This applies even if the applicant changes jobs or employers so long as the new offer of employment is in the same or similar occupation. If the adjustment application has been pending for less than 180 days, the approved petition does not remain valid with respect to a new offer of employment.

An unadjudicated petition is not valid merely because the petition was filed with USCIS or through the passage of 180 days. Rather, the petition must have been filed on behalf of an alien who was entitled to the employment-based classification at the time that the petition was filed, and therefore must be approved prior to a favorable determination on a portability request. If at any time USCIS revokes approval of the petition, the applicant is not eligible for the job flexibility provisions of Section 106(c) of AC21.\[6\]

In revocation cases, the officer adjudicating the adjustment application may deny the adjustment application and Supplement J request. In all cases, an offer of employment must have been bona fide and the employer must have had the intent (at the time the petition was approved) to employ the beneficiary upon adjustment.

3. Withdrawal of Petition

In general, if USCIS receives a request from a petitioner to withdraw a pending Form I-140 petition, USCIS issues an acknowledgment of the withdrawal request and denies any corresponding adjustment application. However, if the pending petition is approvable and the adjustment application was pending for 180 days or more, the petition may remain valid for priority date retention and possible eligibility under INA 204(j) for the adjustment application.\[7\]

In addition, if USCIS receives a request from a petitioner to withdraw a petition that has been approved for fewer than 180 days, and any corresponding adjustment application has not been pending for at least 180 days (or has not been filed), USCIS automatically revokes the approval of the petition.\[8\] However, if USCIS receives a withdrawal request from a petitioner 180 days or more after the approval of the petition, or a corresponding adjustment application has been pending for 180 days or more, the petition remains valid for priority date retention. The alien may be eligible under INA 204(j) for the adjustment application (unless USCIS revokes the approval of the petition under substantive grounds) if he or she satisfies all of the requirements to port based on a new same or similar position and the adjustment application has been approved.
pending 180 days or more at the time of withdrawal.\[9\]

If the adjustment applicant is not eligible under INA 204(j), the applicant must obtain a new employment-based preference petition in order to file a new adjustment application, even if withdrawal of the original petition occurred after it had been approved for at least 180 days or a corresponding adjustment application was pending for at least 180 days.

4. Termination of Original Petitioner’s Business

In general, if the Form I-140 petitioner’s business terminates before USCIS approves the Form I-140 petition, USCIS denies the petition and denies any corresponding adjustment application.\[10\] However, if the petition was approvable at the time of filing and remained approvable until the adjustment application had been pending for 180 days or more, the petition remains valid for priority date retention, and possible eligibility under INA 204(j) for the adjustment application.\[11\]

In addition, USCIS automatically revokes the approval of the petition in cases where:

- The petitioner’s business terminates after the approval of the petition;
- The petition has been approved for fewer than 180 days at the time; and
- A corresponding adjustment application has not been pending for at least 180 days (or has not been filed).\[12\]

However, if the business termination occurs 180 days or more after the approval of the petition or a corresponding adjustment application has been pending for 180 days or more, the petition may remain valid for priority date retention. The alien may be eligible to port under INA 204(j) for the adjustment application (unless USCIS revokes the approval of the petition under substantive grounds) if he or she satisfies all of the requirements to port based on a new same or similar position and the adjustment application has been pending 180 or more days when the business terminated.\[13\]

If the applicant is not eligible under INA 204(j) but otherwise meets the timing criteria to sustain the validity of the petition, the applicant must obtain a new employment-based preference petition in order to file a new adjustment application.\[14\]

5. Adjustment Application Pending 180 Days or More

For portability purposes, counting the number of days the adjustment application has been pending begins on the day the applicant properly filed the adjustment application with USCIS and includes every subsequent calendar day until USCIS receives the applicant’s request to port (so long as the application remains unadjudicated).

If the Form I-140 petitioner withdraws the petition or the petitioner’s business terminates before USCIS approves the petition, the portability provisions only apply if the adjustment application has been pending for 180 calendar days or more. If the adjustment application has been pending for fewer than 180 calendar days, portability does not apply and the petition is not approvable.\[15\]

An immigrant visa must be available at the time an applicant files an adjustment application.\[16\] However, a visa does not need to remain continuously available for the 180 days to accrue. The fact that a visa number becomes unavailable after the filing of the adjustment application does not stop the number of days required for Form I-140 petition portability eligibility from accruing.
6. New Job in Same or Similar Occupational Classification

To determine whether a new job offer is valid for purposes of INA 204(j) portability, the new job offer must be in either the same occupational classification or a similar occupational classification as the job specified in the underlying Form I-140 petition.

Same Occupational Classification

The term “same occupational classification” means an occupation that resembles in every relevant respect the occupation for which the underlying employment-based immigrant visa petition was approved. Accordingly, USCIS evaluates whether the jobs are identical, resembling in every relevant respect, or the same kind of category or thing when determining whether two job offers are in the same occupational classification.

Similar Occupational Classification

The term “similar occupational classification” means an occupation that shares essential qualities or has a marked resemblance or likeness with the occupation for which the underlying employment-based immigrant visa petition was approved. When determining whether two job offers are in similar occupational classifications, USCIS evaluates whether the jobs share essential qualities or have a marked resemblance or likeness.

Factors to Consider

To determine if the new job offer is in the same or similar occupational classification as the job listed on the petition, officers evaluate the totality of the circumstances. As part of this evaluation, officers may consider and compare various factors and evidence relating to the jobs. Relevant factors include, but are not limited to:

- The U.S. Department of Labor (DOL) occupational codes assigned to the respective jobs;
- Job duties;
- Job titles;
- The required skills and experience;
- The educational and training requirements;
- Any licenses or certifications specifically required;
- The offered wage or salary; and
- Any other material and credible evidence relevant to a determination of whether the new position is in the same or a similar occupational classification.

A change to the same or a similar occupational classification may involve lateral movement, career progression, or porting to self-employment, either in the same or a different geographic location.

With respect to porting to self-employment, all other eligibility requirements must be satisfied. First, as with all other portability determinations, the employment must be in a same or similar occupational classification as the job for which the original petition was filed. Second, the adjustment applicant should provide sufficient evidence to confirm that the applicant’s business and the job offer are legitimate. If the submitted evidence is insufficient to confirm the legitimacy, or the officer identifies fraud indicators that raise doubts about the
legitimacy of the self-employment, the officer may request evidence to show that the self-employment is legitimate. Third, as with any portability case, USCIS focuses on whether the petition represented the truly intended employment at the time of the filing of both the petition and the adjustment application. This means that, as of the time of the filing of the petition and at the time of filing the adjustment application (if not filed concurrently), the original petitioner must have had the intent to employ the beneficiary, and the beneficiary must also have intended to undertake the employment upon adjustment.[19] Officers may take the petition and supporting documents themselves as evidence of such intent, but in certain cases requesting additional evidence or initiating an investigation may be appropriate.

7. Using Standard Occupational Classification Codes

U.S. Department of Labor’s Standard Occupational Classification

Standard Occupational Classification (SOC) codes may help address uncertainty in the portability determination process. As mentioned above, USCIS does not consider SOC codes or their descriptions as the sole determining factor(s) or mandatory factor(s) in portability determinations. USCIS considers other relevant factors or evidence in the totality of the circumstances.[20]

In making portability determinations, officers may refer to DOL’s labor market expertise as reflected in its SOC system. The SOC system is used to organize occupational data and classify workers into distinct occupational categories.[21] Occupations are generally categorized based on the type of work performed and, in some cases, on the skills, education, and training required to perform the job.

Organization of SOC System

The SOC organizes all occupations into major groups, which are then broken down in descending order into minor groups, broad occupations, and detailed occupations.[22] All workers are classified into one of these detailed occupations. Detailed occupations with similar job duties and, in some cases, skills, education, and training are generally grouped together in the same broad occupation.

The SOC system is organized using numeric codes consisting of six digits. Each digit or group of digits represents the level of similarity of positions. An occupation is not assigned to more than one category at the lowest level of the classification (sixth digit).

For example, the SOC code for the detailed occupational classification of “web developer” is 15-1254 and is broken down as follows:

- The first two digits (15) indicate the major group classification, which includes all computer and mathematical occupations. Major Group 15-0000: Computer and Mathematical Occupations.
- The third digit (1) indicates the minor group classification, which includes all computer occupations. Minor Group 15-1200: Computer Occupations.
- The fourth and fifth digits (25) indicate the broad occupation classification, which includes software and web developers, programmers, and testers. Broad occupation 15-1250 Software and Web Developers, Programmers, and Testers.
- The sixth digit (4) indicates the detailed occupation classification, which includes only web developers. Detailed Occupation 15-1254: Web Developers.

The SOC system classifies supervisors and managers of other workers distinctly. Supervisors of workers in many major groups may be classified along with the workers they supervise. As such, supervisors usually
have work experience and perform activities similar to the workers they supervise.[23]

Management Occupations (such as those primarily engaged in planning and directing) are generally classified in a separate major group (Major Group 11-0000).[24] Persons classified in this major group are generally managers of persons categorized in other major groups and their duties may include supervision of such other persons.

For example, the SOC code 11-9041 is assigned to the detailed occupation Architectural and Engineering Managers, which covers persons who “[p]lan, direct, or coordinate activities in such fields as architecture and engineering or research and development in these fields.”[25] Under normal career progression, a person in an occupation in any given major group may advance to a corresponding and related occupation in the major group for managers.

In all cases, USCIS officers should review all relevant evidence when determining whether two jobs are in the same or similar occupational classification(s) for purposes of INA 204(j) portability (see above), to include SOC codes to compare the respective jobs as well as relevant information in alternative resources.[26]

**Determining Appropriate SOC Code**

Determining the appropriate SOC codes for the relevant jobs depends on the type of petition filed on behalf of the adjustment applicant:

- For petitions that are supported by labor certifications from DOL, the SOC codes for the original position have been certified by DOL. The SOC code associated with the new position, as reported on Supplement J, must be established by the applicant with supporting evidence from the intending employer.

- For petitions that do not require labor certifications from DOL, the applicant must establish the proper SOC code for both the original position and the new position. The applicant should submit supporting evidence from the intending employer for the new position.

With respect to SOC codes other than those certified by DOL in a labor certification, the burden is on the applicant to demonstrate by a preponderance of the evidence that the SOC code may properly be associated with the relevant position.[27]

If the applicant establishes by a preponderance of the evidence that the detailed occupational codes describing the original and new positions are the same (for example, those where all six digits of the code match), and the totality of the circumstances supports that determination, officers may generally treat such evidence favorably in determining whether the two positions are in the same or similar occupational classification(s) for INA 204(j) portability purposes.[28]

Similarly, if the applicant establishes by a preponderance of the evidence that the two jobs are described by two distinct detailed occupation codes within the same broad occupation code, officers may treat such evidence favorably in determining whether the two positions are in similar occupational classifications. USCIS generally considers such positions to be in similar occupational classifications unless the preponderance of the evidence indicates that favorable treatment is not warranted (upon review of the evidence and considering the totality of the circumstances).[29]

For example, the detailed occupations of Computer Programmers (15-1251), Software Developers (15-1252), Software Quality Assurance Analysts and Testers (15-1253), Web Developers (15-1254), and Web and Digital Interface Designers (15-1255) are found within the broad occupational group of Software and Web
Developers, Programmers, and Testers (15-1250). Officers may consider these detailed occupations to be in similar occupational classifications given the largely similar duties and areas of study associated with each classification.\[30\]

In certain instances, however, simply establishing that the two jobs are described within the same broad occupation may not be sufficient to establish by a preponderance of the evidence that the two jobs are in similar classifications.

For example, the detailed occupations of Geographers (19-3092) and Political Scientists (19-3094) are found within the broad occupational code for Miscellaneous Social Scientists and Related Workers (19-3090).\[31\] Although such occupations are grouped together in the same broad occupational code, the workers in those respective occupations largely do not share the same duties, experience, and educational backgrounds. In such cases, the officer may determine that the two jobs are not in similar occupational classifications for purposes of INA 204(j) portability.

The burden is on the applicant to demonstrate that the relevant positions are in the same or similar occupational classification(s). When making such determinations, and when determining whether the relevant positions have been properly categorized by the applicant under the SOC, USCIS reviews the evidence of each case and considers the totality of the circumstances.

**Career Progression**

USCIS recognizes that persons earn opportunities for career advancement as they gain experience over time. As with other cases, USCIS considers cases involving career progression under the totality of the circumstances to determine whether the applicant has established by a preponderance of the evidence that the relevant positions are in similar occupational classifications for INA 204(j) portability purposes.

In many instances, a person’s progress in his or her career may easily fit the standards discussed in the preceding guidance, such as when a person moves into a more senior but related position that does not have a managerial or supervisory role (such as a promotion from a software engineer to a senior software engineer). In such cases, officers should consider whether the original position and the new position are in the same or similar occupational classification(s), consistent with the preceding section.

In other instances, career progression may involve a different analysis, such as when a person moves from a non-managerial or non-supervisory position into a managerial or supervisory role. In such cases, officers may treat certain evidence favorably in determining whether the two jobs are in similar occupational classifications for purposes of INA 204(j) portability. Specifically, in cases where the evidence submitted by the applicant establishes that the applicant is primarily responsible for managing the same or similar functions of their original jobs or the work of persons whose jobs are in the same or similar occupational classification(s) as the applicants’ original positions.

**Example (Similar Occupational Classification)**

If the occupation described in the original job offer was assigned the SOC code of 15-1152 for Software Developers, officers may determine that a new job offer described in the SOC code of 11-3021 for Computer and Information Systems Managers is in a similar occupational classification.\[32\]

This is because Computer and Information Systems Managers generally manage those in positions that fall within occupational classifications that are the same as or similar to the occupational classification of the original job offer (such as Computer Programmers (15-1251), Software Developer (15-1252), and Web Developer (15-1254), all of which are grouped together under the broad occupational code for Software and Web Developers, Programmers and Testers (15-1250)).\[33\]
Example (Not Similar Occupational Classification)

If the occupation described in the original job offer was assigned the SOC code of 35-2014 for Cooks, Restaurant, officers may determine that a new job offer described in the SOC code of 11-9051 for Food Service Managers is not in a similar occupational classification.

This is because the duties of Food Service Managers (duties that include planning, directing, or coordinating activities of an organization that serves food and beverages) are generally different from those of restaurant cooks, who largely prepare meals. Moreover, the SOC code for Food Service Managers specifically excludes “Chefs and Head Cooks,” who supervise restaurant cooks and persons in other similar positions.[34]

Non-Managerial Career Progression

There may be instances where the evidence (in light of the totality of the circumstances) warrants a favorable portability determination based on normal career progression. This may apply even though the person is not managing persons in jobs that are in the same or similar occupational classification(s) as the applicant’s original position.

For example, if an applicant’s original job duties as a restaurant cook included ordering supplies, setting menu prices, and planning the daily menu, a change to a food service manager position may be considered a normal career progression. This may apply if the applicant’s responsibilities as a food service manager include ordering food and beverages, equipment, and supplies; as well as overseeing food preparation, portion sizes, and overall presentation of food.

While the applicant may not be directly supervising cooks in his or her new position, the applicant may provide evidence that he or she is overseeing some of the functions that a cook would perform to demonstrate that the two positions are in similar occupational classifications.

As noted above, in all cases that involve career progression, officers must consider the totality of the circumstances to determine whether the preponderance of the evidence establishes that the two positions are in similar occupational classifications for INA 204(j) portability purposes.

Other Variations

Even in cases where SOC codes are not grouped together or the relevant positions do not reflect normal career progression, USCIS reviews the evidence presented under the totality of the circumstances to determine if the two jobs can be considered to be in the same or similar occupational classification(s).

For example, a person whose original job was coded within the major group code of 15-0000 for Computer and Mathematical Occupations may find a job in an engineering field that is classified under the major group code of 17-0000 for Architecture and Engineering Occupations.[35] If the preponderance of the evidence indicates that the two jobs share essential qualities or have a marked resemblance or likeness, the person may be eligible to port to the new position.

USCIS also recognizes that variations in job duties arising from performing jobs for different employers, including employers in different economic sectors, do not necessarily preclude two positions from being in similar occupational classifications for purposes of INA 204(j) portability.

For example, if the original position was for a Personal Financial Advisor (13-2052) at a financial consulting firm, the applicant’s duties may have included reviewing financial information.[36] This may include using knowledge of tax and investment strategies; assessing clients’ assets, liabilities, cash flow, taxes, and financial objectives; and networking and business development.[37]
If the new position is for a Financial Analyst (13-2051) in-house with a pharmaceutical company, the job duties may involve reviewing and recommending the financial objectives of the organization, including quantitative analyses of information involving investment programs or financial data of public or private institutions, including valuation of businesses.[38]

While the duties of the two positions differ to some degree, such positions may be similar to each other when viewed in the totality of the circumstances considering that the overarching duty of both positions is to apply accounting and investment principles in order to develop financial strategies; and the same skills, experience, and education may be required to perform both jobs.

As a further example, if the original position was for a Microbiologist (19-1022) at a federal research laboratory, the applicant’s duties may have included: investigate the growth, structure, development, and other characteristics of microscopic organisms, such as bacteria, algae, or fungi. Includes medical microbiologists who study the relationship between organisms and disease or the effects of antibiotics on microorganisms.[39]

If the new job offer is for a Medical Scientist, Except Epidemiologist (19-1042) at a private medical research laboratory, the duties may include: research dealing with the understanding of human diseases and the improvement of human health. Engage in clinical investigation, research and development, or other related activities.[40]

When reviewing the evidence under the totality of the circumstances, USCIS may consider the two positions to be similar because the primary duties involved share essential qualities or have a marked resemblance or likeness, particularly if they require similar education, experience, and skills to perform the associated duties, even though the two positions do not share the same broad occupation.

**Differences in Wages**

USCIS may consider the wages offered for the original position and the new position in determining whether the two positions meet the requirements for INA 204(j) portability. The mere fact that both positions offer similar wages is not conclusive evidence to establish that the two positions are in the same or similar occupational classification(s). Likewise, a difference in salaries alone would not preclude an officer from finding that two positions are in the same or similar classification.

USCIS recognizes that normal raises occur through the passage of time to account for inflation or promotion. USCIS also recognizes that there may be differences in pay due to varying rates of pay in different economic sectors or geographic locations, as well as other factors, such as corporate mergers, size of employer, or differences in compensation structure. Additionally, there could be differences in wages in cases involving moves from for-profit employers to nonprofit employers, academic institutions, or public employers (or vice versa).

Applicants should explain in detail any substantial discrepancy in wages between the original position and the new position. In all instances, officers review a difference in wages and any explanation for that difference along with all other evidence presented.

**C. Making a Portability Request**

**1. When Required**

If an applicant is filing or has filed an adjustment application as the principal beneficiary of a valid Form I-140 petition in an employment-based immigrant visa category that requires a job offer, the applicant must...
file a Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j) (Form I-485 Supplement J) in order to confirm the job offer remains bona fide, or to request job portability under INA 204(j) to a new, full-time, permanent job offer that he or she intends to accept once the adjustment application is approved.

Applicants seeking or granted a national interest waiver of the job offer requirement\[41\] and applicants seeking or granted classification as an alien of extraordinary ability\[42\] do not need to file Supplement J or request job portability under INA 204(j) because these employment-based immigrant visa categories are not tied to a specific job offer.

2. Timing of Request

Applicants may request portability after the adjustment application has been pending 180 days, including during an adjustment interview or in response to a Request for Evidence or Notice of Intent to Deny sent by USCIS following a request to withdraw the petition.\[43\]

3. Format and Suggested Evidence

If the applicant makes a request to port on or after January 17, 2017, the applicant must submit a Supplement J. If the applicant requested to port before January 17, 2017, the applicant could have requested to port through a letter. However, even for requests filed before that date, USCIS may request Supplement J to validate the employment offer. While the applicant completes the portions of the supplement pertaining to him or herself, the employer completes the sections pertaining to itself and the new job.

The applicant should submit the following documents in support of the Supplement J when requesting portability:

- A copy of Notice of Action (Form I-797), establishing the date of acceptance of the adjustment application under INA 245, which shows that the Form I-485 has been pending for 180 days or more (receipt date); and
- A copy of Notice of Action (Form I-797), showing that the alien is the principal beneficiary of an approved or still pending Form I-140 petition.

USCIS also considers secondary evidence when the above evidence is not available, but failure to provide these notices of action may result in delayed processing.

4. Adjudication

When adjudicating the Supplement J, USCIS reviews the evidence of record in the totality of the circumstances to determine if the new job offer is in the same or similar occupational classification as the job listed on the underlying petition.\[44\]

If the officer determines that the new job is in the same or similar occupational classification, the officer approves the Supplement J and continues with adjudication of the adjustment application. If USCIS determines that the new job offer is not in the same or similar occupational classification, USCIS denies the Supplement J. Therefore, USCIS denies the adjustment application and may add any other bases for denial (if applicable).

D. Effect of Principal Beneficiary’s Death on Portability
Derivative adjustment applicants may remain eligible to adjust despite the death of the principal applicant. In these circumstances, USCIS may approve a pending petition or reinstate approval of an automatically revoked petition without regard to portability considerations.

Footnotes


[^3] See Application to Register Permanent Residence or Adjust Status (Form I-485).

[^4] Portability is not applicable to adjustment applicants whose approved immigrant visa petitions are based on classification as an alien with extraordinary ability or for whom USCIS has waived the job offer and labor certification requirements in the national interest. See 8 CFR 204.5(e)(5). See INA 204(j). Although these applicants are not eligible for AC21 portability, they are permitted to change employers, including becoming self-employed. Aliens of extraordinary ability do not require a job offer but must show clear evidence that they intend to work in the area of their expertise. See 8 CFR 204.5(h)(5). Physicians for whom USCIS has waived the job offer and labor certification requirements in the national interest under INA 203(b)(2)(B)(ii) must file a new Form I-140 petition if they desire to change employers or establish their own practice. See 8 CFR 204.12(f). For more information regarding physicians who are adjusting based on a physician national interest waiver, see Chapter 7, National Interest Waiver Physicians [7 USCIS-PM E.7].


[^7] See 8 CFR 205.1(a)(3)(iii)(C). If the petition is subsequently approved, it remains valid unless USCIS revokes the approval under substantive grounds.


[^16] See 8 CFR 245.1(a) and 8 CFR 245.1(g)(1).


[^20] Officers may reference additional resources to determine whether two jobs are in the same or similar occupational classification(s), including, for example, the DOL Bureau of Labor Statistics (BLS)’ Occupational Outlook Handbook, the DOL Employment and Training Administration-sponsored Occupational Information Network (O*NET), or the DOL BLS’ Occupational Employment Statistics database.

[^21] See DOL BLS’ Standard Occupational Classification, DOL revises the SOC codes periodically.

[^22] See DOL BLS’ Standard Occupational Classification.


[^26] As noted above, officers may reference additional resources to determine whether two jobs are in the same or similar occupational classification(s), including, for example, the DOL BLS’ Occupational Outlook Handbook, the DOL Employment and Training Administration-sponsored Occupational Information Network (O*NET), or the DOL BLS’ Occupational Employment Statistics database.


[^28] If an occupation is not included as a distinct detailed occupation in the structure, it is classified in an appropriate “All Other” occupation. “All Other” occupations are placed in the structure when it is determined that the detailed occupations comprising a broad occupation group do not account for all of the workers in the group, even though such workers may perform a distinct set of work activities. These occupations appear as the last occupation in the group with a code ending in “9” and are identified in their title by having “All Other” appear at the end. See DOL BLS’ 2018 Standard Occupational Classification User Guide (PDF). Under such circumstances, officers should carefully review the evidence to determine that the two positions are in the same or similar occupational classification.

[^29] According to DOL: “Broad occupations often include several detailed occupations that are difficult to distinguish without further information. For example, people may report their occupation as biologist or psychologist without identifying a concentration. Broad occupations, such as psychologist, include more detailed occupations, such as industrial-organizational psychologists, for those requiring further detail. For cases in which there is little confusion about the content of a detailed occupation, the broad occupation is the same as the detailed occupation. For example, because it is relatively easy to identify lawyers, the broad occupation, lawyers, is the same as the detailed occupation.” See Chester Levine et al., Revising the Standard Occupational Classification System (PDF), BLS Monthly Labor Review (May 1999), 39-40. Therefore, broad occupational codes may be helpful indicators that two positions are similar.

Chapter 6 - Adjudication [Reserved]

Chapter 7 - National Interest Waiver Physicians [Reserved]

Part F - Special Immigrant-Based (EB-4) Adjustment

Chapter 1 - Purpose and Background
The Immigration and Nationality Act (INA) allows certain special immigrants physically present in the United States to adjust status to that of a lawful permanent resident (LPR).[^1] The INA defines the term “special immigrant” to include various categories of aliens, such as religious workers, special immigrant juveniles, and employees and former employees of the U.S. government or others who have benefited the U.S. government abroad.[^2] Most special immigrants apply for adjustment under the employment-based fourth preference (EB-4) immigrant category.[^3]

Special immigrants are subject to many of the same eligibility requirements as applicants seeking adjustment based on a family or employment-based preference category. For example, special immigrants are subject to immigrant visa availability. That means that an immigrant visa must be immediately available when the applicant files the adjustment of status application and at the time of final adjudication.[^4] There are, however, some differences.

While some special immigrants are allowed to file their Application to Register Permanent Residence or Adjust Status (Form I-485) concurrently with the underlying immigrant petition, most special immigrants must first receive approval of the underlying special immigrant petition before filing an adjustment application.[^5] Furthermore, some categories require the adjustment application to be filed before a specified deadline.[^6]

### Footnotes

[^1]: See INA 245(a).

[^2]: See INA 101(a)(27). Congress also created additional special immigrant classifications through public laws not incorporated in the INA. These unique special immigrant classifications are also discussed in this Part.

[^3]: See INA 203(b)(4). Technically, LPRs returning from a temporary visit abroad and immigrants applying for re-acquisition of U.S. citizenship are included in the definition of special immigrant. See INA 101(a)(27)(A)-(B). However, these special immigrants are outside the scope of the EB-4 immigrant category per INA 203(b)(4). In addition, certain Afghanistan and Iraq nationals may also seek adjustment as special immigrants, however, they do not fall under the EB-4 immigrant category since they are not included in INA 101(a)(27). Instead, the authority lies in separate public laws, which also provides for separately allocated visa numbers.


[^5]: See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section C, Concurrent Filings [7 USCIS-PM A.3(C)]. Aliens file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) to obtain special immigrant classification. Special immigrant juveniles, for example, may file both underlying petition and adjustment application at the same time. They do not need to wait for the petition’s approval before filing the adjustment application, as is the general rule. See Chapter 7, Special Immigrant Juveniles [7 USCIS-PM F.7].

[^6]: In addition to the relevant program-specific chapters, applicants should refer to the relevant regulations, corresponding form instructions, and general adjustment guidance in this part for more information on
eligibility and filing requirements. See Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A] and Part B, 245(a) Adjustment [7 USCIS-PM B].

Chapter 2 - Religious Workers

A. Purpose and Background

Ministers of a religious denomination have long been a part of the framework of U.S. immigration law. Congress provided lawful permanent residence for certain ministers and their families as early as the Immigration Act of 1924. In 1990, Congress created a new special immigrant category that includes both ministers and other religious workers in the Immigration and Nationality Act (INA).

While the statutory provision for minister is permanent, the Immigration Act of 1990 (IMMACT 90) specified that other religious workers must adjust status or immigrate before October 1, 1994. Congress has extended this sunset date several times. While there is no limit on the number of ministers who may adjust status or immigrate, there is an annual limit of 5,000 for all other religious workers.

B. Legal Authorities

- **INA 101(a)(27)(C)** – Certain ministers and religious workers
- **INA 203(b)(4)** – Certain special immigrants
- **INA 245; 8 CFR 245** – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- **8 CFR 204.5(m)** – Religious workers

C. Eligibility Requirements

To adjust to lawful permanent resident (LPR) status as a special immigrant religious worker, an applicant must meet the eligibility requirements shown in the table below.

<table>
<thead>
<tr>
<th>Religious Worker Adjustment of Status Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant has been inspected and admitted or inspected and paroled into the United States.</td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.</td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
### Religious Worker Adjustment of Status Eligibility Requirements

The applicant is eligible to receive an immigrant visa because the applicant is the beneficiary of an approved [Form I-360](https://www.uscis.gov/book/export/html/68600) classifying him or her as a special immigrant religious worker. [8]

The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application [9] and at the time of final adjudication. [10]

The applicant is not subject to any applicable bars to adjustment of status. [11]

The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [12]

The applicant merits the favorable exercise of discretion. [13]

### 1. Eligibility to Receive an Immigrant Visa [14]

To be eligible to receive an immigrant visa to adjust status as a religious worker, the principal applicant must obtain classification as a religious worker from USCIS. Either the applicant or the applicant’s employer must file a Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](https://www.uscis.gov/book/export/html/68600)) to obtain this classification.

An alien may be classified as a special immigrant religious worker based on full-time employment with a bona fide nonprofit religious organization in the United States or bona fide organization affiliated with the religious denomination in the United States if all of the following criteria are met:

- The work to be performed in the organization is: solely as a minister for a religious denomination, in a religious vocation in a professional or nonprofessional capacity, or in a religious occupation either in a professional or nonprofessional capacity;
- The religious worker has been a member of a religious denomination that has a bona fide nonprofit religious organization in the United States for at least 2 years immediately preceding the filing of the petition for classification as a religious worker; and
- The religious worker must have been working continuously in one of the positions described above either abroad or in the United States [15] for at least 2 years immediately preceding the filing of the petition. Only employment after 14 years of age qualifies under this requirement. [16]

The religious organization seeking to employ the alien as a special immigrant religious worker may file [Form I-360](https://www.uscis.gov/book/export/html/68600) with USCIS on behalf of the alien. Alternatively, the alien may file the [Form I-360](https://www.uscis.gov/book/export/html/68600) as a self-petitioner. [17] The petition must include evidence to prove the above eligibility criteria. [18] USCIS may conduct an on-site inspection of all petitioning organizations. If USCIS conducts a pre-approval inspection, satisfactory completion of the inspection is a condition of approval of any petition. USCIS may also randomly inspect a petitioner’s site after adjudication.

ails Doc. No. 19060633. (Posted 3/26/21)
Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility[19]

The religious worker petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the religious worker petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified as a religious worker and thus is eligible to adjust as a religious worker. As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as a religious worker. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

2. Bars to Adjustment

Unless exempt, religious workers and their derivatives are ineligible for adjustment of status if any of the bars to adjustment of status apply. [20] Religious workers and their derivatives may be exempt under INA 245(k) from some of the bars to adjustment. [21] To qualify for an exemption, the applicant must not have accrued more than 180 days of certain immigration violations since his or her last lawful admission. If the applicant does not qualify for the exemption, then the applicant remains subject to the adjustment bars. [22]

3. Admissibility and Waiver Requirements

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available. [23] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. [24] If a waiver or other form of relief is granted, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants seeking LPR status based on the religious worker classification.

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(2) – Crime-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(3) – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(4) – Public Charge</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Ground of Inadmissibility</td>
<td>Applies</td>
<td>Exempt or Not Applicable</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------</td>
<td>---------</td>
<td>--------------------------</td>
</tr>
<tr>
<td><strong>INA 212(a)(5)</strong> – Labor Certification and Qualifications for Certain Immigrants</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>INA 212(a)(6)</strong> – Illegal Entrants and Immigration Violators</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>INA 212(a)(7)(A)</strong> – Documentation Requirements for Immigrants</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>INA 212(a)(8)</strong> – Ineligibility for Citizenship</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>INA 212(a)(9)</strong> – Aliens Previously Removed</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>INA 212(a)(10)</strong> – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

4. Sunset Date

Except for ministers, all other religious workers and their derivatives must adjust to LPR status on or before the designated sunset date. USCIS denies any adjustment applications based on special immigrant religious worker petitions (other than for ministers) that are pending or filed after the designated sunset date.

5. Treatment of Family Members

The spouse or child (unmarried and under 21 years of age) of a religious worker may accompany or follow-to-join the principal applicant if the spouse or child is otherwise eligible. The spouse and child may, as derivative applicants, apply to adjust status under the same immigrant category and priority date as the principal applicant.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as a religious worker:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Copy of the Approval Notice (Form I-797) for the principal applicant’s special immigrant religious worker petition;
- Employment letter from the applicant’s Form I-360 employer-petitioner;
• Two passport-style photographs;
• Copy of government-issued identity document with photograph;
• Copy of birth certificate;
• Copy of passport page with nonimmigrant visa (if applicable);
• Copy of passport page with admission or parole stamp (if applicable);
• Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);[29]
• Evidence of continuously maintaining a lawful status since arrival in the United States;
• Any other evidence, as needed, to show that an adjustment bar does not apply or that the applicant qualifies for an exemption;[30]

• Report of Medical Examination and Vaccination Record (Form I-693);[31]
• Certified police and court records of criminal charges, arrests, or convictions (if applicable);
• Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and
• Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who is filing as a derivative applicant should submit the following:

• Copy of documentation showing relationship to the principal applicant, such as a marriage certificate or adoption decree (if applicable);
• Copy of approval notice (Form I-797) for the principal applicant’s Form I-360; and
• Copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551), (if applicable and not filing together with the principal applicant).

E. Adjudication[32]

An officer adjudicating the adjustment application must review the application for completeness and supporting documents to verify the applicant’s eligibility under these provisions. The A-file should contain evidence of the approved Form I-360 petition. As appropriate, the A-file should also contain a denominational certification for religious organizations that are affiliated with a religious denomination.[33] The officer may issue a Request for Evidence for any missing information or documents.

The officer should verify that a USCIS site visit was satisfactorily completed. The officer may request an initial or follow-up site visit as needed before adjudicating the principal’s adjustment adjudication.[34]

In addition, the officer should review the title and duties stated in the special immigrant religious worker petition and ensure the principal applicant was properly classified as a minister or other religious
worker based on the underlying petition. If the principal applicant is not a minister but some other religious worker, the officer must verify that the principal’s and any family member’s adjustment adjudications can be approved before the specified sunset date.

1. Filing

An applicant seeking adjustment of status as a special immigrant religious worker may file his or her adjustment application with USCIS after USCIS approves the special immigrant petition (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application;
- The visa availability requirements are met.

These applicants may not file an adjustment application concurrently with Form I-360.

2. Interview

The officer must schedule the applicant for an in-person interview at the appropriate field office and transfer jurisdiction to that field office for final adjudication in cases where:

- The officer cannot make a decision based on the evidence of record; or
- The applicant does not meet the criteria for an interview waiver.

3. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant religious worker (or family member). If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication.

If approved, USCIS assigns the codes of admission to applicants adjusting under this category as shown in the table below.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister of religion</td>
<td>SD6</td>
</tr>
<tr>
<td>Spouse of minister (SD6)</td>
<td>SD7</td>
</tr>
<tr>
<td>Child of minister (SD6)</td>
<td>SD8</td>
</tr>
</tbody>
</table>

Classes of Applicants and Codes of Admission
The applicant becomes an LPR as of the date of approval of the adjustment application. [43]

**Denial**

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial. [44] Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

**Footnotes**

[^1] See Section 4(d) of Pub. L. 68-139, 43 Stat. 153, 155 (May 26, 1924) which states, “An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of, carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife and his unmarried children, under 18 years of age, if accompanying or following to join him.”


[^4] In this chapter, the term “religious workers” broadly includes both ministers (clergy) and all other types of eligible religious workers; we also use the terms “ministers” and “other religious workers” when discussing the different eligibility rules that apply to these two categories.

[^5] Except for ministers, all other religious workers seeking adjustment of status as a special immigrant religious worker must have their Form I-485 approved before the specified sunset date. See Section 3 of Pub. L. 112-176 (PDF), 126 Stat. 1325, 1325 (September 28, 2012). For information on the current sunset date, see the USCIS website.


[^7] See INA 245(a) and (c). See 8 CFR 245. See Instructions to Form I-485.

[^8] The job offered to the applicant based on the Form I-360 must still exist with the employer that filed the
petition, and the applicant must intend to accept this employment upon approval of the applicant’s Form I-485.

[^9] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of “Properly Filed” [7 USCIS-PM A.3(B)].


[^12] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


[^15] Federal regulations at 8 CFR 204.5(m)(4) and (11) specify that any qualifying employment an alien performs in the United States must have occurred while the alien was in a lawful immigration status. However, the U.S. Court of Appeals in Shalom Pentecostal Church v. Acting Secretary DHS, 783 F.3d 156 (3rd Cir. 2015), found this regulatory requirement to be inconsistent with the statute. As a result of this decision and a growing number of Federal courts reaching the same conclusion, USCIS decided to apply the Shalom Pentecostal decision nationally. As of July 5, 2015, USCIS does not deny special immigrant religious worker petitions based on the lawful status requirements at 8 CFR 204.5(m)(4) and 8 CFR 204.5(m)(11). Therefore, any employment in the United States can be used to qualify an alien under the special immigrant religious worker requirements, regardless of whether the alien was in a lawful or unlawful immigration status.

[^16] See 8 CFR 204.5(m)(4) and (11).

[^17] See 8 CFR 204.5(m)(6).

[^18] See Instructions to Form I-360 for more information on the special immigrant petition for religious workers. Required documentation and information includes the Employer Attestation section and Religious Denomination Certification section in Form I-360.

[^19] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^20] See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[^21] See INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8).

[^22] See INA 245(k). See Part B, 245(a) Adjustment, Chapter 8, Exemptions from Bars to Adjustment, Section C, Certain Special Immigrants [7 USCIS-PM B.8(C)] and Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].
See [INA 212(a)] for the specific grounds of inadmissibility.

See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-121).

See the [USCIS website] for the current sunset date.

See [INA 101(a)(27)(C)] and [INA 203(d)]. For the definition of child, see [INA 101(b)(1)].

See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

The letter should be on official business letterhead verifying the job offer, the job title or position, summary of duties, and wages or salary to be paid. If the applicant filed the Form I-360 as a self-petitioner, the applicant should include a signed statement confirming that he or she intends to work in the occupation specified in the Form I-360.

Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the [CBP Web site] to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

Such as evidence that the [INA 245(c)(2)] adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons, or evidence that the applicant qualifies for an exemption under [INA 245(k)]. See [8 CFR 245.1(d)(2)]. See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and INA 245(c)(8), Section E, Exceptions [7 USCIS-PM B.4(E)] and Chapter 8, Exemptions from Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the [USCIS website] for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

The denominational certification includes the name of the employing organization, the name of the religious denomination, a signature and date attesting that the religious denomination is tax exempt as a 501(c)(3) organization, the attesting name and title of the person signing the document, and the attesting organization name, street address, and contact information. See [8 CFR 204.5(m)(8)(iii)(D)].

See [8 CFR 204.5(m)(12)]. See Religious Worker Benefit Fraud Assessment Summary (PDF) (July 2006) by the USCIS Office of Fraud Detection and National Security.

An officer can assess the title and duties of the special immigrant religious worker by reviewing the Employer Attestation section of the Petition for Amerasian, Widow(er), and Special Immigrant (Form I-360).

See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdiction [7 USCIS-PM A.3(D)].

The applicant must have an immigrant visa immediately available when he or she filed the adjustment.
Chapter 3 - International Employees of U.S. Government Abroad

A. Purpose and Background

As early as 1952, Congress provided a special immigrant category for certain employees and honorably retired former employees of the U.S. government abroad. Originally, this special immigrant category had no annual limit to the number of visas that could be issued. However, these special immigrants became subject to the preference-based numerical limitations when Congress placed such special immigrants under the employment-based fourth preference visa classification.

This special immigrant category allows aliens who have served faithfully in the employment of the U.S. government abroad over long periods of time to become lawful permanent residents (LPRs). The U.S. Department of State (DOS) adjudicates petitions for classification as special immigrant international employees of the U.S. government abroad.

Most applicants who immigrate as a special immigrant international employee do so from abroad, through consular processing. However, eligible applicants present in the United States may file an Application to Register Permanent Residence or Adjust Status (Form I-485) to obtain LPR status.

B. Legal Authorities

- **INA 101(a)(27)(D)** – Certain employees or former employees of the U.S. government abroad
- **INA 203(b)(4)** – Certain special immigrants
- **INA 245: 8 CFR 245** – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
C. Eligibility Requirements

To adjust to LPR status as a special immigrant international employee, an applicant must meet the eligibility requirements shown in the table below. \[4\]

<table>
<thead>
<tr>
<th>Adjustment of Status Eligibility Requirements for Special Immigrant International Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant has been inspected and admitted or inspected and paroled into the United States.</td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time of filing and adjudication of the adjustment application.</td>
</tr>
<tr>
<td>The applicant is eligible to receive an immigrant visa because the applicant is the beneficiary of an approved petition [5] classifying him or her as a special immigrant international employee.</td>
</tr>
<tr>
<td>The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application [6] and at the time of final adjudication. [7]</td>
</tr>
<tr>
<td>The applicant is not subject to any applicable bars to adjustment of status. [8]</td>
</tr>
<tr>
<td>The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [9]</td>
</tr>
<tr>
<td>The applicant merits the favorable exercise of discretion. [10]</td>
</tr>
</tbody>
</table>

1. Eligibility to Receive an Immigrant Visa \[11\]

Eligible international employees and honorably retired former employees of the U.S. government abroad are subject to a unique process to demonstrate eligibility to receive an immigrant visa to adjust status as a special immigrant international employee.

*Step One – Exceptional Circumstances*

First, the principal officer of a Foreign Service establishment must have found that exceptional circumstances exist and on that basis recommended the grant of special immigrant status.

*Step Two – National Interest*
Second, the Secretary of State must have accepted the recommendation and found it to be in the national interest to grant the status.

**Step Three – Form DS-1884**

Finally, based on the determinations described in the prior two steps, the employee may seek classification as a special immigrant by filing a Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad ([Form DS-1884](https://www.uscis.gov/forms) with DOS). USCIS plays no role in the adjudication of this petition.

A [Form DS-1884](https://www.uscis.gov/forms) is valid for 6 months after it is approved. Notwithstanding, if a visa is unavailable at the time of approval, the petition is valid for 6 months after a visa becomes available. In addition, DOS can extend the validity of the petition if it determines that an extension is in the national interest.

2. **Priority Dates**

The priority date for a special immigrant international employee is the date on which the immigrant petition is filed with DOS. The filing date of the petition is the date that a properly completed form and the required fee are accepted by a Foreign Service post.

3. **Bars to Adjustment**

Special immigrant international employees and their derivatives are ineligible for adjustment of status if any of the bars to adjustment of status apply.

4. **Admissibility and Waiver Requirements**

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available. If a ground of inadmissibility applies, an applicant must generally apply for a waiver or other form of relief to overcome that inadmissibility. If a waiver or other form of relief is granted, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants seeking LPR status based on the international employee classification.

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2) – Crime-Related</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Ground of Inadmissibility</td>
<td>Applies</td>
<td>Exempt or Not Applicable</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------</td>
<td>---------</td>
<td>--------------------------</td>
</tr>
<tr>
<td><strong>INA 212(a)(3)</strong> – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(4)</strong> – Public Charge</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(5)</strong> – Labor Certification and Qualifications for Certain Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(6)</strong> – Illegal Entrants and Immigration Violators</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(7)(A)</strong> – Documentation Requirements for Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(8)</strong> – Ineligibility for Citizenship</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(9)</strong> – Aliens Previously Removed</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(10)</strong> – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

5. Treatment of Family Members

The spouse or child (unmarried and under 21 years of age) of a special immigrant international employee may, if otherwise eligible, accompany or follow-to-join the principal applicant. [20] The spouse and child may, as derivative applicants, apply to adjust status under the same immigrant category and priority date as the principal applicant.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as a special immigrant international employee:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Evidence of an approved Form DS-1884 (PDF);
- Evidence of financial support (as appropriate);
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);[21]
- Evidence of continuously maintaining a lawful status since arrival in the United States;
- Any other evidence, as needed, to show that an adjustment bar does not apply;[22]
- Report of Medical Examination and Vaccination Record (Form I-693);[23]
- Certified police and court records of criminal charges, arrests, or convictions (if applicable);
- Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and
- Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who is filing as a derivative applicant should submit the following:

- A copy of documentation showing relationship to the principal applicant, such as a marriage certificate or adoption decree (if applicable); and
- A copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).

### E. Adjudication[24]

#### 1. Filing

An applicant seeking adjustment of status as a special immigrant international employee may file his or her adjustment application with USCIS after DOS approves the Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad (Form DS-1884 (PDF)), provided:

- USCIS has jurisdiction over the adjustment application;[25] and
- The visa availability requirements are met.[26]

These applicants may not file an adjustment application concurrently with Form DS-1884 (PDF).
2. Interview

The officer must schedule the applicant for an in-person interview at the appropriate field office and transfer jurisdiction to that field office for final adjudication in cases where:

- The officer cannot make a decision based on the evidence of record; or
- The applicant does not meet the criteria for an interview waiver. [27]

3. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant international employee or family member. [28]

If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication. [29]

If approved, USCIS assigns the following codes of admission to applicants adjusting under this category as shown in the table below.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Immigrant Employee or Former Employee</td>
<td>SE6</td>
</tr>
<tr>
<td>of the U.S. Government Abroad</td>
<td></td>
</tr>
<tr>
<td>Spouse of Employee (SE6)</td>
<td>SE7</td>
</tr>
<tr>
<td>Child of Employee (SE6)</td>
<td>SE8</td>
</tr>
</tbody>
</table>

Upon the approval of the adjustment application, the applicant becomes an LPR as of the date of approval.

Denial

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide a written reason for the denial. [30] Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

Footnotes

[^1] See Immigration and Nationality Act (INA) of 1952, Pub. L. 82-414 (PDF), 66 Stat. 163 (June 27,

[^2] See H.R. Rep. No. 1365, 82nd Cong., 2nd Sess. 1951. See INA 203(b)(4) (“Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section 101(a)(27)…”).

[^3] Eligible employees include those who have worked for the American Institute in Taiwan (AIT), which Congress created through the Taiwan Relations Act of 1979. See Pub. L. 96-8 (PDF), 93 Stat. 14 (April 10, 1979). See the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (PDF), 108 Stat. 4305 (October 25, 1994). Although a private, non-profit corporation, the AIT is largely funded and overseen by DOS and was designated as the entity through which the U.S. government was to conduct any programs, transactions, or other relations with Taiwan.


[^5] See Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad (Form DS-1884 (PDF)).


[^9] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


[^12] Unlike other special immigrants, the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) is not used to classify special immigrant international employees.


[^16] See 22 CFR 42.32(d)(iii).

[^17] See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[^18] See INA 212(a) for the specific grounds of inadmissibility.

[^19] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].
USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

[^20] See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

[^21] Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

[^22] Such as evidence that the INA 245(c)(2) adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons. See 8 CFR 245.1(d)(2). See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and INA 245(c)(8), Section E, Exceptions [7 USCIS-PM B.4(E)].

[^23] The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

[^24] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^25] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdiction [7 USCIS-PM A.3(D)].

[^26] The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM E.7(C)].

[^27] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

[^28] See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A] and Part B, 245(a) Adjustment [7 USCIS-PM B].

[^29] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^30] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

Chapter 4 - Panama Canal Zone Employees

A. Purpose and Background

On September 7, 1977, the United States signed the Panama Canal Treaty, agreeing to the eventual transfer of control of the Panama Canal from the United States to the Panamanian government. The Panama Canal Act of 1979 effectively implemented the treaty that, among other things, resulted in the involuntary separation or geographic relocation of most U.S. citizens working as federal employees in the Canal Area. [1]

The Panama Canal Act also impacted certain Panamanian nationals and others working at the Panama Canal.
In particular, the legislation impacted those employed as firefighters, police officers, or security guards who were considered threatened or at risk as a direct result of their employment. Congress created a special immigrant category for certain former employees of the Panama Canal Company or Canal Zone government as a result of the perceived threat and to reward certain employees for their faithful service. Congress originally limited this special immigrant category to 15,000 immigrant visas in total, with no more than 5,000 immigrant visas available per year. Congress later removed these numerical limitations in the Immigration and Nationality Technical Corrections Act of 1994. These special immigrant former employees of the Panama Canal Company or Canal Zone government, however, are subject to the yearly numerical limits of the employment-based fourth preference immigrant category.

Due to the difficulty in verifying the periods and nature of employment and the periods of residence, USCIS generally should consult with the U.S. Embassy in Panama City and the Department of State prior to granting any cases under these provisions, unless consultation already occurred during adjudication of the underlying special immigrant petition to verify this information. This program has no sunset date.

**B. Legal Authorities**

- **INA 101(a)(27)(E), INA 101(a)(27)(F), and INA 101(a)(27)(G)** – Employees of Panama Canal Company or Canal Zone government

- **INA 203(b)(4)** – Certain special immigrants

- **INA 245; 8 CFR 245** – Adjustment of status of nonimmigrant to that of person admitted for permanent residence

- **22 CFR 42.32(d)(3)** - Panama Canal employees

**C. Eligibility Requirements**

To adjust to lawful permanent resident (LPR) status as a special immigrant Panama Canal Zone employee, an applicant must meet the following eligibility requirements:

<table>
<thead>
<tr>
<th>Adjustment of Status Eligibility Requirements for Special Immigrant Panama Canal Zone Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant has been inspected and admitted or inspected and paroled into the United States.</td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time of filing and adjudication of the adjustment application.</td>
</tr>
<tr>
<td>The applicant is eligible to receive an immigrant visa because the applicant is the beneficiary of an approved Form I-360 classifying him or her as a special immigrant Panama Canal Zone employee.</td>
</tr>
</tbody>
</table>
Adjustment of Status Eligibility Requirements for Special Immigrant Panama Canal Zone Employees

The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication.

The applicant is not subject to any applicable bars to adjustment of status.

The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.

1. Eligibility to Receive an Immigrant Visa

To be eligible to receive an immigrant visa to adjust status as a special immigrant Panama Canal Zone employee, the principal applicant must obtain such classification from USCIS by filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

The table below outlines the various special immigrant Panama Canal Zone employee categories provided by law.

<table>
<thead>
<tr>
<th>Citation</th>
<th>Employed by…</th>
<th>Employed at least…</th>
<th>Additional Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 101(a)(27)(E)</td>
<td>Panama Canal Company or Canal Zone government</td>
<td>One year on or prior to October 1, 1979</td>
<td>Lived in Panama Canal Zone on April 1, 1979</td>
</tr>
<tr>
<td>INA 101(a)(27)(F)</td>
<td>U.S. Government in the Canal Zone</td>
<td>15 years prior to October 1, 1979</td>
<td>Panamanian national and honorably retired from service or continues to be employed by the U.S. government in an area of the former Canal Zone</td>
</tr>
</tbody>
</table>
Aliens who qualify as a current or former employee of the U.S. Government in the Canal Zone might also qualify as a special immigrant employee or honorably retired employee of the U.S. Government. An applicant who is eligible under both categories may seek to adjust under whichever category may be more advantageous.

**Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility**

The Panama Canal Zone employee petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the Panama Canal Zone employee petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified as a Panama Canal Zone employee and thus is eligible to adjust as a Panama Canal Zone employee. As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as a Panama Canal Zone employee. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

2. **Bars to Adjustment**

Special immigrant Panama Canal Zone employees and their derivatives are ineligible for adjustment of status if any of the bars to adjustment of status apply.

3. **Admissibility and Waiver Requirements**

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available. In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. If a waiver or other form of relief is granted, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants seeking LPR status based on the Panama Canal Zone employee classification.

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INA 212(a)(1)</strong> – Health-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(2)</strong> – Crime-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(3)</strong> – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(4)</strong> – Public Charge</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(5)</strong> – Labor Certification and Qualifications for Certain Immigrants</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>INA 212(a)(6)</strong> – Illegal Entrants and Immigration Violators</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(7)(A)</strong> – Documentation Requirements for Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(8)</strong> – Ineligibility for Citizenship</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(9)</strong> – Aliens Previously Removed</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(10)</strong> – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

4. Treatment of Family Members

The spouse or child [17] of a special immigrant Panama Canal Zone employee may accompany or follow-to-join the principal applicant if the spouse or child is otherwise eligible. [18] The spouse and child may, as derivative applicants, apply to adjust status under the same immigrant category and priority date as the principal applicant.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as a special immigrant Panama Canal Zone employee:
• Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;

• Copy of the approval notice (Form I-797) for the principal applicant’s special immigrant petition (Form I-360);

• Two passport-style photographs;

• Copy of government-issued identity document with photograph;

• Copy of birth certificate;

• Copy of passport page with nonimmigrant visa (if applicable);

• Copy of passport page with admission or parole stamp (if applicable);

• Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable); [19]

• Evidence of continuously maintaining a lawful status since arrival in the United States;

• Any other evidence, as needed, to show that an adjustment bar does not apply; [20]

• Report of Medical Examination and Vaccination Record (Form I-693); [21]

• Certified police and court records of criminal charges, arrests, or convictions (if applicable);

• Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and

• Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who is filing as a derivative applicant should submit the following:

• A copy of documentation showing relationship to the principal applicant, such as a marriage certificate or adoption decree (if applicable); and

• A copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).

E. Adjudication [22]

1. Filing

An applicant seeking adjustment of status as a special immigrant Panama Canal Zone employee may file his or her adjustment application with USCIS after USCIS approves the special immigrant petition [23] (as long as the petition is still valid), provided:

• USCIS has jurisdiction over the adjustment application; [24] and
- The visa availability requirements are met.\textsuperscript{[25]}

These applicants may not file an adjustment application concurrently with Form I-360.

### 2. Interview

The officer must schedule the applicant for an in-person interview at the appropriate field office and transfer jurisdiction to that field office for final adjudication in cases where:

- The officer cannot make a decision based on the evidence of record; or
- The applicant does not meet the criteria for an interview waiver.\textsuperscript{[26]}

### 3. Decision

#### Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant Panama Canal Zone employee or family member.\textsuperscript{[27]} If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication.\textsuperscript{[28]}

If approved, USCIS assigns the following codes of admission to applicants adjusting under this category:

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Former employees of the Panama Canal Company or Canal Zone government\textsuperscript{[29]}</td>
<td>SF6</td>
</tr>
<tr>
<td>Spouse of former employee (SF6)</td>
<td>SF7</td>
</tr>
<tr>
<td>Child of former employee (SF6)</td>
<td>SF7</td>
</tr>
<tr>
<td>Former employees of the U.S. Government in the Panama Canal Zone\textsuperscript{[30]}</td>
<td>SG6</td>
</tr>
<tr>
<td>Spouse of former employee (SG6)</td>
<td>SG7</td>
</tr>
<tr>
<td>Child of former employee (SG6)</td>
<td>SG7</td>
</tr>
<tr>
<td>Former employees of the Panama Canal Company or Canal Zone government</td>
<td>SH6</td>
</tr>
</tbody>
</table>
The applicant becomes an LPR as of the date of approval of the adjustment application.\[^{32}\]

**Denial**

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial.\[^{33}\] Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

**Footnotes**


[^8] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


See INA 101(a)(27)(F).


For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

See INA 212(a) for the specific grounds of inadmissibility.

See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

Unmarried and under 21 years of age.

See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

Such as evidence that the INA 245(c)(2) adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons. See 8 CFR 245.1(d)(2). See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and INA 245(c)(8), Section E, Exceptions [7 USCIS-PM B.4(E)].

The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].

The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].
Chapter 5 - Certain Physicians

A. Purpose and Background

Prior to 1981, the United States required graduates of foreign medical schools licensed and practicing medicine in the United States to have passed the Visa Qualifying Examination (VQE) in order to immigrate as a practicing (clinical) physician. To address an immediate need for physicians and avoid bureaucratic delays, Congress eliminated this requirement in 1981[1] for certain foreign medical graduate physicians as part of a new special immigrant category.[2] This program has no sunset date.

B. Legal Authorities

- **INA 101(a)(27)(H)** – Special immigrant physicians
- **INA 203(b)(4)** – Certain special immigrants
- **INA 245; 8 CFR 245** – Adjustment of status of nonimmigrant to that of person admitted for permanent residence

C. Eligibility Requirements

To adjust to lawful permanent resident (LPR) status as a special immigrant physician, an applicant must meet the eligibility requirements shown in the table below.

<table>
<thead>
<tr>
<th>Special Immigrant Physician Adjustment of Status Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant has been inspected and admitted or inspected and paroled into the United States.</td>
</tr>
</tbody>
</table>
Special Immigrant Physician Adjustment of Status Eligibility Requirements

The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.

The applicant is eligible to receive an immigrant visa because the applicant is the beneficiary of an approved Form I-360 classifying him or her as a special immigrant physician.

The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication.

The applicant is not subject to any applicable bars to adjustment of status.

The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.

1. Eligibility to Receive an Immigrant Visa

To be eligible to receive an immigrant visa to adjust status as a special immigrant physician, the principal applicant must be classified as a special immigrant physician by USCIS. The applicant must obtain such classification by filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

Requirements for classification as a special immigrant physician include:

- Graduation from a foreign medical school or licensure as practicing physician in a foreign country;
- Full and permanent licensure to practice medicine in a U.S. state on January 9, 1978, and practicing medicine in a state on that date;
- Admission to the United States before January 10, 1978, as a J or H nonimmigrant;
- Continuous presence in the United States since that admission in the practice or study of medicine.

The special immigrant physician must submit evidence to establish these requirements as part of filing the Form I-360 petition.

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility

The special immigrant physician petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the special immigrant physician.
petition at the time of the adjudication of the adjustment application. However, the officer should ensure that
the applicant remains classified as a special immigrant physician and thus is eligible to adjust as a special
immigrant physician. As a result, there may be instances when USCIS may require the applicant to provide
additional evidence to show he or she continues to be classified as a special immigrant physician. In other
words, the officer must verify the status of any underlying immigrant petition that forms the basis for
adjustment.

2. Bars to Adjustment

Certain adjustment bars do not apply to special immigrant physicians and their derivatives.[11] If these
special immigrants fall under any other adjustment bar, however, they are not eligible to adjust status.[12]

3. Admissibility and Waiver Requirements

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she
obtains a waiver or other form of relief, if available.[13] In general, if a ground of inadmissibility applies, an
applicant must apply for a waiver or other form of relief to overcome that inadmissibility.[14] If a waiver or
other form of relief is granted, USCIS may approve the application to adjust status if the applicant is
otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants
seeking LPR status based on the special immigrant physician classification.

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(2) – Crime-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(3) – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(4) – Public Charge</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(6) – Illegal Entrants and Immigration Violators</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
### Ground of Inadmissibility

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INA 212(a)(7)(A)</strong> – Documentation Requirements for Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(8)</strong> – Ineligibility for Citizenship</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(9)</strong> – Aliens Previously Removed</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>INA 212(a)(10)</strong> – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

### 4. Treatment of Family Members

The spouse or child (unmarried and under 21 years of age) of a special immigrant physician, if otherwise eligible, may accompany or follow-to-join the principal applicant. As derivative applicants, the spouse and child may apply to adjust status under the same immigrant category and priority date as the principal applicant.

### D. Documentation and Evidence

An applicant should submit the following documentation to adjustment status as a special immigrant physician:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Copy of the approval notice (Form I-797) for the principal applicant’s special immigrant physician petition; [16]
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable); [17]
- Report of Medical Examination and Vaccination Record (Form I-693); [18]
Certified police and court records of criminal charges, arrests, or convictions (if applicable);

Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and

Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who is filing as a derivative applicant should submit the following:

- A copy of documentation showing relationship to the principal applicant, such as a marriage certificate or adoption decree (if applicable); and

- A copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).

E. Adjudication[19]

1. Filing

An applicant seeking adjustment of status as a special immigrant physician may file his or her adjustment application with USCIS after USCIS approves the special immigrant petition [20] (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application;[21] and

- The visa availability requirements are met.[22]

These applicants may not file an adjustment application concurrently with Form I-360.

2. Interview

The officer must schedule the applicant for an in-person interview at the appropriate field office and transfer jurisdiction to that field office for final adjudication in cases where:

- The officer cannot make a decision based on the evidence of record; or

- The applicant does not meet the criteria for an interview waiver.[23]

3. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant physician or family member. [24] If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication. [25]

If approved, USCIS assigns the following codes of admission to applicants adjusting under this category:
Classes of Applicants and Codes of Admission

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Immigrant Physician</td>
<td>SJ6</td>
</tr>
<tr>
<td>Spouse of Immigrant Physician (SJ6)</td>
<td>SJ7</td>
</tr>
<tr>
<td>Child of Immigrant Physician (SJ6)</td>
<td>SJ7</td>
</tr>
</tbody>
</table>

The applicant becomes an LPR as of the date of approval of the adjustment application. [26]

Denial

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial. [27] Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

Footnotes

[^1] At that time, the VQE was known as Parts I and II of the National Board of Medical Examiners examination.


[^6] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

See INA 245(c)(2) and INA 245(c)(8).

See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

See INA 212(a) for the specific grounds of inadmissibility.

See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].

The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A] and Part B, 245(a) Adjustment [7 USCIS-PM B].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

The date of approval is shown in the USCIS approval notice mailed to the applicant; that date is also shown on the actual Permanent Resident Card (Form I-551) the applicant receives after adjustment approval.

See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).
A. Purpose and Background

Employees of recognized international organizations hold nonimmigrant G-4, N, or NATO-6 status in the United States while they are operating in their official capacities. These nonimmigrants’ immediate family members are generally eligible for a corresponding dependent nonimmigrant status.\[1\] Examples of some qualifying international organizations include the North Atlantic Treaty Organization (NATO) and International Telecommunications Satellite Organization (INTELSAT).\[2\]

In 1986, Congress created a special immigrant category to provide G-4 nonimmigrants a basis to adjust to lawful permanent resident status.\[3\] In 1988, Congress added a separate special immigrant category to provide a similar opportunity to foreign retired employees of NATO and their qualifying spouses, widow(er)s, children, and adult sons and daughters.\[4\] This category applies to:

- Retired officer or employee of a qualifying international organization or NATO (and derivative spouse);
- Surviving spouse of a deceased officer or employee of a qualifying international organization or NATO; and
- Unmarried son or daughter of a current or retired officer or employee of a qualifying international organization or NATO.

B. Legal Authorities

- **INA 101(a)(27)(I)** and **INA 101(a)(27)(L)** – Certain employees of international organizations
- **INA 203(b)(4)** – Certain special immigrants
- **INA 245; 8 CFR 245** – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- **8 CFR 101.5** – Special immigrant status for certain G-4 nonimmigrants
- **22 CFR 42.32(d)(5)** – Certain international organization and NATO civilian employees
- **22 CFR 41.24** – International organization aliens
- **22 CFR 41.25** – NATO representatives, officials, and employees

C. Eligibility Requirements

To adjust to lawful permanent resident (LPR) status as a G-4 international organization or NATO-6 employee or family member, an applicant must meet the eligibility requirements shown in the table below.\[5\]
G-4 International Organization or NATO-6 Employees and Family Members Adjustment of Status

Eligibility Requirements

The applicant has been inspected and admitted or inspected and paroled into the United States.

The applicant maintained G-4, N, or NATO-6 status and has resided and been physically present in the United States for the periods of time required by statute.

The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.

The applicant is eligible to receive an immigrant visa.

The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication.

The applicant is not subject to any applicable bars to adjustment of status.

The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.

1. Eligibility to Receive an Immigrant Visa

An applicant must be eligible to receive an immigrant visa to adjust status. An adjustment applicant typically establishes eligibility for an immigrant visa through an immigrant petition. A G-4 international organization or NATO-6 employee or family member can establish eligibility for an immigrant visa by obtaining classification from USCIS by filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

Therefore, in order for a G-4 international organization or NATO-6 employee or family member adjustment applicant to be eligible to receive an immigrant visa, he or she must be one of the following:

- The applicant is the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) classifying him or her as G-4 international organization employee or family member or NATO-6 employee or family member;
- The applicant has a pending Form I-360 (that is ultimately approved); or
- The applicant is filing the adjustment application concurrently with the Form I-360 (and the Form I-360 is ultimately approved). [13]

The following table provides information on the qualifications that principal I-360 applicants must meet to obtain such classification.

Types of Special Immigrant G-4 International Organization Employee or Family Member or NATO-6 Employee or Family Member

<table>
<thead>
<tr>
<th>Type</th>
<th>Nonimmigrant Status</th>
<th>Physical Presence</th>
<th>Resided in the United States</th>
<th>When to Apply for Adjustment[14]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retired officer or employee[15]</td>
<td>Must have maintained G-4, N, or NATO-6 status during requisite period of residence and physical presence in the United States[16]</td>
<td>½ of 7 years prior to application</td>
<td>15 years before date of retirement</td>
<td>No later than 6 months after retirement</td>
</tr>
<tr>
<td>Surviving spouse of a deceased officer or employee[17]</td>
<td>Must have maintained G-4, N, or NATO-6 status during requisite period of residence and physical presence in the United States</td>
<td>½ of 7 years prior to application</td>
<td>15 years before death of spouse</td>
<td>No later than 6 months after spouse’s death</td>
</tr>
<tr>
<td>Unmarried son or daughter of a current or former officer or employee[18]</td>
<td>Must have maintained G-4, N, or NATO-6 status during requisite period of residence and physical presence in the United States</td>
<td>½ of 7 years prior to application</td>
<td>7 years between the ages of five and 21[19](before 22nd birthday)</td>
<td>No later than applicant’s 25th birthday</td>
</tr>
<tr>
<td>Spouse of a retired officer or employee (accompanying or following to join)[20]</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

Nonimmigrant Status

Applicants under this category (except for the spouse of a qualified retiree) must establish that the time spent
in the United States accruing residence and physical presence was completed while the applicant was maintaining a valid G-4, N, or NATO-6 nonimmigrant status.

Maintaining status for these purposes is defined as maintaining qualified employment with a qualifying G international organization or maintaining the qualifying family relationship with the G-4 international organization employee. Unauthorized employment does not disqualify an otherwise eligible beneficiary from G-4 status for residence and physical presence purposes, provided the qualifying G status is maintained.\[21\]

Residence and Physical Presence

Applicants (except for the spouse of a qualified retiree) must establish the specified residence and physical presence to be eligible for adjustment of status. The date of filing the adjustment of status application fixes the date for calculating the residence and physical presence requirements. The applicant must have complied with all requirements as of that filing date.\[22\]

An absence from the United States for official business or vacation is not subtracted from the aggregate residence or physical presence, as long as the applicant did not abandon residence in the United States and was still stationed in the United States during that time. However, any time an unmarried son or daughter spends outside the United States to attend school does not count towards the physical presence requirement.\[23\]

USCIS determines residence and physical presence on a case-by-case basis, taking into account all factors relevant to the applicant’s absences from the United States.

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility\[24\]

The special immigrant petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the special immigrant petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified as a special immigrant G-4 international organization employee or family member or NATO-6 employee or family member and thus is eligible to adjust as a special immigrant G-4 international organization employee or family member or NATO-6 employee or family member.

As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as a special immigrant G-4 international organization employee or family member or NATO-6 employee or family member. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

2. Bars to Adjustment

Special immigrant NATO-6 employees and family members are ineligible for adjustment of status if any of the bars to adjustment of status apply.\[25\] Certain adjustment bars do not apply to G-4 international organization employees and family members.\[26\] G-4 special immigrants are ineligible to adjust status, however, in cases where they fall under an applicable adjustment bar.\[27\]

3. Admissibility and Waiver Requirements

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available.\[28\] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility.\[29\] If a waiver or
other form of relief is granted, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants seeking LPR status based on the G-4 international organization or NATO-6 employee or family member classification.

**Applicability of Grounds of Inadmissibility: G-4 International Organization and NATO-6 Employees and Family Members**

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(2) – Crime-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(3) – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(4) – Public Charge</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(6) – Illegal Entrants and Immigration Violators</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(7)(A) – Documentation Requirements for Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(8) – Ineligibility for Citizenship</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(9) – Aliens Previously Removed</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(10) – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

### 4. Treatment of Family Members

The spouse of a retired G-4, N, or NATO-6 employee may, if otherwise eligible, accompany or follow-to-join.
the principal applicant and apply to adjust status as a derivative under the same immigrant category and priority date. An unmarried son or daughter is considered to be the principal adjustment applicant and so is not treated as a derivative applicant. No other family members of principal applicants may adjust as derivative applicants.

**D. Documentation and Evidence**

An applicant should submit the following documentation to adjust status as a special immigrant employee of an international organization officer or family member of such an employee:

- Application to Register Permanent Residence or Adjust Status ([Form I-485](https://www.uscis.gov/i-485)), with the correct fee; Copy of the receipt or approval notice (Form I-797) for the principal applicant’s petition (unless the applicant is filing the petition together with the **Form I-485**);[31]

- Copy of every page of passport and any other documents showing that you resided and were physically present in the United States for the required time period;

- Evidence of maintenance of G-4, N, or NATO-6 nonimmigrant status since your last entry into the United States;

- Interagency Record of Request ([Form I-566](https://www.uscis.gov/i-566));

- Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities ([Form I-508](https://www.uscis.gov/i-508));

- Two passport-style photographs;

- Copy of government-issued identity document with photograph;

- Copy of birth certificate;

- Copy of passport page with nonimmigrant visa (if applicable);

- Copy of passport page with admission or parole stamp (if applicable);

- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);[32]

- Any other evidence, as needed, to show that an adjustment bar does not apply;[33]

- Report of Medical Examination and Vaccination Record ([Form I-693](https://www.uscis.gov/i-693));[34]

- Certified police and court records of criminal charges, arrests, or convictions (if applicable);

- Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and

- Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under [INA 212(e)](https://www.uscis.gov/old-ina-212e) if applicable.

In addition, a spouse filing as a derivative applicant should submit the following:

- A copy of documentation showing relationship to the principal applicant, such as a marriage certificate
(if applicable); and

- A copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).

Applicants must be able to establish they meet the relevant eligibility grounds, including residence, physical presence, and a qualifying relationship, when necessary. An officer should ensure there is sufficient documentation included with the application to substantiate eligibility.

E. Adjudication[35]

1. Filing

An applicant seeking adjustment of status as a special immigrant G-4 international organization or NATO-6 employee may file his or her adjustment application with USCIS concurrently with the Form I-360 petition, while the Form I-360 petition is pending, or after USCIS approves the Form I-360 petition (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application;[36] and
- The visa availability requirements are met.[37]

2. Interview

The officer must schedule the applicant for an in-person interview at the appropriate field office and transfer jurisdiction to that field office for final adjudication in cases where:

- The officer cannot make a decision based on the evidence of record; or
- The applicant does not meet the criteria for an interview waiver.[38]

3. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant international organization employee (or family member).[39] If the adjustment application is approvable, the officer must determine if a visa is available at the time of final adjudication.[40]

If approved, USCIS assigns the following codes of admission to applicants adjusting under this category:

<table>
<thead>
<tr>
<th>Classes of Applicants and Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retired G-4 Employee</td>
<td>SK6</td>
</tr>
<tr>
<td>Spouse of G-4 Employee (SK6)</td>
<td>SK7</td>
</tr>
<tr>
<td>Unmarried Son or Daughter of G-4 Employee (SK6)</td>
<td>SK8</td>
</tr>
<tr>
<td>Surviving Spouse of Deceased G-4 Employee (SK6)</td>
<td>SK9</td>
</tr>
<tr>
<td>Retired NATO-6 Employee</td>
<td>SN6</td>
</tr>
<tr>
<td>Spouse of NATO-6 Employee (SN6)</td>
<td>SN7</td>
</tr>
<tr>
<td>Unmarried Son or Daughter of NATO-6 Employee (SN6)</td>
<td>SN8</td>
</tr>
<tr>
<td>Surviving Spouse of Deceased NATO-6 Employee (SN6)</td>
<td>SN9</td>
</tr>
</tbody>
</table>

The applicant becomes an LPR as of the date of approval of the adjustment application. [41]

Denial

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial. [42] Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

Footnotes

[^1] As long as their international organizations remain recognized, the employees and their family members enjoy certain privileges, immunities, and protections, including protection from most grounds of inadmissibility and deportation.

[^2] See 9 Foreign Affairs Manual (FAM) 402.3-7(N), International Organizations for more qualifying international organizations. See 9 FAM 502.5-6(B), Certain International Organization and NATO Civilian Employees.


[^5] See INA 245(a) and (c). See 8 CFR 245. See Instructions to Form I-485.


[^9] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


[^14] Special immigrant employees of qualifying international organizations and qualified family members, who consular process rather than adjust status, must appear for the final visa interview and issuance of the immigrant visa within 6 months of approval of the Form I-360. See 22 CFR 42.32(d)(5)(ii).


[^19] See INA 101(a)(27)(I)(i). Based on common understanding of the phrase “between the ages of 5 and 21 years,” the establishment of residence may include the entire year during which the applicant is considered 21-years-old, but the requirement must be met before the applicant’s 22nd birthday.


[23] See 8 CFR 101.5(c).

[24] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[25] See INA 245(e). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[26] See INA 245(c)(2) and INA 245(c)(8). See 8 CFR 245.1(b).

[27] See INA 245(e). For more information on the bars to adjustment, see Part B, 245(a) Adjustment, Chapter 8, Exemptions from Bars to Adjustment, Section C, Certain Special Immigrants [7 USCIS-PM B.8(C)].

[28] See INA 212(a) for the specific grounds of inadmissibility.

[29] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).


[31] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

[32] Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013 may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP Web site to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

[33] Such as evidence that the INA 245(c)(2) adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons. See 8 CFR 245.1(d)(2). See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and INA 245(c)(8), Section E, Exceptions [7 USCIS-PM B.4(E)]. Since the adjustment bars at INA 245(c)(2) and INA 245(c)(8) do not apply to special immigrant G-4 employees and family members as a matter of law, applicants applying for adjustment under this category do not need to submit any additional evidence regarding these bars. See INA 245(c)(2) and 8 CFR 245.1(b).

[34] The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

[35] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[36] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].

[37] The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].

[38] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

[^40] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^41] The date of approval is shown in the USCIS approval notice mailed to the applicant; that date is also shown on the actual Permanent Resident Card (Form I-551) the applicant receives after adjustment approval.

[^42] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

Chapter 7 - Special Immigrant Juveniles

A. Purpose and Background[^1]

Congress created the special immigrant juvenile (SIJ) classification when it enacted the Immigration Act of 1990 (IMMACT 90).[^2] Certain juveniles in the United States may be eligible for SIJ classification. Once classified as an SIJ, juveniles may be eligible to adjust status, if they meet all eligibility requirements.

B. Legal Authorities

- INA 101(a)(27)(J) – Special immigrant juveniles
- INA 203(b)(4) – Certain special immigrants
- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- INA 245(h) – Application of adjustment provisions with respect to special immigrants
- 8 CFR 245.1(e)(3) – Special immigrant juveniles
- 8 CFR 204.11 – Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile)
- Section 153 of the Immigration Act of 1990 (IMMECT 90)[^3] – Special immigrant status for certain aliens declared dependent on a juvenile court
- Section 113 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1998[^5]

C. Eligibility Requirements
To adjust to lawful permanent resident (LPR) status as an SIJ, an applicant must meet the eligibility requirements shown in the table below.\[7\]

### SIJ-Based Adjustment of Status Eligibility Requirements

<table>
<thead>
<tr>
<th>Eligibility Requirement</th>
<th>Where can I find more information?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant must have been:</td>
<td></td>
</tr>
<tr>
<td>* Inspected and admitted into the United States; or</td>
<td>See Subsection 1, Inspected and Admitted or Inspected and Paroled [7 USCIS-PM F.7(C)(1)].</td>
</tr>
<tr>
<td>* Inspected and paroled into the United States.</td>
<td></td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.</td>
<td>See Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A].</td>
</tr>
<tr>
<td>The applicant is eligible to receive an immigrant visa.</td>
<td>See Subsection 2, Eligibility to Receive an Immigrant Visa [7 USCIS-PM F.7(C)(2)].</td>
</tr>
<tr>
<td>The applicant has an immigrant visa immediately available when he or she files the adjustment of status application and at the time of final adjudication.</td>
<td>See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of “Properly Filed” [7 USCIS-PM A.3(B)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].</td>
</tr>
<tr>
<td>The applicant is not subject to any applicable bars to adjustment of status.</td>
<td>See Subsection 3, Bars to Adjustment [7 USCIS-PM F.7(C)(3)].</td>
</tr>
<tr>
<td>The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.</td>
<td>See Subsection 4, Admissibility and Waiver Requirements [7 USCIS-PM F.7(C)(4)].</td>
</tr>
</tbody>
</table>

### 1. Inspected and Admitted or Inspected and Paroled

SIJs are not exempt from the general adjustment requirement that applicants be inspected and admitted or...
inspected and paroled. However, the INA expressly states that SIJs are considered paroled into the United States for purposes of adjustment under INA 245(a). Accordingly, the beneficiary of an approved SIJ petition is treated for purposes of the adjustment application as if the beneficiary has been paroled, regardless of his or her manner of arrival in the United States.

2. Eligibility to Receive an Immigrant Visa

An applicant must be eligible to receive an immigrant visa to adjust status. An adjustment applicant typically establishes eligibility for an immigrant visa through an approved immigrant petition. An SIJ can establish eligibility for an immigrant visa by obtaining classification from USCIS by filing an SIJ-based Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) (SIJ petition).

Therefore, in order for an SIJ-based adjustment applicant to be eligible to receive an immigrant visa, he or she must be one of the following:

- The applicant is the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) classifying him or her as an SIJ;
- The applicant has a pending Form I-360 (that is ultimately approved); or
- The applicant is filing the adjustment application concurrently with the Form I-360 (and the Form I-360 is ultimately approved).

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility

The SIJ petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the SIJ petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified as an SIJ and thus is eligible to adjust as an SIJ. As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as an SIJ. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

Revocation of Approved Petition

USCIS may revoke an approved SIJ petition upon notice as necessary for what it deems to be good and sufficient cause, such as, if the record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for petitioner’s eligibility for SIJ classification. USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approved petition.

Furthermore, USCIS automatically revokes an approved SIJ petition, as of the date of approval, if any one of the circumstances below occurs before a decision on the adjustment application is issued:

- Marriage of the petitioner;
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under state law; or
- Reversal by the juvenile court of the determination that it would not be in the petitioner’s best interest.
to be returned (to a placement) to the petitioner’s or his or her parent’s country of nationality or last habitual residence.

If one of the above grounds for automatic revocation occurs, USCIS issues a notice to the petitioner of such revocation of the SIJ petition, which means the applicant is no longer classified as a SIJ. [19]

If the petition is revoked, either upon notice or as an automatic revocation, [20] then the officer should deny the adjustment application because the applicant no longer has an underlying basis to adjust status.

3. Bars to Adjustment [21]

An applicant classified as an SIJ is subject to the terrorist-related bar to adjustment. [22] There is no waiver of or exemption to this adjustment bar if it applies. Therefore, if the terrorist-related bar to adjustment applies, an SIJ is ineligible for adjustment of status.

4. Admissibility and Waiver Requirements [23]

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available. [24] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome an inadmissibility ground that applies. [25] USCIS may approve the application to adjust status if a waiver or other form of relief is granted and the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility do not apply to applicants seeking LPR status based on the SIJ classification. [26]

<table>
<thead>
<tr>
<th>Inadmissibility Grounds that Do Not Apply to Special Immigrant Juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(4)</td>
</tr>
<tr>
<td>INA 212(a)(5)(A)</td>
</tr>
<tr>
<td>INA 212(a)(6)(A)</td>
</tr>
<tr>
<td>INA 212(a)(6)(C)</td>
</tr>
<tr>
<td>INA 212(a)(6)(D)</td>
</tr>
<tr>
<td>INA 212(a)(7)(A)</td>
</tr>
</tbody>
</table>
Inadmissibility Grounds that Do Not Apply to Special Immigrant Juveniles

<table>
<thead>
<tr>
<th>Inadmissibility Ground that Does Not Apply to SIJs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INA 212(a)(9)(B)</strong> Unlawful Presence</td>
</tr>
</tbody>
</table>

The following table specifies which grounds of inadmissibility do apply to applicants seeking LPR status based on the SIJ classification and for which a waiver or other form of relief may be available.

<table>
<thead>
<tr>
<th>Inadmissibility Grounds that Apply to Special Immigrant Juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INA 212(a)(1)</strong> Health-Related</td>
</tr>
<tr>
<td><strong>INA 212(a)(2)</strong> Crime-Related</td>
</tr>
<tr>
<td><strong>INA 212(a)(3)</strong> Security-Related</td>
</tr>
<tr>
<td><strong>INA 212(a)(6)(B)</strong> Failure to Attend Removal Proceedings</td>
</tr>
<tr>
<td><strong>INA 212(a)(6)(E)</strong> Smugglers</td>
</tr>
<tr>
<td><strong>INA 212(a)(6)(F)</strong> Subject of Civil Penalty</td>
</tr>
<tr>
<td><strong>INA 212(a)(6)(G)</strong> Student Visa Abusers</td>
</tr>
<tr>
<td><strong>INA 212(a)(8)</strong> Ineligibility for Citizenship</td>
</tr>
<tr>
<td><strong>INA 212(a)(9)(A)</strong> Certain Aliens Previously Removed</td>
</tr>
<tr>
<td><strong>INA 212(a)(9)(C)</strong> Aliens Unlawfully Present After Previous Immigration Violations</td>
</tr>
<tr>
<td><strong>INA 212(a)(10)</strong> Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
</tr>
</tbody>
</table>

An applicant found inadmissible based on any of the above applicable grounds may be eligible for an SIJ-
specific waiver of these inadmissibility grounds for:

- Humanitarian purposes;
- Family unity; or
- When it is otherwise in the public interest.\[27\]

The following table specifies which grounds of inadmissibility cannot be waived under the SIJ-specific waiver for such purposes.\[28\]

<table>
<thead>
<tr>
<th>Inadmissibility Grounds that Cannot Be Waived</th>
<th>[29]</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(2)(A)</td>
<td>Conviction of Certain Crimes</td>
</tr>
<tr>
<td>INA 212(a)(2)(B)</td>
<td>Multiple Criminal Convictions</td>
</tr>
<tr>
<td>INA 212(a)(2)(C)</td>
<td>Controlled Substance Traffickers</td>
</tr>
<tr>
<td>INA 212(a)(3)(A)</td>
<td>Security and Related Grounds</td>
</tr>
<tr>
<td>INA 212(a)(3)(B)</td>
<td>Terrorist Activities</td>
</tr>
<tr>
<td>INA 212(a)(3)(C)</td>
<td>Foreign Policy Related</td>
</tr>
<tr>
<td>INA 212(a)(3)(E)</td>
<td>Participants in Nazi Persecution, Genocide, or the Commission of Any Act of Torture or Extrajudicial Killing</td>
</tr>
</tbody>
</table>

**Juvenile Delinquency**

Findings of juvenile delinquency are not considered criminal convictions for purposes of immigration law. However, certain grounds of inadmissibility do not require a conviction. In some cases, certain conduct alone may be sufficient to trigger an inadmissibility ground.\[30\]

Furthermore, findings of juvenile delinquency may also be part of a discretionary analysis.\[31\] USCIS will consider findings of juvenile delinquency on a case-by-case basis based on the totality of the evidence to determine whether a favorable exercise of discretion is warranted. Therefore, an adjustment applicant must disclose all arrests and charges. If any arrest or charge was disposed of as a matter of juvenile delinquency, the applicant must include the court or other public record that establishes this disposition.

In the event that an applicant is unable to provide such records because the applicant’s case was expunged or sealed, the applicant must provide information about the arrest and evidence demonstrating that such records
are unavailable under the law of the particular jurisdiction. USCIS evaluates sealed and expunged records according to the nature and severity of the criminal offense.

5. Treatment of Family Members

Dependents of SIJs cannot file as derivative applicants. SIJ beneficiaries may petition for certain qualifying family members through family-based immigration after they have adjusted status to LPR. However, a juvenile who adjusts status based on an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents after naturalization. This prohibition also applies to a non-abusive, custodial parent, if one exists.

6. Requirements for Perez-Olano Litigation Class Members

Perez-Olano v. Holder is a class-action lawsuit filed on behalf of certain alien juveniles who may have been eligible for SIJ classification or SIJ-based adjustment of status but whose SIJ petition or adjustment application was denied or revoked for certain reasons. Certain persons whose petition for SIJ classification or SIJ-based application for adjustment of status was denied or revoked on or after May 13, 2005, may be eligible to file a motion to reopen the denied SIJ petition or SIJ-based application for adjustment of status.

A class action member may file a motion to reopen if his or her SIJ petition or SIJ-based application for adjustment of status was denied or revoked on account of:

- Age if, at the time the class member filed a complete petition for SIJ classification, he or she was under 21 years of age;
- Dependency status if, at the time the class member filed a complete petition for SIJ classification, he or she was the subject of a valid dependency order that was subsequently terminated based on age; or
- Specific consent, if the petitioner did not receive a grant of the Department of Health and Human Services (HHS) specific consent before going before the juvenile court and the court order did not alter the petitioner’s HHS custody status or placement.

There is also a stipulation to the settlement agreement involving cases in which SIJ petitions or SIJ-based applications for adjustment of status were denied, terminated, or revoked on or after December 15, 2010, because the applicant’s state court dependency order had expired at the time of the filing. The requirements and process for a class member to request that his or her case be reopened under the Stipulation differ from requirements under the original Settlement Agreement.

Under the stipulation, USCIS will not deny, revoke, or terminate an SIJ petition or SIJ-based adjustment of status if, at the time of filing the SIJ petition, the applicant:

- Is or was under 21 years of age, unmarried, and otherwise eligible; and
- Is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as an SIJ:
• Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee or with a Request for Fee Waiver (Form I-912);

• Copy of the receipt or approval notice (Form I-797) for the applicant’s SIJ petition (unless the applicant is filing the petition together with Form I-485);[39]

• Two passport-style photographs;

• Copy of government-issued identity document with photograph (if available);

• Copy of birth certificate;

• Copy of passport page with nonimmigrant visa (if applicable);

• Copy of passport page with admission or parole stamp (if applicable);

• Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);[40]

• Any other evidence, as needed, to show that the terrorist-related adjustment bar does not apply;

• Report of Medical Examination and Vaccination Record (Form I-693);[41]

• Certified police and court records of juvenile delinquency findings, criminal charges, arrests, or convictions (if applicable);

• Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and

• Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).[42]

E. Adjudication[43]

1. Filing

An applicant seeking adjustment of status as a special immigrant juvenile may file his or her adjustment application with USCIS concurrently with the SIJ petition, while the SIJ petition is pending, or after USCIS approves the SIJ petition (as long as the petition is still valid), provided:

• USCIS has jurisdiction over the adjustment application;[44] and

• The visa availability requirements are met.[45]

2. Interview

*Determining Necessity of Interview*

USCIS recognizes the vulnerable nature of SIJ based applicants for adjustment of status and generally conducts interviews of SIJ based applicants for adjustment of status when an interview is deemed necessary. USCIS conducts a full review of the record and supporting evidence to determine whether an interview may
be warranted.

USCIS will generally not require an interview if the record contains sufficient information and evidence to approve the adjustment application without an in-person assessment. However, USCIS retains the discretion to interview SIJ based adjustment applicants for the purposes of adjudicating the adjustment of status application, as applicable. [46]

Conducting the Interview

Given the vulnerable nature of SIJ based adjustment applicants and the hardships they may face because of the loss of parental support, USCIS takes special care to establish a child-friendly interview environment. During an interview, USCIS avoids questioning the applicant about the details of the abuse, neglect, or abandonment suffered because these issues are handled by the juvenile court. USCIS generally focuses the interview on resolving issues related to eligibility for adjustment of status.

The applicant may bring a trusted adult to the interview in addition to an attorney or representative. The trusted adult may serve as a familiar source of comfort to the applicant, but should not interfere with the interview process or coach the applicant during the interview. Given potential human trafficking and other concerns, USCIS assesses the appropriateness of the adult to attend the interview and is observant of the adult’s interaction with the child. If USCIS has any concerns related to appropriateness of the adult’s presence, USCIS may continue the interview without that adult present.

3. Age-Out Protections

There is no age limit for SIJ-based applicants for adjustment of status. In cases where an SIJ petitioner is under 21 years of age on the date of proper filing of the SIJ petition, USCIS does not deny an SIJ-based adjustment application solely because the applicant is older than 21 years of age at the time of filing or adjudication of the Form I-485. [47]

4. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements and merits the favorable exercise of discretion[48] before approving the application to adjust status as an SIJ. If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication. [49]

If approved, USCIS assigns the following code of admission to applicants adjusting under this category:

<table>
<thead>
<tr>
<th>Class of Applicant and Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Immigrant Juvenile</td>
</tr>
</tbody>
</table>

The applicant becomes an LPR as of the date of approval of the adjustment application. [50]

Denial
If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial. Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider, or renew the application in Immigration Court. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

Footnotes

[^1] For more information on the legislative history of the SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles [6 USCIS-PM J].


[^7] See INA 245(a) and (c). See 8 CFR 245, 8 CFR 245.1(a) and 8 CFR 245.1(e)(3). See Instructions to Form I-485.


[^12] To see what requirements applicants must meet to obtain such classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements [6 USCIS-PM J.2].


[^16] See 8 CFR 205.2(b).

[^17] The applicant must be unmarried at the time of filing the adjustment application and at the time of final adjudication of the form. See 8 CFR 205.1(a)(3)(iv).

[^18] Revocation will not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.
See 8 CFR 205.1(b).

See 8 CFR 205.1(b).

See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

See INA 245(c)(6), which bars from adjustment any alien deportable due to involvement in a terrorist activity or group under INA 237(a)(4)(B). Special immigrant juveniles are exempt from INA 245(c)(2) and INA 245(c)(8). See 62 FR 39417 (PDF), 39422 (July 23, 1997). See 8 CFR 245.1(b)(5), 8 CFR 245.1(b)(6), and 8 CFR 245.1(b)(10). INA 245(c)(7) also does not apply. See 8 CFR 245.1(b)(9). See Part B, 245(a) Adjustment, Chapter 5, Employment-Based Applicant Not in Lawful Nonimmigrant Status – INA 245(c)(7) [7 USCIS-PM B.5]. Finally, INA 245(c)(1), INA 245(c)(3), INA 245(c)(4), and INA 245(c)(5) do not apply since a special immigrant juvenile is considered to be paroled into the United States and, when reviewing these bars, USCIS focuses on the most recent admission. See INA 245(h)(1). See 8 CFR 245.1(a) and 8 CFR 245.1(e)(3). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

See INA 212(a) for the specific grounds of inadmissibility.

See Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

See INA 245(h)(2)(B) and 8 CFR 245.1(e)(3). Grounds of removal under INA 237(c) that correspond with exempted inadmissibility grounds are also waived for SIJs.

See INA 245(h)(2)(B) and 8 CFR 245.1(e)(3).

However, an applicant found inadmissible based on one of the grounds of inadmissibility listed below may be eligible to obtain a waiver under other statutory authorities. For more information on other types of waivers, see Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

This table includes inadmissibility grounds that cannot be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest.

For example, see INA 212(a)(2)(A) (inadmissibility based on conviction of or admission that the alien committed certain criminal acts).

For more information, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A] and Part B, 245(a) Adjustment [7 USCIS-PM B].


See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

See Application to Register Permanent Residence or Adjust Status (Form I-485).

See Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement (PDF), issued (June 25, 2015).
For information about limitations on additional evidence, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 3, Documentation and Evidence, Section B, Limitations on Additional Evidence [6 USCIS-PM J.3(B)].

USCIS may also require the applicant to provide additional evidence to show he or she continues to be classified as an SIJ. See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

See Part A, Adjustment of Status Policies and Procedures, Chapter 2, Eligibility Requirements, Section B, Who is Not Eligible to Adjust Status, Subsection 3, Other Eligibility Requirements [7 USCIS-PM A.2(B)(3)].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].

The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].

See 8 CFR 103.2(b)(9).

See INA 101(b)(1) (definition of child is an unmarried person under 21 years of age). See Section 235(d)(6) of the TVPRA, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008) (provides age-out protection to SIJ petitioners). Although the SIJ definition at INA 101(a)(27)(J) does not use the term child, USCIS incorporated the child definition at INA 101(b)(1) into SIJ-related regulations. For more information on age-out protections for purposes of an SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements, Part C, Age-out Protections [6 USCIS-PM J.2(C)].

See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Appropriate Use of Discretion [7 USCIS-PM A.10].

For more information on visa availability and visa retrogression, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

The date of approval is shown in the USCIS approval notice mailed to the applicant. That date is also shown on the actual Permanent Resident Card (Form I-551) the applicant receives after adjustment approval.

See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).
Chapter 8 - Members of the U.S. Armed Forces

A. Purpose and Background

Under special agreements that the United States maintained after World War II with several Pacific island nations, certain aliens residing outside of the United States were allowed to enlist in the U.S. military. During times of specific hostilities, these aliens could become naturalized U.S. citizens based upon their active duty service if they met certain qualifications. However, once American military action terminated in Vietnam in 1978, they no longer had this pathway to U.S. citizenship.

In the years that followed, Congress discovered that many of these aliens had served multiple tours of duty but were denied advancement in their military careers because they were not U.S. citizens and so were unable to receive security clearances or become officers. In 1991, Congress passed the Armed Forces Immigration Adjustment Act,[1] creating a special immigrant category for certain qualifying military members. This provision in essence recognized these alien military members for their years of service to the United States.

Congress intended the law to be comparable to the special immigrant status awarded to certain U.S. government workers in the Panama Canal and long-term employees of international organizations residing in the United States.[2]

Sometimes referred to as the “Six and Six program,” adjustment as a special immigrant armed forces member under this law requires either 12 years of honorable, active duty service in the U.S. armed forces or 6 years of honorable, active duty service, if the military member has re-enlisted to serve for an additional 6 years. In addition, these special immigrants may be eligible for immediate citizenship after acquiring lawful permanent resident status, through their service during a designated period of hostilities.[3]

Special immigrant military members eligible under treaties in effect on October 1, 1991, include nationals of the Philippines, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands. While the treaty for Filipinos no longer exists, sailors from the Philippines who served during the Persian Gulf conflict may still qualify under these provisions; a more direct route to naturalization may also be available.

B. Legal Authorities

- **INA 101(a)(27)(K)** – Certain armed forces members
- **INA 203(b)(4)** – Certain special immigrants
- **INA 245; 8 CFR 245** – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- **INA 245(g)** – Parole provision for special immigrant armed forces members seeking adjustment of status
- **8 CFR 245.8** – Adjustment of status as a special immigrant under Section 101(a)(27)(K) of the Act

C. Eligibility Requirements

AILA Doc. No. 19060633. (Posted 3/26/21)
To adjust to lawful permanent resident (LPR) status as a special immigrant member of the U.S. armed forces, an applicant must meet the eligibility requirements shown in the table below.

<table>
<thead>
<tr>
<th>Special Immigrant Armed Forces Members Adjustment of Status Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant has been inspected and admitted or inspected and paroled into the United States.</td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.</td>
</tr>
<tr>
<td>The applicant is eligible to receive an immigrant visa.</td>
</tr>
<tr>
<td>The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication.</td>
</tr>
<tr>
<td>The applicant is not subject to any applicable bars to adjustment of status.</td>
</tr>
<tr>
<td>The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.</td>
</tr>
<tr>
<td>The applicant merits the favorable exercise of discretion.</td>
</tr>
</tbody>
</table>

1. Eligibility to Receive an Immigrant Visa

An applicant must be eligible to receive an immigrant visa to adjust status. An adjustment applicant typically establishes eligibility for an immigrant visa through an approved immigrant petition. A special immigrant armed forces member can establish eligibility for an immigrant visa by obtaining classification from USCIS by filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

Therefore, in order for a special immigrant armed forces member adjustment applicant to be eligible to receive an immigrant visa, he or she must be one of the following:

- The applicant is the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) classifying him or her as special immigrant armed forces member;
- The applicant has a pending Form I-360 (that is ultimately approved); or
- The applicant is filing the adjustment application concurrently with the Form I-360 (and the Form I-360 is ultimately approved).

The following provides information how a principal I-360 applicant qualifies for classification as a special immigrant armed forces member.
immigrant armed forces member:

- The applicant must have been lawfully enrolled in the U.S. military outside the United States under a treaty or agreement that was in effect on October 1, 1991;

- The applicant must have either served honorably or was enrolled to serve in the U.S. armed forces after October 15, 1978, for a specific time period;

- The applicant must have served for an aggregate period of either (1) 12 years and received an honorable discharge, or (2) 6 years of honorable active duty service in the U.S. armed forces and have reenlisted for 6 more years of active duty to total at least 12 years of active duty at the time that enlistment ends; and

- The applicant must have been recommended for special immigrant classification by the executive department under which the immigrant served or is currently serving.

Once accorded special immigrant classification, these aliens could adjust to LPR status, provided they meet the other eligibility requirements for adjustment.

**Treaties in Effect on October 1, 1991**

Those eligible under treaties in effect on October 1, 1991, include nationals of:

- Philippines;
- Federated States of Micronesia;
- Republic of Palau; and
- Republic of the Marshall Islands.

**Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility**[13]

The special immigrant armed forces member petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the special immigrant armed forces member petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified as a special immigrant armed forces member and thus is eligible to adjust as a special immigrant armed forces member. As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as a special immigrant armed forces member. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

**2. Bars to Adjustment**

Certain adjustment bars do not apply to special immigrant armed forces members and their derivatives.[14] Furthermore, since these special immigrants and their derivatives are deemed parolees for purposes of adjustment of status, there are other adjustment bars relating to certain immigration statuses that do not apply to them.[15] If these special immigrants fall under any other adjustment bar,[16] however, they are not eligible to adjust status.[17]

**3. Admissibility and Waiver Requirements**
In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available. In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. If a waiver or other form of relief is granted, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants seeking LPR status based on the armed forces member classification.

### Applicability of Grounds of Inadmissibility: Members of the U.S. Armed Forces

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(2) – Crime-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(3) – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(4) – Public Charge</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(6) – Illegal Entrants and Immigration Violators</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(7)(A) – Documentation Requirements for Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(8) – Ineligibility for Citizenship</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(9) – Aliens Previously Removed</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(10) – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

### 4. Treatment of Family Members
The spouse or child (unmarried and under 21 years of age) of a special immigrant armed forces member may, if otherwise eligible, accompany or follow-to-join the principal applicant. The spouse and child may, as derivative applicants, apply to adjust status under the same immigrant category and priority date as the principal applicant.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as a special immigrant armed forces member:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Copy of approval notice or receipt (Form I-797) for the principal applicant’s special immigrant petition (unless the applicant is filing the petition together with Form I-485);
- Proof of honorable discharge from the U.S. armed forces, if no longer serving;
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);
- Any other evidence, as needed, to show that an adjustment bar does not apply;
- Report of Medical Examination and Vaccination Record (Form I-693);
- Certified police and court records of criminal charges, arrests, or convictions (if applicable);
- Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and
- Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who is filing as a derivative applicant should submit the following:

- A copy of documentation showing relationship to the principal applicant, such as a marriage certificate or adoption decree (if applicable); and
- A copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).
E. Adjudication

1. Filing

An applicant seeking adjustment of status as a special immigrant armed forces member may file his or her adjustment application with USCIS concurrently with the Form I-360 petition, while the Form I-360 petition is pending, or after USCIS approves the Form I-360 petition (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application;[27] and
- The visa availability requirements are met.[28]

2. Interview

The officer must schedule the applicant for an in-person interview at the appropriate field office and transfer jurisdiction to that field office for final adjudication in cases where:

- The officer cannot make a decision based on the evidence of record; or
- The applicant does not meet the criteria for an interview waiver.[29]

If the application appears approvable at the conclusion of the adjustment of status interview, the officer should determine whether the special immigrant armed forces member may be eligible for naturalization benefits. The officer should advise the applicant if the applicant is immediately eligible for naturalization upon approval of the adjustment application.[30]

3. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant armed forces member or family member.[31] If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication.[32]

If approved, USCIS assigns the following codes of admission to applicants adjusting under this category:

<table>
<thead>
<tr>
<th>Classes of Applicants and Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
</tr>
<tr>
<td>Code of Admission</td>
</tr>
<tr>
<td>Special Immigrant Armed Forces Member</td>
</tr>
<tr>
<td>Spouse of Armed Forces Member (SM9)</td>
</tr>
<tr>
<td>Child of Armed Forces Member (SM9)</td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
The applicant becomes an LPR as of the date of approval of the adjustment application. [33]

**Denial**

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial. [34] Although there are no appeal rights for the denial of an employment-based adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

**F. Post-Adjudication Considerations**

If a special immigrant armed forces member who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the special immigrant may become subject to removal proceedings (if removable). [35] USCIS verifies whether a special immigrant armed forces member has failed to maintain eligibility by obtaining a current Certificate of Release or Discharge from Active Duty (Form DD-214) from the appropriate executive department.

**Footnotes**


[^5] See INA 245(a) and (e). See 8 CFR 245. See Instructions to Form I-485.


[^9] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


PM A.6] and Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section C, Eligible to Receive an Immigrant Visa [7 USCIS-PM B.2(C)].


[^14] See INA 245(c)(2) and INA 245(c)(8).

[^15] See INA 245(g), providing that these special immigrants are considered parolees for purposes of adjustment under INA 245(a). As parolees, the adjustment bars under INA 245(c)(1), INA 245(c)(3), INA 245(c)(4), and INA 245(c)(5) do not apply.

[^16] See INA 245(c)(6) and 245(c)(7).

[^17] See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[^18] See INA 212(a) for the specific grounds of inadmissibility.

[^19] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

[^20] See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

[^21] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

[^22] The applicant may submit a Certificate of Release or Discharge from Active Duty (DD Form 214) for this purpose.

[^23] Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013 may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

[^24] Such as evidence that the INA 245(c)(2) adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons. See 8 CFR 245.1(d)(2). See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and INA 245(c)(8), Section E, Exceptions [7 USCIS-PM B.4(E)].

[^25] The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

[^26] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^27] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdiction [7 USCIS-PM A.3(D)].

[^28] The applicant must have an immigrant visa immediately available when he or she filed the adjustment
of status application and at the time of final adjudication. See Section C, Eligibility Requirements \[7\text{ USCIS-PM F.8(\text{C})}\].

[^29] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines \[7\text{ USCIS-PM A.5}\].


[^31] See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures \[7\text{ USCIS-PM A}\] and Part B, 245(a) Adjustment \[7\text{ USCIS-PM B}\].

[^32] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability \[7\text{ USCIS-PM A.6(C)}\].

[^33] The date of approval is shown in the USCIS approval notice mailed to the applicant; that date is also shown on the actual Permanent Resident Card (Form I-551) the applicant receives after adjustment approval.

[^34] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).


Chapter 9 - Certain Broadcasters

A. Purpose and Background

Since the advent of the Cold War, the United States has sought to provide international broadcasting services to countries where the free flow of information is suppressed, undeveloped, or nonexistent. United States-funded radio and other media programs have since expanded to Europe, Asia, and the Middle East.

On November 22, 2000, Congress amended the Immigration and Nationality Act to create a special immigrant category for certain international broadcasters.\[1\] The law provides for up to 100 employment-based fourth preference special immigrant visas per fiscal year \[2\] for principal immigrants entering the United States to work for the International Broadcasting Bureau of the Broadcasting Board of Governors (BBG) or a grantee of the BBG. \[3\]

B. Legal Authorities

- INA 101(a)(27)(M) – Broadcaster employees
- INA 203(b)(4) – Certain special immigrants
- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- 8 CFR 204.13 – How can the International Broadcasting Bureau of the United States Broadcasting Board of Governors petition for a fourth preference special immigrant broadcaster?

C. Eligibility Requirements[^4]
To adjust to lawful permanent resident (LPR) status as a special immigrant broadcaster, an applicant must meet the eligibility requirements shown in the table below.

<table>
<thead>
<tr>
<th>Special Immigrant Broadcaster Adjustment of Status Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant has been inspected and admitted or inspected and paroled into the United States.</td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.</td>
</tr>
<tr>
<td>The applicant is eligible to receive an immigrant visa because the applicant is the beneficiary of an approved Form I-360 classifying him or her as a special immigrant broadcaster.</td>
</tr>
<tr>
<td>The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication.</td>
</tr>
<tr>
<td>The applicant is not subject to any applicable bars to adjustment of status.</td>
</tr>
<tr>
<td>The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.</td>
</tr>
<tr>
<td>The applicant merits the favorable exercise of discretion.</td>
</tr>
</tbody>
</table>

1. Eligibility to Receive an Immigrant Visa

To be eligible to receive an immigrant visa to adjust status as a special immigrant broadcaster working for the BBG or a BBG grantee, the principal applicant must obtain such classification from USCIS by filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

A broadcaster in this context means:

- A reporter, writer, translator, editor, producer, or announcer for news broadcasts;
- A host for news broadcasts, news analysis, editorial, and other broadcast features; or
- A news analysis specialist.

Aliens performing purely technical or support services for the BBG or a BBG grantee do not meet the regulatory definition of a “broadcaster” for immigration purposes and therefore may not obtain classification as special immigrant broadcasters.
The approved petition contains signed and dated supplemental attestation from the BBG or a BBG grantee, describing the prospective broadcaster and the position, including the job title and a full description of the job to be performed. The attestation also includes:

- The applicant’s broadcasting expertise, including how long he or she has been performing the duties that relate to the prospective position; or
- A statement as to how the applicant possesses the necessary skills that make him or her qualified for the broadcasting-related position within the BBG or BBG grantee.

The alien may file an Application to Register Permanent Residence or Adjust Status (Form I-485) as an international broadcaster only after USCIS approves the special immigrant petition. Special immigrant broadcasters may not file the adjustment application concurrently with the petition.

**Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility**

The special immigrant broadcaster petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the special immigrant broadcaster petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified as a special immigrant broadcaster and thus is eligible to adjust as a special immigrant broadcaster. As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as a special immigrant broadcaster. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

**2. Bars to Adjustment**

Special immigrant broadcasters and their dependents are ineligible for adjustment of status if any of the bars to adjustment of status apply. [16]

**3. Admissibility and Waiver Requirements**

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available. In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. If a waiver or other form of relief is granted, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants seeking LPR status based on the special immigrant broadcaster classification.

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Ground of Inadmissibility</td>
<td>Applies</td>
<td>Exempt or Not Applicable</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------</td>
<td>---------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>INA 212(a)(2) – Crime-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(3) – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(4) – Public Charge</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(6) – Illegal Entrants and Immigration Violators</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(7)(A) – Documentation Requirements for Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(8) – Ineligibility for Citizenship</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(9) – Aliens Previously Removed</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(10) – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

In general, applicants for this special immigrant category are able to overcome any public charge concerns by submitting a valid letter or attestation of intended employment from the BBG or BBG-grantee. A separate affidavit of support is not required. [19]

4. Treatment of Family Members

The spouse or child (unmarried and under 21 years of age) of a special immigrant broadcaster may, if otherwise eligible, accompany or follow-to-join the principal applicant. [20] The spouse and child may, as derivative applicants, apply to adjust status under the same immigrant category and priority date as the principal applicant.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as a special immigrant international
broadcaster:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Copy of the Approval Notice or Receipt (Form I-797) for the principal applicant’s special immigrant petition;[21]
- Employment letter from the applicant’s Form I-360 employer-petitioner;[22]
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);[23]
- Evidence of continuously maintaining a lawful status since arrival in the United States;
- Any other evidence, as needed, to show that an adjustment bar does not apply;[24]
- Report of Medical Examination and Vaccination Record (Form I-693);[25]
- Certified police and court records of criminal charges, arrests, or convictions (if applicable);
- Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and
- Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who is filing as a derivative applicant should submit the following:

- A copy of documentation showing relationship to the principal applicant, such as a marriage certificate or adoption decree (if applicable); and
- A copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).

E. Adjudication[26]

1. Filing

An applicant seeking adjustment of status as a special immigrant broadcaster may file his or her adjustment application with USCIS after USCIS approves the special immigrant petition[27] (as long as the petition is...
still valid), provided:

- USCIS has jurisdiction over the adjustment application; and
- The visa availability requirements are met.

These applicants may not file an adjustment application concurrently with Form I-360.

2. Interview

The officer must schedule the applicant for an in-person interview at the appropriate field office and transfer jurisdiction to that field office for final adjudication in cases where:

- The officer cannot make a decision based on the evidence of record; or
- The applicant does not meet the criteria for an interview waiver.

3. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant broadcaster. If the adjustment application is approvable, the officer must determine if a visa is available at the time of final adjudication.

If approved, USCIS assigns the following codes of admission to applicants under this category:

<table>
<thead>
<tr>
<th>Classes of Applicants and Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
</tr>
<tr>
<td>Special immigrant international broadcaster</td>
</tr>
<tr>
<td>Spouse of special immigrant international broadcaster (BC6)</td>
</tr>
<tr>
<td>Child of special immigrant international broadcaster (BC6)</td>
</tr>
</tbody>
</table>

The applicant becomes an LPR as of the date of approval of the adjustment application.

Denial

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial. Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion.
Footnotes


[^5] See INA 245(a) and INA 245(c). See 8 CFR 245. See Instructions to Form I-485.


[^9] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


[^12] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).


[^16] See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

[^17] See INA 212(a) for the specific grounds of inadmissibility.

[^18] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].
USCIS-PM. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application forPermission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

[^19] See INA 213A.

[^20] See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

[^21] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

[^22] The letter should be on official business letterhead verifying the job offer, the job title or position, summary of duties, and wages or salary anticipated.

[^23] Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

[^24] Such as evidence that the INA 245(c)(2) adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons. See 8 CFR 245.1(d)(2). See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and INA 245(c)(8), Section E, Exceptions [7 USCIS-PM B.4(E)].

[^25] The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

[^26] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^27] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

[^28] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].

[^29] The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].


[^31] See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A] and Part B, 245(a) Adjustment [7 USCIS-PM B].

[^32] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^33] The date of approval is shown in the USCIS approval notice mailed to the applicant; that date is also shown on the actual Permanent Resident Card (Form I-551) the applicant receives after adjustment approval.

[^34] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).
Chapter 10 - Certain Afghanistan and Iraq Nationals

A. Purpose and Background

During the wars in Afghanistan and Iraq, the U.S. government employed many Afghans and Iraqis as interpreters, translators, and other roles to assist in the war effort. Some faced ongoing, serious threats because of their employment with the U.S. government and the vital assistance they provided. As a result, Congress created three special immigrant programs to allow such qualified aliens to immigrate to the United States with their families.

This special immigrant category applies to a:

1. Special immigrant Afghanistan or Iraq national who worked with the U.S. armed forces as a translator;
2. Special immigrant Iraq national who was employed by or on behalf of the U.S. government; and
3. Special immigrant Afghanistan national who was employed by or on behalf of the U.S. government or in the International Security Assistance Force (ISAF) in Afghanistan.

B. Legal Authorities

1. INA 245: 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
2. Section 1059 of the National Defense Authorization Act for Fiscal Year 2006, as amended – Special immigrant status for persons serving as translators with United States armed forces
4. Section 602(b) of the Afghan Allies Protection Act of 2009, as amended – Special immigrant status for certain Afghans

C. Eligibility Requirements

To adjust to lawful permanent resident (LPR) status as a special immigrant for certain Afghanistan and Iraq nationals, an applicant must meet the following eligibility requirements:

Special Immigrant Afghanistan and Iraq Nationals Adjustment of Status Eligibility Requirements

The applicant has been inspected and admitted as a nonimmigrant or inspected and paroled into the United States.
The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.

The applicant is eligible to receive an immigrant visa because the applicant is the beneficiary of an approved Form I-360 classifying him or her as a special immigrant Afghanistan or Iraq national.

The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication.

The applicant is not subject to any applicable bars to adjustment of status.

The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.

1. Eligibility to Receive an Immigrant Visa

To be eligible to receive an immigrant visa to adjust status as a special immigrant Afghanistan or Iraq national, the principal applicant must obtain such classification from USCIS by filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility

The special immigrant petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the special immigrant petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified in one of the eligible special immigrant Afghanistan and Iraq National categories and thus is eligible to adjust as a special immigrant. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

2. Bars to Adjustment

Certain adjustment bars do not apply to Afghanistan and Iraq nationals and their dependents. If these special immigrants fall under any other adjustment bar, however, they are not eligible to adjust status.

3. Admissibility and Waiver Requirements

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she
obtains a waiver or other form of relief, if available. In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. If a waiver or other form of relief is granted, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility apply and which do not apply to applicants seeking LPR status based on the Afghanistan and Iraq national classification.

### Applicability of Grounds of Inadmissibility: Special Immigrant Afghanistan and Iraq Nationals

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(2) – Crime-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(3) – Security-Related</td>
<td>X</td>
<td></td>
</tr>
<tr>
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<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(6) – Illegal Entrants and Immigration Violators</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(7)(A) – Documentation Requirements for Immigrants</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(8) – Ineligibility for Citizenship</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(9) – Aliens Previously Removed</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>INA 212(a)(10) – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

### 4. Treatment of Family Members
The spouse or child (unmarried and under 21 years of age) of a principal special immigrant Afghanistan or Iraq national adjustment applicant may, if otherwise eligible, accompany or follow-to-join [22] the principal applicant and apply to adjust status under the same immigrant category and priority date.

Any accompanying spouse and children are eligible to adjust status as long as they continue to maintain the requisite relationship with the principal special immigrant. [23] Unique to this special immigrant category, these family members do not count against the numerical limitations of the relevant program. However, they are counted against the general quota limitations of the employment-based fourth preference category (EB-4).

5. Potential for Conversion of Special Immigrant Petition from One Classification to Another

In some cases the underlying petition may have been approved as an Afghan or Iraq translator and converted to an approval as an Afghanistan or Iraq national who worked for, or on behalf of, the U.S. government. This conversion allows an applicant to obtain a visa from a program with a larger number of visas available. The conversion does not affect adjustment eligibility. The officer should ensure that the application is adjudicated under the correct program.

6. Applicants Admitted as Refugees

To be eligible for adjustment of status as an Afghanistan or Iraq national special immigrant, a person must have been either paroled into the United States or admitted as a nonimmigrant. [24] A person who last entered the United States as a refugee is not paroled and is admitted as a refugee, not a nonimmigrant. Thus, the person admitted as a refugee cannot adjust status under any of the Afghanistan or Iraq programs as refugees have their own basis for adjusting status. [25]

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as a special immigrant Afghanistan or Iraq national:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee or with a Request for Fee Waiver (Form I-912); Copy of approval notice (Form I-797) for the principal applicant’s special immigrant petition; [26]

- Two passport-style photographs;

- Copy of a government-issued identity document with photograph;

- Copy of birth certificate;

- Copy of passport page with nonimmigrant visa (if applicable);

- Copy of passport page with admission or parole stamp (if applicable);

- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable); [27]

- Evidence of continuously maintaining a lawful status since arrival in the United States;
Any other evidence, as needed, to show that an adjustment bar does not apply; [28]

Report of Medical Examination and Vaccination Record (Form I-693); [29]

Certified police and court records of criminal charges, arrests, or convictions (if applicable);

Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and

Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).

In addition, a spouse or child who is filing as a derivative applicant should submit the following:

- A copy of documentation showing relationship to the principal applicant, such as a marriage certificate or adoption decree (if applicable); and

- A copy of the approval or receipt notice (Form I-797) for the principal applicant’s Form I-485 or a copy of the principal applicant’s permanent resident card (Form I-551) (if applicable and not filing together with the principal applicant).

E. Adjudication [30]

1. Filing

An applicant seeking adjustment of status as a special immigrant Afghanistan or Iraqi national may file his or her adjustment application with USCIS after USCIS approves the special immigrant petition (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application; [32] and

- The visa availability requirements are met. [33]

These applicants may not file an adjustment application concurrently with Form I-360.

2. Interview

All adjustment applications under these programs must be relocated to the appropriate field office for an interview. Relocation of the case occurs after USCIS has completed the required background and security checks.

3. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements as well as merits the favorable exercise of discretion before approving the application to adjust status as a special immigrant Afghan or Iraqi translator (or family member). [34] If the adjustment application is approvable, the officer must determine if a visa is available at the time of final adjudication. [35]
If approved, USCIS assigns the following codes of admission to applicants adjusting under this category:

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Immigrant Afghan or Iraqi Translator</td>
<td>SI6</td>
</tr>
<tr>
<td>Spouse of Translator (SI6)</td>
<td>SI7</td>
</tr>
<tr>
<td>Child of Translator (SI6)</td>
<td>SI8</td>
</tr>
<tr>
<td>Special Immigrant Afghanistan or Iraq U.S. Government Employee</td>
<td>SQ6</td>
</tr>
<tr>
<td>Spouse of Government Employee (SQ6)</td>
<td>SQ7</td>
</tr>
<tr>
<td>Child of Government Employee (SQ6)</td>
<td>SQ8</td>
</tr>
</tbody>
</table>

The applicant becomes an LPR as of the date of approval of the adjustment application.\[^{36}\]

**Denial**

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial.\[^{37}\] If the adjustment application must be denied, an officer must provide the applicant a written reason for the denial.\[^{38}\] Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

**Footnotes**

\[^{1}\] Only principal applicants are counted against the annual numerical limitations. Accompanying spouses or children do not count against the visa cap in any of these programs.

\[^{2}\] No more than 50 visas are allotted each year. The allotment was temporarily increased to 500 for fiscal years (FY) 2007 and 2008.

\[^{3}\] The Department of State’s (DOS) authority to issue special immigrant visas to Iraqi nationals under the National Defense Authorization Act of 2008 was extended. As of January 1, 2014, 2,500 visas may be issued to principal applicants under this program. This program will continue until all visas have been issued or all qualified applicants, if less than the number of visas allocated, have received visas.
DOS authority to issue Special Immigrant Visas (SIVs) to Afghan nationals under section 602(b) of the Afghan Allies Protection Act of 2009, as amended, has been extended. The National Defense Authorization Act for FY 2016 as signed by President Obama on November 25, 2015, allocates 3,000 additional visas for Afghan principal applicants, for a total of 7,000 since December 19, 2014. The Afghan SIV program will end when all 7,000 visas are issued. The deadline to apply for Chief of Mission approval is extended from December 31, 2015 to December 31, 2016. The National Defense Authorization Act for FY 2016 amends the Afghan SIV program by increasing the minimum required length of service from one year to two years for applicants who submit petitions after September 30, 2015. The National Defense Authorization Act for FY 2016 expands the Afghan SIV program to include certain Afghans who were employed by the ISAF or a successor mission to ISAF.


[^7] See INA 245(a) and (c). See 8 CFR 245. See Instructions to Form I-485.

[^8] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of “Properly Filed” [7 USCIS-PM A.3(B)].


[^11] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


[^14] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). There is no filing fee for a Form I-360 filed on behalf of a special immigrant Afghanistan or Iraq national. See 8 CFR 103.7(b)(1)(T)(4).


[^16] See Section 602(b)(9) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8 (PDF), 123 Stat. 807, 809 (March 11, 2009) which states that INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8) do not apply to special immigrant Iraq and Afghan nationals who were employed by or on behalf of the U.S. government (for Section 602(b) and 1244 adjustment applicants who were either paroled into the United States or admitted as nonimmigrants). See Section 1(c) of Pub. L. 110-36 (PDF), 121 Stat. 227, 227 (June 15, 2007), which amended Section 1059(d) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163 (PDF), 119 Stat. 3136, 3444 (January 6, 2006) to state that INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8) do not apply to Iraq or Afghan translator adjustment applicants.
[18] See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment, Chapter 8, Inapplicability of Bars to Adjustment, Section C, Certain Special Immigrants [7 USCIS-PM B.8(C)].

[19] See INA 212(a) for the specific grounds of inadmissibility.

[20] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).


[22] Although INA 101(a)(27)(D), INA 101(a)(27)(E), INA 101(a)(27)(F), and INA 101(a)(27)(G) refer to the accompanying spouse and children, INA 203(d) encompasses following to join relatives as well and applies to all employment-based immigrants, including these special immigrants.

[23] Generally, the qualifying relationship must exist at the time the adjustment application is filed and the time the application is adjudicated. For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section B, Determine Ongoing Eligibility, Subsection 2, Qualifying Family Relationship Continues to Exist [7 USCIS-PM A.6(B)(2)].


[25] See INA 209. For more information, see Part L, Refugee Adjustment [7 USCIS-PM L].

[26] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

[27] Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013 may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

[28] Such as evidence that the INA 245(c)(2) adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons. See 8 CFR 245.1(d)(2). See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – INA 245(c)(2) and INA 245(c)(8), Section E, Exceptions [7 USCIS-PM B.4(E)].

[29] The applicant may submit Form I-693 together with Form I-485 or later at USCIS’ request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].


[31] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

[32] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].
The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Chapter 7, Special Immigrant Juveniles, Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].

See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A], and Part B, 245(a) Adjustment [7 USCIS-PM B].

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

The date of approval is shown in the USCIS approval notice mailed to the applicant; that date is also shown on the actual Permanent Resident Card (Form I-551) the applicant receives after adjustment approval.

See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

See 8 CFR 103.2(b)(19).

Part G - Diversity Visa Adjustment

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 23 - Adjustment of Status to Lawful Permanent Resident (External) (PDF, 1.61 MB)

Part H - Reserved

Part I - Adjustment Based on Violence Against Women Act

Part J - Trafficking Victim-Based Adjustment

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AFM Chapter 23 - Adjustment of Status to Lawful Permanent Resident (External) (PDF, 1.61 MB)

Part K - Crime Victim-Based Adjustment

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS
AFM Chapter 23 - Adjustment of Status to Lawful Permanent Resident (External) (PDF, 1.61 MB)

Part L - Refugee Adjustment

Chapter 1 - Purpose and Background

A. Purpose

USCIS seeks to:

- Resolve the refugee’s status after admission by ultimately determining whether the refugee is admissible to the United States as an immigrant; and

- Provide qualified refugees a pathway to permanent residence as persons of special humanitarian concern to the United States.

B. Background

Before the Refugee Act of 1980, refugee admission policy was reactive and piecemeal as it grew in response to humanitarian crises and ethnic conflicts. The result was an assortment of laws and regulations that classified persons as refugees, conditional entrants, parolees, pre-parolees, escapees, evacuees, or asylum grantees. In many cases, the long-term resolution of these classifications was unclear. The Refugee Act of 1980 addressed these issues by providing a systematic procedure for the admission and permanent resettlement of refugees of special humanitarian concern to the United States.

Prior to the passage of the Refugee Act, a refugee in the United States had to wait two years to apply for adjustment of status. The refugee also had to show that he or she had fled (or stayed away from) any communist-dominated country or country within the Middle East and was unwilling or unable to return due to fear of persecution.

Although the refugee was not required to show that he or she continued to meet the definition of a refugee, he or she adjusted status under section 245 of the Immigration and Nationality Act (INA), meaning that all of the inadmissibility grounds and bars to adjustment applied. The Refugee Act established, among other things, a uniform basis for permanent resettlement by amending the INA with the creation of section 209.

Refugees are now required to apply to adjust status one year after being admitted as a refugee in order for USCIS to determine their admissibility to the United States as an immigrant.[1] Recognizing the unique and tenuous position of this population, Congress determined that certain grounds of inadmissibility would not apply at time of adjustment, while allowing for the possible waiver of other grounds.

C. Legal Authorities
By applying for adjustment of status, refugees are considered to be applying for inspection and admission to the United States as an immigrant. A refugee may adjust status to a lawful permanent resident if the refugee meets the following four requirements:

- Admitted as a refugee under INA 207;
- Physically present in the United States as a refugee for at least 1 year;
- Refugee status has not been terminated; and
- Permanent resident status has not already been acquired in the United States.

Applicants who fail to meet any of these requirements are statutorily ineligible for adjustment of status as a refugee.

## A. Admitted as a Refugee under INA 207

Only applicants classified as refugees are eligible to adjust status as a refugee. Aliens are generally classified as refugees through an approved Registration for Classification as Refugee (Form I-590), or an approved Asylee/Refugee Relative Petition (Form I-730) filed by a principal refugee.

Refugees who are admitted to the United States through an approved Form I-590 are granted refugee status on the date they are admitted. Derivative refugees already in the United States when their relative petition (Form I-730) is approved are granted refugee status on the date the relative petition is approved. Derivative refugees outside the United States when their relative petition is approved are granted refugee status on the date they are admitted to the United States.

Immigrants Often Mistaken as Refugees:

Several classifications of immigrants are often mistaken for refugees. Many of these aliens apply for adjustment of status as a refugee because they are not aware of the difference between their status and refugee status and may genuinely think they are refugees. These applicants are not eligible for adjustment of status under the refugee adjustment of status provisions. The most commonly encountered non-refugees are:

*Asylees*

Asylum may be granted to persons who are already in the United States and meet the definition of a

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refugee. Asylees are similar to refugees in many ways and in some cases may be confused with refugees. However, asylees gain status through either an Application for Asylum and for Withholding of Removal (Form I-589) approved by an Asylum Office, Immigration Judge or the Board of Immigration Appeals, or by obtaining a visa through an approved relative petition for derivative asylees not included on the original asylum application. Asylees also may apply for adjustment of status under INA 209, but through a process separate from the refugee adjustment process. [1]

Lautenberg Parolees

As part of a program under the Lautenberg Amendment first introduced in 1990, certain aliens from the former Soviet Union found to be ineligible for refugee status and whose applications are denied can be offered parole into the United States. These persons include, but are not necessarily limited to: Jews, Evangelical Christians, and Ukrainian Christians of the Orthodox and Roman Catholic denominations. Prior to mid-1994, Lautenberg parolees also included certain Vietnamese, Cambodians, and Laotians. Lautenberg parolees will usually have a denied Form I-590 and a travel letter, or an Arrival/Departure Record (Form I-94) showing that they were paroled into the United States. Lautenberg parolees may adjust status under Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990. [2]

Cuban Entrants

Since 1959, thousands of Cuban nationals have been paroled or admitted into the United States, many for humanitarian reasons but not as refugees. Although Cubans from the port of Mariel, Cuba, entered the United States shortly after the enactment of the Refugee Act of 1980 and may have documentation that seems to indicate refugee status, they do not adjust status as refugees. Such persons who have been physically present in the United States for 1 year can adjust status under the Cuban Adjustment Act of 1966.

Indochinese Parolees

Throughout the 1980s and 1990s, thousands of citizens of Vietnam, Cambodia, and Laos were paroled into the United States under the Orderly Departure Program. Those who were paroled into the United States before October 1, 1997 and who were in the United States on that day may adjust status under Section 586 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001. [3]

Humanitarian Parolees

Persons throughout the world who are facing a humanitarian crisis may be paroled into the United States. Sometimes these are extended family members of refugees or asylees who cannot be approved on a relative petition. They may be similar to Lautenberg parolees in that they do not qualify for refugee status but are facing some type of hardship. These aliens generally have no means to adjust status based on their parole.

Illegal Entrants

Some illegal entrants may consider themselves to be refugees because they are fleeing someone or some place. They may have applied for asylum status and been denied, entered the United States without inspection or overstayed their nonimmigrant visa.

Iraqi and Afghan Translators

While some Iraqi and Afghan nationals are admitted as refugees, others may be admitted into the United States based on their service to the United States Armed Forces as a translator or interpreter (SI-1
classification). These aliens are not refugees. The holder of a SI-1 classification will have an approved Petition for Amerasian, Widow(er), Or Special Immigrant (Form I-360) in order to apply for adjustment of status. Iraqi nationals and citizens with an approved Form I-360 do not adjust status as a refugee but rather as employment-based 4th preference special immigrants.

*Iraqi Employees Who Worked On or Behalf of the U.S. Government*

Section 1244 of the National Defense Authorization Act for Fiscal Year 2008[^4] authorizes special immigrant status (SQ-1 classification) for Iraqi nationals who worked for or on behalf of the U.S. government in Iraq on or after March 20, 2003 to be admitted to the United States or adjust to immigrant status. These aliens are not refugees. The holder of a SQ-1 classification must have an approved Form I-360 in order to apply for adjustment of status. Iraqi nationals and citizens with an approved Form I-360 do not adjust status as a refugee but rather as employment-based 4th preference special immigrants.

*Afghan Allies*

The Afghan Allies Protection Act of 2009 authorizes special immigrant status (SQ-1 classification) for Afghan nationals who worked for or on behalf of the U.S. government to be admitted to the United States or adjust to immigrant status. These aliens are not refugees. The holder of the SQ-1 classification must have an approved Form I-360 in order to apply for adjustment of status. Afghan nationals and citizens with an approved Form I-360 do not adjust status as a refugee but rather as employment-based 4th preference special immigrants.

*Aliens Erroneously Admitted to the United States as Refugees*

Sometimes an alien may be erroneously admitted as a refugee as indicated on their admission document (Form I-94). This is most common with derivative asylees, humanitarian parolees, and sometimes Lautenberg parolees. The fact that a person was admitted erroneously as a refugee does not make that person eligible to adjust status under the refugee adjustment of status provisions.[^5] As is the case in all adjustment of status applications, an officer must determine if the person was indeed admitted under the proper classification prior to making a decision on the adjustment application.[^6]

**B. Physical Presence in the United States for at Least 1 Year**

Refugees are required to have 1 year of physical presence in the United States at time of filing the application in order to be eligible to adjust status. For applicants who gained derivative refugee status through an approved relative petition and who were in the United States when the petition was approved, the 1 year period begins on the date the relative petition was approved.

Because the requirement is 1 year of physical presence and not just one year from the date of admission as a refugee, only time spent in the United States counts toward this requirement. Applicants who travel outside the United States within their first year of residence as a refugee will not meet this requirement until the cumulative amount of time spent in the United States is at least 1 year.

**C. Refugee Status Has Not Been Terminated**

An applicant whose refugee status has been terminated is not eligible to adjust status. Evidence of termination of status in the applicant’s A-file will generally include a notice of termination of status, a Notice To Appear, and EOIR court records. Other evidence may include a notice of intent to terminate status, interview notes, and assessment notes.[^7]
D. Permanent Resident Status Has Not Already Been Acquired in the United States

Refugees who have already acquired permanent resident status are not eligible to adjust status. Evidence of permanent resident status will most often be an approved adjustment application already in the applicant’s A-file.

Refugees who sought adjustment of status prior to July 1998 applied through the local field office. These refugees will usually have only an approved Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181) in their A-file as evidence of their adjustment of status. Refugees who adjusted status between 1998 and 2005 will usually have both an approved adjustment of status application (Form I-485) and an approved Form I-181 in their A-file.

Refugees who adjusted status from 2005 to the present will usually have only an approved adjustment of status application in their A-file. The Form I-181 is no longer in use.

E. Others Allowed to Apply for Adjustment under INA 209 by Statute or Regulation

Historically, USCIS has granted other aliens status that is similar to the current refugee and asylee categories. Although most of these persons have already applied for adjustment of status due to the passage of time, an officer may occasionally encounter such cases. These applicants are eligible to apply for adjustment of status under INA 209 once certain conditions have been met.

1. Pre-April 1, 1980 Conditional Entrants

Prior to April 1, 1980, the Immigration and Nationality Act (INA) allowed persons from communist or communist-dominated countries and persons from countries in the general area of the Middle East to be admitted as “conditional entrants” under what was then known as the seventh preference category. Conditional entrants were allowed to become permanent residents after a specified period (initially 2 years, later reduced to 1 year) in the United States.

The conditional entrant provisions were generally repealed by the Refugee Act of 1980, except that the repeal did not apply to persons who were granted conditional entry prior to April 1, 1980. Accordingly, any conditional entrant encountered today who is seeking LPR status should be treated in the same fashion as a refugee seeking permanent residence, except that the correct adjustment code is “P7-5.”

2. Persons Paroled as Refugees Prior to April 1, 1980

The Refugee Act also allowed aliens paroled into the United States as refugees prior to April 1, 1980 to adjust their status if they were eligible for the benefits of Section 5 of Pub. L. 95-412 (PDF).[8] The law states in part that “Notwithstanding any other provision of law, any refugee, not otherwise eligible for retroactive adjustment of status, who was or is paroled into the United States by the Attorney General pursuant to INA 212(d)(5) before April 1, 1980, shall have his status adjusted pursuant to the provisions of INA 203(g) and (h) of the Act.”

Therefore, a person paroled into the United States as a refugee prior to April 1, 1980, may have his or her status adjusted to lawful permanent resident, if otherwise eligible.
3. Persons Paroled as Refugees Between April 1, 1980 and May 18, 1980

Some aliens continued to be paroled into the United States for a few weeks after April 1, 1980. They are to be treated the same as persons admitted under the former seventh preference (conditional entrant) category. [9] Even though conditional entrance or parole of refugees was not permitted after passage of the Refugee Act, legacy Immigration and Naturalization Service (INS) may have done so in error. Since the adjustment of status of such a person is not covered by the INA or current regulations, the officer should contact the Refugee Affairs Division at the Refugee, Asylum, and International Operations Directorate (RAIO) for further guidance.

F. Special Considerations for Refugee Adjustment of Status Applicants

Officers must be aware of the following provisions affecting refugees applying for adjustment of status:

- Refugees do not have to continue to meet the definition of “refugee” within the meaning of the INA after admission and may still adjust status as a refugee.

- Derivative refugees accompanying or following to join the principal refugee do not have to wait until the principal refugee has adjusted status to adjust their own status. They are considered refugees in their own right once admitted to the United States.

- Derivative refugees do not have to maintain their familial relationship to the principal refugee after admission to the United States to be eligible to adjust status.

- There is no bar to adjustment of status for refugees who have firmly resettled in a foreign country subsequent to being admitted to the United States as refugees.

- There is no bar to adjustment of status for refugees who previously had the status of an exchange nonimmigrant under INA 101(a)(15)(J) and who had been subject to the foreign resident requirement under INA 212(e), even if the foreign resident requirement was never met. In this case, no waiver is necessary.

1. Relationship Issues

While reviewing a case, an officer may become aware that, at the time a derivative refugee was admitted to the United States, he or she did not possess the requisite relationship to the principal refugee and as such was not entitled to derivative refugee status at time of admission. In certain instances, these applicants may be found inadmissible for fraud or misrepresentation because they were questioned about their marital status and familial relationships during the Form I-590 interview or interview for Form I-730 derivative refugee status, or at the port of entry.

Although the derivative refugees in each of the following examples have been admitted to the United States as refugees, they were not eligible for that status when they were admitted because their status was dependent upon their relationship to the principal, and the relationship did not exist or no longer existed at the time of admission. [10] The most common scenarios are:

Pre-Departure Marriages

It is not uncommon for some derivative refugee children to marry prior to admission as a refugee to
the United States. The marriage severs their familial relationship to the principal refugee. In February 2003, USCIS officers began requiring derivative children of the principal refugee (RE-3 classification) to sign an RE-3 Notice on Pre-Departure Marriage and Declaration statement.

By signing the notice, RE-3 derivatives acknowledge that they will be ineligible for admission as a derivative refugee if they marry prior to being admitted to the United States. Refugee derivatives who sign this notice and who marry prior to being admitted to the United States as a refugee may also be found inadmissible for fraud or misrepresentation should they present themselves as unmarried children. A pre-departure change to marital status will render the applicant ineligible for admission as a derivative refugee regardless of whether the alien signs an RE-3 Notice.

Pre-Departure Divorces

A derivative spouse (RE-2 classification) of a refugee who divorces the principal refugee prior to seeking admission as a refugee to the United States is ineligible for admission as a derivative refugee. Officers should note that if USCIS did not ask the derivative spouse about their marital status or eligibility at the time of admission, the alien may not have committed an act of fraud or misrepresentation.

Non-Existent or Fraudulent Relationships

Some derivative refugees may be untruthful on the refugee application about their marital status. A derivative spouse (RE-2) may not have been legally married to the principal applicant when the refugee application was filed, although they may have publicly presented themselves as husband and wife. A derivative child (RE-3) may have been married when the application was filed but claimed to be single. Additionally, applicants who have no relationship to the principal could claim a relationship as either a spouse or child, and likewise the principal may claim a relationship to them in order to gain access to the U.S. Refugee Admissions Program.

In all three scenarios, refugee adjustment allows most grounds of inadmissibility to be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Many applicants who may be found inadmissible due to relationship fraud or ineligibility due to not having the requisite relationship at time of admission may be deserving of a waiver of that ground, especially those who have or had a legitimate familial relationship or common law relationship to the principal. An officer should use their discretion when granting these waivers and should consider the totality of the circumstances, including whether or not the derivative has had an actual relationship to the principal.


As of August 6, 2002, any derivative refugee child who had a pending relative petition (Form I-730), adjustment application (Form I-485), or refugee application (Form I-590) on or after that date has had his or her age “frozen” as of the date the petition or application was filed. This was to allow the alien’s continued classification as a child for purposes of both refugee classification and adjustment of status. Any person who aged out prior to that date is not eligible for continuing classification as a child unless one of these applications was pending on August 6, 2002.

An unmarried child who is under 21 on the day the principal refugee files the refugee application will remain eligible to be classified as a child as long as he or she was listed on the parent’s refugee application prior to adjudication. In determining continuing eligibility as a derivative refugee child for adjustment, the officer need only verify that the derivative applicant’s age was under 21 at the time the refugee application or the relative petition was filed, whichever form first listed the child.
Chapter 3 - Admissibility and Waiver Requirements

Refugees must be admissible to the United States as an immigrant at the time adjustment of status is granted. However, an officer must remember that applicants who were admitted to the United States as refugees were subject to grounds of inadmissibility at the time of admission. Therefore, any information contained in the A-file known to the refugee officer, consular officer, or inspections officer at the time of admission is generally not used to find the refugee inadmissible at the time of adjustment, unless the law or interpretation of the law has changed subsequent to admission, or a clear error was made by the original adjudicating officer.[1]

An officer makes a determination regarding the refugee’s admissibility at the time of admission and the officer adjudicating the adjustment of status application should give deference to this prior determination.

A. Exemptions

The following grounds of inadmissibility do not apply to refugees adjusting status:

- Public Charge – INA 212(a)(4)
- Labor Certification and Qualifications for Certain Immigrants – INA 212(a)(5)
- Documentation Requirements for Immigrants – INA 212(a)(7)(A)

B. Applicable Inadmissibility Grounds
The following grounds of inadmissibility apply to refugees adjusting status:

- **Health-Related** – [INA 212(a)(1)]
- **Crime-Related** – [INA 212(a)(2)]
- **Security-Related** – [INA 212(a)(3)]
- **Illegal Entrants and Immigration Violators** – [INA 212(a)(6)]
- **Ineligibility for Citizenship** – [INA 212(a)(8)]
- **Aliens Previously Removed** – [INA 212(a)(9)]
- **Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation** – [INA 212(a)(10)]

**Health-Related Considerations**

Generally, if an officer waives the grounds of inadmissibility at the time of the refugee admission, the waiver carries forward to the adjustment application. A notable exception would be for waivers of medical inadmissibility for Class A medical conditions. In these instances, the waiver does not carry through to adjustment and the applicant must submit to a new medical exam to determine whether the Class A medical condition has been resolved.

**C. Inadmissibility Grounds that May Not Be Waived**

While waivers are generally available for most of the grounds listed in Section B, Applicable Inadmissibility Grounds,[2] the following grounds of inadmissibility cannot be waived:

- **Controlled Substance Traffickers** – [INA 212(a)(2)(C)]
- **Espionage; Sabotage; Illegal Export of Goods, Technology, or Sensitive Information; Unlawful Overthrow or Opposition to U.S. Government** – [INA 212(a)(3)(A)]
- **Terrorist Activities** – [INA 212(a)(3)(B)]
- **Adverse Foreign Policy Impact** – [INA 212(a)(3)(C)]
- **Participants in Nazi Persecutions or Genocide** – [INA 212(a)(3)(E)]

An officer should deny the adjustment application if no waiver is available due to the type of inadmissibility found.

**National Security Issues**

In the event that an adjudicating officer identifies at any stage one or more national security indicator(s) or concerns unknown at the time of the refugee grant, an officer should refer to USCIS guidance on disposition of national security cases. An officer should also follow current USCIS instructions on cases that involve Terrorist Related Inadmissibility Ground (TRIG) issues for disposition of the case or see their supervisor for questions on material support to terrorism.
Unless sent specifically to a field office for resolution of a TRIG issue, an officer should return any refugee adjustment case with unresolved TRIG issues to the Nebraska Service Center for resolution.

**D. Waivers**

All grounds of inadmissibility listed at Section B, Applicable Inadmissibility Grounds are subject to waiver, if the applicant can establish he or she qualifies for a waiver. An officer may have waived a refugee adjustment applicant’s ground of inadmissibility for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. This is a more generous waiver provision than what is used for general adjustments, which typically require an applicant to prove extreme hardship.

In adjudicating a discretionary waiver application for refugee adjustment, an officer must balance the humanitarian, family unity, or public interest considerations with the seriousness of the offense that rendered the applicant inadmissible. In making this determination, an officer should recognize that the applicant has already established either past persecution or a well-founded fear of future persecution, which is an extremely strong positive discretionary factor. Therefore, unless there are even stronger negative factors that outweigh the positive ones, the waiver application should generally be approved.

Often, waiver applications for refugees are handled overseas before the alien is approved for the refugee classification. However, if a ground of inadmissibility arose after the applicant’s approval for the refugee classification, or if it was not known to the officer who approved the refugee classification, the applicant may seek a waiver. The officer should adjudicate the waiver as a part of the refugee adjustment process. The applicant generally seeks a waiver through the filing of an Application by Refugee for Waiver of Grounds of Excludability (Form I-602).

When an officer determines that an applicant is inadmissible and a waiver is available, an officer may grant the waiver without requiring submission of a Form I-602, if:

- The applicant is inadmissible under a ground of inadmissibility that may be waived (other than health related grounds);[5]
- USCIS records and other information available to an officer contain sufficient information to assess eligibility for a waiver;
- There is no evidence to suggest that negative factors would adversely impact the exercise of discretion; and
- It is appropriate to grant a waiver.

If an officer determines that the applicant does not need to file a Form I-602, the officer should indicate that they have waived the inadmissibility by annotating the adjustment application to reflect this action. An officer may use a written annotation, stamp, or pre-printed label to indicate the specific inadmissibility ground that they are waiving.

The officer’s signature and approval stamp on the adjustment application also serves as the signature and approval of the waiver. Waivers granted because the vaccinations were not medically appropriate do not require a waiver annotation on the adjustment application or the medical record (Form I-693).[6] All others do require an annotation.

In cases that require a Form I-602, there is no need for a separate waiver approval notice because the approval of the adjustment application will indicate the approval of the waiver application. The officer should
simply stamp the waiver application as approved, check the block labeled “Waiver of Grounds of Inadmissibility is Granted,” and make the appropriate endorsements in the space labeled “Basis For Favorable Action.”

If the applicant is statutorily ineligible for a waiver (i.e., he or she is inadmissible under a ground of inadmissibility that cannot be waived) or if there are sufficient negative factors to warrant denial of the waiver application, the officer should check the block on Form I-602 labeled “Waiver of Grounds of Inadmissibility is Denied,” and write “See Form I-291”[^7] in the space labeled “Reasons.”

The denial of the waiver should be fully discussed in the denial of the adjustment application. While there is no appeal from the denial of the Form I-602, the immigration judge may consider the waiver application de novo when he or she considers the renewed adjustment application during removal proceedings.

### Footnotes

[^1] For example, a ground of inadmissibility was waived for which no waiver was available, or a national security issue was not properly addressed.

[^2] See Section B, Applicable Inadmissibility Grounds [7 USCIS-PM L.3(B)].

[^3] For more information on waiver policies and procedures, see Volume 9, Waivers and Other Forms of Relief, Part A, Waiver Policies and Procedures [9 USCIS-PM A]


[^5] See Health Related Considerations in Section B, Applicable Inadmissibility Grounds [7 USCIS-PM L.3(B)].


[^7] USCIS uses the Form I-291 to notify the applicant that his or her application has been denied.

### Chapter 4 - Documentation and Evidence

The officer should review the following documentation or evidence to determine the refugee’s eligibility for adjustment:

#### A. Required Documentation and Evidence

- Application to Register Permanent Residence or Adjust Status (Form I-485)

Each applicant must file a separate application regardless of whether he or she is a principal or a derivative refugee. There is no fee required for refugees to file this form.

The officer must check the Form I-485 for additional aliases requiring a systems query.

- Proof of refugee status

An officer must review the contents of the A-file for proof of refugee status. The A-file should contain an
approved refugee application (Form I-590) with proper endorsement, or an approved relative petition (Form I-730). Although applicants may submit an Arrival/Departure Record (Form I-94), or a notice showing an approved relative petition with their application, these documents must always be cross-checked with the evidence in the A-file to confirm the applicant’s refugee status.

- Evidence of 1-year physical presence in the United States

An officer can generally verify physical presence by reviewing the date of last arrival, place of last entry into the United States, and address history on the adjustment application, and the information within USCIS systems, such as the Central Index System.

In addition, the officer should review the date of admission on either a Form I-94 or Form I-590 with the date of filing of the adjustment application. If the evidence lends reasonable doubt as to the time periods the applicant has spent in the United States, the officer may request additional information verifying physical presence.

- Two (2) passport-style photos, taken no earlier than 30 days prior to filing
- Report of Medical Examination and Vaccination Record (Form I-693)

Typically a complete medical examination record is not needed by refugees. A refugee who already received a medical examination prior to admission does not need to repeat the entire medical examination unless the original examination revealed a Class A medical condition. However, the refugee must establish compliance with the vaccination requirements at the time of adjustment of status. The refugee must submit the vaccination record portion completed by a designated civil surgeon. State and local health departments may qualify for a blanket designation as civil surgeons for the purpose of completing the vaccination record for refugees applying for adjustment of status. [1]

- Certified copies of arrest/court records (if applicable)

An applicant must submit an original official statement by the arresting agency or a certified court order for all arrests, detentions or convictions, regardless of whether the arrest, detention or conviction occurred in the United States or elsewhere in the world.

- Application by Refugee for Waiver of Grounds of Excludability (Form I-602) (if applicable)

**B. Supplemental Documentation**

Supplemental documentation is often submitted by the applicant but is not required. This may include the following:

- Arrival/Departure Document (Form I-94), with appropriate endorsement
- Birth certificate, when obtainable

See the Department of State Reciprocity Tables for information on the availability of identity documents in particular countries and during specific time periods. There may be other instances in which a birth certificate is unobtainable because of country conditions or personal circumstances.

In these instances, affidavits may be submitted to establish the applicant’s identity. An officer may also review the A-file to check for a birth certificate that the applicant may have submitted with the refugee application or for other evidence submitted at the time of the interview to establish the applicant’s identity.
• Copy of passport(s), when obtainable

In most instances a refugee will be unable to produce a copy of his or her passport. There may be other instances in which a passport is unobtainable due to country conditions, personal circumstances, or the fact that the applicant may have never possessed a passport. In these cases, a copy of a passport is not required and an officer may use evidence in the A-file to verify the applicant’s identity.

An officer should review any supplemental documentation submitted to ensure it is consistent with the documentation contained in the A-file. Since identity is already established during the adjudication of the refugee application, a birth certificate or passport is not required at the time of adjustment.

Nevertheless, if the applicant submits any of these documents, the officer must address and resolve any discrepancies at the time of adjudication. In all cases, an officer should give considerable weight to the documentation contained in the refugee application or with the relative petition, as this information was previously vetted at the time of the refugee status interview or relative petition approval.

C. Documentation Already Contained in the A-File

The refugee application, (generally referred to as the “refugee travel packet”), should already be included in the applicant’s A-file, including all of the forms, evidence, and officer notes that were part of the original application for refugee status. The most important document for an officer to review is either the refugee application or the relative petition, which provides proof of status and establishes identity (with attached photo) as well as citizenship, since most refugees will not have a birth certificate or a passport.

Another important document in the refugee travel packet is the Medical Examination of Applicants for United States Visas (Form DS-2053 (PDF), formerly numbered OF-157). An officer does not need to be aware of the overseas medical examination requirements, but should realize that the overseas medical examination requirements are not the same as the requirements for medical examinations performed in the United States. Refugees are generally not required to complete a new medical exam in the United States if a medical exam was performed overseas and there were no Class A conditions.

D. Unavailable or Missing Documentation

When a refugee flees the country of persecution, he or she may not be able to obtain any documentation issued by a civil authority as proof of identity or of a familial relationship. At the time of the refugee status interview, an officer reviews many documents and affidavits and solicits testimony when seeking to establish a refugee’s personal and family identity. Any available documents submitted at the time of the refugee status interview should be contained within the A-file.

An officer may rely on the documents contained in the original refugee travel packet to verify identity at the time of adjustment. While it is not necessary to request the applicant’s birth certificate or passport as proof of identity, an officer should review any documentation establishing identity submitted with the adjustment application.

Additionally, an officer should compare photos submitted with the application to the photos in the refugee packet. If an officer is unable to establish an applicant’s identity due to discrepancies between the documentation the applicant submitted and information contained in the original refugee packet, then the officer should forward the file to the field office with jurisdiction over the case for interview and resolution.
Footnote

[^1] For more information, see Volume 8, Admissibility, Part C, Civil Surgeon Designation and Revocation, Chapter 3, Blanket Civil Surgeon Designation, Section A, Blanket Designation of State and Local Health Departments [8 USCIS-PM C.3(A)].

Chapter 5 - Adjudication Procedures

A. Record of Proceedings Review and Underlying Basis

The officer should place all documents in the file according to the established record of proceedings (ROP) order, including the filing of any documents the applicant submitted in response to a Request for Evidence (RFE).

When the officer reviews the application for adjustment of status of a refugee, the officer should also review the refugee travel packet to verify the applicant’s identity, refugee status and admission, completion of the overseas medical exam and to ensure consistency with the adjustment application. There are several forms that may be found in the A-File that may be of particular importance:

- Registration for Classification as Refugee (Form I-590)
  This form documents identity, marital status, number of children, military service, organizational memberships and any violations of law. A photo of the refugee should be attached to the upper left hand corner. In addition, the Port of Admission Block at the bottom of the second page should be stamped. This indicates the refugee’s particular port of entry and date of admission.

- Sworn Statement of Refugee Applying for Admission into the United States (G-646)
  This form documents the applicant’s testimony regarding possible persecutory acts and the inadmissibility provisions that pertain to refugees.

- Refugee Assessment
  This document, completed by a USCIS officer, contains the testimony given by the principal refugee to establish his or her claim for refugee status during an interview with a USCIS officer and includes the officer’s legal analysis including an assessment of the applicant’s eligibility under the refugee definition, admissibility, and credibility.

- Case History/Persecution Story
  This document details the key material aspects of the principal refugee’s life from birth up to the time of refugee processing. It is completed by Resettlement Support Center (RSC) staff under cooperative agreement with the U.S. Department of State (DOS).

- Family Tree
  This document contains the biographic information and family relationships for the principal refugee and each person included in the case of the principal refugee. The family tree is completed by RSC staff under cooperative agreement with the DOS.
Referrals from the Office of the United Nations High Commissioner for Refugees (UNHCR), the U.S. Embassy or Nongovernmental Organization (NGO)

These documents contain biographical information, family relationships, organizational memberships, political/social/religious affiliations, any detentions or imprisonments, the refugee claim, and inadmissibility issues. This document is completed by UNHCR, the U.S. Embassy, or the referring NGO.

Record of Medical Examination

This form documents the pre-departure medical examination of the refugee. Any Class A conditions would be noted, as would any recommendations for follow-up treatment.

B. Interview Criteria

The decision to interview a refugee applicant for adjustment of status is made on a case-by-case basis.[1] Interviews are generally required when an officer is unable to verify identity or determine admissibility based solely on the immigration records available to the officer. Although the decision to conduct an interview is made on a case-by-case basis, an officer should generally refer a case for interview if it meets one or more of the following criteria:

- The officer cannot verify the identity of the applicant through the information in the A-File.
- The officer can verify the identity of the applicant through the information in the A-File, but the applicant is claiming a new identity.
- Immigration records are insufficient for the officer to determine whether or not the applicant has refugee status.
- The applicant has an approved Form I-730, but, if granted overseas, was not interviewed as part of the derivative refugee process or, if granted in the United States, was not interviewed prior to the approval.
- The applicant’s Federal Bureau of Investigation (FBI) fingerprint results indicate that further processing is needed.
- The officer cannot determine the applicant’s admissibility without an interview.
- The officer determines that the applicant is inadmissible but that an interview is necessary to determine if a waiver is appropriate.
- The applicant has an articulable national security or terrorism-related ground of inadmissibility concern.
- Other eligibility fraud, identified on a case-by-case basis, where Fraud Detection and National Security (FDNS), Center Fraud Detection Operations (CFDO), or Background Check Units (BCU) recommends interview.
- Immigration records are insufficient for the officer to determine whether or not the applicant is inadmissible based on past or current placement in removal proceedings at any time.[2]
- The applicant has conflicting or multiple identities, other than properly documented by legal name changes.
- A sworn statement is required to address the applicant’s admissibility.

- An interview would yield clarifying information, such as with an unclear response to a request for evidence concerning the applicant’s admissibility.

- The applicant is a citizen of, or last habitually resided in, a country that is now, or was at the time of last residence, a State Sponsor of Terrorism.

- The officer has any other articulable concern regarding identity, inadmissibility, national security, public safety, or fraud, and recommends an interview to help resolve that concern.

These interview criteria may be modified in response to developing circumstances and concerns. These criteria are similar to those used by USCIS generally when determining if an interview is required for a particular adjustment of status application and promote greater consistency in the agency’s adjudication of adjustment of status applications. The additional criteria specific to adjustment of status applications filed by refugees and their derivative family members help ensure program integrity and improve the detection of fraud, misrepresentation, national security threats, and public safety risks.[3]

C. Requests to Change Name or Date of Birth

The officer must address and reconcile any discrepancy in biographical information found in case records or USCIS data systems at the time of adjustment. During the overseas interview, the refugee reviewed their refugee application, relative petition, and biographical information and had the opportunity to correct any errors or resolve any identity issues at that time. An officer may not accept an affidavit as proof of a changed name or erroneous date of birth.

The officer should be aware that name changes may occur after the refugee interview, such as in the case of a legal adoption, marriage, or divorce. Applicants requesting a name change at time of adjustment need to submit one of the following documents issued by a civil authority (whether by a foreign state or U.S. authority):

- Legal name change decree – lists former and new legal name;
- Marriage certificate – listing maiden name/last name of spouse;
- Divorce decree – showing restoration of maiden name; or
- Adoption decree – lists adopted child’s birth name and the names of the adoptive parents.

While there may be a reasonable explanation for a refugee to change his or her name after arrival, an officer should consider whether such a change raises the possibility that the person either used an alias or committed fraud or misrepresentation at the time of the overseas interview.

D. Spelling of Names and Naming Convention Issues

From time to time, refugee adjustment applicants may complete an adjustment application by filling out their name in some variation of what was listed on the refugee application or relative petition. Although some immigrants may be permitted on other local or federal government-issued documents to anglicize their name or to use a slightly different spelling, refugees are not permitted to change the spelling of their names from what was listed on their refugee application or relative petition or to use an anglicized version at time of adjustment. This is prohibited in order to preserve the continuity and integrity of immigration records on
Occasionally, the refugee application or relative petition may contain an error in the spelling or the order of a person’s name. If, based on a review of underlying documents in the refugee packet, the officer clearly recognizes such an error, he or she may correct the error by amending the name on the adjustment application accordingly. If the applicant is approved for permanent resident status, the name must also be amended in the appropriate electronic systems.

E. Detained Refugees

In certain circumstances, U.S. Immigration and Customs Enforcement (ICE) may encounter a refugee who has failed to timely file for adjustment of status under INA 209(a). This most often occurs when the refugee has been apprehended by other law enforcement agencies for suspected criminal activity. If ICE determines that the refugee should be placed in removal proceedings, the local Enforcement and Removal Operations (ERO) field office promptly reaches out to its corresponding USCIS Field Office Director or designated point-of-contact to begin the adjustment of status process.

The ERO field office advises the refugee of the requirement by law to file for adjustment of status and provides him or her with an adjustment application and waiver application to fill out prior to the refugee’s release from custody. Should the refugee refuse, ICE personnel fills out Part 1 of both forms instead and signs them as completed by ICE. Originals are sent to the USCIS Field Office Director or designee for expedited processing.

F. Decision

1. Approval

If the adjustment application is properly filed, the applicant meets all eligibility requirements, and the applicant satisfies admissibility and waiver requirements, then the officer must approve the application. Unlike most applications for adjustment of status, refugee adjustments are not discretionary, and the application may only be denied if the applicant is found to be ineligible, inadmissible, or if the application was improperly filed.

Effective Date of Residence

If the adjustment application is approved, the effective date of permanent residence is the date the applicant was first admitted to the United States as a refugee.

The effective date of permanent residence for derivative refugees who gained their status through an approved relative petition and who were already in the United States when the petition was approved is the date the relative petition was approved.

Code of Admission

An applicant who has been granted refugee status in his or her own right (RE-1, classification as a principal) is adjusted using the code “RE-6.” The RE-6 code should not be used for the former spouse or child of a principal refugee where that relationship terminated after the derivative was granted refugee status. The RE-6 code is reserved solely for the principal refugee to ensure there is no confusion regarding the eligibility to file a relative petition.

An applicant who was admitted as a spouse of a refugee (RE-2 classification) who either remains the spouse...
or becomes a former spouse of the principal at time of adjustment is given the code “RE-7.” An applicant who was admitted as a child of a refugee (RE-3 classification) is given the code “RE-8,” regardless of the child’s marital status or current age at time of adjustment.

In cases of nonexistent or fraudulent derivative refugee relationships in which a waiver was granted, applicants should be given an adjustment code of RE-7 or RE-8, depending on the original admission code given, even though they are not technically the derivative spouse or child of the principal refugee.

<table>
<thead>
<tr>
<th>Classes of Applicants and Corresponding Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
</tr>
<tr>
<td>Refugee (Principal)</td>
</tr>
<tr>
<td>Spouse of a Principal Refugee (RE6)</td>
</tr>
<tr>
<td>Child of a Principal Refugee (RE6)</td>
</tr>
</tbody>
</table>

The officer must ensure that the refugee’s new Class of Admission (COA) information is updated in the appropriate electronic systems, so that the applicant receives a Permanent Resident Card. After completion, A-Files are routed to the National Records Center (NRC).

2. Denial

If the adjustment application is denied based on inadmissibility, the refugee should be placed into removal proceedings, provided there are applicable grounds of deportability under [INA 237][4].

If the adjustment application is denied based on improper filing, abandonment, or ineligibility, the applicant has not been inspected for admission and should not be placed into removal proceedings because no determination of admissibility has been made. The applicant continues to have refugee status until such time that the applicant is inspected and an admissibility determination is made.

The officer should write a denial notice explaining the reasons for denial in clear language that the applicant can understand. There is no appeal from the denial, but the applicant may renew the application for adjustment while in removal proceedings before the immigration judge.

Footnotes


[^3] USCIS expanded the interview criteria list for refugee-based adjustment applications (adding the last
eight criteria in the list) on December 15, 2020. The expanded list applies to applications filed on or after that date. USCIS found that the previous interview criteria list resulted in interviews for approximately less than 5 percent of cases. The limited pool of cases diminished USCIS’ ability to develop a uniform baseline for screening and vetting these types of cases as needed to ensure program integrity and align with USCIS’ multi-year effort to institute a comprehensive strategy for detecting and preventing fraud and risks of harm to the United States. Further, the expanded criteria aligns more closely with existing interview criteria for INA 245 adjustment (including not only questions of admissibility but also proper processing such as identity verification) and incorporates criteria developed in practice by service center officers in assessing which cases would benefit from an interview. Accordingly, the expanded criteria promote greater consistency in adjudications across all adjustment applications. These criteria are well within the parameters of 8 CFR 209.1(d), as they retain officers’ discretion, and each is reasonably related to the admissibility of the applicant. Additionally, officers must continue to make each determination to waive or require an interview on a case-by-case basis. Before implementing the changes to the interview criteria list, USCIS recognized that the changes may result in an increase in the number of applicants who may be requested to appear at a USCIS office for an interview. However, USCIS determined the expansion was a necessary step to help ensure program integrity and improve the detection of fraud, misrepresentation, national security threats, and public safety risks.


Chapter 6 - Termination of Status and Notice to Appear Considerations

A. Basis

Changed country conditions in the refugee’s country of nationality do not justify termination of refugee status. The sole basis for an officer to terminate the status of an alien admitted to the United States as a refugee is if the officer determinates that the alien was not a refugee within the meaning of the Immigration and Nationality Act (INA) at the time of his or her admission to the United States. In order to make this determination, an officer must be familiar with how the term “refugee” is defined.\[1\]

This determination standard applies solely to principal refugees and never to derivative refugees. Derivative refugees are not required to prove past persecution or a well-founded fear of future persecution. However, an officer may terminate a derivative refugee’s status if the principal’s status is terminated.

The statute and regulations do not require the formal termination of refugee status prior to removal proceedings where the refugee has been inspected and examined for adjustment of status, has been found inadmissible, and has not been granted a waiver of inadmissibility. Prior to being placed in removal proceedings, the applicant may first be given an opportunity to apply for a discretionary waiver of inadmissibility grounds.

If USCIS denies the adjustment application and/or waiver application, the applicant may also renew his or her application for adjustment or waiver of inadmissibility before an Immigration Judge (IJ). The applicant may also apply for asylum or any other relief from removal before an IJ.

The officer should prepare a Notice To Appear (NTA) if the refugee is inadmissible. Upon written notice of the adjustment application’s denial, the applicant is no longer considered an admitted alien and should be charged with inadmissibility grounds under INA 212(a). However, if the officer is denying the adjustment application on other grounds (e.g., abandonment), the officer should not issue a NTA, since the applicant has...
not been found inadmissible.

Alternatively, USCIS may place a person who was admitted as a refugee directly in removal proceedings, without termination of refugee status, on the basis of any applicable charges under INA 237 without the adjudication of an adjustment application.

**B. Procedures**

USCIS conducts terminations of refugee status. [2] If an officer concludes after reviewing a refugee’s A-file that the facts merit termination of the principal refugee’s status, the officer will follow the procedures below, depending on where the case is located:

**1. Cases Located at Service Centers**

All evidence relevant to a possible termination of refugee status should be reviewed by a supervisor and then scanned and forwarded to the Refugee Affairs Division (RAD) within the Refugee, Asylum, and International Operations Directorate (RAIO) for review. RAD will review the information and send a response back with a recommendation on how to proceed. If RAD recommends relocation of the case for possible termination, the principal’s file and all derivative files, along with a copy of RAD’s recommendation, should be relocated to the district or field office to interview the refugee for possible termination of status.

**2. Cases Located at Field Offices**

All evidence relevant to a possible termination of refugee status should be reviewed by a supervisor and then scanned and forwarded along with an explanation detailing why the officer believes termination may be appropriate to the Field Operations Directorate at headquarters through appropriate channels. This evidence will be forwarded for review to the Refugee Affairs Division (RAD). RAD will review the information and send a response back with a recommendation on how to proceed.

If RAD recommends possible termination, all family members’ files should be requested. Once all family files have been received, the field office should interview the refugee for possible termination of status. If RAD does not recommend termination, no interview is needed for Notice of Intent to Terminate purposes and the officer should resume adjudication of the adjustment application.

**Footnotes**

[^1] See INA 207(c)(4) and 8 CFR 207.9.


**Part M - Asylee Adjustment**

**Chapter 1 - Purpose and Background**

**A. Purpose**
U.S. Citizenship and Immigration Services (USCIS) seeks to:

- Resolve the asylee’s status by ultimately determining whether he or she is admissible to the United States as an immigrant; and
- Provide qualified asylees a pathway to permanent residence as persons of special humanitarian concern to the United States.

**B. Background**

The Refugee Act of 1980 not only provided for the admission and adjustment of status of refugees but also established procedures for aliens to seek asylum. Prior to the Refugee Act, there was no mechanism for someone in the United States to apply for protection under the Refugee Convention. The Refugee Act required the establishment of a procedure for an alien who meets the definition of a refugee to apply for and be granted asylum if physically present in the United States regardless of the person’s immigration status.

The Refugee Act provided for the adjustment of status of asylees to permanent residents. Unlike refugees, asylees are not required to apply for adjustment of status 1 year after receiving asylum. Instead, an asylee may apply for adjustment of status after accruing 1 year of physical presence after receiving asylum status. The asylee is not required to apply within a specific time frame.

Although the Refugee Act exempted asylees from the worldwide annual limitations on immigrants, the law placed a ceiling of 5,000 on the number of asylees who could adjust to permanent resident status each year. The Immigration Act of 1990 increased the annual ceiling to 10,000 and waived the annual limit for those asylees who met the required 1-year physical presence requirement and filed for adjustment of status on or before June 1, 1990. In 2005, the REAL ID Act[^1] permanently eliminated the annual cap on the number of asylees allowed to adjust status.

**C. Legal Authorities**

- [INA 209(b)] – Adjustment of status of refugees
- [8 CFR 209.2] – Adjustment of status of alien granted asylum

**Footnote**


**Chapter 2 - Eligibility Requirements**

An asylee may adjust status to a lawful permanent resident if the asylee meets the following four requirements:

- The asylee has been physically present in the United States for at least 1 year after being granted asylum.
• The principal asylee continues to meet the definition of a refugee, or the derivative asylee continues to be the spouse or child of the principal asylee.

• The asylee has not firmly resettled in any foreign country.

• The asylee is admissible to the United States as an immigrant at the time of examination for adjustment of status, subject to various exceptions and waivers.

Applicants who fail to meet any of these requirements are statutorily ineligible for adjustment of status as an asylee.

The Immigration Act of 1990 (IMMACT 90) added additional eligibility requirements to applicants granted asylum who wish to adjust status. USCIS issued regulations[1] to clarify that persons granted asylum status prior to enactment of IMMACT 90 would not be subject to these additional requirements at time of adjustment.

Therefore, applicants who were granted asylum prior to November 29, 1990 may have their status adjusted to permanent residents even if they no longer are a refugee due to a change in circumstance, no longer meet the definition of a refugee, or have failed to meet the required 1 year of physical presence in the United States after being granted asylum. These applicants need only apply for adjustment and establish that they have not been resettled in another country and are not inadmissible to the United States.

Although it is unlikely that any of these cases still remain pending, an officer should be aware of these special provisions that apply to any asylum adjustment applicant whose grant of asylum was prior to November 29, 1990.

A. Physical Presence in the United States of at Least 1 Year

Only time spent in the United States counts towards the 1-year physical presence requirement. A principal asylee’s physical presence starts accruing on the date the asylee is granted asylum.

If a derivative asylee was physically present in the United States when USCIS approved his or her Refugee/Asylee Relative Petition (Form I-730) or the principal asylee’s Application for Asylum and for Withholding of Removal (Form I-589), whichever is applicable, then the derivative asylee may start accruing physical presence on the approval date of the petition or application. If the derivative asylee is living abroad when USCIS approves the relative petition, then the derivative asylee’s physical presence begins accruing on the date of admission as an asylee.

An asylee who travels outside the United States as an asylee will not meet the physical presence requirement until the cumulative amount of time spent in the United States equals 1 year. The officer should review the asylee’s adjustment application and the documentation in the record to determine whether the asylee has been absent from the United States during the previous calendar year to ensure the asylee meets the physical presence requirement for adjustment.

B. Principal Asylee Continues to Meet the Definition of a Refugee

In order to be eligible for asylee status, the principal asylee had to show a well-founded fear of persecution based on at least one of five statutory grounds:

• Race;
• Religion;
• Nationality;
• Membership in a particular social group; or
• Political opinion.

If an applicant no longer meets the definition of a refugee, he or she is not eligible to adjust status as an asylee. In general, at the time of adjustment, an officer will not readjudicate the asylum claim. However, if there is new evidence that the asylee may not have met the definition of a refugee at the time of the asylum grant, the officer should refer the case to the Asylum Division within the Refugee, Asylum, and International Operations Directorate or to an immigration judge for termination of status.

C. Derivative Asylee Continues to be the Spouse or Child of the Principal Asylee

A derivative asylee must continue to meet the definition of a spouse or child of a refugee both at the time of filing and final adjudication of the adjustment application. A derivative asylee spouse fails to meet this eligibility requirement if the marital relationship has ended. A derivative child fails to meet this requirement if he or she marries or no longer meets the definition of a child. Likewise, if the principal is no longer a refugee or adjusted asylee at the time a derivative seeks to adjust status, then the derivative asylee will no longer qualify.

A derivative asylee who fails to meet this requirement does not lose his or her asylum status when the relationship to the principal asylee ends or when the principal asylee naturalizes. A derivative asylee only loses the ability to adjust status as a derivative asylee, but may adjust status under another category if he or she can establish eligibility.

1. Surviving Spouse or Child of a Deceased Principal Asylee

The Immigration and Nationality Act (INA) was amended by the addition of Section 204(l) which allows USCIS to approve an adjustment of status application for the derivative spouse or child of a deceased qualifying relative, including a derivative spouse or child of a deceased principal asylee. Therefore, an applicant that meets all the requirements of this new law will remain a derivative spouse or child of an asylee for purposes of adjustment of status even after the principal asylee’s death.

This applies to an adjustment of status application adjudicated on or after October 28, 2009, even if the qualifying relative died before October 28, 2009. If a petition or application was denied on or after October 28, 2009, without considering the effect of this section, and the section could have permitted approval, USCIS must, on its own motion, reopen the case for a new decision in light of this new law.

2. Derivative Asylees Ineligible for Adjustment of Status

Divorced Spouse

A spouse who is divorced from the principal asylee is no longer a spouse of the principal and is no longer eligible to adjust status as a derivative asylee.

Married Child
A child who is married either at the time of filing or at the time of adjudication of the adjustment of status application is no longer considered a child of the principal and is no longer eligible to adjust status as a derivative asylee. However, a child who was married after his or her grant of derivative asylum status, but has since divorced (and is therefore unmarried at the time of filing for adjustment of status) may qualify once again as the derivative child of the principal asylee, provided the child is under 21 or eligible for the benefits of the Child Status Protection Act (CSPA).

**Child 21 or Older and Not Eligible for Benefits under the Child Status Protection Act (CSPA)**

Certain derivative children who have turned 21 years old and are not protected by the CSPA are no longer eligible to adjust status as a derivative asylee. This is generally only seen in cases that were filed prior to August 6, 2002.

As of August 6, 2002, any derivative asylee child who had a pending refugee/asylee relative petition (Form I-730), adjustment application (Form I-485) or principal’s asylum application (Form I-589) on or after that date had his or her age “frozen” as of the date the application was filed. This allows the alien’s continued classification as a child for purposes of both asylum and adjustment of status. Any person who aged out prior to August 6, 2002 is not eligible for continuing classification as a child unless one of these applications was pending on August 6, 2002.

As a result of CSPA provisions, an unmarried child who is under 21 on the day the principal asylee files the asylum application will remain eligible to be classified as a child as long as he or she was eligible to be listed on the parent’s asylum application prior to adjudication and is unmarried at the time of adjudication. In determining continuing eligibility as a child for adjustment, the officer need only verify that the derivative applicant’s age was under 21 at the time the principal’s asylum application was filed and that the child is currently unmarried.

**Principal Asylee has Naturalized**

A principal asylee who has naturalized no longer meets the definition of a refugee. Therefore, once the principal has naturalized, a spouse or child is no longer eligible to adjust status as a derivative asylee because they no longer qualify as the spouse or child of a refugee.

**Principal Asylee Who No Longer Meets Definition of Refugee and has Asylum Status Terminated**

If a principal asylee no longer meets the definition of a refugee and his or her asylum status is terminated, then a derivative asylee is also no longer eligible to adjust status.

### 3. Nunc Pro Tunc Asylum Cases

“Nunc pro tunc,” meaning “now for then,” refers to cases where a derivative asylee who is ineligible to adjust status as a derivative asylee may file for and be granted asylum in his or her own right and the grant may be dated as of the date of the original principal’s asylum grant. Any alien who is physically present in the United States regardless of status may apply for asylum. In certain cases, the nunc pro tunc process may enable a derivative asylee who is ineligible to adjust as a derivative to become a principal asylee and eligible to adjust status.

Like any other asylum application filed with USCIS, these cases are handled by the Asylum Division of the Refugee, Asylum and International Operations (RAIIO) Directorate. New asylum applications can be filed by derivative asylees requesting to be considered as principal applicants.

If an officer encounters a case in which the applicant is not eligible for adjustment of status as a
derivative asylee, the adjustment application should be denied.

4. Pre-Departure Marriages and Divorces

Occasionally, derivative asylees who are admitted to the United States based on a refugee/asylee relative petition (Form I-730) will end their relationship to the principal asylee through either divorce or marriage after the grant of the petition, but before being admitted to the United States. In these cases, if the derivative asylee was admitted to the United States, he or she was not eligible for that status at time of admission because the status was dependent upon the relationship to the principal, which no longer existed at time of admission. While USCIS may pursue termination of status on these applicants, the actual relationship of the derivative to the principal may be a consideration in the determination. In cases in which the officer makes an initial determination that termination may be appropriate, he or she should return the file to the asylum office for further review and potential termination of status.

Derivatives who end their relationship with the principal asylee at any time are not eligible to adjust status in their own right, but may be eligible to file for asylum as a principal applicant.

5. Non-Existent or Fraudulent Relationships

At times, an officer may discover that a derivative asylee never had a bona fide relationship to the principal asylee. Examples would include a claimed spouse who was never legally married to the principal although they may have cohabitated or other relatives who are claimed as children. Those derivatives will be ineligible to adjust status.

Additionally, applicants who have no relationship to the principal asylee could claim a relationship as either a spouse or child, and likewise the principal asylee could claim a relationship to them, in order to be granted asylum. These applicants are ineligible for admission as derivative asylees and may be found removable for fraud or misrepresentation.

Although they were admitted as derivative asylees, they were not eligible for that status when they were admitted because their status was dependent upon their relationship to the principal, which did not exist at the time of admission. USCIS may decide to pursue termination of status on these persons; however, the actual relationship of the derivative to the principal should be a factor when considering possible termination of status.

In cases in which the adjustment officer makes an initial determination that termination may be appropriate, he or she should return the file to the asylum office for further review and potential termination of status.

D. Not Firmly Resettled in Any Foreign Country

An applicant who has firmly resettled in another country is not eligible to obtain either asylum or adjustment of status as an asylee in the United States. A person is considered firmly resettled in another country if he or she has been offered resident status, citizenship, or some other type of permanent resettlement in another country.

The asylum officer would have considered whether the application was firmly resettled prior to arriving in the United States so an officer considering the adjustment of status application would rarely need to reconsider the prior determination. However, any evidence in the file that suggests resettlement in another country subsequent to the granting of asylum status will need to be considered.
Chapter 3 - Admissibility and Waiver Requirements

An asylee adjustment applicant must be admissible at the time USCIS grants the adjustment of status. Because an asylee is not subject to admissibility grounds at the time of the asylum grant, the adjudication of the adjustment application may be the first instance that inadmissibility grounds are considered. The applicants may be found inadmissible based on any information in the A-file or submitted with the adjustment application or through security checks.

A. Exemptions

The following grounds of inadmissibility do not apply to asylees adjusting status:

- Public Charge – INA 212(a)(4)
- Labor Certification and Qualifications for Certain Immigrants – INA 212(a)(5)
- Documentation Requirements for Immigrants – INA 212(a)(7)(A)

B. Applicable Inadmissibility Grounds

The following grounds of inadmissibility apply to asylees adjusting status:

- Health-Related – INA 212(a)(1)
- Crime-Related – INA 212(a)(2)
- Security-Related – INA 212(a)(3)
- Illegal Entrants and Immigration Violators – INA 212(a)(6)
- Ineligibility for Citizenship – INA 212(a)(8)
• Aliens Previously Removed – INA 212(a)(9)
• Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation – INA 212(a)(10)

1. Health-Related Considerations

In some cases, a derivative asylee who had a Refugee/Asylee Relative Petition (Form I-730) processed overseas may have had a Class A medical condition that was waived for purposes of admission as an asylee. In these instances, the waiver does not carry through to adjustment and the applicant must submit to a new medical examination to determine whether the Class A medical condition has been resolved.

2. Unlawful Presence Considerations

An unlawful presence exception applies during the period of time in which the asylee had a bona fide, pending asylum application. The time period that the applicant’s bona fide asylum application was pending should not be included in any unlawful presence calculation[1] provided the applicant was not employed without authorization during such time period. Unauthorized employment would disqualify the asylee from this exception.[2]

While departures from the United States may trigger an unlawful presence bar, an officer may consider a waiver for unlawful presence either through submission of a waiver application (Form I-602), or in conjunction with the adjustment of status application, in instances in which a waiver application is not requested. If the officer does not request a waiver application, the officer should notate any waiver granted on the adjustment of status application. However, the Board of Immigration Appeals held on April 17, 2012 that travel on advance parole for a pending adjustment applicant will not trigger the unlawful presence bar.[3]

C. Inadmissibility Grounds that May Not Be Waived

While waivers are generally available for most of the grounds listed in Section B, Applicable Inadmissibility Grounds,[4] the following grounds of inadmissibility cannot be waived:

• Controlled Substance Traffickers – INA 212(a)(2)(C)
• Espionage; Sabotage; Illegal Export of Goods, Technology, or Sensitive Information; Unlawful Overthrow or Opposition to U.S. Government – INA 212(a)(3)(A)
• Terrorist Activities – INA 212(a)(3)(B) (Note: Exemptions for some of these grounds exist)
• Adverse Foreign Policy Impact – INA 212(a)(3)(C)
• Participants in Nazi Persecutions or Genocide – INA 212(a)(3)(E)

An officer should deny the adjustment application where no waiver or exemption is available due to the type of inadmissibility found.

National Security Issues

In the event that the adjudicating officer identifies at any stage one or more national security indicator(s) or concerns unknown at the time of the grant of asylum, the officer should refer to USCIS guidance on

AILA Doc. No. 19060633. (Posted 3/26/21)
disposition of national security cases. The officer should also follow current USCIS instructions on cases that involve terrorist related grounds of inadmissibility for disposition of the case or see their supervisor for questions.

Unless a case is sent specifically to a field office for resolution of Terrorist Related Inadmissibility Ground (TRIG) issues and final adjudication of the adjustment application, an officer should return any asylee adjustment case with unresolved TRIG issues to the originating service center for resolution.

D. Waivers[5]

All grounds of inadmissibility listed at Section B, Applicable Inadmissibility Grounds[6] are subject to waiver, if the applicant can establish he or she qualifies for a waiver.

An asylee adjustment applicant may have a ground of inadmissibility waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. This type of waiver does not require the applicant to prove extreme hardship.

In adjudicating a discretionary waiver application for asylee adjustment, an officer must balance the humanitarian, family unity, or public interest considerations with the seriousness of the offense or conduct that rendered the applicant inadmissible. In making this determination, an officer should recognize that the applicant has already established past or a well-founded fear of future persecution, which is an extremely strong positive discretionary factor.

Footnotes


[^5] For more information on waiver policies and procedures, see Volume 9, Waivers and Other Forms of Relief, Part A, Waiver Policies and Procedures [9 USCIS-PM A]


Chapter 4 - Documentation and Evidence

Officers should review the following documentation to determine an asylee’s eligibility to adjust status.

A. Required Documentation and Evidence

- Application to Register Permanent Residence or Adjust Status (Form I-485)

Each applicant must file a separate application with fee (unless granted a fee waiver), regardless of whether the applicant is a principal or derivative asylee.
The officer must check the Form I-485 for additional aliases requiring a systems query. Also, the officer should review the applicant’s address history information.

If the applicant lists a country in their address history other than the applicant’s country of persecution, the officer should consider this as potential evidence of resettlement in a country other than the United States by the applicant. However, an applicant is only considered firmly resettled in another country if they have been offered resident status, citizenship, or some other type of permanent resettlement in another country.

- Proof of asylum status

An officer must review the contents of the A-file for proof of asylum status. The A-file should contain an approved Application for Asylum and for Withholding of Removal (Form I-589) or an approved Refugee/Asylee Relative Petition (Form I-730). Although an applicant may submit an Arrival/Departure Record (Form I-94) or an approval notice of the relative petition with their application, these documents must always be cross-checked with evidence in the A-file and in USCIS’ systems to confirm the applicant’s asylum status.

- Evidence of 1-year physical presence in the United States

An officer can verify physical presence for a principal asylee by reviewing the date the asylum application was approved, as indicated either on the approval letter from the asylum office or on the order from the immigration judge, the Board of Immigration Appeals, or a federal court. Officers may also check the information available in the Refugees, Asylum, and Parole System (RAPS).

An officer can generally verify physical presence for a derivative asylee by reviewing:

- The “Date of Last Arrival” and “Place of Last Arrival into the United States” fields on the adjustment application;
- The principal’s and derivative’s “Address History” listed on each Form I-485; and
- The admissions information contained in USCIS’ systems.

Officers should also review the date of admission as an asylee found on an Arrival/Departure Record (Form I-94) against the filing date of the adjustment application.

An officer should review any requests for travel documents or advance parole prior to the filing of the adjustment application. If there is doubt as to the applicant’s time periods in the United States, the officer may request additional information verifying physical presence. This may include pay stubs or employment records, school or medical records, rental and utility receipts, or any other documentation that supports proof of residence.

- Two (2) passport-style photos taken no earlier than 30 days prior to filing
- Report of Medical Examination and Vaccination Record (Form I-693)

A principal asylee is required to submit a complete medical examination and vaccination record. The examination must be completed by a USCIS designated civil surgeon, meet the standards of the medical examination, and include all required vaccinations as of the date of the examination. A complete medical examination is not required of all derivative asylees at time of adjustment.

Derivative asylees that had a medical examination conducted overseas will not be required to undergo a new medical examination at the time of applying for adjustment of status if:
• The results of the overseas medical examination are contained in the A-file and no Class A condition was reported;

• The asylee has applied for adjustment of status within 1 year of filing eligibility (for example, within 2 years of the date of admission as an asylee derivative); and

• There is no evidence in the A-file or testimony given at an interview to suggest that the asylee has acquired a Class A condition subsequent to his or her entry into the United States.

Even if a complete new medical examination is not required, the applicant must still establish compliance with the vaccination requirements and submit the vaccination record portion of the medical examination record with the adjustment application. Unlike refugees, derivative asylees may not have their vaccination records completed by a health department with a blanket waiver as a civil surgeon. Blanket waivers for civil surgeons only extend to refugee vaccination certifications.[1]

• Certified Copies of Arrest/Court Records (if applicable)

An applicant must submit an original official statement by the arresting agency or certified court order for all arrests, detentions or convictions.

• Application by Refugee for Waiver of Grounds of Excludability (Form I-602) (if applicable)

B. Supplemental Documentation and Evidence

Applicants often submit supplemental documentation although not required to do so. This may include:

• Arrival/Departure Document (Form I-94), with appropriate endorsement

• Birth certificate, when obtainable

See the Department of State Reciprocity Tables for identity documents that cannot be obtained in particular countries and during specific time periods. There may be other instances in which a birth certificate is unobtainable because of country conditions or personal circumstances. In these instances, an applicant may submit affidavits to establish his or her identity. The officer may also review the A-file to check for a birth certificate that the applicant submitted with the asylum application or other evidence the applicant submitted at the time of the interview to establish his or her identity.

• Copy of passport(s), when obtainable

In many instances, an asylee will be unable to produce a copy of his or her passport. There may be other instances in which a passport is unobtainable due to country conditions, personal circumstances or the simple fact that the applicant never possessed a passport. In these cases, a copy of a passport is not required and the officer may use evidence in the applicant’s A-file to verify his or her identity. The asylee’s date of birth and nationality are established during the asylum application or relative petition process.

The officer should review any supplemental documentation submitted by the applicant to ensure it is consistent with the documentation contained in the A-file. Since identity is already established during the asylum proceedings, a birth certificate or passport is not required at the time of adjustment. Nevertheless, if the applicant submits any of these documents, the officer must address and resolve any discrepancies at the time of adjudication. In all cases, considerable weight is given to the documentation contained in the asylum packet or with the relative petition.
C. Documentation Already Contained in the A-File

The original asylum application should already be in a principal applicant’s A-file. A copy of the asylum application should also be found in the A-file of each derivative asylee who was in the United States at the time of asylum adjudication and was included on the asylum application. The relative petition should be in a derivative asylee’s A-file if the derivative asylee followed to join the principal and was not included on the original asylum application.

Each case file will contain all of the forms, evidence, and officer notes that were part of the application for asylum. The most important document for an officer to review is either the asylum application (Form I-589) or the relative petition (Form I-730). Both provide proof of status and establish identity (with attached photo) as well as citizenship, since many asylees will not have a birth certificate or passport.

D. Unavailable or Missing Documentation

When an asylee flees the country of persecution, they may have been unable to obtain any documentation issued by a civil authority as proof of identity or of a familial relationship. At the time of the asylum interview, the asylum officer reviews a myriad of documents and affidavits and solicits testimony when seeking to establish an asylum-seeker’s personal and family identity. Any available documents submitted at the time of the asylum interview should be contained within the A-file.

An officer may rely on the documents contained in the A-file to verify the applicant’s identity at the time of adjustment. While it is not necessary to request the applicant’s birth certificate or passport as proof of identity, officers should review any documentation the applicant submits to establish identity. Additionally, photos the applicant submits should be compared to the photos in the A-file. If an officer is unable to establish an applicant’s identity due to discrepancies between the documentation the applicant submitted and the information contained in the A-file, then the file should be forwarded to the field office having jurisdiction over the case for interview and resolution.

Footnote

[^1] This is a determination made by the Department of Health and Human Services, Centers for Disease Control and Prevention.

Chapter 5 - Adjudication Procedures

A. Record of Proceedings Review and Underlying Basis

The officer should place all documents in the file according to the established record of proceedings (ROP) order, including the filing of any documents the applicant submitted in response to a Request for Evidence (RFE).

In determining eligibility for adjustment of status as an asylee, the officer should review the underlying application (either Form I-589 or Form I-730) that provided the applicant with asylum status. The application establishes identity, family relationships, and date of grant of asylum status (if a principal asylee or a derivative asylee was within the United States at time of grant).
B. Interview Criteria

Officers make the decision to interview an asylee applicant for adjustment of status on a case-by-case basis. Interviews are generally required when an officer is unable to verify identity or eligibility or determine admissibility based solely on the available immigration records. Although the decision to conduct an interview is made on a case-by-case basis, an officer should generally refer a case for interview if it meets one or more of the following criteria:

- The officer cannot verify the identity of the applicant through the information in the A-File.
- The officer can verify the identity of the applicant through the information in the A-File, but the applicant is claiming a new identity.
- Immigration records are insufficient for the officer to determine whether or not the applicant has asylum status.
- The applicant has an approved Form I-730 but, if granted overseas, was not interviewed as part of the overseas process or, if in the United States, was not interviewed prior to the approval.
- The applicant’s Federal Bureau of Investigation (FBI) fingerprint results indicate a record that may cause the applicant to be inadmissible, or the applicant has had two unclassifiable fingerprints and the applicant must provide a sworn statement at an interview.
- The officer cannot determine the applicant’s admissibility without an interview.
- The officer determines that the applicant is inadmissible but that an interview is necessary to determine if a waiver is appropriate.
- There is evidence that suggests that the original grant of asylum may have been obtained through fraud or misrepresentation.
- There is evidence that suggests that the principal asylum applicant no longer meets the definition of a refugee.
- There is evidence that suggests that the asylee derivative beneficiary no longer has the requisite relationship to adjust status as a derivate spouse or child.
- The applicant has an articulable national security or terrorism-related ground of inadmissibility concern.
- Other eligibility fraud, identified on a case-by-case basis, where Fraud Detection and National Security (FDNS), Center Fraud Detection Operations (CFDO), or Background Check Units (BCU) recommends interview.
- Immigration records are insufficient for the officer to determine whether or not the applicant is inadmissible based on past or current placement in removal proceedings at any time.
- The applicant has conflicting or multiple identities, other than properly documented by legal name changes.
- A sworn statement is required to address the applicant’s admissibility.
• An interview would yield clarifying information, such as with an unclear response to a request for evidence concerning the applicant’s admissibility.

• The applicant is a citizen of, or last habitually resided in, a country that is now or was at the time of last residence a State Sponsor of Terrorism.

• The officer has any other articulable concern regarding identity, inadmissibility, national security, public safety, or fraud, and recommends an interview to help resolve that concern.

These interview criteria may be modified in response to developing circumstances and concerns. These criteria are similar to those used by USCIS generally when determining if an interview is required for a particular adjustment of status application and promote greater consistency in the agency’s adjudication of adjustment of status applications. The additional criteria specific to adjustment of status applications filed by asylees and their derivative family members help ensure program integrity and improve the detection of fraud, misrepresentation, national security threats, and public safety risks.[3]

C. Waiver Instructions

When the officer determines that an applicant is inadmissible and a waiver is available, the officer may grant the waiver without requiring submission of an Application by Refugee for Waiver of Grounds of Excludability (Form I-602) if:

• The applicant is inadmissible under a ground of inadmissibility that may be waived (other than health-related grounds);

• USCIS records and other information available to the officer contain sufficient information to assess eligibility for a waiver;

• There is no evidence to suggest that negative factors would adversely impact the exercise of discretion; and

• It is appropriate to grant a waiver.

If the adjudicating officer determines that a waiver application (Form I-602) is not required, the officer should indicate that the waiver has been granted by annotating on the adjustment application the particular inadmissibility that has been waived. The officer may use a written annotation, stamp, or pre-printed label to indicate the specific inadmissibility ground that is being waived in any open space on the face of the adjustment application.

An officer’s signature and approval stamp on the adjustment application also serves as the signature and approval of the waiver for any waived grounds of inadmissibility specified on the face of the adjustment application. Waivers granted because the vaccinations were not medically appropriate or other blanket waivers for medical grounds do not require a waiver annotation on the adjustment application or the medical examination and vaccination record (Form I-693). All others require an annotation.

When a waiver application is required, the officer should stamp the waiver application approved, check the block labeled “Waiver of Grounds of Inadmissibility is Granted,” and make the appropriate endorsements in the space provided.

In both instances, there is no need for a separate approval notice since the approval of the adjustment application also indicates the approval of the waiver or the waiver application.
If the applicant is statutorily ineligible for a waiver (that is, he or she is inadmissible under a ground of inadmissibility that cannot be waived) or if there are sufficient negative factors to warrant denial of the waiver application, the officer should check the block labeled “Waiver of Grounds of Inadmissibility is Denied” and write “See Form I-291”[4] in the space labeled “Reasons.”

The officer should fully discuss the denial of the waiver in the written decision of the adjustment application. While there is no appeal from the denial of the waiver application, an immigration judge may consider the waiver application de novo when he or she considers the renewed adjustment application during removal proceedings.

D. Requests to Change Name or Date of Birth

Asylum-seekers sometimes enter the United States with fraudulent documentation. This fraudulent biographical information may be entered in the agency’s information systems as an alias. The asylee will have to address and reconcile any outstanding discrepancies in biographical information found in case records or USCIS data systems at the time of adjustment.

While a principal asylee would have had his or her identity confirmed at time of asylum grant, this may not be true for derivative asylees who had neither an overseas interview nor an interview by a USCIS officer as a part of the Form I-730 adjudication process.

In this case, the derivative asylee may have to provide documentation as proof of his or her true identity if the biographical information contained on the Form I-730 does not match the information contained on the adjustment application. Additionally, the applicant would need to provide a reasonable explanation for why his or her true identity, including name and date of birth, was not properly established with the Form I-730.

During the asylum or overseas interview, asylees reviewed their asylum application or relative petition and biographical information and had the opportunity to correct any errors or resolve any identity issues at that time. Therefore, an officer should be cautious in reviewing any documents that now assert a change to the applicant’s name or date of birth, as it raises the possibility that the person either used an alias or committed fraud or misrepresentation at the time of the asylum or overseas interview. An officer may not accept an affidavit as proof of a changed name or date of birth.

An officer should be aware that name changes may legitimately occur after the asylum or overseas interview, such as in the case of a legal adoption, marriage, or divorce. Applicants requesting a name change at the time of adjustment need to submit one of the following civil-issued documents:

- Legal name change decree – lists former and new legal name;
- Marriage certificate – lists maiden name/last name of spouse;
- Divorce decree – shows restoration of maiden name; or
- Adoption decree – lists adopted child’s birth name and the names of the adoptive parents.

E. Spelling of Names and Naming Convention Issues

From time to time, asylee adjustment applicants may complete an adjustment application by filling out their name in some variation of that which was listed on the Form I-589 or Form I-730. Although immigrants may be permitted on other local or federal government-issued documents to change their name or use a slightly different spelling, asylees are not permitted to change the spelling of their names from that listed on their application.
asylum application or relative petition or to use another version of their name at time of adjustment, unless the applicant provides documentation of a legal name change. This is prohibited in order to preserve the continuity and integrity of immigration.

The asylum application or relative petition might contain an error in the spelling or the order of a person’s name. If an officer, based on a review of underlying documents in the A-File, recognizes that the original application or petition clearly had an error and the applicant is requesting the corrected name on the adjustment application, the officer may correct the error by amending the name on the application. If the applicant is granted permanent resident status, the name must also be corrected in the appropriate electronic immigration systems.

**F. Decision**

**1. Approvals**

If the application is properly filed, the applicant meets the eligibility requirements, and the applicant satisfies admissibility or waiver requirements, then the officer may approve the adjustment application as a matter of discretion.

*Effective Date of Residence*

The date of adjustment for approved applications filed by asylees is 1 year before the date of being approved for permanent residence.

For example, an asylee is granted asylum status on January 1, 2007. The asylee files for adjustment of status on March 15, 2009, and the application is approved on July 1, 2009. The date of adjustment of status is rolled back 1 year to July 1, 2008. This is the date that appears on the applicant’s Permanent Resident Card and in USCIS systems. Additionally, the 1-year roll back is counted toward physical presence for naturalization purposes.

*Code of Admission*

An applicant who has been granted asylum status as a principal asylee is adjusted using the code “AS-6.” The AS-6 code is reserved for the principal asylee to ensure there is no confusion regarding the eligibility to file a relative petition. The AS-6 code also applies to asylees who were granted asylum through the nunc pro tunc process. An applicant who adjusts status as a spouse of an asylee (AS-2 classification) is given the code “AS-7.” An applicant who adjusts status as a child of a principal asylee (AS-3 classification) is given the code “AS-8.”

<table>
<thead>
<tr>
<th>Classes of Applicants &amp; Corresponding Codes of Admission</th>
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</thead>
<tbody>
<tr>
<td><strong>Applicant</strong></td>
</tr>
<tr>
<td>Asylee (Principal)</td>
</tr>
<tr>
<td>Spouse of a Principal Asylee (AS6)</td>
</tr>
</tbody>
</table>


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The officer must ensure that the asylee’s new Class of Admission (COA) information is updated in the appropriate electronic systems, so that the applicant receives a Permanent Resident Card. After completion, cases are routed to the National Records Center (NRC).

2. Denials

If an applicant fails to establish eligibility for adjustment under this section, the application is denied. The officer must provide the applicant with a written notice specifying the reasons for denial in clear language the applicant can understand. While there is no appeal from denial of this type of case, a motion to reopen may be considered if timely filed within 30 days of the date of the denial and received before removal proceedings are instituted.

An applicant may also renew the application for adjustment while in removal proceedings before an immigration judge. If a motion includes a waiver, and the motion to reopen is granted, the officer must adjudicate the waiver before a final decision can be made on the adjustment application.

If an officer denies the adjustment application due to ineligibility, improper filing, or abandonment of the application, the applicant should not be placed into removal proceedings and the applicant still keeps his or her asylum status. In certain instances, if the officer denies the adjustment application because the applicant is inadmissible, the asylee may be placed into removal proceedings.

Footnotes


[^3] USCIS expanded the interview criteria list for asylee-based adjustment applications (adding the last eight criteria in the list) on December 15, 2020. The expanded list applies to applications filed on or after that date. USCIS found that the previous interview criteria list resulted in interviews for approximately less than 5 percent of cases. The limited pool of cases diminished USCIS’ ability to develop a uniform baseline for screening and vetting these types of cases as needed to ensure program integrity and align with USCIS’ multi-year effort to institute a comprehensive strategy for detecting and preventing fraud and risks of harm to the United States. Further, the expanded criteria aligns more closely with existing interview criteria for INA 245 adjustment (including not only questions of admissibility but also proper processing such as identity verification) and incorporates criteria developed in practice by service center officers in assessing which cases would benefit from an interview. Accordingly, the expanded criteria promote greater consistency in adjudications across all adjustment applications. These criteria are well within the parameters of 8 CFR 209.2(e), as they retain officers’ discretion, and each is reasonably related to the admissibility of the applicant. Additionally, officers must continue to make each determination to waive or require an interview on a case-by-case basis. Before implementing the changes to the interview criteria list, USCIS recognized that the changes may result in an increase in the number of applicants who may be requested to appear at a USCIS office for an interview. However, USCIS determined the expansion was a necessary step to help
ensure program integrity and improve the detection of fraud, misrepresentation, national security threats, and public safety risks.

[^4] USCIS uses the Form I-291 to inform the applicant of the denial of his or her application.

Chapter 6 - Termination of Status and Notice to Appear Considerations

On occasion, an officer reviewing the adjustment application will discover evidence that indicates the applicant was not eligible for asylum status at the time of asylum grant or is otherwise no longer eligible for asylum status. The officer should return the file to the asylum office for further review and potential termination of status.

A. Basis

A grant of asylum does not convey a right to remain permanently in the United States and may be terminated.[1] The date of the asylum grant guides the termination procedures.

Fraud in the application pertaining to eligibility for asylum at the time it was granted is grounds for termination regardless of the filing date.

1. Asylum Application Filed on or after April 1, 1997

USCIS may terminate asylum if USCIS determines that the applicant:

- No longer meets the definition of a refugee;
- Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- Constitutes a danger to the community of the United States, if convicted of a particularly serious crime;
- Committed a serious nonpolitical crime outside the United States prior to arriving in the United States;
- Is a danger to the security of the United States, including terrorist activity;
- May be removed, to a country (other than the country of the applicant’s nationality or last habitual residence) in which the applicant’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, where the applicant is eligible to receive asylum or equivalent temporary protection;
- Has voluntarily availed himself or herself of the protection of the country of nationality or last habitual residence by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or
- Has acquired a new nationality and enjoys the protection of the country of his new nationality.

2. Asylum Application Filed before April 1, 1997

USCIS may terminate the approval of asylum if USCIS determines that the applicant:
• No longer has a well-founded fear of persecution due to changed country conditions;
• Was convicted of a particularly serious crime or an aggravated felony;
• Was firmly resettled in a third country;
• Can reasonably be regarded as a danger to the security of the United States; or
• Is a persecutor or has engaged in terrorist activity.

B. Procedures

1. Asylum Granted by USCIS or INS

Termination Before Decision on Adjustment Application

USCIS may initiate termination of asylum status if USCIS or legacy Immigration and Naturalization Services (INS) initially granted the status. USCIS may not terminate asylum status granted by an immigration judge (IJ) or the Board of Immigration Appeals (BIA). If an officer determines that termination may be appropriate in a case where USCIS or legacy INS granted asylum, the officer should forward the case to the asylum office with jurisdiction before adjudicating the adjustment of status application. Jurisdiction is based on the current residence of the alien, regardless of which USCIS office or legacy INS office originally granted asylum status.

In all but the Ninth Circuit (discussed below), the asylum office must provide the alien with written notice before USCIS terminates the alien’s asylum status and any related employment authorization. The written notice is called a Notice of Intent to Terminate (NOIT). The NOIT presents the termination ground(s) under consideration, provides a brief summary of the evidence supporting the grounds for termination, and notifies the alien that he or she will have an opportunity to rebut the termination grounds during a scheduled termination interview at an asylum office or a hearing before an IJ. The NOIT must contain prima facie evidence supporting the termination ground(s).

The alien must be given at least 30 days to respond to the NOIT and present evidence that he or she is still eligible for asylum. After considering the evidence, including the alien’s response, lack of a response, or failure to appear, if the asylum office determines that one or more grounds of termination have been established by a preponderance of the evidence, the asylum office issues a Notice of Termination (NOT) and a Notice to Appear (NTA).

Upon termination of asylum status, USCIS denies the pending adjustment application. The adjustment of status denial must set forth the reason(s) for the denial. There is no appeal from the denial of the adjustment of status application, but the alien may renew the application for adjustment in his or her removal proceedings before the immigration court.[2]

Alternatively, at the discretion of an Asylum Office Director, the asylum office may issue a NOIT with an NTA, referring the termination of asylum status to U.S. Immigration and Customs Enforcement (ICE) to pursue in removal proceedings. At any time after the alien is issued a NOIT and an NTA, an IJ may terminate asylum granted by USCIS or legacy INS at a termination hearing held in conjunction with removal proceedings. When a NOIT and NTA have been filed with the immigration court before the adjustment of status application is adjudicated, USCIS may deny the pending adjustment application for lack of jurisdiction. The alien may file an adjustment application in removal proceedings.
Asylees Residing in the Ninth Circuit

In *Nijjar v. Holder*, the Ninth Circuit Court of Appeals determined that USCIS cannot terminate asylum for aliens residing within the jurisdiction of the Ninth Circuit. Rather, the asylum office issues a NOIT with an NTA, referring the termination of asylum status to ICE to pursue in removal proceedings. If the alien does not reside in the Ninth Circuit, the officer should forward the case to the asylum office with jurisdiction over the alien’s current residential address for termination review.

**Derivative Asylees**

Termination of asylum status for a principal asylee also results in termination of any derivative’s asylum status, if the derivative asylee has not yet adjusted to lawful permanent resident (LPR) status. If USCIS issues a NOIT to a principal asylee, the NOIT also includes any derivative asylees who have not yet adjusted status.

USCIS may terminate the asylum status of a derivative asylee who has not adjusted status and whose asylum status was granted by USCIS, even if the principal asylee was granted asylum by an IJ or the BIA, so long as there is an independent ground to terminate the derivative’s asylum status. If it is a derivative asylee who is subject to termination, and not the principal asylee, USCIS includes only the derivative asylee in the NOIT. When the grounds for termination apply to only a derivative asylee, the derivative asylum status is terminated without effect on the principal asylee’s status.

**Post-Adjustment Actions**

If an alien adjusted to LPR status and an officer later determines there is evidence that an asylum termination ground or related inadmissibility ground applied before the adjustment occurred, USCIS may take steps to rescind the alien’s permanent resident status (if within 5 years of adjustment) or issue an NTA.

**2. Asylum Granted by Immigration Court**

USCIS may not terminate asylum status granted by an IJ since jurisdiction rests with the immigration court. To initiate termination of asylum in these cases, ICE must file a motion to reopen proceedings before the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR).

**Footnotes**

[^1] See INA 208(c)(2).


[^5] Derivative asylee includes family members included on the principal asylee’s Application for Asylum and for Withholding of Removal (Form I-589) or who followed to join as asylee beneficiaries of a Refugee/Asylee Relative Petition (Form I-730).
In these circumstances, the termination does not preclude the former derivative from applying for asylum or withholding of removal on his or her own as a principal asylee.

USCIS does not have jurisdiction to terminate derivative asylees’ asylum status where such status was granted by the immigration court. For more information, see Subsection 2, Asylum Granted by Immigration Court [7 USCIS-PM M.6(B)(2)].

See INA 246.

EOIR’s jurisdiction includes principal and derivative asylees granted asylum by the IJ. See 8 CFR 208.24(f).

Part N - Legalization

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 24 - Legalization (External) (PDF, 261.48 KB)

Part O - Registration

Chapter 1 - Presumption of Lawful Admission

A. Purpose

USCIS may recognize certain classes of immigrants who entered the United States during specific time periods as having been lawfully admitted for permanent residence even though a record of their admission cannot be found. Such immigrants who have not abandoned status or been ordered excluded, deported, or removed may be eligible for a creation of record of their lawful permanent residence. This process is called “presumption of lawful admission” and is essentially a verification of status, rather than an adjustment of status.

B. Background

As U.S. immigration laws were codified, certain groups of aliens were unable to prove their entry, admission, or immigration status in the United States based on records or other evidence. Various provisions grandfathered these aliens into existing law by allowing for the recording of their lawful admission for permanent residence.

C. Legal Authority

- 8 CFR 101.1 – Presumption of lawful admission
D. Eligibility Requirements

An immigrant is presumed to be a lawful permanent resident of the United States if he or she can show presence in the United States under any of the standards in 8 CFR 101.1. There are more than 30 situations when an immigrant is entitled to presumption of lawful admission for permanent residence. Some merely require that the applicant establish that he or she entered the United States before a certain date. Others require a particular nationality, entry at a particular location, entry by a certain manner, or other requirements. An officer should review the regulation to ensure an applicant is in fact eligible to register his or her lawful permanent residence.

Eligibility to register permanent resident status based on a presumption of lawful admission requires an immigrant to establish that he or she has not abandoned his or her residence in the United States. One of the tests for retention of permanent resident status is continuous residence in the United States. The applicant must also be physically present in the United States at the time he or she files the application.

All presumption of lawful admission cases require an admission to the United States in 1957 or earlier. It is the applicants’ responsibility to establish their admission through documentation, testimony, or affidavits. However, an officer should consider the passage of time since the events in question and the difficulties inherent in documenting events that may have occurred decades ago.

The following table provides a list of eligible classes for presumption of lawful admission and whether evidence of admission is required.

<table>
<thead>
<tr>
<th>Eligible Class of Aliens</th>
<th>Regulation</th>
<th>Evidence of Admission Required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entered prior to June 30, 1906.</td>
<td>8 CFR 101.1(a)</td>
<td>No</td>
</tr>
<tr>
<td>Citizen of Canada or Newfoundland who entered the United States across the Canadian border prior to October 1, 1906.</td>
<td>8 CFR 101.1(b)</td>
<td>No</td>
</tr>
<tr>
<td>Citizen of Mexico who entered the United States across the Mexican border prior to July 1, 1908.</td>
<td>8 CFR 101.1(b)</td>
<td>No</td>
</tr>
<tr>
<td>Citizen of Mexico who entered the United States at the port of Presidio, TX, prior to October 21, 1918.</td>
<td>8 CFR 101.1(b)</td>
<td>No</td>
</tr>
<tr>
<td>Eligible Class of Aliens</td>
<td>Regulation</td>
<td>Evidence of Admission Required?</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>An alien who establishes he or she gained admission to the United States prior to July 1, 1924 based on a pre-examination at a U.S. immigration station in Canada.</td>
<td>8 CFR 101.1(b)</td>
<td>No</td>
</tr>
<tr>
<td>An alien who entered the U.S. Virgin Islands prior to July 1, 1938 even if there is a record of admission as a nonimmigrant.</td>
<td>8 CFR 101.1(c)</td>
<td>Yes</td>
</tr>
<tr>
<td>An alien who established that he or she is indigenous to and native of a country within the Asiatic zone[4] who is:</td>
<td>8 CFR 101.1(d)</td>
<td>Yes</td>
</tr>
<tr>
<td>• Exempted from exclusion; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Entered the United States prior to July 1, 1924.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certain Chinese aliens with record of admission prior to July 1, 1924 under laws and regulations formerly applicable to Chinese aliens.</td>
<td>8 CFR 101.1(e)(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Certain Chinese or Japanese aliens who were admitted or readmitted on or after July 1, 1924, including certain aliens admitted under specific provisions of the Nationality Act of 1940.</td>
<td>8 CFR 101.1(e)(2)</td>
<td>Yes</td>
</tr>
<tr>
<td>[Note: Most admissions under this provision took place between July 1, 1924 and December 23, 1952.]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Philippine citizen who entered the United States prior to May 1, 1934.[5]</td>
<td>8 CFR 101.1(f)(1)</td>
<td>Yes</td>
</tr>
<tr>
<td>Philippine citizen who entered Hawaii between May 1, 1934 and July 3, 1946 (inclusive) under the provisions of the last sentence of Section 8(a)(1) of the Act of March 24, 1934.[6]</td>
<td>8 CFR 101.1(f)(2)</td>
<td>Yes</td>
</tr>
<tr>
<td>Aliens when admitted, expressed an intention to remain temporarily or pass in transit through the United States, but who remained in the United States, including those admitted prior to June 3, 1921 or admitted pursuant to the Act of May 19, 1921. [7]</td>
<td>8 CFR 101.1(g)</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### Eligible Class of Aliens

<table>
<thead>
<tr>
<th>Eligible Class of Aliens</th>
<th>Regulation</th>
<th>Evidence of Admission Required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens of the Trust Territory of the Pacific Islands who entered Guam prior to December 24, 1952 and were residing in Guam on December 24, 1952.</td>
<td>8 CFR 101.1(h)</td>
<td>Yes</td>
</tr>
<tr>
<td>Aliens admitted to Guam prior to December 24, 1952, as established by records, who was:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Not excludable under the Act of February 5, 1917; [8]</td>
<td>8 CFR 101.1(i)</td>
<td>Yes</td>
</tr>
<tr>
<td>• Continued to reside in Guam until December 24, 1952; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Not admitted or readmitted into Guam as a nonimmigrant. [9]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### E. Documentation and Evidence

An immigrant should submit the following to establish eligibility for presumption of lawful admission for permanent residence:

- Application to Register Permanent Residence or Adjust Status ([Form I-485](https://www.uscis.gov/apply-form), with the correct fee;
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of birth certificate;
- Evidence of the applicant’s examination, entry, or admission to the United States (if applicable);
- A list of all the applicant’s arrivals into and departures from the United States;
- Evidence substantiating the applicant’s claim to presumption of lawful admission for permanent residence, including proof of maintenance of residence, where required, or any other requirements as specified by regulation;

AILA Doc. No. 19060633. (Posted 3/26/21)
• A statement by the applicant indicating his or her basis for a claim to presumption of lawful admission for permanent residence; and

• Any other requirements or evidence as specified by regulation.

**F. Adjudication**

This process does not involve a grant of adjustment of status, but rather, recognition of an applicant’s status. A decision on presumption of admission does not involve any consideration of admissibility or discretion. If an applicant meets the eligibility requirements provided in the regulation,[12] an officer must approve the application.

If an applicant is unable to establish the criteria necessary for presumption of lawful admission, an officer should determine whether the applicant has submitted sufficient evidence to establish eligibility for registry, and if so, adjudicate the application as a request to register lawful permanent residence under INA 249.[13]

If approved, USCIS assigns the following code of admission:

<table>
<thead>
<tr>
<th>Classes of Applicants and Corresponding Codes of Admission</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Code of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presumption of Lawful Admission</td>
<td>XB3</td>
</tr>
</tbody>
</table>

The effective date of permanent residence is not the date the application is approved, but rather the date the applicant arrived in the United States under the conditions that created the presumption of lawful admission for permanent residence.[14]

**Footnotes**

[^1] Continuous residence is distinct from continuous physical presence. Although continuous residence and continuous physical presence are related, they have different meanings. Continuous residence refers to maintaining a permanent dwelling place in the United States during the period of time required. In contrast, continuous physical presence refers to the required number of days physically present in the United States during the period of time required. See Volume 12, Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3] and Chapter 4, Physical Presence [12 USCIS-PM D.4].


[^4] The Asiatic zone was defined in the Act of February 5, 1917 and covered much of the Middle East and Asia, including countries such as India, China, and the Philippines. See Section 3 of Pub. L. 64-301, 39 Stat. 874, 876.
Registrants under this section are not regarded as permanent residents for naturalization unless they were a citizen of the Commonwealth of the Philippines on July 2, 1946.


See Pub. L. 64-301.


See Chapter 4, Aliens Who Entered the United States Prior to January 1, 1972 [7 USCIS-PM O.4].

See 8 CFR 264.2(h)(1).

Chapter 2 - Presumption of Lawful Admission Despite Certain Errors Occurring at Entry

Under certain circumstances, immigrants and nonimmigrants may still be considered as having been lawfully admitted even if the following errors occurred at the time of their admission:

- Entry was made and recorded under a name other than the immigrant’s or nonimmigrant's full true and correct name; or

- Entry record contains errors in sex, names of relatives, or names of foreign places of birth or residence. \[1\]

As long as the applicant proves by clear, unequivocal, and convincing evidence that the record of the claimed admission relates to him or herself, the admissions record can be corrected and the applicant considered lawfully admitted. \[2\]

If correcting an error in name that occurred as part of an entry on or after May 22, 1918, then the applicant must also establish that the name used was not adopted for the purpose of concealing identity when obtaining a passport or visa, or otherwise evading immigration law. Additionally, the name used at the time of entry must have been one the applicant was known by for a sufficient length of time before applying for a passport or visa so true identity could have been established. \[3\]
If the error took place during admission at a port of entry, the applicant should go to the nearest port of entry or U.S. Customs and Border Protection (CBP) deferred inspection office in person to correct the error. If USCIS made an error on the Arrival/Departure Record (Form I-94), the applicant should file an Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I-102) for correction.

### Footnotes


[4] To locate a port of entry, go to cbp.gov/contact/ports. To locate a deferred inspection site, go to cbp.gov/document/guidance/deferred-inspection-sites.

## Chapter 3 - Children Born in the United States to Accredited Diplomats

### A. Purpose

The child of a foreign diplomatic officer accredited by the U.S. Department of State who is born in the United States may voluntarily register for lawful permanent residence. [1]

### B. Background

Foreign diplomats enjoy certain immunities under international law. The spouse and child of a diplomat generally enjoy similar immunities. Children born in the United States to accredited foreign diplomatic officers do not acquire citizenship under the 14th Amendment since they are not “born . . . subject to the jurisdiction of the United States.” [2] DHS regulations, however, have long allowed these children to choose to be considered lawful permanent residents (LPRs) from the time of birth. [3]

Registration as a permanent resident under this provision is entirely voluntary, but it does involve an application process.

This registration process is necessary and available only if both parents were foreign diplomats when the child was born. If one parent was an accredited diplomat, but the other was a U.S. citizen or non-citizen U.S. national, then the child was “born . . . subject to the jurisdiction of the United States,” and is a citizen.

### C. Legal Authority

- 8 CFR 101.3 – Creation of record of lawful permanent resident status for person born under diplomatic status in the United States

- 8 CFR 264.2 – Application for creation of record of permanent residence

### D. Eligibility Requirements
To register permanent residence as a child born in the United States to a foreign diplomatic officer accredited by the Department of State, the applicant must meet the following eligibility requirements:

<table>
<thead>
<tr>
<th>Eligibility Requirements: Children Born in the United States to Accredited Diplomats</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant voluntarily seeks to register permanent residence.</td>
</tr>
<tr>
<td>The applicant was born in the United States.</td>
</tr>
<tr>
<td>The applicant maintained continuous residence in the United States since birth.</td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time he or she files the application.</td>
</tr>
<tr>
<td>The applicant had a parent who was listed on the Department of State’s Diplomatic List, also known as the Blue List, at the time of the applicant’s birth.</td>
</tr>
<tr>
<td>The applicant lost or waived his or her diplomatic immunity.</td>
</tr>
</tbody>
</table>

1. Voluntarily Seeking the Benefit

This is automatically established by the applicant applying to register permanent resident status in the United States.

2. Born in the United States

The applicant must establish birth in the United States.

3. Continuous Residence in the United States

Generally, absences that would not affect the status of any other LPR do not break the continuous residence of an applicant under this program. Some additional guidelines are applicable to this particular type of case:

- Temporary or extended absences from the United States do not break continuous residence if the diplomatic parent remained accredited to the United States during the applicant’s absence. For example, many children of diplomats attend school in their parents’ home country while the parents are on diplomatic assignment. An absence for this purpose, even if it extended for a year or longer, would not be considered a break in the applicant’s continuous residence.

- Readmission to the United States as an A or G nonimmigrant at the end of an absence does not break an applicant’s continuous residence.

- Departure of the applicant’s diplomatic parent does not break the applicant’s residence if the applicant
remains in the United States. However, if the applicant permanently departs with his or her diplomat parent, continuous residence is broken.  

4. Parent with Full Diplomatic Immunity at Time of the Applicant’s Birth

Diplomats accredited to the United States and having full diplomatic immunity are listed on the Department of State’s Diplomatic List (Blue List). If either parent was listed on the Blue List when the applicant was born, the applicant is eligible to apply for this benefit. Both parents do not have to be listed for the applicant to be eligible.

Not all diplomats or employees of certain designated international organizations admitted to the United States as an A or G nonimmigrant have full diplomatic immunity and appear on the Blue List. For example, the immunities that apply to a foreign consular officer are not the same as those that apply to diplomats. In order to determine eligibility to register for permanent residence based on being born in the United States in diplomatic status, the applicant must submit official confirmation of the diplomatic classification and occupational title of his or her parent at the time of birth.

USCIS confirms with the Department of State whether the applicant’s parent(s) was on the Blue List at the time of the child’s birth. If an applicant did not have a parent on the Blue List at the time of his or her birth in the United States, then the applicant is a U.S. citizen because the applicant did not have full diplomatic immunity and was therefore subject to U.S. jurisdiction at the time of birth.

5. Applicant Lost or Waived Diplomatic Immunity

Because an LPR cannot be immune to the laws of the United States, applicants who retain diplomatic immunity at the time they apply to register permanent residence must submit with their application a completed and signed Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities (Form I-508).

However, if, at the time an applicant applies to register lawful permanent residence, the applicant has lost diplomatic immunity as verified by USCIS through the Department of State, then the applicant does not need to submit Form I-508 with the application.

E. Documentation and Evidence

An applicant should submit the following to establish eligibility for lawful permanent residence as a person born in the United States to an accredited foreign diplomatic officer:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities (Form I-508);
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of birth certificate;
- A list of all the applicant’s arrivals into and departures from the United States;
- Proof of continuous residence in the United States; and
• Official confirmation of the diplomatic classification and occupational title of the applicant’s parent(s) at the time of the applicant’s birth.

F. Adjudication

A decision on registration of those born in the United States in diplomatic status does not involve any consideration of admissibility or discretion. If the applicant meets all eligibility requirements,[9] an officer must approve the application. USCIS may require the applicant to appear in person for an interview, if needed.[10]

If approved, USCIS assigns the following code of admission:

<table>
<thead>
<tr>
<th>Classes of Applicants and Corresponding Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
</tr>
<tr>
<td>Born Under Diplomatic Status in the United States</td>
</tr>
</tbody>
</table>

The effective date of permanent residence is the applicant’s date of birth.[11]

Footnotes

[^8] However, this registration process is necessary and available only if both parents were foreign diplomats when the child was born. If one parent was an accredited diplomat, but the other was a U.S. citizen or non-citizen U.S. national, then the child was born subject to U.S. jurisdiction and is a citizen.
[^10] If it appears that the applicant is subject to removal, approval of registration does not bar issuance of a notice to appear.
Chapter 4 - Aliens Who Entered the United States Prior to January 1, 1972

A. Purpose

USCIS has the discretionary authority to create a record of lawful admission for and to adjust to lawful permanent resident status eligible aliens who entered the United States prior to January 1, 1972. This process is called registry.

B. Background

The statutory provision on registry, which originated in the Act of March 2, 1929, enables certain unauthorized aliens in the United States to acquire permanent resident status. The provision has been reviewed and amended periodically since 1929, most commonly to advance the required date from which continuous residence must be established:

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Effect on Registry Provision</th>
</tr>
</thead>
</table>
| Nationality Act of 1940 [2] | • Codified the registry provision  
  • Advanced the registry date to July 1, 1924 |
| Immigration and Nationality Act of 1952 [3] | • Rephrased registry provision  
  • Created INA 249 |
  • Created requirement that applicant may not be inadmissible “as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotics laws or smugglers of aliens” [6]  
  • Advanced the registry date to June 28, 1940 |
| Immigration and Nationality Act Amendments of 1965 [7] | • Advanced the registry date to June 30, 1948 |
| Immigration Reform and Control Act of 1986 [8] | • Advanced the registry date to January 1, 1972 |

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Effect on Registry Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Immigration Technical Corrections Act of 1988</strong> [9]</td>
<td>• Added requirement that registry applicants must not be inadmissible as participants in Nazi persecution or genocide</td>
</tr>
<tr>
<td><strong>Immigration Act of 1990(IMMACT 90)</strong> [10]</td>
<td>• Made registry unavailable for 5 years to applicants who, despite proper notice, failed to appear for deportation, asylum, or other immigration proceedings</td>
</tr>
<tr>
<td><strong>Illegal Immigration Reform and Immigrant Responsibility Act of 1996</strong> [11]</td>
<td>• Lengthened IMMACT 90’s 5-year bar to 10 years • Precluded aliens from registry if deportable for engaging in terrorist activities</td>
</tr>
</tbody>
</table>

**C. Legal Authority**

- [INA 249; 8 CFR 249](#) – Record of admission for permanent residence in the case of certain aliens who entered the United States prior to January 1, 1972

**D. Eligibility Requirements**

To qualify for registry, the applicant must meet the following eligibility requirements: [12]

<table>
<thead>
<tr>
<th>Eligibility Requirements: Registry</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant entered the United States prior to January 1, 1972.</td>
</tr>
<tr>
<td>The applicant maintained continuous residence in the United States since his or her entry.</td>
</tr>
<tr>
<td>The applicant is physically present in the United States at the time he or she files the application.</td>
</tr>
<tr>
<td>The applicant is a person of good moral character.</td>
</tr>
<tr>
<td>The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.</td>
</tr>
</tbody>
</table>
Eligibility Requirements: Registry

The applicant is not deportable under terrorist-related grounds. [13]

The applicant merits the favorable exercise of discretion.

1. Entered the United States prior to January 1, 1972

In general, entry pertains to any type of entry, whether legal or illegal, including entry in any immigrant, nonimmigrant, or parole classification.

*Current Exchange Visitors*

Although not listed as a basis for ineligibility for registry, nonimmigrants who entered as an exchange visitor (J nonimmigrant) subject to the 2-year foreign residency requirement are precluded from applying for permanent residence unless a waiver is granted. [14] Any applicant subject to the foreign residency requirement must be eligible for and obtain a waiver of the requirement since compliance with such requirement would break the continuous residence after entry.

2. Maintained Continuous Residence in the United States Since Entry

An applicant may prove continuous residence [15] in the United States since entry without regard to numerous brief departures from the United States. [16]

Establishing continuity of residence is normally done through the submission of a number of documents covering the period of time since the claimed admission date. While there is no fixed number of documents an applicant must submit to cover the period, it must be enough to satisfy an officer making the determination. An officer should take into account the length of time since the entry, the applicant’s circumstances, and other similar factors when determining how much evidence is necessary to establish continuous residence.

The burden remains on the applicant to prove eligibility for this benefit. [17] Exact, complete proof of continuous residence is not required. However, the applicant should submit evidence to show a pattern of continuous residence in the United States for the time period necessary. The officer should consider the proof of residence submitted in light of any relevant periods of time when large numbers of aliens were leaving the United States, such as periods of war or economic recessions. [18]

*Establishing Entry and Continuous Residence*

The applicant may show evidence of entry by submitting at least one document showing presence in the United States prior to January 1, 1972. An applicant may submit as many documents as necessary to establish the entry date and continuous residence in the United States. The officer should document the record to reflect the evidence used to establish eligibility.

Examples of the types of evidence an applicant may submit include copies of:

- Passport page(s) with nonimmigrant visa, admission, or parole stamp(s);
- Arrival/Departure Record (Form I-94);
- Income tax records;
- Mortgage deeds or leases;
- Insurance premiums and policies;
- Birth, marriage, and death certificates of immediate family members;
- Medical records;
- Bank records;
- School records;
- All types of receipts that contain identifying information about the applicant;
- Census records;
- Social Security records;
- Newspaper articles concerning the applicant;
- Employment records;
- Military records;
- Draft records;
- Car registrations;
- Union membership records; and
- Affidavits from credible witnesses having a personal knowledge of the applicant’s residence in the
  United States, submitted with the affiant’s contact information.

Although affidavits may be submitted and should be considered, an applicant should be able to provide some
type of additional evidence to support the application. Additionally, affidavits must be convincing and
verifiable and affiants must be credible witnesses. [19]

3. Good Moral Character

The good moral character [20] requirement for the registry should be treated in a similar manner to the good
moral character requirement in the naturalization process except that registry does not require good moral
character over a specified period of time. The applicant is required to establish good moral character during
the period encompassed by the registry application. If an applicant is not within any of the specific classes of
aliens ineligible for visas or admission under INA 212, an officer may find the applicant does not possess
good moral character for other reasons. [21]

4. Admissibility and Waiver Requirements
Only certain grounds of inadmissibility are relevant to registry applications.[22] The following table specifies which grounds of inadmissibility apply and which do not apply to applicants for registry.

<table>
<thead>
<tr>
<th>Ground of Inadmissibility</th>
<th>Applies</th>
<th>Exempt or Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>INA 212(a)(1) – Health-Related</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(A) – Conviction (or Commission) of Certain Crimes</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(B) – Multiple Criminal Conviction</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(C) – Controlled Substance Traffickers</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(D) – Prostitution and Commercialized Vice</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(E) – Asserted Immunity from Prosecution</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(G) – Foreign Government Officials who have Committed Severe Violations of Religious Freedom</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(H) – Significant Traffickers in Persons</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(2)(I) – Money Laundering</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(3)(E) – Security-Related</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(4) – Public Charge</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(6)(A) – Present Without Admission or Parole</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Ground of Inadmissibility</td>
<td>Applies</td>
<td>Exempt or Not Applicable</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
<td>---------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>INA 212(a)(6)(B) – Failure to Attend Removal Proceedings</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(6)(C) – Misrepresentation</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(6)(D) – Stowaways</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(6)(E) – Smugglers</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(6)(F) – Subject to Civil Penalty</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(6)(G) – Student Visa Abusers</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(7)(A) – Documentation Requirements for Immigrants</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(8) – Ineligibility for Citizenship</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(9) – Aliens Previously Removed</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>INA 212(a)(10) – Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Criminal acts may be waived if the applicant meets the criteria for a waiver of the ground. An applicant may file a waiver application for the applicable grounds of inadmissibility and it should be adjudicated to the standards of any other waiver.

5. Discretion

Even if a registry applicant meets all other statutory eligibility criteria, the application must still warrant a favorable exercise of discretion to be approved.

In most registry cases, a favorable exercise of discretion is warranted because the positive factor of having lived in the United States for such a long period of time and having created ties to the country outweigh all but the most negative discretionary factors.
6. Treatment of Family Members

Dependents of registry applicants cannot file as derivative applicants. Each applicant must qualify on his or her own. An applicant may petition for eligible family members in an appropriate family-based category once he or she obtains permanent resident status through registry.

E. Documentation and Evidence

An applicant should submit the following to establish eligibility for registry:

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Two passport-style photographs;
- Copy of government-issued identity document with photograph;
- Copy of birth certificate;
- Evidence of entry into the United States prior to January 1, 1972;
- Evidence of continuous physical presence in the United States since entry; and
- Certified police and court records of criminal charges, arrests, or convictions (if applicable).

An applicant does not have to submit a Report of Medical Examination and Vaccination Record (Form I-693) or Affidavit of Support Under Section 213A of the Act (Form I-864), because the medical and public charge grounds of inadmissibility are not applicable.

F. Adjudication

1. Jurisdiction

An application for registry must be filed according to the form instructions. USCIS generally has jurisdiction to adjudicate the application unless the applicant has been served with a Notice to Appear or warrant of arrest. If the applicant has been served with a Notice to Appear, an Immigration Judge generally has jurisdiction over the application. If an Immigration Judge has jurisdiction, an officer completes only preliminary processing and closing actions on the case once the judge has made a final decision.

2. Interview

If USCIS has jurisdiction, the applicant is interviewed to determine eligibility. At the interview, the officer places the applicant under oath and proceeds to review the application.

Name

The officer should closely question the applicant regarding all variations of names used, including foreign variations of any Anglicized names. An officer should pay particular attention to the name the applicant used upon arrival in the United States. Information gathered concerning the applicant’s name may provide data that an officer can use to search relevant systems for information on the applicant’s entry.

Date of Last Arrival in the United States
If the applicant has been absent from the United States on at least one occasion since the entry claimed on the application for registry, an officer should question the applicant to obtain all the facts regarding the date, place, manner of departure and reentry, and the purpose of each absence. An officer may need to verify each departure and reentry from USCIS records if the applicant’s file does not contain the information. A temporary absence does not necessarily break the continuity of the applicant’s residence. Therefore, an officer must determine whether the evidence establishes that the applicant’s absence did or did not break the continuity of residence. In any case where the applicant departed under an order of exclusion or deportation, continuity of residence is considered broken.

Membership in Organizations

If other evidence of the applicant’s continuity of residence is missing, an applicant’s organizational membership or association records may be helpful regarding the period of the applicant’s membership. Membership in organizations includes unions, clubs, and religious or community entities.

An officer should question the applicant about the nature of any organization in which the applicant has been involved. When appropriate, an officer should check against the list of Foreign Terrorist Organizations designated by the Secretary of State. [27]

Violations of Law

The statute specifically bars from registry those applicants who are found to be inadmissible “as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotics laws or smugglers of aliens.” [28] Therefore, an officer should elicit information from the applicant about any criminal history to determine if the applicant meets the eligibility requirements and ensure the applicant is admissible to the United States.

Request for Exemption or Discharge from Training or Service in the U.S. Armed Forces

An applicant who is ineligible to citizenship is barred from registry. [29] For this reason, an officer should review any information in the Selective Service System to determine if the applicant is eligible for registry.

If the applicant was classified as “4-C – Alien or Dual National - Sometimes Exempt from Military Service” by the Selective Service System, the officer should further inquire to determine if the applicant was granted exemption or discharge from training or service in the U.S. armed forces due to alienage. [30] If the applicant avoided conscripted military service by requesting and being granted exemption or discharge from training or service in the U.S. military due to alienage, the applicant is considered “ineligible to citizenship” and therefore ineligible for registry.

Deportation Proceedings

An officer should verify the applicant’s statements regarding deportation or removal proceedings. The applicant’s continuity of residence is considered broken by a departure due to, or following, an order of removal, deportation, or exclusion. However, an applicant who leaves under an order of voluntary departure does not automatically break the continuity of residence. [31]

Eligibility for Presumption of Lawful Admission

If examination of an applicant’s file and supporting documents and information establishes the applicant is eligible for presumption of lawful admission [32] even though the applicant sought permanent residence through registry, an officer should advise the applicant that the registry application filed on Form I-485 will be converted to one for presumption of lawful admission.
The officer should only transfer the Form I-485 from one basis to another in clear cases in which the application can be immediately granted.

3. Approvals

If the applicant can establish eligibility for registry and that the application warrants a favorable exercise of discretion, then the officer should approve the application and provide the applicant with a permanent resident card.

*Effective Date of Permanent Residence*

The date the applicant is able to establish entry for registry purposes is important because it determines the code of admission as well as the effective date of the applicant’s permanent residence, as outlined in the table below.

<table>
<thead>
<tr>
<th>Classes of Applicants and Corresponding Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Established Entry</td>
</tr>
<tr>
<td>---------------------------</td>
</tr>
<tr>
<td>Prior to July 1, 1924</td>
</tr>
<tr>
<td>On or After July 1, 1924 and Prior to June 28, 1940</td>
</tr>
<tr>
<td>On or After June 28, 1940 and Prior to January 1, 1972</td>
</tr>
</tbody>
</table>

An applicant who claims entry prior to July 1, 1924, but is only able to establish presence at some point after that date and before January 1, 1972 can only be granted permanent residence as of the date of the application’s approval. If the applicant is able to establish presence prior to July 1, 1924 after a decision has already been made, the application should be reopened on a Service motion and a new decision issued. [33]

4. Denials

If no record is found of the applicant’s entry and the applicant is unable to establish eligibility for registry, an officer must deny the application and provide a written explanation of the reasons the application was denied. [34] There is no appeal of a denied registry application. If removal proceedings are initiated against the applicant, then the applicant may renew the registry application in removal proceedings. [35]

**Footnotes**


[^5] By eliminating deportability as a bar, registry became available to applicants who had entered the country without inspection, or who had overstayed or violated the terms of a temporary period of entry.


[^19] See 8 CFR 103.2(b)(2). See 8 CFR 245a.2(d)(3) for examples of documents that may establish proof of continuous residence. Although this list was created for legalization provisions, it provides common examples of evidence that USCIS will accept to establish continuous residency under any statutory provision.


The statute only requires that a registry applicant establish that he or she is not inadmissible under INA 212(a)(3)(E) or INA 212(a) insofar as it relates to “criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens” and that he or she is not ineligible to citizenship and is not deportable under INA 237(a)(4)(B). See INA 249. For more information on the grounds of inadmissibility, see Volume 8, Admissibility [8 USCIS-PM].

[^22] See INA 212(h).

[^23] See for more information on waivers, see Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


[^27] Applicants must not be deportable under terrorist-related grounds to be eligible for registry. See Section D, Eligibility Requirements [7 USCIS-PM O.4(D)].


[^29] See INA 249(d). See INA 212(a)(8) (ground of inadmissibility) and INA 101(a)(19) (definition of ineligible to citizenship). See Section D, Eligibility Requirements, Subsection 4, Admissibility and Waiver Requirements [7 USCIS-PM O.4(D)(4)].

[^30] See Volume 12, Citizenship and Naturalization, Part I, Military Members and their Families, Chapter 4, Permanent Bars to Naturalization [12 USCIS-PM I.4]. An applicant who requested, applied for, and obtained a discharge or exemption from military service from the U.S. armed forces on the ground that he or she is an alien (“alienage discharge”) is permanently ineligible for naturalization unless he or she qualifies for an exception.


[^32] See Chapter 1, Presumption of Lawful Admission [7 USCIS-PM O.1].

[^33] See 8 CFR 249.3.

[^34] See 8 CFR 103.3.


Chapter 5 - Other Special Laws

A. American Indians Born in Canada

1. Purpose and Background
Section 289 of the Immigration and Nationality Act (INA) provides that American Indians who are born in Canada cannot be denied admission into the United States if they possess at least 50 percent American Indian blood. By regulation, aliens who are eligible for INA 289 status may also become lawful permanent residents (LPRs) if they have maintained residence in the United States since their last entry.[1]

*Texas Band of Kickapoo Indians*

Certain members of the Texas Band of Kickapoo Indians, which is a subgroup of the Kickapoo Tribe of Oklahoma, also cannot be denied admission to the United States. However, INA 289 is not the statutory basis for the treatment of members of the Texas Band of Kickapoo Indians which is authorized by a separate statute.[2]

2. **Legal Authorities**


3. **Eligibility Requirements**

   An alien who proves that he or she is an American Indian born in Canada, with at least 50 percent American Indian blood, cannot be denied admission to the United States at a port of entry. If an alien with at least 50 percent American Indian blood lives outside the United States and seeks to enter the United States, he or she must tell the Customs and Border Protection officer that he or she is an American Indian born in Canada and provide documentation to support that claim.

   Aliens who live in the United States and are American Indians born in Canada who possess at least 50 percent American Indian blood are entitled to evidence of LPR status if they can establish that they have maintained residence in the United States since their last entry.[3] They may obtain a Permanent Resident Card (PRC)[4] by requesting a creation of record at a USCIS Field Office. As with presumption of lawful admission cases,[5] USCIS is not adjudicating an application to become an LPR, but verifying a status which the person already has and issuing documentation accordingly.

4. **Documentation and Evidence**

   To obtain a PRC, claimants must demonstrate:

   - 50 percent or more of blood of the American Indian race;
   - Birth in Canada; and
   - Residence in the United States since last entry.[6]

   Claimants must have proof of ancestry based on familial blood relationship to parents, grandparents, or great-grandparents who are or were registered members of a recognized Canadian Indian Band or U.S. Indian tribe. Usually, eligibility is established by presenting identification such as a tribal certification that is based on reliable tribal records, birth certificates, and other documents establishing the requisite percentage of Indian blood.

   The Canadian Certificate of Indian Status (Form IA-1395) issued by the Canadian government[7] specifies the tribal affiliation but does not indicate percentage of Indian blood. Membership in an Indian tribe or First Nation in Canada does not necessarily require Indian blood.
Aliens are not eligible for permanent residence if tribal membership comes through marriage or adoption.

For additional information on how to request creation of a record and proof of permanent residence, see the Green Card for an American Indian Born in Canada web page.

5. Decision

Approval

Upon establishing that the claimant is an American Indian born in Canada, with at least 50 percent American Indian blood, who has maintained residence in the United States since his or her last entry, the claimant is entitled to creation of a record of admission for lawful permanent residence, even if technically inadmissible or previously deported. USCIS issues a PRC accordingly. A claimant is not required to file any application or pay any fees as part of this process.

If DHS records show that the claimant has already been accorded creation of a record of admission for lawful permanent residence and issued a PRC, an officer should advise the applicant that he or she must file an Application to Replace Permanent Resident Card (Form I-90), and pay the filing fee required.

Denial

If the claimant is unable to prove that he or she is an American Indian born in Canada, with at least 50 percent American Indian blood, or prove residency since the last entry, the officer must deny the request and provide a written explanation of the reasons of the denial. There is no appeal from the decision, although the claimant may renew his or her request if and when he or she is able to overcome the basis of the decision. Depending on the circumstances, such a claimant may be referred for consideration of initiation of removal proceedings.

B. [Reserved]

Footnotes


[^4] A Permanent Resident Card is also called a Form I-551 or a green card.


[^7] Since August 2017, the certificates (also known as “INAC cards” or “status cards”) are issued by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). For more information, see the CIRNAC webpage.

Part P - Other Adjustment Programs

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 21 - Family-based Petitions and Applications (External) (PDF, 2.86 MB)

AFM Chapter 23 - Adjustment of Status to Lawful Permanent Resident (External) (PDF, 1.61 MB)

Chapter 1 - Reserved

Chapter 2 - Reserved

Chapter 3 - Reserved

Chapter 4 - Reserved

Chapter 5 - Liberian Refugee Immigration Fairness

A. Purpose and Background[1]

Enacted on December 20, 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision, Liberian Refugee Immigration Fairness (LRIF), which provides an opportunity for certain Liberian nationals and their eligible family members to obtain lawful permanent resident (LPR) status.[2] After adjusting to LPR status under LRIF, some aliens would then immediately become eligible to apply for naturalization.

As initially enacted, the filing deadline for LRIF applications was December 20, 2020. Congress later extended the filing period for LRIF applications to December 20, 2021.[3] Applications must be received on or by December 20, 2021.

B. Legal Authority

C. Eligibility Requirements

To adjust to LPR status based on LRIF a Liberian principal applicant must meet the eligibility requirements shown in the table below.[5]

<table>
<thead>
<tr>
<th>LRIF-Based Adjustment of Status Eligibility Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant must properly file an Application to Register Permanent Residence or Adjust Status (Form I-485) which is received on or by December 20, 2021.[6]</td>
</tr>
<tr>
<td>The applicant is a national of Liberia.</td>
</tr>
<tr>
<td>The applicant has been continuously physically present in the United States since November 20, 2014, through the date he or she properly files the adjustment application.[7]</td>
</tr>
<tr>
<td>The applicant is admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.</td>
</tr>
</tbody>
</table>

1. Ineligible Aliens

An alien is not eligible for adjustment of status based on LRIF if he or she has:

- Been convicted of any aggravated felony;[8]
- Been convicted of two or more crimes involving moral turpitude (other than a purely political offense); or
- Ordered, incited, assisted, or otherwise participated in the persecution of any other person on account of race, religion, nationality, membership in a particular social group, or political opinion.[9]

2. Continuous Physical Presence Requirement

To qualify for adjustment of status based on LRIF, a Liberian principal applicant must establish that he or she has been continuously physically present in the United States during the period beginning on November 20, 2014, and ending on the date he or she properly files an adjustment application based on LRIF.[10]

USCIS considers an applicant who was absent from the United States for one or more periods amounting to more than 180 days in the aggregate (total) to have failed to have maintained continuous physical presence.[11]

3. Admissibility and Waiver Requirements

An applicant must be admissible to the United States in order to be eligible for adjustment of status under
LRIF [12] In general, if an applicant is inadmissible based on an applicable ground of inadmissibility, he or she must apply for a waiver or other form of relief, if eligible, to overcome that inadmissibility. [13] If USCIS grants a waiver or other form of relief in its discretion, USCIS may approve the application to adjust status if the applicant is otherwise eligible.

LRIF applicants are subject to all grounds of inadmissibility except:

- **INA 212(a)(4)** – Public charge;
- **INA 212(a)(5)** – Labor certification and qualifications for certain immigrants;
- **INA 212(a)(6)(A)** – Aliens present without admission or parole; and
- **INA 212(a)(7)** – Documentation requirements for immigrants. [14]

### 4. Eligibility of Family Members

The spouse, child,[15] and unmarried son or daughter of a Liberian principal applicant who is LRIF-eligible may also seek adjustment based on LRIF regardless of their nationality. [16]

To adjust based on LRIF, eligible family members must:

- Properly file an Application to Register Permanent Residence or Adjust Status (Form I-485) which is received on or by December 20, 2021; and
- Be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.

The same ineligibility criteria and inadmissibility grounds that apply to Liberian principal applicants apply to eligible family members seeking adjustment based on LRIF.

However, the continuous physical presence requirement that applies to Liberian principal applicants does not apply to those seeking to adjust based on LRIF as an eligible family member.

*When Eligible Family Members May File the Adjustment Application*

Each applicant must properly file his or her own adjustment application, which must be received by USCIS on or by December 20, 2021.

Eligible family members may file their adjustment application:

- Together with the Liberian principal applicant’s LRIF-based adjustment application; or
- After the Liberian principal applicant filed an LRIF-based adjustment application that remains pending a final decision or was approved by USCIS.

An eligible family member may not adjust status before the qualifying Liberian principal applicant. Adjustment of family members must be concurrent with or subsequent to the Liberian principal applicant’s adjustment to LPR status.[17]

The qualifying relationship may have been created before or after the Liberian principal applicant’s adjustment. Provided that the applicant meets the burden of proof to demonstrate a bona fide family
relationship, USCIS may adjust the spouse (or child or unmarried son or daughter) of a Liberian principal applicant to that of an LPR regardless of the duration of the relationship; however, the relationship must exist on the date of filing and the date of adjudication of the family member’s adjustment application.

The spouse, child, or unmarried son or daughter remains eligible for LRIF-based adjustment only so long as the qualifying Liberian national remains an LPR. If the Liberian national loses LPR status or naturalizes, the family members’ eligibility to adjust to LPR status under LRIF also ends.[18]

5. Sunset Date

Applicants must properly file their adjustment application, which is received by USCIS on or by December 20, 2021, in order to be eligible for adjustment of status under LRIF.[19] Each applicant must file his or her own adjustment application.


Aliens, including eligible family members, currently in exclusion, deportation, or removal proceedings may file an adjustment application with USCIS based on LRIF.[21] Aliens present in the United States with an existing order of exclusion, deportation, removal, or voluntary departure may also file an adjustment application with USCIS based on LRIF.[22] Such aliens must meet the eligibility requirements of LRIF in order to adjust status based on LRIF.

7. Jurisdiction

USCIS has sole authority to adjudicate an adjustment application based on LRIF.[23] USCIS may adjudicate an adjustment application filed under LRIF for an alien in removal, exclusion, or deportation proceedings or with a final order of removal, exclusion, or deportation, notwithstanding those proceedings or final order.

D. Documentation and Evidence

A Liberian national applicant should submit the following documentation to seek adjustment of status based on LRIF:

- A properly filed Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee;
- Two identical color photographs of the applicant taken recently;[24]
- A copy of a government-issued identity document with photograph;
- A copy of the birth certificate;
- A copy of the passport page with admission or parole stamp (if applicable);
- A copy of the Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);[25]
- A properly completed Report of Medical Examination and Vaccination Record (Form I-693);[26]
- Evidence of being a Liberian national;
- A list and any evidence of all arrivals to and departures from the United States;

- Evidence of continuous physical presence in the United States beginning on November 20, 2014, and ending on the date the applicant properly files an LRIF-based adjustment application; and

- A completed Application for Waiver of Grounds of Inadmissibility (Form I-601), if applicable.

1. Liberian Nationality

A Liberian principal applicant must provide evidence to prove he or she is a Liberian national. Examples of evidence that may demonstrate Liberian nationality include, but are not limited to:

- Unexpired Liberian passport; or

- Liberian certificate of naturalization.

2. Continuous Physical Presence

A Liberian principal applicant must submit evidence that he or she was physically present in the United States for a continuous period beginning on November 20, 2014, and ending on the date he or she properly files the LRIF-based adjustment application. For purposes of LRIF, USCIS considers an applicant who left the United States for one or more periods amounting to more than 180 days in the aggregate (total) to have failed to have maintained continuous physical presence.

An applicant must submit probative evidence to establish continuous physical presence since November 20, 2014. Examples of the types of evidence may include, but are not limited to:

- Copy of passport pages with nonimmigrant visa, admission, or parole stamps;

- Arrival/Departure Record (Form I-94);

- Income tax records;

- Utility bills;

- Mortgage deeds or leases;

- Insurance premiums and policies;

- Birth, marriage, and death certificates for immediate family members;

- Medical records;

- Bank records;

- School records;

- All types of receipts that contain identifying information about the applicant;

- Census records;

- Social Security records;
• Employment records;
• Military records;
• Draft records;
• Car registrations; and
• Union membership records.

3. Evidence of Arrivals to and Departures from the United States

Liberian principal applicants must provide a list of all arrivals to and departures from the United States. All applicants also should submit any evidence of all arrivals to and departures from the United States. Applicants should also submit any evidence showing residence from the date of his or her first arrival where residence was established until the filing of the applicant’s LRIF-based adjustment application. USCIS uses this information to determine the date of lawful permanent residence for approved LRIF-based adjustment applicants.\[28\]

Residence means the applicant’s place of general abode; the place of general abode means his or her principal, actual dwelling place in fact, without regard to intent.\[29\]

4. Family Members

In addition to the documentation listed above, an eligible family member applying to adjust based on LRIF must submit:

• Evidence of his or her relationship to a Liberian principal applicant (for example, marriage certificate or birth certificate);
• Evidence of termination of any prior marriages, and any prior marriages of the Liberian principal applicant, if applying as the eligible spouse of a Liberian principal applicant; and
• Evidence that the Liberian principal applicant obtained LPR status or has a pending application for adjustment of status under LRIF (for example, an Approval or Receipt Notice (Form I-797) for the Liberian national’s adjustment application), if the eligible family member is not filing concurrently with the Liberian principal applicant.

Only the Liberian principal applicant must show Liberian nationality and continuous physical presence in the United States to be eligible to adjust based on LRIF.

Evidence of Arrivals to and Departures from the United States

LRIF applicants applying as family members must provide a list of all arrivals to and departures from the United States. Applicants should submit evidence of all arrivals to and departures from the United States. Applicants should also submit any evidence showing residence from the date of his or her first arrival where residence was established until the filing of the applicant’s LRIF-based adjustment application. USCIS uses this information to determine the date of lawful permanent residence for approved LRIF-based adjustment applicants.\[30\]

E. Adjudication
1. Interview

USCIS may require any applicant filing a benefit request to appear for an interview. [31]

2. Approvals

USCIS must approve the adjustment application if the applicant meets all the eligibility requirements under LRIF. Adjustment under LRIF is not discretionary. If USCIS approves the application for adjustment, USCIS assigns the codes of admission as shown in the table below.

<table>
<thead>
<tr>
<th>Classes of Applicants and Codes of Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liberian national as described in Section 7611(c)(1)(A) of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020) who has adjusted status under LRIF</td>
</tr>
<tr>
<td>Spouse of Liberian national as described in Section 7611(c)(1)(A) of NDAA 2020 who has adjusted status under LRIF</td>
</tr>
<tr>
<td>Child of Liberian national as described in Section 7611(c)(1)(A) of NDAA 2020 who has adjusted status under LRIF</td>
</tr>
<tr>
<td>Unmarried son or daughter of Liberian national as described in Section 7611(c)(1)(A) of NDAA 2020 who has adjusted status under LRIF</td>
</tr>
</tbody>
</table>

Rollback Provisions

An officer should record the applicant’s admission date for permanent residence as follows.

The Liberian principal applicant’s admission date is either:

- The earliest arrival date in the United States from which the applicant establishes residence in the United States; or
- November 20, 2014 (if the applicant cannot establish residence earlier). [32]

An eligible family member’s admission is either:

- The earliest arrival date in the United States from which the applicant establishes residence in the United States; or
- The receipt date of the applicant’s adjustment application (if the applicant cannot establish residence earlier). [33]

Family members receive the full rollback provision, even if the date precedes the date of the qualifying marriage or the Liberian principal applicant’s date of admission.
For both Liberian principal applicants and eligible family members, officers should review the nature of all arrivals and departures and absences from the United States to determine if the applicant abandoned residence in the United States. For example, an alien who first arrived as a nonimmigrant tourist (B-2) and timely departed the United States would not have begun a period of residence but a subsequent arrival may begin a period of residence. Similarly, an alien who first arrived as a nonimmigrant tourist (B-2) and never departed could have begun a period of residence. In such a case, any subsequent long absences from the United States (after the applicant’s first arrival) may indicate that the applicant no longer intended to live in the United States, so the applicant’s admission date for permanent residence might not roll back to the applicant’s earliest arrival date. The applicant bears the burden to establish the earliest arrival date from which he or she established residency in the United States.

Rollback Provision and Rescission

In the case of an alien who adjusts under LRIF and received an admission date for permanent residence pursuant to the LRIF “rollback” provision, the 5 year time period for any rescission proceedings is measured from the actual date on which the adjustment was granted, not on the date to which the adjustment was rolled back.[34]

3. Denials

USCIS must deny the adjustment application if the applicant does not meet all the eligibility requirements outlined in LRIF. Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).[35]

F. Employment Authorization While Adjustment Application is Pending

Applicants with a pending adjustment application based on LRIF are eligible to apply for employment authorization.[36] Applicants must file an Application for Employment Authorization (Form I-765) to request an employment authorization document.[37] Applicants may file a Form I-765 concurrently with their adjustment application or while the adjustment application is pending with USCIS. If an LRIF applicant’s adjustment application has been pending for more than 180 days and it has not been denied, USCIS must approve the applicant’s Form I-765 on such basis.[38]

Footnotes


A Liberian principal applicant is a Liberian national described in Section 7611(c)(1)(A) of NDAA 2020, Pub. L. 116-92 (PDF), 113 Stat. 1198, 2310 (December 20, 2019).

Each benefit request must be properly completed, submitted, and executed in accordance with the form instructions. See 8 CFR 103.2(a)(1) and 8 CFR 103.2(b)(1).

A Liberian national who does not meet the continuous physical presence requirement may still be eligible to apply for adjustment under LRIF if he or she qualifies as a family member. For more information, see Subsection 4, Eligibility of Family Members [7 USCIS-PM P.5(C)(4)].

See INA 101(a)(43) (definition of aggravated felony).


While the adjustment bars at INA 245(c) do not apply to LRIF applicants and an LRIF applicant who has been at any time in unlawful status in the United States is not barred from seeking adjustment under LRIF, the unlawful presence grounds of inadmissibility at INA 212(a)(9) still apply to LRIF applicants. See Matter of Briones (PDF), 24 I&N Dec. 355 (BIA 2007).

See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM]. See Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212).

Unmarried and under 21 years old, as defined in INA 101(b)(1).


Under Section 7611(c)(1)(B) of NDAA 2020, Pub. L. 116-92 (PDF), 113 Stat. 1198, 2310 (December 20, 2019), a family member is eligible to adjust if the alien is the spouse, child, or unmarried son or daughter of an alien described in Section 7611(c)(1)(A). Section 7611(c)(1)(A)(ii) requires that the Liberian national alien submit an application under Section 7611(b) and the most reasonable interpretation is that the application filed by the Liberian national alien must meet all of the requirements of Section 7611(b) in its entirety.

While any such family members would no longer be eligible to adjust status under LRIF if the Liberian principal applicant naturalizes (and is no longer an alien), nothing would preclude the Liberian principal applicant who naturalizes from filing a petition for any eligible family members by filing a Petition for Alien Relative (Form I-130).

The applicant’s adjustment application must be receipted by a USCIS Lockbox on or before December


[^24] The photos must be 2- by 2-inches, in color with full face, frontal view on a white to off-white background, printed on thin paper with a glossy finish, and be unmounted and unretouched. Head must be bare unless wearing headwear as required by a religious denomination of which the applicant is a member.

[^25] Aliens admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such aliens may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

[^26] For more information, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

[^27] The term national means a person owing permanent allegiance to a state. See INA 101(a)(21).

[^28] For more information, see Section E, Adjudication, Subsection 2, Approvals [7 USCIS-PM P.5(E)(2)].

[^29] See INA 101(a)(33).

[^30] For more information, see Section E, Adjudication, Subsection 2, Approvals [7 USCIS-PM P.5(E)(2)].

[^31] See 8 CFR 103.2(b)(9).

[^32] This is because at this stage of adjudication, the alien will have already proven he or she was physically present in the United States since at least November 20, 2014. If the applicant cannot demonstrate that he or she arrived in the United States and established a residence prior to November 20, 2014, the date of admission will default to November 20, 2014.

[^33] A family member applying to adjust status based on LRIF must be physically present in the United States at the time he or she files for adjustment. If the applicant cannot demonstrate that he or she arrived in the United States and established a residence prior to the date he or she filed an adjustment application, the date of admission will default to the date of filing for adjustment. This is because the alien already proved that he or she had arrived by that date.

Part Q - Rescission of Lawful Permanent Residence

Chapter 1 - Purpose and Background

A. Purpose

Rescission proceedings serve the goal of removing an alien’s lawful permanent resident (LPR) status when USCIS determines that the alien was not eligible for adjustment of status at the time LPR status was granted. Rescission places the alien in the same standing that he or she would have been in if USCIS had never granted adjustment of status. In certain limited circumstances, this can result in the alien being in a period of authorized stay or having some form of lawful immigration status even after rescission. In most instances, however, it results in the alien having no lawful status and not being in a period of authorized stay, and therefore subject to removal proceedings. A contested rescission proceeding requires a hearing before an immigration judge (IJ), so most cases subject to possible rescission are placed in removal proceedings instead of rescission proceedings.

B. Background

Rescission is a cumbersome process that was once required before the initiation of removal proceedings against certain LPRs.\[1\] Rescission is now an option that USCIS uses only in limited instances. In most cases, USCIS can and should place the alien into removal proceedings under INA 240 with a Notice to Appear.\[2\] Any subsequent order of removal issued by an IJ is now sufficient to rescind the LPR’s status. Because most cases that used to require rescission (for example, adjustment obtained by fraud) now may be resolved in the context of removal proceedings under INA 240, rescission should be an infrequent process.\[3\]

C. Legal Authorities

- INA 246 – Rescission of adjustment of status; effect upon naturalized citizen; 8 CFR 246 – Rescission of adjustment of status

Footnotes

[^ 1] See Matter of Saunders (PDF), 16 I&N Dec. 326 (BIA 1977) (lawful permanent resident who (1)
obtained his or her status through adjustment of status and (2) was subject to the rescission provisions of INA 246 could not be placed into deportation proceedings prior to rescission of his or her status by legacy Immigration and Naturalization Service (INS)).


[^3] See Garcia v. Att’y Gen., 553 F.3d 724 (3d Cir. 2009) (PDF). In 2009, the U.S. Court of Appeals for the Third Circuit issued Garcia v. Attorney General, which held that the U.S. Government must initiate either rescission or removal proceedings within 5 years or else is barred from initiating removal proceedings. The Third Circuit relied on Bamidele v. INS, a Third Circuit pre-Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) case that interpreted the time limitation of INA 246 to apply to removal proceedings as well as rescissions. The decision only applies to cases that fall within the jurisdiction of the Third Circuit.

Chapter 2 - Eligibility

A person who has adjusted status to that of an alien lawfully admitted for permanent residence under INA 210, 240A, (the former) 244, 245, 245A, or 249, or under any other provision of law may be placed into rescission proceedings at any time during the first 5 years after the granting of permanent residence, if:

- USCIS determines that the alien was not eligible for adjustment of status at the time that permanent residence was granted; and
- The alien would have not been eligible for adjustment under any other provision of law.[1]

A determination that an alien is not subject to rescission proceedings does not necessarily mean that no further action may be taken. An alien who is not subject to rescission may still be subject to removal proceedings.[2]

Footnotes


Chapter 3 - Rescission Process

In order to rescind an alien’s adjustment to lawful permanent resident (LPR) status, USCIS must serve the alien through personal service[^1] a Notice of Intent to Rescind (NOIR) within 5 years of the date of his or her adjustment.[2] Once the NOIR has been served, rescission action may proceed even beyond the 5-year time limit (in other words, the serving of the NOIR “stops the clock”). In the case of an alien whose adjustment contained a “rollback” provision (for example, a Cuban who adjusted under the Cuban Adjustment Act), the 5-year time period is calculated from the actual date on which the adjustment was granted, not on the date to which the adjustment was rolled back.[3]
A. Jurisdiction

The USCIS district office that has jurisdiction over the alien’s place of residence initiates rescission proceedings.\[4\] The sole exception is, if the alien adjusted status by way of a grant of suspension of deportation or a grant of special rule cancellation of removal, the asylum office that has jurisdiction over the place of the alien’s residence initiates rescission proceedings.\[5\] In all other cases, including adjustments granted by another USCIS office, the USCIS district office having jurisdiction over the person’s residence has jurisdiction over the initiation of rescission proceedings.\[6\] As a matter of policy, USCIS does not initiate rescission proceedings if adjustment was granted by an immigration judge.

B. Rescission of Adjustment of a Conditional Permanent Resident

With regards to conditional permanent residents (CPRs), the period of time the alien is in CPR status counts as part of the 5-year limitation under INA 246. However, USCIS generally does not use the rescission authority of INA 246 for aliens who are CPRs.

1. Certain Alien Spouses and Sons and Daughters Defined in INA 216

If USCIS determines that an alien’s CPR status should be terminated for the reasons set forth in INA 216, then USCIS generally does not use the rescission authority of INA 246.

In general, USCIS terminates an alien’s CPR status if USCIS determines, before the second anniversary of the alien obtaining CPR status, that the qualifying marriage was improper because:

- The qualifying marriage was entered into for the purpose of procuring an alien’s admission as an immigrant;\[7\]
- The qualifying marriage has been judicially annulled or terminated, other than through the death of a spouse;\[8\] or
- A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for filing of a petition under INA 204(a) or INA 214(d) or (p) with respect to the alien.\[9\]

In general, USCIS also terminates the alien’s CPR status if:

- The CPR does not file a Petition to Remove Conditions on Residence (Form I-751) which requests the removal of the conditions on the alien’s permanent resident status;\[10\]
- The CPR and petitioning spouse fail to appear for their interview in connection with a jointly filed Form I-751, or the CPR fails to appear for his or her interview in connection with Form I-751 filed based on hardship waiver;\[11\] or
- USCIS makes an adverse determination and denies Form I-751.\[12\]

If USCIS discovers the CPR was not eligible for adjustment of status, but the alien’s CPR status should not be terminated pursuant to INA 216, then USCIS may use the rescission authority of INA 246.

2. Certain Alien Entrepreneurs, Spouses, and Children Defined in INA 216A [Reserved]
C. Deportability Based on Events Arising After Adjustment

If an alien becomes removable as a result of an event that occurred after adjustment of status to lawful permanent residence, he or she is not subject to rescission as a result of the event. However, the officer may refer the case for possible initiation of removal proceedings if the alien is deemed removable.\[13]\n
D. Rescission of Adjustment After Alien Has Naturalized

In general, a naturalization is revoked before the rescission of adjustment of status.\[14]\n
Footnotes


[^14] INA 246(b) provides that a person whose adjustment of status has been rescinded is subject to revocation of naturalization under INA 340. For additional information, see Volume 12, Citizenship and Naturalization, Part L, Revocation of Naturalization [12 USCIS-PM L].

Chapter 4 - Effective Date of Rescission

A rescission of lawful permanent resident (LPR) status is effective as of the date of the approval of the Application to Register Permanent Residence or Adjust Status (Form I-485). In the case of an alien who received a “rollback,” the residence period acquired by the rollback is likewise rescinded.
A. Effect of Rescission on Other Benefits Derived from LPR Status

Because rescission voids LPR status from the time of approval, any third parties who acquired rights based on the LPR status may have been ineligible for those rights when they were obtained. Third parties include relatives for whom the alien petitioned on the basis of their relationship to the LPR and relatives who obtained status as derivatives of the LPR.

For example, if a spouse obtains LPR status through marriage to an alien whose LPR status is later rescinded, the alien is then considered not to have been an LPR at the time of petitioning for the spouse. The spouse was therefore not eligible for classification as the spouse of an LPR at the time of adjustment and was ineligible for adjustment of status under INA 245 on that basis. In such cases, USCIS issues the spouse a Notice of Intent to Rescind his or her LPR status.

Footnote


Chapter 5 - Adjudication Procedures

USCIS officers review the evidence in the record to determine whether the evidence supports the initiation of rescission of lawful permanent resident (LPR) status.

The central issue in rescission proceedings is whether the alien was ineligible for adjustment of status at the time LPR status was granted.

A. Notice of Intent to Rescind

Once USCIS determines that an LPR’s status should be rescinded, USCIS issues a Notice of Intent to Rescind (NOIR). The NOIR must include why the alien was not eligible for adjustment of status at the time LPR status was granted and all of the alien's rights and options during rescission proceedings.

The NOIR must be sent by certified mail, with return receipt requested, or delivered to the alien in person. It must include the following:

- The background of the case, including the basic facts pertaining to the alien’s adjustment;
- The information that has arisen indicating that the alien was not eligible for adjustment of status. If the file does not establish that the alien is already aware of this information, the notice must also inform the alien of his or her right to review the information;
- The various steps of the alien’s immigration history that led to his or her ineligibility for LPR status;
- Any and all pertinent information in order to give the alien the opportunity to respond or rebut the allegations;
- All the grounds of inadmissibility applicable to the alien and the reasons that these grounds of
inadmissibility apply, as well as ineligibility for any other preference classification.[3]

- USCIS' statutory and regulatory authority to rescind the adjustment and intent to do so; and

- The alien’s options should he or she decide to contest the NOIR.

If fraud of any kind was involved, the NOIR must specifically define the fraud. For example, in order to deny or to subsequently rescind LPR status based on a marriage, the evidence must establish that the marriage was a sham or fraudulent, or that it was legally dissolved at the time of the adjustment. A marriage which was non-viable at the time of adjustment (for example, where the couple has separated without chance of reconciling), but not necessarily fraudulent, may not support a rescission.[4]

The alien must be informed and permitted to rebut all allegations contained in the NOIR. A rescission proceeding is invalid if the NOIR does not advise the alien of:

- The right to rebut the allegations;
- The right to counsel (at no expense to the government); and
- The right to request a hearing before an immigration judge (IJ).

The NOIR must advise the alien that the response must be in writing, under oath, and submitted to USCIS within 30 days of the receipt of the NOIR. USCIS must give the alien an opportunity to respond to the NOIR before proceeding to the next stage.[5]

B. Alien’s Response to Notice of Intent to Rescind

Upon receipt of the NOIR, the alien may:

- Fail to respond to the notice;
- Admit all allegations, surrender his or her permanent resident card (Form I-551) (commonly called a green card), and depart the United States, if necessary;
- Submit a written answer to the allegations contained in the NOIR, under oath, to contest any allegation; or
- Request a hearing before the IJ.

C. Action Following Response to Notice of Intent to Rescind

The next stage of the process is dependent on which option the alien chose upon receipt of the NOIR.

1. Alien Admits All Allegations or Fails to Respond

If the alien fails to respond to the NOIR or responds to the NOIR by admitting all allegations, the rescission becomes final. USCIS sends the alien a letter by certified mail, return receipt requested, informing the alien that his or her LPR status has been rescinded pursuant to INA 246 and instructing the alien to surrender his or her permanent resident card to the nearest USCIS office. The alien may not appeal that decision.[6]
2. Alien Contests the Allegations or Requests Hearing Before Immigration Judge

If the alien contests any of the allegations in the NOIR or specifically requests a hearing before an IJ, then USCIS refers the case for a rescission hearing before an IJ. The respondent can appeal the IJ’s decision.

D. Final Action After Adjustment Has Been Rescinded

Upon rescission, USCIS places the alien into removal proceedings under INA 240 with a Notice to Appear, unless the alien is otherwise in a lawful status or in a period of stay authorized by the secretary.

In addition, USCIS requests the alien surrender his or her permanent resident card (Form I-551) to the district director with administrative jurisdiction over the office where the alien obtained LPR status.

Footnotes


[^3] For example, if the alien had already obtained a permanent labor certification, and a visa number was available to the alien, but the alien then married a U.S. citizen and adjusted status on the basis of that marriage, rescission proceedings due to ineligibility for adjustment of status based on that marriage would be appropriate only if the alien would also have been ineligible for adjustment under an employment-based preference classification.

[^4] See Matter of Boromand (PDF), 17 I&N Dec. 450 (BIA 1980). For information regarding termination of status of CPRs whose status was obtained based on a marriage, see Chapter 3, Rescission Process, Section B, Rescission of Adjustment of a Conditional Permanent Resident, Subsection 1, Certain Alien Spouses and Sons and Daughters Defined in INA 216 [7 USCIS-PM Q.3(B)(1)].


[^9] For more information on NTA issuance, see Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (PDF) (PDF, 327.19 KB), PM-602-0050.1, issued June 28, 2018.


Part R - Abandonment of Lawful Permanent Residence

Volume 8 - Admissibility
Part A - Admissibility Policies and Procedures

Part B - Health-Related Grounds of Inadmissibility

Chapter 1 - Purpose and Background

A. Purpose

The medical grounds of inadmissibility, the medical examination of aliens, and the vaccinations administered to aliens are designed to protect the health of the United States population. The immigration medical examination, the resulting medical examination report, and the vaccination record provide the information USCIS uses to determine if an alien meets the health-related standards for admissibility.

Four basic medical conditions may make an applicant inadmissible on health-related grounds:

- Communicable disease of public health significance,
- Failure to show proof of required vaccinations,
- Physical or mental disorder with associated harmful behavior, and
- Drug abuse or addiction.

B. Background

Public health concerns have been reflected in U.S. immigration law since the Immigration Act of 1882.[1] Among others, “persons suffering from a loathsome or a dangerous contagious disease” were not allowed to enter the United States.[2] In 1990, Congress revised and consolidated all of the grounds of inadmissibility. It narrowed health-related grounds of inadmissibility to include only aliens with communicable diseases, physical or mental disorders with associated harmful behavior, or those with drug abuse or addiction problems.[3]

As of 1996, Congress requires all immigrant visa and adjustment of status applicants to establish that they have been vaccinated against certain vaccine-preventable diseases.[4]

C. Role of the Department of Health and Human Services (HHS)

Because medical knowledge and public health concerns can and do change over time, Congress gave the Department of Health and Human Services (HHS) the authority to designate by regulations which conditions make a person inadmissible on health-related grounds.

The HHS component charged with defining these medical conditions is the Centers for Disease Control and Prevention (CDC). CDC’s responsibilities include:

- Publishing regulations addressing health-related conditions that render an applicant inadmissible;
- Establishing the medical examination requirements in its Technical Instructions for Medical Examination of Aliens (Technical Instructions) that are binding on civil surgeons in the United States,
panel physicians overseas, USCIS officers, and State Department consular officers;[5]

- Responding to medical questions that officers, civil surgeons, and panel physicians may have based on the Technical Instructions;[6] and

- Advising USCIS on the adjudication of medical waivers.

**D. Role of the Department of Homeland Security (DHS)**

Congress authorizes the Department of Homeland Security (DHS) to determine an alien’s admissibility to the United States, which includes determinations based on health reasons.[7] DHS must follow HHS regulations and instructions when determining whether an applicant is inadmissible on health-related grounds.[8]

Congress also empowers DHS to designate qualified physicians as civil surgeons who conduct medical examinations of aliens physically present in the United States.[9]

**E. Making a Health-Related Inadmissibility Determination**

To make a health-related inadmissibility determination, the officer should follow the steps outlined below:

**Overview of Process of Making a Health-Related Inadmissibility Determination**

<table>
<thead>
<tr>
<th>Step of Adjudication</th>
<th>Where can I find information on this step?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1: Is the applicant subject to the health-related grounds of inadmissibility or is there another reason that requires the applicant to undergo an immigration medical examination?</td>
<td>Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3]</td>
</tr>
<tr>
<td>Step 2: If required, has the applicant been medically examined by the appropriate physician and is the appropriate medical documentation in the file?</td>
<td>Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3]</td>
</tr>
<tr>
<td>Step 3: Was the medical documentation properly completed and is it still valid?</td>
<td>Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4] throughChapter 10, Other Medical Conditions [8 USCIS-PM B.10]</td>
</tr>
<tr>
<td>Step 4: Is the applicant inadmissible based on the health-related grounds?</td>
<td>Chapter 11, Inadmissibility Determination [8 USCIS-PM B.11]</td>
</tr>
<tr>
<td>Step 5: Is the applicant inadmissible based on grounds other than the health-related grounds, as evidenced by the</td>
<td>Chapter 11, Inadmissibility Determination, Section D, Other Grounds of Inadmissibility [8</td>
</tr>
<tr>
<td>Step of Adjudication</td>
<td>Where can I find information on this step?</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>medical documentation?</td>
<td>USCIS-PM B.11(D)</td>
</tr>
</tbody>
</table>

## F. Legal Authorities

- [INA 212(a)(1)] – Health-related grounds
- [INA 221(d)] – Physical examination
- [INA 232; 8 CFR 232] – Detention of aliens for physical and mental examination
- [42 U.S.C. 252] – Medical examination of aliens
- [42 CFR 34] – Medical examination of aliens
- Technical Instructions for Civil Surgeons (Technical Instructions), and updates[^11]

## Footnotes


[^6] CDC can be reached at cdcqap@cdc.gov. Officers should identify themselves as an immigration officer in the e-mail. This e-mail address is not for inquiries from the public. It is only for inquiries from immigration officers and civil surgeons. Inquiries from the public should be submitted to CDC INFO at cdc.gov/dcs/ContactUs/Form.


[^10] Medical documentation refers to the following: Report of Medical Examination and Vaccination Record (Form I-693), Report of Medical Examination by Panel Physician (Form DS-2054), and any other related worksheets.
Chapter 2 - Medical Examination and Vaccination Record

A. Purpose of the Medical Examination and Vaccination Report

The results of the medical examination and vaccination record determine whether an applicant is inadmissible on health-related grounds. The medical examination documentation indicates whether the applicant has either a Class A or Class B medical condition and the vaccination record shows whether the applicant has complied with all vaccination requirements.

B. Class A and B Conditions and Their Impact on Admissibility

Class A and B conditions are defined in Department of Health and Human Services (HHS) regulations.\(^1\)

Class A conditions are medical conditions that render a person inadmissible and ineligible for a visa or adjustment of status.\(^2\) A Class A medical condition is a:

- Communicable disease of public health significance per HHS regulation;
- A failure to present documentation of having received vaccinations against vaccine-preventable diseases;\(^3\)
- Present or past physical or mental disorder with associated harmful behavior or harmful behavior that is likely to recur; and
- Drug abuse or addiction.

Class B conditions are defined as physical or mental health conditions, diseases, or disability serious in degree or permanent in nature.\(^4\) This may be a medical condition that, although not rendering an applicant inadmissible, represents a departure from normal health or well-being that may be significant enough to:

- Interfere with the applicant’s ability to care for himself or herself, to attend school, or to work; or
- Require extensive medical treatment or institutionalization in the future.

C. Completion of a Medical Examination

When a medical examination is required to determine the applicant’s admissibility, the person must be examined by a physician who is designated to perform this examination.

By statute, any medical officer in the U.S. Public Health Service may conduct the examination. However, this rarely occurs. Most medical examinations are conducted by a physician designated as a civil surgeon by USCIS\(^5\) or designated as a panel physician abroad by the U.S. Department of State (DOS). Civil surgeons complete medical examinations for applicants in the United States, while panel physicians complete medical examinations for immigrant visa and refugee applicants seeking immigration benefits from outside the United States.

Footnotes


[^3] This Class A medical condition only applies to aliens who seek admission as immigrants, or who seek adjustment of status to one lawfully admitted for permanent residence. Additionally, a child who is adopted and under the age of 10 years or younger is not deemed to have a Class A condition if the following conditions apply: Prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement, and will ensure that, within 30 days of the child’s admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations required for immigration purposes. See 42 CFR 34.2(d)(2).


Chapter 3 - Applicability of Medical Examination and Vaccination Requirement

A. Requirements by Benefit Type

Medical examination and vaccination requirements vary depending on the immigration benefit the person is seeking.

Most applicants subject to medical grounds of inadmissibility must undergo a medical examination to determine their admissibility. Some applicants, however, do not need to undergo a medical examination unless there is a specific concern. Nonimmigrants, for example, are in this category.

Even if the applicant is not subject to health-related grounds of inadmissibility, the officer may still order a medical examination as a matter of discretion if the evidence indicates that there may be a public health concern. This could apply, for example, when an officer adjudicates a request for parole.

In general, an immigration officer may order a medical examination of an applicant at any time, if the officer is concerned that the applicant may be medically inadmissible. This rule applies regardless of the type of immigration benefit sought, or whether the applicant is applying for a visa, seeking entry at a U.S. port-of-entry, or already in the United States.

A civil surgeon in the United States can only perform a medical examination for purposes of a benefits application processed within the United States. Similarly, a panel physician abroad can generally only perform a medical examination for purposes of a visa application processed outside the United States. There are limited exceptions where an applicant seeking a benefit application inside the United States does not have to repeat a medical examination performed by a panel physician. The following chart highlights the benefits that require a medical examination and vaccinations, and whether a civil surgeon or panel physician should conduct the medical examination.

Medical Examination and Vaccination Requirements by Benefit Type
<table>
<thead>
<tr>
<th>Benefit Type</th>
<th>Medical Examination (Yes or No)</th>
<th>Vaccination (Yes or No)</th>
<th>Panel Physician or Civil Surgeon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immigrant visa applicants, applying with U.S. Department of State (DOS)</td>
<td>Yes</td>
<td>Yes</td>
<td>Panel physician</td>
</tr>
<tr>
<td>Adjustment applicants</td>
<td>Yes</td>
<td>Yes</td>
<td>Civil surgeon</td>
</tr>
<tr>
<td>Nonimmigrant visa applicants, applying with DOS; and nonimmigrants seeking change/extension of status while in the United States</td>
<td>No (with some exceptions)</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Temporary Protected Status (TPS) applicants</td>
<td>No (with some exceptions)</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>K or V visa applicants, applying with DOS</td>
<td>Yes</td>
<td>No</td>
<td>Panel physician</td>
</tr>
<tr>
<td>Nonimmigrant seeking change of status to V status</td>
<td>Yes</td>
<td>No</td>
<td>Civil surgeon</td>
</tr>
<tr>
<td>K or V nonimmigrants applying for adjustment of status in the United States</td>
<td>May be required</td>
<td>Yes</td>
<td>Panel physician and/or civil surgeon</td>
</tr>
<tr>
<td>Refugee applicants, including principal and derivative applicants overseas</td>
<td>Yes</td>
<td>No</td>
<td>Panel physician</td>
</tr>
<tr>
<td>Applicants seeking derivative refugee or derivative asylee status while in the United States</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Principal asylum applicants in the United States</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Applicants seeking derivative asylee status with DOS [16]</td>
<td>Yes</td>
<td>No</td>
<td>Panel physician</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>-----</td>
<td>----</td>
<td>-----------------</td>
</tr>
<tr>
<td>Asylees applying for adjustment of status [20]</td>
<td>May be required [21]</td>
<td>Yes</td>
<td>Civil surgeon</td>
</tr>
<tr>
<td>Kurdish asylees paroled under Operation Pacific Haven applying for adjustment of status</td>
<td>Yes</td>
<td>Yes</td>
<td>Panel physician or civil surgeon</td>
</tr>
<tr>
<td>Registry applicants</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>North American Indians entering the United States [22]</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Children of returning residents entering the United States [23] or children of U.S. nationals</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Internationally adopted orphans [24]</td>
<td>Yes</td>
<td>Yes</td>
<td>Panel physician</td>
</tr>
</tbody>
</table>

**B. Special Considerations**

1. **Nonimmigrants and TPS Applicants**

In general, nonimmigrant visa applicants, nonimmigrants seeking change or extension of status, and Temporary Protected Status (TPS) applicants are only medically examined if the consular officer or immigration officer has concerns as to the applicant’s inadmissibility on health-related grounds. Customs and Border Protection (CBP) officers at ports-of-entry may also require a nonimmigrant arriving with or without a visa to submit to a medical examination to determine whether a medical ground of inadmissibility applies.

2. **K or V Visa Applicants Applying with DOS [25]**

While the consular officer may encourage compliance, the consular officer cannot deny a K or V visa for lack of compliance with the vaccination requirements.
Some panel physicians may perform the vaccination assessment in anticipation of the applicant’s later adjustment of status application.

3. Nonimmigrants Applying for Change of Status to V Status

For nonimmigrants applying for change of status to V status, the civil surgeon may perform the vaccination assessment in anticipation of the applicant’s later adjustment of status application.

4. K or V Nonimmigrants Applying for Adjustment [26]

K and V nonimmigrants applying for adjustment of status are not required to repeat the medical examination if the application was filed within one year of the date of the original medical examination, and:

- The medical examination did not reveal a Class A medical condition; or
- The applicant received a conditional waiver in conjunction with the K or V nonimmigrant visa or the change of status to V and the applicant submits evidence of compliance with the waiver terms and conditions. [27]

If a new medical examination is required and reveals a Class A medical condition, a new waiver application will also be required. In such cases, the officer should determine whether the applicant complied with the terms and conditions of the first waiver, if applicable. Such determination should be given considerable weight in the adjudication of a subsequent waiver application. [28]

Even if a new medical examination is not required, applicants must still comply with the vaccination requirements if the vaccination record was not included as part of the original medical examination report. If the vaccination report was properly completed at the time of the overseas examination, the officer may accept the vaccination assessment completed by the panel physician.

An applicant’s overseas medical examination report completed by a panel physician should already be in the applicant’s A-file. If it is not in the A-file, the officer should request the medical examination report through a Request for Evidence (RFE).

If the applicant was granted a change of status to V in the United States, [29] the medical examination report completed by the civil surgeon should be in the A-file created at the time that the change of status was initially granted.

5. Refugees Applying for Adjustment [30]

By regulation, refugees applying for adjustment of status generally do not need to repeat the entire medical examination if the applicant was already examined by a panel physician for purposes of admission to the United States. [31] Refugees must undergo an additional medical examination only if the original examination by the panel physician revealed a Class A medical condition.

Family members granted refugee status in the United States must submit to a medical examination at the time they seek to adjust their status.

All refugees must comply with the vaccination requirements at the time of adjustment of status by submitting the relevant parts of the Report of Medical Examination and Vaccination Record (Form I-693) completed by a designated civil surgeon. A prior vaccination assessment performed by the panel physician cannot be used...
for purposes of the adjustment of status application. [32]

USCIS granted a blanket civil surgeon designation to state and local health department physicians for the limited purpose of completing the vaccination record for refugees applying for adjustment of status.

6. Asylees Applying for Adjustment

All asylees are required to undergo an immigration medical exam, including vaccination assessment, at time of adjustment.[33]

However, according to USCIS policy developed in consultation with the Centers for Disease Control and Prevention, an asylee dependent who had a medical examination conducted overseas is not required to undergo a new medical exam when applying for adjustment of status if:

- The results of the overseas medical examination are contained in the A-file and no Class A condition was reported;
- The asylee has applied for adjustment of status within one year of eligibility to file; and
- No evidence in the A-file or testimony given at the interview suggests that the asylee has acquired a Class A condition after his or her entry into the United States.

Even if an asylee dependent may use the result of the previous examination, he or she must still establish compliance with the vaccination requirements and submit the vaccination assessment with his or her adjustment of status application. This requirement applies even if the applicant had a vaccination assessment completed overseas by a panel physician. To comply with the requirement, the applicant must have the relevant parts of Form I-693 completed by the civil surgeon.

7. Children of Returning Residents Entering the United States [34]

For children of returning residents entering the United States, as long as the parent’s visa is valid or the parent is a U.S. resident or U.S. national, there are no medical examination or vaccination requirements.

Children of returning residents entering the United States are:

- Children born abroad after the parent has been issued an immigrant visa and while the parent is applying for admission to the United States.
- Children born abroad during the temporary visit abroad of a mother who is a national or permanent resident of the United States.

8. Internationally Adopted Orphans [35]

Children 10 years of age or younger who are classified as orphans and who are applying for IR-3 and IR-4 (orphans) and IH-3 and IH-4 (Hague Convention adoptees) visas are not required to comply with the vaccination requirements before admission to the United States.[36]

Footnotes
Based on the conditions listed in INA 212(a)(1).

See INA 212(d)(5)(A).

See Matter of Arthur (PDF), 16 I&N Dec. 558 (BIA 1978) (The applicant has the burden of proof to establish his or her admissibility to the United States according to INA 291; the burden never shifts to the government).

Special considerations that apply to certain benefit types are noted in Section B, Special Considerations [8 USCIS-PM B.3(B)].


See Section B, Special Considerations [8 USCIS-PM B.3(B)].

See INA 244.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

See INA 214. See 8 CFR 214.2(k) and 8 CFR 214.15.

See INA 214(q) and 8 CFR 214.15.

See INA 245 and 8 CFR 245.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

See INA 207 and 8 CFR 207.7. See INA 208 and 8 CFR 208.21.

See INA 207 and 8 CFR 207.

See INA 208 and 8 CFR 208.

See INA 208 and 8 CFR 208.21.

See INA 209 and 8 CFR 209.1.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

Including state or local health department physicians, who are blanket designated by USCIS as civil surgeons for purposes of completing the vaccination record for refugees adjusting status only.

See INA 209 and 8 CFR 209.2.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

See 8 CFR 289.1 and 8 CFR 289.2. American Indians born in Canada who meet the regulatory requirements may be regarded as having been admitted for lawful permanent residence. Because neither an immigrant visa nor an adjustment of status application is required, the applicant is not required to comply with the medical examination and vaccination requirements.

See INA 101(a)(27)(A) and 22 CFR 42.22.

See INA 101(b)(1)(F), including Hague Convention adoptees.
Chapter 4 - Review of Medical Examination Documentation

A. Results of the Medical Examination

The physician must annotate the results of the examination on the following forms:

Panel Physicians

Panel physicians must annotate the results of the medical examination on the Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets [1].

Civil Surgeons

Civil surgeons must annotate the medical examination results on the Report of Medical Examination and Vaccination Record (Form I-693).

B. Documentation Completed by Panel Physician

Since a State Department consular officer reviews the medical documentation completed by a panel physician as part of the overseas visa process, a USCIS officer may assume that the medical documentation is properly
completed. [2]

If the USCIS officer notices a significant irregularity such as an omission of a particular section, the officer may issue a Request for Evidence (RFE) to have a civil surgeon in the United States complete the missing part(s) of the medical examination. A civil surgeon should address any deficiency by completing the respective parts of a **Form I-693** according to the Technical Instructions for Civil Surgeons issued by the Centers for Disease Control and Prevention (CDC). [3] This should only happen in rare instances.

Applicants who have already been examined abroad and are not required to repeat the medical examination in the United States may still have to show proof of the vaccination requirement. [4]

### C. Documentation Completed by Civil Surgeon

#### 1. Civil Surgeon Designation

Except for physicians who are Public Health Service officers, only physicians designated by USCIS to act as civil surgeons may conduct an immigration medical examination in the United States and complete **Form I-693**. [5] Only doctors of medicine (M.D.) and doctors of osteopathy (D.O.) who are currently licensed to practice as physicians may be designated. [6] The physician must be designated as a civil surgeon at the time of the completion of the medical examination.

To determine whether the physician is designated as a civil surgeon, the officer should consult the designated civil surgeon list at [uscis.gov/tools](http://uscis.gov/tools) (via the Find a Doctor tool).

#### 2. Complete Form

The following requirements must always be met regarding any **Form I-693** submitted to USCIS:

- The form must be completed legibly;
- All required parts of the form must be completed; [7]
- The form must be signed and dated by the designated civil surgeon who conducted the medical examination; [8]
- The form must be signed and dated by the applicant who was examined; [9]
- If applicable, the form must be signed and dated by the physician(s) completing referral evaluations; [10]
- The form must still be valid; [11] and
- The form must be in a sealed envelope as detailed in the form’s instructions.

If the above requirements are not met, or if there is evidence that the envelope has been tampered with, the officer must return the original **Form I-693** to the applicant for corrective action. Whenever an original is returned to the applicant, the officer should retain a copy.

A response to an RFE is acceptable if it is completed by a civil surgeon in one of the following ways:
The civil surgeon annotates the original medical examination in the deficient part(s), and both the applicant and the civil surgeon re-sign and re-date their respective certifications.

The civil surgeon re-completes an entirely new Form I-693, and corrects for the original deficiency.

The civil surgeon completes the following sections of a new form: The part containing the applicant’s information, the part(s) that were deficient in the original examination, and the part containing the civil surgeon’s information and certification. The civil surgeon must include the original medical examination documentation with the newly completed parts.

The applicant may return to the original civil surgeon who performed the immigration medical exam or a new civil surgeon to correct the form.

The civil surgeon must place the corrected form in a sealed envelope. The applicant must then return the sealed envelope to USCIS.

3. Signatures

The applicant, the civil surgeon, and any other health care provider who evaluated the applicant as part of the immigration medical examination should sign the form, to verify that the content of their representations is truthful.

Signature of the Civil Surgeon

The civil surgeon’s signature must be an original signature. Stamps of the physician’s signature or other substitutes, or copies of the civil surgeon’s original signature, are not acceptable (except for blanket-designated health departments or military physicians as described below).

As outlined in CDC’s Technical Instructions, the civil surgeon is only permitted to sign the Form I-693 after he or she has completed the entire medical examination. An examination is not completed until any prescribed treatment for a Class A condition has been administered.

There may be circumstances when an applicant refuses to undergo one part of the examination, but the civil surgeon certifies the form with a notation that part of the exam is not complete. In these cases, the officer should issue an RFE to the applicant for corrective action.

The civil surgeon might also diagnose a Class A condition for which the applicant refuses treatment. The civil surgeon might then annotate the Class A condition but still certify and sign the form. In this case, the officer should not return the form for corrective action. The officer should determine that the applicant is inadmissible and ask the applicant to request a waiver, if available.

Signature of the Health Department

In agreement with CDC, USCIS granted blanket civil surgeon designation to local and state health departments in the United States. This blanket designation allows health departments to complete the vaccination portion of Form I-693 for refugees seeking adjustment if they have a physician who meets the professional qualifications for a civil surgeon. If a refugee only requires the vaccination assessment, the only parts of the form that need to be completed are the applicant’s information, the vaccination assessment, and the certifications. The other parts are irrelevant and do not have to be submitted.

If the health department physician is completing only a vaccination assessment for refugees seeking adjustment, the physician’s signature may be either an original (handwritten) or a stamped signature, as long
as it is the signature of the health department physician. The attending nurse may, but does not have to, co-sign with the physician. The signature of the physician must be accompanied by the health department’s stamp or raised seal, whichever is customarily used.

If the health department does not properly sign, the officer should return the medical documentation to the applicant for corrective action.\textsuperscript{15}

\textit{Signature of a Military Physician designated as a Civil Surgeon for Members and Veterans of the Armed Forces}

To ease the difficulties encountered by physicians and applicants in the military, USCIS issued a blanket civil surgeon designation to qualifying military physicians to permit them to perform the immigration medical examination and complete the \textit{Form I-693} for eligible members and veterans of the U.S. armed forces and their dependents.\textsuperscript{16}

Pursuant to the understanding reached between USCIS and the CDC, military physicians who qualify under this blanket civil surgeon designation may perform the entire immigration medical examination as long as the exam is conducted in the United States on the premises of a Military Treatment Facility (MTF) and conducted for a U.S. armed forces member, veteran, or dependent who is eligible to receive medical care at the MTF.

If operating under the blanket civil surgeon designation for military physicians, a physician’s signature may be either an original (handwritten) or stamped signature, as long as it is the signature of a qualifying military physician. Nurses and other health care professionals may, but are not required to, co-sign the form. The signature of the physician must be accompanied by the official stamp or raised seal of the MTF, whichever is customarily used.

If the military physician does not properly sign, the officer should return the medical documentation to the applicant for corrective action.

\textit{Signature of the Applicant}

The applicant or the civil surgeon may complete the section about the applicant’s information. The civil surgeon must always verify the applicant’s identity by requiring a government-issued ID, as stated in CDC’s Technical Instructions.

The applicant must sign the certification only when instructed by the civil surgeon. By signing the form, the applicant attests that he or she consented to the medical examination and that any information provided in relation to the medical examination is truthful.

Whenever the civil surgeon orders a test that he or she does not perform personally, the civil surgeon must ensure that the physician or staff to whom the applicant is referred checks the identity of the applicant by requesting a government-issued ID.\textsuperscript{17}

An officer should follow the chart below to determine whether the applicant or a legal guardian must sign the form.\textsuperscript{18}

\begin{center}
\textbf{Signature of the Applicant}
\begin{tabular}{|c|c|}
\hline
Age of Applicant & Signature Requirement \\
\hline
\end{tabular}
\end{center}
<table>
<thead>
<tr>
<th>Age of Applicant</th>
<th>Signature Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age 14 or Older</td>
<td>The applicant must sign Form I-693. However, a legal guardian may sign for a mentally incompetent person.</td>
</tr>
<tr>
<td>Under Age 14</td>
<td>Either the applicant, a parent, or legal guardian may sign the Form I-693. The officer should not reject the form as improperly completed if only the applicant, parent, or guardian signs.</td>
</tr>
</tbody>
</table>

*Signature of Physicians Receiving Referrals for Evaluation*

If the civil surgeon is unable to perform a particular medical assessment, he or she is required to refer the applicant to another physician. The physician receiving the referral is required to complete the appropriate section on Form I-693 after he or she has completed the evaluation of the applicant’s condition. The civil surgeon may not sign the civil surgeon’s certification on the form until the civil surgeon has received and reviewed the report of the physician who received the referral. If the referring physician ordered treatment, the civil surgeon may not sign the certification until the treatment has been completed.

Contracted services used by the civil surgeon to complete a step in the medical examination are not considered referrals. Therefore, the referral section can be blank in such cases. For example, if the civil surgeon uses a contractor to draw blood, the referral section does not have to be completed. However, if the Technical Instructions require a referral to the Health Department because the applicant has TB, the officer must make sure that the referral section is completed.

**4. Validity Period of Form I-693 (Including Use of Prior Versions)**

*Evidentiary Value*

A person seeking an immigration benefit and who is subject to the health-related grounds of inadmissibility must establish that he or she is not inadmissible on health-related grounds. In general, those applying for immigration benefits while in the United States must use Form I-693 to show they are free from any conditions that would render them inadmissible under the health-related grounds.

An officer may determine that the applicant has met the burden of proof required to establish that he or she is free from a medical condition that would render the applicant inadmissible on health-related grounds if all of the following criteria are met:

- A USCIS-designated civil surgeon performed the immigration medical examination in accordance with HHS regulations;
- The civil surgeon and the applicant properly completed the current version of Form I-693;
- The Form I-693 that the applicant submitted is signed by a civil surgeon no more than 60 days before the date the applicant filed an application for the underlying immigration benefit;
- The Form I-693 establishes that the applicant does not have a Class A medical condition and has complied with the vaccination requirements or is granted a waiver; and
• USCIS issues a decision on the underlying immigration benefit application no more than 2 years after the date the civil surgeon signed Form I-693. [24]

In general, if any one of the above criteria is not met, the applicant has not met the burden of proof required to establish that he or she is free of a medical condition that would render the applicant inadmissible to the United States on health-related grounds. In this case, the officer should follow standard operating procedures regarding issuance of a denial or an RFE or Notice of Intent to Deny (NOID) to address the deficiency.

Additionally, even if all of the above criteria are met, but the officer has reason to believe that the applicant’s medical condition has changed since submission of the Form I-693 such that the applicant’s admissibility could be affected, the officer, in his or her discretion, may request that the applicant submit a new Form I-693.

Special rules may apply to certain aliens who were examined overseas, including certain nonimmigrant fiancé(e)s or spouses of U.S. citizens (K visa), spouses of lawful permanent residents (V visa), refugees, and asylee dependents. Such aliens usually do not need to repeat the full immigration medical exam in the United States for purposes of adjustment of status. [25]

Generally, the only acceptable version of Form I-693 is the version in use at the time of the medical examination. [26] Prior versions of Form I-693 are generally not acceptable because they may lack necessary information. [27]

Form I-693 Submitted to USCIS Before November 1, 2018

In 2018, USCIS revised its policy regarding the extent to which a Form I-693 retains its evidentiary value. This policy is effective November 1, 2018. Before November 1, 2018, the validity period policy provided Form I-693 retained its evidentiary value as long as it was submitted to USCIS within 1 year of the civil surgeon’s signature and USCIS issued a final decision on the underlying immigration benefit application within a year of the Form I-693’s submission to USCIS. This policy contained a maximum 2-year period during which Form I-693 retained its evidentiary value.

Due to increasing caseloads and more complex adjudications, USCIS observed an increasing number of cases where benefit applications could not be decided within 1 year from the date the Form I-693 was submitted. In these cases, USCIS would have to request a new Form I-693, further delaying the processing of the underlying application and inconveniencing the applicant.

The new policy, effective November 1, 2018, addresses these issues by realigning the existing 2-year period (during which Form I-693 retains its evidentiary value) to require applicants to complete their immigration medical examination closer in time to the filing of the underlying benefit application. This revised policy is intended to reduce the need for USCIS to request an updated Form I-693, thereby streamlining case processing and minimizing inconveniences to applicants.

Certain Form I-693 submitted to USCIS before November 1, 2018 may be subject to the previous validity period policy as noted in the section below.

A completed Form I-693 submitted to USCIS before November 1, 2018 retains its evidentiary value to support a finding that an applicant is not inadmissible based on health-related grounds if it meets any of the following scenarios:

• The civil surgeon signs Form I-693 more than 60 days before the applicant files the underlying benefit application with USCIS, but the applicant submits Form I-693 to USCIS no more than 1 year after the civil surgeon signed Form I-693; and USCIS issues a decision on the underlying benefit application no
more than 1 year after the date the applicant submitted Form I-693 to USCIS.

- The civil surgeon signs Form I-693 no more than 60 days before the applicant files the underlying benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon’s signature.

- The civil surgeon signs Form I-693, and the applicant submits Form I-693, after the applicant files the benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon’s signature.

In all cases, a Form I-693 submitted to USCIS more than 1 year after the date of the civil surgeon’s signature is insufficient for evidentiary purposes as of the time of its submission to USCIS. The table below illustrates these scenarios.

Form I-693 Submitted to USCIS Before November 1, 2018

<table>
<thead>
<tr>
<th>When did civil surgeon sign?</th>
<th>When was underlying benefit application filed with USCIS?</th>
<th>I-693 retains evidentiary value through</th>
</tr>
</thead>
<tbody>
<tr>
<td>No more than 1 year before I-693 submitted to USCIS</td>
<td>More than 60 days after civil surgeon signed the I-693</td>
<td>1 year from date applicant submitted I-693 to USCIS</td>
</tr>
<tr>
<td>No more than 60 days before underlying benefit application filed with USCIS</td>
<td>No more than 60 days after civil surgeon signed the I-693</td>
<td>2 years from date civil surgeon signed I-693</td>
</tr>
<tr>
<td>After the benefit application was filed with USCIS</td>
<td>Before the civil surgeon signed the I-693</td>
<td>2 years from date civil surgeon signed I-693</td>
</tr>
<tr>
<td>More than 1 year before I-693 submitted to USCIS</td>
<td>N/A – I-693 not valid at time applicant submits I-693 to USCIS</td>
<td></td>
</tr>
</tbody>
</table>

Form I-693 Submitted to USCIS On or After November 1, 2018

A completed Form I-693 submitted to USCIS on or after November 1, 2018 retains its evidentiary value to support a finding that an applicant is not inadmissible based on health-related grounds if it meets any of the following scenarios:

- The civil surgeon signs Form I-693 no more than 60 days before the applicant files the underlying benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon’s signature.

- The civil surgeon signs the Form I-693, and the applicant submits Form I-693, after the applicant files the benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon’s signature.

In all cases, a Form I-693 signed by a civil surgeon more than 60 days before the applicant files the
underlying benefit application is insufficient for evidentiary purposes as of the time of its submission to USCIS. The table below illustrates these scenarios.

<table>
<thead>
<tr>
<th>When did civil surgeon sign?</th>
<th>I-693 retains evidentiary value through</th>
</tr>
</thead>
<tbody>
<tr>
<td>No more than 60 days before applicant filed underlying benefit application with USCIS</td>
<td>2 years from date civil surgeon signed I-693</td>
</tr>
<tr>
<td>After applicant filed benefit application with USCIS</td>
<td>2 years from date civil surgeon signed I-693</td>
</tr>
<tr>
<td>More than 60 days before applicant filed benefit application with USCIS</td>
<td>N/A – I-693 not valid at time applicant submits I-693 to USCIS</td>
</tr>
</tbody>
</table>

**Timing of the Submission of the Medical Examination Report**

Applicants may submit the Form I-693 medical examination report to USCIS:

- Concurrently with the immigration benefit application; or
- At any time after filing the immigration benefit application but before USCIS finalizes adjudication of that application. If not submitted simultaneously with the immigration benefit application, applicants may bring the medical examination report to an interview or wait until USCIS issues an RFE requesting the medical examination report.

**Place of Submission of the Medical Examination Report**

The medical examination report should be submitted to the appropriate location. [28]

**Footnotes**

[^1] As of October 1, 2013, panel physicians only use DS-2054. The DS-2053 is no longer used after that date.

[^2] The Technical Instructions for Panel Physicians may differ from the Technical Instructions for Civil Surgeons. As long as the DS form is properly completed, the officer should accept the finding of the consular officer as correct.

[^3] In this case, because the DS form was completed by a panel physician, the officer should retain the original document. The RFE must specify which sections of Form I-693 have to be completed by a civil surgeon.

[^4] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for specific information on who is required to be examined and to what extent.
Form I-693 can only be used for immigration benefits that are granted in the United States.

See INA 232 and 8 CFR 232.

Some parts of the form may not be required. For example, if an applicant is not required to undergo a chest X-ray in the TB section of the medical examination report, the chest X-ray section would not have to be completed.

See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].

See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].

See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].

See Subsection 4, Validity Period of Form I-693 (Including Use of Prior Versions) [8 USCIS-PM B.4(C)(4)].

As part of completing the Form I-693, the civil surgeon must ensure that the applicant has signed the applicant’s certification.

Along with the original Form I-693, if separate from the corrected form.

See Volume 9, Waivers and Other Forms of Relief, Part D, Health-Related Grounds of Inadmissibility [9 USCIS-PM D] for more on waivers.

See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon designation for health departments.

See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon designation for military physicians.

By signing the form, the civil surgeon certifies that he or she has examined the applicant according to the procedures and requirements outlined in the Technical Instructions, Form I-693, and form instructions. Officers do not need to verify whether the civil surgeon instructed the referring physician to check the applicant’s identity.

See 8 CFR 103.2(a)(2).

Civil surgeons are, however, still responsible for ensuring that the contractor properly checks the applicant’s ID.

See INA 212(a)(1).

See Section C, Documentation Completed by Civil Surgeon [8 USCIS-PM B.4(C)].

For example, Form I-485. Certain Form I-693 submitted to USCIS before November 1, 2018 may be subject to the previous policy in effect. See below for more information.

For more information on determining inadmissibility based on medical grounds, see Chapter 5, Review of Overall Findings [8 USCIS-PM B.5] through Chapter 11, Inadmissibility Determination [8 USCIS-PM B.11].

USCIS considers the date the civil surgeon signed the Form I-693 as the date the civil surgeon completed the examination. Certain Form I-693s submitted to USCIS before November 1, 2018 may be

AILA Doc. No. 19060633. (Posted 3/26/21)
subject to the previous policy in effect. See below for more information.

[^25] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for more information on these special considerations.

[^26] In other words, the Form I-693 must be a valid form version as of the date the civil surgeon signed the form.

[^27] See uscis.gov/i-693 for the current and accepted version(s) of the form.


Chapter 5 - Review of Overall Findings

A. Overall Finding of Admissibility

The civil surgeon should properly complete the part addressing when the medical examinations and any follow-up examinations took place. The civil surgeon should also mark the appropriate boxes in the “Summary of Overall Findings” section.

If the summary indicates a Class A condition, the officer should ensure that the findings in the other form sections correspond. If they do correspond, the applicant is inadmissible. If there is conflicting information, the officer should return the form to the applicant for corrective action.

If the civil surgeon omits the summary finding entirely, the officer should check the findings in the other form sections to determine whether the applicant has a Class A condition. If all sections are properly completed, and no Class A condition has been indicated by the civil surgeon, the officer should not issue a Request for Evidence (RFE) and instead proceed with the adjudication.

If the officer is unable to determine whether the applicant has a Class A condition based on the other form sections, the officer should return the form to the applicant for corrective action. The RFE should be sent to the applicant directing him or her to return to the civil surgeon to correct the form.

B. Changes to the Summary Findings

The Technical Instructions direct civil surgeons to treat Class A communicable diseases of public health significance or refer the applicant for treatment. Generally, the civil surgeon can only sign off upon completion of the treatment. This is why the officer may encounter a summary finding that has been reclassified from a “Class A condition” to a “Class B” or “No Class A or Class B” condition.

The officer should not reject the form because of the reclassification as long as the information is consistent with the information otherwise provided in the medical examination documentation. In such cases, the applicant is not inadmissible on health-related grounds.

For example, a civil surgeon may initially annotate the summary section with a Class A condition but, following treatment, change the annotation to a Class B condition. In this instance, the summary section may indicate an earlier Class A condition, followed by a later Class B determination. Since the civil surgeon indicated on the Form I-693 that a former Class A condition is now a Class B condition, the applicant is not inadmissible on health-related grounds.
Chapter 6 - Communicable Diseases of Public Health Significance

A. Communicable Diseases

Applicants who have communicable diseases of public health significance are inadmissible. The Department of Health and Human Services (HHS) has designated the following conditions as communicable diseases of public health significance that apply to immigration medical examinations conducted in the United States:

- Gonorrhea;
- Hansen’s Disease (Leprosy), infectious;
- Syphilis, infectious stage; and
- Tuberculosis (TB), Active—Only a Class A TB diagnosis renders an applicant inadmissible to the United States. Under current Centers for Disease Control and Prevention (CDC) guidelines, Class A TB means TB that is clinically active and communicable.

What qualifies as a communicable disease of public health significance is determined by HHS, not by USCIS. Any regulatory updates HHS makes to its list of communicable diseases of public health significance are controlling over the list provided in this Part B.

1. Additional Communicable Diseases for Applicants Abroad

HHS regulations also list two additional general categories of communicable diseases of public health significance. Currently, these provisions only apply to applicants outside the United States who have to be examined by panel physicians:

- Communicable diseases that may make a person subject to quarantine, as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act.
- Communicable diseases that may pose a public health emergency of international concern if they meet one or more of the factors listed in 42 CFR 34.3(d) and for which the Director of the CDC has determined that (A) a threat exists for importation into the United States, and (B) such disease may potentially affect the health of the American public. The determination will be made consistent with criteria established in Annex 2 of the revised International Health Regulations. HHS/CDC’s determinations will be announced by notice in the Federal Register.

2. Human Immunodeficiency Virus (HIV)

As of January 4, 2010, human immunodeficiency virus (HIV) infection is no longer defined as a communicable disease of public health significance according to HHS regulations. Therefore, HIV infection does not make the applicant inadmissible on health-related grounds for any immigration benefit adjudicated on or after January 4, 2010, even if the applicant filed the immigration benefit application before January 4, 2010.

The officer should disregard a diagnosis of HIV infection when determining whether an applicant is inadmissible on health-related grounds. The officer should administratively close any HIV waiver application
filed before January 4, 2010.

B. Parts of Form I-693 Addressing Communicable Diseases

The civil surgeon must complete “Findings” boxes for all categories of communicable diseases of public health significance. The civil surgeon may add explanatory remarks; however, the officer should not issue a Request for Evidence (RFE) simply because there are no remarks.

1. Tuberculosis

An initial tuberculosis (TB) screening test for showing an immune response to Mycobacterium tuberculosis\(^7\) antigens is required for all applicants 2 years of age or older.\(^8\) According to the Tuberculosis Technical Instructions for Civil Surgeons, applicants under 2 years of age are required to undergo an initial screening test only if the child has signs or symptoms suggestive of TB or has known human immunodeficiency virus (HIV) infection.

The “testing age” is the applicant’s age on the date the civil surgeon completed the medical examination by signing the form, not the age at the time of the adjudication. An officer should not send a RFE for testing if the applicant was properly exempt from the testing requirement due to age at the time of the medical examination. The officer, however, may always require testing if evidence indicates the applicant may have been exposed to TB since the examination.

Initial Screening Test Results

The initial screening test results must be recorded. If the initial screening test was not administered, the exceptions should be clearly annotated in the remarks portion after the “not administered” box in the testing section. The officer should be aware that anyone who previously received the Bacille Calmette-Guérin vaccine\(^9\) must still undergo an initial TB screening test. These applicants are not exempt from the initial screening test.

The civil surgeon must also annotate the “Initial Screening Test Result and Chest X-Ray Determination” section. If the section indicates that the applicant is medically cleared relating to TB, then no further TB tests are required. In this case, the X-ray section should be left blank.

Positive Screening Results

If the initial screening test is positive, or if the applicant has signs or symptoms of TB or has known HIV infection, a chest X-ray must be performed. Applicants who have chest x-ray findings suggestive of TB, signs or symptoms of TB, or known HIV infection must be referred to the health department of jurisdiction for sputum testing. This referral, testing, and treatment can be a lengthy process, but the civil surgeon cannot sign off on the Form I-693 until any required steps relating to TB have been completed.

Under the Technical Instructions, a pregnant applicant can defer the chest X-ray until after pregnancy but the civil surgeon may not submit the form until the chest X-ray has been performed, interpreted, and the appropriate follow-up, if required under the Technical Instructions, is completed. If the officer receives an incomplete medical examination for a pregnant applicant, the officer should return the original form to the applicant for corrective action according to established local procedures.

Referral and Reporting to Health Departments

If a referral is required, the civil surgeon must not sign Form I-693 until the referral evaluation section has
been completed and received back from the appropriate health department. If the referral evaluation section is not documented, the officer should issue an RFE for corrective action. Determining whether a referral is required is detailed in the TB Technical Instructions for Civil Surgeons.

2. Syphilis

Serological testing for syphilis is required for applicants 15 years of age or older. Applicants under 15 years may be tested by the civil surgeon if illness is suspected. The testing age is the age on the date the civil surgeon completed the medical examination and signed the form, not the age at the time of the adjudication of the adjustment application. The civil surgeon must complete details in the “Findings” portion of Form I-693.[10]

3. Gonorrhea

Testing for gonorrhea is required for applicants 15 years of age or older. Applicants under 15 years old may be tested by the civil surgeon if illness is suspected. The testing age is determined by the applicant’s age on the date the civil surgeon signed the form, not the age at the time USCIS adjudicates the adjustment application. The civil surgeon must complete details about the testing and the “Findings” portion in Form I-693.[11]

4. Other Class A and Class B Conditions for Communicable Diseases of Public Health Significance

According to the Technical Instructions for Hansen's Disease (Leprosy) for Civil Surgeons, screening for Hansen’s disease includes obtaining medical history with inquiries as to past and present diagnoses of Hansen’s disease, history of skin lesions unresponsive to treatment, and family history of skin lesions or known Hansen’s disease. The physical exam must include a search for signs and lesions consistent with Hansen’s disease, and the civil surgeon must complete the “Findings” portion in Form I-693.

Footnotes

[^3] See 42 CFR 34.2(b)(2) and 42 CFR 34.2(b)(3).
[^4] An officer will not encounter such annotations on Form I-693, but may on the DS-2053/DS-2054.
Chapter 7 - Physical or Mental Disorder with Associated Harmful Behavior

A. Physical or Mental Disorders with Associated Harmful Behavior

Applicants who have physical or mental disorders and harmful behavior associated with those disorders are inadmissible. The inadmissibility ground is divided into two subcategories:

- Current physical or mental disorders, with associated harmful behavior.
- Past physical or mental disorders, with associated harmful behavior that is likely to recur or lead to other harmful behavior.

There must be both a physical or mental disorder and harmful behavior to make an applicant inadmissible based on this ground. Neither harmful behavior nor a physical or mental disorder alone renders an applicant inadmissible on this ground. Harmful behavior is defined as behavior that may pose, or has posed, a threat to the property, safety, or welfare of the applicant or others.

A physical disorder is a currently accepted medical diagnosis as defined by the current edition of the Manual of International Classification of Diseases, Injuries, and Causes of Death published by the World Health Organization or by another authoritative source as determined by the Director. Officers should consult the Technical Instructions for additional information, if needed.

A mental disorder is a currently accepted psychiatric diagnosis, as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or by another authoritative source as determined by the Director. Officers should consult the Technical Instructions for additional information, if needed.

Under the Technical Instructions, a diagnosis of substance abuse/addiction for a substance that is not listed in Section 202 of the Controlled Substances Act (with current associated harmful behavior or a history of associated harmful behavior judged likely to recur) is classified as a mental disorder.

Under prior Technical Instructions and the July 20, 2010 or older versions of the form, these conditions were summarized under the drug abuse/addiction part of the form. An officer, however, should not find an applicant inadmissible for “drug abuse/addiction” if a non-controlled substance is involved.
B. Relevance of Alcohol-Related Driving Arrests or Convictions

1. Alcohol Use and Driving

Alcohol is not listed in Section 202 of the Controlled Substances Act. Therefore, alcohol use disorders are treated as a physical or mental disorder for purposes of determining inadmissibility. As a result, an applicant with an alcohol use disorder will not be deemed inadmissible unless there is current associated harmful behavior or past associated harmful behavior likely to recur. The harmful behavior must be such that it poses, has posed, or is likely to pose a threat to the property, safety, or welfare of the applicant or others.

In the course of adjudicating benefit applications, officers frequently encounter criminal histories that include arrests and/or convictions for alcohol-related driving incidents, such as DUI (driving under the influence) and DWI (driving while intoxicated). These histories may or may not rise to the level of a criminal ground of inadmissibility. A record of criminal arrests and/or convictions for alcohol-related driving incidents may constitute evidence of a health-related inadmissibility as a physical or mental disorder with associated harmful behavior.

Operating a motor vehicle under the influence of alcohol is clearly an associated harmful behavior that poses a threat to the property, safety, or welfare of the applicant or others. Where a civil surgeon’s mental status evaluation diagnoses the presence of an alcohol use disorder (abuse or dependence), and where there is evidence of harmful behavior associated with the disorder, a Class A medical condition should be certified on Form I-693.

2. Re-Examinations

Requesting Re-Examinations

Some applicants may fail to report, or may underreport, alcohol-related driving incidents in response to the civil surgeon’s queries. Where these incidents resulted in an arrest, they may be subsequently revealed in the criminal history record resulting from a routine fingerprint check. Consequently, a criminal record printout revealing a significant history of alcohol-related driving arrests may conflict with the medical examination report that indicates no alcohol-related driving incidents were reported to or evaluated by the civil surgeon.

In such an instance, an officer may require the applicant to be re-examined. The re-examination would be limited to a mental status evaluation specifically considering the record of alcohol-related driving incidents. On the Request for Evidence (RFE), officers should use the following language: “Please return to the civil surgeon for purposes of conducting a mental status evaluation specifically considering the record of alcohol-related driving incidents.”

Upon re-examination, the civil surgeon may refer the applicant for further evaluation to a psychiatrist or to a specialist in substance-abuse disorders as provided for under the Technical Instructions. After such referral, the civil surgeon will determine whether a Class A medical condition exists and amend the Form I-693 accordingly. The determination of a Class A condition is wholly dependent on the medical diagnosis of a designated civil surgeon.

Re-Examination for Significant Criminal Record of Alcohol-Related Driving Incidents

Only applicants with a significant criminal record of alcohol-related driving incidents that were not considered by the civil surgeon during the original medical examination should be referred for re-examination.
The actual criminal charges for alcohol-related driving incidents vary among the different states. A significant criminal record of alcohol-related driving incidents includes:

- One or more arrests/convictions for alcohol-related driving incidents (DUI/DWI) while the driver’s license was suspended, revoked, or restricted at the time of the arrest due to a previous alcohol-related driving incident(s);

- One or more arrests/convictions for alcohol-related driving incidents where personal injury or death resulted from the incident(s);

- One or more convictions for alcohol-related driving incidents where the conviction was a felony in the jurisdiction in which it occurred or where a sentence of incarceration was actually imposed;

- One arrest/conviction for alcohol-related driving incidents within the preceding 5 years\(^8\); or

- Two or more arrests/convictions for alcohol-related driving incidents within the preceding 10 years.\(^9\)

If the officer finds that the criminal record appears to contradict the civil surgeon’s finding in the medical examination report, then the officer should request a re-examination.

*Example:* An applicant’s criminal record shows that she was convicted for DWI-related vehicular manslaughter. However, the medical examination report reflects that no Class A or B physical or mental disorder was found. In this case, the officer should request a re-examination because the medical examination report finding should have reflected that the applicant has a history relating to an alcohol-related driving incident that could indicate a physical or mental disorder with associated harmful behavior.

### 3. Determination Based on Re-Examination

Upon completion of the re-examination, the officer should determine whether the applicant is inadmissible. If the civil surgeon annotated a Class A condition, the applicant is inadmissible. If no Class A condition is certified by the civil surgeon, the officer may not determine that the applicant is inadmissible. In exceptional cases, the officer may seek review of the civil surgeon’s determination from CDC.

If the applicant is inadmissible, he or she may file an application for waiver of inadmissibility.\(^{10}\)

### C. Relevance of Other Evidence

The guidance relating to alcohol-related driving arrests or convictions described above applies to any similar scenario where the record of proceeding contains evidence that may indicate inadmissibility due to a mental or physical disorder with associated harmful behavior that was not considered by the civil surgeon in the original medical examination. Such evidence includes, but is not limited to:

- A prior finding of inadmissibility due to a mental disorder;

- A history of institutionalization for a mental disorder;

- A criminal history other than drunk driving arrests/convictions, such as assaults and domestic violence, in which alcohol or a psychoactive substance was a contributing factor;

- Any other evidence that suggests an alcohol problem; or
• Other criminal arrests where there is a reasonable possibility of a mental disorder as a contributing factor.

Accordingly, where the record of proceeding available to the officer contains evidence suggestive of a mental disorder, and the Form I-693 medical report does not reflect that the evidence was considered by the civil surgeon, the applicant must be required to undergo a mental status re-examination by a civil surgeon specifically addressing the adverse evidence that may not have initially been revealed to the civil surgeon.

D. Parts of Form I-693 Addressing Physical or Mental Disorders

The civil surgeon must check the appropriate findings box on the medical examination report. The civil surgeon should also either annotate the findings in the remarks section or attach a report, if the space provided is not sufficient. However, the officer should not RFE simply because the civil surgeon has omitted the remarks or failed to attach a report.

Footnotes

[^1] See 42 CFR 34.2(n) (mental disorder). See 42 CFR 34.2(p) (physical disorder).


[^3] HHS regulations define Director as the director of CDC or a designee as approved by the Director or Secretary of HHS. See 42 CFR 34.2(g).

[^4] HHS regulations define Director as the director of CDC or a designee as approved by the Director or Secretary of HHS. See 42 CFR 34.2(g).


[^8] See CDC’s Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

[^9] See CDC’s Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.


Chapter 8 - Drug Abuse or Drug Addiction
A. Drug Abuse or Drug Addiction

Applicants who are found to be drug abusers or addicts are inadmissible. Drug abuse and drug addiction are current substance-use disorders or substance-induced disorders of a controlled substance listed in Section 202 of the Controlled Substances Act, as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association or by another authoritative source as determined by the Director.

In 2010, the Centers for Disease Control and Prevention (CDC) changed the Technical Instructions on how a civil surgeon determines whether an applicant is a drug abuser or drug addict. The civil surgeon must now make this determination according to the DSM as specified in the Technical Instructions.

If the applicant is classified as a drug abuser or addict, the applicant can apply again for an immigration benefit if his or her drug abuse or addiction is in remission. Remission is now defined by DSM criteria, and no longer by a set timeframe as it was under previous Technical Instructions. In order for an applicant’s drug abuse or addiction to be classified as in remission, the applicant must return to a civil surgeon for a new assessment.

If the officer has reason to question the completeness or accuracy of the medical examination report, the officer should ask CDC to review the medical report before sending a Request for Evidence (RFE).

Most applicants who are found to be drug abusers or addicts are ineligible for a waiver; the availability depends, however, on the immigration benefit the applicant seeks.

B. Part of Form I-693 Addressing Drug Abuse or Drug Addiction

The civil surgeon must check the appropriate findings box on the medical examination report. The civil surgeon should also either annotate the findings in the remarks section or attach a report, if the space provided is not sufficient. However, the officer should not RFE simply because the civil surgeon has omitted the remarks or failed to attach a report.

C. Request for CDC Advisory Opinion

If an officer has a case where there is a question concerning the diagnosis or classification made by the civil surgeon or panel physician, the officer may forward the pertinent documents to CDC and request an advisory opinion.

The request should include the following documents:

- A cover letter indicating the request, reason(s) for the request, and the USCIS office making the request;
- A copy of the medical examination documentation (Form I-693 or Form DS-2053/DS-2054, and its related worksheets);
- A copy of the provided medical report(s) detailing the medical condition for which the advisory opinion is being requested; and
- Copies of all other relevant medical reports, laboratory results, and evaluations connected to the
medical condition.

Once the documents are received by CDC, CDC reviews the documents and forwards a response letter with results of the review to the USCIS office that submitted the request.

CDC’s usual processing time for review and response back to the requesting USCIS office is approximately 4 weeks.

Upon receipt, the officer should review CDC’s response letter to determine next steps.

**Footnotes**


[^2] See Title II of [Pub. L. 91-513 (PDF), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at 21 U.S.C. 801 et. seq. See [42 CFR 34.2(h)](https://www.cdc.gov/mmwr/preview/mmwrhtml/00000000.htm) (drug abuse). See [42 CFR 34.2(i)](https://www.cdc.gov/mmwr/preview/mmwrhtml/00000000.htm) (drug addiction). HHS regulations define Director as the Director of CDC or a designee as approved by the Director or Secretary of HHS. See [42 CFR 34.2(g)](https://www.cdc.gov/mmwr/preview/mmwrhtml/00000000.htm).

[^3] See CDC’s Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html).

[^4] The DSM is a publication of the American Psychiatric Association. Considerations that were relevant under previous Technical Instructions, such as a pattern of abuse or a history of experimental use of drugs, no longer play a direct role in the admissibility determination; they are now only considered as one of the elements under the DSM assessment. The assessment under the DSM is complicated. For more information, please see the Technical Instructions.

[^5] Under the pre-2010 Technical Instructions, an applicant’s substance abuse or addiction was in remission if the applicant had not engaged in non-medical use of a controlled substance within the past 3 years, or non-medical use of a non-controlled substance within the past 2 years.


**Chapter 9 - Vaccination Requirement**

**A. Vaccination Requirements for Immigrants**

Some vaccines are expressly required by statute. Others are required because the Centers for Disease Control and Prevention (CDC) have determined they are in the interest of public health.[1]

The Immigration and Nationality Act (INA)[2] specifies the following vaccinations:

- Mumps, measles, rubella;
- Polio;
• Tetanus and diphtheria toxoids;\textsuperscript{[3]}
• Pertussis;
• Haemophilus influenza type B; and
• Hepatitis B.

CDC requires the following additional vaccines for immigration purposes:

• Varicella;
• Influenza;
• Pneumococcal pneumonia;
• Rotavirus;
• Hepatitis A; and
• Meningococcal.

If the applicant has not received any of the listed vaccinations and the vaccinations are age appropriate and medically appropriate, the applicant has a Class A condition and is inadmissible. Generally, all age appropriate vaccine rows of the vaccination assessment must have at least one entry before the assessment can be considered to have been properly completed.

B. Blanket Waiver if Vaccine is “Not Medically Appropriate”

1. Definition of “Not Medically Appropriate”

The term “not medically appropriate” applies to:

• Vaccinations that are not required based on the applicant’s age at the time of the medical exam (“not age appropriate”); \textsuperscript{[4]}

• Vaccinations that cannot be administered on account of a medical contraindication (“contraindication”);
  \begin{itemize}
    \item A contraindication is a condition in a recipient which is likely to result in a life-threatening problem if the vaccine is given.
    \item Examples of contraindications include a severe allergic reaction to a vaccination that was previously given, or pregnancy.
  \end{itemize}

• Vaccinations that are administered as a series in intervals, but there is insufficient time to complete the entire vaccination series at the time of the medical examination (“insufficient time interval”); \textsuperscript{[5]} or

• The influenza vaccine if it is not the flu season, or if the vaccine for the specific flu strain missing is no longer available (“not flu season”).

If receiving the vaccine is not medically appropriate, the civil surgeon should indicate this medical finding on the Form I-693 in the appropriate boxes. USCIS will then waive that vaccine(s). \textsuperscript{[6]} A separate waiver
application is not required for an officer to grant a waiver of the vaccination requirement as “not medically appropriate.”

The officer should generally accept a finding by the civil surgeon that a vaccine is not medically appropriate unless that finding is clearly wrong. For example, if a vaccine was age appropriate at the time of the medical exam based on the vaccination chart, but the civil surgeon marked that the vaccine is not medically appropriate because it is not age appropriate, then it is clear that the civil surgeon’s mark is incorrect. The same is true for a finding that a vaccine is not medically appropriate because it is not flu season; the officer should be able to clearly see whether the finding is correct based on the date of the medical examination.

An officer, however, should usually defer to a civil surgeon’s finding that a vaccine is not medically appropriate because of a contraindication. This is because such a finding involves medical judgment.

As indicated in the previous section, generally all age appropriate vaccine rows of the vaccination assessment must have at least one entry before the assessment can be considered to have been properly completed. However, if the officer can see from the record that the age appropriate vaccine was not required because, for instance, “it is not the flu season” but the civil surgeon failed to mark this on the vaccination assessment, then the officer may grant a blanket waiver despite the omission. In such cases, the officer should annotate in the “For USCIS Use Only” Remarks box in the vaccination record that a blanket waiver was granted.

2. Pregnancy or an Immuno-Compromised Condition

Some vaccines are, in general, not medically appropriate during pregnancy. These vaccines will likely be marked as contraindicated on Form I-693 if the applicant was pregnant at the time of the medical examination.

The civil surgeon may annotate in the remarks section that the applicant did not receive one or more vaccines because of a contraindication that is based on pregnancy or a condition other than pregnancy. The reason for the contraindication may be annotated by the civil surgeon on the Form I-693; however, if it is omitted, the officer does not need to issue a Request for Evidence (RFE) solely for that omission as long as the contraindication is marked in the vaccine chart.

An officer should also never issue an RFE for additional vaccines if the applicant is no longer pregnant at the time of the adjudication of the adjustment of status. As long as the vaccination assessment was properly completed by the civil surgeon at the time of the examination, the vaccination assessment can be accepted. In other words, if a woman did not receive certain required vaccines because she was pregnant at the time of the medical examination, and the contraindication box is marked by the civil surgeon, the applicant is not required to get those vaccines later at the time of the adjudication.

Likewise, some vaccines are not medically appropriate for applicants who have an immuno-compromised condition (such as HIV/AIDS or a weakened immune system because of taking certain medications) and may be marked by the civil surgeon as contraindicated.

In the case of an immuno-compromised person, the officer should never issue an RFE for additional vaccines even if, at the time of the adjudication of adjustment of status, the applicant is no longer immuno-compromised. As long as the vaccination assessment was properly completed at the time of the examination by the civil surgeon, the vaccination assessment can be accepted. The applicant should not be required to get the missing vaccines later at the time of the adjudication.

3. Blanket Waiver due to Nationwide Vaccination Shortage

AILA Doc. No. 19060633. (Posted 3/26/21)
USCIS will grant a blanket waiver only in the case of a vaccination shortage if CDC recommends that USCIS should do so based on CDC’s assessment that there is a nationwide shortage.

An officer may only grant a blanket waiver for a vaccine based on a vaccination shortage if the following circumstances are met:

- CDC declares that there is a nationwide vaccination shortage, and issues the appropriate statement on its website for civil surgeons;
- USCIS issues the appropriate statement on uscis.gov; and
- The civil surgeon annotates the medical examination form in compliance with any additional requirements specified by CDC or USCIS.

The grant of this blanket waiver does not differ from the grant of other blanket waivers.

4. Vaccines Not Routinely Available Abroad

“National vaccination shortage” principles do not apply overseas. In the context of overseas vaccinations, the term panel physicians use to indicate the unavailability of a vaccine is “not routinely available.” Therefore, if the adjustment applicant is permitted to use the vaccination assessment completed overseas, officers should not find the applicant inadmissible solely based on the lack of the vaccine(s) that is “not routinely available.” Officers should also not issue an RFE for corrective action. USCIS will grant a blanket waiver in these cases.

C. Adjudication Steps

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Determine which vaccination(s) were age appropriate for the applicant to receive based on the applicant’s age on the date the medical exam was completed. [12]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 2</td>
<td>Verify that any vaccine that was required (age appropriate) [13] as of the date of the medical exam is marked as:</td>
</tr>
<tr>
<td></td>
<td>- Received by the applicant; or</td>
</tr>
<tr>
<td></td>
<td>- “Not medically appropriate” because of contraindication, inappropriate time interval, or not flu season.</td>
</tr>
<tr>
<td>Step 3</td>
<td>If the required (age appropriate) vaccinations were not received or not marked as “not medically appropriate” as of the date the medical exam was completed, determine whether the missing vaccinations would still be required as of the date of adjudication.</td>
</tr>
<tr>
<td></td>
<td>Vaccinations missing at the time of the medical exam may no longer be required as of the date of adjudication if, for example, the applicant has aged out, or it is not the flu season,</td>
</tr>
</tbody>
</table>
### Vaccination Requirement: Adjudication Steps

or a vaccine is no longer required by law.

<table>
<thead>
<tr>
<th>Step 4</th>
<th>If the missing vaccinations are no longer required as of the date of the adjudication, the vaccination requirements have been met.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 5</td>
<td>If the missing vaccinations would still be required, the officer should send an RFE for an updated Form I-693 showing the applicant has received those vaccinations.</td>
</tr>
</tbody>
</table>

### D. Vaccination Chart

USCIS officers should consult the chart in the [Vaccination Technical Instructions](https://www.uscis.gov/book/export/html/68600) to determine inadmissibility based on failure to meet the vaccination requirements.

### E. Special Vaccination Considerations

Additionally, officers should pay special attention to the following developments.

#### 1. Human Papillomavirus (HPV) Vaccination

From August 1, 2008 through December 13, 2009, human papillomavirus (HPV) vaccination was required for female applicants ages 11 years through 26 years. The requirement was eliminated on December 14, 2009, and affects any admissibility determination under INA 212(a)(1)(A)(ii) on that date or thereafter. Therefore, for adjudications taking place on or after December 14, 2009, officers should disregard any annotation of the HPV vaccine, or the lack thereof, on Form I-693 or U.S. Department of State’s Vaccination Documentation Worksheet (Form DS-3025), when determining whether the vaccination requirements are met.

#### 2. Zoster Vaccination

From August 1, 2008 through December 13, 2009, the zoster vaccination was required for applicants ages 60 years or older unless the applicant had received the varicella vaccine.

The zoster vaccine, however, was not available in the United States due to a nationwide shortage from the time it became mandatory. Therefore, even though the vaccine was missing, the Form I-693 could be accepted if the physician was unable to obtain the vaccine.

On December 14, 2009, the zoster vaccine was removed from the list of required vaccines for immigration purposes, and the change affects any admissibility determination made on or after that date. Therefore, officers should disregard any annotation of the zoster vaccine, or the lack thereof, on any Form I-693 or U.S. Department of State’s Vaccination Documentation Worksheet (Form DS-3025), when determining whether the vaccination requirements are met.

#### 3. Influenza Vaccination
The flu vaccination is only available during the flu season. For purposes of **Form I-693**, the flu season commences annually on October 1 and runs through March 31.

Over time, CDC has changed the age category of applicants required to obtain the flu vaccine for immigration purposes. As of November 16, 2010, CDC’s Technical Instructions require that all applicants 6 months of age or older receive the flu vaccine during the flu season.

If an applicant was required to obtain the flu vaccine at the time of the medical examination (the date of the civil surgeon’s certification governs) but a flu vaccine annotation is missing, the officer should only issue an RFE if it is still the same flu season and if it is reasonable to expect that the applicant will be able to obtain the flu vaccine within the time frame of the RFE.

This accounts for the fact that the flu vaccine is strain-specific and only available for a limited time each year. The officer should not issue an RFE if the applicant will not be able to obtain the strain-specific flu vaccine that had been required at the time of the medical examination because:

- It is no longer the same flu season; or
- It is not the flu season at all.

### 4. Vaccination Requirements Prior to August 1, 2008

The following vaccines were NOT required prior to August 1, 2008: Hepatitis A, meningococcal, rotavirus, human papillomavirus (HPV), and zoster. [14]

### F. Completion of the Results Section by the Civil Surgeon

According to the Vaccination Component of the Technical Instructions, the civil surgeon should mark the appropriate results box at the bottom of the vaccination assessment chart. The Technical Instructions direct the civil surgeon to only check one appropriate box.

The officer should be aware that civil surgeons may improperly mark the boxes because they may misunderstand the meaning of these boxes. Therefore, the officer should determine, from the vaccination assessment completed by the civil surgeon, whether the applicant received all vaccines, which blanket waivers should be granted, and whether the applicant requires any other waivers. The officer should exercise discretion in reviewing the vaccination chart and when evaluating the results boxes at the bottom of the vaccination assessment chart.

If the civil surgeon did not check any result boxes, the officer should only return the form for corrective action if he or she is unable to ascertain whether the applicant is admissible. The officer should never alter or complete sections on the medical examination report that are the responsibility of the civil surgeon, such as the results boxes.

The results boxes and their meanings are described below (according to the Vaccination Component of the Technical Instructions).

<table>
<thead>
<tr>
<th><strong>Applicant may be eligible</strong></th>
<th>This box will usually be checked because some vaccines may not be age</th>
</tr>
</thead>
</table>

**Vaccination Record: Explanation of Results**

AILA Doc. No. 19060633. (Posted 3/26/21)
### Vaccination Record: Explanation of Results

<table>
<thead>
<tr>
<th>for blanket waiver(s) as indicated above</th>
<th>appropriate for the applicant, a vaccination series could not be completed, there was a contraindication, or because of any other condition noted in the “Not Medically Appropriate” heading.</th>
</tr>
</thead>
</table>
| Applicant will request an individual waiver based on religious or moral convictions | If an applicant objects to one of the vaccines based on religious or moral convictions, the "Applicant will request an individual waiver based on religious or moral convictions" box must be checked.  
This is not a blanket waiver, and the applicant will have to submit a waiver request on [Form I-601](https://www.uscis.gov/i-601).  
Even if the applicant otherwise requires a blanket waiver(s), the civil surgeon must check this box, and not the box titled “Applicants may be eligible for blanket waivers.” It may be, however, that the civil surgeon checks both boxes, in which case, the officer should just request the waiver documentation that establishes the religious or moral conviction. |
| Vaccine history complete for each vaccine, all requirements met | If the applicant has met the vaccination requirements, i.e., completed the series for all required vaccines, the "Vaccine history complete for each vaccine, all requirements met" box must be checked. |
| Applicant does not meet immunization requirements | If an applicant's vaccine history is incomplete and the applicant refuses administration of a single dose of any required vaccine that is medically appropriate for the applicant, the "Applicant does not meet immunization requirements" box must be checked.  
If this box is checked, the applicant may be inadmissible. Depending on the case, the officer should ask for the reason through an RFE, Notice of Intent to Deny (NOID), or an interview.  
If the applicant refused to be vaccinated on account of a religious or moral conviction, the officer should direct the applicant to file a waiver. If the applicant had no religious or moral reason for refusal, the applicant is inadmissible.  
The officer should not return the assessment to the civil surgeon if he or she has enough information to determine health-related inadmissibility. |

### G. Exception for Certain Adopted Children

Some children are not subject to the vaccination requirement if all of the following conditions are met:

- The child is 10 years of age or younger;

AILA Doc. No. 19060633. (Posted 3/26/21)
The child is classified as an orphan (IR3 or IR4) or a Hague Convention adoptee (IH3 or IH4); and

The child is seeking an immigrant visa as an immediate relative.

For the child to benefit from this exception, the adopting parent(s) must sign an affidavit prior to the immigrant visa issuance, affirming that the child will receive the required vaccination within 30 days of admission to the United States or at the earliest time that is medically appropriate. However, noncompliance with the vaccination requirements following the child's admission to the United States is not a ground for removal.

The Department of State has developed a standard affidavit form, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child (Form DS-1981), to ensure that adopting parents are aware of the possibility of an exception from the vaccination requirements and of their obligation to ensure that the child is vaccinated following admission. The completed form must be submitted to the consulate as part of the immigrant visa application.

Only orphans or Convention adoptees whose adoptive or prospective adoptive parents have signed an affidavit will be exempt from the vaccination requirement. If the adopting parent(s) prefers that the child meet the vaccination requirement as part of the visa application process, the child may benefit from the waiver(s) for those vaccinations which the panel physician determines are medically inappropriate.

When the adoptive or prospective adoptive parent cannot sign the affidavit in good faith because of religious or moral objections to vaccinations, the child will require a waiver.

**Footnotes**

[^1] Effective December 14, 2009, CDC changed its methods on how to assess which vaccines should be required for immigration purposes. This led to changes in the list of required vaccines; some that were required prior to 2009 are no longer required since December 14, 2009.


[^3] Applicants who have completed the initial DTP/DTaP/DT or Td/Tdap series should receive a Td/Tdapbooster shot every 10 years. If the last dose was received more than 10 years ago, the applicant is required to have the booster shot, otherwise the applicant is inadmissible under INA 212(a)(1)(A)(ii).


[^5] In these cases, the civil surgeon will administer the dose due at the time of the medical examination and mark on the form that there is not sufficient time to complete the entire vaccination series (insufficient time interval).


[^8] Immuno-compromised condition refers to a medical state that does not allow the body to fight off infection.

[^9] See CDC’s Vaccination Technical Instructions for a list of the specific vaccines not medically


[^12] See Section D, Vaccination Chart [8 USCIS-PM B.9(D)] for a chart of vaccine requirements by age.

[^13] Since the applicant was not required to receive non-age appropriate vaccines at the time of the medical exam, the officer does not need to review these vaccine rows at the time of adjudication.

[^14] Please see information immediately above for the zoster and the HPV vaccine, since these vaccines have not been required since December 2009.


[^16] See INA 101(b)(1)(F) and INA 101(b)(1)(G), respectively.

[^17] Under INA 201(b); a child can either obtain an IR-3 or IR-4 immigrant visa as an immediate relative if the child is an “orphan” or an IH-3 or IH-4 immigrant visa if the child is a Hague Convention adoptee.

[^18] The affidavit is made under oath or affirmation in the presence of either the consular officer or a notary public.

[^19] See INA 212(g)(2)(B). This waiver authority has been delegated to the Department of State and a consular officer can grant the waiver. Neither a form nor a fee is required.

[^20] When the waiver application is for a child, the child’s parent must satisfy the waiver requirements under INA 212(g)(2)(C). The waiver is filed by submitting an Application for Waiver of Grounds of Inadmissibility (Form I-601) along with the required fee. See Volume 9, Waivers and Other Forms of Relief, Part D, Health-Related Grounds of Inadmissibility, Chapter 3, Waiver of Immigrant Vaccination Requirement [9 USCIS-PM D.3] for more information on the requirements for vaccination waivers based on religious beliefs or moral objections.

Chapter 10 - Other Medical Conditions

The civil surgeon should annotate any other medical condition the applicant may have, as directed by the Technical Instructions. A condition annotated in this section does not render the applicant inadmissible on health-related grounds of inadmissibility. However, it may impact other inadmissibility determinations.

Chapter 11 - Inadmissibility Determination

A. Civil Surgeon or Panel Physician Documentation
If a “Class A condition” is noted on the medical form, it is conclusive evidence that the applicant is inadmissible. The Class A annotation may also indicate that an applicant could be inadmissible on other grounds of inadmissibility. For example, “harmful behavior” associated with a physical or mental disorder, or illegal drug use, may have resulted in criminal convictions that make an applicant inadmissible under INA 212(a)(2). However, a criminal conviction should be supported by conviction records or similar evidence, and not just the medical examination report.[1]

If a civil surgeon or panel physician only annotates a “Class B condition” (per U.S. Department of Health and Human Services regulations), the applicant is never inadmissible on health-related grounds. The officer should remember that if the civil surgeon or panel physician indicates on the Form I-693 that a former Class A condition is now a Class B condition, the applicant is no longer inadmissible. However, a Class B condition may indicate that the applicant could be inadmissible on other grounds because of the condition, such as public charge.[2]

The officer may encounter medical documentation that is not fully completed. In this case, the officer should issue a Request for Evidence (RFE). If the physician fails to properly complete the form in response to the RFE, the applicant has not established that he or she is clearly admissible to the United States.[3]

**B. Applicant’s Declaration**

If the applicant indicates that he or she may be inadmissible based on a medical reason, the officer must order a medical examination of the applicant. Based on the results of that medical exam, the officer should ascertain whether the applicant actually has a Class A, Class B, or no condition at all that is relevant to the applicant’s admissibility. The applicant should not be found inadmissible unless the medical examination confirms the presence of a Class A medical condition.

**C. Other Information**

Even if the civil surgeon or panel physician did not annotate a Class A or B condition in the medical documentation, or if the applicant was not required to undergo a medical examination, the officer may order or reorder an immigration medical examination at any time if he or she has concerns as to an applicant’s inadmissibility on health-related grounds.

The concern should be based on information in the A-file, information that is revealed by the applicant or another applicant during an interview, or information revealed during a background investigation.

**D. Other Grounds of Inadmissibility**

**1. General Considerations**

Where relevant, the information contained in the medical examination can be used to determine whether other grounds of inadmissibility may apply. For instance, health is one factor to consider when determining if someone is inadmissible on public charge grounds. This factor must, however, be considered in light of all other factors specified by law.[4]

**2. Criminal Grounds**

An applicant may be inadmissible on criminal grounds if he or she has admitted to committing certain
controlled substance violations. An applicant may acknowledge to a civil surgeon or a panel physician that he or she has used a controlled substance, which the physician then may annotate on the medical documentation.

USCIS does not consider this acknowledgement, in and of itself, a valid admission that would make an applicant inadmissible on criminal grounds. However such an acknowledgment of drug use may open a line of questioning to determine criminal inadmissibility. USCIS officers should find that an applicant has made a valid “admission” of a crime only when the admission is made in accordance with the requirements outlined by the Board of Immigration Appeals.

E. Privacy Concerns

An officer should take great care to regard the privacy of the applicant. The officer should generally not discuss the applicant’s medical issues with applicants other than the applicant, his or her counsel, immigration officers, or other government officials who clearly have a need to know the information.

The officer should not directly contact a civil surgeon to discuss an applicant’s inadmissibility or medical issues. If the officer has any concerns that cannot be resolved by reviewing the evidence in the record, the officer should issue an RFE.

Footnotes

[^1] See Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)] for more information.


[^6] A valid admission (absent a conviction) for purposes of criminal inadmissibility grounds “requires that the [alien] be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms.” See Matter of K-, 7 I&N Dec. 594, 597 (BIA 1957).


[^8] Such as the Centers for Disease Control and Prevention.

Chapter 12 - Waiver Authority

USCIS may provide waivers for some medical grounds of inadmissibility under INA 212(g) and other provisions governing the specific immigration benefit the applicant is seeking. In certain cases, applicants must file a waiver application either along with their Application to Register Permanent Residence or Adjust Status (Form I-485) and Report of Medical Examination and Vaccination Record (Form I-693) or in
response to a Request for Evidence. [2]

Footnotes

[^ 1] See Application for Waiver of Grounds of Inadmissibility (Form I-601), Application By Refugee for Waiver of Grounds of Excludability (Form I-602), or Application for Waiver of Grounds of Inadmissibility Under Section 245A or 210 of the Immigration and Nationality Act (Form I-690).


Part C - Civil Surgeon Designation and Revocation

Chapter 1 - Purpose and Background

A. Purpose

USCIS designates eligible physicians as civil surgeons to perform medical examinations for immigration benefit applicants in the United States. [1] Civil surgeons assess whether applicants have any health conditions that could result in exclusion from the United States.

Based on the results of the civil surgeon’s assessment, USCIS determines whether the applicant is admissible to the United States or whether the applicant is inadmissible based on health-related grounds of inadmissibility. The health-related grounds of inadmissibility [2] and the medical examination of applicants are designed to protect the health of the United States population.

B. Background

The Immigration Act of 1882 [3] first granted the Secretary of the Treasury the authority to examine aliens arriving in the United States to prohibit the entry of any “person unable to take care of himself or herself without becoming a public charge.” The Act provided that the examination be delegated to state commissions, boards, or officers.

The term “civil surgeon” was first introduced in the Immigration Act of 1891 as an alternative to surgeons of the Marine Hospital Service if such surgeons were not available to perform the medical examination on arriving aliens. [4]

The Immigration and Nationality Act (INA) of 1952, as amended by the Homeland Security Act of 2002, [5] authorizes the Secretary of Homeland Security to designate civil surgeons if medical officers of the U.S. Public Health Service (USPHS) are not available. USCIS exercises the authority to designate civil surgeons on the Secretary’s behalf, and may designate as many or as few civil surgeons as needed. [6] Since USPHS medical officers are rarely available today, civil surgeons generally provide all immigration medical examinations required of aliens in the United States.

The civil surgeon’s primary role is to perform immigration medical examinations to assess whether aliens have any of the following medical conditions that could result in their inadmissibility:
• Communicable disease of public health significance;
• Failure to show proof of required vaccinations (for immigrant visa applicants and adjustment of status applicants only);
• Physical or mental disorder with associated harmful behavior; and
• Drug abuse or addiction.

Civil surgeons must perform such examinations according to the Technical Instructions for the Medical Examination of Aliens in the United States, issued by the Centers for Disease Control and Prevention (CDC), an agency of the Department of Health and Human Services (HHS).

The civil surgeon must also record the results of the immigration medical examination on the Report of Medical Examination and Vaccination Record (Form I-693) according to the form instructions. An alien submits the form to USCIS as part of his or her immigration benefits application, if required. USCIS reviews the form to determine whether the applicant is inadmissible based on health-related grounds.

C. Professional Qualifications

Only licensed physicians with at least four years of professional experience may be designated as civil surgeons. USCIS interprets “not less than four years’ professional experience” to require four years of professional practice after completion of training. Based on consultations with CDC, USCIS has determined that internships and residencies do not count toward the four-year professional experience because they are both part of a physician’s training. Even if one is already licensed as a physician, the four-year period of professional practice only begins when the post-graduate training ends.

Therefore, to be eligible for civil surgeon designation, the physician must meet all of the following requirements:

• Be either a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.);
• Be licensed to practice medicine without restrictions in the state in which he or she seeks to perform immigration medical examinations; and
• Have the requisite four years of professional experience.

Registered nurses, nurse practitioners, medical technicians, physical therapists, physician assistants, chiropractors, podiatrists, and other healthcare workers who are not licensed as physicians (M.D. or D.O.) may not be designated or function as civil surgeons.

D. Responsibilities of Designated Civil Surgeons

Civil surgeon designation comes with a number of responsibilities. Physicians who fail to meet their responsibilities as a civil surgeon may have their designation revoked by USCIS.

Civil surgeons’ responsibilities include:

• Completing medical examinations according to HHS regulations and CDC requirements, such as the Technical Instructions for the Medical Examination of Aliens in the United States (Technical
Instructions) and any updates posted on CDC’s website;[12]

- Making referrals for treatment and filing case reports, as required by the Technical Instructions;
- Reporting the results of the immigration medical examination on Form I-693 accurately;
- Informing USCIS of any changes in contact information within 15 days of the change;[13] and
- Refraining from any activity related to the civil surgeon designation and medical examination of immigrants if USCIS revokes the physician’s civil surgeon designation. This includes the physician informing his or her patients seeking immigration medical examinations that the physician may no longer complete medical examinations.

E. Legal Authorities

- **INA 212(a)(1)** – Health-related grounds
- **INA 232; 8 CFR 232** – Detention of aliens for physical and mental examination
- **42 U.S.C. 252** – Medical examination of aliens
- **42 CFR 34** – Medical examination of aliens
- Technical Instructions for Civil Surgeons (Technical Instructions), and updates[14]

Footnotes

[^1] If a physician wishes to be designated, he or she submits an application to USCIS for designation. Civil Surgeons should be distinguished from panel physicians. Panel physicians are designated by the Department of State and provide immigration medical examinations required as part of an applicant’s visa processing at a U.S. Embassy or consulate abroad. See **42 CFR 34.2(o)** and **22 CFR 42.66**. See **9 FAM 302.2-3(E)**, Panel Physicians.

[^2] See **INA 212(a)(1)**.


[^6] See **8 CFR 232.2(b)**.

[^7] See **INA 212(a)(1)**.

[^8] See **INA 232(b)** and **8 CFR 232.2(b)**.

[^9] A fellowship, however, would generally count toward professional experience since fellowships are not typically required as part of a physician’s training.

Chapter 2 - Application for Civil Surgeon Designation

A. Background

Historically, civil surgeon designation was an informal process handled by USCIS District Directors. By regulation, USCIS District Directors are authorized to designate civil surgeons in their respective jurisdictions.[1] Physicians submitted informal written requests for civil surgeon designation to the district or field office with jurisdiction, along with documentary evidence showing they meet the professional qualifications to be a civil surgeon.

As of March 11, 2014, USCIS replaced the informal, decentralized civil surgeon application process with a formal, centralized process by (a) requiring centralized filing of the Application for Civil Surgeon Designation (Form I-910), at a Lockbox facility, and (b) delegating the District Directors’ authority to grant, deny, and revoke civil surgeon designation to the Director of the National Benefits Center (NBC). [2] These changes were made to improve the application intake process, enhance case management, promote consistency and uniformity in decision-making, and improve the overall efficiency and integrity of the program.

B. Application

A physician generally must apply for civil surgeon designation with USCIS. However, physicians who qualify under a blanket designation are exempt from the filing and fee requirements. [3]

USCIS will only accept [4] and consider complete applications for civil surgeon designation; applications must be submitted in accordance with the form instructions. [5]

A complete application consists of the following:

1. Application for Civil Surgeon Designation (Form I-910)

A physician seeking designation as a civil surgeon must complete all required parts of the Application for Civil Surgeon Designation. [6]

2. Filing Fee

The physician must include the required filing fee [7] with the completed Application for Civil Surgeon Designation. Applications for civil surgeon designation that do not include the correct filing fee will be
rejected.

3. Evidence

The physician must include evidence that shows that he or she meets the eligibility requirements to be designated a civil surgeon. At a minimum, the civil surgeon applicant must submit all of the following evidence with the completed Application for Civil Surgeon Designation (Form I-910): 

- Proof of U.S. citizenship, legal status, or authorization to work in the United States;
- A copy of the physician’s current medical license in the state in which he or she seeks to perform immigration medical examinations;
- A copy of the physician’s medical degree verifying he or she is an M.D. or D.O.; and
- Evidence to verify the requisite professional experience, such as letters of employment verification.

4. Signature

The physician must sign the application. The signature must be submitted to USCIS on Application for Civil Surgeon Designation (Form I-910). Applications for civil surgeon designation that do not include a signature may be rejected or returned to the physician.

C. Adjudication of Civil Surgeon Applications

1. Adjudication

To determine whether to approve or deny the application for civil surgeon designation, the officer should follow these steps:

<table>
<thead>
<tr>
<th>Adjudication of Civil Surgeon Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1: Determine whether the physician meets all of the eligibility requirements to be designated a civil surgeon:</td>
</tr>
</tbody>
</table>

- Is the physician authorized to work in the United States? [10]
- Is the physician an M.D. or a D.O?
- Is the physician licensed without restriction in the state in which he or she seeks to perform immigration medical examinations?
- Does the physician have at least four years of professional experience, not including residency or internships or other experience related to training?

If there is insufficient information in the application and evidence submitted with the application to make this determination, the officer may issue a Request for Evidence (RFE) for additional information such as documentary evidence establishing any of the eligibility requirements.
Adjudication of Civil Surgeon Applications

If the physician does not meet all of the eligibility requirements, the officer should deny the application. Otherwise, go to Step 2.

**Step 2: Determine whether the application warrants a favorable exercise of discretion.** In general, a favorable exercise of discretion is warranted unless there are adverse factors that prevent it.

An unfavorable exercise of discretion may, for instance, be applied to any applications submitted by physicians who had a prior civil surgeon designation revoked by USCIS, and where the concerns underlying that revocation have not been resolved.

If there is insufficient evidence in the application to make this determination, the officer may request additional information through the issuance of a Request for Evidence (RFE).

**Examples**

*Example:* The physician had a prior civil surgeon designation revoked due to the physician’s confirmed participation in an immigration fraud scheme. The officer should deny the civil surgeon application as a matter of discretion. The fee will not be refunded since USCIS performed an adjudication of the application.

*Example:* The physician had a prior civil surgeon designation revoked due to suspension of her medical license. However, the officer determines that the underlying reason for the suspension has been resolved, is unlikely to recur, and the physician now has a current, unrestricted medical license. In this case, the officer may approve the civil surgeon application if the physician otherwise meets the eligibility requirements.

2. **Approval**

If the application for civil surgeon designation is approved, the officer should do the following:

**Notification**

Notify the physician in writing of the approval.

**Files**

Either create a new file for the physician who was granted civil surgeon designation; or, if a file for the physician already exists, update the file to reflect the grant of designation.

The files should be maintained in such a way as to facilitate retrieval or review of information relating to the specific civil surgeon. The file should be retained according to the established records retention schedule.

**Updating Civil Surgeon List**

The NBC should coordinate with External Affairs Directorate (EXA) to ensure the civil surgeon list is updated in a timely manner to reflect all newly designated civil surgeons. At a minimum, the newly designated civil surgeon’s full name, name of medical practice, address, and telephone number should be
added to the list. Particular care should be taken when entering the civil surgeon’s zip code and telephone number since these are the primary ways that applicants search for civil surgeons.

3. Denial

If the application for civil surgeon designation is denied, the officer should do the following:

Notification

Notify the physician in writing of the denial. There is no appeal from a decision denying designation as a civil surgeon. However, the physician may file a motion to reopen or reconsider. In the decision denying designation as a civil surgeon, the officer must notify the physician of the possibility to file a timely motion to reopen or reconsider.

A physician who is denied designation is not precluded from reapplying for civil surgeon designation. In the decision denying designation as a civil surgeon, the officer should also notify the physician that he or she may reapply if the physician believes that he or she has overcome the reason(s) for denial.

Files

Create a new file for each physician who was denied designation; or, if a file for the physician already exists, the officer should update the file to reflect the denial of the designation.

4. File Maintenance

The files should be maintained in such a way as to facilitate retrieval or review of information relating to the specific civil surgeon. The file should be retained according to the established records retention schedule.

Footnotes

[^1] See 8 CFR 232.2. In some circumstances, District Directors had delegated the designation authority to Field Office Directors in their districts.

[^2] USCIS field offices continued to accept applications for civil surgeon designation until March 11, 2014. Federal regulations provide the authority for this transfer of authority: Director or district director prior to March 1, 2003, means the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive redelegation, the terms mean, to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. The terms also mean such other official, including an official in an acting capacity, within U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above for a particular geographic district, region, or area. See 8 CFR 1.2.


[^4] USCIS also has the authority to select as many (or as few) civil surgeons necessary to serve the needs of the jurisdiction. See 8 CFR 232.2(b). Therefore, USCIS may also reject complete applications if it determines the jurisdiction’s needs are met. In this case, USCIS would return the entire application package to the
physician, including the fee associated with the application.


[^6] The current version of the form and instructions can be accessed online at uscis.gov/i-910.

[^7] See 8 CFR 103.7(b)(1)(i). The current filing fee can also be found at uscis.gov/i-910.

[^8] If not all of the required initial evidence has been submitted or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer may request additional evidence.


[^10] If an officer grants civil surgeon designation to a physician who is only authorized to work in the United States for a limited period of time, the designation should be limited to the duration of the physician’s work authorization.

[^11] USCIS has the discretion to designate as many (or as few) civil surgeons as needed. See 8 CFR 232.2(b).

[^12] See 8 CFR 103.5. To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion (Form I-290B), with fee. Forms and fee information can be found at uscis.gov.

[^13] If the physician would like to reapply for civil surgeon designation because he or she has overcome the reason(s) for denial, the physician must file a new Application for Civil Surgeon Designation (Form I-910) with the required evidence and filing fee.

Chapter 3 - Blanket Civil Surgeon Designation

A. Blanket Designation of State and Local Health Departments[^1]

1. Overview

USCIS has the authority to designate either individual physicians or members of a specified class of physicians as civil surgeons, provided they meet the legal requirements.[^2] Through policy and in agreement with the Centers for Disease Control and Prevention (CDC), USCIS designated all state and local health departments as civil surgeons. Health departments may only use this blanket civil surgeon designation to complete the vaccination assessments for refugees seeking adjustment of status.[^3]

This blanket designation eases the difficulties encountered by refugee adjustment applicants in complying with the vaccination requirement. It also relieves USCIS of the need to maintain lists of health departments and the names of individual physicians at these health departments.

2. Eligible Physicians

Participation in this blanket civil surgeon designation is entirely voluntary and at the discretion of each health department. Health departments may only participate under this blanket designation if they have physicians authorized to provide medical services who meet the professional qualifications of a civil surgeon[^4] since
only these qualifying physicians may certify the vaccination assessment for refugees seeking adjustment of status. This includes volunteer physicians at state and local health departments.

Eligible physicians at health departments may, but are not required to, personally perform the vaccination assessment. Nurses or other medical professionals may perform the vaccination assessment and complete the vaccination record in the Report of Medical Examination and Vaccination Record (Form I-693) as long as the health department physician reviews and certifies the Form I-693.

Neither health departments nor eligible physicians at health departments need to obtain approval from USCIS prior to performing the vaccination component of immigration medical examinations as specified in the next section. Blanket designated civil surgeons are exempt from both application and fee requirements for civil surgeon designation.

However, health departments and eligible physicians must review and be familiar with the Technical Instructions for the vaccination requirements before they can begin performing vaccination assessments. [5]

3. Scope

Pursuant to the understanding reached between USCIS and CDC, health departments may only use this blanket civil surgeon designation to complete the vaccination assessments for refugees seeking adjustment of status. [6] Therefore, health departments operating under this blanket designation should examine government-issued documents presented by the applicant to verify that he or she is a refugee. [7] This blanket designation does not cover asylees seeking adjustment of status. [8]

Accordingly, health departments operating under this blanket designation are authorized only to perform the vaccination component of the immigration medical examination for refugees seeking adjustment of status. If a health department physician would like to perform parts of the immigration medical examination other than the vaccination assessment, the physician must obtain designation as a civil surgeon through the standard application process. [9]

Refugees who require the entire medical exam, [10] likewise need to visit a physician designated as a civil surgeon through the standard application process. [11]

4. Recording and Certification Requirements

Health departments operating under the blanket civil surgeon designation must record the vaccination assessment on the Report of Medical Examination and Vaccination Record (Form I-693) as follows:

- Ensure the applicant’s information and certification are completed;
- Complete the vaccination record; and
- Complete the civil surgeon’s information and certification.

In accordance with the agreements reached with CDC, health departments operating under the blanket civil surgeon designation are required to certify Form I-693 by providing the attending physician’s signature and a seal or stamp of the health department:

**Physician Signature**

The attending physician must sign Form I-693. A signature stamp may be used. Health department nurses or
other health care professionals may, but are not required to, co-sign the form. However, a form that has been
signed only by a registered nurse, physician's assistant, or other medical professional who is not a licensed
physician is not sufficient.

If a form for a refugee adjusting status has been signed only by a medical professional employed by the
health department (without an accompanying signature by a medical doctor), a Request for Evidence
(RFE) should be sent to the applicant for corrective action.

**Health Department Stamp or Seal**

The health department is also required to affix either the official stamp or raised seal (whichever is
customarily used) of that health department on the space designated on the form.

As with all immigration medical examinations, the signed [Form I-693](https://www.uscis.gov/book/export/html/68600) must be placed in a sealed envelope,
according to the form’s instructions.

### B. Blanket Designation of Military Physicians as Civil Surgeons

#### 1. Overview

Through policy, USCIS extended a blanket civil surgeon designation to military physicians for the
completion of all parts of a required immigration medical examination for members and veterans of the U.S.
armed forces and certain eligible dependents if the military physician meets certain conditions.

This blanket designation eases the difficulties encountered by U.S. armed forces members, veterans, and
certain eligible dependents when obtaining immigration medical examinations. It also eases the civil surgeon
designation process for military physicians, since many military physicians are not licensed in the states in
which they provide medical services for the military. Furthermore, this policy relieves USCIS of the need to
maintain lists of individual military physicians designated as civil surgeons.

#### 2. Eligible Physicians

Participation in this blanket civil surgeon designation is entirely voluntary and at the discretion of each
medical facility. This blanket designation only applies to military physicians who:

- Meet the professional qualifications of a civil surgeon except that the physician may be licensed
  in any state in the United States, and is not required to be licensed in the state in which the physician is
  performing the immigration medical examination;

- Are employed by the Department of Defense (DOD) or provides medical services to U.S. armed forces
  members, veterans, and their dependents as military contract providers or civilian physicians; and

- Are authorized to provide medical services at a military treatment facility (MTF) within the United
  States.

Neither the medical facility nor the physician who qualifies and wishes to participate in the blanket
designation needs to obtain approval from USCIS prior to performing immigration medical examinations as
specified in the next section. Blanket designated civil surgeons are exempt from both USCIS application and
fee requirements for civil surgeon designation.

However, military physicians must review and be familiar with CDC’s Technical Instructions for the Medical
Examination of Aliens in the United States before they can begin performing immigration medical examinations. [13]

3. Scope

Pursuant to the understanding reached between USCIS and CDC, military physicians who qualify under this blanket civil surgeon designation may perform the entire immigration medical examination as long as the exam is conducted in the United States on the premises of an MTF, and for a U.S. armed forces member, veteran, or dependent who is eligible to receive medical care at that MTF.

Military physicians must apply for civil surgeon designation under the standard designation process [14] if they wish to complete immigration medical examinations:

- In a U.S. location other than on the premises of an MTF; or
- For applicants other than those U.S. armed forces members, veterans, or dependents to whom they are authorized to provide medical services at an MTF.

U.S. armed forces members, veterans, or dependents will need to visit a physician designated as civil surgeon through the standard application process if they:

- Prefer to have the immigration medical examination performed by a physician who does not qualify under this blanket designation for military physicians;
- Prefer to have the immigration medical examination performed in a U.S. location other than at the MTF at which they are authorized to receive medical services; or
- Do not have access to a military physician who is performing immigration medical examinations under this blanket designation.

4. Recording and Certification Requirements

Military physicians operating under the blanket civil surgeon designation must record the results of the immigration medical examination on the Report of Medical Examination and Vaccination Record (Form I-693), according to the standard procedures all civil surgeons are required to follow.

In accordance with the agreements reached with CDC, a military physician operating under the blanket civil surgeon designation is required to certify Form I-693 by providing both of the following on the form:

Physician Signature

The blanket designated civil surgeon must sign Form I-693. A signature stamp may be used. Nurses or other health care professionals may, but are not required to, co-sign the form. However, a form that has been signed only by a registered nurse, physician's assistant, or other medical professional who is not a licensed physician is not sufficient. If a form for a U.S. armed forces member, veteran, or eligible dependent has been signed only by a medical professional employed by the military facility (without an accompanying signature by a medical doctor), an RFE should be sent to the applicant for corrective action.

MTF Stamp or Seal

The MTF is also required to affix either the official stamp or raised seal of that facility on the space designated on the form.
The signed Form I-693 must be placed in a sealed envelope, according to the form’s instructions.

Footnotes


[^2] As specified under INA 232(b), 8 CFR 232.2(b), and 42 CFR 34.2(b).


[^4] As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [8 USCIS-PM C.1(C)].


[^7] Refugees may present their Arrival-Departure Record (Form I-94), Refugee Travel Document (Form I-571), or Employment Authorization Document (Form I-766) as evidence of refugee status. However, health departments completing the vaccination assessment will not know whether a refugee seeks adjustment under INA 209 or under another provision. Therefore, when reviewing a vaccination assessment completed by a blanket designated civil surgeon for a refugee seeking adjustment, the officer should confirm that the refugee is adjusting under INA 209 before accepting the vaccination assessment performed by a blanket designated health department.


[^11] However, blanket-designated health departments may still perform the vaccination component of the medical exam for refugees who require the entire medical exam.

[^12] As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [8 USCIS-PM C.1(C)].


Chapter 4 - Termination and Revocation

A. Voluntary Termination

A civil surgeon who no longer wishes to be designated as a civil surgeon should request, in writing, that USCIS terminate the designation. [1]
A physician who voluntarily terminates his or her civil surgeon designation must re-apply with USCIS if he or she wishes to be designated as a civil surgeon again.

**B. Revocation**

Current regulations do not contain specific revocation provisions; however, the law does not preclude revocation, especially when the physician no longer qualifies for civil surgeon designation.

1. **Grounds for Revocation**

USCIS may revoke a physician’s civil surgeon designation if he or she:

- Fails to comply with the Technical Instructions, Form I-693 Instructions, or fails to fulfill other responsibilities of a civil surgeon consistently or intentionally;

- Falsifies or conceals any material fact in the application for civil surgeon designation, or provides any false documents or information to obtain the designation;

- Knowingly falsifies or conceals any material fact on Form I-693, or includes any false documents or information to support any findings in the record;

- Fails to maintain a currently valid and unrestricted license to practice as a physician in any state in which the physician conducts immigration medical examinations, unless otherwise excepted or exempted from this requirement;

- Is subject to any court or disciplinary action that revokes, suspends, or otherwise restricts the physician’s authority to practice as a physician in any state in which the physician conducts immigration medical examinations; or

- Has failed to meet any of the professional qualifications for a civil surgeon at any time during the period of a physician’s designation as a civil surgeon, unless USCIS finds both that the physician has corrected any gap in eligibility and that the physician refrained from conducting immigration medical examinations during any period in which the physician was not eligible for designation as a civil surgeon.

2. **Initiating Revocation**

The file should be well-documented before USCIS takes any steps to revoke a physician’s civil surgeon designation. When the proposed revocation is based on allegations of misconduct reported by an adjustment of status applicant, the officer should take a sworn statement to support the allegations. The officer should also retain any other available evidence of the alleged misconduct.

The National Benefits Center (NBC) may request the assistance of other USCIS offices to collect evidence if such evidence is not otherwise available to the NBC and if resources allow. For instance, if the NBC is unable to reach or communicate with a particular civil surgeon, the NBC may request assistance from the local office to contact the civil surgeon.

In instances where the civil surgeon may be involved in fraud, USCIS Fraud Detection and National Security Directorate (FDNS) should be notified per the standard fraud referral operating procedures and the civil surgeon’s record should be annotated to reflect that suspected fraud played a factor in initiating revocation. Depending on the nature and severity of the allegations, it may also be necessary to consult with the Centers.
for Disease Control and Prevention (CDC) to obtain expert medical advice.

An officer may refer a proposed revocation of civil surgeon designation to USCIS counsel for review. When referring a case to USCIS counsel, the officer should include the reasons for the intended revocation and a copy of the supporting evidence.

Once the decision has been made to initiate the revocation, the officer must serve the physician with a notice of intent to revoke by Certified Mail/Return Receipt Requested or other method that provides proof of delivery. The notice must clearly state the exact grounds for the intended revocation and include copies of any relevant evidence. The officer must give the physician 30 days from the date of the notice to respond with countervailing evidence. The physician may be represented by private counsel at his or her own expense.

3. Allegations of Malpractice, Breaches of Medical Ethics, and Other Improper Conduct

The authority to designate civil surgeons does not give USCIS authority to regulate the practice of medicine. For this reason, the process for revoking designation as a civil surgeon is not the proper forum for adjudicating complaints against a physician concerning malpractice, breach of medical ethics, or other improper conduct. If USCIS receives a complaint of this kind, USCIS should advise the complainant to make the complaint with the proper medical licensing authority for the State or territory in which the physician practices.

4. Decision

Once the period for the physician’s response to the notice of intent to revoke has expired, USCIS reviews the record and decide whether to revoke the physician’s designation as a civil surgeon. Any response from the physician is included in the record of proceeding. USCIS must notify the physician in writing of the decision.

There is no administrative appeal from a decision to revoke a physician’s designation as a civil surgeon. The physician may, however, file a motion to reopen or reconsider. A decision revoking a physician’s designation as a civil surgeon must notify the physician of the right to file a timely motion to reopen or reconsider.

Similarly, USCIS may reopen and reconsider a decision on its own motion. A physician whose civil surgeon designation is revoked is not precluded from reapplying for civil surgeon designation, but the ground(s) upon which revocation is based should be considered as part of the adjudication of a subsequent application for civil surgeon designation. A physician, however, whose prior civil surgeon designation was revoked based on confirmed involvement in an immigration benefits fraud scheme will be denied civil surgeon designation upon reapplication.

If USCIS revokes a physician’s designation as a civil surgeon, the public civil surgeon list should be updated immediately to remove the civil surgeon’s information.

If an officer reviewing Form I-693 has a concern about the sufficiency of an immigration medical examination performed by a physician who was designated at the time of the medical exam but subsequently had his or her designation revoked, the officer may reorder the medical exam to be performed by a civil surgeon to address the concern.

Footnotes
For more information on where to send a request to terminate one’s designation, visit the UScis website.

UScis may redact certain sensitive or identifying information.

Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) must also be filed in this case.

As permitted in 8 CFR 103.5. To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion (Form I-290B), with fee. Forms and fee information can be found at uscis.gov.

As specified in Chapter 5, Civil Surgeon List [8 USCIS-PM C.5].

In general, an officer may order or reorder an immigration medical examination, in part or in whole, at any time if he or she has concerns regarding an applicant’s inadmissibility on health-related grounds. See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

Chapter 5 - Civil Surgeon List

A. Overview

UScis maintains a nationwide list of civil surgeons available to the public. Applicants may search the list for civil surgeons designated in their area at USCis.gov (via the Civil Surgeon Locator) or through the USCis Contact Center’s toll-free number at 1-800-375-5283.

Physicians on the civil surgeon list are generally current in their designation as civil surgeons. Since the list is updated weekly, it is advisable for the applicants to check that a physician is still on the civil surgeon list as close as possible to the date of the immigration medical exam appointment. If uncertain, applicants should also confirm with their doctors regarding their civil surgeon status prior to the immigration medical examination.

B. Requests to Update the Civil Surgeon Information

A civil surgeon should inform USCis of any change that is relevant to the civil surgeon designation within 15 days of the change. [1]

If an officer at a USCis field or district office receives a request to update the civil surgeon list, he or she should forward the request to the National Benefits Center (NBC) for review.

C. Maintaining the Civil Surgeon List

UScis reviews all requests from civil surgeons to update contact information or to terminate the civil surgeon designation. USCis also updates the civil surgeon list accordingly, as well as removes civil surgeons whose designations have been suspended or revoked.

1. Request to Update Contact Information
If a civil surgeon’s request to update contact information involves a move to a new state, then evidence of medical licensure in the new state[^2] must accompany the request before the officer may approve it. If this evidence is missing, the officer may request this information through the issuance of a Request for Evidence (RFE).

2. Termination, Suspension, or Revocation

If a civil surgeon requests to be removed from the civil surgeon list or if USCIS determines designation should be suspended or revoked, the officer should annotate the date and reason for removal. Records of former civil surgeons should be retained internally; the information may be relevant, for instance, to the adjudication of a medical examination the civil surgeon completed before he or she was removed from the civil surgeon list or if the physician re-applies for civil surgeon designation in the future.

3. Updates and Review of Civil Surgeon List

USCIS ensures the civil surgeon list is updated in a timely manner to reflect any changes in a civil surgeon’s contact information or designation status. In addition, USCIS performs a review of the civil surgeon list on a bi-annual basis, at a minimum, to ensure that all publicly available civil surgeon information is current and accurate.

If during this review USCIS learns that a civil surgeon is no longer performing immigration medical examinations in the location specified as part of the designation, or is no longer practicing medicine at all, USCIS may terminate the civil surgeon designation and remove the physician from the list. USCIS should follow regular revocation procedures.

Footnotes

[^1] See uscis.gov/i-910 for more information on how to update contact information.

[^2] The physician must show that he or she continues to meet the professional qualifications to be a civil surgeon in the new state.

Part D - Criminal and Related Grounds of Inadmissibility

Part E - Terrorism

Part F - National Security and Related Grounds of Inadmissibility

Chapter 1 - Purpose and Background [Reserved]

Chapter 2 - [Reserved]

Chapter 3 - Immigrant Membership in Totalitarian Party
A. Purpose and Background

1. Purpose

The inadmissibility ground for immigrant membership in or affiliation with the Communist or any other totalitarian party is part of a broader set of laws passed by Congress to address threats to the safety and security of the United States. Its original purpose was to protect the United States against un-American and subversive activities that were considered threats to national security.

In general, any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate), domestic or foreign, is inadmissible.[1] There are two exceptions to this ground of inadmissibility and a limited waiver available to certain aliens depending on the immigration benefit they are seeking.[2]

2. Background

During and after World War I, the U.S. government was concerned with the external threats of anarchism and communism. In response, Congress passed the Immigration Act of 1918 that authorized the detention and deportation of alien anarchists under an extremely broad definition of anarchism irrespective of the alien’s date of entry into the United States.[3] Furthermore, Congress also criminalized the reentry of any alien who was previously deported under provisions of this Act.[4]

In 1938, Congress sought to protect the internal security, national defense, and foreign relations of the United States by requiring that foreigners disseminating propaganda and alien ideologies be registered and identified.[5]

Near the onset of World War II, concern about the possibility of hostile foreign enemies living in the United States was on the rise. In response, Congress passed the Alien Registration Act of 1940.[6] With this Act, Congress made it a crime for any person to advocate for the overthrow or destruction of the U.S. government by force or violence, print or distribute materials advocating such activities, or organize any groups that advocate such activities. Congress also made it a crime for any person to attempt or conspire to commit such acts. The Act also established a removal ground for aliens convicted of these new offenses within 5 years of entry or convicted more than once at any time after entry.[7]

In the aftermath of World War II and in response to the rise of communism in the global arena, Congress passed a succession of laws, including the Internal Security Act of 1950.[8] Through the Internal Security Act of 1950, Congress aimed to combat the world communism movement and prosecute those who knowingly and willfully participated.[9]

The Internal Security Act of 1950 created criminal penalties for conspiring to create a totalitarian dictatorship in the United States and to unlawfully communicate or receive classified information. It did not create criminal penalties for membership or the holding of office in a communist organization, but required communist organizations to register, submit annual reports, and prohibited the members of communist organizations from applying for, renewing, or using a U.S. passport.[10]

The Internal Security Act of 1950 also amended the Immigration Act of 1918 by adding new grounds of exclusion specific to members of communist or totalitarian parties, affiliates of such groups, or to aliens who advocate the doctrines of world communism or any other form of totalitarianism.[11] It likewise expanded the deportation provisions to cover such aliens.
The Act also created new restrictions on naturalization by making aliens who were members or affiliates of a communist organization or who advocated certain communist or totalitarian positions (or were members or affiliates of organizations that advocated such positions) ineligible for naturalization.\[12\] Naturalized citizens who engaged in such activities within 5 years following their naturalization would be subject to revocation of their naturalization orders.

A year later, Congress amended the Internal Security Act of 1950 to include some of the exceptions to the grounds of exclusion specific to the members and affiliates of communist organizations to better align the actual language of the statute with the intent of Congress. The amendment stated that only membership or affiliation which was voluntary would be considered for exclusion and would not include membership or affiliation which is or was solely when the alien was under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes.\[13\]

Subsequently, Congress passed the Immigration and Nationality Act (INA) of 1952 which, for the first time, authorized the exclusion of all aliens, immigrants or nonimmigrants, on the basis of membership in or affiliation with the Communist or any other totalitarian party.\[14\] As with previous acts, the INA of 1952 also declared that aliens were excludable based on a wide variety of other activities linked to the Communist Party or other totalitarian parties even if the aliens were not members or affiliates.

The INA of 1952 included exceptions and waivers similar to those available today. There were two classes of exceptions available to immigrants and nonimmigrants alike. The first, which was based solely on the alien’s personal history (and tracked the Internal Security Act amendments of 1951), excepted aliens if their membership or affiliation “is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes.”\[15\]

The second exception was available to aliens whose admission “would be in the public interest” if their membership or affiliation had terminated at least 5 years before the date of the application and the alien had been “actively opposed to the doctrine, program, principles, and ideology” of the Communist or totalitarian organization during those 5 years.\[16\]

The INA of 1952 also contained an exception for nonimmigrant diplomats (A) and nonimmigrant representatives of international organizations (G) as well as a general waiver for temporary admission as a nonimmigrant.\[17\] The general waiver for aliens seeking nonimmigrant visas was only to be granted in the discretion of the Attorney General based on the recommendation of the Secretary of State or a consular officer.

Subsequent amendments provided for additional exceptions. In 1977, Congress passed the Foreign Relations Authorization Act of Fiscal Year 1978, which contained a provision popularly referred to as the “McGovern Amendment.”\[18\] This provision slightly modified the operation of the nonimmigrant waiver established in INA 212(d)(3). While the INA stated that an excludable alien applying for a nonimmigrant visa would only receive the visa and be admitted in the discretion of the Attorney General based on a recommendation by the Secretary of State or a consular officer, the McGovern Amendment required the Secretary of State to make a favorable recommendation to the Attorney General within 30 days of receiving the nonimmigrant visa application unless “the admission of such alien would be contrary to the security interests of the United States.”\[19\]

Congress limited the scope of the McGovern Amendment in 1979 with a provision in the Department of State Authorization Act, Fiscal Years 1980 and 1981, by eliminating eligibility for the McGovern Amendment for three groups: representatives of “purported labor organizations” that were actually instruments of totalitarian
states; members, officers, officials, representatives, and spokesmen of the Palestine Liberation Organization; and aliens from countries that signed the Helsinki Final Act but which were not in substantial compliance with its provisions.\[20\]

The Immigration Act of 1990 (IMMACT 90) completely reorganized the exclusion grounds, amending some and deleting others.\[21\] While Congress retained the exclusion ground in the INA relating to membership or affiliation, with IMMACT 90, Congress eliminated the various other related exclusion grounds such as those that penalized the advocacy or publication of communist or other subversive views or materials.

The IMMACT 90 exclusion provision related to membership in the Communist or other totalitarian party is nearly identical to the current inadmissibility ground at INA 212(a)(3)(D), with two minor differences.\[22\] Through IMMACT 90, Congress limited the exclusion ground to “immigrants” rather than applying this provision on its own terms to “aliens” more generally.\[23\] While nonimmigrant alien members of communist or totalitarian parties cannot be found inadmissible based on INA 212(a)(3)(D), they may be found inadmissible based on other grounds, if applicable.

The naturalization provisions contain a separate but related ineligibility ground for an alien who has been a member of (or affiliated with) the Communist or any other totalitarian party within 10 years of filing and until the applicant takes the Oath of Allegiance.\[24\] As in the inadmissibility context, there are statutory exceptions to the naturalization bar based on past membership and past involuntary membership.\[25\] The regulations related to naturalization contain definitions and concepts concerning the Communist Party or other totalitarian parties that USCIS also applies to its interpretation of the inadmissibility ground found at INA 212(a)(3)(D).\[26\]

3. Legal Authorities

- **INA 212(a)(3)(D)** - Immigrant membership in totalitarian party

B. Overview of Inadmissibility Ground

In general, any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.\[27\]

1. Applicability

This ground of inadmissibility applies to an alien seeking immigrant status, such as an alien inside the United States applying for adjustment of status to that of a lawful permanent resident (LPR), an alien applying for an immigrant visa with the U.S. Department of State (DOS) at a U.S. embassy or consulate outside of the United States, or an alien applying for admission as an immigrant at a U.S. port of entry.\[28\]

The inadmissibility ground applies to membership (past or present) and those with an affiliation with such parties. There are certain exceptions to this ground of inadmissibility as well as a waiver.\[29\]

2. Overview of Inadmissibility Determination

The following table provides officers with an overview of how to determine whether an alien is inadmissible under **INA 212(a)(3)(D)**.
### Overview of Inadmissibility Determination

<table>
<thead>
<tr>
<th>Step</th>
<th>If yes, then…</th>
<th>If no, then…</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1: Determine whether the organization is the Communist or any other totalitarian party</td>
<td>Go to Step 2</td>
<td>Alien is not inadmissible under INA 212(a)(3)(D)</td>
</tr>
<tr>
<td>Step 2: Determine whether alien’s connection to the organization rises to the level of membership in or affiliation with such organization</td>
<td>Go to Step 3</td>
<td>Alien is not inadmissible under INA 212(a)(3)(D)</td>
</tr>
<tr>
<td>Step 3: Determine whether membership or affiliation was “meaningful”</td>
<td>Go to Step 4</td>
<td>Alien is not inadmissible under INA 212(a)(3)(D)</td>
</tr>
<tr>
<td>Step 4: Determine whether one of the exceptions applies</td>
<td>Alien is not inadmissible under INA 212(a)(3)(D)</td>
<td>Alien is inadmissible under INA 212(a)(3)(D)</td>
</tr>
</tbody>
</table>

### 3. Communist or Any Other Totalitarian Party

An alien who is or has been a member of or affiliated with the Communist or any other totalitarian party is inadmissible under INA 212(a)(3)(D), unless an exception applies.

Under INA 212(a)(3)(D), an officer must first determine whether the organization in question meets the definition of Communist or any other totalitarian party.

The regulations define the Communist Party as:

- The Communist Party of the United States;
- The Communist Political Association;
- The Communist Party of any state of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state;
- Any section, subsidiary, branch, affiliate, or subdivision of any such association or party;
- The direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; and
- Any communist-action or communist-front organization that was required to register under former Section 786 of Title 50 of the U.S. Code, provided that the applicant knew or had reason to believe, while he or she was a member, that such organization was a communist-front organization.\[30\]
“Any other totalitarian party” is defined as “an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism.”

“Totalitarian dictatorship” or “totalitarianism” refer to systems of government not representative in fact, characterized by:

- The existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit; and
- The forcible suppression of opposition to such party.

After determining that the group in question meets the definition of the Communist or any other totalitarian party, the officer must determine if the alien is or has been a member of or affiliated with that group. If the group does not meet the definition, then the alien is not inadmissible under this ground.

4. Extent of Alien’s Involvement

Membership

Membership may be established by the alien’s testimony alone, where that testimony shows a sufficiently viable and purposeful relationship. Membership is not defined in the INA or in the regulations, and is dependent on a person satisfying the requirements for membership as specified by the membership organization in question.

Membership may be established by evidence that the alien was issued a membership card, paid dues to the organization or even based on witness testimony regarding an alien’s membership in the organization (including seeing an alien’s name on membership records, dues records, and testimony regarding meeting attendance).

Affiliation

Even if an alien is not a member of the Communist or any other totalitarian party, he or she may still be inadmissible if found to be an affiliate of such an organization. The INA states that while “the giving, loaning, or promising of support or of money or any other thing of value for any other purpose to any organization shall be presumed to constitute affiliation . . . nothing in this paragraph shall be construed as an exclusive definition of affiliation.”

Affiliation implies less than membership but more than sympathy. Affiliation includes more than mere interest or sympathy for an organization but may also be accompanied by some positive and voluntary action that provides support, money, or another thing of value. The regulations state that “[a]ffiliation with an organization includes, but is not limited to, the giving, lending, or promising of support or of money or anything of value, to that organization to be used for any purpose.”

“Affiliate” is also used in the context of this inadmissibility ground to describe links between organizations, in addition to ties between an alien and an organization. An affiliate organization of a totalitarian party is one that is related to, or identified with, a proscribed association or party in such close association as to evidence an adherence to or a furtherance of the purposes and objectives of such association or party, or as to indicate a working alliance to bring to fruition the purposes and objectives of the proscribed association or party.
Special Considerations for Military and Government Service

Service in the armed forces of a communist or totalitarian-controlled country, whether voluntary or not, does not in itself constitute or establish an alien’s membership in or affiliation with a communist or totalitarian party.\(^{[42]}\) Notwithstanding, if the alien’s service in the armed forces is inherently political, the alien is inadmissible as a member or affiliate of a communist or totalitarian party. In such cases, the officer should determine if the evidence supports a finding that the alien was aware of the political nature of his or her military service. For example, an alien may occupy a sufficiently high rank in the armed forces of his or her country that is inherently political or perform a specific mission that is inherently political.

If the alien was or is a government worker in a communist or communist-controlled country, then the officer should give special attention and scrutinize such employment since voluntary service in a political capacity constitutes affiliation with a political party or the organization in power at the time of service.\(^{[43]}\)

5. Whether Involvement was Meaningful

Even if the officer has determined that an alien is or has been a member of or affiliate of a proscribed group, the evidence must show that the alien’s membership or affiliation was meaningful when finding the alien inadmissible.

“Meaningful” membership or affiliation versus “non-meaningful” membership or affiliation has never been codified in the INA but is rather a judicially created concept. In general, membership in a communist or totalitarian party must be intentional in order to be meaningful. Most notably, the Supreme Court of the United States has held that “[t]here must be a substantial basis for finding that an alien committed himself to the Communist Party in consciousness that he was ‘joining an organization known as the Communist Party which operates as a distinct and active political organization[].’”\(^{[44]}\)

An alien’s membership or affiliation is meaningful if the evidence shows that the alien is aware of the political aspects of the proscribed organization during the time of their membership or if the evidence shows that the alien engaged in party activities to a degree that substantially supports an inference of his or her awareness of the party’s political aspect.\(^{[45]}\) Accordingly, an alien’s knowledge or awareness of a communist or totalitarian party’s political nature is sufficient to establish that an alien’s membership is meaningful.\(^{[46]}\)

C. Adjudication

1. Evidence

A finding of inadmissibility under INA 212(a)(3)(D) must be based on evidence, such as oral testimony, written testimony, or any other documentation containing information about the applicant’s current or prior membership in or affiliation with the Communist or any other totalitarian party. Some USCIS forms, including the Application to Register Permanent Residence or Adjust Status (Form I-485), require applicants to list their memberships in organizations and parties.

Membership or affiliation is a question of fact for the officer to determine. If the facts and evidence available would allow a reasonable person to conclude that the alien is a member or an affiliate of the Communist or any other totalitarian party, then the applicant must establish that he or she qualifies for one of the exceptions or the waiver.

If an applicant misrepresents information regarding membership or affiliation in answering questions on Form I-485, the alien could also be found inadmissible under INA 212(a)(6)(C)(i).\(^{[47]}\)
## 2. Burden of Proof

The burden of proof to establish admissibility when seeking an immigration benefit is always on the applicant. The burden never shifts to the Government at any time during adjudication.

To determine whether an alien is inadmissible based on his or her membership in or affiliation with the Communist or any other totalitarian party, there must be sufficient evidence that would lead a reasonable person to find that he or she is or was a member of or affiliated with a proscribed group. If there is evidence that would permit a reasonable person to conclude that the applicant is inadmissible under this ground, then the officer should find that the applicant has not successfully met the burden of proof. If there is any adverse, third-party information in the record, then the officer conducting an interview is generally expected to confront the applicant with the information and resolve the issue at the time of the interview.

If an officer is basing a decision in whole or in part on information of which the applicant is unaware or could not reasonably be expected to be aware, and the applicant was not confronted with that information and given an opportunity to respond during an interview, the officer must issue a Notice of Intent to Deny (NOID). The NOID provides the applicant an opportunity to review and respond to the information, unless the information is classified. An applicant who fails to meet the burden of proof is inadmissible for being a member or affiliate of the Communist or any other totalitarian party, unless the applicant is able to successfully rebut the officer’s inadmissibility finding.

If the applicant is successful in rebutting the inadmissibility finding, the officer should find that the alien is not inadmissible for being a member or affiliate of the Communist or any other totalitarian party.

## D. Exceptions and Waivers

### 1. Exceptions

Congress provided two statutory exceptions for aliens who might otherwise be found inadmissible for their membership in or affiliation with the Communist or any other totalitarian party. There are two categories of exceptions: involuntary membership and past membership.

**Involuntary Membership**

The first category of exceptions applies to aliens whose membership or affiliation is or was:

- Involuntary;
- Solely when under 16 years of age;
- By operation of law; or
- For purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes.

Membership or affiliation is considered involuntary when it is the result of factors such as coercion, fraud, duress, incapacity, or some other error which may impair or negate the capacity for affirmative and intentional actions. The burden remains on the alien to establish that the association is involuntary.

An exception also applies when such membership or affiliation occurred solely when the alien was under the
age of 16.\[57\] However, political activities and continuing commitments after the age of 16 are not protected under this exception.\[58\]

The statute also excepts membership or affiliation occurring solely by operation of law. This includes any case where “the alien automatically, and without personal acquiescence, became a member of or affiliated with a proscribed party or organization by official act, proclamation, order, edict, or decree.”\[59\]

Joining a proscribed organization in order to obtain the essentials of living is also excepted, absent an ideological commitment to the cause.\[60\] Examples of the essentials of living refer to “food, shelter, clothing, employment and an education which were routinely available to the rest of the population.”\[61\]

Under the INA, an alien is not inadmissible when his membership in or affiliation with a communist or totalitarian party is necessary in order to obtain food or employment. Inadmissibility “shall not apply to an alien because of membership or affiliation if the alien establishes ... that the membership or affiliation is or was ... for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.”\[62\] If an alien’s membership or affiliation with a communist or totalitarian party was not actually necessary for purposes of such essentials of living, then the alien is inadmissible unless another exception applies.

**Past Membership**

If an officer has determined that the alien has been a member of or affiliated with a proscribed organization and one of the involuntary membership exceptions does not apply, the officer should evaluate whether the past membership exception applies to the alien.

An alien may be excepted from inadmissibility under INA 212(a)(3)(D) if the alien can establish that:

- His or her membership in or affiliation with a proscribed organization terminated at least 2\[63\] or 5 years before the date of receipt of the application (if the alien’s membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, the alien must establish that his or her membership or affiliation terminated at least 5 years before the date of receipt); and

- He or she is not a threat to the security of the United States.\[64\]

In cases that involve past membership, mere termination for the requisite time period is sufficient; active opposition is not required.\[65\] It is also the applicant's burden to prove that he or she is not a threat to the security of United States.

Furthermore, where the evidence shows that the alien is a threat to the security of the United States, the alien may also be inadmissible under security and related grounds\[66\] or terrorist activities.\[67\] An alien may be found to be a threat to the security of the United States and ineligible for the exception even if not inadmissible under a separate security or terrorist inadmissibility ground.\[68\]

If the officer finds that a meaningful membership or affiliation in a proscribed organization exists, and the alien does not qualify for either of the two exceptions, then the officer should find the alien inadmissible under INA 212(a)(3)(D) for being or having been a member of the Communist or any other totalitarian party.

**2. Waiver**
A discretionary waiver is available for certain family members of U.S. citizens or LPRs.

The INA provides that the Secretary of Homeland Security may waive this ground of inadmissibility for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if:

- The alien is a parent, spouse, son, daughter, brother, or sister of a U.S. citizen, or is a spouse, son, or daughter of an LPR;
- The alien is not a threat to the security of the United States; and
- The alien warrants a favorable exercise of discretion.[69]

When considering whether or not an alien is a threat to the security of the United States, USCIS considers the following non-exhaustive list of factors:

- Espionage;
- Terrorism;
- Subversion;
- Public safety, including criminal history and gang activity;
- Risks to intellectual property;
- Risks to information security, including disinformation campaigns;
- Risks to election security; and
- Risks to public health.

To apply for the waiver, the alien must file an Application for Waiver of Grounds of Inadmissibility (Form I-601).[^1]

Footnotes


[^2] See INA 212(a)(3)(D)(ii)-(iv). For more information, see Section D, Exceptions and Waivers [8 USCIS-PM F.3(D)].

[^3] See Sections 1 and 2 of the Immigration Act of 1918, Pub. L. 65-221 (PDF), 40 Stat. 1012, 1012 (October 16, 1918). This Act expanded upon the brief definition of anarchy found in prior law to cover all forms of activities related to its advocacy, including membership in and affiliation with any organization or group that advocated opposition to all forms of organized government.


Also known as the Smith Act, see Pub. L. 76-670 (June 28, 1940).

In the Alien Registration Act of 1940, Congress also expanded the exclusion grounds from the Immigration Act of 1918 relating to “aliens who are members of the anarchistic and similar classes.” Previously, only aliens who were members of such classes at the time of entry were excludable. In 1940, Congress expanded the ground to include aliens who “at any time” were members of these classes.


This exclusion ground did not apply to certain nonimmigrants. See Section 22 of the Internal Security Act of 1950, Pub. L. 81-831, 64 Stat. 987, 1006-10 (September 23, 1950).


See former Section 212(a)(28) of the INA of 1952, also referred to as the McCarran-Walter Act, Pub. L. 82-414 (PDF), 66 Stat. 163, 184 (June 27, 1952).

See former INA 212(a)(28)(I)(i).

See former INA 212(a)(28)(I)(ii).

See Section 212(d)(2) and (3) of the INA of 1952, Pub. L. 82-414 (PDF), 66 Stat. 163, 187 (June 27, 1952).


See INA 313 and 8 CFR 313.

See INA 313 and 8 CFR 313.

See 8 CFR 313.1. For more information on the corresponding naturalization provision, see Volume 12, Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 7, Attachment to the Constitution [12 USCIS-PM D.7].

See INA 212(a)(3)(D)(i).

For more information on adjustment of status, see Volume 7, Adjustment of Status [7 USCIS-PM].

For more information, see Section D, Exceptions and Waivers [8 USCIS-PM F.3(D)].

See 8 CFR 313.1 (definitions).


See INA 101(a)(37). See 22 CFR 40.34(f), which indicates that any former or present voluntary member of, or an alien who was, or is, voluntarily affiliated with a noncommunist party, organization, or group, or any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence in which the totalitarian party did not or does not advocate for the establishment of a totalitarian dictatorship in the United States, is not considered ineligible under INA 212(a)(3)(D) to receive a visa.

See Langhammer v. Hamilton, 295 F.2d 642, 645 (1st Cir. 1961) (holding that the alien was deportable for being a member of the Communist Party, an excludable class of aliens, based exclusively on the alien’s own testimony).

See Langhammer v. Hamilton, 295 F.2d 642, 647 (1st Cir. 1961) (where the alien was found to be a member of three Communist-controlled organizations in addition to the Party itself. In that case, the evidence showed that he not only carried a membership card and paid dues, but also served as an officer of two different Party units, organized meetings, arranged for speakers, collected dues from others, and maintained Party records).

See Matter of A---, 6 I&N Dec. 524 (BIA 1955) (where the alien was found to be a member of the Communist Party based on a witness testifying that he had seen the alien’s name on official Communist Party records, received a Communist Party membership book issued to the alien, and another witness testifying to seeing the alien at a Communist Party meeting). See Wellman v. Butterfield, 235 F.2d 932 (7th Cir. 1958) (finding that a witness testifying to attending over a hundred closed Communist Party meetings with the alien and that the witness had issued the alien a membership card and collect dues from the alien was sufficient to prove membership in the Communist Party).

See INA 101(e)(2). See 22 CFR 40.34(f).


See Matter of G---, 5 I&N Dec. 112 (BIA 1953) (holding that an alien, who was not a member of the Communist Party, but was a sympathizer with its principles, who subscribed to and sold a Communist newspaper, distributed Communist literature, and made speeches on behalf of the Party was deemed to have been affiliated with the Communist Party). See Bridges v. Wixon, 326 U.S. 135 (1945) (where the Supreme Court states that affiliation implies something less than membership but more than sympathy).
Including any section, subsidiary, branch, or subdivision of the association or party.

See 22 CFR 40.34(a).

See 22 CFR 40.34(b).

See 22 CFR 40.34(c).


See Gastelum-Quinones v. Kennedy, 374 U.S. 469, 476-77 (1963) (holding that the evidence was insubstantial to demonstrate that the alien was “sensible to the Party’s nature as a political organization” or that he engaged in “Party activities to a degree substantially supporting an inference of his awareness of the Party’s political aspect”).

See Wellman v. Butterfield, 253 F.2d 932, 933 (6th Cir. 1958) (“[T]he foregoing evidence was sufficient to . . . establish that the appellant joined the party, aware that she was ‘joining an organization known as the Communist Party which operates as a distinct and active political organization[]’” (quoting Galvan)). See Matter of Rusin (PDF), 20 I&N Dec. 128 (BIA 1989) (holding that the alien did not have a meaningful association with the Communist Party since she did not commit herself to a Communist organization).

For more information, see Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

See INA 291. See Matter of Bett (PDF), 26 I&N Dec. 437 (BIA 2014). For more information, see Volume I, General Policies and Procedures, Part E, Adjudications, Chapter 4, Burden and Standards of Proof [1 USCIS-PM E.4].

See INA 291.

The reasonable person standard derives from INS v. Elias-Zacarias, 502 U.S. 478 (1992) (agency factfinding must be accepted unless a reasonable fact finder would necessarily conclude otherwise).

For example, investigative reports, reports from informants, school record, or employment records not provided by the applicant.

See 8 CFR 103.2(b)(16)(iv).

If USCIS has made a decision on the application, the applicant may provide new facts for consideration by seeking a motion to reopen. To do so, the applicant must file a Notice of Appeal or Motion (Form I-290B).

See INA 212(a)(3)(D)(ii).


See Matter of B---, 5 I&N Dec. 72 (BIA 1953). For more information on burden of proof, see Section C, Adjudication, Subsection 2, Burden of Proof [8 USCIS-PM F.3(C)(2)].

See INA 212(a)(3)(D)(ii).

See Matter of Pust (PDF), 11 I&N Dec. 228 (BIA 1965) (where the BIA acknowledged that the alien’s participation of youth organizations commenced when he was under 16 years of age and continued
throughout high school but his membership was found to be of a passive nature for the purposes of obtaining a grade school and high school education).

[^59] See 22 CFR 40.34(e). See Gzymala-Siedlecki v. U.S., 285 F.2d 836 (5th Cir. 1961) (where the alien automatically became a member of the Communist Party even though “[h]e signed no application for membership, received no membership card and was never sworn in.”).


[^61] See, for example, 8 CFR 313.3(d)(1)(i).


[^63] Aliens who were members of or affiliated with a communist or other totalitarian party that was not controlling the government of a foreign state that was a totalitarian dictatorship only need to show that their membership or affiliation terminated 2 years before the date of receipt of the application.


[^65] See Section 601 of IMMACT 90, Pub. L. 101-649 (PDF), 104 Stat. 4978, 5067-5077 (November 29, 1990) which eliminated the requirement of active opposition to the doctrine, program, principles, and ideology of the Communist or totalitarian organization.


[^70] For more general information on waivers, see Volume 9, Waivers, Part A, Waiver Policies and Procedures [9 USCIS-PM A].

Part G - Public Charge Ground of Inadmissibility

Alert


USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. USCIS continues to apply the public charge inadmissibility statute, including consideration of the statutory minimum factors in the totality of the circumstances, in accordance

AILA Doc. No. 19060633. (Posted 3/26/21)
with the 1999 Interim Field Guidance that was in place before the Public Charge Final Rule was implemented on Feb. 24, 2020, to the adjudication of any application for adjustment of status. In addition, USCIS will no longer apply the separate, but related, “public benefits condition” to applications or petitions for extension of nonimmigrant stay and change of nonimmigrant status.

On or after Mar. 9, 2021, applicants and petitioners should not provide information required solely by the Public Charge Final Rule. That means that applicants for adjustment of status should not provide the Form I-944, Declaration of Self-Sufficiency, or any evidence or documentation required on that form with their Form I-485. Applicants and petitioners for extension of nonimmigrant stay and change of nonimmigrant status should not provide information related to the receipt of public benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If an applicant or petitioner has already provided such information, and USCIS adjudicates the application or petition on or after Mar. 9, 2021, USCIS will not consider any information provided that relates solely to the Public Charge Final Rule, including, for example, information provided on the Form I-944, evidence or documentation submitted with Form I-944, or information on the receipt of public benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If you received a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) requesting information that is solely required by the Public Charge Final Rule, including but not limited to Form I-944, and your response is due on or after Mar. 9, 2021, you need not provide the information solely required by the Public Charge Final Rule. You do, however, need to respond to the aspects of the RFE or NOID that otherwise pertain to the eligibility for the immigration benefit sought. If USCIS requires additional information or evidence to make a public charge inadmissibility determination under the statute and consistent with the 1999 Interim Field Guidance, it will issue a subsequent RFE or NOID. Or information about the relevant court decisions, please see the litigation summary.

USCIS will issue additional guidance regarding the use of affected forms. In the interim, USCIS will not reject any Form I-485 on the basis of the inclusion or exclusion of Form I-944, and will not reject Form I-129, Form I-129CW, Form I-539, or Form I-539A based on whether the public benefits questions (Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3) have been completed or left blank.

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 20 - Immigrants in General (External) (PDF, 385.41 KB)

Part H - Labor Certification and Select Immigrant Qualifications

Part I - Illegal Entrants and Other Immigration Violators

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS
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AFM Chapter 40 - Grounds of Inadmissibility under Section 212(a) of the Immigration and Nationality Act (External) (PDF, 1018.03 KB)

Part J - Fraud and Willful Misrepresentation

Chapter 1 - Purpose and Background

A. Purpose

To properly control movement across its borders, a government must be able to scrutinize and assess a person’s identity as part of determining eligibility to enter. If a person willfully provides incorrect information about identity and intentions for entering the country, the person has deprived the government of its right to examine the request for admission. [1]

In recognition of these principles, Congress provided a specific ground of inadmissibility to address the use of fraud or willful misrepresentation when obtaining a benefit under the Immigration and Nationality Act (INA).

There are exceptions and waivers to inadmissibility due to fraud or willful misrepresentation available to a person under certain circumstances depending on the particular immigration benefit the person is seeking. [2]

B. Background

The 1924 Immigration Act [3] made obtaining a visa under a false name or submitting false evidence in support of a visa application a federal crime. The Board of Immigration Appeals (BIA) and the courts used this principle to find that a visa obtained by fraud was no visa at all, making the person’s admission with a fraudulent visa unlawful. [4]

Congress codified the BIA’s and the courts’ approach in the Immigration and Nationality Act of 1952. With former INA 212(a)(19), it created a new bar to admission for any applicant who used fraud or willful misrepresentation to gain entry into the United States or obtain a visa or other documentation. [5]

In 1986, Congress amended the bar so that a person could be found inadmissible for using fraud or willful misrepresentation when seeking any benefit under the INA, not just entry, visas, or other documents. [6] Congress re-designated former INA 212(a)(19) as INA 212(a)(6)(C) in 1990 but did not alter the bar to admission itself. [7] Substantive changes to the inadmissibility ground did not come until 1996, when Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). [8]

With the passage of IIRIRA, Congress created two separate inadmissibility grounds that remain unchanged to this day: [9]
Fraud or willful misrepresentation made in connection with obtaining an immigration benefit; and False claim to U.S. citizenship made on or after September 30, 1996.

These two grounds differ significantly. This Part J only addresses the inadmissibility determination for fraud or willful misrepresentation made in connection with obtaining an immigration benefit. This includes, however, false claims to U.S. citizenship made prior to September 30, 1996.

Aliens who made a false claim to U.S. citizenship prior to September 30, 1996, cannot be found inadmissible under the false claim to U.S. citizenship ground of inadmissibility. IIRIRA made this ground applicable only to false claims made on or after September 30, 1996.

Therefore, for false claims to U.S. citizenship made before September 30, 1996, the officer must analyze the person’s inadmissibility according to the general fraud and willful misrepresentation ground of inadmissibility, as outlined in this Part J.

C. Scope

This guidance addresses inadmissibility for fraud and willful misrepresentation in relation to obtaining a benefit under the INA, including inadmissibility for falsely claiming U.S. citizenship before September 30, 1996.

D. Legal Authorities

- INA 212(a)(6)(C)(i) – Illegal entrants and immigration violators - misrepresentation

Footnotes


[^2] For more on the waiver of fraud or willful misrepresentation under INA 212(i), see Volume 9, Waivers and Other Forms of Relief, Part F, Fraud and Willful Misrepresentation.[9 USCIS-PM F].

[^3] See Sections 22(b) and 22(c) of the Immigration Act of 1924, Pub. L. 68-139 (May 26, 1924).


[^5] Former INA 212(a)(19) made inadmissible any applicant who “seeks to procure, or has sought to procure or has procured a visa or other documentation, or seeks to enter the United States by fraud, or by willfully misrepresenting a material fact.” See the Immigration and Nationality Act of 1952, Pub. L. 82-414 (PDF) (June 27, 1952).

[^6] Congress expanded former INA 212(a)(19) to make one inadmissible for using fraud or willful misrepresentation in relation to “a visa, other documentation, or entry into the United States or other benefit provided under this Act.” See Section 6(a) of the Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639 (PDF), 100 Stat. 3537, 3543 (November 10, 1986).
Chapter 2 - Overview of Fraud and Willful Misrepresentation

A. General

An applicant may be found inadmissible if he or she obtains a benefit under the Immigration and Nationality Act (INA) either through:

- Fraud; or
- Willful misrepresentation.

Although fraud and willful misrepresentation are distinct actions for inadmissibility purposes, they share common elements. All of the elements necessary for a finding of inadmissibility based on willful misrepresentation are also needed for a finding of inadmissibility based on fraud. However, a fraud finding requires two additional elements.

This is why a person who is inadmissible for fraud is always also inadmissible for willful misrepresentation. However, the opposite is not necessarily true: a person inadmissible for willful misrepresentation is not necessarily inadmissible for fraud. [1]

Additionally, misrepresentation of a material fact may lead to other adverse immigration consequences. For example, if the beneficiary commits marriage fraud, it may have adverse immigration consequences for both the petitioner and the beneficiary.

B. Willful Misrepresentation

Inadmissibility based on willful misrepresentation requires a finding that a person willfully misrepresented a material fact. [2] For a person to be inadmissible, the officer must find all of the following elements:
• The person procured, or sought to procure, a benefit under U.S. immigration laws;
• The person made a false representation;
• The false representation was willfully made;
• The false representation was material; and
• The false representation was made to a U.S. government official, generally an immigration or consular officer. [3]

If all of the above elements are present, then the person is inadmissible for willful misrepresentation.

If the person succeeded in obtaining the benefit under the INA, he or she would be inadmissible for having procured the benefit by willful misrepresentation. If the attempt was not successful, [4] the person would still be inadmissible for having “sought to procure” the immigration benefit by willful misrepresentation. In each case, evidence of intent to deceive is not required. [5]

C. Fraud

Inadmissibility based on fraud requires a finding that a person knowingly made a false representation of a material fact with the intent to deceive the other party. [6]

For a person to be inadmissible for having procured entry, a visa, other documentation, or any other benefit under the INA by fraud, the officer must find all of the following elements:

• The person procured, or sought to procure, a benefit under U.S. immigration laws;
• The person made a false representation;
• The false representation was willfully made;
• The false representation was material;
• The false representation was made to a U.S. government official, generally an immigration or consular officer; [7]
• The false representation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); [8] and
• The U.S. government official believed and acted upon the false representation by granting the benefit. [9]

If all of the above elements are present, then the person is inadmissible for having procured an immigration benefit by fraud. Since the elements required for fraud also include the elements for willful misrepresentation, the person is also inadmissible for willful misrepresentation.

If the person was unsuccessful in obtaining the benefit, [10] he or she may still be inadmissible for having “sought to procure” the immigration benefit by fraud. In this case, the fraud element requiring the U.S. government official to believe and act upon the false representation is not applicable; however, intent to deceive is still a required element.
In cases of attempted fraud, it may be difficult to establish the person’s intent to deceive because the fraud has not actually succeeded. However, establishing intent to deceive may be unnecessary; if evidence supports a finding of willful misrepresentation, which does not require intent to deceive, then the person is already considered inadmissible without any further determination of fraud.

D. Comparing Fraud and Willful Misrepresentation

In practice, the distinction between fraud and willful misrepresentation is not greatly significant because either fraud or a willful misrepresentation alone is sufficient to establish inadmissibility.

The following table shows a comparison of the elements required for each ground:

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Willful Misrepresentation</th>
<th>Fraud</th>
</tr>
</thead>
<tbody>
<tr>
<td>The person procured, or sought to procure, a benefit under U.S. immigration laws.</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>The person made a false representation.</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>The false representation was willfully made.</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>The false representation was material.</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>The false representation was made to a U.S. government official.</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>When making the false representation, the person intended to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer).</td>
<td>Not Applicable</td>
<td>x</td>
</tr>
<tr>
<td>The U.S. government official believed and acted upon the false representation.</td>
<td>Not Applicable</td>
<td>x</td>
</tr>
</tbody>
</table>
As the table illustrates, a fraud finding encompasses a willful misrepresentation finding. Therefore, if all the elements are present to make a finding of fraud, then the elements for making a finding of willful misrepresentation must also necessarily be present.

Example:

The officer finds that a person obtained an immigration benefit by fraud. The person is then inadmissible for both fraud[12] and willful misrepresentation.

Example:

The officer finds that there was no intent to deceive, but the other elements of fraud are present. The person is not inadmissible based on fraud but is still inadmissible for willful misrepresentation.[13]

E. Overview of Admissibility Determination

A finding of willful misrepresentation or fraud requires certain determinations. If the evidence indicates that the person may be inadmissible due to fraud or willful misrepresentation, the officer should follow the steps in the table below to determine inadmissibility:

<table>
<thead>
<tr>
<th>Step</th>
<th>For More Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1</strong></td>
<td>Determine whether the person procured, or sought to procure, a benefit under U.S. immigration laws.</td>
</tr>
<tr>
<td><strong>Step 2</strong></td>
<td>Determine whether the person made a false representation.</td>
</tr>
<tr>
<td><strong>Step 3</strong></td>
<td>Determine whether the false representation was willfully made.</td>
</tr>
<tr>
<td>Step</td>
<td>For More Information</td>
</tr>
<tr>
<td>------</td>
<td>----------------------</td>
</tr>
<tr>
<td><strong>Step 4</strong></td>
<td>Determine whether the false representation was material.</td>
</tr>
<tr>
<td><strong>Step 5</strong></td>
<td>Determine whether the false representation was made to a U.S. government official.</td>
</tr>
<tr>
<td><strong>Step 6</strong></td>
<td>Determine whether, when making the false representation, the person intended to deceive a U.S. government official authorized to act upon request (generally an immigration or consular officer).</td>
</tr>
<tr>
<td><strong>Step 7</strong></td>
<td>Determine whether the U.S. government official believed and acted upon the false representation.</td>
</tr>
<tr>
<td><strong>Step 8</strong></td>
<td>Determine whether a waiver of inadmissibility is available.</td>
</tr>
</tbody>
</table>

When making the inadmissibility determination, the officer should keep in mind the severe nature of the penalty for fraud or willful misrepresentation. The person will be barred from admission for the rest of his or her life unless the person qualifies for and is granted a waiver. The officer should examine all facts and circumstances when evaluating inadmissibility for fraud or willful misrepresentation.

**Footnotes**

[^1] For more on the interplay between findings of fraud and willful misrepresentation, see Section D, Comparing Fraud and Willful Misrepresentation [8 USCIS-PM J.2(D)].

[^2] See INA 212(a)(6)(C)(i). For a definition of materiality, see Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [8 USCIS-PM J.3(E)].


[^4] For example, the misrepresentation was detected and the benefit was denied.

Chapter 3 - Adjudicating Inadmissibility

A. Evidence and Burden of Proof

1. Evidence

To find a person inadmissible for fraud or willful misrepresentation, there must be at least some evidence that would permit a reasonable person to find that the person used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit.

In addition, the evidence must show that the person made the misrepresentation to an authorized official of the U.S. government, whether in person, in writing, or through other means. Examples of evidence an officer may consider include oral or written testimony, or any other documentation containing false information.

2. Burden of Proof

The burden of proof to establish admissibility during the immigration benefit-seeking process is always on the applicant. During the adjudication of the benefit, the burden never shifts to the government.

If there is no evidence the applicant obtained or sought to obtain a benefit under the Immigration and Nationality Act (INA) by fraud or willful misrepresentation, USCIS should find that the applicant has met the burden of proving that he or she is not inadmissible under this ground.

If there is evidence that would permit a reasonable person to conclude that the applicant may be inadmissible for fraud or willful misrepresentation, then the applicant has not successfully met the burden of proof. In

AILA Doc. No. 19060633. (Posted 3/26/21)
these cases, USCIS considers the applicant inadmissible for fraud or willful misrepresentation, unless the applicant is able to successfully rebut the officer’s inadmissibility finding.

Special issues may arise if evidence indicates that an applicant is violating, or has violated, his or her nonimmigrant status or is otherwise engaging, or has engaged, in conduct in the United States that is inconsistent with representations the applicant made to a consular or DHS officer when applying for admission, a visa, or another immigration benefit. Although conduct inconsistent with one’s nonimmigrant status and prior representations does not automatically mean there is a misrepresentation, such evidence permits a reasonable person to conclude that the applicant may be inadmissible for fraud or willful misrepresentation, especially if the violation or conduct occurred shortly after the U.S. Department of State (DOS) visa interview or after admission. The officer should carefully assess the circumstances of the applicant’s case.\[6\]

If the officer’s finding of inadmissibility is based on evidence that the applicant obtained or sought to obtain a benefit under the INA through willful misrepresentation, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The misrepresentation was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
- The false representation was not willful;
- The false representation was not material; or
- The false representation was not made to a U.S. government official.

If the officer’s finding of inadmissibility is based on evidence that the applicant obtained a benefit under the INA by fraud, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The fraud was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
- The false representation was not willful;
- The false representation was not material;
- The false representation was not made to a U.S. government official;
- The person did not intend to deceive; or
- The U.S. government official did not believe or did not act upon the false representation.

If the officer’s finding of inadmissibility is based on evidence that the applicant sought to obtain a benefit under the INA by fraud, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The fraud was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
• The false representation was not willful;
• The false representation was not material;
• The false representation was not made to a U.S. government official; or
• The person did not intend to deceive.

If the officer determines, after assessing all of the evidence, that the applicant has established at least one of the above facts, then the applicant has successfully rebutted the inadmissibility finding. The applicant has therefore met the burden of proving that he or she is not inadmissible on account of fraud or willful misrepresentation.

If the officer determines, after assessing all of the evidence, that the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding. The applicant is therefore inadmissible because he or she has not satisfied the burden of proof.[7]

Finally, if the officer finds that the evidence for and against a finding of fraud or willful misrepresentation is of equal weight, then the applicant is inadmissible due to failure to meet the burden of proof. As long as there is a reasonable evidentiary basis to conclude that a person is inadmissible for fraud or willful misrepresentation, and the applicant has not overcome that reasonable basis with evidence, the officer should find the applicant inadmissible.

3. The U.S. Department of State’s 90-Day Rule[8]

DOS developed a 90-day “rule” to assist consular officers in evaluating willful misrepresentation in cases involving an applicant who violated his or her nonimmigrant status or whose conduct is inconsistent with representations made to either the consular officer at the time of the visa application or to the immigration officer at the port of entry. The DOS 90-day rule creates a presumption of willful misrepresentation if an applicant engages in such conduct within 90 days of admission to the United States.

Although referred to by DOS as a “rule” in its Foreign Affairs Manual (FAM), the 90-day rule is not a regulation. It is DOS guidance to its officers, and as such, the 90-day rule is not binding on USCIS officers. However, USCIS officers must examine all of the factors in an applicant’s case. After such review, USCIS officers may find that an applicant made a willful misrepresentation, especially if the violation or inconsistent conduct occurred shortly after the consular interview or admission to the United States.[9]. Officers should carefully assess each situation and continue to evaluate cases for potential fraud indicators. When appropriate, officers should also refer cases to Fraud Detection and National Security, according to existing procedures.

B. Procuring a Benefit under the INA

1. General

In order to be found inadmissible for fraud or willful misrepresentation, a person must seek to procure, have sought to procure, or have procured one of the following:

• An immigrant or nonimmigrant visa;
• Other documentation;
• Admission into the United States; or
• Other benefit provided under the INA.

The fraud or willful misrepresentation must have been made to an official of the U.S. government, generally an immigration or consular officer. [10]

2. Other Documentation

“Other documentation” refers to documents required when a person applies for admission to the United States. This includes, but is not limited to:

• Re-entry permits;
• Refugee travel documents;
• Border crossing cards; and
• U.S. passports.

Documents evidencing extension of stay are not considered entry documents. [11] Similarly, documents such as petitions and labor certification forms are documents that are presented in support of a visa application or applications for status changes. They are not, by themselves, entry documents and therefore, they are also not considered “other documentation.”

However, if such documents are used in support of obtaining another benefit provided under the INA, they may be relevant to a finding of willful misrepresentation or fraud.

3. Other Benefits Provided under the INA

Any “other benefit” refers to an immigration benefit or entitlement provided for by the INA. This includes, but is not limited to:

• Requests for extension of nonimmigrant stay; [12]
• Change of nonimmigrant status; [13]
• Permission to re-enter the United States;
• Waiver of the 2-year foreign residency requirement; [14]
• Employment authorization; [15]
• Parole; [16]
• Voluntary departure; [17]
• Adjustment of status; [18] and
• Requests for stay of deportation. [19]
C. False Representation

1. General

False representation, or usually called “misrepresentation,” is an assertion or manifestation that is not in accordance with the true facts. A person may make a false representation in oral interviews, or written applications, or by submitting evidence containing false information.[20]

2. False Representation Must be Connected to Benefit

A person is only inadmissible if he or she makes a misrepresentation in connection with his or her own immigration benefit. If a person misrepresents a material fact in connection with another’s immigration benefit, then the person is not inadmissible for fraud or willful misrepresentation.[21] However, fraud or willful misrepresentation made in connection with another’s immigration benefit may make the person inadmissible for alien smuggling.[22]

There may be situations in which a representative or a parent makes a misrepresentation on behalf of the applicant. The question then becomes whether the applicant himself or herself willfully allowed such an action.

D. Willfulness

The person is only inadmissible for fraud or willful misrepresentation if the false representation was willfully made.

1. Definition of Willfulness

The term “willfully” should be interpreted as “knowingly” as distinguished from accidentally, inadvertently, or in a good faith belief that the factual claims are true.[23] To find the element of willfulness, the officer must determine that the person had knowledge of the falsity of the misrepresentation, and therefore knowingly, intentionally, and deliberately presented false material facts.[24]

When determining the “willfulness” of a person’s false representation, the officer should consider the circumstances that existed at the time the benefit was issued.[25]

USCIS petitions and applications are signed “under penalty of perjury.” The person may also be interviewed under oath. By signing or by making statements under oath, the person therefore asserts his or her claims are truthful. If the evidence in the record subsequently shows that the claims are factually unsupported, that may indicate the applicant willfully misrepresented his or her claim(s).

2. Silence or Failure to Volunteer Information

A person’s silence or failure to volunteer information does not, in and of itself, constitute fraud or willful misrepresentation because silence itself does not establish a conscious concealment.[26] Silence or omission can, however, lead to a finding of fraud or willful misrepresentation if it is clear from the evidence that the person consciously concealed information.

If the evidence shows that the person was reasonably aware of the nature of the information sought and
knowingly, intentionally, and deliberately concealed information from the officer, then the officer should find that the applicant consciously concealed and willfully misrepresented a material fact.

*Example:*

An applicant is legally married but has lived apart from his spouse for 20 years. During that time apart, the applicant lived with another person for 10 years as domestic partners until the other person died. A few years later, having been in touch with his legal spouse by letter, the applicant states in his application for admission to the United States that he is coming to join his wife.

Although the applicant did not reveal the complications in his marital status during the past 20 years, the applicant was not specifically asked any questions relating to these facts. As a matter of law, the applicant is still married to the spouse, and there is no evidence that he married the spouse to obtain an immigration benefit. Since the applicant gave reasonably accurate and correct answers, his failure to disclose his complicated marital situation did not constitute conscious concealment of facts.

*Example:*

During World War II, a person was captured by Germans while serving in the Russian Army and forced to serve as an armed guard at a Nazi concentration camp. The person later applies for a visa and is questioned about his present and past memberships and affiliations, including any military service. The person discloses that he had served in the Russian army but does not mention his time as a guard at the concentration camp. When pressed for more on his military service, the person continues to present only information on service in the Russian army.

Since the person provided an unreasonably narrow response to a general question, it is likely that the person was fully aware that his time at the concentration camp was pertinent to the response and information sought by the officer. When the person provided only a partial response, he concealed information knowingly, intentionally, and deliberately. The person’s conscious concealment of facts, therefore, constitutes willful misrepresentation. [27]

3. Refusal to Respond to Questions

A person’s refusal to answer a question does not necessarily mean that he or she willfully made a false representation. However, refusal to answer a question during an admissibility determination could result in the officer finding that the applicant failed to establish admissibility. [28]

4. Misrepresentation Made by a Person’s Agent

If the false representation is made by an applicant’s attorney or agent, the applicant will be held responsible if it is established that the applicant was aware of the action taken by the representative in furtherance of his or her application. This includes oral misrepresentations made at the border by someone assisting a person to enter illegally. Furthermore, a person cannot deny responsibility for any misrepresentation made on the advice of another unless it is established that the person lacked the capacity to exercise judgment. [29]

5. Misrepresentations by Minors (Under 18) or those who are Mentally Incompetent

The INA does not exempt a person from inadmissibility for fraud or willful misrepresentation solely based on age or mental incapacity. The BIA has not yet addressed in any precedent decision whether a minor is shielded from this inadmissibility on account of being a minor.
Both fraud and willful misrepresentation must be intentional acts. There may be cases in which the officer finds that a person, because of mental incompetence or young age, was incapable of independently forming an intent to defraud or misrepresent. In these cases, a person’s inability to commit intentional acts precludes a finding of inadmissibility for fraud or willful misrepresentation since the person could not have acted “willfully.”

The officer should consider all relevant factors when evaluating fraud or willful misrepresentation including the applicant’s:

- Age;
- Level of education;
- Background;
- Mental capacity;
- Level of understanding;
- Ability to appreciate the difference between true and false; and
- Other relevant circumstances.

The fact that a misrepresentation occurred while the person was under 18 years of age, in particular, is not determinative. There is no categorical rule that someone under 18 cannot, as a matter of law, make a willful misrepresentation. A person may be able to claim, however, that, on the basis of the facts of his or her own case, he or she lacked the capacity necessary to form a willful intent to misrepresent a material fact.

If admissibility is an issue in a case, USCIS does not bear the burden of proving that the person is inadmissible. As long as there is at least some evidence that would permit a reasonable person to find an applicant inadmissible, the applicant must establish that the inadmissibility ground does not apply. For this reason, someone who appears to have made a willful misrepresentation of a material fact while under the age of 18 would have to prove his or her lack of capacity.

This burden of proof would also apply to someone who claimed a lack of capacity based on a reason other than age, such as cognitive or other disabilities.

If the evidence, clearly and beyond doubt, shows that the person did not have the capacity to form an intent to deceive, then the misrepresentation could not have been fraudulent. Similarly, if the evidence, clearly and beyond doubt, shows that the person did not have the capacity to know that the information was false, then the misrepresentation could not have been willful.

In these cases, the officer should not find the applicant inadmissible for fraud or willful misrepresentation.

6. Timely Retraction

As a defense to inadmissibility for fraud or willful misrepresentation, a person may show that he or she timely retracted or recanted the false statement. The effect of a timely retraction is that the misrepresentation is eliminated as if it had never happened. If a person timely retracts the statement, the person is not inadmissible for fraud or willful misrepresentation.

For the retraction to be effective, it has to be voluntary and timely. The applicant must correct his or
her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. A retraction can be voluntary and timely if made in response to an officer’s question during which the officer gives the applicant a chance to explain or correct a potential misrepresentation.

Admitting to the false representation after USCIS has challenged the veracity of the claim is not a timely retraction.\[32\] For example, an applicant’s recantation of the false testimony is neither voluntary nor timely if made a year later and only after it becomes apparent that the disclosure of the falsity of the statements is imminent.\[33\] A retraction or recantation is only timely if it is made in the same proceeding in which the person gives the false testimony or misrepresentation.\[34\]

E. Materiality

1. Definition of Materiality

A false representation only renders a person inadmissible if it is material. A “material” misrepresentation is a false representation concerning a fact that is relevant to the person’s eligibility for an immigration benefit.\[35\]

2. Test to Determine Materiality

The U.S. Supreme Court has developed a test to determine whether a misrepresentation is material: A concealment or a misrepresentation is material if it has a natural tendency to influence or was capable of influencing the decisions of the decision-making body.\[36\] The misrepresentation is only material if it led to the person gaining some advantage or benefit to which he or she may not have been entitled under the true facts.

A misrepresentation has a natural tendency to influence the officer’s decision to grant the immigration benefit if:

- The person would be inadmissible on the true facts;\[37\] or
- The misrepresentation tends to cut off a line of inquiry, which is relevant to the applicant’s eligibility and which might have resulted in a proper determination that he or she is inadmissible.\[38\]

The table below provides step-by-step guidelines to assist officers to determine whether a misrepresentation is material.

Guidelines for Determining whether Misrepresentation is Material

<table>
<thead>
<tr>
<th>Step</th>
<th>If Yes, then…</th>
<th>If No, then…</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1:</strong> Consider whether the evidence in the record supports a finding that the applicant is (or was) inadmissible on the true facts.</td>
<td>Misrepresentation is Material</td>
<td>Proceed to Step 2</td>
</tr>
<tr>
<td>Step</td>
<td>If Yes, then…</td>
<td>If No, then…</td>
</tr>
<tr>
<td>------</td>
<td>---------------</td>
<td>---------------</td>
</tr>
<tr>
<td><strong>Step 2:</strong> Consider whether misrepresentation tended to shut off a line of inquiry, which was relevant to the applicant’s eligibility.</td>
<td>Proceed to Step 3</td>
<td>Misrepresentation is NOT Material</td>
</tr>
<tr>
<td><strong>Step 3:</strong> If a relevant line of inquiry had been cut off, ask whether that inquiry might have resulted in a determination of ineligibility. (The applicant has the burden to show that it would not have resulted in ineligibility.)</td>
<td>Misrepresentation is Material</td>
<td>Misrepresentation is NOT Material</td>
</tr>
</tbody>
</table>

### 3. Harmless Misrepresentation

A misrepresentation that is not material because it is not relevant to an applicant’s eligibility for the benefit is considered a harmless misrepresentation. An applicant is not inadmissible for making a harmless misrepresentation even though the applicant misrepresented a fact. However, a harmless misrepresentation may still be taken into account when considering whether a benefit is warranted as a matter of discretion.

### 4. Misrepresenting Identity

A misrepresentation concerning a person’s identity almost always shuts off a line of inquiry because, at the outset, it prevents the adjudicating from scrutinizing a person’s eligibility for a benefit. However, if the line of inquiry that is shut off would not have resulted in the denial of the benefit, then the misrepresentation is harmless. The applicant bears the burden of proof to demonstrate that the relevant line of inquiry that was shut off by the misrepresentation of his or her identity was irrelevant to the original eligibility determination.

### F. Fraud or Willful Misrepresentation Must Be Made to a U.S. Government Official

In addition to the other elements outlined above, the person must have made the fraud or willful misrepresentation to a U.S. government official in order for such act to rise to the level of an inadmissible offense. Fraud or willful misrepresentation made to a private person or entity would not make one inadmissible under this ground.

### G. Elements Only Applicable to Fraud

Fraud differs from willful misrepresentation in that there are generally two extra elements, in addition to the willful misrepresentation elements listed in Chapter 2(B), necessary for a fraud finding:

- The willful misrepresentation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); and
- The U.S. government official believed and acted upon the willful misrepresentation by granting the
Depending on whether the person successfully procured the immigration benefit, one or both elements are needed to establish inadmissibility based on fraud.

If the person successfully obtained the immigration benefit, the officer needs to establish both elements. If the person was unsuccessful in obtaining the immigration benefit, he or she may still be inadmissible for “seeking to procure” the benefit by fraud. In this case, the officer only needs to establish that the person intended to deceive a U.S. government official for the purpose of obtaining an immigration benefit to which the person was not entitled.

As stated previously, the distinction between fraud and willful misrepresentation is not of great practical importance since either fraud or a willful misrepresentation alone is sufficient to establish inadmissibility.

All of the elements necessary for a finding of willful misrepresentation are also needed for a finding of fraud. However, the opposite is not necessarily true: a person inadmissible for willful misrepresentation is not necessarily also inadmissible for fraud.

Therefore, once an officer determines that all the elements of willful misrepresentation are present, the person is inadmissible without any further determination of fraud.

Footnotes


[^6] For more information on willfulness, see Section D, Willfulness [8 USCIS-PM J.3(D)].


[^8] For more information, see 9 FAM 302.9-4, Misrepresentation -- INA 212(a)(6)(C).

[^9] For more information on how to assess an applicant’s conduct in the United States that is inconsistent with prior representations made, see Subsection 2, Burden of Proof [8 USCIS-PM J.3(A)(2)].


[^16] See INA 212(d)(5). See 8 CFR 212.5.


[^18] See INA 245.

[^19] See 9 FAM 302.9-4(B)(7), Interpretation of the Terms “Other Documentation” or “Other Benefit.”


[^21] See Matter of M-R-, 6 I&N Dec. 259 (BIA 1954) (the procurement of documentation for the applicant's two children to facilitate their entry into the United States did not render the applicant himself inadmissible under former INA 212(a)(19)).


[^25] See Matter of Healy and Goodchild, 17 I&N Dec. 22, 28 (BIA 1979) (finding that the applicant had not willfully misrepresented since he could have reasonably believed his actions were correct under the law at the time).


[^28] It is the applicant’s burden to establish that he or she is not inadmissible. See INA 291. See Matter of Arthur, 16 I&N Dec. 558 (BIA 1978).

[^29] See 9 FAM 302.9-4(B)(4), Interpretation of Term Willfully. For more information on factors the officer should consider when determining whether a person is capable of exercising judgment and committing intentional acts, see Subsection 5, Misrepresentations by Minors (Under 18) or those who are Mentally Incompetent [8 USCIS-PM J.3(D)(5)].


[^31] “If the witness withdraws the false testimony of his own volition and without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an intention to deceive


[^34] See *Llanos-Senarrilos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949).

[^35] Officers may consult with field office leadership and Office of Chief Counsel for further assistance as needed to determine whether an applicant’s misrepresentation is material.


[^37] See *Fedorenko v. United States*, 449 U.S. 490 (1981) (visa applicant who failed to disclose that he had been an armed guard at a concentration camp made a false statement that was material and is therefore inadmissible because disclosure of true facts would have made applicant ineligible for a visa).


[^39] See *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1964) (submission of a forged job offer in the United States was not material when the applicant was not otherwise inadmissible as a person likely to become a public charge). See *Matter of Mazar*, 10 I&N Dec. 79 (BIA 1962) (no materiality in the nondisclosure of membership in the Communist Party since the membership was involuntary and would not have resulted in a determination of inadmissibility).


[^41] See *Matter of S- and B-C*, 9 I&N Dec. 436, 449 (A.G. 1961). As noted above, a harmless misrepresentation may still be taken into account when considering whether a benefit is warranted as a matter of discretion.


[^45] See 8 USCIS-PM J.2(B).


[^47] For a comparison of the elements required for a finding of fraud and a finding of willful misrepresentation, see Chapter 2, Overview of Fraud and Willful Misrepresentation, Section D, Comparing Fraud and Willful Misrepresentation [8 USCIS-PM J.2(D)].

Part K - False Claim to U.S. Citizenship
Chapter 1 - Purpose and Background

A. Purpose

U.S. citizenship confers important rights and responsibilities, including the right to vote and to hold public office. U.S. citizens also have an unqualified right to live in the United States. In recognition of these principles, Congress provided a specific ground of inadmissibility to address when an alien falsely claims to be a U.S. citizen for any purpose or benefit under the Immigration and Nationality Act (INA) or any other federal or state law. Indeed, the immigration consequences for falsely claiming U.S. citizenship are severe. The alien is permanently barred from admission.

There are exceptions and waivers to this ground of inadmissibility. The Department of Homeland Security has the authority to waive inadmissibility for purposes of a nonimmigrant admission. A waiver is not available, however, to most aliens seeking lawful permanent resident (LPR) status.

B. Background

Congress added the ground of inadmissibility for falsely claiming U.S. citizenship with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Prior to the passage of IIRIRA, an alien who falsely claimed U.S. citizenship for purposes of immigration benefits was inadmissible because of fraud and willful misrepresentation. Concerned about non-citizens’ increased use of fraud to access various federal benefits, Congress divided the provision into two separate inadmissibility grounds including:

- Fraud or willful misrepresentation made in connection with obtaining an immigration benefit;
- False claim to U.S. citizenship made on or after September 30, 1996 in connection with obtaining any benefit or for any purpose under federal or state law, including immigration law.

These two grounds differ significantly. This part only addresses the inadmissibility determination for false claims to U.S. citizenship made on or after September 30, 1996, the date that the new inadmissibility ground for falsely claiming U.S. citizenship became effective.

The officer cannot make a finding of inadmissibility under the false claim to U.S. citizenship ground of inadmissibility for aliens who made a false claim to U.S. citizenship prior to September 30, 1996. In those cases, the officer must analyze the alien’s inadmissibility according to the fraud and willful misrepresentation ground of inadmissibility.

This distinction is important, because aliens who made a false claim to U.S. citizenship before September 30, 1996, may apply for a waiver of the ground of inadmissibility for fraud and misrepresentation. Aliens who made a false claim to U.S. citizenship on or after September 30, 1996, generally are not eligible for waivers if they seek permanent resident status.

The chart below outlines the distinctions between the inadmissibility grounds of fraud or willful misrepresentation and falsely claiming U.S. citizenship.
### Comparing Fraud or Willful Misrepresentation and False Claim to U.S. Citizenship

<table>
<thead>
<tr>
<th>Inadmissibility Ground</th>
<th>Offense</th>
<th>Description</th>
<th>Made To</th>
<th>Waiver</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fraud or Willful Misrepresentation</strong></td>
<td>Fraud or willful misrepresentation anytime or false claim to U.S. citizenship made before September 30, 1996</td>
<td>Misrepresentation material for any purpose or benefit under INA (immigration benefit)</td>
<td>Government official exercising authority under the immigration and nationality laws[^15]</td>
<td>Waiver available for most applicants</td>
</tr>
<tr>
<td><strong>False Claim to U.S. Citizenship</strong></td>
<td>False claim to U.S. citizenship made on or after September 30, 1996</td>
<td>Misrepresentation of U.S. citizenship for any purpose or benefit under INA or any other federal or state law</td>
<td>Any government or non-government official[^16]</td>
<td>Waiver not available for most applicants</td>
</tr>
</tbody>
</table>

### C. Scope

This guidance addresses inadmissibility for falsely claiming U.S. citizenship[^17] for any purpose or benefit under the INA or any other federal or state law, made on or after September 30, 1996.

### D. Legal Authorities

- **INA 212(a)(6)(C)(ii)** – Illegal entrants and immigration violators – falsely claiming citizenship

### Footnotes

[^1]: Falsely claiming U.S. citizenship is also a criminal offense under [18 U.S.C. 911](https://uses.gov/). This Part K does not address the criminal consequences of falsely claiming U.S. citizenship but addresses when a criminal conviction is evidence for purposes of the inadmissibility determination.

[^2]: See [INA 212(d)(3)](https://uses.gov/). If the alien needs a nonimmigrant visa, then the Department of State (DOS) must concur in the waiver.


[^4]: See [INA 212(a)(6)(C)](https://uses.gov/). For more information on fraud and willful misrepresentation, see Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].
For an alien to be inadmissible based on false claim to U.S. citizenship, an officer must find all of the following elements:

- The alien made a representation of U.S. citizenship;
- The representation was false;[11] and
- The alien made the false representation for any purpose or benefit under the Immigration and Nationality Act (INA) or any other federal or state law.

**A. Overview of Inadmissibility Determination**

The officer should examine all facts and circumstances when evaluating inadmissibility for falsely claiming U.S. citizenship. The officer should follow the steps in the table below to determine inadmissibility.
### Overview of Inadmissibility Determination

<table>
<thead>
<tr>
<th>Step</th>
<th>For More Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1</td>
<td>Determine whether alien falsely claimed to be a U.S. citizen.</td>
</tr>
<tr>
<td>Section B, Claim to U.S. Citizenship [8 USCIS-PM K.2(B)]</td>
<td></td>
</tr>
<tr>
<td>Step 2</td>
<td>Determine whether alien falsely made the representation on or after September 30, 1996.</td>
</tr>
<tr>
<td>Section C, Claim Made On or After September 30, 1996 [8 USCIS-PM K.2(C)]</td>
<td></td>
</tr>
<tr>
<td>Step 3</td>
<td>Determine whether alien’s false claim to U.S. citizenship was for the purpose of obtaining a benefit under the INA or under any other federal or state law.</td>
</tr>
<tr>
<td>Section D, Purpose or Benefit under INA or Any State or Federal Law [8 USCIS-PM K.2(D)]</td>
<td></td>
</tr>
<tr>
<td>Step 4</td>
<td>Determine whether alien timely retracted the false claim to U.S. citizenship.</td>
</tr>
<tr>
<td>Section E, Timely Retraction [8 USCIS-PM K.2(E)]</td>
<td></td>
</tr>
<tr>
<td>Step 5</td>
<td>Determine whether alien is exempt from inadmissibility because a statutory exception applies. [2]</td>
</tr>
<tr>
<td>Chapter 4, Exceptions and Waivers, Section A, Applicability [8 USCIS-PM K.4(A)] and Section B, Exception [8 USCIS-PM K.4(B)]</td>
<td></td>
</tr>
<tr>
<td>Step 6</td>
<td>Determine whether a waiver of inadmissibility is available.</td>
</tr>
<tr>
<td>Chapter 4, Exceptions and Waivers, Section C, Waiver [8 USCIS-PM K.4(C)]</td>
<td></td>
</tr>
</tbody>
</table>

### B. Claim to U.S. Citizenship

An officer should first determine whether an alien claimed to be a U.S. citizen.

#### 1. Form of Claim

An alien may claim to be a U.S. citizen in oral interviews, written applications, or by submitting evidence. It is irrelevant whether or not the alien made the claim under oath.

#### 2. Representation Before Government Official Not Necessary

Unlike inadmissibility for fraud and misrepresentation, an alien does not have to make the claim of U.S. citizenship to a U.S. government official exercising authority under the immigration and nationality laws. The alien can make the claim to any other federal, state, or local official, or even to a private person, such as an employer.
3. Distinction between a U.S. Citizen and a U.S. National

U.S. citizen status is related to, but is not the same as, U.S. national status. A U.S. national is any person owing permanent allegiance to the United States and may include a U.S. citizen or a non-citizen U.S. national.[5] A non-citizen U.S. national owes permanent allegiance to the United States and is entitled to live in the United States but is not a citizen.[6] A U.S. citizen is any person born in the United States or who otherwise acquires U.S. citizenship at or after birth.[7]

4. Claiming to be a U.S. National

An alien who falsely claims to be a U.S. national but not a U.S. citizen is not inadmissible for false claim to U.S. citizenship.[8] The alien, however, may be inadmissible for fraud or willful misrepresentation if all other elements for that ground are met.[9]

The Employment Eligibility Verification form (Form I-9) used prior to April 3, 2009, asked the person completing it whether the person is a “citizen or national” of the United States and required checking a box corresponding to the answer. The fact that an alien marked “Yes” on an earlier edition of the Employment Eligibility Verification does not necessarily subject the alien to inadmissibility for falsely claiming U.S. citizenship, because the earlier edition of the form did not distinguish a claim of “nationality” from a claim of “citizenship.”[10]

An affirmative answer to this question does not, by itself, provide sufficient evidence that would permit a reasonable person to find the alien falsely represented U.S. citizenship because of the question’s ambiguity.[11]

In these cases, the applicant must demonstrate to an officer that he or she understands the distinction between a U.S. citizen and non-U.S. citizen national.[12] The applicant has the burden of showing that he or she was claiming to be a non-U.S. citizen national as opposed to a U.S. citizen. The applicant’s inadmissibility for a false claim to U.S. citizenship depends on whether the applicant meets the burden of showing that he or she intended to claim to be a U.S. national when completing the Form I-9.

This inquiry is not necessary if the applicant used the April 3, 2009, edition or any later edition of the Form I-9, because these editions clearly differentiate between “Citizen of the United States” and “Non-citizen National of the United States.”

C. Claim Made On or After September 30, 1996[13]

An officer should determine whether the claim to U.S. citizenship occurred on or after September 30, 1996,[14] If an applicant claimed U.S. citizenship before September 30, 1996, the applicant may be inadmissible for fraud or willful misrepresentation[15] but not for falsely claiming U.S. citizenship.[16]

D. Purpose or Benefit under INA or Any State or Federal Law

1. Any Purpose or Benefit

The law only makes an alien inadmissible for falsely claiming U.S. citizenship if the alien falsely represents him or herself to be a citizen of the United States “for any purpose or benefit” under the INA, including INA 274A, or any other federal or state law.[17]
The provision for inadmissibility based on false claim to U.S. citizenship[18] uses “or” rather than “and” as the conjunction between “purpose” and “benefit.” There may be cases in which the facts show that the alien intended to achieve both a purpose and obtain a benefit. However, an alien can also be inadmissible based on a false claim made with the specific intent to achieve an improper purpose, even if it did not involve an application for any specific benefit.

Furthermore, U.S. citizenship must affect or matter to the purpose or benefit sought. That is, U.S. citizenship must be material to the purpose or benefit sought.[19]

In sum, even though an alien may have falsely claimed U.S. citizenship, he or she is only inadmissible if:

- The alien made the false claim with the subjective intent of obtaining a benefit or achieving a purpose under the INA or any other federal or state law, as shown by direct or circumstantial evidence; and
- U.S. citizenship affects or matters to the purpose or benefit sought, that is, it must be material to obtaining the benefit or achieving the purpose.

2. Intent to Obtain a Benefit[20]

Whether an alien made the false claim with the specific intent of obtaining a benefit is a question of fact and dependent on the circumstances of each case. The alien has the burden to show, either with direct or circumstantial evidence, that he or she did not have the subjective intent of obtaining the benefit.[21]

Whether U.S. citizenship actually affects or matters to the benefit sought is determined objectively. If the benefit requires U.S. citizenship as part of eligibility, then the alien’s false claim is material[22] If the claim to citizenship has a natural tendency to influence the official decision to grant or deny the benefit sought, the claim is material.[23] It is the alien’s burden to show that U.S. citizenship is not relevant to obtaining the benefit.

If U.S. citizenship is irrelevant to the benefit at issue, the alien’s false claim to U.S. citizenship does not make him or her inadmissible unless the evidence provides a basis for finding that the alien made the false claim to achieve a purpose under federal or state law.

For purposes of a false claim to U.S. citizenship,[24] a benefit must be identifiable and enumerated in the INA or any other federal or state law.

A benefit includes but is not limited to:

- A U.S. passport;[25]
- Entry into the United States;[26] and
- Obtaining employment, loans, or any other benefit under federal or state law, if citizenship is a requirement for eligibility.[30]

3. Intent to Achieve a Purpose

Whether an alien made the false claim with the specific intent of achieving a purpose is a question of fact and dependent on the circumstances of each case. The alien has the burden to show, either with direct or circumstantial evidence, that he or she did not have the subjective intent of achieving the purpose.[28]
Whether U.S. citizenship actually affects or matters to the purpose is determined objectively. U.S. citizenship affects or matters to the purpose, and is material, if it has a natural tendency to influence the applicant’s ability to achieve the purpose.\[29\] It is the alien’s burden to show that U.S. citizenship is not relevant to achieving the purpose.

If U.S. citizenship is irrelevant to achieving the purpose at issue, the alien’s false claim to U.S. citizenship does not make him or her inadmissible unless the evidence provides a basis for finding that the alien made the false claim to obtain a benefit under federal or state law.

The term “purpose” includes avoiding negative legal consequences. Negative legal consequences that an alien might seek to avoid by falsely claiming U.S. citizenship include but are not limited to:

- Removal proceedings;\[30\]
- Inspection by immigration officials;\[31\] and
- Prohibition on unauthorized employment.\[32\]

Purpose, however, is not limited to avoiding negative legal consequences. The purpose may also be something more positive. For example, a false claim would be for an improper purpose if a benefit under federal or state law is not restricted to U.S. citizens, but an alien falsely claims to be a U.S. citizen when seeking the benefit to avoid an eligibility or evidentiary requirement that does not apply to citizens seeking the benefit.

*Example*

In the course of an arrest for disorderly conduct, an alien falsely claimed that he was born in Puerto Rico. However, the facts of the case did not support that he had falsely claimed U.S. citizenship with the subjective intent of achieving the purpose of avoiding DHS immigration proceedings. Furthermore, the police could not have conferred such a result, and the alien’s status as a U.S. citizen was immaterial to the arrest proceedings because the police treated U.S. citizens and aliens the same.\[33\]

*Example*

An alien stated twice during DHS interrogation that he was a U.S. citizen. He failed to show he had not made this claim to U.S. citizenship with the subjective intent of achieving the purpose of avoiding removal proceedings. He also failed to show that citizenship did not affect removal proceedings. Therefore, the alien was inadmissible for falsely claiming U.S. citizenship.\[34\]

*Example*

An employer made a job offer to an alien who did not have employment authorization. In completing the USCIS Form I-9, the alien marked the box claiming U.S. citizenship with the intent to avoid the need to obtain and present a valid and unexpired employment authorization document. The alien is inadmissible since the alien made the false claim for the purpose of avoiding additional requirements under the immigration laws.\[35\]

*Example*

An alien applied for a license under state law. The eligibility is not restricted to U.S. citizens but an alien must submit additional evidence that a U.S. citizen is not required to submit. Specifically, an alien must present evidence of lawful status or at least authorization to accept employment. The alien falsely claimed
citizenship in order to avoid the additional evidentiary requirements. The alien is inadmissible since the alien made the false claim for the purpose of avoiding additional requirements under state law.\[^{36}\]

4. Representation Must Be for Own Benefit

An alien is only inadmissible if the alien makes a misrepresentation for the alien’s own benefit. If an alien misrepresents another alien’s citizenship, the alien that made the misrepresentation is not inadmissible for falsely claiming U.S. citizenship.\[^{37}\]

5. For Purpose of Coming into the United States

An alien who makes a successful false claim to U.S. citizenship or nationality at the port-of-entry and who is allowed into the United States has not been admitted. In order for an alien to be admitted, CBP must have authorized the alien to enter the United States after the alien came to the port-of-entry and sought admission as an alien.\[^{38}\]

However, the law and precedents relating to what qualifies as the admission of an alien do not apply to U.S. citizens and nationals. U.S. citizens and nationals are not subject to the same inspection process as aliens. If CBP believes the person is a U.S. citizen or national, CBP cannot prevent the person’s return to the United States. It is well-settled that someone who is allowed to come into the United States as a U.S. citizen or national has not been admitted.\[^{42}\]

Therefore, an alien who comes into the United States under a false claim to U.S. citizenship is not only inadmissible for falsely claiming U.S. citizenship, but may also be inadmissible as an alien who is in the United States without inspection and admission or parole.\[^{40}\]

An alien who comes into the United States based on a false claim to U.S. nationality is not inadmissible under the provision relating to false claims to citizenship.\[^{41}\] However, the person may be inadmissible as an alien who is in the United States without inspection and admission or parole.

6. False Claim Made by an Agent or Representative

If an applicant’s attorney or agent makes the false representation, the applicant is held responsible. This includes oral misrepresentations made at the border by a person assisting an alien to enter illegally. Furthermore, an alien cannot deny responsibility for any misrepresentation made by the alien based on the advice of another person.

E. Timely Retraction

Case law relating to the inadmissibility ground for fraud or willful misrepresentation has long recognized that an alien is not inadmissible if he or she made a timely retraction of the fraud or misrepresentation.\[^{42}\] If an alien timely retracts the statement, it acts as a defense to the inadmissibility ground. A USCIS officer would then decide the case as if the fraud or misrepresentation had never happened.

In principle, an alien might also timely retract a false claim to U.S. citizenship. If the alien does so, he or she would not be inadmissible for this inadmissibility ground. The retraction has to be voluntary and timely in order to be effective.\[^{43}\] The applicant must correct the representation before an officer or U.S. government official challenges the applicant’s truthfulness and before the conclusion of the proceeding during which the applicant gave false testimony. A retraction can be voluntary and timely if made in response to an officer’s...
Admitting to the false representation after USCIS has challenged the veracity of the claim is not a timely retraction. For example, an applicant’s recantation of the false testimony is neither voluntary nor timely if made a year later and only after it becomes apparent that the disclosure of the falsity of the statements is imminent. A retraction or recantation can only be timely if the alien makes it in the same proceeding in which the alien gives the false testimony or misrepresentation.

Further, a retraction or recantation of a false claim to U.S. citizenship is only timely if the alien makes it in the same proceeding in which he or she made the false claim. For example, disclosing in an adjustment application that one falsely claimed to be a citizen in completing a Form I-9, registering to vote, or seeking any other benefit would not be a timely retraction. The false claim was complete when the alien submitted the Form I-9, registered to vote, or sought the other benefit. The disclosure of the false claim on the adjustment of status application, therefore, would be part of a different proceeding.

Footnotes

[^1] In previous guidance, an alien needed to have made the false representation knowingly in order to be inadmissible under INA 212(a)(6)(C)(ii). However, in Matter of Zhang, 27 I&N Dec. 569 (BIA 2019), the Board of Immigration Appeals (BIA) noted that unlike INA 212(a)(6)(C)(i), the plain language of INA 237(a)(3)(D)(i) does not require an intent to falsely represent citizenship to trigger this ground of removability. The BIA in Zhang reasoned that “the absence of a ‘knowing’ or ‘willful’ requirement for false claims to citizenship in sections 212(a)(6)(C)(ii)(I) and 237(a)(3)(D)(i) indicates that there was no congressional intent to include one.” See Matter of Zhang, 27 I&N Dec. 569, 571, n.3 (citing Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006)). Therefore, for the purposes of inadmissibility under INA 212(a)(6)(C)(ii), an alien need not intend to falsely claim citizenship in order to trigger this ground of inadmissibility.


[^4] For example, the alien could make a false claim to U.S. citizenship to comply with the employment verification requirements under INA 274A.


[^6] See INA 308. As of 2014, American Samoa (including Swains Island) is the only outlying possession of the United States, as defined under INA 101(a)(29). See Volume 12, Citizenship and Naturalization [12 USCIS-PM].


[^9] For example, if the false claim to U.S. nationality was made to a U.S. government official in seeking an immigration benefit. See INA 212(a)(6)(C). See Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

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In *Ateka v. Ashcroft*, 384 F.3d 954 (8th Cir. 2004) and in *Rodriguez v. Mukasey*, 519 F.3d 773 (8th Cir. 2008), the applicants specifically testified that they claimed to be citizens when checking the particular box on Form I-9. Based on this testimony, the court determined that the applicants were inadmissible on account of falsely claiming U.S. citizenship. The Board of Immigration Appeals (BIA) non-precedent decisions seem to draw on this distinction. See *Matter of Oduor*, 2005 WL 1104203 (BIA 2005). See *Matter of Soriano-Salas*, 2007 WL 2074526 (BIA 2007).

See *U.S. v. Karaouni*, 379 F.3d 139 (9th Cir. 2004).

In *Ateka v. Ashcroft*, 384 F.3d 954 (8th Cir. 2004), *Matter of Oduor*, 2005 WL 1104203 (BIA 2005), and *Matter of Soriano-Salas*, 2007 WL 2074526 (BIA, June 5, 2007), for example, the evidence showed that the applicant had no idea what it meant to be a non-citizen national and that the applicant intended to claim that the applicant was a citizen.

INA 212(a)(6)(C)(ii)(I) makes an alien subject to removal as inadmissible. INA 237(a)(3)(D)(i) is identical but applies to an alien who has been admitted but has become removable on account of the false representation. Also, if an alien falsely claims citizenship by voting, that alien would also be inadmissible under INA 212(a)(10)(D), which declares an alien inadmissible who votes in violation of any federal, state, or local law.

The date this inadmissibility ground became effective. See Section 344(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 (PDF) (September 30, 1996).

For more information on inadmissibility based on fraud and willful misrepresentation, see Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

See Chapter 1, Purpose and Background, Section B, Background [8 USCIS-PM K.1(B)].


See INA 212(a)(6)(C)(ii).

For more information on materiality, see Part J, Fraud and Willful Misrepresentation, Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [8 USCIS-PM J.3(E)].


See *Kungys v. United States*, 485 U.S. 759, 770 (1988). A false claim has a natural tendency to influence the official decision to grant or deny the benefit if the person would not obtain the benefit on the true facts, or if the false claim tends to cut off a line of inquiry, which is relevant to the eligibility and which might have resulted in a proper determination that the alien is not eligible for the benefit.

See INA 212(a)(6)(C)(ii).


[29] See Kungys v. United States, 485 U.S. 759, 770 (1988). A false claim has a natural tendency to influence the official decision to grant or deny the benefit if the person would not obtain the benefit on the true facts, or if the false claim tends to cut off a line of inquiry, which is relevant to the eligibility and which might have resulted in a proper determination that the alien is not eligible for the benefit.


[33] See Castro v. Attorney Gen. of U.S., 671 F.3d 356, 368 (3rd Cir. 2012). According to the court, the Immigration Judge’s (IJ) and the BIA conclusion that Castro made a false claim of U.S. citizenship for the purpose of evading detection by immigration authorities seemed to have been built solely on the assumption that this was a reasonable purpose to ascribe to Castro because he was undocumented. Therefore, the court decided that the BIA and the IJ erred in coming to this conclusion. The purpose imputed by the BIA to Castro would have applied to virtually any false claim to citizenship made by an alien unlawfully present in the country because the absence of legal status always provides a reason to wish to avoid the attention of DHS. Therefore, the construction threatened to read the limiting language—the requirement that the “purpose or benefit” be “under” the INA or any other federal or state law—out of INA 212(a)(6)(C)(ii) entirely.

[34] See Matter of Richmond, 26 I&N Dec. 779 (BIA 2016).


[36] This conclusion is consistent with the rationale of Matter of Richmond, 26 I&N Dec. 779 (BIA 2016).

[37] See Department of State Cable (no. 97-State-174342) (September 17, 1997). However, falsely claiming citizenship on behalf of another alien may make the alien inadmissible for alien smuggling. See Matter of M-R, 6 I&N Dec. 259, 260 (BIA 1954).


[40] Similarly, a lawful permanent resident (LPR) returning from a temporary trip abroad is not considered to be seeking admission or readmission to the United States unless of one of the factors in INA 101(a) (13)(C) is present. See Matter of Collado-Munoz (PDF), 21 I&N Dec. 1061 (BIA 1998). Because the returning LPR is not an arriving alien who is an applicant for admission unless one of the factors in INA

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If $101(a)(13)(C)$ is present, the alien is not inspected as an arriving alien. If the alien makes a false claim to LPR status at a port-of-entry and if the alien is permitted to enter, then the alien has not been admitted for purposes of INA $101(a)(13)(A)$.


[^43] “If the witness withdraws the false testimony of his own volition and without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an intention to deceive cannot rightly be drawn.” See Llanos-Senarrilos v. United States, 177 F.2d 164, 165 (9th Cir. 1949). See Matter of R-R-, 3 I&N Dec. 823 (BIA 1949). See Matter of Namio (PDF), 14 I&N Dec. 412 (BIA 1973), referring to Matter of M-, 9 I&N Dec. 118 (PDF) (BIA 1960) and Llanos-Senarrilos v. United States, 177 F.2d 164 (9th Cir. 1949).


Chapter 3 - Adjudication

A. Evidence

For an officer to find an alien inadmissible for falsely claiming U.S. citizenship,[1] the evidence must demonstrate:

- The alien made the misrepresentation in-person, in writing, or through other means to a person or entity; and

- The alien made the misrepresentation for any purpose or benefit under the Immigration and Nationality Act (INA), other federal law, or state law.[2]

There must be sufficient evidence that would lead a reasonable person to find that the alien falsely represented him or herself to be a U.S. citizen[3] Examples of evidence include oral testimony, written testimony, or any other documentation containing information about the applicant’s false claim to U.S. citizenship.[4]

B. Burden of Proof

The burden of proof to establish admissibility during the process of seeking an immigration benefit is on the applicant.[5] The burden never shifts to the government at any time during the adjudication process.[6]

1. No Evidence of False Misrepresentation

If there is no evidence that the applicant made a false representation of U.S. citizenship for any purpose or
benefit under the INA or any other federal or state law, the officer should find that the applicant has met the burden of proof and is not inadmissible under this ground.

2. Evidence of False Misrepresentation

If there is evidence that would permit a reasonable person to conclude that the applicant is inadmissible under this ground, the officer should find that the applicant has not successfully met the burden of proof. An applicant who fails to meet the burden of proof is inadmissible for falsely claiming U.S. citizenship unless the applicant is able to successfully rebut the officer’s inadmissibility finding.

3. Applicant’s Rebuttal Must be Clear and Beyond Doubt

If the officer determines that the applicant is inadmissible based on a false claim to U.S. citizenship, the applicant has the burden of establishing at least one of the following facts clearly and beyond doubt to rebut the finding:

- The representation was not false;
- The false representation was not a representation of U.S. citizenship;
- The false representation was made prior to September 30, 1996; or
- The false representation was not made for a purpose or benefit under the INA or any other federal or state law.

4. Rebutting Inadmissibility Finding

If the officer determines that the applicant has established at least one of the above facts, then the applicant has successfully rebutted the inadmissibility finding and has met the burden of proving that he or she is not inadmissible.

If the officer determines that the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding and is inadmissible.

If the officer finds that the evidence for and against a finding of false claim to U.S. citizenship is of equal weight, then the applicant is inadmissible. As long as there is a reasonable evidentiary basis to conclude that an applicant is inadmissible for falsely claiming U.S. citizenship, and the applicant has not overcome that reasonable basis with evidence, then the officer should find the applicant inadmissible.

C. Civil Penalty or Criminal Conviction

Falsely claiming to be a U.S. citizen could result in a civil penalty or in a criminal conviction for falsely and willfully representing to be a U.S. citizen.

Inadmissibility for falsely claiming to be a U.S. citizen can be sustained simply by proving that the applicant knowingly made the false claim for any purpose or any benefit under the INA or any other federal or state law. For purposes of determining whether the applicant is inadmissible for falsely claiming U.S. citizenship, it is not necessary to establish that the applicant is the subject of a civil penalty or that the applicant has a criminal conviction for falsely and willfully representing to be a U.S. citizen.
If the officer finds that the alien has a conviction for falsely and willfully representing to be a U.S. citizen,[13] the conviction record is sufficient to establish that the applicant is inadmissible for falsely claiming U.S. citizenship.

Similarly, an order of civil penalty based on a false representation of U.S. citizenship is sufficient to establish that the applicant is inadmissible for falsely claiming to be a U.S. citizen. Fraudulent conduct other than a false claim to U.S. citizenship, however, may be the basis for a civil penalty. If the applicant was liable for a civil penalty for document fraud that does not relate to a false claim to U.S. citizenship,[14] then the civil penalty order is not an indication that the applicant is inadmissible for falsely claiming U.S. citizenship.

The civil penalty must be specifically based on a finding that the alien made a false claim to U.S. citizenship for the civil penalty order to be sufficient to establish inadmissibility for falsely claiming U.S. citizenship.

**Footnotes**


[^9] For example, an alien falsely claiming to be a U.S. citizen during a police arrest would not meet the “purpose or benefit” requirement. See Castro v. Attorney General, 671 F.3d 356 (3rd Cir. 2012).


[^11] See INA 274C. Whenever “civil penalty” is used in this section, it refers to a civil penalty under INA 274C.


For example, the applicant is held liable for a civil penalty based on the use of a fraudulent visa.

Chapter 4 - Exceptions and Waivers

A. Applicability

Inadmissibility on account of false claim to U.S. citizenship does not apply to:

- Special immigrant juveniles seeking adjustment of status;\(^1\) and
- Applicants for registry.\(^2\)

B. Exception\(^3\)

In 2000, Congress added a narrow statutory exception to inadmissibility for false claim to U.S. citizenship.\(^4\) Congress made the exception apply retroactively.

The exception only applies to false claims to U.S. citizenship made on or after September 30, 1996, if the applicant satisfies the following requirements:

- Each parent of the applicant (or each adoptive parent in case of an adopted child) is or was a U.S. citizen, whether by birth or naturalization;
- The applicant permanently resided in the United States prior to attaining the age of 16; and
- The applicant reasonably believed at the time of the representation that he or she was a U.S. citizen.

Each of the applicant’s parents had to be a U.S. citizen at the time of the false claim to U.S. citizenship to meet the first requirement of this exception.\(^5\)

C. Waiver\(^6\)

The availability of a waiver to an inadmissibility ground depends on the immigration benefit. In general, there is no waiver for inadmissibility based on a false claim to U.S. citizenship\(^7\) for aliens seeking lawful permanent resident status:

- As an immediate relative;
- Under an immigrant preference category (other than special immigrant juveniles);
- As a diversity immigrant;
- Under the Cuban Adjustment Act of 1966;\(^8\) or
- Under any other statute that does not provide authority to waive the ground.

An officer may grant a waiver to an alien seeking adjustment of status as a refugee or an asylee, as a legalization applicant, or under any other basis that specifically permits a waiver of this ground of
Inadmissibility based on a false claim to U.S. citizenship does not necessarily bar adjustment of status based on residence in the United States since before January 1, 1972. It could, however, support a finding that the applicant is not a person of good moral character.

Nonimmigrants may seek permission to enter despite the inadmissibility.

Footnotes


[^2] Registry is a section of immigration law that enables certain aliens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.


[^6] For more information, see Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].


Part L - Documentation Requirements

Part M - Citizenship Ineligibility

Part N - Aliens Previously Removed

Part O - Aliens Unlawfully Present

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these...
resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 40 - Grounds of Inadmissibility under Section 212(a) of the Immigration and Nationality Act (External) (PDF, 1018.03 KB)

Part P - Alien Present After Previous Immigration Violation

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 40 - Grounds of Inadmissibility under Section 212(a) of the Immigration and Nationality Act (External) (PDF, 1018.03 KB)

Part Q - Practicing Polygamists, International Child Abductors, Unlawful Voters, and Tax Evaders

Volume 9 - Waivers and Other Forms of Relief

Part A - Waiver Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

Certain aliens may not be allowed to enter or obtain status in the United States because they are inadmissible. These aliens may overcome the inadmissibility if they are eligible to apply for and receive a waiver.

USCIS, in its administration of waiver laws and policies, seeks to:

- Promote family unity and provide humanitarian results;
- Provide relief to refugees, asylees, victims of human trafficking [1] and certain criminal acts, [2] and other humanitarian and public interest applicants who seek protection or permanent residency in the United States;
- Advance the national interest by allowing aliens to be admitted to the United States if such admission could benefit the welfare of the country;
- Ensure public health and safety concerns are met by requiring that applicants satisfy all medical requirements prior to admission or, if admitted, seek any necessary treatment; and
- Weigh public safety and national security concerns against the social and humanitarian benefits of
granting admission to an alien.

Considerations of family unity, humanitarian concerns, public and national interest, and national security may differ depending on the specific waiver an applicant is seeking.

**B. Background**

With the enactment of the Immigration and Nationality Act of 1952 (INA),[3] Congress established a variety of inadmissibility grounds to protect the interests of the United States. Congress considered waivers as a special remedy to the grounds of inadmissibility.[4]

Congress later amended the INA in 1957, easing many stricter provisions of the earlier legislation. [5] For example, it allowed certain alien relatives of U.S. citizens or lawful permanent residents (LPR) to apply for and obtain a waiver of certain grounds of exclusion or deportation (now inadmissibility or removal).[6]

When passing the 1957 amendments, Congress created exceptions to many strict provisions from the 1952 Act to promote family unity. For Congress, in many circumstances, it was more important to keep families together than to stringently enforce inadmissibility grounds. [7]

Congress tightened waiver requirements and availability once again with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).[8] For example, IIRIRA made waivers of criminal inadmissibility[9] unavailable to LPRs who were convicted of an aggravated felony or who had not continuously resided in the United States for at least 7 years before initiation of removal proceedings.

IIRIRA also created new inadmissibility grounds, such as the ground of inadmissibility on account of unlawful presence, and corresponding waivers.

**C. Legal Authorities**

- [INA 207, 8 CFR 207](https://www.uscis.gov/book/export/html/68604) - Annual admission of refugees and admission of emergency situation refugees
- [INA 210, 8 CFR 210](https://www.uscis.gov/book/export/html/68606) - Special agricultural workers
- [INA 211, 8 CFR 211](https://www.uscis.gov/book/export/html/68607) - Admission of immigrants into the United States
- [INA 212, 8 CFR 212](https://www.uscis.gov/book/export/html/68608) - Excludable aliens
- [INA 214, 8 CFR 214](https://www.uscis.gov/book/export/html/68609) - Admission of nonimmigrants
- [INA 244, 8 CFR 244](https://www.uscis.gov/book/export/html/68610) - Temporary protected status
- [INA 245, 8 CFR 245](https://www.uscis.gov/book/export/html/68611) - Adjustment of status of nonimmigrant to that of person admitted for permanent residence

**Footnotes**
Chapter 2 - Forms of Relief

A. Waivers

In general, applicants for immigration benefits must establish that they are admissible to the United States. If an applicant for an immigration benefit is inadmissible to the United States, USCIS may only grant the benefit if the applicant receives a waiver of inadmissibility or another form of relief provided in the Immigration and Nationality Act (INA). In general, if the INA uses the term waiver, the applicant must apply for the waiver by filing the correct application.

USCIS may only grant a waiver if the applicant meets all statutory and regulatory requirements.

There are instances in which an officer may adjudicate a waiver without asking the applicant to file a form. For example, an officer may adjudicate certain waivers of inadmissibility for a refugee or an asylee seeking adjustment of status without the applicant filing a waiver application. In these circumstances, the officer must still clearly document the waiver determination in the record.

B. Exceptions or Exemptions

A statute may provide for an exception or exemption from a ground of inadmissibility. If the alien’s action or circumstance meets the requirements of an exception or exemption, then the ground of inadmissibility does not apply and the alien is not inadmissible on that ground. Unlike a waiver, an exemption or exception generally does not require that an alien file an application.

C. Consent to Reapply

Permission to reapply for admission into the United States after deportation or removal, also known
as “consent to reapply,” is not a waiver. [3] Consent to reapply is a distinct remedy that permits an alien to seek admission. If the statute specifies that the alien must obtain consent to reapply to overcome the inadmissibility, a waiver of inadmissibility is not a substitute for consent to reapply. [4]

Footnotes


[^2] Exception and exemption both mean that the specific inadmissibility ground does not apply if the applicant establishes that the terms of the exception or exemption apply.

[^3] See Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) (used to seek consent to reapply). See the form instructions for more information.


Chapter 3 - Review of Inadmissibility Grounds

A. Verification of Inadmissibility

Before adjudicating a waiver, the officer must verify that the applicant is inadmissible. [1] The officer must identify all inadmissibility grounds that apply, even if an immigration judge, a consular officer, Customs and Border Protection (CBP) officer, or a different USCIS officer made a prior inadmissibility determination. [2]

An applicant’s file should reflect evidence of inadmissibility. Examples of evidence that may indicate an applicant is inadmissible may include but is not limited to:

- A visa refusal worksheet;
- Background check results;
- A criminal disposition;
- A sworn statement; and
- A Record of Arrests and Prosecutions sheet (police arrest record).

If the officer identifies that the applicant is inadmissible, the officer should then determine whether a waiver or other type of relief is available and whether the applicant meets the eligibility requirements for the relief. [3]

B. Grounds Included in Waiver Application

The officer must review all inadmissibility grounds that the applicant lists in the waiver application. If the applicant states that he or she is inadmissible but there is no evidence of inadmissibility in the record, then the officer should issue a Request for Evidence (RFE). The officer should request that the applicant provide a written statement explaining why the applicant thinks he or she is inadmissible. The officer should proceed
with the waiver adjudication if the officer determines that the applicant is inadmissible.

An applicant may file a waiver application after another government agency, such as the Department of State or CBP, has found the applicant inadmissible. In general, USCIS accepts another government agency’s finding of inadmissibility. The officer should only question another government agency’s inadmissibility determination if:

- The government agency’s finding was clearly erroneous; or
- The applicant has shown that he or she is clearly not inadmissible.

The officer should work with the other government agency to resolve the issue through appropriate procedures.

**C. Grounds Not Included in Waiver Application**

If the officer identifies additional inadmissibility grounds based on events that are not included in the waiver application, the officer should notify the applicant and the applicant’s representative, if applicable. The officer should follow current USCIS guidance on the issuance of RFEs, Notices of Intent to Deny (NOID), and Denials.

**Footnotes**

[^1] For more on admissibility determinations, see Volume 8, Admissibility [8 USCIS-PM].

[^2] When verifying the inadmissibility, the officer may determine that the applicant is admissible and does not require a waiver. For more on admissibility determinations, see Volume 8, Admissibility [8 USCIS-PM].

[^3] For specific scenarios that the officer may encounter during the adjudication of a waiver, see Chapter 4, Waiver Eligibility and Evidence, Section C, Evidence [9 USCIS-PM A.4(C)].

**Chapter 4 - Waiver Eligibility and Evidence**

**A. Eligibility Requirements**

Waiver eligibility depends on whether:

- A waiver is available for the inadmissibility ground;
- The applicant meets all other statutory and regulatory provisions for the waiver; and
- A favorable exercise of discretion is warranted[^1]

An applicant must meet all statutory and regulatory requirements, including the requirements specified in the waiver application’s instructions, before USCIS can approve the waiver application[^2]. When the officer receives the application, the officer should ensure that it meets all of the applicable filing requirements[^3].

[^1]: A favorable exercise of discretion is warranted.
[^2]: An applicant must meet all statutory and regulatory requirements, including the requirements specified in the waiver application’s instructions, before USCIS can approve the waiver application.
[^3]: When the officer receives the application, the officer should ensure that it meets all of the applicable filing requirements.
B. Waiver Availability

1. Waiver is Available

If an applicant is inadmissible, the officer must determine whether USCIS may waive the ground of inadmissibility and whether the applicant meets all eligibility requirements of the waiver. If the applicant is inadmissible on grounds that can be waived, the officer should determine whether the applicant meets the requirements for the waiver.[4]

2. Waiver and Consent to Reapply

An applicant who files a waiver application may also be inadmissible because of a prior removal or unlawful reentry after a previous immigration violation.[5] In these cases, the applicant is required to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), which is also called consent to reapply.

If the officer determines that the waiver is approvable, the officer should give the applicant an opportunity to file a consent to reapply application, if required. The officer should consult the consent to reapply form instructions to determine when USCIS may accept the waiver application and consent to reapply application together.

If the waiver is not approvable and the applicant did not request consent to reapply (although required), the officer should deny the waiver and not request the application for consent to reapply. If an applicant files a consent to reapply application and the officer denies the waiver application, then the officer should deny the consent to reapply application as a matter of discretion.[6]

3. No Waiver is Available

An applicant may be inadmissible for both a ground that USCIS may waive and a ground for which no waiver or other form of relief is available. In this instance, the applicant is still inadmissible on grounds that cannot be waived and approving the waiver application serves no purpose. The officer, therefore, should deny the application as a matter of discretion because the applicant is inadmissible on grounds that cannot be waived.[7] The officer should provide the standard language regarding the availability of motions to reopen, motions to reconsider, and appeals (if applicable) in the denial notice.

C. Evidence

There is no specific type or amount of evidence necessary to establish eligibility for a waiver. Typically, the evidence should support all eligibility requirements, be specific, and come from a credible source. It should also substantiate the applicant’s claims. If evidence is unavailable, the applicant should provide a reasonable explanation for its absence.[8]

1. Medical and Other Issues Requiring Specialized Knowledge

Professionals should address issues that require specialized knowledge. Physicians and other medical professionals, for example, should provide medical statements. The professional’s attestation should explain how the condition or issue affects that applicant. An officer may still consider a nonprofessional’s statement, but the officer should give less weight to a nonprofessional’s opinion. An officer may consider
medical evidence from the internet and published sources, but these sources generally cannot replace a
physician's statement.

2. Family Relationships

Some waivers require that the applicant establish a qualifying familial relationship. Unless the adjudicating
officer finds the underlying evidence unpersuasive, the evidence submitted as part of a previously approved
petition or application based on that familial relationship is sufficient to establish the qualifying relationship
for the waiver. If there is no evidence in the record establishing the qualifying relationship, then the
officer must request evidence that establishes the qualifying relationship, such as marriage, birth, or adoption
certificates, or other evidence as permitted by law.

Footnotes


[^2] See 8 CFR 103.2. See 8 CFR 103.7. General filing requirements include proper signature; proper fee or
fee waiver; translation of any foreign language evidence; proper filing location; and the initial evidence
specified in the relevant regulations and instructions with the application. Forms and form instructions are
available on USCIS’ website at uscis.gov/forms.

[^3] See 8 CFR 103.2. Typically, a waiver does not require the applicant to submit biometrics. USCIS
usually collects this information as part of the underlying benefit application, such as an adjustment of status
application. However, if the required biometrics are outdated, then the officer must update the biometrics
prior to the adjudication of a waiver.


[^5] Inadmissible under INA 212(a)(9)(A) or INA 212(a)(9)(C).


Chapter 5 - Discretion

If the applicant meets all other statutory and regulatory requirements of the waiver, the officer must
determine whether to approve the waiver as a matter of discretion.[^1] Meeting the other statutory and
regulatory requirements alone does not entitle the applicant to relief.[^2]

The discretionay determination is the final step in the adjudication of a waiver application. The applicant
bears the burden of proving that he or she merits a favorable exercise of discretion.[^3]

A. Discretionary Factors
The officer must weigh the social and humanitarian considerations against the adverse factors present in the applicant’s case. The approval of a waiver as a matter of discretion depends on whether the favorable factors in the applicant's case outweigh the unfavorable ones.

The following table provides some of the factors relevant to the waiver adjudication.

Non-Exhaustive List of Factors that May Be Relevant in the Discretionary Analysis

<table>
<thead>
<tr>
<th>Category</th>
<th>Favorable Factors</th>
<th>Unfavorable Factors</th>
</tr>
</thead>
</table>
| **Waiver Eligibility**          | • Meeting certain other statutory requirements of the waiver, including a finding of extreme hardship to a qualifying family member, if applicable.  
• Eligibility for waiver of other inadmissibility grounds.                                                                                                                                                                                                                                                                                                                     | Not applicable – Not meeting the statutory requirements of the waiver results in a waiver denial. A discretionary analysis is not necessary.                                                                                                                                                                                                                                                                 |
| **Family and Community Ties**   | • Family ties to the United States and the closeness of the underlying relationships.  
• Hardship to the applicant or to non-qualifying lawful permanent residents (LPRs) or U.S. citizen relatives or employers.  
• Length of lawful residence in the United States and status held during that residence, particularly where the applicant began residency at a young age.  
• Significant health concerns that affect the qualifying relative.  
• Difficulties the qualifying relative would be likely to face if the qualifying relative moves abroad with the applicant due to country conditions, inability to adapt, restrictions on residence, or other factors that may be claimed.  
• Honorable service in the U.S. armed forces or other evidence of value and service to the community.                                                                                                                                                                                                                                   | • Absence of community ties.                                                                                                                                                                                                                                                                                                                      |
<table>
<thead>
<tr>
<th>Category</th>
<th>Favorable Factors</th>
<th>Unfavorable Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property or business ties in</td>
<td>• Respect for law and order, and good moral character, which may be evidenced by</td>
<td>• Moral depravity or criminal tendencies reflected by an ongoing or continuing criminal</td>
</tr>
<tr>
<td>the United States.</td>
<td>affidavits from family, friends, and responsible community representatives.</td>
<td>record, particularly the nature, scope, seriousness, and recent occurrence of criminal</td>
</tr>
<tr>
<td></td>
<td>• Reformation of character and rehabilitation.</td>
<td>activity.</td>
</tr>
<tr>
<td></td>
<td>• Community service beyond any imposed by the courts.</td>
<td>• Repeated or serious violations of immigration laws, which evidence a disregard for U.S.</td>
</tr>
<tr>
<td></td>
<td>• Considerable passage of time since deportation or removal.</td>
<td>law.</td>
</tr>
<tr>
<td>Criminal History, Moral</td>
<td></td>
<td>• Lack of reformation of character or rehabilitation.</td>
</tr>
<tr>
<td>Character (or both)</td>
<td></td>
<td>• Previous instances of fraud or false testimony in dealings with USCIS or any government</td>
</tr>
<tr>
<td></td>
<td></td>
<td>agency.</td>
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<tr>
<td></td>
<td></td>
<td>• Marriage to a U.S. citizen or LPR for the primary purpose of circumventing immigration</td>
</tr>
<tr>
<td></td>
<td></td>
<td>laws.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Nature and underlying circumstances of the inadmissibility ground at issue, and the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>seriousness of the violation.</td>
</tr>
<tr>
<td>Other</td>
<td>• Absence of significant undesirable or negative factors.</td>
<td>• Public safety or national security concerns</td>
</tr>
<tr>
<td></td>
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</tr>
</tbody>
</table>

**B. Discretionary Determination**

When making a discretionary determination, the officer should review the entire record and give the appropriate weight to each adverse and favorable factor. Once the officer has weighed each factor, the officer should consider all of the factors cumulatively to determine whether the favorable factors outweigh the unfavorable ones. If the officer determines that the positive factors outweigh the negative factors, then the applicant merits a favorable exercise of discretion.

*Example*
A lengthy and stable marriage is generally a favorable factor in the discretionary analysis. On the other hand, the weight given to any possible hardship to the spouse that may occur upon separation may be diminished if the parties married after the commencement of removal proceedings with knowledge of an impending removal. [7]

Example

In general, when reviewing an applicant’s employment history, an officer may consider the type, length, and stability of the employment. [8]

Example

In general, when reviewing an applicant’s history of physical presence in the United States, the officer may favorably consider residence of long duration in this country, as well as residence in the United States while the applicant was of young age. [9]

Example

When looking at the applicant's presence in the United States, the officer should evaluate the nature of the presence. For example, a period of residency during which the applicant was imprisoned may diminish the significance of that period of residency. [10]

C. Cases Involving Violent or Dangerous Crimes

If an alien is inadmissible on criminal grounds involving a violent or dangerous crime, an officer may not exercise favorable discretion unless the applicant has established, in addition to the other statutory and regulatory requirements of the waiver that:

- The case involves extraordinary circumstances; or
- The denial would result in exceptional and extremely unusual hardship. [11]

Extraordinary circumstances involve considerations such as national security or foreign policy interests. Exceptional and extremely unusual hardship is substantially beyond the ordinary hardship that would be expected as a result of denial of admission, but it does not need to be so severe as to be considered unconscionable. [12] Depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances may still be insufficient to warrant a favorable exercise of discretion. [13]

Footnotes

[^1] If the applicant does not meet another statutory requirement of the waiver, USCIS denies the waiver and a discretionary analysis is not necessary. However, an officer may still include a discretionary analysis if the applicant’s conduct is so egregious that a discretionary denial would be warranted even if the applicant had met the other statutory and regulatory requirements. Adding a discretionary analysis to a denial is also useful if an appellate body on review disagrees with the officer’s conclusion that the applicant failed to meet the statutory requisites for the waiver. For more information on exercising discretion generally, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].
Chapter 6 - Validity of an Approved Waiver

A. Extent of Waiver Validity

In general, an approved waiver is only valid for the grounds of inadmissibility specified in the application. Furthermore, a waiver is only valid for those crimes, events, incidents, or conditions specified in the waiver application. If an alien is later found inadmissible for a separate crime, event, incident or condition not already included in the approved waiver application, the alien is required to file another waiver application.

B. Length of Waiver Validity

A waiver’s validity depends on the underlying immigration benefit connected to the approved waiver.

1. Certain Nonimmigrants [1]
An inadmissible applicant seeking to enter the United States as a nonimmigrant generally needs to obtain advance permission to enter the United States as a nonimmigrant. [2] Advance permission to enter as a nonimmigrant [3] despite inadmissibility is referred to as a nonimmigrant waiver. Customs and Border Protection (CBP) generally adjudicates this waiver, which is temporary if approved. [4] This temporary permission does not ordinarily carry over to other benefit categories, such as other nonimmigrant categories, immigrant categories, visas, or adjustment of status.

2. Temporary Protected Status Holders [5]

An applicant seeking temporary protected status (TPS) status in the United States may be inadmissible. In most cases, a waiver is available to a TPS applicant in connection with his or her TPS application. If USCIS approves a TPS applicant’s waiver, the waiver is temporary and lasts for the duration of TPS only. [6]

3. Refugees

An inadmissible refugee must apply for a waiver before seeking admission to the United States. [7] A waiver granted to a refugee for admission to the United States is valid for purposes of seeking adjustment of status as a refugee. [8] In this case, the applicant does not have to file another waiver for the specific inadmissibility ground previously waived. [9]

There is an exception, however, for medical waivers. If USCIS grants the refugee a waiver for purposes of admission to the United States because of a Class A condition, then the refugee is required to submit to another medical examination. If the second examination reveals a Class A condition, the refugee must file another waiver when seeking adjustment of status. [10]

4. Lawful Permanent Residents

An inadmissible applicant seeking lawful permanent resident (LPR) status requires a waiver. As previously explained, the availability of a waiver depends on the specific category under which an applicant seeks LPR status.

A waiver granted in connection with any application for LPR status [11] permanently waives the ground of inadmissibility for purposes of any future immigration benefits application, including immigrant and nonimmigrant benefits. The waiver remains valid even if the LPR later abandons or otherwise loses LPR status. [12]

This rule, however, does not apply to conditional residents or conditional grants issued to K-1 and K-2 nonimmigrants. [13]

5. Conditional Permanent Residents [14]

For most conditional permanent residents, [15] the waiver becomes valid indefinitely when the conditions are removed from the permanent resident status. This is the case even if the LPR later abandons or otherwise loses LPR status.

For certain criminal waivers [16] and a waiver of fraud or willful misrepresentation, [17] the validity of a waiver automatically ends if USCIS terminates conditional residency. There is no need for a separate termination notice and the applicant cannot appeal this waiver termination. If the immigration judge
determines during removal proceedings that USCIS incorrectly terminated the conditional residence, the waiver becomes effective again. [18]


If the applicant seeks a waiver to obtain a fiancé(e) visa (K-1 or K-2), the waiver’s approval is conditioned upon the K-1 nonimmigrant marrying the U.S. citizen who filed the fiancé(e) petition. [19] If the K-1 nonimmigrant marries the petitioner, the approved waiver becomes valid indefinitely for any future immigration benefits application, whether immigrant or nonimmigrant.

The waiver remains valid even if the K nonimmigrant does not ultimately adjust status to an LPR or if the K nonimmigrant later abandons or otherwise loses LPR status. [20]

If the K-1 nonimmigrant does not marry the petitioner, the K-1 and K-2 (if applicable) remain inadmissible for any application or any benefit other than the proposed marriage between the K-1 and the K nonimmigrant visa petitioner. [21]

7. Inter-country Convention Adoptees

An approved waiver in conjunction with the provisional approval of a Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800) is conditioned upon the issuance of an immigrant or nonimmigrant visa for the child's admission to the United States and final approval of that Form I-800. If Form I-800 or the immigrant or nonimmigrant visa application is ultimately denied, the waiver is void. [22]

Footnotes


[^2] The application is filed on Application for Advance Permission to Enter as Nonimmigrant (Form I-192).


[^4] For more information on when an applicant should file this waiver with CBP and when with USCIS, see Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).

[^5] See INA 244(c).

[^6] See INA 244(a) and INA 244(c). See 8 CFR 244.3 and 8 CFR 244.13. See Instructions for Application for Waiver of Grounds of Inadmissibility (Form I-601). If the applicant obtains a waiver in connection with an Application for Temporary Protected Status (Form I-821), the waiver is only valid for the TPS application. If granted, the waiver applies to subsequent TPS re-registration applications, but not to any other immigration benefit requests.


[^9] If the refugee is seeking adjustment of status on a basis other than INA 209, the refugee must apply for a new waiver as required by that particular benefit.
Refugees seek adjustment of status under INA 209. For more information on Class A conditions, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

This includes applications for an immigrant visa, fiancé(e) visa, legalization, and adjustment of status.

See 8 CFR 212.7(a)(4)(ii).

See 8 CFR 212.7(a)(4)(ii). For K-1 and K-2 nonimmigrants granted a waiver, see Subsection 6, K-1 and K-2 Nonimmigrants [9 USCIS-PM A.6(B)(6)].

See INA 216. See 8 CFR 212.7(a)(4)(iv).

Aliens lawfully admitted for permanent residence on a conditional basis. See INA 216.

See INA 212(h).

See INA 212(i).

See 8 CFR 212.7(a)(4)(iv).

See 8 CFR 212.7(a)(4)(iii).

See 8 CFR 212.7(a)(4)(ii).

See 8 CFR 212.7(a)(4)(iii).

See 8 CFR 204.313(g).

Chapter 7 - Denials, Appeals, and Motions

An officer must specify the reason(s) for denying any waiver in the denial notice. If an officer denies the waiver based on discretion, the officer should explain how the negative factors outweigh the positive factors.

If USCIS denies a waiver application, the governing regulation may provide that the applicant may appeal the denial. The officer must specify in the decision letter if the applicant may:

- File an appeal. If the decision is appealable, the officer must give the applicant proper notice of the possibility to appeal; or

- File a motion to reopen or reconsider. If USCIS approves the motion, then the officer reviews the waiver application again as if it had never been adjudicated. Therefore, USCIS issues a new decision on the waiver application following a successful motion.

USCIS may also reconsider a waiver approval or denial on its own motion at any time.

Footnotes


Part B - Extreme Hardship

Chapter 1 - Purpose and Background

A. Purpose

This part offers guidance concerning the adjudication of applications for those discretionary waivers of inadmissibility that require applicants to establish that refusal of their admission would result in “extreme hardship” to certain U.S. citizen or lawful permanent resident (LPR) family members.

B. Background

Under the Immigration and Nationality Act (INA), admissibility is generally a requirement for admission to the United States, adjustment of status, and other immigration benefits. The grounds that make aliens inadmissible to the United States are generally described in section 212 of the INA.

Several statutory provisions authorize the Secretary of Homeland Security to grant discretionary waivers of particular grounds of inadmissibility for those who demonstrate that a denial of admission would result in “extreme hardship” to specified U.S. citizen or LPR family members. These specified family members are known as “qualifying relatives.”

Each of these statutory provisions conditions a waiver on both a finding of extreme hardship to one or more qualifying relatives and the favorable exercise of discretion. These waiver applications are adjudicated by USCIS (and in some cases by the Department of Justice’s Executive Office for Immigration Review).

The various statutory waiver provisions specify different categories of qualifying relatives and permit waivers of different inadmissibility grounds. The provisions include:

- **INA 212(a)(9)(B)(v)** – Provides for waiver of the 3- and 10-year inadmissibility bars for unlawful presence. Qualifying relatives are limited to applicants’ U.S. citizen and LPR spouses and parents.

- **INA 212(h)(1)(B)** – Provides for waiver of inadmissibility based on crimes involving moral turpitude, multiple criminal convictions, prostitution and commercialized vice, and certain serious criminal offenses for which the alien received immunity from prosecution. Also provides a waiver of inadmissibility for a controlled substance violation insofar as the violation relates to a single offense of simple possession of 30 grams or less of marijuana. Qualifying relatives are limited to applicants’ U.S. citizen and LPR spouses, parents, sons, and daughters.

- **INA 212(i)(1)** – Provides for waiver of inadmissibility for certain types of immigration fraud or willful misrepresentations of material fact. For purposes of this waiver:
  - Qualifying relatives are generally limited to applicants’ U.S. citizen and LPR spouses and parents.
  - But if the applicant is a Violence Against Women Act (VAWA) self-petitioner, USCIS also must
consider extreme hardship to the applicant himself or herself, or to a parent or child who is a U.S. citizen, LPR, or otherwise a qualified alien.

The factors discussed in this guidance apply to any waiver application in which the applicant must establish extreme hardship to a qualifying relative. Because the classes of individuals who may serve as qualifying relatives varies among the different waiver provisions, officers should carefully determine which individuals can serve as qualifying relatives under the relevant extreme hardship analysis.

**Footnotes**


[^2] See INA 212(a) and INA 245(a).


[^4] The classes of individuals who may serve as “qualifying relatives” depends on the specific text of the waiver provision involved. A U.S. citizen or LPR spouse or parent is a qualifying relative for most extreme hardship waivers. For certain other extreme hardship waivers, a U.S. citizen or LPR child, as well as an adult son or daughter, can be the qualifying relative. In the case of a K visa applicant, a U.S. citizen fiancé(e) is considered a U.S. citizen “spouse” qualifying relative. See 8 CFR 212.7(a) and 22 CFR 41.81(d) (K nonimmigrants). Finally, under some provisions, discretionary relief may be available upon a showing of extreme hardship to the applicants themselves. These include waivers of inadmissibility under INA 212(i)(1) (waiver of fraud-related inadmissibility for Violence Against Women Act (VAWA) self-petitioners), waivers of requirements for removing conditions on LPR status under INA 216(c)(4)(A), cancellation of removal under INA 240A(b)(2)(A)(v) adjudicated by the Executive Office for Immigration Review, and suspension of removal and cancellation of removal under Section 203 of Nicaraguan Adjustment and Central America Relief Act (NACARA), Pub. L. 105-100, 111 Stat. 2160, 2196 (November 19, 1997). See 8 CFR 240.64(c) and 8 CFR 1240.64(e). This guidance addresses USCIS’ adjudication of waiver applications that require a showing of extreme hardship to specified family members, not applications based on extreme hardship to applicants themselves.


[^7] A U.S. citizen fiancé(e) is a qualifying relative in the case of a K nonimmigrant applicant. See 8 CFR 212.7(a) and 22 CFR 41.81(d) (K nonimmigrants).

[^8] Other provisions of INA 212(h) authorize waivers of certain grounds of inadmissibility without an extreme hardship determination. See INA 212(h), INA 212(h)(1)(A), and INA 212(h)(1)(C).


[^11] The son or daughter must be related to the applicant in one of the ways specified in INA 101(b)(1), but he or she does not need to be a “child” (unmarried and under 21 years of age). Because the term “son or daughter” is not restricted with respect to age or marital status, it includes children as defined in INA 101(b)(1).
101(b)(1) as well as adult or married sons and daughters.


[^13] The term “child” is limited to individuals who are unmarried, under 21 years of age, and related to the applicant in one of the ways specified in INA 101(b)(1).

[^14] Certain types of waivers utilize standards of hardship other than “extreme hardship.” For example, the “exceptional hardship” waiver that applies to the foreign residence requirement for certain exchange visitors under INA 212(e) is a less demanding standard than “extreme hardship.” By contrast, the “exceptional and extremely unusual hardship” standard for non-LPR cancellation of removal is more stringent that the extreme hardship standard under INA 240A(b). See Matter of Monreal-Aguinaga (PDF), 23 I&N Dec. 56 (BIA 2001). This guidance specifically applies only to “extreme hardship” determinations.

Chapter 2 - Extreme Hardship Policy

A. Overview

Waivers of inadmissibility generally authorize U.S. immigration authorities to balance competing policy considerations when determining whether an alien should be admitted to the United States despite his or her inadmissibility.

On the one hand, the alien has engaged in conduct that Congress considers serious enough to render the individual inadmissible to the United States. On the other hand, Congress specifically authorized waivers of these grounds of inadmissibility for those cases in which the refusal of admission “would result in extreme hardship.” To meet this “extreme hardship” requirement, the applicant must show that refusal of admission would impose more than the usual level of hardship that commonly results from family separation or relocation. Congress clearly intended the waiver to be applied for purposes of family unity and with other humanitarian concerns in mind. [1]

B. What is Extreme Hardship

The term “extreme hardship” is not expressly defined in the Immigration and Nationality Act (INA), in Department of Homeland Security (DHS) regulations, or in case law (although DHS regulations and certain Board of Immigration Appeals (BIA) decisions have provided some relevant guidance with respect to what may constitute extreme hardship in certain contexts). As the U.S. Supreme Court recognized in INS v. Jong Ha Wang, “[t]hese words are not self-explanatory, and reasonable men could easily differ as to their construction. But the [INA] commits their definition in the first instance to the Attorney General [and the Secretary of Homeland Security] and [their] delegates.” [2]

Therefore, “[t]he Attorney General [and the Secretary of Homeland Security] and [their] delegates have the authority to construe ‘extreme hardship’ narrowly should they deem it wise to do so.” [3] Conversely, “[a] restrictive view of extreme hardship is not mandated either by the Supreme Court or by [the BIA] case law.” [4]

USCIS recognizes that at least some degree of hardship to qualifying relatives exists in most, if not all, cases in which individuals with the requisite relationships are denied admission. Importantly, to be considered “extreme,” the hardship must exceed that which is usual or expected. [5] But extreme hardship need not be
unique, nor is the standard as demanding as the statutory “exceptional and extremely unusual hardship” standard that is generally applicable to non-lawful permanent resident cancellation of removal. [7]

Footnotes

[1] For example, see Matter of Lopez-Monzon (PDF), 17 I&N Dec. 280, 281 (BIA 1979) (“The intent of Congress in adding [the INA 212(i) waiver], which is evident from its language, was to provide for the unification of families, thereby avoiding the hardship of separation.”).


[5] See 8 CFR 1240.58(b) (hardship must go “beyond that typically associated with deportation”) (former suspension of deportation). The federal courts and the BIA have frequently relied on cases involving the former suspension of deportation statute when interpreting extreme hardship waiver statutes, as these statutes employed the same language. See Hassan v. INS, 927 F.2d 465, 467 (9th Cir. 1991). See Matter of Cervantes-Gonzalez (PDF), 22 I&N Dec. 560, 565 (BIA 1999), aff’d, Cervantes-Gonzales v. INS, 244 F.3d 1001 (9th Cir. 2001).


[7] See INA 240A(b). See Matter of Andazola-Rivas (PDF), 23 I&N Dec. 319, 322, 324 (BIA 2002) (holding the “exceptional and extremely unusual hardship” standard to be “significantly more burdensome than the ‘extreme hardship’ standard” and intimating that the applicant “might well” have prevailed under the latter standard even though she failed under the former. See Matter of Monreal-Aguinaga (PDF), 23 I&N Dec. 56, 59-64 (BIA 2001) (same).

Chapter 3 - Adjudicating Extreme Hardship Claims

A. Overview

In adjudicating a waiver request, the officer must ensure that the applicant meets all of the statutory requirements for the waiver, including the extreme hardship showing. If the applicant is eligible, the officer must then determine whether the applicant warrants a favorable exercise of discretion. In each case, the officer should analyze each part separately.

First, the applicant has the burden of proof to demonstrate by a preponderance of the evidence that he or she satisfies the statutory requirements of the waiver, including extreme hardship. [1] The applicant meets the preponderance of the evidence standard if the evidence shows that it is more likely than not that a denial of admission would result in extreme hardship to one or more qualifying relatives. [2]

The finding of extreme hardship permits, but does not require, a favorable exercise of discretion. [3] Once the officer finds extreme hardship, the officer must then determine whether the applicant has shown that he or she merits a favorable exercise of discretion. [4]
## B. Adjudicative Steps

The officer should complete the following steps when adjudicating a waiver application that requires a showing of extreme hardship to a qualifying relative.[5]

<table>
<thead>
<tr>
<th>Adjudication Step</th>
<th>For More Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1</strong></td>
<td>Confirm that the waiver provision requires a showing of extreme hardship to a qualifying relative.</td>
</tr>
<tr>
<td></td>
<td>See Chapter 1, Purpose and Background [9 USCIS-PM B.1]</td>
</tr>
<tr>
<td><strong>Step 2</strong></td>
<td>Consistent with the applicable waiver authority, identify each person as to whom the applicant makes a claim of extreme hardship and confirm that the applicant has established the necessary family relationship for the person(s) to be qualifying relative(s).</td>
</tr>
<tr>
<td></td>
<td>See Chapter 4, Qualifying Relative [9 USCIS-PM B.4]</td>
</tr>
<tr>
<td><strong>Step 3</strong></td>
<td>Evaluate the present and future hardships that each qualifying relative would experience to determine whether it is more likely than not that an applicant’s refusal of admission would result in extreme hardship to the qualifying relative. This includes whether any of the particularly significant factors listed below are present. These particularly significant factors generally exceed the common consequences and often weigh heavily in support of a finding of extreme hardship.</td>
</tr>
<tr>
<td></td>
<td>See Chapter 5, Extreme Hardship Considerations and Factors [9 USCIS-PM B.5]</td>
</tr>
<tr>
<td></td>
<td>See Chapter 6, Extreme Hardship Determinations [9 USCIS-PM B.6]</td>
</tr>
<tr>
<td><strong>Step 4</strong></td>
<td>If no single hardship rises to the level of “extreme,” then determine whether it is more likely than not that the hardships to the qualifying relatives in the aggregate rise to the level of extreme hardship.</td>
</tr>
<tr>
<td></td>
<td>See Chapter 2, Extreme Hardship Policy [9 USCIS-PM B.2]</td>
</tr>
<tr>
<td></td>
<td>See Chapter 5, Extreme Hardship Considerations and Factors [9 USCIS-PM B.5]</td>
</tr>
<tr>
<td></td>
<td>See Chapter 6, Extreme Hardship Determinations [9 USCIS-PM B.6]</td>
</tr>
</tbody>
</table>
**Adjudication Step**

If extreme hardship is not found, deny the application.

**Step 5**

If extreme hardship is found, determine whether based on the totality of the circumstances of the individual case, the applicant merits a favorable exercise of discretion.

**For More Information**

See Chapter 7, Discretion [9 USCIS-PM B.7]

---

**Footnotes**

[^1] See INA 291 (providing that burden is on applicant for admission to prove he or she is “not inadmissible” and “entitled to the nonimmigrant [or] immigrant . . . status claimed”). See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296, 299 (BIA 1996) (holding that applicant for INA 212(h)(1)(B) waiver has burden of showing that favorable exercise of discretion is warranted, “as is true for other discretionary forms of relief”). See 8 CFR 212.7(e)(7) (provisional INA 212(a)(9)(B)(v) waivers). See INA 240(c)(4)(A) (in removal proceedings, the applicant for relief has the burden of proving that he or she is statutorily eligible and merits a favorable exercise of discretion).


[^4] See Chapter 7, Discretion [9 USCIS-PM B.7].

[^5] In most cases, there will already have been a finding of inadmissibility, either by the consular officer adjudicating a visa application, or a USCIS officer adjudicating a related application, such as an Application to Register Permanent Residence or Adjust Status ([Form I-485](https://www.uscis.gov/forms)). A formal finding of inadmissibility is not required in adjudicating an Application for Provisional Presence Waiver ([Form I-601A](https://www.uscis.gov/forms)). The officer should identify all inadmissibility grounds and confirm that the ground(s) may be waived. This chart assumes that the inadmissibility grounds have been identified and that a waiver is available.

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**Chapter 4 - Qualifying Relative**

**A. Establishing the Relationship to the Qualifying Relative**

A USCIS officer must verify that the relationship to a qualifying relative exists. When the qualifying relative is the visa petitioner, an officer should use the approval of the Petition for Alien Relative ([Form I-130](https://www.uscis.gov/forms)) as proof that the qualifying relationship has been established.[^1]

If the applicant’s relationship to the qualifying relative has not already been established through a prior approved petition, the USCIS officer must otherwise verify that the relationship to the qualifying relative...
exists. Along with the waiver application, applicants should include primary evidence that supports the relationship, such as marriage certificates, birth certificates, adoption papers, paternity orders, orders of child support, or other court or official documents.

If such primary evidence does not exist or is otherwise unavailable, the applicant should explain the reason for the unavailability and submit secondary evidence of the relationship, such as school records or records of religious or other community institutions. If secondary evidence is also not reasonably available, the applicant may submit written testimony from a witness or witnesses with personal knowledge of the relevant facts. If evidence establishing the relationship is missing or insufficient, the officer should issue a Request for Evidence (RFE) in accordance with USCIS policy.

If the applicant claims that the qualifying relative would suffer extreme hardship in part due to the hardship that would be suffered by a non-qualifying relative, the applicant must submit evidence establishing the claimed relationships. If such evidence is missing or insufficient, the officer should issue an RFE in accordance with USCIS policy.

**B. Separation or Relocation**

With respect to the requirement that the refusal of the applicant’s admission “would result in” extreme hardship to a qualifying relative, there are 2 potential scenarios to consider. Either:

- The qualifying relative(s) may remain in the United States separated from the applicant who is denied admission (separation); or
- The qualifying relative(s) may relocate overseas with the applicant who is denied admission (relocation).

In either scenario, depending on all the facts of the particular case, the refusal of admission may result in extreme hardship to one or more qualifying relatives.

Separation may result in extreme hardship if refusal of the applicant’s admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family separation. When assessing extreme hardship claims based on separation, USCIS focuses on how denial of the applicant’s admission would affect the qualifying relative’s well-being in the United States given the separation of the qualifying relative from the applicant.

Relocation may result in extreme hardship if refusal of the applicant’s admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family relocation. When assessing extreme hardship claims based on relocation, USCIS focuses on how denial of the applicant’s admission would affect the qualifying relative’s well-being given the qualifying relative’s relocation outside the United States.

An applicant may show that extreme hardship to a qualifying relative would result from both separation and relocation. However, an applicant is not required to show extreme hardship under both scenarios. An applicant may submit evidence demonstrating which of the 2 scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship.

If the applicant seeks to demonstrate extreme hardship based on separation or relocation, the applicant’s evidence must demonstrate that the designated outcome “would result” from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under
penalty of perjury that the qualifying relative would relocate or separate if the applicant is denied admission. The statement should be sufficiently detailed to adequately convey to USCIS the reasons why either separation or relocation would likely result from a denial of admission. The applicant may also submit documentation or other evidence, if available, in support of this statement.

Due to the subjective factors inherently involved in decisions involving separation or relocation, a credible statement from the qualifying relative may be the best available evidence for establishing whether he or she would separate or relocate if the applicant’s admission is denied. Among other things, such decisions generally involve the weighing of many deeply personal and subjective factors that cannot be objectively assessed by others.

Qualifying relative spouses, for example, are faced with the choice of separating from their applicant spouses to remain in the United States or leaving the United States to relocate abroad with their applicant spouses. The former may involve, among other things, the significant decline in the emotional support and affection between spouses; the latter may involve leaving behind important ties to the United States, including family and friends in the country, jobs and career opportunities, educational opportunities, availability of medical care, and safety and security. Decisions based on such complex human factors may be difficult to prove other than through credible statements.

However, if the USCIS officer determines that such a statement is not plausible or credible (including because it is inconsistent with the evidence of hardship presented), the officer may request additional evidence from the applicant to support the designation that the qualifying relative would separate or relocate. In such cases, the officer must consider the subjective nature of the inquiry and the difficulty involved in proving intent in this context through documentary or other supporting evidence.

Moreover, the officer must make determinations based on the evidence and arguments presented and not on the officer’s personal moral view as to whether a particular qualifying relative “ought” to either relocate or separate in an individual case. Generally, in the absence of inconsistent evidence, a credible, sworn statement from the qualifying relative of his or her intent to relocate or separate would generally suffice to demonstrate what the qualifying relative plans to do.

Ultimately, the officer must be persuaded that it is more likely than not that a qualifying relative will suffer extreme hardship resulting from the denial of admission. In a case in which the applicant chooses to rely on evidence showing that extreme hardship would result from relocation, the officer must determine based on a preponderance of the evidence that relocation would occur. The same principle applies if the applicant chooses to rely on evidence showing that extreme hardship would result from separation. If the evidence presented fails to persuade the officer, the officer should provide an opportunity for the applicant to submit additional evidence—either to show that relocation or separation would occur, or to demonstrate that extreme hardship would result under both scenarios.

Finally, special considerations may arise in cases involving those limited statutory waivers for which a child may serve as a qualifying relative. In such cases, a parent who asserts that he or she will separate from a child so that the child may remain in the United States bears the burden of overcoming the general presumption that the child will relocate with the parent. Among other factors, the parent should generally be expected to explain the arrangements for the child’s care and support.

The failure to provide a credible plan for the care and support of the child would cast doubt on the parent’s contention that he or she will actually leave the child behind in the United States. Moreover, if the parent represents that the child will be left behind, USCIS may require the parent to state that understanding in a statement made under penalty of perjury. Such a statement is not required, however, if the parent credibly represents that the child will be left behind in the care of the other parent (which may itself give rise
to extreme hardship depending on the totality of the circumstances).

C. Effect on Extreme Hardship if Qualifying Relative Dies

Generally, the applicant must show extreme hardship to a qualifying relative who is alive at the time the waiver application is both filed and adjudicated. Unless a specific exception applies, an applicant cannot show extreme hardship if the qualifying relative has died. INA 204(l) provides the only exception. In general, INA 204(l) allows USCIS to approve, or reinstate approval of, an immigrant visa petition and certain other benefits even though the petitioner or the principal beneficiary has died. INA 204(l) also provides that it applies generally to “any related applications,” thereby including applications for waivers related to immigrant visa petitions.

Under this provision, an alien who establishes that the requirements of INA 204(l) have been met may apply for a waiver even though the qualifying relative for purposes of extreme hardship has died. Moreover, in cases in which the deceased individual is both the qualifying relative for purposes of INA 204(l) and the qualifying relative for purposes of the extreme hardship determination, the death of the qualifying relative is treated as the functional equivalent of a finding of extreme hardship.

Section 204(l) also applies in the case of widows and widowers of U.S. citizens whose pending or approved petition was converted to a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), including if the petition later reverts to a Form I-130 petition based on a subsequent remarriage.

D. Effect of Hardship Experienced by a Person who is not a Qualifying Relative

On its own, hardship to a non-qualifying relative cannot satisfy the extreme hardship requirement. In some cases, however, the hardship experienced by non-qualifying relatives can be considered as part of the extreme hardship determination, but only to the extent that such hardship affects one or more qualifying relatives.

1. Hardship to the Applicant

Except for certain applicants who are Violence Against Women Act (VAWA) self-petitioners, applicants for the waivers enumerated in Chapter 1 may not meet the relevant extreme hardship requirements by establishing hardship to themselves. In cases in which applicants who are not VAWA self-petitioners submit evidence of hardship to themselves, officers should consider the alleged hardships only as they affect the applicants’ qualifying relatives.

For example, consider an applicant who indicates he suffers from a medical condition for which he would be unable to obtain necessary medical treatment in his home country. The applicant provides medical documentation about his condition and Department of State (DOS) information on country conditions that corroborate his statements. Because the applicant is not a qualifying relative, his claims alone cannot meet the extreme hardship requirement of the waiver.

However, the applicant’s condition and prospective situation may show that denial of his admission would have a significant emotional or financial impact on one or more qualifying relatives in the United States. The USCIS officer may consider such impacts when determining whether the qualifying relative(s) would
experience extreme hardship upon the applicant’s denial of admission.

2. Hardship to Other Non-Qualifying Relatives

Similarly, if the applicant claims hardship to an individual who is not a qualifying relative for purposes of the relevant waiver, the officer should consider the alleged hardship only as it affects one or more qualifying relatives.

For example, consider an applicant who is married to a U.S. citizen with whom she has a 5-year-old child with a disability. Unless the relevant waiver allows for her child to serve as a qualifying relative, the USCIS officer may not consider the hardship to the child if the applicant is denied admission. The officer, however, may consider the child’s disability when assessing whether the denial of admission will cause hardship for the qualifying-relative spouse. For example, denial of admission may impact the qualifying parent’s financial and emotional ability to care for the disabled child. Moreover, even if such derivative hardship does not rise to the level of extreme hardship by itself, it is a factor that should be considered when determining whether the qualifying relative’s hardship, considered in the aggregate, rises to the level of extreme.

E. Aggregating Hardships

To establish extreme hardship, it is not necessary to demonstrate that a single hardship, taken in isolation, rises to the level of “extreme.” Rather, any relevant hardship factors “must be considered in the aggregate, not in isolation.” Therefore, even if no one factor individually rises to the level of extreme hardship, the USCIS officer “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation” (or, in this case, the refusal of admission). Moreover, even “those hardships ordinarily associated with deportation, . . . while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.”

The applicant needs to show extreme hardship to only one qualifying relative. But an applicant may have more than one qualifying relative. In such cases, if there is no single qualifying relative whose hardship alone is severe enough to be found “extreme,” the extreme hardship standard would be met if the combination of hardships to 2 or more qualifying relatives in the aggregate rises to the level of extreme hardship.

Therefore, if the applicant demonstrates that the combined hardships that two or more qualifying relatives would suffer rise to the level of extreme hardship, the applicant has met the extreme hardship standard. If the applicant presents evidence of hardship to multiple qualifying relatives that does not rise to the level of extreme hardship to any one qualifying relative, the USCIS officer should aggregate all of their hardships to decide whether these hardships combined rise to the level of extreme hardship.

Footnotes

[^1] An officer who has concerns about the qualifying relationship in the approved Form I-130 should consult with a supervisor.

[^2] This includes marriages valid under the laws of the place of marriage.

See Section D, Effect of Hardship Experienced by a Person who is not a Qualifying Relative [9 USCIS-PM B.4(D)].

For discussion of the common consequences of family separation and relocation, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [9 USCIS-PM B.5(B)].

If an applicant who submits evidence related to both relocation and separation ultimately demonstrates extreme hardship with regard to only one scenario, the USCIS officer should determine, possibly through the issuance of an RFE, whether the qualifying relative has established which scenario is more likely to result from a denial of admission.

See, for example, Matter of Calderon-Hernandez (PDF), 25 I&N Dec. 885 (BIA 2012) (remanding for determination of hardship based only on separation after immigration judge had rejected hardship based on relocation). See Matter of Reginas (PDF), 23 I&N Dec 467 (BIA 2002) (consideration of hardship based only on relocation). See Cerrillo-Perez v. INS, 809 F.2d 1419 (9th Cir. 1987) (ordering consideration of extreme hardship based on separation after Board of Immigration Appeals found no hardship based on relocation). See Salcido-Salcido v. INS, 138 F.3d 1292 (9th Cir. 1998) (same). See Mendez v. Holder, 566 F.3d 316 (2nd Cir. 2009) (ordering consideration of hardship only under relocation). See Figueroa v. Mukasey, 543 F.3d 487 (9th Cir. 2008) (remanding assessment of hardship only under relocation).

This is authorized by statute in cases of waivers of criminal grounds under INA 212(h)(1)(B).

See Matter of Ige (PDF), 20 I&N Dec. 880, 885 (BIA 1994) (holding that, for purposes of the former suspension of deportation, neither the parent’s “mere assertion” that the child will remain in the United States nor the mere “possibility” of the child remaining is entitled to “significant weight;” rather, the Board expects evidence that “reasonable provisions will be made for the child’s care and support”). See Iturribarria v. INS, 321 F.3d 889, 902-03 (9th Cir. 2003) (finding that in suspension of deportation case, the petitioner could not claim extreme hardship from family separation without evidence of the family’s intent to separate). See Perez v. INS, 96 F.3d 390, 393 (9th Cir. 1996) (holding that agency properly required, as means of reducing speculation in considering extreme hardship element in a suspension of deportation case, affidavits and other evidentiary material establishing that family members “will in fact separate”).

See Matter of Ige (PDF), 20 I&N Dec. 885, 885 (BIA 1994) (requiring such an affidavit in suspension of deportation cases).

See Matter of Calderon-Hernandez (PDF), 25 I&N Dec. 885 (BIA 2012) (concluding that when a child will stay behind with a parent in the United States, regardless of that parent’s immigration status, the waiver applicant need not provide documentary evidence regarding the child’s care).


See AFM Chapter 10.21(c)(5), Waivers and Other Related Applications (PDF).

See 8 CFR 204.2(i)(1)(iv).

For more detailed guidance on the approval of petitions and applications after the death of a qualifying relative under INA 204(l), see Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act (PDF), issued December 16, 2010, and Approval of a Spousal Immediate Relative Visa Petition under Section 204(l) of the Immigration and Nationality Act after the Death of a U.S. Citizen Petitioner (PDF), issued November 18, 2015. See Williams v. DHS, 741 F.3d 1228 (11th Cir. 2014) (noting congressional intent in not expressly including a “remarriage bar” in 204(l) and finding “[t]hat a spouse eventually remarries does nothing to impugn the validity of the original I-130 beneficiary-petition or the first marriage, and leaves the surviving spouse in the same position
she would have been but for the untimely passing of her husband, an event beyond her control.”). USCIS applies this ruling to all cases it adjudicates.

[^16] For example, hardship to the applicant’s child when the particular waiver provision lists only the applicant’s spouse and parents as qualifying relatives.

[^17] See Matter of Gonzalez Recinas (PDF), 23 I&N Dec. 467, 471 (BIA 2002) (“In addition to the hardship of the United States citizen children, factors that relate only to the respondent may also be considered to the extent that they affect the potential level of hardship to her qualifying relatives.”).

[^18] See Zamora-Garcia v. INS, 737 F.2d 488, 494 (5th Cir. 1984) (requiring, in suspension of deportation case, “consideration of the hardship to the [qualifying applicant] posed by the possibility of separation from the [non-qualifying third party children]”).

[^19] See Bueno-Carrillo v. Landon, 682 F.2d 143, 146 n.3 (7th Cir. 1982). See Ramos v. INS, 695 F.2d 181, 186 n.12 (5th Cir. 1983).


[^22] See, for example, INA 212(h), INA 212(i), and INA 212(a)(9)(B)(v).

[^23] See Watkins v. INS, 63 F.3d 844, 850 (9th Cir. 1995) (reversing BIA decision on ground it had failed to aggregate the “professional and social changes” of the petitioner, who was a qualifying relative under the particular statute, with the hardship to the applicant’s children, who were also qualifying relatives). See Prapavat v. INS, 638 F.2d 87, 89 (9th Cir. 1980) (holding that extreme hardship “may also be satisfied … by showing that the aggregate hardship to two or more family members described in 8 U.S.C. 1254(a)(1) is extreme, even if the hardship suffered by any one of them would be insufficient by itself”), on rehearing, 662 F.2d 561, 562-63 (9th Cir. 1981) (per curiam) (again listing both hardships to the qualifying relative petitioners and hardships to their U.S. citizen child, holding that these hardships “must all be assessed in combination,” and finding that the Board had erred in failing to do so). See Jong Ha Wang v. INS, 622 F.2d 1341, 1347 (9th Cir. 1980) (“[T]he Board should consider the aggregate effect of deportation on all such persons when the alien alleges hardship to more than one.”), rev’d on other grounds, 450 U.S. 139 (1981) (per curiam). These decisions all interpreted the former suspension of deportation provision. The list of qualifying individuals (which included the petitioners themselves) whose extreme hardship sufficed under that provision differed from the lists of qualifying relatives in the waiver provisions discussed here, but the statutory language was identical in all other relevant respects (“result in extreme hardship to …”).

[^24] Hardships that the BIA has held to be “common results” in themselves are insufficient for a finding of extreme hardship. See Matter of Ngai, (PDF) 19 I&N Dec. 245 (BIA 1984). A common consequence, however, when combined with other factors that alone would also have been insufficient, may meet the extreme hardship standard when considered in the aggregate. For a list of those common consequences, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [9 USCIS-PM B.5(B)].

Chapter 5 - Extreme Hardship Considerations and Factors
A. Totality of the Circumstances

The officer must make extreme hardship determinations based on the factors, arguments, and evidence submitted. Therefore, the officer should consider any submission from the applicant bearing on the extreme hardship determination. The officer may also consider factors, arguments, and evidence relevant to the extreme hardship determination that the applicant has not specifically presented, such as those addressed in Department of State (DOS) information on country conditions or other U.S. Government determinations regarding country conditions, including a country’s designation for Temporary Protected Status (TPS). Officers must base their decisions on the totality of the evidence and circumstances presented.

B. Common Consequences

The common consequences of denying admission, in and of themselves, do not warrant a finding of extreme hardship. The Board of Immigration Appeals (BIA) has held that the common consequences of denying admission include, but are not limited to, the following:

- Family separation;
- Economic detriment;
- Difficulties of readjusting to life in the new country;
- The quality and availability of educational opportunities abroad;
- Inferior quality of medical services and facilities; and
- Ability to pursue a chosen employment abroad.

While extreme hardship must involve more than the common consequences of denying admission, the extreme hardship standard is not as high as the significantly more burdensome “exceptional and extremely unusual” hardship standard that applies to other forms of immigration adjudications, such as cancellation of removal.

C. Factors Must Be Considered Cumulatively

The officer must consider all factors and consequences in their totality and cumulatively when assessing whether a qualifying relative will experience extreme hardship either in the United States or abroad. In some cases, common consequences that on their own do not constitute extreme hardship may result in extreme hardship when assessed cumulatively with other factors.

For example, if a qualifying relative has a medical condition that alone does not rise to the level of extreme hardship, the combination of that hardship and the common consequences of inferior medical services, economic detriment, or readjusting to life in another country may cumulatively cause extreme emotional or financial hardship for the qualifying relative when considering the totality of the circumstances.

Ordinarily, for example, the fact that medical services are less comprehensive in another country is a common consequence of denying admission; but the inferior quality of medical services, considered along with the individual’s specific medical conditions, may create sufficient difficulties as to rise to the level of extreme hardship in combination with all the other consequences.
The officer must weigh all factors individually and cumulatively, as follows:

- First, the officer must consider whether any factor set forth individually rises to the level of extreme hardship under the totality of the circumstances.

- Second, if any factor alone does not rise to the level of extreme hardship, the officer must consider all factors together to determine whether they cumulatively rise to the level of extreme hardship. This includes hardships to multiple qualifying relatives.

When considering the factors, whether individually or cumulatively, all factors, including negative factors, must be evaluated in the totality of the circumstances.

**D. Examples of Factors that May Support a Finding of Extreme Hardship**

The chart below lists factors that an applicant might present and that would be relevant to determining whether an applicant has demonstrated extreme hardship to a qualifying relative. This list is not exhaustive; circumstances that are not on this list may also be relevant to finding extreme hardship.

The presence of one or more of the factors below in a particular case does not mean that extreme hardship would necessarily result from a denial of admission. But they are factors that may be encountered and should be considered in their totality and cumulatively in individual cases. All hardship factors presented by the applicant should be considered in the totality of the circumstances in making the extreme hardship determination.

Some of the factors listed below apply when the qualifying relative would remain in the United States without the applicant. Other factors apply when the qualifying relative would relocate abroad. Some of the factors might apply under either circumstance.

<table>
<thead>
<tr>
<th>Factors</th>
<th>Considerations</th>
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<tbody>
<tr>
<td><strong>Family Ties and Impact</strong></td>
<td>• Qualifying relative’s ties to family members living in the United States,</td>
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<td></td>
<td>including age, status, and length of residence of any children.</td>
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<td>• Responsibility for the care of any family members in the United States,</td>
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<td>particularly children, elderly adults, and disabled adults.</td>
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<td>• The qualifying relative’s ties, including family ties, to the country of</td>
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<td>relocation, if any.</td>
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<td></td>
<td>• Nature of relationship between the applicant and the qualifying relative,</td>
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<td>including any facts about the particular relationship that would either</td>
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<td></td>
<td>aggravate or lessen the hardship resulting from separation.</td>
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<tr>
<td></td>
<td>• Qualifying relative’s age.</td>
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<td></td>
<td>• Length of qualifying relative’s residence in the United States.</td>
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<tr>
<td>Factors</td>
<td>Considerations</td>
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<td></td>
<td>• Length of qualifying relative’s prior residence in the country of relocation, if any.</td>
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<td>• Prior or current military service of qualifying relative.</td>
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<td>• Impact on the cognitive, social, or emotional well-being of a qualifying relative who is left to replace the applicant as caregiver for someone else, or impact on the qualifying relative (for example, child or parent) for whom such care is required.</td>
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<tr>
<td>Social and Cultural Impact</td>
<td>• Loss of access to the U.S. courts and the criminal justice system, including the loss of opportunity to request or provide testimony in criminal investigations or prosecutions; to participate in proceedings to enforce labor, employment, or civil rights laws; to participate in family law proceedings, victim’s compensation proceedings, or other civil proceedings; or to obtain court orders regarding protection, child support, maintenance, child custody, or visitation.</td>
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<td>• Fear of persecution or societal discrimination.</td>
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<td>• Prior grant of U nonimmigrant status.</td>
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<td>• Existence of laws and social practices in the country of relocation that would punish the qualifying relative because he or she has been in the United States or is perceived to have Western values.</td>
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<td></td>
<td>• Access or lack of access to social institutions and structures (official and unofficial) for support, guidance, or protection.</td>
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<td></td>
<td>• Social ostracism or stigma based on characteristics such as gender, gender identity, sexual orientation, religion, race, national origin, ethnicity, citizenship, age, political opinion, marital status, or disability. [6]</td>
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<td></td>
<td>• Qualifying relative’s community ties in the United States and in the country of relocation.</td>
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<td></td>
<td>• Extent to which the qualifying relative has integrated into U.S. culture, including language, skills, and acculturation.</td>
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<tr>
<td></td>
<td>• Extent to which the qualifying relative would have difficulty integrating into the country of relocation, including understanding and adopting social norms and established customs, including gender roles and ethical or moral codes.</td>
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<td>• Difficulty and expense of travel/communication to maintain ties between qualifying relative and applicant, if the qualifying relative does not relocate.</td>
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<tr>
<td>Factors</td>
<td>Considerations</td>
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<td>• Qualifying relative’s present inability to communicate in the language of the country of relocation, as well as the time and difficulty that learning that language would entail.</td>
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<td>• Availability and quality of educational opportunities for qualifying relative (and children, if any) in the country of relocation.</td>
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<td></td>
<td>• Availability and quality of job training, including technical or vocational opportunities, for qualifying relative (and children, if any) in the country of relocation.</td>
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<tr>
<td>Economic Impact</td>
<td>• Economic impact of applicant’s departure on the qualifying relative, including the applicant’s or qualifying relative’s ability to obtain employment in the country of relocation.</td>
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<td>• Economic impact resulting from the sale of a home, business, or other asset.</td>
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<td>• Economic impact resulting from the termination of a professional practice.</td>
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<td>• Decline in the standard of living, including due to significant unemployment, underemployment, or other lack of economic opportunity in the country of relocation.</td>
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<td>• Ability to recoup losses, or repay student loan debt.</td>
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<td>• Cost of extraordinary needs, such as special education or training for children.</td>
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<td>• Cost of care for family members, including children and elderly, sick, or disabled parents.</td>
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<tr>
<td>Health Conditions and Care</td>
<td>• Health conditions and the availability and quality of any required medical treatment in the country to which the applicant would be returned, including length and cost of treatment.</td>
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<td>• Psychological impact on the qualifying relative due to either separation from the applicant or departure from the United States, including separation from other family members living in the United States.</td>
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<td>• Psychological impact on the qualifying relative due to the suffering of the applicant.</td>
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</tbody>
</table>
|         | • Prior trauma suffered by the qualifying relative that may aggravate the psychological impact of separation or relocation, including trauma evidenced by prior grants of asylum, refugee status, or other forms of...
## Factors Considerations

<table>
<thead>
<tr>
<th>Factors</th>
<th>Considerations</th>
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<tbody>
<tr>
<td><strong>Country Conditions</strong>[^7]</td>
<td>humanitarian protection.</td>
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<td></td>
<td>• Conditions in the country of relocation, including civil unrest or generalized levels of violence, current U.S. military operations in the country, active U.S. economic sanctions against the country, ability of country to address significant crime, environmental catastrophes like flooding or earthquakes, and other socio-economic or political conditions that jeopardize safe repatriation or lead to reasonable fear of physical harm.</td>
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<td></td>
<td>• Temporary Protected Status (TPS) designation.[^8]</td>
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<td>• Danger Pay for U.S. government workers stationed in the country of nationality.[^9]</td>
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<td>• Withdrawal of Peace Corps from the country of nationality for security reasons.</td>
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<td></td>
<td>• DOS Travel Warnings or Alerts, whether or not they constitute a particularly significant factor, as set forth in Part E below.</td>
</tr>
</tbody>
</table>

## E. Particularly Significant Factors

The preceding list identifies factors that may bear on whether a denial of admission would result in extreme hardship. Below are factors that USCIS has determined often weigh heavily in support of finding extreme hardship. An applicant who seeks to demonstrate the presence of one of the enumerated circumstances must submit sufficient reliable evidence to support the existence of such circumstance(s) and show that the circumstance will cause extreme hardship to the qualifying relative. The mere presence of an enumerated circumstance does not create a presumption of extreme hardship. The ultimate determination of extreme hardship must be based on the totality of the circumstances present in the individual case.

It is important to emphasize that the enumerated circumstances listed below are specifically highlighted only because they are often likely to support findings of extreme hardship. Other hardships not enumerated may also rise to the level of extreme, even if they vary significantly than those listed below.[^10]

Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication.[^11] However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

### 1. Qualifying Relative Previously Granted Iraqi or Afghan Special Immigrant Status, T Nonimmigrant Status, or Asylum or Refugee Status

If a qualifying relative was previously granted Iraqi or Afghan special immigrant status,[^12] T nonimmigrant status, asylum status, or refugee status in the United States from the country of relocation and the qualifying

[^10]: Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

[^11]: Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

[^7]: Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

[^8]: Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

[^9]: Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

[^12]: Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.
relative’s status has not been revoked, those factors would often weigh heavily in support of finding extreme hardship. The existence of this circumstance normally results in hardship greater than the common consequences denying admission, whether in cases involving relocation or separation.

The prior decision to grant the qualifying relative status as an Iraqi or Afghan special immigrant, T nonimmigrant, refugee, or asylee indicates the significantly heightened risk that relocation to the country from which he or she received protection could result in retaliatory violence, persecution or other danger to the qualifying relative. This prior assessment by USCIS would often weigh heavily in support of finding extreme hardship in a case involving relocation.

The same is also true in cases involving separation. The prior assessment by USCIS with respect to the qualifying relative indicates that he or she would likely face increased difficulty returning to that country to visit the applicant, thus generally resulting in hardship that is greater than that normally present in cases involving family separation. The applicant might also show that, due to their relationship, the applicant may experience persecution or other dangers similar to those that gave rise to the qualifying relative’s underlying status. The qualifying relative in such a case may suffer additional psychological trauma due to the potential for harm to the applicant in the country of relocation.

2. Qualifying Relative or Related Family Member’s Disability

Cases involving disabled individuals often involve hardships that rise above the common consequences. If a government agency has made a formal disability determination with regard to the qualifying relative, or with regard to a family member of the qualifying relative who is dependent on the qualifying relative for care, that factor would often weigh heavily in support of finding that either relocation or separation would result in extreme hardship under the totality of the circumstances.

In cases involving either (1) relocation of the qualifying relative with a disability or (2) relocation of both the qualifying relative and the relevant family member with a disability, the applicant will need to show that the services available to the disabled individual in the country of relocation are unavailable or significantly inferior to those available to him or her in the United States. In such cases, the disability determination would often weigh heavily in support of a finding of extreme hardship.

In cases involving separation, the applicant will need to show that the qualifying relative with a disability, or the relevant family member with a disability, generally requires the applicant’s assistance for care due to the disability. Where replacement care is not realistically available and obtainable, the disability determination would often weigh heavily in support of a finding of extreme hardship.

Absent a formal disability determination, an applicant may provide other evidence that a qualifying relative or relevant individual suffers from a medical condition, whether mental or physical, that makes either travel to, or residence in, the country of relocation detrimental to the qualifying relative or family member’s health or safety. Similarly, an applicant may provide other evidence that the condition of the qualifying relative requires the applicant’s assistance for care.

3. Qualifying Relative’s Military Service

Military service by a qualifying relative often results in hardships from denial of the applicant’s admission that rise above the common consequences of denying admission. If a qualifying relative is an Active Duty member of any branch of the U.S. armed forces, or is an individual in the Selected Reserve of the Ready Reserve, denial of an applicant’s admission often causes psychological and emotional harm that significantly exacerbates the stresses, anxieties and other hardships inherent in military service by a qualifying relative.
This may result in an impairment of the qualifying relative’s ability to serve the U.S. military, or to be quickly called into active duty in the case of reservists, which also affects military preparedness. This is often the case even if the qualifying relative’s military service already separates, or will separate, him or her from the applicant. In such circumstances, the applicant’s removal abroad may magnify the stress of military service to a level that would constitute extreme hardship.

4. DOS Travel Warnings

DOS issues travel warnings to notify travelers of the risks of traveling to certain foreign countries. Reasons for issuing travel warnings include, but are not limited to, unstable government, civil war, ongoing intense crime or violence, or frequent terrorist attacks. A travel warning remains in place until changes in circumstances sufficiently mitigate the need for such a warning. With respect to some travel warnings, DOS advises of travel risks to a specific region or regions of the country at issue.

In some situations, DOS issues travel warnings that do more than notify travelers of the risks of traveling to a particular country or region(s) within a country. Rather, DOS affirmatively recommends against travel or affirmatively recommends that U.S. citizens depart. DOS may make such travel warnings country-wide. Such travel warnings may contain language in which:

- DOS urges avoiding all travel to the country or region because of safety and security concerns;
- DOS warns against all but essential travel to the country or region;
- DOS advises deferring all non-essential travel to the country or region; and/or
- DOS advises U.S. citizens currently in the country or region to depart.

In cases where a qualifying relative would relocate to a country or region that is the subject of such DOS recommendations against travel, the travel warning would often weigh heavily in support of a finding of extreme hardship. In assessing the dangers in the country of relocation, USCIS officers should give weight to DOS travel warnings, taking into account the nature and severity of such warnings.

Generally, the fact that the country of relocation is currently subject to a DOS country-wide travel warning against travel may indicate that a qualifying relative would face significantly increased danger if he or she were to relocate to that country with the applicant. This significantly increased danger would often support a finding of extreme hardship.

If the relevant travel warning covers only a part or region of the country of relocation, the USCIS officer must determine whether the qualifying relative would relocate to the part or region that is subject to the warning. If the officer finds that this part or region is one to which the qualifying relative plans to return despite the increased danger (for example, because of family relationships or employment opportunities), that may indicate that the qualifying relative would face significantly increased danger if he or she were to relocate to that part or region. This significantly increased danger would often support a finding of extreme hardship.

Alternatively, if the officer finds that the qualifying relative would relocate to a part of the country that is not subject to the travel warning (because of the danger in the part or region covered by the travel warning or for any other reason), that indicates that the qualifying relative would generally not face significantly increased danger upon relocation.

If the officer finds that the qualifying relative would remain in the United States while the applicant returns to a country or region that is subject to a DOS warning against travel, the officer should evaluate
whether the separation may result in extreme hardship to the qualifying relative. In such cases, the officer should consider the hardship to the qualifying relative resulting from the increased danger to the applicant in the relevant country or region.

5. Substantial Displacement of Care of Applicant’s Children

USCIS recognizes the importance of family unity and the ability of parents and other caregivers to provide for the well-being of children. [17] Depending on the particular facts of a case, either the continuation of one’s existing caregiving duties under new and difficult circumstances or the need to assume someone else’s caregiving duties can be sufficiently burdensome to rise to the level of extreme hardship. The children do not need to be U.S. citizens or lawful permanent residents (LPRs) in such cases. [18]

In cases involving the separation of spouses in which the qualifying relative is the primary caretaker and the applicant is the primary income earner, the income earner’s refusal of admission often causes economic loss to the caregiver. Although economic loss alone is generally a common consequence of a denial of admission, depending on the particular circumstances the economic loss associated with the denial of admission may create burdens on the caregiver that are severe enough to rise to the level of extreme hardship. That can occur, for example, when the qualifying relative must take on the additional burdens of primary income earner while remaining the primary caregiver. That dual responsibility may significantly disrupt the qualifying relative’s ability to meet his or her own basic subsistence needs or those of the person(s) for whom the care is being provided. In such cases, the dual burden would often support a finding of extreme hardship. In addition, the qualifying relative may suffer significant emotional and psychological impacts from being the sole caregiver of the child(ren) that exceed the common consequences of being left as a sole parent.

In cases involving the separation of spouses in which the qualifying relative is the primary income earner and the applicant is the primary caretaker, the caretaker’s refusal of admission can result in a substantial shift of caregiving responsibility from the applicant to the qualifying relative. Such a shift may significantly affect the qualifying relative’s ability to earn income for the family; disrupt family, social, and cultural ties; or hinder the child(ren)’s psychological, cognitive, or emotional development.

The shift may also frustrate or complicate the qualifying relative’s efforts to provide a healthy, stable, and caring environment for the child(ren). Such additional emotional, psychological and/or economic stress for the qualifying relative could exceed the levels of hardship that ordinarily result from family separation, and rise to the level of extreme hardship. [19]

Under either scenario discussed above, the significant shifting of caregiving or income-earning responsibilities would often weigh heavily in support a finding of extreme hardship to the qualifying relative, provided the applicant shows:

- The existence of a bona fide relationship between the applicant and the child(ren);
- The existence of a bona fide relationship between the qualifying relative and the child(ren); and
- The substantial shifting of caregiving or income-earning responsibilities under circumstances in which the ability to adequately care for the children would be significantly compromised.

To prove a bona fide relationship to the child(ren), the applicant and qualifying relative should have emotional and/or financial ties or a genuine concern and interest for the child(ren)’s support, instruction, and general welfare. [20] Evidence that can establish such a relationship includes (but is not limited to):

- Income tax returns;
To prove the qualifying relative would take on the additional caregiving or income-earning responsibilities, the applicant needs to show that the qualifying relative either (1) is a parent of the child(ren) in question or (2) otherwise has the bona fide intent to assume those responsibilities. Evidence of such an intent could include (but is not limited to):

- Legal custody or guardianship of the child;
- Other legal obligation to take over parental responsibilities;
- Affidavit signed by qualifying relative to take over parental or other caregiving responsibilities; or
- Affidavits of friends, neighbors, school officials, or other associates knowledgeable about the qualifying relative's relationship with the children or intentions to assume parental or other caregiving responsibilities.

F. Hypothetical Case Examples

Below are hypothetical cases that can help officers determine when cases present factors that rise to the level of extreme hardship. These hypotheticals are not meant to be exhaustive or all-inclusive with respect to the facts or scenarios that may be presented for adjudication and that may give rise to extreme hardship. Although a USCIS officer presented with similar scenarios as those presented in the hypotheticals could reasonably reach the same conclusions described below, extreme hardship determinations are made on a case-by-case basis in the totality of the circumstances. An extreme hardship determination will always depend on the facts of each individual case.

For purposes of the following hypotheticals, it is assumed that:

- The applicant is inadmissible under a ground that may be waived based on a showing of extreme hardship to a qualifying relative spouse or parent. [21]
- The facts asserted in the hypotheticals are supported by appropriate documentation.

Scenario 1

Tyler was admitted to the United States as a nonimmigrant 5 years ago. Three years after Tyler's entry, Tyler married Pat, a U.S. citizen spouse. Tyler seeks a waiver claiming that Pat would suffer extreme hardship if Tyler were denied admission to the United States.

Pat submits a credible, sworn statement indicating that if Tyler is refused admission, Pat would relocate to Tyler's native country. Tyler and Pat have been married for 2 years. Pat is a sales clerk. A similar job in the country of relocation would pay far less than Pat earns in the United States. In addition, although Pat has visited the country of relocation several times, Pat is not fluent in the country's language and lacks the ties that would facilitate employment opportunities and social and cultural integration.
Tyler is a skilled laborer who similarly would command a much lower salary in the country of relocation, but who was, prior to coming to the United States, gainfully employed. The couple is renting an apartment in the United States, does not own any real estate or other significant property, and has no children. Pat and Tyler do not have any other family, either in the United States or in the country of relocation.

Analysis of Scenario 1

These facts alone generally would not favor a finding of extreme hardship. The hardships to Pat, even when aggregated, include only common consequences of relocation—economic loss and the social and cultural difficulties arising mainly from Pat’s inability to speak the language fluently.

Scenario 2

The facts are the same as in Scenario 1 except that Pat (who is Tyler’s U.S. citizen spouse and would relocate) has a chronic medical condition requiring regular visits to the doctor, and Tyler is an unskilled worker who would command a much lower salary in the country of relocation. In addition, Pat has family that lives nearby and is a crucial part of Tyler’s support system. Pat and Tyler are also active members of their local community and have friends who often help out when Pat’s family is not available. Based on the care received from the doctor and the support received from family and friends, Pat is able to manage the chronic condition.

Pat submits a credible, sworn statement that Pat will relocate with Tyler despite Pat’s medical condition, and the evidence shows under the totality of the circumstances that Pat will relocate with Tyler. Pat’s doctor provides a statement that confirms that Pat will continue to progress and function well if Pat keeps receiving medical treatment and the support from family and other members of Pat’s existing social support network. While the doctor cannot fully attest to the availability of care in Tyler’s native country, the doctor is able to attest that moving to another country and disrupting Pat’s medical care and support network will cause Tyler significant difficulties. The doctor’s statement also states that Pat will likely not be able to work without the support system Pat has in the United States.

Analysis of Scenario 2

These facts would generally favor a finding of extreme hardship. The aggregate hardships to Pat now include not only the economic losses, diminution of employment opportunities, and social, cultural, and linguistic difficulties (which are generally common consequences of relocation) but also the additional medical hardship that Pat would experience if Pat relocates to Tyler’s native country. The attestation of Pat’s doctor expressing concerns about the disruption in medical care, the effect of losing support from Pat’s family and social environment, and the possibility of Pat not being able to accept employment, would generally favor a finding of extreme hardship.

Scenario 3

Assume the facts are the same as originally presented in Scenario 1 (without the additional facts from Scenario 2), but now with the added facts that Tyler also has LPR parents who live in the United States. Pat submits a credible, sworn statement indicating that Pat would relocate with Tyler and that Tyler’s LPR parents would remain in the United States. Again, when analyzing the additional evidence under the totality of the circumstances, the evidence shows Pat will still relocate with Tyler.

Tyler and Pat both have a close relationship with Tyler’s parents, who are elderly and non-native English speakers. Tyler regularly transports the parents to medical appointments, translates medical and other instructions, and offers them significant emotional support. As a result of the separation from Tyler and
Tyler’s spouse, Tyler’s parents would suffer significant emotional hardship.

Analysis of Scenario 3

Based on the totality of the evidence presented, the addition of these facts would generally favor a finding of extreme hardship. There are now 3 qualifying relatives (Tyler’s U.S. citizen spouse and Tyler’s two LPR parents). Although the aggregated hardships to Tyler’s spouse alone (under Scenario 1) include only common consequences of a refusal of admission, aggregating those hardships with the hardships to Tyler’s elderly parents, which include the potential disruption of their medical care, loss of ability to navigate their surroundings in English, and their significant emotional hardship resulting from the loss of their child’s support, would generally tip the balance in favor of a finding of extreme hardship.

Scenario 4

EF has lived continuously in the United States since entering without inspection 4 years ago. She has been married to GH, her U.S. Citizen husband, for 2 years. EF seeks a waiver claiming that GH would suffer extreme hardship if EF were denied admission to the United States. GH has a moderate income, and EF works as a housecleaner for low wages. GH submits a credible, sworn statement that he would remain in the United States, and thus would separate from EF, if she is denied the waiver. Upon separating, the couple would lose the income EF earns. In addition to losing EF’s income, GH is committed to sending remittances to EF once she leaves, in whatever amount GH can afford. EF and GH do not have children, and GH does not have family in the United States.

Analysis of Scenario 4

These facts alone generally would not rise to the level of extreme hardship, even if the hardships to the qualifying relative are aggregated. The hardships to GH do not rise above the common consequences of separation and economic loss.

Scenario 5

JK has lived continuously in the United States since entering without inspection 6 years ago. She married LM, her U.S. citizen husband, 2 years ago. JK seeks a waiver on the basis that LM would suffer extreme hardship if JK were denied admission to the United States. JK and LM live near LM’s family and friends, and LM has spent little time traveling abroad. He does not speak the language of the country to which JK would return if she is denied admission, and LM’s employment opportunities in that country would be less desirable than in the United States.

Additionally, DOS has issued a travel warning that strongly advises against travel to specific regions in the country to which JK would return, including the region where her family lives. The region-specific warning affirmatively recommends against non-essential travel to that region, citing the high rate of kidnapping and murder. LM submits a credible, sworn statement indicating that due to his recent marriage, the difficulties JK would face in her country, and his commitment to supporting her however possible, he would relocate to remain with JK if she is denied a waiver.

Analysis of Scenario 5

The totality of these circumstances generally would favor a finding of extreme hardship, significantly in light of the nature and severity of the DOS travel warning. Although the other hardships present in the case are common consequences of relocation, LM has also demonstrated that he will return to the region of a country that is the subject of the DOS travel warning, which advises against non-essential travel to that region. The travel warning recommending against travel to that particular region of that country to which LM would...
relocate is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. If the travel warning were less severe or only temporary, the warning would not qualify as a particularly significant factor but would be another factor to be considered in the totality of the circumstances by the officer.

Alternatively, in some circumstances where DOS has issued travel warnings with regard to a particular region of a country, the applicant and qualifying relative may relocate to a different region of the country that is not subject to a travel warning. In such a situation, the fact of the region-specific travel warning would not itself constitute a particularly significant factor; however, the hardships arising from relocating to another region of the country remains a factor to be considered and may result in a finding of extreme hardship, based on the totality of the circumstances. [22]

Scenario 6

OP has lived continuously in the United States since entering without inspection 7 years ago. After dating and living together for 5 years, OP married her same-sex partner SQ, a U.S. citizen. OP seeks a waiver claiming that SQ would suffer extreme hardship if OP were denied admission to the United States. SQ submits a credible, sworn statement indicating that she would remain in the United States and separate from OP if the waiver is denied.

SQ owns a business in the United States, and OP has continuously supported the business, including by helping out as an office manager. SQ would not be able to keep the business running successfully without OP because of the expense of hiring an office manager. In addition, the DOS country report indicates that women in OP’s country of relocation generally may not work outside the home except in an extremely limited set of professions (such as teaching) for which OP is not qualified.

The country report also indicates that same-sex marriages are not recognized in that country, that same-sex sexual conduct is illegal, and that official societal discrimination and harassment (in some circumstances even giving rise to physical threats or harm) based on sexual orientation or gender identity is prevalent in many areas of life.

Based on these factors, SQ fears OP would be discriminated against and potentially be at risk of physical harm based on her sexual orientation. SQ has been in therapy due to depression and anxiety after she learned that her wife may be denied admission to the United States and that her wife would have to remain in a country where she risks discrimination and physical harm. The couple does not provide other evidence of hardship.

Analysis of Scenario 6

These facts would generally favor a finding of extreme hardship. SQ would face serious economic detriment if OP is denied admission. In addition, the country reports show that SQ’s marriage to OP would not be recognized in OP’s native country, and that OP’s marriage to a person of the same gender is a common cause for social ostracism, discrimination, and potential physical danger in OP’s native country. The country reports further show that OP’s access to education, employment and health care could be limited due to OP’s sexual orientation and gender, thereby negatively affecting OP’s subsistence.

SQ would face psychological trauma based on the fear that OP would be harassed or threatened because of her sexual orientation. SQ’s trauma based on her fear that OP will be ostracized and persecuted in OP’s native country based on her sexual orientation and gender are factors that in the totality of circumstances would ordinarily rise to the level of extreme hardship.

Scenario 7
TU married his U.S. citizen wife, VW, 3 years ago. TU seeks a waiver on the ground that VW would suffer extreme hardship if TU were denied admission to the United States. Before becoming a U.S. citizen, VW and some members of her family fled persecution from her native country, and they were granted asylum in the United States. TU is of the same nationality. VW submits a credible, sworn statement that she would remain in the United States and separate from TU if the waiver is denied. The evidence also supports the conclusion that the return of TU to that country would cause VW particular anxiety and psychological stress, due both to the limitations on VW’s ability to visit her husband and to the harm TU may face in the country of return due to his relationship to VW.

**Analysis of Scenario 7**

These facts generally would favor a finding of extreme hardship. TU and VW are of the same nationality, and TU would return to the country from which VW fled. The fact that VW was previously granted asylum from the country of relocation is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. The fact that VW and members of her family were previously granted asylum from the country of return shows that she is at risk of persecution if she were to return to that country to even visit her husband.

She has also submitted credible evidence indicating that she would suffer additional anxiety and psychological stress from the harm her husband may face due to his relationship with her and her family. The totality of these circumstances, including the particularly significant factor of VW’s grant of asylum, would generally result in a finding of extreme hardship.

**Scenario 8**

XY married her U.S. citizen husband, ZA, 9 years ago. XY seeks a waiver on the basis that ZA would suffer extreme hardship if XY were denied admission to the United States. XY and ZA have a 3-year old son and a 2-year old daughter. XY submits credible evidence showing that she is the primary caretaker of the children and that ZA is the primary income earner. His wages are not sufficient to pay for childcare and the couple does not have family that can provide childcare for the children.

ZA submits a credible, sworn statement indicating that he will remain in the United States with their children separated from XY if the waiver is denied. The evidence also indicates that XY will have very limited employment opportunities in the country of return because of her limited education. Whatever income XY will be able to earn in the country of return will be spent on her subsistence and will be insufficient to allow her to contribute to childcare or other family needs in the United States. Due to the lack of childcare options available to ZA, he will be required to become the sole caregiver of the children, while simultaneously striving to maintain his role as the family’s sole income earner.

If ZA is unable to retain his job due to the assumption of primary caregiving responsibilities, he will lose the income necessary to support his children. The dual burden of being both the primary income earner and sole caregiver will create significant psychological, emotional, and financial stresses for ZA. Additionally, the evidence shows that the displacement of childcare would impact the emotional state and development of the children, which would require further care and attention on the part of ZA.

**Analysis of Scenario 8**

These facts would generally favor a finding of extreme hardship. Although ZA’s children are not qualifying relatives for purposes of demonstrating extreme hardship in this case, the hardship to ZA caused by becoming primarily responsible for the children’s care, while maintaining his role as primary income earner, would implicate the particularly significant factor for substantial displacement of care of the applicant’s children.
In this case, ZA and XY submitted credible evidence that XY cannot contribute to the family’s needs, that ZA is unable to earn sufficient income for family needs if he must assume primary caregiving responsibilities, and that ZA otherwise lacks the resources or support network to replace either the primary caregiving responsibilities he would need to assume or the primary income-earning role that has been the source of the family’s support.

The evidence also shows that the displacement of childcare would impact the children in a manner that would require additional care and attention by ZA and would thus further impact ZA’s ability to care for his children. Absent other facts that diminish the impacts of the separation, this scenario would generally rise to the level of extreme hardship based on the totality of the circumstances.

Alternatively, this particularly significant factor may also be presented in a case where the applicant is the primary income earner and the qualifying relative is the primary caretaker of the children. If the applicant is refused admission, the qualifying relative could be required, depending on the circumstances, to take on the additional responsibilities of being the primary income earner in addition to continuing his or her role as primary caretaker.

In cases where this heightened responsibility would threaten the qualifying relative’s ability to meet basic subsistence needs for the family, the significant emotional and psychological stress caused by the added burdens would often weigh heavily in support of a finding of extreme hardship. [23]

Footnotes


[^3] See Matter of Ngai (PDF), 19 I&N Dec. 245 (BIA 1984) (“Common results of the bar, such as separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts”).


[^6] The characteristics for which a person is ostracized or stigmatized may be actual or perceived (that is, the person may actually have that characteristic, or someone may perceive the person as having that characteristic).

[^7] The officer should consider any submitted government or nongovernmental reports on country conditions specified in the hardship claim. In the absence of any evidence submitted on country conditions, the officer may refer to DOS information on country conditions, such as DOS Country Reports on Human Rights Practices and the most recent DOS Travel Warnings, to corroborate the claim.

[^8] For more information on TPS, see the USCIS website.

[\(^{10}\)] See Section D, Examples of Factors that Might Support Finding of Extreme Hardship [\textbf{9 USCIS-PM B.5(D)}].

[\(^{11}\)] See 8 CFR 103.2(b)(1).


[\(^{13}\)] Although it is unlikely that a qualifying relative would have been granted withholding of removal under INA 241(b)(3) or withholding or deferral of removal under the Convention Against Torture (CAT), if a qualifying relative was previously granted such a form of relief, this would often weigh heavily in support of a finding of extreme hardship to that qualifying relative, similar to situations involving qualifying relatives described in this particularly significant factor.

[\(^{14}\)] Federal agency programs focusing on individuals with disabilities generally rely on definitions found in their authorizing legislation. These definitions may be unique to an agency’s program.

[\(^{15}\)] See 10 U.S.C. 101. The term “armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

[\(^{16}\)] See DOS Travel Warnings.

[\(^{17}\)] The term “child” includes those related to the applicant by birth, adoption, marriage, legal custody, or guardianship.

[\(^{18}\)] In this scenario, the children are assumed to be under age 21. See INA 101(b)(1) and INA 101(c)(1).

[\(^{19}\)] These scenarios are not exhaustive. For example, even when a qualifying relative is not the primary caretaker or breadwinner. Nonetheless, the loss of the applicant’s contribution to caretaking or support may have consequences that rise to the level of extreme hardship to the qualifying relative based on the totality of the circumstances.

[\(^{20}\)] USCIS applies a similar principle when assessing whether there is a bona fide relationship between a father and his child born out of wedlock. See INA 101(b)(1)(D) and 8 CFR 204.2(d)(2)(iii).

[\(^{21}\)] None of these examples involves a waiver authority where the child is a qualifying relative under the Immigration and Nationality Act (INA). For more on qualifying relatives, see Chapter 4, Qualifying Relative [\textbf{9 USCIS-PM B.4}].

[\(^{22}\)] If the entire country is the subject of a travel warning that affirmatively recommends against travel or residence, the particularly significant factor will exist and would often weigh heavily in support of a finding of extreme hardship. For more on travel warnings, see Section E, Particularly Significant Factors, Subsection 4, DOS Travel Warnings [\textbf{9 USCIS-PM B.5(E)(4)}].

[\(^{23}\)] For more on substantial displacement of care, see Section E, Particularly Significant Factors, Subsection 5, Substantial Displacement of Care of Applicant’s Children [\textbf{9 USCIS-PM B.5(E)(5)}].

\textbf{Chapter 6 - Extreme Hardship Determinations}
A. Evidence

Most instructions to USCIS forms list the types of supporting evidence that applicants may submit with those forms. The instructions to the relevant waiver forms describe some of the extreme hardship factors that may be considered, along with certain possible types of supporting evidence that may be submitted. USCIS accepts any type of probative evidence, including, but not limited to:

- Expert opinions;
- Medical or mental health documentation and evaluations by licensed professionals;
- Official documents, such as birth certificates, marriage certificates, adoption papers, paternity orders, orders of child support, and other court or official documents;
- Photographs;
- Evidence of employment or business ties, such as payroll records or tax statements;
- Bank records and other financial records;
- Membership records in community organizations, confirmation of volunteer activities, or records related to cultural affiliations;
- Newspaper articles and reports;
- Country reports from official and private organizations;
- Personal oral testimony; and
- Affidavits, statements that are not notarized but are signed “under penalty of perjury” as permitted by 28 U.S.C. 1746, or letters from the applicant or any other person.

If the applicant indicates that certain relevant evidence is not available, the applicant must provide a reasonable explanation for the unavailability, along with available supporting documentation. Depending on the country where the applicant is from, is being removed to, or resides, certain evidence may be unavailable. If the applicant alleges that documentary evidence such as a birth certificate is unavailable, the officer may consult the Department of State (DOS) Foreign Affairs Manual when appropriate, to verify whether these particular documents are ordinarily unavailable in the relevant country.

B. Burden of Proof and Standard of Proof

The applicant bears the burden of proving that the qualifying relative would suffer extreme hardship. He or she must establish eligibility for a waiver by a preponderance of the evidence. If the applicant submits relevant, probative, and credible evidence that leads the USCIS officer to believe that it is “more likely than not” that the assertion the applicant seeks to prove is true, then the applicant has satisfied the preponderance of the evidence standard of proof as to that assertion.

The mere assertion of extreme hardship alone does not establish a credible claim. Individuals applying for a waiver of inadmissibility should provide sufficient evidence to support and substantiate assertions of extreme hardship to the qualifying relative(s). Each assertion should be accompanied by evidence that substantively
supports the claim absent a convincing explanation why the evidence is unavailable and could not reasonably be obtained. The officer should closely examine the evidence to ensure that it supports the applicant’s claim of hardship to the qualifying relative.

To illustrate, an applicant who claims that the qualifying relative has severe, ongoing medical problems will not likely be able to establish the existence of these problems without providing medical records documenting the qualifying relative’s condition. Officers cannot substitute their medical opinion for a medical professional’s opinion; instead the officer must rely on the expertise of reputable medical professionals.

A credible, detailed statement from a doctor may be more meaningful in establishing a claim than dozens of test results that are difficult for the officer to decipher. However, nothing in such a case changes the requirement that all evidence submitted by applicants should be considered to evaluate the totality of the circumstances.

Similarly, if the applicant claims that the qualifying relative will experience severe financial difficulties, the applicant will not likely be able to establish these difficulties without submitting financial documentation. This could include, but is not limited to, bank account statements, employment and income records, tax records, mortgage statements, leases, and proof of any other financial liabilities or earnings.

If not all of the required initial evidence has been submitted, or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer should issue a Request for Evidence (RFE) in accordance with USCIS policy.

In considering whether the applicant’s evidence is sufficient to meet the applicant’s burden of proof, the officer will consider whether the applicant has complied with applicable requirements to submit information and supporting documentation and whether the evidence is credible, persuasive, and refers to specific facts sufficient to demonstrate that the burden of proof has been satisfied and that applicant warrants a favorable exercise of discretion. In considering whether the applicant’s evidence is credible, the officer will consider the totality of the circumstances and all relevant factors and should take into account the inherent plausibility and internal and external consistency of the evidence and any inaccuracies or falsehoods in the evidence.

If evidence in the record leads the officer to reasonably believe that undocumented assertions of the extreme hardship claim are true, the officer may accept the assertion as sufficient to support the extreme hardship claim. The preponderance of the evidence standard does not require any specific form of evidence; it requires the applicant to demonstrate only that it is more likely than not that the refusal of admission will result in extreme hardship to the qualifying relative(s). Any evidence that satisfies that test will suffice. [8]

If the officer finds that the applicant has met the above burden of showing extreme hardship to one or more qualifying relatives, the officer should proceed to the discretionary determination. [9] If the officer ultimately finds that the applicant has not met the above burden, the waiver application must be denied.

Footnotes

[^1] A waiver that requires a showing of extreme hardship to a qualifying relative is currently submitted on an Application for Waiver of Grounds of Inadmissibility (Form I-601) or an Application for Provisional Unlawful Presence Waiver (Form I-601A).

[^2] An officer who interviews an applicant or other witness in person must place the witness under oath or affirmation before beginning the interview and must note in the record that the person was placed under oath.
along with the date and place of the interview. The officer should also take notes or record the testimony.


[^5] See also DOS Bureau of Consular Affairs website for more information on birth certificates under reciprocity by country.


[^8] For more detailed guidance on how to interpret the requirement that the refusal of admission “would result in” extreme hardship to the qualifying relative, see Chapter 2, Extreme Hardship Policy, Section B, What is Extreme Hardship [9 USCIS-PM B.2(B)].

[^9] See Chapter 7, Discretion [9 USCIS-PM B.7].

Chapter 7 - Discretion

A finding of extreme hardship permits but never compels a favorable exercise of discretion. If the officer finds the requisite extreme hardship, the officer must then determine whether USCIS should grant the waiver as a matter of discretion based on an assessment of the positive and negative factors relevant to the exercise of discretion. The family relationships to U.S. citizens or lawful permanent residents and a finding of extreme hardship to one or more of those family members are significant positive factors to consider.[^1]

For purposes of exercising discretion, a finding of extreme hardship that is sufficient to warrant a favorable exercise of discretion to grant a waiver of the unlawful presence grounds of inadmissibility may not be sufficient to warrant a favorable exercise of discretion with respect to crime- or fraud-related grounds of inadmissibility. The conduct that triggered the applicant's inadmissibility, such as a criminal conviction[^2] or underlying fraud[^3] is an important negative factor to consider. The officer should weigh all positive factors against all negative factors. Ultimately, if the positive factors outweigh the negative factors, the officer should approve the waiver; otherwise, the waiver should be denied.[^4]

Footnotes


[^2] In cases where applicants who have been convicted of violent or dangerous crimes apply for waivers under INA 212(h)(1)(B) [formerly INA 212(h)(2)], discretion generally will not be favorably exercised unless either there are “extraordinary circumstances” (for example those relating to national security or foreign policy) or the applicant demonstrates “exceptional and extremely unusual hardship.” Depending on the gravity of the offense, even a showing of extraordinary circumstances does not guarantee a favorable exercise of discretion. See 8 CFR 212.7(d).

Part C - Family Unity, Humanitarian Purposes, or Public or National Interest

Part D - Health-Related Grounds of Inadmissibility

Chapter 1 - Purpose and Background

A. Purpose

USCIS balances public health interests against family unity and the needs of the applicant in adjudicating waivers of medical inadmissibility. For this reason, one of the terms and conditions imposed on all applicants with the grant of a waiver is to receive treatment so that the medical condition no longer poses a public health risk.

B. Background

A medical examination is generally required for all immigrant visa and some nonimmigrant visa applicants, as well as for refugees, and adjustment of status applicants. The purpose of the medical examination is to determine if an applicant has a medical condition(s) that renders him or her inadmissible to the United States.

Generally, applicants establish their admissibility on medical grounds by submitting a Report of Medical Examination and Vaccination Record (Form I-693), or Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets. Civil surgeons or panel physicians complete these documents after the medical examination of the applicant, certifying the presence or absence of physical or mental conditions that may render the applicant inadmissible. Two types of certifications may indicate to USCIS that the applicant may be inadmissible: a “Class A” and a “Class B” condition.

A Class A condition is conclusive evidence that an applicant is inadmissible on health-related grounds. A Class B condition, unlike a Class A condition, does not make an applicant inadmissible on health-related grounds but may lead the officer to conclude that the applicant is inadmissible on other grounds (such as public charge).

Before 1957, no waiver was available to applicants inadmissible on health-related grounds. The Immigration Act of 1957 created the first waiver provision for those afflicted with tuberculosis who had close relatives in the United States. In addition, the 1965 amendments to the INA authorized the waiver of inadmissibility and admission of certain applicants in this category who had close relatives in the United States.

The Immigration Act of 1990 relaxed the requirements for a familial relationship before a medical waiver could be granted. In addition, over time, other provisions were added to the 1952 Immigration Act that allowed for other waivers of medical grounds depending on the immigration benefit sought.
C. Scope

If an applicant is inadmissible because of a medical condition, he or she may have a waiver available. The availability of a waiver depends on the legal provisions governing the immigration benefit the applicant seeks.

This Part C only addresses the processes used for the medical waiver available to persons seeking an immigrant visa or adjustment of status based on a family or employment-based petition. All medical grounds of inadmissibility have a corresponding waiver under this section except for inadmissibility based on drug abuse or addiction.

Applicants for other immigration benefits categories, such as refugees and asylees seeking adjustment, Legalization or SAW applicants, or applicants under other special programs, may have additional or other means to waive grounds of medical inadmissibility, including inadmissibility for drug abuse or addiction.

Many of the processes mentioned in this Part C are also applicable to other medical waivers, such as those obtained by asylees or refugees seeking adjustment of status.

D. Legal Authorities

- INA 212(a)(1) – Health-Related Grounds
- INA 212(g) – Bond and Conditions for Admission of Alien Excludable on Health-Related Grounds
- 8 CFR 212.7 – Waiver of Certain Grounds of Inadmissibility

E. Forms Used When Applying For a Medical Waiver

Applicants for the immigration benefits listed below may apply for a medical waiver by using the following USCIS forms:

<table>
<thead>
<tr>
<th>Immigration Benefits Category</th>
<th>Statutory Authority for Waiver</th>
<th>Relevant Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjustment of status or immigrant visa</td>
<td>INA 212(g)</td>
<td>Application for Waiver of Grounds of Inadmissibility (Form I-601) (with the appropriate fee unless waived)</td>
</tr>
<tr>
<td>Admission as refugee under INA 207</td>
<td>INA 207(c)(3)</td>
<td>Application by Refugee for Waiver of Grounds of Excludability (Form I-602) (no fee associated)</td>
</tr>
<tr>
<td>Immigration Benefits Category</td>
<td>Statutory Authority for Waiver</td>
<td>Relevant Form</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Refugee or asylee applying for adjustment of status under <strong>INA 209</strong></td>
<td><strong>INA 209(c)</strong></td>
<td></td>
</tr>
<tr>
<td>Legalization under <strong>INA 245A</strong></td>
<td><strong>INA 245A(d)(2)(B)(i)</strong></td>
<td>Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act (<strong>Form I-690</strong>) (with the appropriate fee unless waived)</td>
</tr>
<tr>
<td>Special Agricultural Workers (SAW) under <strong>INA 210</strong></td>
<td><strong>INA 210(c)(2)(B)(i)</strong></td>
<td></td>
</tr>
<tr>
<td>T and U nonimmigrant visa</td>
<td><strong>INA 212(d)(13) and INA 212(d)(14)</strong></td>
<td>Application for Advance Permission to Enter as Nonimmigrant (<strong>Form I-192</strong>) (with the appropriate fee unless waived)</td>
</tr>
<tr>
<td>Other nonimmigrant visa</td>
<td><strong>INA 212(d)(3)(A)</strong></td>
<td></td>
</tr>
</tbody>
</table>

**F. Role of Centers for Disease Control and Prevention (CDC)**

Any waiver application to overcome a medical ground of inadmissibility (other than lack of a required vaccination) must be sent to the U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) for review before USCIS can determine whether to grant or deny the waiver.

CDC’s favorable response does not constitute a waiver approval. The purpose of CDC’s review is to ensure that

- The civil surgeon or panel physician examined, diagnosed, and classified the applicant according to the Technical Instructions; and

- The applicant (or person assuming the responsibility on behalf of the applicant) has identified a suitable health care provider in the United States who will provide medical care and treatment for the medical condition if a waiver is granted.

CDC’s response, however, carries significant weight in determining what terms, conditions, or controls should be placed on the waiver, and whether USCIS should approve the waiver.

**Footnotes**


[^7] Under INA 212(a)(1)(A), four categories of medical conditions may render an applicant inadmissible: (1) Communicable disease of public health significance; (2) For immigrants, failure to show proof of required vaccinations; (3) Physical or mental disorder with associated harmful behavior; (4) Drug abuse or addiction. See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information.

[^8] Under INA 212(g).


[^12] For example, an asylee or a refugee seeking adjustment of status who is found to be a drug abuser or addict may apply for a waiver of inadmissibility under INA 209(c). INA 209(c) waivers are not addressed in this Part.

[^13] For further information on waivers other than the medical waiver described in this Part, please see the program-specific waiver chapters in this volume. While these other waivers may be briefly discussed in this chapter, more detailed discussion can be found in the program-specific waiver chapters in this volume.

Chapter 2 - Waiver of Communicable Disease of Public Health Significance

A. General

The INA authorizes USCIS to exercise discretion in deciding whether to waive inadmissibility based on a communicable disease of public health significance. USCIS may grant this waiver in accordance with such terms, conditions, and controls, if any, that USCIS considers appropriate after consultation with the Secretary of HHS. This includes the grant of a waiver based on requiring payment of a bond.

Once the officer has verified that the applicant is inadmissible because of a communicable disease of public health significance and requires a waiver, the officer must go through the following steps to adjudicate the waiver application:

- Determine whether the applicant meets the eligibility requirements of the waiver;
- Consult with CDC; and
Determine whether the waiver is warranted as a matter of discretion.

B. Special Note on HIV

As of January 4, 2010, HIV infection is no longer defined as a communicable disease of public health significance according to HHS regulations. Therefore, HIV infection does not make an applicant inadmissible if the immigration benefit is adjudicated on or after January 4, 2010, even if the applicant filed the immigration benefit application before January 4, 2010. Officers should administratively close any HIV waiver application that is filed before January 4, 2010 but adjudicated on or after January 4, 2010.

C. Waiver Eligibility and Adjudication

1. Qualifying Relationship

To be eligible for the waiver, the applicant must be one of the following:

- The spouse, parent, child, unmarried son or daughter, or minor unmarried lawfully adopted child of:
  - A U.S. citizen,
  - A person lawfully admitted for permanent residence, or
  - A person who has been issued an immigrant visa.

- Eligible for classification as a self-petitioning spouse or child.

- The fiancé(e) of a U.S. citizen or the fiancé(e)’s child.

The officer should verify that the existence of the appropriate relationship is well supported in the applicant’s file.

2. Documentation for CDC’s Review

As stated above, USCIS can only grant this waiver after it has consulted with CDC. However, CDC’s review of necessary documents does not constitute a waiver approval. CDC may recommend that USCIS should make the waiver subject to appropriate terms, conditions, or controls.

To obtain CDC’s review of a waiver application, the officer should forward the following documents to CDC:

- A cover letter that identifies the USCIS office requesting the review;
- A copy of the waiver application (including the TB supplement, if applicable) that contains all the required signatures, excluding the supporting documentation that is not medically relevant;[10]
- A copy of the medical examination documentation;[11]
- Copies of all other medical reports, laboratory results, and evaluations regardless of whether they are connected to the communicable disease of public health significance.
3. Sending Documents to CDC

Officers should email the documents to cdcqap@cdc.gov.

To request expedited review, officers should indicate in the subject line of the email to CDC that the request is “Urgent.”

4. CDC Response

Once CDC receives and reviews the documents, CDC will forward a response letter with its recommendation to the requesting USCIS office.

CDC’s usual processing time for review and response to the requesting USCIS office is approximately 4 weeks. If CDC’s response appears delayed, the officer may contact CDC at cdcqap@cdc.gov to obtain a status update.

Upon receipt, the officer should review CDC’s response letter to determine next steps.

If CDC’s response letter indicates that CDC was satisfied with the initial documentation and that it does not require additional information, then the officer may proceed to the next step of the waiver adjudication. If CDC was not satisfied with the documentation, it may request additional information or recommend additional conditions to be met before the waiver may be granted. In such a case, the officer should issue a Request for Evidence (RFE) for the applicant to provide the additional information or to demonstrate that he or she made the arrangements required by CDC.

If CDC requests it, the officer will need to submit the information obtained through the RFE to CDC to determine whether the additional information is sufficient. CDC will provide a response letter to the requesting USCIS office advising if the additional information is sufficient.[12]

Once CDC indicates no additional information is needed, the officer may proceed with the next step of the waiver adjudication.

5. Discretion

As is generally the case for waivers, a waiver for communicable diseases of public health significance requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion. Hardship to a qualifying relative is not required for this waiver.[13]

CDC’s response in support of granting the waiver should ordinarily be sufficient to warrant a favorable exercise of discretion for the grant of the waiver. However, if an applicant declares openly his or her unwillingness to commit to treatment, the waiver may be denied as a matter of discretion.[14] If CDC does not issue a favorable recommendation, the officer generally should not grant the waiver as a matter of discretion.

By statute, it is USCIS’s decision whether to make the waiver subject to terms, conditions, or controls. A CDC recommendation concerning terms, conditions, or controls on the granting of the waiver ordinarily carries great persuasive weight.

Once a final decision (approval or denial) is made on the waiver, the officer should inform CDC of the decision. The officer should provide a brief statement indicating the final action and date of the action and forward it to CDC by emailing cdcqap@cdc.gov.
# D. Step-by-Step Checklist

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Check for qualifying relationship to determine whether the applicant is eligible for the waiver.</td>
</tr>
<tr>
<td>2</td>
<td>Gather the necessary documentation for CDC review.</td>
</tr>
<tr>
<td>3</td>
<td>Send documentation to CDC.</td>
</tr>
<tr>
<td>4</td>
<td>Review CDC response.</td>
</tr>
<tr>
<td>5</td>
<td>Analyze whether the waiver should be granted as a matter of discretion.</td>
</tr>
<tr>
<td>6</td>
<td>Inform CDC of waiver decision.</td>
</tr>
</tbody>
</table>

## Footnotes


[^2] A condition of granting a waiver for an applicant with a communicable disease of public health significance, such as tuberculosis, is that the applicant must agree to see a doctor immediately upon admission and make arrangements to receive private or public medical care for that disease. This requirement is reflected, for example, in the Application for Waiver of Grounds of Inadmissibility ([Form I-601](https://www.uscis.gov/book/export/html/68600)), TB Supplement.


[^4] Note that an applicant who has been determined to have a Class A condition involving a communicable disease of public health significance may successfully complete treatment. If, after treatment, the civil surgeon or panel physician certifies that the applicant now has a Class B condition, the applicant is no longer inadmissible and does not need a waiver.
Chapter 3 - Waiver of Immigrant Vaccination Requirement

A. General

An applicant seeking an immigrant visa at a U.S. consulate or an applicant seeking adjustment of status in the United States who is found inadmissible for not being vaccinated[^1] may be eligible for the following waivers:

- The applicant has, by the date of the decision on the visa or adjustment application, received vaccination against the vaccine-preventable disease(s) for which he or she had previously failed to present documentation;[^2]

- The civil surgeon or panel physician certifies that such vaccination would not be medically appropriate;[^3] or

[^5] See 42 CFR 34.2(b) as amended by 74 FR 56547 (November 2, 2009).

[^6] USCIS interprets the references to “unmarried son or daughter” as embracing both those sons and daughters who qualify as “children” because they are not yet 21 years old and sons and daughters who are over 21, so long as they are not married.

[^7] USCIS interprets “minor unmarried lawfully adopted child” as a clarifying, not as a restricting, provision. Therefore, an applicant is eligible to apply for this waiver if he or she qualifies as the “child” of a citizen or permanent resident (or a person who has received an immigrant visa) under any provision of INA 101(b)(1). This includes, but is not limited to, both children adopted abroad to be admitted in class IR3 or IH3 and children whose adoption will be finalized in the United States to be admitted in class IR4 or IH4.

[^8] Under INA 204(a)(1)(A)(iii) or INA 204(a)(1)(A)(iv) or INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii), including derivative children of the person. This includes self-petitioning spouses and children eligible for classification under INA 204(a)(1)(A)(v) or INA 204(a)(1)(B)(iv).

[^9] TB is currently the only communicable disease of public health significance that requires a supplement.


[^11] Report of Medical Examination and Vaccination Record (Form I-693); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.

[^12] For Class A TB waivers, CDC’s response letter will provide a specific recommendation whether CDC supports the granting of a waiver.


[^14] If CDC certifies that an applicant who obtained an INA 212(g) waiver has failed to comply with any terms, conditions, or controls on the waiver, the applicant is subject to removal per INA 237(a)(1)(C)(ii). The U.S. health care provider treating the particular condition should provide a summary of the applicant’s initial evaluation to CDC or notify CDC that the applicant has failed to report for care. Generally, no further follow-up is required by the officer.
• The requirement of such a vaccination would be contrary to the applicant’s religious beliefs or moral convictions. [4]

Each of these waivers has its own requirements. [5] Unlike some other waivers, no qualifying relative is required for the applicant to be eligible for a waiver of the immigrant vaccination requirement.

The first two waivers are often referred to as “blanket waivers.” USCIS grants blanket waivers if a health professional indicates that an applicant has received the required vaccinations or is unable to receive them for medical reasons. If USCIS grants blanket waivers, the applicant does not have to file a form or pay a fee.

The waiver on account of religious or moral objection must be filed on the appropriate form and accompanied by the correct fee.

B. Use of Panel Physician’s or Civil Surgeon's Report

The determination whether an applicant is inadmissible for lack of having complied with the vaccination requirement is made by reviewing the panel physician’s or civil surgeon’s vaccination assessment in the medical examination report. [6]

C. Blanket Waiver for Missing Vaccination Documentation [7]

Applicants who received the vaccinations for which documents were missing when they initially applied for adjustment of status or for an immigrant visa may be given a blanket waiver.

A streamlined procedure applies for this waiver; no form is needed. If a required vaccine is lacking, the officer should issue a Request for Evidence (RFE). The RFE should instruct the applicant to return to the civil surgeon for corrective action that demonstrates the applicant has received the required vaccine(s).

If the RFE response demonstrates that the missing vaccine(s) was received, the officer will deem the waiver granted. No annotation is needed on either the medical exam form, or any related form or worksheet.

D. Blanket Waiver if Vaccine is Not Medically Appropriate [8]

1. Situations Specified in the Law [9]

If the civil surgeon or the panel physician certifies that a vaccine is not medically appropriate for one or more of the following reasons, the officer may grant a blanket waiver (without requesting a form and fee):

• The vaccine is not age appropriate;

• The vaccine is contraindicated;

• There is an insufficient time interval to complete the vaccination series; or

• It is not the flu season, or the vaccine for the specific flu strain is no longer available.

Once the civil surgeon or panel physician annotates that the vaccine(s) is not medically appropriate, no further annotation is needed and the officer may proceed with granting the waiver. The civil surgeon’s or panel physician’s annotation on the vaccination assessment sufficiently documents that the requirements for
the waiver have been met; the officer does not need to make any further annotation on the vaccination report.

2. Nationwide Vaccination Shortage

USCIS will grant a blanket waiver in the case of a vaccination shortage only if CDC recommends that USCIS should do so, and USCIS has published the appropriate guidance on its website. CDC will only make such a recommendation to USCIS after verifying that there is indeed a nationwide vaccination shortage and issuing the appropriate statement on its website for civil surgeons. In turn, USCIS will issue the appropriate statement on its website.

The term “nationwide vaccine shortage” does not apply to the medical examination conducted by a panel physician overseas. If a vaccine is not available in the applicant’s country, the panel physician will annotate the vaccination assessment with the term “not routinely available.” If an officer encounters this annotation, the officer may grant a blanket waiver based on this annotation alone.

E. Waiver due to Religious Belief or Moral Conviction

1. General

USCIS may grant this waiver when the applicant establishes that compliance with the vaccination requirements would be contrary to his or her religious beliefs or moral convictions. Unlike other waivers of medical grounds of inadmissibility, there is no requirement that CDC review this waiver.

If, upon review of the medical documentation, the officer finds that the applicant is missing a vaccine and a blanket waiver is not available, the officer should ask the applicant why the vaccine is missing. The officer may request clarification during an interview or by sending an RFE.

If the applicant indicates that he or she does not oppose vaccinations based on religious beliefs or moral convictions, the applicant may be inadmissible if he or she refuses to obtain the missing vaccine(s). The officer should issue an RFE if the applicant is willing to obtain the vaccine.

If the applicant indicates that he or she opposes vaccinations, the officer should inform the applicant of the possibility of the waiver. The officer should explain the basic waiver requirements for a religious belief or moral conviction waiver, as outlined below. The officer should, at that time, issue an RFE for the waiver application.

Upon receipt of the waiver documentation, the officer should proceed with the adjudication of the waiver.

2. Requirements

With the adjudication of this waiver, USCIS has always taken particular caution to avoid any perceived infringement on personal beliefs and First Amendment rights to free speech and religion. To best protect the public health, USCIS, in consultation with CDC, has established the following three requirements that an applicant (or, if the applicant is a child, the applicant’s parents) has to demonstrate through documentary evidence:

The applicant must be opposed to all vaccinations in any form.

The applicant has to demonstrate that he or she opposes vaccinations in all forms; the applicant cannot “pick and choose” between the vaccinations. The fact that the applicant has received certain vaccinations but not...
others is not automatic grounds for the denial of a waiver. Instead, the officer should consider the reasons provided for having received those vaccines.

For example, the applicant's religious beliefs or moral convictions may have changed substantially since the date the particular vaccinations were administered, or the applicant is a child who may have already received certain vaccinations under the routine practices of an orphanage. These examples do not limit the officer's authority to consider all credible circumstances and accompanying evidence.

The objection must be based on religious beliefs or moral convictions.

This second requirement should be handled with sensitivity. On one hand, the applicant's religious beliefs must be balanced against the benefit to society as a whole. On the other hand, the officer should be mindful that vaccinations offend certain persons' religious beliefs.

The religious belief or moral conviction must be sincere.

To protect only those beliefs that are held as a matter of conscience, the applicant must demonstrate that he or she holds the belief sincerely, and in subjective good faith of an adherent. Even if these beliefs accurately reflect the applicant's ultimate conclusions about vaccinations, they must stem from religious or moral convictions, and must not have been framed in terms of a particular belief so as to gain the legal remedy desired, such as this waiver.

While an applicant may attribute his or her opposition to a particular religious belief or moral conviction that is inherently opposed to vaccinations, the focus of the waiver adjudication should be on whether that claimed belief or moral conviction is truly held, that is, whether it is applied consistently in the applicant's life.

The applicant does not need to be a member of a recognized religion or attend a specific house of worship. Note that the plain language of the statute refers to religious beliefs or moral convictions, not religious or moral establishments.

It is necessary to distinguish between strong religious beliefs or moral convictions and mere preference. Religious beliefs or moral convictions are generally defined by their ability to cause an adherent to categorically disregard self-interest in favor of religious or moral tenets. The applicant has the burden of establishing a strong objection to vaccinations that is based on religious beliefs or moral convictions, as opposed to a mere preference against vaccinations.

3. Evidence

The applicant's objection to the vaccination requirement on account of religious belief or moral conviction may be established through the applicant's sworn statement. In this statement, the applicant should state the exact nature of those religious beliefs or moral convictions and establish how such beliefs would be violated or compromised by complying with the vaccination requirements.

Additional corroborating evidence supporting the background for the religious belief or moral conviction, if available and credible, should also be submitted by the applicant and considered by the officer. For example, regular participation in a congregation can be established by submitting affidavits from other members in the congregation, or evidence of regular volunteer work.

The officer should consider all evidence submitted by the applicant.

4. Discretion
As is generally the case for waivers, a waiver of the vaccination requirement requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion.

A favorable exercise of discretion is generally warranted if the applicant establishes that he or she objects to the vaccination requirement on account of religious beliefs or moral convictions.

**F. Step-by-Step Checklist**

A blanket waiver may be available to the applicant. The officer should check whether the applicant is eligible for a blanket waiver before proceeding to this checklist.

<table>
<thead>
<tr>
<th>Step</th>
<th>If YES …</th>
<th>If NO …</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Step 1:</strong> Review the evidence for any indication that the applicant opposes the vaccination requirement based on religious beliefs or moral convictions.</td>
<td>Explain (during the interview or through an RFE) the waiver requirements and request that the applicant file a waiver, if he or she has not already done so. Proceed to Step 3.</td>
<td>RFE or interview to ascertain reasons why vaccines were not given. Proceed to Step 2A.</td>
</tr>
<tr>
<td><strong>Step 2A:</strong> Did the applicant oppose the vaccines?</td>
<td>Explain to the applicant (at interview or through RFE) the waiver requirements and request that the applicant file a waiver if not already done so. Proceed to Step 3.</td>
<td>Proceed to Step 2B.</td>
</tr>
<tr>
<td><strong>Step 2B:</strong> Is the applicant willing to obtain the missing vaccine?</td>
<td>Issue an RFE for corrective action of the vaccination assessment. Upon receipt of response to RFE, determine whether the vaccine requirement has been met. If the applicant is still missing vaccines, and no blanket waiver is available, begin at Step 1 again.</td>
<td>Applicant is inadmissible based on <strong>INA 212(a)(1)(A)(ii)</strong> (irrespective of the grant of any blanket waivers).</td>
</tr>
<tr>
<td><strong>Step 3:</strong> Review the waiver application to determine whether the applicant opposes the vaccination requirement <strong>in any form.</strong></td>
<td>Proceed to Step 4.</td>
<td>The waiver should be denied and the applicant is inadmissible based on <strong>INA 212(a)(1)(A)(ii)</strong> (irrespective of the grant of any blanket waivers).</td>
</tr>
<tr>
<td>Step</td>
<td>If YES …</td>
<td>If NO …</td>
</tr>
<tr>
<td>------</td>
<td>-----------</td>
<td>---------</td>
</tr>
<tr>
<td><strong>Step 4:</strong> Review the waiver application to determine whether the applicant opposes the vaccination requirement on account of religious belief or moral conviction.</td>
<td>Proceed to Step 5.</td>
<td>The waiver should be denied and the applicant is inadmissible based on <strong>INA 212(a)(1)(A)(ii)</strong> (irrespective of the grant of any blanket waivers).</td>
</tr>
<tr>
<td><strong>Step 5:</strong> Analyze whether the waiver application reflects that the applicant’s belief is sincere.</td>
<td>Proceed to Step 6.</td>
<td>The waiver should be denied and the applicant is inadmissible based on <strong>INA 212(a)(1)(A)(ii)</strong> (irrespective of the grant of any blanket waivers).</td>
</tr>
<tr>
<td><strong>Step 6:</strong> Analyze whether the waiver should be granted as a matter of discretion; ordinarily, the finding that the applicant holds sincere religious or moral objections should be sufficient for a grant of the waiver.</td>
<td>Grant the waiver.</td>
<td>The waiver should be denied and the applicant is inadmissible based on <strong>INA 212(a)(1)(A)(ii)</strong> (irrespective of the grant of any blanket waivers).</td>
</tr>
</tbody>
</table>

**Footnotes**

[^1] See **INA 212(a)(1)(A)(ii)**.

[^2] See **INA 212(g)(2)(A)**.

[^3] See **INA 212(g)(2)(B)**.

[^4] See **INA 212(g)(2)(C)**.

[^5] These waivers are described in more detail in Section C, Blanket Waiver for Missing Vaccination Documentation [9 USCIS-PM D.3(C)]; Section D, Blanket Waiver if Vaccine is Not Medically Appropriate [9 USCIS-PM D.3(D)]; and Section E, Waiver due to Religious Belief or Moral Conviction [9 USCIS-PM D.3(E)].


[^7] See **INA 212(g)(2)(A)**.

[^8] See **INA 212(g)(2)(B)**.
Chapter 4 - Waiver of Physical or Mental Disorder Accompanied by Harmful Behavior

A. General

If the applicant has a physical or mental disorder and behavior associated with the disorder that poses, may pose, or has posed a threat to the property, safety, or welfare of the applicant or others, the applicant must file a waiver to overcome this ground of inadmissibility. [1]

The officer should remember that the physical or mental disorder alone (that is, without associated harmful behavior) or harmful behavior alone (without it being associated with a mental or physical disorder) is not sufficient to find the applicant inadmissible on health-related grounds.

USCIS may grant this discretionary waiver in accordance with such terms, conditions, and controls (if any) that USCIS imposes after consulting with the Secretary of Health and Human Services (HHS). [2] A condition could include the payment of a bond.

A common condition of granting a waiver for an applicant with a physical or mental disorder with associated harmful behavior is that the applicant must agree to see a U.S. health care provider immediately upon admission and make arrangements to receive care and treatment.

The officer must determine whether the applicant is eligible for the waiver, consult with CDC, and determine whether the waiver is warranted as a matter of discretion.

B. Waiver Eligibility and Adjudication

1. Qualifying Relationship

Unlike waivers for communicable diseases of public health significance, waivers for physical or mental disorders with associated harmful behaviors do not require a qualifying relationship.

2. Documentation for CDC’s Review

As noted above, USCIS can only grant this waiver after it has consulted with CDC. However, CDC’s review
of the necessary documents does not constitute a waiver approval. CDC may recommend that USCIS should make the waiver subject to appropriate terms, conditions, or controls.

To obtain CDC’s review of a waiver application, the officer should forward the following documents to CDC:

- A cover letter that identifies the USCIS office requesting the review;
- A copy of the waiver application that contains all the required signatures, excluding the supporting documentation that is not medically relevant;¹³
- A copy of the medical examination documentation;¹⁴
- A copy of the supporting medical report, if provided, detailing the physical or mental disorder that is associated with the harmful behavior and the physician’s recommendation regarding the course and prospects of the treatment;¹⁵ and
- Copies of all other medical reports, laboratory results, and evaluations regardless of whether they are connected to the mental or physical disorder with associated harmful behavior.

3. Sending Documents to CDC

Officers should email the documents to cdcqap@cdc.gov.

To request expedited review, officers should indicate in the subject line of the email to CDC that the request is “Urgent.”

4. CDC Response

Once the documents are received by CDC, the documents are reviewed by CDC’s consultant psychiatrist and CDC will forward a response letter with its recommendation to the requesting USCIS office.

CDC’s usual processing time for review and response to the requesting USCIS office is approximately 4 weeks. If CDC’s response appears delayed, the officer may contact CDC at cdcqap@cdc.gov to obtain a status update.

Upon receipt, the officer should review CDC’s response to determine next steps.

If CDC agrees in its response that the applicant has a Class A condition, CDC will send to the USCIS requesting office CDC 4.422-1 forms, Statements in Support of Application for Waiver of Inadmissibility Under Section 212(a)(1)(A)(iii)(I) or 212(a)(1)(A)(iii)(II) of the Immigration and Nationality Act. The officer must provide the CDC 4.422-1 forms to the applicant (or the applicant’s sponsor) for completion. Once the CDC forms are completed and returned to USCIS, the officer must return the completed forms to CDC for review and endorsement.

Once CDC receives the completed forms, it reviews them to determine whether the applicant has identified an appropriate U.S. health care provider and that the health care provider has completed the forms. If the appropriate U.S. health care provider has been identified, CDC will endorse the forms and return them to the requesting USCIS office.

If CDC’s response indicates that the applicant is “Class B” or “no Class A or B,” it is CDC’s recommendation that the applicant does not require a waiver for the medical condition.
If CDC’s response indicates that additional information is needed in order to complete the review, the officer should issue a Request for Evidence (RFE) for the applicant to provide additional information as specified by CDC. The officer should submit the information obtained through the RFE to CDC. CDC will provide a response to USCIS regarding the additional information. Once CDC indicates that no additional information is needed, the officer may proceed with the adjudication of the waiver.

5. Discretion

As is generally the case for waivers, a waiver for mental or physical conditions with associated harmful behavior requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion. [7]

CDC’s review and endorsement of the identified U.S. health care provider should ordinarily be sufficient to warrant a favorable exercise of discretion for the grant of the waiver. However, if an applicant declares openly his or her unwillingness to commit to treatment, the waiver may be denied as a matter of discretion. [8] If CDC does not favorably endorse the identified U.S. health care provider, the officer should generally not grant the waiver as a matter of discretion.

By statute, it is USCIS’s decision whether to make the waiver subject to terms, conditions or controls. A CDC recommendation concerning terms, conditions, or controls on the granting of the waiver ordinarily has great persuasive weight, but is not binding on USCIS.

USCIS should inform CDC of the decision (approval or denial) of the waiver. The officer does so by completing the CDC response letter, that CDC provided when it returned the endorsed CDC forms to the officer, and emailing cdcqap@cdc.gov.

C. Step-by-Step Checklist

<table>
<thead>
<tr>
<th>Step-by-Step Checklist</th>
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<tbody>
<tr>
<td><strong>Step 1</strong></td>
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<td><strong>Step 2</strong></td>
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<td><strong>Step 3</strong></td>
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<tr>
<td><strong>Step 4</strong></td>
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<tr>
<td><strong>Step 5</strong></td>
</tr>
</tbody>
</table>
Chapter 5 - Waiver of Drug Abuse and Addiction

A. Adjustment of Status and Immigrant Visa Applicants

In general, no waiver is available for adjustment of status and immigrant visa applicants who are found inadmissible because of drug abuse or drug addiction. [1]

B. Remission

Although a waiver is unavailable for health-related inadmissibility due to drug abuse or addiction, an applicant may still overcome this inadmissibility if his or her drug abuse or addiction is found to be in remission. After being found inadmissible due to drug abuse or drug addiction, an applicant may undergo a re-examination at a later date at his or her own cost. If, upon re-examination, the civil surgeon or panel physician certifies, per the applicable HHS regulations and CDC’s Technical Instructions, that the applicant is in remission, the applicant is no longer inadmissible as a drug abuser or addict.

Footnote
There are specific statutory provisions that permit USCIS to waive this ground, such as those applying to asylees and refugees seeking adjustment, and Legalization and SAW applicants. These waivers are specific to those classes of immigrants and are outside the scope of this chapter, which focuses only on waivers available under INA 212(g). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on inadmissibility on account of drug abuse or drug addiction.

Part E - Criminal and Related Grounds of Inadmissibility

Part F - Fraud and Willful Misrepresentation

Chapter 1 - Purpose and Background

A. Purpose

An applicant who is inadmissible for fraud or willful misrepresentation may be eligible for a waiver.\[1\] A waiver of inadmissibility allows an applicant to enter the United States or obtain an immigration benefit despite having been found inadmissible.

The purpose of a waiver for inadmissibility due to fraud or willful misrepresentation\[2\] is to:

- Provide humanitarian relief and promote family unity;
- Ensure the applicant merits favorable discretion based on positive factors outweighing the applicant’s fraud or willful misrepresentation and any other negative factors; and
- Allow the applicant to overcome the inadmissibility or removability ground.

B. Background

Prior to September 30, 1996, a waiver was available to applicants who could show either:

- More than 10 years had passed since the date of the fraud or willful misrepresentation; or
- The applicant’s U.S. citizen or lawful permanent resident (LPR) parents, spouse, or children would suffer extreme hardship if the applicant was refused admission to the United States.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)\[3\] limited the availability of the waiver and eliminated the possibility of applying for a waiver if more than 10 years have passed.\[4\] A waiver is now available only to applicants who can demonstrate extreme hardship to:

- U.S. citizen parent or spouse;
- An LPR parent or spouse;
- A U.S. citizen fiancé(e);\[5\] or
- In the case of a Violence Against Women Act (VAWA) self-petitioner: the VAWA self-petitioner, or his or her U.S. citizen, LPR, or qualified alien parent or child.
IIRIRA made other changes that play a role in the waiver adjudication. IIRIRA modified the inadmissibility provision by creating two inadmissibility grounds within the same provision:

- Inadmissibility for fraud or willful misrepresentation;
- Inadmissibility for falsely claiming U.S. citizenship on or after September 30, 1996.

The waiver discussed in this Part G only applies to applicants who are inadmissible for fraud or willful misrepresentation.

Inadmissibility based on a false claim to U.S. citizenship made on or after September 30, 1996 cannot be waived through a waiver for fraud or willful misrepresentation. However, because IIRIRA’s changes were not retroactive, applicants who falsely claimed U.S. citizenship before September 30, 1996, are considered inadmissible for fraud or willful misrepresentation and may still seek the fraud or willful misrepresentation waiver.

C. Scope

The availability of a waiver of inadmissibility based on fraud or willful misrepresentation depends on the immigration benefit the applicant is seeking. The guidance in this Policy Manual part only addresses the processes used for the fraud or willful misrepresentation waiver available to applicants listed in the table below.

<table>
<thead>
<tr>
<th>Classes of Applicants Eligible to Apply for Waiver under INA 212(i)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicants seeking:</td>
</tr>
<tr>
<td>An immigrant visa or adjustment of status based on a family-based petition or as a VAWA self-petitioner</td>
</tr>
<tr>
<td>An immigrant visa or adjustment of status based on an employment-based petition</td>
</tr>
<tr>
<td>A nonimmigrant K visa (fiancé(e)s of U.S. citizens and their accompanying minor children, foreign spouses, and step-children of U.S. citizens)</td>
</tr>
<tr>
<td>A nonimmigrant V visa (spouses and unmarried children under age 21, or step-children of lawful permanent residents)</td>
</tr>
</tbody>
</table>

Applicants seeking other immigration benefits may have different means to waive inadmissibility for fraud or willful misrepresentation.

D. Legal Authorities
E. Applicants Who May Have a Waiver Available

The chart below details who may apply for a waiver of inadmissibility based on fraud or willful misrepresentation and the relevant form. This chart includes waivers under INA 212(i) as well as waivers of inadmissibility for fraud or willful misrepresentation under other provisions of the INA.

Available Waiver of Inadmissibility Based on Fraud or Willful Misrepresentation

<table>
<thead>
<tr>
<th>Applicant Category</th>
<th>Relevant Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicants for adjustment of status, immigrant visas, and K and V nonimmigrant visas seeking waiver under <strong>INA 212(i)</strong></td>
<td><strong>Form I-601</strong> Application for Waiver of Grounds of Inadmissibility</td>
</tr>
<tr>
<td>Temporary Protected Status (TPS) applicants seeking waiver under <strong>INA 244(c)</strong></td>
<td><strong>Form I-601</strong> Application for Waiver of Grounds of Inadmissibility</td>
</tr>
<tr>
<td>Applicants for admission as refugees under <strong>INA 207</strong></td>
<td><strong>Form I-602</strong> Application by Refugee for Waiver of Grounds of Inadmissibility</td>
</tr>
<tr>
<td>Refugees and asylees applying for adjustment of status under <strong>INA 209 [15]</strong></td>
<td><strong>Form I-602</strong> Application by Refugee for Waiver of Grounds of Inadmissibility</td>
</tr>
<tr>
<td>Legalization applicants under <strong>INA 245A</strong></td>
<td><strong>Form I-690</strong> Application for Waiver of Grounds of Inadmissibility</td>
</tr>
<tr>
<td>Special Agricultural Workers (SAW) under <strong>INA 210</strong></td>
<td><strong>Form I-690</strong> Application for Waiver of Grounds of Inadmissibility</td>
</tr>
<tr>
<td>Nonimmigrants, including T and U [16] visa applicants (but not K and V nonimmigrants)</td>
<td><strong>Form I-192</strong> Application for Advance Permission to Enter as Nonimmigrant</td>
</tr>
</tbody>
</table>

1. Immigrants, Adjustment of Status Applicants, and K and V Visa Applicants
USCIS has the discretion to waive inadmissibility based on fraud or willful misrepresentation for:

- A VAWA self-petitioner seeking adjustment of status;
- An immigrant visa applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;
- An adjustment of status applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;
- A V visa applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;
- A K visa applicant who is the fiancé(e) of a U.S. citizen, or the applicant’s children; and
- A K-3 or K-4 visa applicant.

The instructions to Form I-601 and the USCIS website detail when and where the applicant should file the waiver.

2. Refugees

An applicant seeking admission as a refugee and who is inadmissible for fraud or willful misrepresentation may seek a waiver. The waiver may be approved if the grant serves humanitarian purposes, family unity, or other public interests. The waiver is processed overseas as part of the refugee package.

3. Asylee and Refugee Based Adjustment Applicants

At the time of adjustment, asylees and refugees seeking adjustment of status may apply for a waiver of inadmissibility for fraud or willful misrepresentation. The waiver can be approved if the grant serves humanitarian purposes, family unity, or other public interests. Under current USCIS policy, the officer has the discretion to grant the waiver with or without a waiver application for certain grounds of inadmissibility.

Waiver applications for refugees are usually adjudicated overseas before the applicant is admitted in the refugee classification. However, if the refugee is inadmissible based on actions that occurred prior to or after admission, the refugee can apply for a waiver when seeking adjustment.

4. Legalization and SAW Applicants

Legalization applicants and Special Agricultural Workers (SAW) applicants may be granted a waiver of inadmissibility based on fraud or willful misrepresentation if the grant serves humanitarian purposes, family unity, or other public interests.

5. Nonimmigrants, including T and U Nonimmigrant Visa Applicants

An applicant seeking admission as a nonimmigrant and who is inadmissible for fraud or willful misrepresentation may obtain a waiver for advance permission to enter the United States. This waiver is granted at the discretion of the Secretary of Homeland Security.

If the applicant is seeking a nonimmigrant visa (other than K, T, U, and V) overseas, the applicant must apply for the waiver through a U.S. Consulate. The Customs and Border Protection (CBP) Admissibility Review Office (ARO) adjudicates the waiver. If the applicant is not required to have a visa (other than visa waiver applicants) and is applying for the waiver at the U.S. border, the application is filed with CBP.
If the applicant is applying for a T or U nonimmigrant visa, the applicant must always file the waiver application with USCIS.

If the applicant is applying for a K or V nonimmigrant visa, the applicant is generally treated as if he or she is an intending immigrant. Therefore, the applicant must file a waiver application with USCIS if inadmissible for fraud or willful misrepresentation. If USCIS grants the waiver, DOS will grant a nonimmigrant waiver without CBP involvement.

### Footnotes


[^5] A fiancé(e) is not yet the spouse of a U.S. citizen. However, K inadmissibility issues are generally addressed as if the fiancé(e) were seeking admission as an immigrant. See 22 CFR 41.81(d). See Matter of Sesay, 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an INA 212(i) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)’s actually marrying the citizen petitioner. See 8 CFR 212.7(a)(4)(iii).


[^12] See INA 212(i). Some separate adjustment mechanisms, such as INA 209 (for refugees and asylees) may have more broadly available waivers that could apply to an applicant who is inadmissible under INA 212(a)(6)(C)(ii). For example, INA 209(c) allows the waiver of many grounds of inadmissibility, and does not list INA 212(a)(6)(C)(ii) as a ground that cannot be waived.

[^13] This guidance only addresses the waiver under INA 212(i). The fraud or willful misrepresentation waiver discussed in this guidance is also available to applicants who obtained, or attempted to obtain, a benefit based on falsely claiming U.S. citizenship before September 30, 1996.

[^14] This includes false claims to U.S. citizenship made before September 30, 1996.
If the officer has sufficient information in the file to determine whether the ground can be waived, then no form is required.

T nonimmigrant status is for victims of human trafficking. U nonimmigrant status is for victims of certain criminal activity.

Under INA 212(i).

A fiancé(e) is not yet the spouse of the U.S. citizen. K inadmissibility issues, however, are generally addressed as if the fiancé(e) were seeking admission as an immigrant. See 22 CFR 41.81(d). See Matter of Sesay, 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an INA 212(i) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)’s actually marrying the citizen petitioner.

Foreign spouses or step-children of U.S. citizens.

For information on the adjudication of these waivers, see Chapter 2, Adjudication of Fraud and Willful Misrepresentation Waivers [9 USCIS-PM F.2].

These applicants seek a waiver under INA 207.

These applicants seek a waiver under INA 209.

See INA 245A and any legalization-related class settlement agreements.

See INA 210.

For more information on waivers for legalization applicants, see INA 245A(d)(2)(B)(i). See 8 CFR 245a.2(k), and 8 CFR 245a.18. For more information on waivers for SAW applicants, see INA 210(c)(2)(B)(i).

These applicants seek relief under INA 212(d)(3).


See Customs and Border Protection website for more information.

See INA 212(i).

See INA 212(d)(3).

Chapter 2 - Adjudication of Fraud and Willful Misrepresentation Waivers

A. Eligibility

An applicant inadmissible for fraud or willful misrepresentation may be eligible for a waiver. Before adjudicating the waiver, the officer should determine if the applicant is inadmissible for fraud or willful misrepresentation. [11]

If inadmissible, the applicant must meet the following requirements before a waiver can be granted:
- The applicant must show that denial of admission to or removal from the United States would result in extreme hardship to his or her qualifying relative (or if the applicant is a VAWA self-petitioner, to himself or herself); and

- The applicant must show that a favorable exercise of discretion is warranted. [2]

<table>
<thead>
<tr>
<th>General Guidelines for Adjudication of Fraud and Willful Misrepresentation Waivers</th>
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<tbody>
<tr>
<td><strong>Step 1</strong></td>
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<tr>
<td><strong>Step 2</strong></td>
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<tr>
<td><strong>Step 3</strong></td>
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</tbody>
</table>

### B. Waiver Adjudication

#### 1. Determine Whether the Applicant Has a Qualifying Relative

For cases other than VAWA self-petitioners, the applicant must have a qualifying relative who is either the applicant’s:

- U.S. citizen parent or spouse;

- Lawful permanent resident (LPR) parent or spouse; or

- U.S. citizen fiancé(e) petitioner (for K-1 or K-2 visa applicants only).

U.S. citizen or LPR children are not qualifying relatives.

A VAWA self-petitioner does not need a qualifying relative, since the VAWA self-petitioner may claim extreme hardship to himself or herself. The VAWA self-petitioner may also claim extreme hardship to a U.S. citizen, LPR, or qualified alien parent or child. [3]

The evidence needed to establish that an applicant has a qualifying relative is generally the same as the evidence required to establish the underlying relationship for a relative or fiancé(e) visa petition.

#### 2. Make an Extreme Hardship Determination

An applicant must demonstrate that his or her qualifying relative (or the applicant himself or herself, if a
VAWA self-petitioner) would suffer extreme hardship if the applicant were refused admission to or removed from the United States as a result of the denial of the waiver.

If the applicant fails to establish extreme hardship, then the officer must deny the waiver application because the applicant has not met the statutory requirements of the waiver. Before denying the waiver, the officer should follow standard operating procedures regarding issuance of a Request for Evidence or Notice of Intent to Deny.

In general, a finding that the applicant has not shown extreme hardship is sufficient to support a denial of the waiver application. If the applicant has not established extreme hardship, then it is unnecessary to determine whether the waiver would have been granted as a matter of discretion. There may be instances, however, where the applicant’s past actions were so egregious that the officer may want to note in the decision that even if extreme hardship were found, the application would be denied as a matter of discretion.

If the applicant has established extreme hardship, the officer should proceed with the discretionary determination.

3. Analyze Whether the Waiver Should Be Granted as a Matter of Discretion

A fraud or willful misrepresentation waiver generally requires an officer to consider whether granting the waiver is warranted as a matter of discretion. The officer should determine whether the applicant’s positive factors outweigh the negative factors.

The finding of extreme hardship experienced by a qualifying relative (or the VAWA self-petitioner himself or herself) is the first positive factor for consideration. The underlying fraud or willful misrepresentation itself is the first negative factor to consider.[4] The nature, seriousness, and underlying circumstances of the fraud or willful misrepresentation may influence the weight given to this negative factor. Considerations include, but are not limited to:

- The facts and circumstances surrounding the fraud or willful misrepresentation;
- The reasons and motivations of the applicant when the fraud or willful misrepresentation was committed;
- Age or mental capacity of the applicant when the fraud was committed;
- Whether the applicant has engaged in a pattern of fraud or whether it was merely an isolated act of misrepresentation;[5] and
- The nature of the proceedings in which the applicant committed the fraud or willful misrepresentation.[6]

Footnotes

[^1] For more on inadmissibility for fraud and willful misrepresentation, see Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

[^2] Once found inadmissible, the underlying fraud or willful misrepresentation is not considered again until the officer determines whether the waiver is warranted as a matter of discretion. For more information, see Chapter 3, Effect of Granting a Waiver [9 USCIS-PM G.3].
Chapter 3 - Effect of Granting a Waiver

A. Validity of an Approved Waiver

If the waiver [1] is granted, then, except for K-1 and K-2 nonimmigrants and conditional permanent residents, [2] the grant permanently waives fraud or willful misrepresentation included in the application for purposes of any future immigration benefits application, whether immigrant or nonimmigrant. The waiver remains valid even if the person later abandons or otherwise loses lawful permanent resident (LPR) status. [3]

For conditional permanent residents, [4] the waiver only becomes valid indefinitely if and when the conditions are removed from his or her permanent resident status. Conversely, termination of the conditional permanent resident status also terminates the validity of the waiver. [5]

A waiver applies only to the specific grounds of inadmissibility and related crimes, events or incidents specified in the waiver application. [6] If, in the future, the applicant is found inadmissible for a separate incident of fraud or willful misrepresentation not already included in an approved waiver application, he or she will be required to file another waiver application. USCIS may reconsider an approval of a waiver at any time if it is determined that the decision has been made in error. [7]

B. Conditional Grant of a Waiver to K-1 or K-2 Nonimmigrant Visa Applicants

If the applicant seeks a waiver to obtain a fiancé(e) visa (K-1 or K-2), the waiver’s approval is conditioned upon the K-1 nonimmigrant marrying the U.S. citizen who filed the fiancé(e) petition. [8] The waiver becomes permanent once the K-1 marries the petitioner, as discussed in the section on validity of an approved waiver. [9]

If the K-1 nonimmigrant does not marry the petitioner, the K-1 and K-2 (if applicable) will remain inadmissible for purposes of any application for a benefit on any basis other than the proposed marriage between the K-1 and the K nonimmigrant visa petitioner. [10]

C. Inadmissibility Based on Documentary Requirements [11]

If an applicant procured an immigration benefit by fraud or willful misrepresentation, the applicant may also be inadmissible for lack of documentary requirements at the time of entry. When an applicant is granted a...
waiver for fraud or willful misrepresentation, inadmissibility based on lack of documentary requirements at the time of entry is also implicitly waived.

Example

An applicant misrepresents a material fact during the overseas nonimmigrant visa application process. The Department of State, however, grants the applicant a visa. Later, the applicant applies for adjustment of status. During the adjustment interview, an officer discovers the misrepresentation and finds applicant inadmissible for both willful misrepresentation \[^{12}\] and failure to comply with documentary requirements.\[^{13}\] The applicant then applies for a waiver of inadmissibility for willful misrepresentation.\[^{14}\] Approval of the waiver has the effect of waiving inadmissibility for willful misrepresentation and for the lack of a valid visa at the time of entry.

Footnotes

[^1] See INA 212(i).

[^2] For K-1 and K-2 nonimmigrants granted a waiver, see Section B, Conditional Grant of a Waiver to K-1 or K-2 Nonimmigrant Visa Applicants [9 USCIS-PM F.3(B)].


[^13] See INA 212(a)(7)(B)(i) (for example, for not possessing a valid nonimmigrant visa).


Part G - Unlawful Presence

Part H - Provisional Unlawful Presence

Part I - Immigrant Membership in Totalitarian Party
Part J - Alien Smuggling

Part K - Aliens Subject to Civil Penalty

Part L - Refugees and Asylees

Part M - Temporary Protected Status Applicants

Part N - Special Immigrant Juvenile Adjustment Applicants

Part O - Victims of Trafficking

Part P - Crime Victims

Part Q - Violence Against Women Act Applicants

Part R - Other Waivers and Provisions Overcoming Inadmissibility

Part S - Consent to Reapply

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 43 - Consent to Reapply After Deportation or Removal (External) (PDF, 254.19 KB)

Volume 10 - Employment Authorization


Chapter 1 - Purpose and Background

A. Purpose

Aliens in the United States must obtain employment authorization before they may lawfully work in the country. Working without authorization may lead to a number of negative consequences, such as DHS terminating the alien’s immigration status, being barred from adjusting status to lawful permanent residence, and DHS removing the alien from the United States.\(^{[1]}\)

Certain aliens automatically obtain employment authorization by virtue of their immigration status. Others
must affirmatively apply for employment authorization with USCIS. If USCIS approves an Application for Employment Authorization (Form I-765), USCIS also issues an employment authorization document (EAD) as evidence of an alien’s authorization to work in the United States.

B. Background

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA)\(^2\) in an effort to deter illegal immigration to the United States. One of Congress’ strategies was to discourage unauthorized employment, which Congress concluded was a significant magnet for illegal immigration. Because of IRCA, employers must now verify the identity and eligibility of employees to work in the United States. The U.S. government imposes penalties on employers that knowingly employ persons not authorized to work in this country or that fail to comply with verification requirements. The immigration laws provide the Secretary of Homeland Security with authority to authorize employment in the United States for eligible aliens and to place restrictions and conditions on both employment authorization and endorsements evidencing such authorization.

Regulations promulgated under IRCA introduced Employment Eligibility Verification (Form I-9) to ensure that all employees present documentary proof to prospective employers of their eligibility to accept employment in the United States.\(^3\) Federal law requires that every employer who recruits, refers for a fee, or hires a person for employment in the United States must complete Form I-9, which requires employers to verify the employee’s identity and employment authorization. To that end, some employers use E-Verify to conduct such verifications.\(^4\)

In implementing IRCA, legacy Immigration and Naturalization Service (INS) created the EAD to provide certain classes of aliens with evidence of their authorization to work in the United States.\(^5\) Regulations outline which classes of persons are automatically authorized to work in the United States by virtue of their immigration status and which classes must apply to request employment authorization.\(^6\)

C. Legal Authorities

- [INA 103](https://www.uscis.gov/book/export/html/68600) – Powers and duties of the Secretary
- [INA 274A](https://www.uscis.gov/book/export/html/68600) – Unlawful employment of aliens

Footnotes

[^1]: DHS may terminate an alien’s immigration status if it determines the alien worked without authorization in violation of the conditions of the immigration status. See [INA 237(a)(1)](https://www.uscis.gov/book/export/html/68600) (violation of status as deportability ground). For more information on unlawful employment as a bar to adjustment, see Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 6, Unauthorized Employment – INA 245(c)(2) and INA 245(c)(8) [7 USCIS-PM B.6]. See [INA 245(c)(2)](https://www.uscis.gov/book/export/html/68600) and [INA 245(c)(8)](https://www.uscis.gov/book/export/html/68600).


E-Verify is a web-based system through which employers electronically confirm the employment eligibility of their employees. Employers enter information from an employee’s Form I-9 and E-Verify compares the information to records available to DHS and the Social Security Administration. For more information, see the E-Verify website.

Some aliens authorized to work may be issued other documentation as evidence of employment authorization to present to employers in compliance with IRCA.

See 8 CFR 274a.12.

Chapter 2 - Eligibility Requirements

Whether or not an alien is authorized to work in the United States depends on his or her immigration status or circumstances. The regulations outline three classes of eligibility for employment authorization:

- Authorization to work for any employer based on immigration status or circumstances;
- Authorization to work for a specific employer based on immigration status or circumstances; and
- Authorization to work for any employer, as well as to engage in self-employment, upon approval, in the discretion of USCIS, of an Application for Employment Authorization (Form I-765).

A. Authorized to Work for Any Employer Based on Status or Circumstances

The following aliens are automatically authorized to work based on their status or circumstance:

- Lawful permanent residents (LPRs) (with or without conditions);
- Lawful temporary residents;
- Refugees;
- Asylees;
- Fiancé(e)s of U.S. citizens or children of such fiancé(e)s (K-1 or K-2 nonimmigrants);
- Parents or dependent children of aliens granted LPR status based on being an employee of a recognized international organization (or such an employee’s family member);
- Citizens of Micronesia, the Marshall Islands, or Palau;
- Spouses of U.S. citizens or children of such spouses (K-3 or K-4 nonimmigrants);
- Aliens granted withholding of deportation or removal;
- Aliens under Deferred Enforced Departure (DED);
• Aliens granted temporary protected status (TPS);[16]

• Aliens granted voluntary departure under the Family Unity Program or granted Family Unity benefits;[17]

• V nonimmigrants;[18]

• Victims of severe forms of trafficking in persons (T-1 nonimmigrants);[19]

• Victims of qualifying criminal activity (U-1 nonimmigrants) and certain qualifying family members (U-2, U-3, U-4, and U-5 nonimmigrants);[21] and

• Aliens granted Commonwealth of the Northern Mariana Islands (CNMI) resident status (employment authorization is limited to the CNMI).[22]

An alien in one of these statuses or circumstances is authorized to work in the United States without restriction.

Although employment authorization is automatic, generally aliens in these categories still need to submit Form I-765 to USCIS with the appropriate fee, and in accordance with the form instructions, to receive an Employment Authorization Document (EAD) as evidence of such authorization if they intend to work in the United States.[25]

B. Authorized to Work for Specific Employer Based on Status or Circumstances

The following nonimmigrants and parolees are automatically authorized to work for a specific employer based on their particular nonimmigrant status or parole:[26]

• Foreign government officials (A-1 or A-2 nonimmigrants), or employees of such official (A-3 nonimmigrants);[27]

• Foreign government officials in transit (C-2 or C-3 nonimmigrants);[28]

• Treaty traders (E-1 nonimmigrants) or treaty investors (E-2 nonimmigrants);[29]

• Students (F-1 nonimmigrants) who are seeking:

  ○ On-campus employment;

  ○ Curricular practical training;

  ○ An EAD based on a STEM Optional Practical Training (OPT) extension, and whose timely filed Form I-765 or successor form is pending and whose employment authorization and accompanying Form I-766 or successor form was issued based on post-completion OPT;[31] or

  ○ H-1B nonimmigrant status and whose duration of status and employment authorization have been extended as provided in regulations;[32]
• Representatives of an international organization (G-1, G-2, G-3, or G-4 nonimmigrants) and their personal employees (G-5 nonimmigrants);[33]

• Temporary workers or trainees (H-1, H-2, or H-3 nonimmigrants);[35]

• Representatives of foreign information media (I nonimmigrants);[36]

• Exchange visitors (J-1 nonimmigrants);[37]

• Intra-company transferees (L-1 nonimmigrants);[38]

• Aliens of extraordinary ability in sciences, arts, education, business, or athletics (O-1 nonimmigrants), and an accompanying alien (O-2 nonimmigrants);[39]

• Athletes, artists, or entertainers (P-1, P-2, or P-3 nonimmigrants) and essential support personnel;[40]

• International cultural exchange visitors (Q-1 nonimmigrants);[41]

• Religious workers (R-1 nonimmigrants);[42]

• North Atlantic Treaty Organization (NATO) civilian employees and their personal employees;[43]

• United States-Mexico-Canada Agreement (USMCA) professionals (TN nonimmigrants);[45]

• Temporary workers who filed a Petition for a Nonimmigrant Worker (Form I-129);[47]

• CNMI investors (E-2 nonimmigrants);[48]

• CNMI transitional workers (CW-1 nonimmigrants);[49]

• Nonimmigrant treaty aliens in a specialty occupation (E-3 nonimmigrants);[50] and

• Aliens paroled as an entrepreneur for the period of authorized parole.[51]

Nonimmigrants authorized to work for a specific employer based on status or circumstances are not required to file a Form I-765 to obtain authorization to work in the United States; they receive employment authorization automatically once they are admitted into the United States in, or change to, the qualifying nonimmigrant status. These nonimmigrants are, however, subject to certain restrictions as a condition of their status. Generally, they are only allowed to work for the employer named in their respective nonimmigrant petition and only allowed to perform the type of work specified in their petition.[52] Certain classes of these nonimmigrants may continue their employment with the same employer for up to 240 days after the expiration of a prior authorized period of stay, provided they are the beneficiary of a timely filed petition or application for an extension of stay using the Petition for a Nonimmigrant Worker (Form I-129) or Application to Extend/Change Nonimmigrant Status (Form I-539).[53]

C. Aliens Required to Apply for Employment Authorization

The following aliens are not automatically authorized to work based on their immigration status or circumstance and must apply for employment authorization with USCIS:[54]
• Alien spouses or unmarried dependent children or sons or daughters of a foreign government official (A-1 or A-2 nonimmigrants) who present an endorsement from the U.S. Department of State;

• Alien spouses or unmarried dependent sons or daughters of alien employees of the Coordination Council for North American Affairs, also known as Taipei Economic and Cultural Representative Office (TECRO) (E-1 nonimmigrants);

• Aliens in nonimmigrant student (F-1 nonimmigrant) status who:
  ○ Are seeking pre-completion optional practical training, authorization to engage in up to 12 months of post-completion Optional Practical Training (OPT), or a 24-month STEM OPT extension;
  ○ Have been offered employment under the sponsorship of an international organization; or
  ○ Are seeking employment because of severe economic hardship;

• Alien spouses or unmarried dependent children or sons or daughters of representatives of international organization (G-1, G-3, or G-4 nonimmigrants);

• Alien spouses or minor children of an exchange visitor (J-2 nonimmigrants);

• Students (M-1 nonimmigrants) seeking employment for practical training;

• Dependents of NATO-1 through NATO-6 nonimmigrants;

• Applicants for asylum;

• Applicants for adjustment of status under INA 245;

• Applicants for cancellation of removal;

• Parolees;

• Alien spouses of an E-2 CNMI investor;

• Aliens granted deferred action;

• Registry applicants based on continuous residence since January 1, 1972;

• Certain visitors for business (B-1 nonimmigrants) who are the personal or domestic servants of a:
  ○ Nonimmigrant employer or
  ○ U.S. citizen;

• Certain visitors for business (B-1 nonimmigrants) employed by a foreign airline;

• Applicants under a final order of deportation or removal, including deferral of removal under the Convention against Torture (CAT);
• Aliens with pending applications for TPS;[74]
• Applicants for adjustment as a special agricultural worker;[75]
• Witnesses or informants and their qualified family members (S nonimmigrants);[76]
• Applicants for legalization under INA 245A;[77]
• Applicants for adjustment under the Legal Immigration Family Equity (LIFE) Act;[78]
• Derivative family members of victims of a severe form of trafficking in persons (T-2, T-3, T-4, T-5, and T-6 nonimmigrants);[79]
• Spouses of certain H-1B nonimmigrants;[80]
• Violence Against Women Act (VAWA) self-petitioners and derivative beneficiaries;[81]
• Spouses of entrepreneur parolees;[82] and
• Principal beneficiaries of an approved Immigrant Petition for Alien Workers (Form I-140) facing compelling circumstances[83] and their spouse or children.[84]

Aliens are not automatically authorized to work and must have an EAD from USCIS as evidence of their authorization to work in the United States. Upon approval of Form I-765, the alien’s type and location of employment is unrestricted.

**Footnotes**

[^1] There are no age restrictions for requesting an Employment Authorization Document (EAD, Form I-766); the EAD functions as an identity document for some aliens.


See 8 CFR 274a.12(a)(8).

See 8 CFR 274a.12(a)(9).

See 8 CFR 274a.12(a)(10).

See 8 CFR 274a.12(a)(11). DED is in the President’s discretion to authorize as part of the President's constitutional power to conduct foreign relations. Although DED is not a specific immigration status, aliens covered by DED are not subject to removal from the United States, usually for a designated period of time.

See 8 CFR 274a.12(a)(12).

See 8 CFR 274a.12(a)(13)-(14).

See 8 CFR 274a.12(a)(15).

See 8 CFR 274a.12(a)(16).

See 8 CFR 274a.12(a)(19).

See 8 CFR 274a.12(a)(20).


See 8 CFR 274a.12(a). Employment authorization under this category may not necessarily be associated with an immigration status technically. For example, aliens who are paroled into the country or who have received voluntary departure or withholding of deportation do not technically have an immigration status.


See 8 CFR 274a.12(a). For example, LPRs, lawful temporary residents, asylees, spouses of U.S. citizens (K-3 nonimmigrants) or children of such aliens (K-4 nonimmigrants), trafficking victims (T-1 nonimmigrants), and crime victims (U-1 nonimmigrants) do not need to file Form I-765 to receive an EAD. However, in order to receive employment authorization incident to placement on the waiting list, crime victims (U-1 nonimmigrants) and their derivatives must file Form I-765.

See 8 CFR 274a.12(b).

See 8 CFR 274a.12(b)(1)-(2).

See 8 CFR 274a.12(b)(3).

See 8 CFR 274a.12(b)(5).


See 8 CFR 274a.12(b)(7).

See 8 CFR 274a.12(b)(8).
See 8 CFR 274a.12(b)(9).

See 8 CFR 274a.12(b)(10).

See 8 CFR 274a.12(b)(11).

See 8 CFR 274a.12(b)(12).

See 8 CFR 274a.12(b)(13).

See 8 CFR 274a.12(b)(14).

See 8 CFR 274a.12(b)(15).

See 8 CFR 274a.12(b)(16).

See 8 CFR 274a.12(b)(17).

See 8 CFR 274a.12(b)(18).

See 8 CFR 274a.12(b)(19).

See 8 CFR 274a.12(b)(20).

See 8 CFR 274a.12(b)(21).

See 8 CFR 274a.12(b)(22).

See 8 CFR 274a.12(b)(23).

See 8 CFR 274a.12(b)(25).

See 8 CFR 274a.12(b)(27).

See 8 CFR 274a.12(b)(28).

See 8 CFR 274a.12(b)(29).

See 8 CFR 274a.12(c).

See 8 CFR 214.2(h)(1)(ii)(C).

8 CFR 274a.12(c) may not be comprehensive. Other authorities may exist for some categories of aliens who USCIS may authorize to work in the United States following an application for and approval of employment authorization. For example, see INA 204(a)(1)(K) (Violence Against Women Act self-petitioners).

See 8 CFR 274a.12(c)(1).

See 8 CFR 274a.12(c)(2).

See 8 CFR 274a.12(c)(3).

See 8 CFR 274a.12(c)(4).

See 8 CFR 274a.12(c)(5).

See 8 CFR 274a.12(c)(6).
See 8 CFR 274a.12(c)(7).

See 8 CFR 274a.12(c)(8).

See 8 CFR 274a.12(c)(9).

See 8 CFR 274a.12(c)(10).

See 8 CFR 274a.12(c)(11).

See 8 CFR 274a.12(c)(12).

See 8 CFR 274a.12(c)(14).

See 8 CFR 274a.12(c)(16).

See 8 CFR 274a.12(c)(17).

See 8 CFR 274a.12(c)(17)(i).

See 8 CFR 274a.12(c)(17)(ii).

See 8 CFR 274a.12(c)(17)(iii).

See 8 CFR 274a.12(c)(18).

See 8 CFR 274a.12(c)(19).

See 8 CFR 274a.12(c)(20).

See 8 CFR 274a.12(c)(21).

See 8 CFR 274a.12(c)(22).


See 8 CFR 274a.12(c)(25).

See 8 CFR 274a.12(c)(26).


See 8 CFR 274a.12(c)(35).

See 8 CFR 274a.12(c)(36).
Chapter 5 - Discretion

Alert

On September 11, 2020, the U.S. District Court for the District of Maryland in Casa de Maryland et al v. Chad Wolf provided limited injunctive relief to members of two organizations, CASA de Maryland (CASA) and the Asylum Seeker Advocacy Project (ASAP), in the application of the Asylum Application, Interview, and Employment Authorization for Applicants Rule to Form I-589s and Form I-765s filed by asylum applicants who are also members of CASA or ASAP. Therefore, while the rule is preliminarily enjoined, we will continue to apply the prior regulatory language and exempt from discretion CASA and ASAP members who file a Form I-765 based on an asylum application.

A. Discretionary Authority and Applicability

While employment authorization for certain aliens is automatic or non-discretionary by virtue of their immigration status, other aliens must affirmatively apply for employment authorization and USCIS may grant employment authorization as a matter of discretion.[1]

The regulations outlined at 8 CFR 274a.12(c) specify categories of aliens who must apply for employment authorization and may be granted employment authorization as a matter of discretion; these aliens are referred to in this chapter as Category C applicants.[2]

For those Category C applicants seeking both employment authorization and an employment authorization document (EAD), the applicant must generally file an Application for Employment Authorization (Form I-765) with USCIS with the appropriate fee (unless waived), and in accordance with the form instructions.[3]

In addition to verifying the applicant’s identity and that the applicant meets all other eligibility criteria, USCIS must determine if a favorable exercise of discretion is warranted in granting employment authorization to a Category C applicant. USCIS determines whether to grant discretionary employment authorization on a case-by-case basis by taking into account all factors and considering the totality of the circumstances.

Exercise of Discretion[4]

The adjudication of Category C applications is generally subject to the discretion of USCIS.[5] In deciding whether to grant employment authorization, USCIS makes a case-by-case determination considering all relevant information. The ultimate decision to grant discretionary employment authorization for a Category C applicant depends on whether, based on the facts and circumstances of the case, USCIS finds that the positive factors outweigh any negative factors that may be present, and that a favorable exercise of discretion is warranted.[6] The denial of employment authorization is not subject to administrative appeal.[7]

Footnotes
For a few select categories of aliens, the Immigration and Nationality Act (INA) grants employment authorization outright or directs the Secretary to authorize employment authorization and provide an endorsement of that authorization. For other categories of aliens, the INA provides that the Secretary may grant employment authorization and provide an endorsement of that authorization.

DHS regulations at 8 CFR 274a.12 set forth the following categories:

- Aliens authorized to work in the United States incident to their immigration status (8 CFR 274a.12(a)),
- Aliens who are authorized to work in the United States but only for a specific employer (8 CFR 274a.12(b)), and
- Aliens who fall within a category that the Secretary has determined must apply for employment authorization and may receive employment authorization as a matter of discretion (8 CFR 274a.12(c)).

For most aliens in the first category seeking an Employment Authorization Document (EAD, Form I-766) and those in the last category seeking both employment authorization and an EAD, an application generally must be filed with USCIS with the appropriate fee (unless waived), and in accordance with the instructions to

AILA Doc. No. 19060633. (Posted 3/26/21)
the Application for Employment Authorization (Form I-765).[^3]

**Footnotes**

[^1] See, for example, INA 210(a)(4) (authorizing employment for special agricultural workers); INA 214(c)(2)(E) (requiring spouses of L nonimmigrants to be work authorized); INA 214(e)(6) (requiring spouses of E treaty traders and investors to be work authorized; INA 214(p)(6) (requiring U nonimmigrants to be work authorized); INA 274A(h)(3)(A) (lawful permanent residents).

[^2] For example, Congress has authorized the Secretary to grant employment authorization, as a matter of discretion, to aliens like spouses and children of A, G, E-3, and H nonimmigrants who have been battered or subjected to extreme cruelty (INA 106(a)), aliens with pending, bona fide petitions for U nonimmigrant status (INA 214(p)(6)), aliens seeking adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) (Title II of Pub. L. 105-100 (PDF) (October 4, 1996), and the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) (Division A, Title IX of Pub. L. 105-277 (PDF) (Oct. 21, 1998)). Most discretionary employment authorization is based on INA 274A(h)(3). For more information on exercising discretion generally, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].


**Chapter 2 - Parolees**

**A. Employment Authorization for Parolees**

USCIS is the DHS component that has authority to grant employment authorization and issue employment authorization documents (EADs) to aliens who are currently in the United States.

This chapter addresses discretionary employment authorization for aliens who have been paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act (INA), based on an urgent humanitarian reason or for a significant public benefit.

The purpose of this chapter is to tailor certain existing guidance for officers on how to exercise discretion in adjudications involving parole-based employment authorization. USCIS has determined that it is necessary to issue this guidance at this time because there is a national emergency at the U.S. southern border where aliens are entering the U.S. illegally.[^1] USCIS also has determined that officers may need more guidance on the use of discretion in employment authorization adjudications.

This policy guidance provides officers with helpful tools based on existing policies to aid in their discretionary adjudications and to help ensure that requests for employment authorization based on parole are properly adjudicated[^2]

**Parole**

The Secretary of Homeland Security has discretionary authority to parole into the United States temporarily “under conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any individual applying for admission to the United States,” regardless of whether the alien is inadmissible to, or removable from, the United States.[^3] Congress did not define the phrase...
“urgent humanitarian reasons or significant public benefit,” entrusting the interpretation and application of these standards to the Secretary.

Any alien may request parole but no alien has a right to be granted parole. Parole decisions are discretionary determinations that must be made on a case-by-case basis consistent with the INA. To exercise its parole authority, USCIS must determine that parole into the United States is justified by urgent humanitarian reasons or significant public benefit. Even when one of those standards is met, DHS may still deny parole as a matter of discretion.

When deciding whether to exercise its parole authority, USCIS must consider all relevant information, including any criminal history or other serious adverse factors that would weigh against a favorable exercise of discretion. The denial of a request for parole is not subject to judicial review. The Secretary also has the authority to impose any terms and conditions on the grant of parole, including requiring reasonable assurances that the parolee will appear at all the hearings and will depart from the United States when required to do so.

In general, if USCIS favorably exercises its discretion to authorize parole, either USCIS or the U.S. Department of State will issue a travel document to enable the applicant to travel to a U.S. port of entry and request parole from U.S. Customs and Border Protection (CBP). CBP officers make the ultimate determination, upon the alien’s arrival at a U.S. port of entry, whether to parole him or her into the United States and for what length of time. Once an alien is paroled into the United States, the parole allows him or her to stay temporarily in the United States. Parole is not an admission to the United States. Parole also does not provide the alien with any lawful status. When an alien is allowed to be paroled into the United States, he or she is still deemed to be an applicant for admission. Parole terminates automatically upon the expiration of the authorized parole period or upon the alien’s departure from the United States. Parole also may be terminated on written notice when DHS determines the purpose for which the parole was authorized has been accomplished or when a DHS official determines that neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States. When parole is terminated, the alien is “restored to the status that he or she had at the time of parole.”

**B. Eligibility for Employment Authorization**

Employment authorization for parolees is discretionary; therefore parolees must apply for and be granted employment authorization before they may work in the United States. An alien who is paroled into the United States is not employment-authorized incident to status.

**Exercise of Discretion**

USCIS, U.S. Immigration and Customs Enforcement (ICE), and CBP officers can decide, as a matter of discretion, whether to grant an alien parole for urgent humanitarian reasons or based on a significant public benefit. The fact that USCIS, ICE, or CBP grants parole does not mean an alien is automatically entitled to discretionary employment authorization. The grant of parole is a separate determination from the grant of employment authorization, even though both adjudications require an officer to exercise discretion.

USCIS determines whether to grant discretionary employment authorization on a case-by-case basis, taking into account all factors and considering the totality of the circumstances. In deciding if an alien should receive an EAD, USCIS officers should consider the underlying factors and circumstances which served as the bases for the alien’s initial parole (or re-parole). However, these factors are not dispositive in
determining if a favorable exercise of discretion is warranted for employment authorization purposes.

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent upon intangible or imagined circumstances. At the same time, there is no calculation that lends itself to a certain conclusion. An officer should determine whether to approve an application for employment authorization based on parole as a matter of discretion by:

- Considering any positive or negative factors relevant to the applicant’s case,
- Evaluating the case-specific considerations for each factor,
- Avoiding the use of numbers, points, or any other analytical tool that suggests quantifying the exercise of favorable or unfavorable discretion, and
- Assessing whether on balance a favorable exercise of discretion is warranted in light of the totality of the evidence including the positive and negative factors.

C. Adjudication of Parole-Based Employment Authorization Applications

In deciding whether a parolee should be granted employment authorization, USCIS makes a case-by-case determination considering all relevant information. The ultimate decision to grant discretionary work authorization for a parolee depends on whether, based on the facts and circumstances of each individual case, USCIS finds that the positive factors outweigh any negative factors that may be present, and that a favorable exercise of discretion is warranted. The denial of employment authorization is not subject to judicial review.

Discretionary Factors

Officers should consider and weigh positive and negative factors when conducting the discretionary analysis for employment authorization for parolees. A nonexclusive, nonbinding list of factors are reflected in the table below which officers may use at their discretion.

Employment Authorization for Parolees: Nonexclusive List of Factors Relevant to Discretionary Determination

<table>
<thead>
<tr>
<th>Favorable Factors</th>
<th>Unfavorable Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>The emergent nature of the event or circumstances that necessitated the alien’s parole that is dependent on work authorization</td>
<td>Any criminal history, especially serious crimes or felonies</td>
</tr>
<tr>
<td>The length of time authorized for parole (for example, over 1 year) and conditions placed on parole</td>
<td>The length of time authorized for parole (for example, less than 1 year)</td>
</tr>
<tr>
<td>If the alien is the primary caregiver or source of financial support for a spouse, parent, or child with significant and debilitating health conditions</td>
<td>If the alien violated the terms of his or her parole</td>
</tr>
<tr>
<td></td>
<td>The nature and severity of any prior violations of the immigration laws, including illegal entries and unauthorized employment</td>
</tr>
<tr>
<td>Favorable Factors</td>
<td>Unfavorable Factors</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>• Any prior time periods the alien has been lawfully in the United States</td>
<td>• The length of time the alien was or has been in the United States without lawful presence, with shorter periods of time being more unfavorable</td>
</tr>
<tr>
<td>• If the alien is assisting (or will assist) the federal government in a criminal investigation or prosecution of significant duration</td>
<td>• Grounds of inadmissibility or removal that may apply to the parolee that may be considered unfavorable factors</td>
</tr>
<tr>
<td>• If the alien is the spouse, parent, or child of a U.S. citizen; or the alien is a member of the U.S. Armed Forces or in the Selected Reserve of the Ready Reserve and is currently serving on active duty, or, if discharged, served honorably</td>
<td>• Fraud or material misrepresentations to obtain an immigration benefit</td>
</tr>
</tbody>
</table>

The officer should examine the totality of the evidence, weighing the positive and negative factors in each case, and determine whether a favorable exercise of discretion is warranted to grant work authorization. Examples of serious negative factors based on the table above include, but are not limited to an alien who has:

- A final order of removal or who is subject to reinstatement of such an order;
- Been convicted of an aggravated felony;[14]
- Been convicted of any felony;[15]
- Been charged with or convicted for any offense involving domestic violence or assault;
- Been charged with or convicted for any criminal offense involving child abuse, neglect, or sexual assault;
- Been charged with, arrested, and or convicted for any criminal offense involving illegal drugs or controlled substances;
- Been charged with or convicted of driving under the influence or driving while intoxicated; or
- Lied or made a material misrepresentation to any immigration or consular officer or employee while such officer or employee is performing his or her official duties under the law.
Officers may consider serious negative factors as strong unfavorable factors that weigh heavily against granting employment authorization as a matter of discretion. However, the negative factors noted above should not be interpreted as an instruction to automatically deny any application for discretionary employment authorization. The ultimate decision to grant or deny an application for employment authorization for a parolee rests on whether, based on the totality of the facts of the individual case, the officer finds that the positive factors outweigh any negative factors that may be present.

Discretionary decisions that involve complex or unusual facts and whether the outcome is favorable or unfavorable to the applicant, may warrant supervisory review. Further, officers may consult with the Office of Chief Counsel through appropriate supervisory channels.

D. Validity Period

USCIS has discretion to establish a specific validity period for discretionary employment authorization. For purposes of discretionary employment authorization for parolees, officers should only grant employment authorization for the period that is the length of the parole authorization, which usually is not more than a year. Aliens who are re-paroled may file a new employment authorization application under the procedures set forth in the instructions to the Application for Employment Authorization (Form I-765).

Footnotes


[^2] For more information on exercising discretion generally, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].


[^6] See INA 101(a)(13)(B) and INA 212(d)(5)(A). See 8 CFR 1.2 (“An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.”).


[^11] One exception is international entrepreneur parolees pursuant to 8 CFR 274a.12(b)(37) who are employment authorized incident to their parole by a specific employer. This PM chapter does not address this category.
CBP, ICE, and USCIS all have authority to grant parole. See DHS Delegation Nos. 7010.3, 7030.2, 0150.1, and the September 2008 Memorandum of Agreement, *Coordinating the Concurrent Exercise of USCIS, U.S. Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) of the Secretary’s Parole Authority under INA 212(d)(5)(A) With Respect to Certain Aliens Located Outside the United States*.

Aliens are granted a fixed parole period that cannot be extended. If the alien’s circumstances still meet the requirements for parole at the end of that period, the alien may be authorized a new parole period by the appropriate DHS component. This action is called “re-parole.”

See *INA 101(a)(43).*

As defined in *18 U.S.C. 3156(a)(3).*

Chapter 3 - Aliens Granted Deferred Action

**A. Employment Authorization for Aliens Granted Deferred Action**

Aliens who have been granted deferred action may apply for employment authorization in the United States without restrictions as to the location or type of employment. Such aliens must affirmatively apply for employment authorization by properly filing an Application for Employment Authorization (*Form I-765*), and USCIS may grant employment authorization as a matter of discretion.

**B. Eligibility for Employment Authorization**

In general, employment authorization for aliens granted deferred action is only provided at USCIS’ discretion. Such aliens must apply for (and be granted) employment authorization before they may work in the United States. Upon approval of the employment authorization application, and while the Employment Authorization Document (EAD) is valid, the alien’s type and location of employment is unrestricted.

The approval or denial of an EAD affects whether the alien is authorized to work in the United States.

**Exercise of Discretion**

This chapter complements general guidance on discretionary adjudications by providing additional information on how officers should exercise discretion in cases involving applications for employment authorization filed by aliens who have been granted deferred action.

In addition to verifying the applicant’s identity and that he or she is in a period of deferred action, USCIS determines in its discretion whether to grant employment authorization on a case-by-case basis, taking into account all factors and considering the totality of the circumstances.

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent upon intangible or imagined circumstances. At the same time, there is no calculation that lends itself to a certain conclusion. A discretionary determination on employment authorization for an alien in a period of deferred action cannot be appealed.

**Certain Aliens Exempt from Discretionary Analysis**
While officers are generally expected to exercise discretion in the adjudication of Form I-765 associated with deferred action, some classifications are exempt from such a discretionary analysis.

By statute, DHS must provide deferred action and employment authorization to nonimmigrant domestic workers (A-3 and G-5) during any period the nonimmigrants file civil actions against their trafficker-employers regarding the terms and conditions of employment.[9] In these cases, deferred action and employment authorization is intended to permit the nonimmigrant to remain legally in the United States for the amount of time sufficient to fully and effectively participate in all legal proceedings related to such civil actions.[10]

In addition, USCIS considers the following populations exempt from a discretionary analysis when adjudicating applications for employment authorization:

- Victims of trafficking granted Continued Presence (PDF)[11] by U.S. Immigration and Customs Enforcement (ICE) where ICE requests employment authorization on behalf of the victim based on parole or deferred action;
- Victims of trafficking with pending applications for T nonimmigrant status and their derivative family members, provided USCIS determines the application to be bona fide and provides written notice to the applicant;
- Violence Against Women Act (VAWA) self-petitioners and their derivative beneficiaries granted deferred action.[12]
- Petitioners for U nonimmigrant status (principal victims and their qualifying derivatives) placed on the U visa waiting list and granted deferred action; and
- Aliens (and qualified family members) who assisted or are assisting a law enforcement agency as a witness or informant and have a pending request for S nonimmigrant status (Inter-Agency Alien Witness and Informant Record (Form I-854)).

C. Adjudication

In deciding whether an alien granted deferred action should be granted employment authorization, USCIS makes a case-by-case determination considering all relevant information. The ultimate decision to grant employment authorization for an alien who has been granted deferred action depends on whether, based on the facts and circumstances of each individual case, USCIS finds that the positive factors outweigh any negative factors that may be present, and that a favorable exercise of discretion is warranted.

Discretionary Factors

Officers should consider and weigh positive and negative factors relevant to the individual case when conducting the discretionary analysis for employment authorization for aliens granted deferred action. The table below provides a nonexclusive, nonbinding list of factors officers may consider.

<table>
<thead>
<tr>
<th>Favorable Factors</th>
<th>Unfavorable Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>The alien has demonstrated economic need</td>
<td>The alien has any criminal history, with any of the following constituting a serious</td>
</tr>
<tr>
<td></td>
<td>negative factor:[13]</td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
<table>
<thead>
<tr>
<th>Favorable Factors</th>
<th>Unfavorable Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The alien is the primary source of financial support for their U.S. citizen or lawful permanent resident (LPR) spouse, parent, or child</td>
<td>○ The alien has been convicted of an aggravated felony[^14]</td>
</tr>
<tr>
<td>• The alien or their immediate relative has a medical condition that would cause significant financial hardship should the alien not be granted employment authorization</td>
<td>○ The alien has been convicted of any felony[^15]</td>
</tr>
<tr>
<td>• The alien has an absence of any significant criminal history</td>
<td>○ The alien has been charged with or convicted of any offense involving domestic violence or assault</td>
</tr>
<tr>
<td>• The alien has a demonstrated need to stay in the United States for a significant period of time in order to assist with a law enforcement investigation or prosecution</td>
<td>○ The alien has been charged with or convicted of any criminal offense involving child abuse, neglect, or sexual assault</td>
</tr>
<tr>
<td>• If the alien is the spouse, parent, or child of a U.S. citizen; or the alien is a member of the U.S. armed forces or in the Selected Reserve of the Ready Reserve and is currently serving on active duty, or, if discharged, served honorably</td>
<td>○ The alien has been charged with, arrested, or convicted of any criminal offense involving illegal drugs or controlled substances</td>
</tr>
<tr>
<td></td>
<td>○ The alien has been charged with or convicted of driving under the influence or driving while intoxicated</td>
</tr>
<tr>
<td></td>
<td>• The nature, frequency, and severity of any prior violations of the immigration laws, including illegal entries and unauthorized employment</td>
</tr>
<tr>
<td></td>
<td>• The length of time the alien was or has been in the United States without lawful presence</td>
</tr>
<tr>
<td></td>
<td>• The alien has knowingly aided or abetted any person in violating U.S. immigration law</td>
</tr>
<tr>
<td></td>
<td>• The alien has committed fraud in order to obtain an immigration benefit</td>
</tr>
<tr>
<td></td>
<td>• The alien has lied or made a material misrepresentation to any immigration or consular officer or employee while such officer or employee is performing his or her official duties under the law</td>
</tr>
<tr>
<td></td>
<td>• The alien is a national security or public safety risk as evidenced by arrests and criminal convictions</td>
</tr>
</tbody>
</table>
The officer should examine the totality of the evidence, weighing the positive and negative factors in each case, and determine whether a favorable exercise of discretion is warranted to grant work authorization.

**Supervisory Review**

Supervisory review may be warranted when discretionary decisions involve complex or unusual facts and an officer needs assistance with the discretionary analysis. Officers may also consult with USCIS counsel through appropriate supervisory channels. There is no appeal from denial of an EAD application.\(^{[16]}\) However, an applicant may submit a motion to reopen or reconsider.\(^{[17]}\)

**D. Validity Period**

USCIS has discretion to establish a specific validity period for employment authorization, though not to exceed certain amounts of time in some circumstances.\(^{[18]}\) USCIS generally approves the employment authorization based on an alien’s grant of deferred action\(^{[19]}\) with a validity period commensurate with the alien’s period of deferred action. Officers must not approve an EAD for a period longer than the period of the alien’s deferred action.

**Footnotes**

\(^{[1]}\) This chapter does not apply to applications for employment authorization that are properly filed under the Consideration of Deferred Action for Childhood Arrivals eligibility category (that is, (c)(33)).

\(^{[2]}\) See 8 CFR 274a.12(c)(14).

\(^{[3]}\) See INA 274A(h)(3). See 8 CFR 274a.13(a)(1).


\(^{[5]}\) Certain EAD categories are automatically extended for up to 180 days. For more information, see the [Automatic Employment Authorization Document (EAD) Extension](https://www.uscis.gov/book/export/html/68600) webpage. See Section D, Validity Period [10 USCIS-PM B.3(D)].

\(^{[6]}\) For general discretion guidance, see Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion [10 USCIS-PM A.5] and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

\(^{[7]}\) For general discretion guidance, see Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion [10 USCIS-PM A.5] and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

\(^{[8]}\) See 8 CFR 274a.13(c).

\(^{[9]}\) See 8 U.S.C. 1375(c)(1)(A), (c)(2).

\(^{[10]}\) See 8 U.S.C. 1375(c)(1)(A), (c)(2).

\(^{[11]}\) Continued Presence is a temporary immigration status provided to those identified by law enforcement as victims of human trafficking.
Chapter 4 - Adjustment Applicants Under INA 245

A. Employment Authorization for Adjustment of Status Applicants

Aliens seeking adjustment of status under INA 245 may apply for employment authorization in the United States without restrictions as to the location or type of employment. Such aliens must affirmatively apply for employment authorization by properly filing an Application for Employment Authorization (Form I-765), and USCIS may grant employment authorization as a matter of discretion.

B. Eligibility for Employment Authorization

Employment authorization for INA 245 adjustment applicants is only provided at USCIS’ discretion. Such applicants, unless authorized to work on a separate basis, must apply for (and be granted) employment authorization before they may work in the United States. Upon approval of the employment authorization application, and while the Employment Authorization Document (EAD) is valid, the applicant’s type and location of employment is unrestricted.

The approval or denial of an EAD affects whether the applicant is authorized to work in the United States.

Exercise of Discretion

This chapter complements general guidance on discretionary adjudications by providing additional information on how officers should exercise discretion in cases involving EAD applications filed by aliens with pending INA 245 adjustment applications.

In addition to verifying the applicant’s identity and that he or she has a pending adjustment application under INA 245, USCIS determines whether to grant discretionary employment authorization on a case-by-case basis.
basis, taking into account all factors and considering the totality of the circumstances.

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent upon intangible or imagined circumstances. At the same time, there is no calculation that lends itself to a certain conclusion. There is no appeal from denial of an EAD application. However, an applicant may submit a motion to reopen or reconsider.

Certain Aliens Exempt from Discretionary Analysis

While officers are generally expected to exercise discretion in the adjudication of Form I-765 associated with applications for INA 245 adjustment of status, some classifications are exempt from such a discretionary analysis. Specifically, USCIS considers the following populations exempt from discretionary analysis:

- Applicants in valid T nonimmigrant status (including principals and their derivative family members) with pending adjustment applications;
- Violence Against Women Act (VAWA) self-petitioners and their derivative beneficiaries with pending adjustment applications;
- Applicants in valid U nonimmigrant status (including principals and their qualifying derivatives) with pending adjustment applications; and
- Aliens (and qualified family members) who assisted or are assisting a law enforcement agency as a witness or informant (S nonimmigrants).

C. Adjudication

In deciding whether an applicant for adjustment of status under INA 245 should be granted employment authorization, USCIS makes a case-by-case discretionary determination considering all relevant information. The ultimate decision to grant employment authorization for an INA 245 adjustment applicant under 8 CFR 274a.12(c)(9) depends on whether, based on the facts and circumstances of each individual case, USCIS finds that the positive factors outweigh any negative factors that may be present, and that a favorable exercise of discretion is warranted.

Officers should consider and weigh positive and negative factors relevant to the individual case when determining whether to favorably exercise discretion and grant employment authorization for INA 245 adjustment applicants under 8 CFR 274a.12(c)(9).

D. Validity Period

USCIS has discretion to establish a specific validity period for employment authorization, though not to exceed certain amounts of time in some circumstances. USCIS approves the employment authorization based on a pending INA 245 adjustment application with a validity period of up to 1 year. For EADs issued with a 1-year validity period, the “valid from” date is the date of approval of the Form I-765, and the “valid to” date is 12 months, less a day, after the “valid from” date.

Footnotes

[^1] See 8 CFR 274a.12(c)(9). Not all applicants apply for adjustment of status based on INA 245. Certain other federal laws (for example, the Liberian Refugee Immigrant Fairness (LRIF) law described in Section 7611(b) of the National Defense Authorization Act 2020, Pub. L. 116-92 (PDF), 113 Stat. 1198, 2309
(December 20, 2019), as amended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, Pub. L. 116-260 (PDF) (December 27, 2020)) provide other bases for aliens to adjust status to lawful permanent residence. For information on employment authorization for aliens applying to adjust based on a law other than INA 245, see the program-specific part of the Policy Manual.


[^4] Certain EAD categories are automatically extended for up to 180 days. For more information, see the Automatic Employment Authorization Document (EAD) Extension webpage. See Section D, Validity Period [10 USCIS-PM B.4(D)].


[^8] See Notice of Appeal or Motion (Form I-290B). See 8 CFR 103.5.

[^9] See INA 101(a)(51) and INA 204(a).

[^10] For a non-exhaustive list of factors, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis, Section C, Adjudicating Discretionary Benefits, Subsection 2, Identifying Discretionary Factors [1 USCIS-PM E.8(C)(2)].


Volume 11 - Travel and Identity Documents

Part A - Secure Identity Documents Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

USCIS issues a variety of documents that establish identity and immigration status in the United States. These include, but are not limited to, Employment Authorization Documents, travel documents, Permanent Resident Cards, and naturalization and citizenship certificates.

B. Background
In 1946, the U.S. government began issuing different types of registration documents based on an alien’s status in the United States. The Identification Card for the Use of Resident Citizen in the United States (Form I-179; later known as Form I-197) was introduced in 1960 to provide naturalized U.S. citizens living along the Mexican border with identification to facilitate border crossings between the United States and Mexico. Legacy Immigration and Naturalization Service (INS) guidance provided that the identification card could only be issued in certain districts of the Southwest United States. The card was issued until February 1973. [1]

Lawful permanent resident (LPR) cards were first issued as Form I-151. Between 1952 and 1977, legacy INS issued 17 different re-designs of the card. In 1977, the Permanent Resident Card (PRC) (Form I-551) replaced Form I-151 as evidence of LPR status. In 1989, legacy INS introduced a new version of the PRC with a 10-year validity period. [2]

USCIS currently issues a number of documents for travel and identity purposes. These secure identity documents often serve multiple purposes; they may also be used as proof of an alien’s immigration status, employment authorization, and as travel authorization. [3]

USCIS has also increased the security, integrity, and efficiency of secure identity document delivery, and maintains better tracking and accuracy of delivery. Various USCIS initiatives work to confirm that secure identity documents are delivered to the right address and person, an important step in the delivery of sensitive documents, which may be subject to abuse. [4]

C. Legal Authorities

- 8 CFR 103.2 - Submission and adjudication of benefit requests
- 8 CFR 103.8 - Service of decisions and other notices
- 8 CFR 103.16 - Collection, use and storage of biometric information

Footnotes

[^1] Although Forms I-179 and I-197 are no longer issued by USCIS, valid existing cards continue to be acceptable documentation of U.S. citizenship. See 8 CFR 235.10.

[^2] Except for conditional permanent residents, who are issued Forms I-551 with an expiration date of 2 years, after the date on which the alien became a conditional permanent resident.


[^4] USCIS previously was unable to confirm the status of the delivery of secure identity documents, the accuracy of the delivery address, or who signed for the document. This left USCIS vulnerable to persons seeking to obtain sensitive immigration documents by theft or other illicit means. Advances in USCIS’ delivery of sensitive documents have significantly reduced this risk.

Chapter 2 - USCIS-Issued Secure Identity Documents
A. Personal Information Used on Secure Identity Documents

USCIS issues a variety of secure identity documents that establish identity and immigration status in the United States. Personal information included on USCIS-issued secure identity documents includes, but is not limited to, a benefit requestor’s biometrics, full legal name, date and country of birth, gender, and A-number.

1. Biometrics

USCIS has general authority to require and collect biometrics from any applicant, petitioner, sponsor, derivative, dependent, beneficiary, or requestor filing for any immigration, citizenship, and naturalization benefit.[1]

If the benefit request filed requires biometrics, and the requestor is in the United States, USCIS schedules a biometric services appointment at a local Application Support Center (ASC).[2] If the benefit requestor is outside of the United States, biometrics are captured by a USCIS international office, a U.S. embassy or consulate, or a U.S. military facility. The biometrics collected from the benefit requestor allow USCIS to verify identity and conduct national security and criminal history background checks. USCIS also uses the benefit requestor’s biometric information for the initial issuance or replacement of a secure identity document.

2. Full Legal Name

All USCIS-issued secure identity documents contain the benefit requestor’s full legal name.[3] Documents USCIS issues do not include nicknames. They do not contain initials, unless an initial appears on the official birth certificate, or the requestor legally changed his or her name to include an initial.

A benefit requestor must provide his or her full legal name on all benefit requests. The requestor’s full legal name is comprised of his or her:

- Given name (first name);
- Middle name(s) (if any); and
- Family name (last name).[4]

The legal name is one of the following:

- The requestor’s name at birth as it appears on the birth certificate (or other qualifying identity documentation when a birth certificate is unavailable);[5] or
- The requestor’s name following a legal name change.

USCIS does not suspend the adjudication of a benefit request pending a court determination of a name change or other efforts by the requestor to establish a new legal name. USCIS creates secure identity documents using the legal name in place when the benefit request is decided.

Name Changes

If the requestor changes his or her name after USCIS issues the secure identity document, the requestor may file an application, with the appropriate fee, to request USCIS re-issue the secure identity document with the new name.[6] The requestor must provide sufficient evidence of the name change. USCIS does not have legal
authority to change a person’s name. The name change may or may not be recorded on the birth certificate, marriage certificate, or other vital document record.

3. Date of Birth

In general, the official date of birth is the date recorded on the requestor’s birth certificate. USCIS recognizes dates of birth based on the Gregorian calendar in the following order: month, day, and year. Some foreign countries issue documents with the date of birth in a different order. Most translations should have the date in the order of the month, day, and year. However, officers should verify the order of a translated date before issuing documents to avoid discrepancies.

If there is a discrepancy between a translated birth certificate and other government-issued documentation, the requestor must provide compelling evidence that the date of birth on the birth certificate is incorrect or miscalculated. For naturalization certificates, USCIS cannot change a recorded date of birth, except to correct a USCIS clerical error.

4. Gender

USCIS-issued documents that display gender or sex identifiers are limited to indicating only female or male. Requestors who have changed their gender should be issued immigration documents that reflect their new gender. Requestors who already possess immigration documents at the time they change gender may request new documents reflecting their post-transition gender by filing the appropriate form for replacement documents.

USCIS recognizes a requestor’s gender change when a court or government with jurisdiction recognizes the change, or when a licensed health care professional certifies that the requested gender designation is consistent with that person’s gender identity. USCIS issues initial or amended secure identity documents reflecting the changed gender designation if the requestor presents sufficient evidence in support of the change in gender designation along with meeting all other requirements to receive the secure identity document.

USCIS does not require proof of sex reassignment surgery, and officers should not request any records relating to such surgery. If the requestor changed his or her name along with gender, the requestor must submit evidence that they completed any name change procedure according to the relevant U.S. state or foreign law.

B. Delivery of Secure Identity Documents

USCIS mails secure identity documents through the U.S. Postal Service (USPS) to the address provided on a benefit request, unless the requestor requested that USCIS send any secure identity document to the U.S. business address of the attorney of record or accredited representative.

In general, USCIS only sends secure identity documents to U.S. addresses. The requestor may, however, request that any secure identity document be sent to a designated military or diplomatic address for pickup in a foreign country, if permitted. For example, certain travel documents (such as reentry permits and refugee travel documents) may be sent to a U.S. embassy or consulate or USCIS international office for the requestor to pick up, if this request is made when the requestor files the benefit application.

C. Tracking Delivery
Benefit requestors may track the delivery status of their secure identity document by signing up for a Case Status Online account to obtain a tracking number. With a tracking number, requestors may also register for Informed Delivery through USPS to get previews of mail in transit.[15]

D. Making Address Changes

Non-U.S. citizens must report any change of address within 10 days of moving within the United States or its territories.[16] If a mailing address changes after a benefit request is filed, the requestor should update it online with USCIS and USPS as soon as possible to ensure he or she receives any secure identity documents USCIS sends in the mail. If more than one application or petition is pending, the requestor should ensure that USCIS updates the address on all pending benefit requests.

Requestors should use the USPS Look Up a Zip Code tool to ensure they are providing a complete address using the standard abbreviations and formatting recognized by USPS.

Footnotes


[^2] For more information, see Preparing for Your Biometric Services Appointment.


[^4] A first name is sometimes referred to as a given name. A family name or surname may also include a maiden name. See 6 CFR 37.3 for the full legal name description in the Real ID Act, Pub. L. 109-13 (PDF) (May 11, 2005).

[^5] There may be instances in which a birth certificate is unobtainable because of country conditions or personal circumstances. In these instances, a requestor may submit secondary evidence or affidavits to establish his or her identity. Any affidavit should explain the reasons primary evidence is unavailable. For more information, see the Department of State Reciprocity Tables for identity documents that cannot be obtained in particular countries and during specific time periods. Asylum applicants may be able to establish their identity, including their full legal name, with testimony alone.


[^7] Most western countries follow the Gregorian calendar. Other countries follow different calendars including the Hebrew (lunisolar calendar); Islamic (lunar calendar); and Julian (solar calendar). The calendars differ on days, months, and years.

[^8] See 8 CFR 338.5. USCIS may, however, change the date of birth on a certificate of citizenship for a person who has a U.S. court order or similar state vital record changing the date of birth. See Volume 12, Citizenship & Naturalization, Part K, Certificates of Citizenship and Naturalization, Chapter 4, Replacements of Certificates of Citizenship and Naturalization [12 USCIS-PM K.4].


[^10] For more information on documentation a benefit requestor must show to establish a change in gender, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 5, Verification of
Identifying Information [1 USCIS-PM E.5].

[^11] There may be instances in which evidence of a name change is unobtainable because of country conditions or personal circumstances. In some situations, USCIS permits such requestors to submit secondary evidence or affidavits to establish their identity. Any affidavit should explain the reasons primary evidence is unavailable. For more information, see the Department of State Reciprocity Tables for identity documents that cannot be obtained in particular countries and during specific time periods. Asylum applicants may be able to establish with testimony alone that they completed any name change procedure according to relevant law.

[^12] See 8 CFR 103.2(b)(19)(iii). A benefit requestor may also request to change, through written notice to USCIS, that USCIS mail the secure identity document to him or her instead of the attorney of record or legal representative.

[^13] For more information regarding mailing secure identity documents overseas, see Travel Documents and Emergency Travel.

[^14] In general, if a requestor applies for advance parole while in the United States, and departs the United States before the advance parole document is issued, the requestor may be found inadmissible to the United States upon return, or even if admitted, may be found to have abandoned his or her application. There is no process for a requestor outside the United States traveling on a valid advance parole document to apply for a replacement of a lost or stolen advance parole document to enable him or her to return the United States. In these cases, the requestor should contact the closest USCIS international office or U.S. embassy or consulate.

[^15] For more information on how to track the delivery of secure identity documents, see How to Track Delivery of Your Green Card, Employment Authorization Document (EAD), and Travel Document.

[^16] See INA 265. See Change of Address Information.

Chapter 3 - Reissuance of Secure Identity Documents

A. General

Benefit requestors may file to renew their USCIS-issued secure identity documents that have expired or replace ones that have been lost, stolen, mutilated, or destroyed, or that contain an error.

The following table provides general information on how to request that USCIS reissue certain secure identity documents.

<table>
<thead>
<tr>
<th>Secure Identity Document</th>
<th>How to Request Replacement or Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent Resident Card (PRC)</td>
<td>• Complete and properly file an Application to Replace Permanent Resident Card (Form I-90) with USCIS, with appropriate fees (if required), in accordance with the Form I-90 instructions[^16]</td>
</tr>
</tbody>
</table>

AILA Doc. No. 19060633. (Posted 3/26/21)
<table>
<thead>
<tr>
<th>Secure Identity Document</th>
<th>How to Request Replacement or Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• An LPR who is temporarily outside the United States for less than 1 year and who is not in possession of a valid PRC (for example, it was lost, stolen, or destroyed) may properly file an Application for Travel Document (Carrier Documentation) (<a href="https://www.uscis.gov/book/export/html/68600">Form I-131A</a>) to request documentation to demonstrate to an airline or other transportation carrier that he or she is authorized to travel to the United States. [2]</td>
</tr>
</tbody>
</table>
• There is no process to seek a replacement EAD, including a combo card (employment and travel authorization documented on a single card), outside the United States. |
| Reentry permit | • If inside the United States, complete and properly file an Application for Travel Document ([Form I-131](https://www.uscis.gov/book/export/html/68600)) with USCIS, with appropriate fees.  
• An LPR who is temporarily outside the United States for less than 2 years and who is not in possession of a valid PRC (for example, it was lost, stolen, or destroyed) may properly file an Application for Travel Document (Carrier Documentation) ([Form I-131A](https://www.uscis.gov/book/export/html/68600)) to request documentation to demonstrate to an airline or other transportation carrier that he or she is authorized to travel to the United States. [4] |
| Advance parole document | • If inside the United States, complete and properly file an Application for Travel Document ([Form I-131](https://www.uscis.gov/book/export/html/68600)) with USCIS, with appropriate fees. [5]  
• There is no process to seek a replacement advance parole document, including a combo card (employment and travel authorization documented on a single card), outside the United States. In cases where an advance parole document was lost, stolen, or destroyed while overseas, requestors should contact the closest [USCIS international office](https://www.uscis.gov/book/export/html/68600) or U.S. embassy or consulate. |
| Refugee travel document | • Whether inside or outside the United States, complete and properly file an Application for Travel Document ([Form I-131](https://www.uscis.gov/book/export/html/68600)) with USCIS, with appropriate fees. |
Secure Identity Document | How to Request Replacement or Renewal
--- | ---
Certificate of Citizenship or Certificate of Naturalization | • Whether inside or outside the United States, complete and properly file an Application for Replacement Naturalization/Citizenship Document (Form N-565).[^6]

**B. Reissuing Non-Deliverable Secure Identity Documents**

USCIS receives a number of secure identity documents returned by the U.S. Postal Service (USPS) after attempting delivery. Reasons for return range from USPS error (such as misdirected mail or correct address not recognized) to requestor error (such as an untimely address change). Benefit requestors who believe their secure identity documents have been returned to USCIS as non-deliverable may contact the USCIS Contact Center. In some instances, USCIS may be able to attempt a second delivery to the original address.

1. **Background**

Historically, the management of secure identity documents, including storage, remailing, and destruction, occurred at multiple sites across USCIS with each location having a separate staff performing Post Office Non-Deliverables (PONDS) functions in accordance with local policies. In 2016, USCIS undertook an initiative to reduce the handling of secure identity documents, more clearly define the scope of PONDS duties, and create a more consistent and manageable process. The Office of Intake and Document Production (OIDP) established a centralized PONDS Unit at the Lee’s Summit Production Facility in June 2017, which now oversees all PONDS operations.

Between June 2017 and October 2017, PONDS data showed 95 percent of secure identity documents were successfully re-mailed to requestors within 60 business days of being returned to USCIS. For documents that were unsuccessfully re-mailed, USCIS had previously kept documents for 365 calendar days. In 2018, USCIS began retaining non-deliverable secure identity documents returned to USCIS for 60 business days, or 12 weeks, before destroying them.[^7]

Before secure identity documents are destroyed, PONDS Unit staff must search all relevant data systems to see if a new address exists. If a new address exists, USCIS re-mails the card to the new address. If no new address exists, USCIS destroys the card and updates its status in applicable systems as destroyed, in accordance with PONDS procedures.

2. **Reissuing Secure Identity Documents**

In certain circumstances, USCIS reissues secure identity documents if the original identity document was not successfully delivered to the requestor and has been subsequently destroyed. Depending on the scenario, USCIS may require the requestor to properly file a new form with fee for USCIS to reissue the secure identity document.

*New Application and Fees Not Required*

Generally, if USCIS-issued secure identity documents were non-deliverable due to USPS errors, USCIS may reissue the secure identity document without requiring a new application and fee.
However, lawful permanent residents and conditional permanent residents must always file Form I-90 to request a replacement PRC.\[8\] In some cases, USCIS would not require a new fee.\[9\]

The table below provides common (but not comprehensive) non-delivery scenarios involving USPS errors.

**Common Non-Delivery Scenarios Involving USPS Errors**

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Example</th>
<th>New Application and Applicable Fee Required?[10]</th>
</tr>
</thead>
<tbody>
<tr>
<td>USPS lost, misdirected, or destroyed mail.[11]</td>
<td>N/A</td>
<td>No</td>
</tr>
<tr>
<td>USPS incorrectly marked as deceased but requestor is not deceased.</td>
<td>N/A</td>
<td>No</td>
</tr>
<tr>
<td>USPS incorrectly marked yellow label on undeliverable envelope.</td>
<td>USPS label indicates requestor does not reside at address; however, requestor does.</td>
<td>No</td>
</tr>
<tr>
<td>USPS did not recognize a good address for requestor.</td>
<td>N/A</td>
<td>No</td>
</tr>
</tbody>
</table>

Generally, if USCIS-issued secure identity documents were non-deliverable due to USCIS or certain other errors, USCIS may reissue the secure identity document without requiring a new application and fee. The table below provides common (but not comprehensive) non-delivery scenarios involving USCIS and other errors.

**Common Non-Delivery Scenarios Involving USCIS and Other Errors**

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Example</th>
<th>New Application and Applicable Fee Required?[12]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requestor updated address timely but USCIS incorrectly entered address into data systems.</td>
<td>Requestor enters “123 Presidential Avenue” and USCIS erroneously enters “123 Residential Avenue.”</td>
<td>No</td>
</tr>
<tr>
<td>Requestor updated address timely but USCIS updated address after 48 hour document</td>
<td>N/A</td>
<td>No</td>
</tr>
</tbody>
</table>
### Common Non-Delivery Scenarios Involving Requestor Errors

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Example</th>
<th>New Application and Applicable Fee Required?</th>
</tr>
</thead>
</table>
| Requestor submitted untimely address change.                          | - Requestor updated address well after the 10-day timeframe set by INA 265 and after USCIS mailed his or her secure identity document, but the secure identity document was not returned to USCIS as undeliverable.  
- Requestor updated address after his or her secure identity document was returned to USCIS as undeliverable and destroyed. | Yes, requestor must resubmit completed application with fee. |
| Requestor updated address timely, but gave incomplete or incorrect address. | - Instead of “123 Main Street,” requestor entered “Main Street 123” or “213 Main Street.”  
- Requestor omitted apartment or suite number or included incorrect apartment or suite number.  
- Requestor misspelled a part of the address, such as “123 Brandway” instead of “123 Broadway.”  
- Requestor listed the wrong state or zip code. | Yes, requestor must resubmit completed application with fee. |
<table>
<thead>
<tr>
<th>Scenario</th>
<th>Example</th>
<th>New Application and Applicable Fee Required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requestor provided an invalid USPS address.</td>
<td></td>
<td>Yes, requestor must resubmit completed application with fee.</td>
</tr>
<tr>
<td>Requestor provided future address, not current address.</td>
<td>N/A</td>
<td>Yes, requestor must resubmit completed application with fee.</td>
</tr>
<tr>
<td>Requestor did not accept mail.</td>
<td>N/A</td>
<td>Yes, requestor must resubmit completed application with fee.</td>
</tr>
</tbody>
</table>

**Footnotes**

[^1] See 8 CFR 264.5. See 8 CFR 103.7. There are certain conditions when USCIS may issue an Alien Documentation, Identification and Telecommunications (ADIT) stamp in place of a new Permanent Resident Card (PRC). One such condition may be applying for naturalization at least 6 months before the expiration of the PRC. Lawful permanent residents in this circumstance may contact the USCIS Contact Center for more information on how to obtain an ADIT stamp instead of filing Form I-90.

[^2] The transportation letter does not replace the PRC. LPRs must still complete and properly file Form I-90 to obtain a replacement PRC.


[^4] The transportation letter does not replace the reentry permit. LPRs must complete and properly file Form I-131 upon reentry into the United States to obtain a replacement reentry permit.

[^5] In general, if a requestor applies for advance parole while in the United States, and departs the United States before the advance parole document is issued, the requestor may be found inadmissible to the United States upon return, or even if admitted, may be found to have abandoned his or her application.

[^6] For more information, see Volume 12, Citizenship and Naturalization, Part K, Certificates of Citizenship and Naturalization, Chapter 4, Replacement of Certificate of Citizenship or Naturalization [12 USCIS-PM K.4].

[^7] An economic analysis found that retention of non-deliverable secure identity documents for longer than 60 days costs USCIS more than production of a new identity document.


[^9] For additional information on required fees, see Form I-90 instructions. See USCIS Fee Calculator.
Applicants seeking a replacement of a PRC must always file Form I-90 to request a replacement card. See 8 CFR 264.5. However, in some cases, such as the scenarios described in the table, USCIS would not require a new fee.

For more information, see Find Missing Mail.

Applicants seeking a replacement of a PRC must always properly file Form I-90 to request a replacement card. See 8 CFR 264.5. However, in some cases, such as the scenarios described in the table, USCIS would not require a new fee.

Unless the requestor qualifies for a fee waiver. See Request for Fee Waiver (Form I-912).

Part B - Permanent Resident Cards

Chapter 1 - Purpose and Background

A. Purpose

A lawful permanent resident (LPR) is an alien who the U.S. government has lawfully authorized to permanently live in the United States. LPRs are issued a Permanent Resident Card (PRC) as evidence of identity and status in the United States.

In general, LPRs initially receive a PRC after USCIS approves their Application to Register Permanent Residence or Adjust Status (Form I-485) or after U.S. Customs and Border Protection admits them into the United States as an LPR following consular processing abroad. LPRs 18 years of age and over are required to carry their PRCs (or other equivalent proof of registration) at all times.

LPRs use the Application to Replace Permanent Resident Card (Form I-90) to request that USCIS replace their PRC. Form I-90 should also be used to obtain a PRC when an applicant has been automatically converted to permanent resident status. Eligible LPRs also use Form I-90 to request taking up “commuter status” or to resume actual residence in the United States after having been in commuter status.

History

The principle of registering and fingerprinting aliens was established in the Alien Registration Act of 1940 (Smith Act). The Smith Act required all non-citizens in the United States 14 years of age or older who remained in the United States 30 days or longer to register and be fingerprinted with the U.S. government before such 30 days were over, whether they were present lawfully or unlawfully, temporarily or permanently. These registered aliens were issued an Alien Registration Receipt Card (Form AR-3).
This card was later revised as AR-3A and AR-103.

In 1946, the U.S. government began issuing different types of registration documents based upon the status of the alien in the United States. LPRs were issued Form I-151 (Alien Registration Receipt Card), which contained a green tint and led to the card being commonly referred to as a “green card.”

In 1977, the PRC (Form I-551) replaced the Form I-151 as evidence of LPR status. In 1989, the Immigration and Naturalization Service (INS) introduced the second version of the PRC, usually with an expiration date of 10 years after the date of issuance. USCIS has continued to improve the PRC by using the latest tamper-resistant technology.

C. Legal Authorities

- **INA 101(a)(20)** – Definition of lawfully admitted for permanent residence
- **INA 262** – Registration of aliens
- **INA 264** – Forms for registration and fingerprinting
- **8 CFR 264.5** – Application for a replacement Permanent Resident Card
- **8 CFR 211.5** – Alien commuters

Footnotes

[^1] Certain LPRs may commence or continue to reside in Mexico or Canada and commute to their place of employment in the United States. For more information, see Chapter 4, Commuter Cards [11 USCIS-PM B.4].

[^2] A Permanent Resident Card is also called a Form I-551 or a green card.

[^3] Certain aliens obtain lawful permanent residence on a conditional basis and are known as conditional permanent residents. An alien (and his or her children) whose qualifying marriage to their petitioning spouse is less than 2 years old at the time of admission or adjustment of status obtain lawful permanent residence on a conditional basis. See INA 216. Immigrant investors (and their spouses and children) may also obtain lawful permanent residence on a conditional basis based on qualifying entrepreneurship. See INA 216A. See
Chapter 2 - Replacement of Permanent Resident Card

A. Eligibility Requirements

Lawful permanent residents (LPRs) are entitled to evidence of status in the United States. LPRs are eligible for replacement of their Permanent Resident Card (PRC) if they meet requirements, including but not limited to, the following:

- Properly file the Application to Replace Permanent Resident Card (Form I-90);
- Establish identity;
- Establish LPR or conditional permanent resident (CPR) status; and
- Otherwise meet the eligibility requirements to receive a replacement PRC.

Maintaining LPR or CPR Status

LPR status generally begins from the date the government admits an alien to the United States as an LPR or grants or recognizes LPR status. LPR status ends if and when rescinded by USCIS terminated in removal.
or the status is abandoned. Similarly, CPR status generally begins from the date the government admits an alien to the United States as a CPR or grants CPR status. CPR status ends if and when rescinded or terminated. For example, CPRs may lose status if they do not apply to remove conditions, if they do not meet certain requirements to remove the conditions on their status during the required time period, or if USCIS denies a petition to remove conditions.

LPRs Applying for Naturalization

LPRs (and CPRs) 18 years of age and over are required to carry their PRCs (or other proof of registration). Applying for naturalization does not change this requirement.

B. Lawful Permanent Residents in Proceedings

LPRs in deportation, exclusion, or removal proceedings are entitled to evidence of LPR status until ordered excluded, deported, or removed.

If an LPR is in proceedings, USCIS reviews the Form I-90 and totality of the evidence in the record to determine if a new PRC will be issued or if the applicant will receive evidence of status in the form of a temporary permanent resident document.

C. Conditional Permanent Residents

A CPR is an alien admitted for permanent residence on a conditional basis for a period of 2 years because he or she sought LPR status:

- Based on a marriage of less than 2 years;
- As an entrepreneur.

CPRs are issued PRCs by USCIS with an expiration date of 2 years from the date of becoming a CPR. CPRs whose status is not expiring within 90 days may file a Form I-90 to replace a PRC for the reasons provided in the form instructions. If a CPR is eligible to receive a replacement card, the expiration date of the replacement card will be the same as that of the prior card (2 years from the date of becoming a CPR).

A CPR is not eligible to file a Form I-90 for any reason if he or she is within 90 days of the expiration of conditional status. This ensures the CPR files the appropriate petition to remove the conditions during the 90 days before his or her CPR status expires. The receipt notice for such a petition to remove conditions serves both to extend CPR status, and as proof of that extension, while the petition is pending.

If a CPR files a Form I-90 during the 90 days before the expiration of conditional status, USCIS denies the application and advises the applicant to file the appropriate petition to remove the conditions.

D. Documentation and Evidence

1. Form

An Application to Replace Permanent Resident Card (Form I-90) must be used by an LPR to request replacement of a PRC expiring within 6 months. Additional reasons for which LPRs must file Form I-90

AILA Doc. No. 19060633. (Posted 3/26/21)
include, but are not limited to, replacement of a lost, stolen, destroyed, or mutilated PRC, or when the LPR’s name or other biographic information has legally changed since issuance of the PRC.[14]

CPRs may use Form I-90 to request replacement of a PRC that is not expiring within 90 days for reasons that include, but are not limited to, replacement of a lost, stolen, destroyed, or mutilated PRC, or when the CPR’s name or other biographic information has legally changed since issuance of the PRC.[15] CPRs may not use Form I-90 to request removal of the conditions on residence.[16]

The Form I-90 instructions include a full list of reasons to request replacement of a PRC and further information on filing requirements for each reason. An applicant must file Form I-90 according to the form instructions. Applicants can access the current edition of the form on the USCIS website.

2. Fees

An applicant should refer to the Form I-90 instructions for the appropriate fees required for filing a Form I-90.[17] Any required fees must be submitted at the time of filing.[18]

3. Filing Location

An applicant may submit a Form I-90 by mail or electronic filing as indicated in the form instructions. However, applicants may not file online if they are requesting a fee waiver.

4. Required Evidence

An applicant should refer to the Form I-90 instructions for required initial evidence based on the particular reason for which he or she is seeking a replacement card. For example, if an applicant requests a replacement PRC because the existing card has incorrect data because of DHS error, the applicant must submit proof of the correct name or biographical data and return the original PRC with the incorrect data to USCIS when filing Form I-90.

E. Biometrics

1. Application Support Center Appointments

Replacement of a PRC requires submission of biometrics at the USCIS Application Support Center (ASC) servicing the applicant’s place of residence in the United States.[19] USCIS generally schedules the applicant for a biometrics appointment after receiving a properly filed application. USCIS notifies the applicant of an appointment by sending the applicant a Notice of Action (Form I-797C) stating the date, time, and location of the appointment.

For purposes of a request to replace a PRC, USCIS generally collects the following biometrics from the applicant: photograph, signature, and fingerprints.[20]

When an applicant appears at an ASC[21] to provide biometrics, the ASC may take actions that include, but are not limited to, the following:

- Verifying applicant identity;
- Verifying biographic changes, if applicable.[22]
Capturing biometrics; and

Attaching an extension sticker on the PRC, when eligible (the extension applies only to the PRC and does not apply to any other documents issued to the applicant).

2. Rescheduling Requests and Failure to Appear

If an applicant fails to appear for the scheduled biometrics appointment, his or her Form I-90 is considered abandoned and may be denied, unless USCIS receives a properly filed change of address or rescheduling request before the scheduled appointment.

Biometrics must be completed within 90 days of the biometrics appointment described in the initial Form I-797C. The application may be denied for abandonment if biometrics are not completed within this timeframe. If an applicant is unable to appear for the initial scheduled date, the applicant may request to reschedule the appointment along with a sufficient explanation for the applicant’s inability to appear on that date. The applicant should submit the rescheduling request before the scheduled appointment, otherwise USCIS may deny the application for failure to appear at a scheduled biometrics appointment. The applicant should follow the instructions on the Form I-797C to request rescheduling.

F. Temporary Evidence of Permanent Resident Status

LPRs are entitled to evidence of status. In some cases, LPRs may require temporary evidence of LPR status. For example, an applicant granted LPR status may require evidence of status while waiting to receive his or her initial PRC or a Form I-90 applicant may require evidence of status while waiting to receive his or her replacement PRC. In these cases, USCIS may issue temporary evidence of LPR status, which may be used to prove employment authorization, and authorization to return to the United States after temporary foreign travel. USCIS may also provide temporary evidence of status to LPRs in deportation, exclusion, or removal proceedings.

1. Permanent Resident Card Extension Sticker

An applicant with a pending Form I-90 to replace an expiring PRC may receive an extension sticker on his or her current PRC to allow for time to process the new card. The extension sticker will specify how long it is valid for.

If the applicant is eligible, the ASC places an extension sticker on the back of the PRC. However, the ASC does not place an extension sticker on any of the following:

- Mutilated cards;
- PRCs currently valid for more than 6 months;
- PRCs issued to CPRs;
- Old versions of the PRC (such as cards with no expiration date);
- A PRC that already contains an extension sticker; or
- A temporary permanent resident card (for example, an Arrival/Departure Record (Form I-94), issued with photo and temporary I-551 stamp).
If the Form I-90 applicant does not have his or her PRC at the time of the ASC appointment, he or she can receive temporary proof of LPR status from the local USCIS office by first calling the USCIS Contact Center at 1-800-375-5283 to schedule an appointment at the local field office (TTY for people who are deaf, hard of hearing, or have a speech disability: 1-800-767-1833).

2. Other Temporary Evidence of Permanent Resident Status

USCIS may issue temporary evidence of LPR status in other forms, known as an Alien Documentation, Identification and Telecommunication (ADIT) stamp (also known as an I-551 stamp). LPRs may obtain an ADIT stamp from the local field office by first calling the USCIS Contact Center at 1-800-375-5283 to schedule an appointment (TTY for people who are deaf, hard of hearing, or have a speech disability: 1-800-767-1833). ADIT stamps may only be placed on Form I-94 (with photo) or an unexpired passport.

G. Adjudication

1. Lawful Permanent Resident Status

The officer reviews evidence submitted by the applicant to verify that the applicant is an LPR. An officer verifies an applicant’s status using USCIS systems and records.

2. Security Checks

Officers should ensure biographic and biometric security checks are completed, and remain valid through adjudication of the application.

3. Requests for Evidence and Interviews

Officers may issue requests for evidence for an application to replace a PRC. In some cases, USCIS may refer a Form I-90 applicant to a field office for an interview.

4. Decision

Approval

USCIS may approve a Form I-90 if the applicant meets the following requirements:

- The application is signed or certified via internet filing;
- All applicable fees have been paid (unless waived or not required);
- The applicant established his or her identity;
- The applicant is an LPR or CPR;
- Biometric requirements have been completed and remain valid at the time of the decision; and
- The applicant established all other eligibility criteria for the specific basis he or she filed Form I-90.

If the officer approves the Form I-90, USCIS sends both the approval notice and the new PRC to the applicant’s U.S. mailing address. PRCs cannot be mailed to addresses outside the United States.
Denial

USCIS may deny an application to replace a PRC if the applicant fails to:

- Establish LPR or CPR status;
- Submit biometrics;
- Establish his or her identity;
- Attend an interview (if required); or
- Otherwise meet the eligibility criteria applicable to his or her Form I-90.

If the officer denies the Form I-90, the applicant cannot appeal the decision. However, the applicant may file a motion to reopen or reconsider. A denial also does not preclude the applicant from filing a new Form I-90 if he or she can establish eligibility.

H. Motions to Reopen or Reconsider

1. Requested by Applicant

To request a motion to reopen or motion to reconsider a denial, an applicant must file a Notice of Appeal or Motion (Form I-290B) with fee, unless waived. An applicant should follow the current form instructions to properly file a motion.

An applicant has 30 days from the date of the decision to submit a motion. Officers may use discretion to excuse failure to file a motion to reopen within this time period if the applicant demonstrates the delay was reasonable and beyond the control of the applicant.

2. Service Motion to Reopen

A Service motion to reopen is initiated by USCIS to reopen a case in order to change the decision or to correct information for card production. When USCIS initiates a Service motion, an officer issues a formal notice to the applicant advising him or her that the case has been reopened. If the new decision is favorable to the applicant, the officer updates appropriate systems and generates an automatic approval notice separate from the motion.

If the decision is unfavorable to the applicant, an officer provides 30 days for the applicant to submit information in support of his or her case. USCIS may extend the time period for good cause shown. If the applicant does not wish to submit any information relating to the motion, the applicant may waive the 30-day period. If the applicant fails to submit the required information within the allocated timeframe or the information the applicant submits does not overcome the grounds for denial, an officer may proceed to make a final determination on the motion and change the decision on the Form I-90, if applicable. A new period for an applicant to file a motion to reopen or reconsider begins from the date of issuance of the new adverse decision on the Form I-90.

Footnotes
[^1] See INA 216 and INA 216A.


[^6] See INA 216(c) and INA 216A(c). USCIS may also terminate a CPR’s status if, during the 2-year conditional resident period, USCIS determines the qualifying marriage or entrepreneurship that formed the basis of the conditional permanent residence was improper. See INA 216(b) and INA 216A(b).


[^8] See 8 CFR 264.5(g) (“Issuance of evidence of permanent residence to an alien who had permanent resident status when the proceedings commenced shall not affect those proceedings”).

[^9] For more information, see Section F, Temporary Evidence of Permanent Resident Status, Subsection 2, Other Temporary Evidence of Permanent Resident Status [11 PM-USCIS B.2(F)(2)].


[^11] Also known as the employment-based 5th preference (EB-5) category. See INA 216A.

[^12] See Petition to Remove Conditions on Residence (Form I-751) or Petition by Entrepreneur to Remove Conditions on Permanent Resident Status (Form I-829). See 8 CFR 216.4 or 8 CFR 216.6.


[^14] See 8 CFR 264.5(b). See Form I-90 instructions (PDF, 379.3 KB) for a full list of reasons. LPRs must also use Form I-90 to request a replacement of a prior edition of the alien registration card issued on Form AR-3, AR-103, or I-151. See 8 CFR 264.5(c).


[^16] A CPR whose card is expiring may apply to have the conditions on residence removed in accordance with 8 CFR 216.4 or 8 CFR 216.6.


[^18] For information on fee waivers, see the Request for Fee Waiver (Form I-912).

[^19] Form I-90 applicants who are commuters may be issued a request for evidence of a U.S. address for USCIS to use to schedule the location of a biometrics services appointment.

[^20] For more information, see Preparing for Your Biometric Services Appointment.

[^21] If an applicant is temporarily outside of the United States due to U.S. military or government orders and he or she is required to include a biometrics service fee when submitting Form I-90, the applicant should also include a properly completed Form FD-258 (fingerprint card) and a passport-style photo with the application. See Form I-90 instructions (PDF, 379.3 KB) for more information.
The ASC may verify portions of the name, date of birth, and gender. See INA 264(d).

For more information on travel documents for LPRs, see Customs and Border Protection's Carrier Information Guide.

See 8 CFR 264.5(g) (“Issuance of evidence of permanent residence to an alien who had permanent resident status when the proceedings commenced shall not affect those proceedings”). See Section B, Lawful Permanent Residents in Proceedings [11 USCIS-PM B.2(B)].

See 8 CFR 264.5(h).

After timely filing the petition to remove conditions on permanent residence, CPRs receive a receipt notice that serves as proof of extension. See Section C, Conditional Permanent Residents [11 USCIS-PM B.2(C)] for more information.

For more information on requests for evidence, see AFM 10.5, Requesting Additional Information (PDF, 2.87 MB).

See 8 CFR 103.2(b)(9).

Applicants may use Case Status Online to check on the status of their Form I-90. If Case Status Online indicates that USCIS has mailed a new PRC, the applicant should be provided with a U.S. Postal Service (USPS) tracking number. If Case Status Online and the USPS tracking number indicate a PRC has been mailed and delivered, but the applicant has not received the PRC, the applicant should inquire with USPS immediately. For more information, see the Form I-90 web page. A PRC issued to a commuters is mailed to the port-of-entry designated by an applicant. For more information, see Chapter 4, Commuter Cards [11 USCIS-PM B.4].

Applicants temporarily outside of the United States due to U.S. military or government orders may be serviced by the U.S. armed forces or U.S. diplomatic postal systems.

See 8 CFR 264.5(f).

See 8 CFR 103.5(a).

If the decision is mailed to the applicant, the applicant has 33 days from the date of the denial letter to submit the motion. See 8 CFR 103.8(b).

See 8 CFR 103.5(a)(1)(i).

If the decision is mailed to the applicant, the applicant has 33 days from the date of the decision letter to submit information in support of his or her case. See 8 CFR 103.8(b).

See 8 CFR 103.5(a)(5)(ii).

See 8 CFR 103.5(a)(5).

See Notice of Appeal or Motion (Form I-290B).

Chapter 3 - Expired Permanent Resident Cards
To deter fraud and enhance security, field offices generally collect expired Permanent Resident Cards (PRCs) encountered through the normal course of business, unless the PRC has an extension sticker.

Offices that have collected expired cards should follow agency procedures to update applicable systems and destroy the expired cards.

**Chapter 4 - Commuter Cards**

Under normal circumstances, a lawful permanent resident (LPR) is considered to have abandoned his or her status if he or she moves to another country with the intent to reside there permanently. However, in certain situations, an LPR may commence or continue to reside in a foreign contiguous territory and commute to the United States for employment. This administrative grant of “commuter status” is only available to LPRs living in Canada or Mexico.

The two types of commuters are as follows:

- Those who commute for regular employment in the United States; and
- Those who enter to perform seasonal work in the United States, but whose presence in the United States is for 6 months or less, in the aggregate, during any continuous 12-month period (seasonal commuters or seasonal workers).

LPRs must use the Application to Replace Permanent Resident Card (Form I-90) to take up commuter status or when taking up actual residence in the United States after having been a commuter. Commuters receive a Permanent Resident Card (PRC) that indicates their status as a commuter. Commuters must also use Form I-90 to replace their commuter PRCs.

**A. Eligibility Requirements**

1. Obtaining Commuter Status

To be eligible for commuter status, an applicant must meet the following requirements:

- Establish LPR status;
- Establish he or she lives in Canada or Mexico; and
- Establish employment in the United States within the 6 months before filing.

Evidence of employment may include, but is not limited to:

- Employment pay stubs showing employment in the United States; or
- An employment letter on company letterhead showing current employment in the United States.

Applicants should refer to the Form I-90 instructions (PDF, 379.3 KB) for further information on evidentiary requirements. Upon approval, USCIS issues the applicant a PRC indicating status as a commuter.

2. Removing Commuter Status
A commuter who begins residing in the United States after having been a commuter must use Form I-90 to request to remove commuter status from his or her PRC. The commuter should submit evidence of a U.S. address with Form I-90. Evidence may include, but is not limited to, a lease agreement, property deed, or utility bill(s) dated within the 6 months before filing Form I-90. Applicants should refer to the Form I-90 instructions (PDF, 379.3 KB) for further information on evidentiary requirements.

A seasonal worker is presumed to be residing in the United States if he or she is present in the United States for more than 6 months, in the aggregate, during any continuous 12-month period. In such a case, the seasonal worker is no longer eligible for commuter status.[6]

B. Loss of Permanent Resident Status for Commuters[7]

A commuter who has been out of regular employment in the United States for a continuous period of 6 months loses LPR status.[8] However, an exception applies when employment in the United States was interrupted for reasons beyond the person’s control (other than lack of a job opportunity) or when the commuter can demonstrate that he or she has worked 90 days in the United States during the 12-month period before the application for admission into the United States at a port of entry.[9]

Footnotes


[^5] The PRC cannot be mailed outside the United States; therefore, the commuter must designate his or her usual port-of-entry (POE) on the Form I-90 so that his or her PRC may be mailed to the designated POE for pick-up. Customs and Border Protection (CBP) also issues a Commuter Status Card (Form I-178) that must be carried while traveling across the border. The Form I-178 is valid for 6 months and must be renewed with CBP at 6-month intervals. Renewal requires presenting proof of ongoing employment in the United States.


[^8] See 8 CFR 211.5(b).

[^9] See 8 CFR 211.5(b).

Part C - Reentry Permits

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in
the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

**AFM Chapter 52 - Reentry Permits (External) (PDF, 89.87 KB)**

**Part D - Refugee Travel Documents**

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**AFM Chapter 53 - Refugee Travel Documents (External) (PDF, 116.57 KB)**

**Part E - Advance Parole Documents**

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**AFM Chapter 54 - Advance Parole Documents and Boarding Letters (External) (PDF, 191.84 KB)**

**Part F - Arrival-Departure Records**

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**AFM Chapter 30 - Nonimmigrants in General (External) (PDF, 541.89 KB)**

**Volume 12 - Citizenship and Naturalization**

**Part A - Citizenship and Naturalization Policies and Procedures**

**Chapter 1 - Purpose and Background**
A. Purpose

The United States has a long history of welcoming immigrants from all parts of the world. The United States values the contributions of immigrants who continue to enrich this country and preserve its legacy as a land of freedom and opportunity. USCIS is proud of its role in maintaining our country’s tradition as a nation of immigrants and will administer immigration and naturalization benefits with integrity.

U.S. citizenship is a unique bond that unites people around civic ideals and a belief in the rights and freedoms guaranteed by the U.S. Constitution. The promise of citizenship is grounded in the fundamental value that all persons are created equal and serves as a unifying identity to allow persons of all backgrounds, whether native or foreign-born, to have an equal stake in the future of the United States.

This volume of the USCIS Policy Manual explains the laws and policies that govern U.S. citizenship and naturalization.

USCIS administers citizenship and naturalization law and policy by:

- Providing accurate and useful information to citizenship and naturalization applicants;
- Promoting an awareness and understanding of citizenship; and
- Adjudicating citizenship and naturalization applications in a consistent and accurate manner.

Accordingly, USCIS reviews benefit request for citizenship and naturalization to determine whether:

- Foreign-born children of U.S. citizens by birth or naturalization meet the eligibility requirements before recognizing their acquisition or derivation of U.S. citizenship.
- Persons applying for naturalization based on their time as lawful permanent residents meet the eligibility requirements to become U.S. citizens.
- Persons applying for naturalization based on their marriage to a U.S. citizen meet the eligibility requirements for naturalization through the provisions for spouses of U.S. citizens.
- Members of the U.S. armed forces and their families are eligible for naturalization and ensure that qualified applicants are naturalized expeditiously through the military provisions.
- Persons working abroad for certain entities, to include the U.S. Government, meet the eligibility requirements for certain exceptions to the general naturalization requirements.

Volume 12, Citizenship and Naturalization, contains detailed guidance on the requirements for citizenship and naturalization.

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### B. Background
Upon the adoption of the U.S. Constitution in 1787, the first U.S. citizens were granted citizenship status retroactively as of 1776. Neither an application for citizenship, nor the taking of an Oath of Allegiance was required at that time. Persons only needed to remain in the United States at the close of the war and the time of independence to show that they owed their allegiance to the new Government and accepted its protection.

The following key legislative acts provide a basic historical background for the evolution of the general eligibility requirements for naturalization as set forth in the Immigration and Nationality Act (INA).

**Evolution of Naturalization Requirements Prior to the Immigration and Nationality Act (INA) of 1952**

<table>
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<tr>
<th>Act</th>
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<tr>
<td>Naturalization Act of 1790</td>
<td>• Established uniform rule of naturalization and oath of allegiance</td>
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<td></td>
<td>• Established two year residency requirement for naturalization</td>
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<td></td>
<td>• Required good moral character of all applicants</td>
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<tr>
<td>Naturalization Act of 1798</td>
<td>• Permitted deportation of aliens considered dangerous</td>
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<td></td>
<td>• Increased residency requirements from 2 years to 14 years</td>
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<tr>
<td>Naturalization Act of 1802</td>
<td>• Reduced residency requirement from 14 years to 5 years</td>
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<tr>
<td>Naturalization Act of 1891</td>
<td>• Rendered polygamists, persons suffering from contagious disease and persons convicted of a “misdemeanor involving moral turpitude” ineligible for naturalization.</td>
</tr>
<tr>
<td>Naturalization Act of 1906</td>
<td>• Standardized naturalization procedures</td>
</tr>
<tr>
<td></td>
<td>• Required knowledge of English language for citizenship</td>
</tr>
<tr>
<td></td>
<td>• Established the Bureau of Immigration and Naturalization</td>
</tr>
<tr>
<td>The Alien Registration Act of 1940</td>
<td>• Required the registration and fingerprinting of all aliens in the United States over the age of 14 years</td>
</tr>
</tbody>
</table>

**C. Legal Authorities**

- **INA 103; 8 CFR 103** – Powers and duties of the Secretary, the Under Secretary, and the Attorney General
A person may derive or acquire U.S. citizenship at birth. Persons who are born in the United States and subject to the jurisdiction of the United States are citizens at birth. Persons who are born in certain territories of the United States also may be citizens at birth. In general, but subject in some cases to other requirements, including residence requirements as of certain dates, this includes persons born in:

- Puerto Rico on or after April 11, 1899; [1]
- Canal Zone or the Republic of Panama on or after February 26, 1904; [2]
- Virgin Islands on or after January 17, 1917; [3]
- Guam born after April 11, 1899; [4] or
- Commonwealth of the Northern Mariana Islands (CNMI) on or after November 4, 1986. [5]

Persons born in American Samoa and Swains Island are generally considered nationals but not citizens of the United States. [6]

In addition, persons who are born outside of the United States may be U.S. citizens at birth if one or both parents were U.S. citizens at their time of birth. Persons who are not U.S. citizens at birth may become U.S. citizens through naturalization. Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever.

In general, an applicant files a naturalization application and then USCIS grants citizenship after adjudicating the application. In some cases, a person may be naturalized by operation of law. This is often referred to as deriving citizenship. In either instance, the applicant must fulfill all of the requirements established by Congress. In most cases, a person may not be naturalized unless he or she has been lawfully admitted to the United States for permanent residence.
Deciding to become a U.S. citizen is one of the most important decisions an immigrant can make. Naturalized U.S. citizens share equally in the rights and privileges of U.S. citizenship. U.S. citizenship offers immigrants the ability to:

- Vote in federal elections;
- Travel with a U.S. passport;
- Run for elective office where citizenship is required;
- Participate on a jury;
- Become eligible for federal and certain law enforcement jobs;
- Obtain certain state and federal benefits not available to noncitizens;
- Obtain citizenship for minor children born abroad; and
- Expand and expedite their ability to bring family members to the United States.

Footnotes


[^2] See INA 303. If the person was born in the Canal Zone, he or she acquired U.S. citizenship at birth if born between February 26, 1904 and October 1, 1979, and one parent was a U.S. citizen at the time of the person’s birth. The Canal Zone ceased to exist on October 1, 1979. See the so-called Torrijos–Carter Treaties (September 7, 1977). If the person was born in the Republic of Panama, but not in the Canal Zone, one parent must have been a U.S. citizen parent employed by the U.S. Government, or by the Panama Railroad Company, at the time of the person’s birth.


Chapter 3 - USCIS Authority to Naturalize

It has long been established that Congress has the exclusive authority under its constitutional power to establish a uniform rule of naturalization and to enact legislation under which citizenship may be conferred.

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upon persons. Before 1991, naturalization within the United States was a judicial function exercised since 1790 by various courts designated in statutes enacted by Congress under its constitutional power to establish a uniform rule of naturalization.

As of October 1, 1991, Congress transferred the naturalization authority to the Attorney General (now the Secretary of DHS). USCIS is authorized to perform such acts as are necessary to properly implement the Secretary’s authority. In certain cases, an applicant for naturalization may choose to have the Oath of Allegiance administered by USCIS or by an eligible court with jurisdiction. Eligible courts may choose to have exclusive authority to administer the Oath of Allegiance.

Footnotes


Part B - Naturalization Examination

Chapter 1 - Purpose and Background

A. Purpose

USCIS conducts an investigation and examination of all naturalization applicants to determine whether an applicant meets all pertinent eligibility requirements to become a U.S. citizen. The investigation and examination process encompasses all factors relating to the applicant's eligibility:

- Completion of security and criminal background checks;
- Review of the applicant’s complete immigration record;
- In-person interview(s) with oral and written testimony;
- Testing for English and civics requirements; and
- Qualification for a disability exception.

USCIS officers have authority to conduct the investigation and examination. The authority includes the legal authority for certain officers to administer the Oath of Allegiance, obtain oral and written testimony during an in-person interview, subpoena witnesses, and request evidence.

The applicant has the burden of establishing eligibility by a preponderance of the evidence throughout the examination. The officer must resolve any pending issues and obtain all of the necessary information and evidence to make a decision on the application. Uniformity in decision-making and application processing is
vital to the integrity of the naturalization process. Consistency in the decision-making process enhances USCIS’ goal to ensure that the relevant laws and regulations are applied accurately to each case.

B. Background

Beginning in 1906, a complete examination and questioning under oath was required of the “petitioner” (now “applicant”) for naturalization and his or her witnesses at the final hearing for naturalization in court. [5] Congress amended the statute in 1940 to include English language requirements and a provision for questioning applicants on their understanding of the principles of the Constitution. [6]

Today, USCIS conducts an investigation and examination of all applicants for naturalization to determine their eligibility for naturalization, including the applicant’s lawful admission for permanent residence, ability to establish good moral character, attachment to the Constitution, residence and physical presence in the United States, and the English and civics requirements for naturalization.

C. Legal Authorities

- **INA 310; 8 CFR 310** – Naturalization authority
- **INA 312; 8 CFR 312** – Educational requirements for naturalization
- **INA 316; 8 CFR 316** – General requirements for naturalization
- **INA 332; 8 CFR 332** – Procedural and administrative provisions; executive functions
- **INA 335; 8 CFR 335** – Investigation and examination of applicant
- **INA 336; 8 CFR 336** – Hearings on denials of naturalization application

Footnotes

[^1] See **INA 335.** See **8 CFR 335.1** and **8 CFR 335.2.**

[^2] See **INA 335(b).** See **8 CFR 332.1** and **8 CFR 335.2.** The authority is delegated by the Secretary of the Department of Homeland Security.

[^3] See **INA 332, INA 335, and INA 337.** See **8 CFR 332, 8 CFR 335, and 8 CFR 337.**

[^4] See **8 CFR 316.2(b).**

[^5] In 1981, Congress enacted legislation which eliminated the character witness requirements of naturalization, though USCIS has the authority to subpoena witnesses if necessary.

A. Background Investigation

USCIS conducts an investigation of the applicant upon his or her filing for naturalization. The investigation consists of certain criminal background and security checks.[1] The background and security checks include collecting fingerprints and requesting a “name check” from the Federal Bureau of Investigations (FBI). In addition, USCIS conducts other inter-agency criminal background and security checks on all applicants for naturalization. The background and security checks apply to most applicants and must be conducted and completed before the applicant is scheduled for his or her naturalization interview.[2]

B. Fingerprints

1. Fingerprint Requirement

USCIS must collect fingerprint records as part of the background check process on applicants for naturalization regardless of their age.[3] In general, applicants receive a biometric service appointment at a local Application Support Center (ASC) for collection of their biometrics (fingerprints, photographs, and signature).[4]

USCIS notifies applicants in writing to appear for fingerprinting after filing the naturalization application. Fingerprints are valid for 15 months from the date of processing by the FBI. An applicant abandons his or her naturalization application if the applicant fails to appear for the fingerprinting appointment without good cause and without notifying USCIS.[5]

Previously, USCIS had waived the fingerprint requirements for applicants 75 years old or older because it was difficult to capture readable fingerprints from this age group. As a result, applicants 75 years old or older were not required to appear at an ASC. Electronic processing of applications and improved technology now allows USCIS to capture fingerprints for applicants of all ages and enhances the ability to confirm identity and perform required background checks.[6]

Once an ASC collects an applicant’s biometrics, USCIS submits the records to the FBI for a full criminal background check.[7] The response from the FBI that a full criminal background check has been completed includes confirmation that:

- The applicant does not have an administrative or a criminal record;
- The applicant has an administrative or a criminal record; or
- The applicant’s submitted fingerprint records have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

Accommodations

USCIS makes special arrangements to accommodate the needs of applicants who are unable to attend an appointment, including applicants with disabilities and homebound or hospitalized applicants. All domestic USCIS facilities are accessible to applicants with disabilities. Applicants who are homebound or hospitalized may request an accommodation when unable to appear at an ASC for biometrics processing. Applicants should submit a copy of the appointment notice and medical documentation verifying the need for an in-home appointment with the local field office.

Applicants who need to request an accommodation for their appointment can submit a request online or call
2. Fingerprint Waivers

Applicants with Certain Medical Conditions

An applicant may qualify for a waiver of the fingerprint requirement if the applicant is unable to provide fingerprints because of a medical condition, to include birth defects, physical deformities, skin conditions, and psychiatric conditions. Only certain USCIS officers are authorized to grant a fingerprint waiver.

An officer responsible for overseeing applicant fingerprinting may grant the waiver in the following situations:

- The officer has met with the applicant in person;
- The officer or authorized technician has attempted to fingerprint the applicant; and
- The officer determines that the applicant is unable to be fingerprinted at all or is unable to provide a single legible fingerprint.

An applicant who is granted a fingerprint waiver must bring local police clearance letters covering the relevant period of good moral character to his or her naturalization interview. All clearance letters become part of the record. In cases where the applicant is granted a fingerprint waiver or has two unclassifiable fingerprint results, the officer must take a sworn statement from the applicant covering the period of good moral character.

An officer should not grant a waiver if the waiver is solely based on:

- The applicant has fewer than 10 fingers;
- The officer considers that the applicant’s fingerprints are unclassifiable; or
- The applicant’s condition preventing the fingerprint capturing is temporary.

An officer’s decision to deny a fingerprint waiver is final and may not be appealed.

C. FBI Name Checks

The FBI conducts “name checks” on all naturalization applicants, and disseminates the information contained in the FBI’s files to USCIS in response to the name check requests. The FBI’s National Name Check Program (NNCP) includes a search against the FBI’s Universal Index (UNI), which contains personnel, administrative, applicant, and criminal files compiled for law enforcement purposes. The FBI disseminates the information contained in the FBI’s files to USCIS in response to the name check requests.

The FBI name check must be completed and cleared before an applicant for naturalization is scheduled for his or her naturalization interview. A definitive FBI name check response of “NR” (No Record) or “PR” (Positive Response) is valid for the duration of the application for which they were conducted. Definitive responses used to support other applications are valid for 15 months from the FBI process date. A new name check is required in cases where the final adjudication and naturalization have not occurred within that timeframe or the name check was processed incorrectly.
Chapter 3 - Naturalization Interview

A. Roles and Responsibilities

1. USCIS Officers

*Authority to Conduct Examination*

USCIS officers have authority to conduct the investigation and examination, to include the naturalization interview.[1] The officer should introduce him or herself and explain the purpose of the naturalization examination and place the applicant under oath at the start of the interview.

USCIS’ authority includes the legal authority for officers to:

- Place an applicant under oath;
- Obtain oral and written testimony during an in-person interview;
- Subpoena witnesses;
- Request evidence; and
- Administer the Oath of Allegiance (when delegated by the Field Office Director).

*Questions on Eligibility*

An officer’s questioning of an applicant during the applicant’s naturalization interview must cover all of the requirements for naturalization.[2] In general, the officer’s questions focus on the information in the
naturalization application. The officer may ask any questions that are pertinent to the eligibility determination. The officer should provide the applicant with suitable opportunities to respond to questions in all instances.

In general, the officer’s questions may include, but are not limited to, the following questions:

- Biographical information, to include marital history and military service;
- Admission and length of time as a lawful permanent resident (LPR);
- Absences from the United States after becoming an LPR;
- Places of residence and employment history;
- Knowledge of English and of U.S. history and government (civics);
- Moral character and any criminal history;
- Attachment to the principles of the U.S. Constitution;
- Affiliations or memberships in certain organizations;
- Willingness to take an Oath of Allegiance to the United States; and
- Any other topic pertinent to the eligibility determination.

In most cases, the officer conducting the naturalization interview administers the required tests relating to the applicant’s ability to read and write English, and his or her knowledge of U.S. history and government (civics), unless the applicant is exempt. The officer who conducts the naturalization interview and who determines the applicant’s ability to speak and understand English is not required to also administer the English reading and writing, and civics tests. Accordingly, a different officer may administer the tests.

Grounding Decisions on Applicable Laws

An officer must analyze the facts of each case to make a legally sound decision on the naturalization application. The officer must base his or her decision to approve or deny the application on the relevant laws, regulations, precedent decisions, and agency guidance:

- The Immigration and Nationality Act (INA) is the primary source of pertinent statutory law.
- The corresponding regulations explain the statutes further and provide guidance on how the statutes are applied.
- Precedent decisions have the force of law and are binding on cases within the jurisdiction of the court or appellate body making the decision.
- USCIS guidance provides the agency’s policies and procedures supporting the laws and regulations. The USCIS Policy Manual is the primary source for agency guidance.

2. Authorized Representatives

An applicant may request the presence and counsel of a representative, to include attorneys or other
representatives, at the applicant’s in-person interview. The representative must submit to USCIS a properly completed notice of entry of appearance.\[8\]

In cases where an applicant requests to proceed without the assistance of a representative, the applicant must sign a waiver of representation. If the applicant does not want to proceed with the interview without his or her representative, the officer must reschedule the interview. Officers should consult with a supervisor if the representative fails to appear for multiple scheduled interviews.

The representative’s role is to ensure that the applicant’s legal rights are protected. A representative may advise his or her client on points of law but should not respond to questions the officer has directed to the applicant.

An applicant may be represented by any of the following:

- Attorneys in the United States;\[9\]
- Certain law students and law graduates not yet admitted to the bar;\[10\]
- Certain reputable individuals who are of good moral character, have a pre-existing relationship with the applicant and are not receiving any payment for the representation;\[11\]
- Accredited representatives from organizations accredited by the Board of Immigration Appeals (BIA);\[12\]
- Accredited officials of the government to which a person owes allegiance;\[13\] or
- Attorneys outside the United States.\[14\]

No other person may represent an applicant.\[15\]

3. Interpreters

An interpreter may be selected either by the applicant or by USCIS in cases where the applicant is permitted to use an interpreter. The interpreter must:

- Translate what the officer and the applicant say word for word to the best of his or her ability without providing the interpreter’s own opinion, commentary, or answer; and
- Complete an interpreter’s oath and privacy release statement and submit a copy of his or her government-issued identification at the naturalization interview.

A disinterested party should be used as an interpreter. If the USCIS officer is fluent in the applicant’s native language, the officer may conduct the examination in the applicant’s language of choice.

USCIS reserves the right to disqualify an interpreter provided by the applicant if an officer considers that the integrity of the examination is compromised by the interpreter’s participation.

B. Preliminary Review of Application

A USCIS officer who is designated to conduct the naturalization interview should review the applicant’s “A-file” and naturalization application before the interview. The A-file is the applicant’s record of his or her
interaction with USCIS, legacy Immigration and Naturalization Service (INS), and other governmental organizations with which the applicant has had proceedings pertinent to his or her immigration record. The officer addresses all pertinent issues during the naturalization interview.

1. General Contents of A-File

The applicant’s A-file may include the following information along with his or her naturalization application:

- Documents that show how the applicant became an LPR;
- Other applications or forms for immigration benefits submitted by the applicant;
- Correspondence between USCIS and the applicant;
- Memoranda and forms from officers that may be pertinent to the applicant’s eligibility;
- Materials such as any criminal records, correspondence from other agencies, and investigative reports and enforcement actions from DHS or other agencies.

2. Jurisdiction for Application[17]

In most cases, the USCIS office having jurisdiction over the applicant’s residence at the time of filing has the responsibility for processing and adjudicating the naturalization application.[18] An officer should review whether the jurisdiction of a case has changed because the applicant has moved after filing his or her naturalization application. The USCIS office may transfer the application to the appropriate office with jurisdiction when appropriate.[19] In addition, an applicant for naturalization as a battered spouse of a U.S. citizen[20] or child may use a different address for safety which does not affect the jurisdiction requirements.

In cases where an officer becomes aware of a change in jurisdiction during the naturalization interview, the officer may complete the interview and then forward the applicant’s A-file with the pending application to the office having jurisdiction. The officer informs the applicant that the application’s jurisdiction has changed. The applicant will receive a new appointment notice from the current office with jurisdiction.

3. Results of Background and Security Checks[21]

An officer should ensure that all of the appropriate background and security checks have been conducted on the naturalization applicant. The results of the background and security checks should be included as part of the record.

4. Other Documents or Requests in the Record

Requests for Accommodations or Disability Exceptions

USCIS accommodates applicants with disabilities by making modifications to the naturalization examination process.[22] An officer reviews the application for any accommodations request, any oath waiver request, or for a medical disability exception from the educational requirements for naturalization.[23]

Previous Notice to Appear, Order to Show Cause, or Removal Order

An officer reviews an applicant’s record and relevant databases to identify any current removal proceedings.
or previous proceedings resulting in a final order of removal from the United States. If an applicant is in removal proceedings, a Notice to Appear or the previously issued “Order to Show Cause” may appear in the applicant’s record.[24] USCIS denies any naturalization application from an applicant who is in removal proceedings, except for certain cases involving naturalization based on military service.[25]

The officer should deny the naturalization application if the applicant has already received a final order of removal from an immigration judge, unless:

- The applicant was removed from the United States and later reentered with the proper documentation and authorization; or
- The applicant is filing for naturalization under the military naturalization provisions.[26]

C. Initial Naturalization Examination

All naturalization applicants must appear for an in-person examination before a USCIS officer after filing an Application for Naturalization (Form N-400).[27] The applicant’s examination includes both the interview and the administration of the English and civics tests. The applicant’s interview is a central part of the naturalization examination. The officer conducts the interview with the applicant to review and examine all factors relating to the applicant’s eligibility.

The officer places the applicant under oath and interviews the applicant on the questions and responses in the applicant’s naturalization application.[28] The initial naturalization examination includes:

- An officer’s review of information provided in the applicant’s naturalization application;
- The administration of tests on the educational requirements for naturalization,[29] and
- An officer’s questions relating to the applicant’s eligibility for naturalization.[30]

The applicant’s written responses to questions on his or her naturalization application are part of the documentary record signed under penalty of perjury. The written record includes any amendments to the responses in the application that the officer makes in the course of the naturalization interview as a result of the applicant’s testimony. The amendments, sworn affidavits, and oral statements and answers document the applicant’s testimony and representations during the naturalization interview(s).

At the officer’s discretion, he or she may record the interview by a mechanical, electronic, or videotaped device, may have a transcript made, or may prepare an affidavit covering the testimony of the applicant.[31] The applicant or his or her authorized attorney or representative may request a copy of the record of proceedings through the Freedom of Information Act (FOIA).[32]

The officer provides the applicant with a notice of results at the end of the examination regardless of the outcome.[33] The notice provides the outcome of the examination and should explain what the next steps are in cases that are continued.[34]

D. Subsequent Re-examination

USCIS may schedule an applicant for a subsequent examination (re-examination) to determine the applicant’s eligibility.[35] During the re-examination:
The officer reviews any evidence provided by the applicant in a response to a Request for Evidence issued during or after the initial interview.

The officer considers new oral and written testimony and determines whether the applicant meets all of the naturalization eligibility requirements, to include re-testing the applicant on the educational requirements (if necessary).

In general, the re-examination provides the applicant with an opportunity to overcome deficiencies in his or her naturalization application. Where the re-examination is scheduled for failure to meet the educational requirements for naturalization during the initial examination, the subsequent re-examination is scheduled between 60 and 90 days from the initial examination.[36]

If the applicant is unable to overcome the deficiencies in his or her naturalization application, the officer denies the naturalization application. An applicant or his or her authorized representative may request a USCIS hearing before an officer on the denial of the applicant’s naturalization application.[37]

E. Expediting Applications from Certain SSI Beneficiaries

USCIS will expedite naturalization applications filed by applicants:

- Who are within 1 year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and

- Whose naturalization application has been pending for 4 months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants, who have pending applications, must inform USCIS of the approaching termination of benefits by InfoPass appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within 1 year or less and that their naturalization application has been pending for 4 months or more from the date of receipt by USCIS; and

- A copy of the applicant’s most recent SSA letter indicating the termination of their SSI benefits. (The USCIS alien number must be written at the top right of the SSA letter).

Applicants who have not filed their naturalization application may write “SSI” at the top of page one of the application. Applicants should include a cover letter or cover sheet along with their application to explain that their SSI benefits will be terminated within 1 year or less.

Footnotes


See Pub. L. 82-414 (June 27, 1952), as amended.

Title 8 of the Code of Federal Regulations (8 CFR). Most of the corresponding regulations have been promulgated by legacy INS or USCIS.

Precedent decisions are judicial decisions that serve as an authority for deciding an immigration matter. Precedent decisions are decisions designated as such by the Board of Immigration Appeals (BIA), Administrative Appeals Office (AAO), and appellate court decisions. Decisions from district courts are not precedent decisions in other cases.

The Adjudicator’s Field Manual (AFM) and policy memoranda also serve as key sources for guidance on topics that are not covered in the Policy Manual.

The representative must use the Notice of Entry of Appearance as Attorney or Representative (Form G-28).

See 8 CFR 292.1(a)(1).

See 8 CFR 292.1(a)(2).

See 8 CFR 292.1(a)(3).


See 8 CFR 292.1(a)(5).

In naturalization cases, attorneys licensed only outside the United States may represent an applicant only when the naturalization proceeding can occur overseas and where DHS allows the representation as a matter of discretion. Attorneys licensed only outside the United States cannot represent an applicant whose naturalization application is processed solely within the United States unless the attorney also qualifies under another representation category.

See 8 CFR 292.1(e).

For example, a Record of Arrest and Prosecution (“RAP” sheet).

See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

An applicant who is a student or a member of the U.S. armed forces may have different places of residence that may affect the jurisdiction requirement. See 8 CFR 316.5(b).

See 8 CFR 335.9.

See INA 319(a).

See Chapter 2, Background and Security Checks [12 USCIS-PM B.2].

See Part C, Accommodations [12 USCIS-PM C].

See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (N-648) [12 USCIS-PM E.3]. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].
An Order to Show Cause was the notice used prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104–208 (PDF), 110 Stat. 3009 (September 30, 1996).

See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)). See Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization [12 USCIS-PM D.2].

See INA 328(b)(2). See INA 329(b)(1).

See 8 CFR 335.2(a).

See 8 CFR 335.2(b) (Re-examination no earlier than 60 days from initial examination). See 8 CFR 312.5(a) (Re-examination for educational requirements scheduled no later than 90 days from initial examination). In cases where an applicant does not meet the educational requirements for naturalization during the re-examination, USCIS denies the application. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].


Chapter 4 - Results of the Naturalization Examination

USCIS has 120 days from the date of the initial naturalization interview to issue a decision. If the decision is not issued within 120 days of the interview, an applicant may request judicial review of his or her application in district court. The officer must base his or her decision on the laws, regulations, precedent decisions, and governing policies.

The officer may:
• Approve the application;

• Continue the examination without making a decision (if more information is needed), if the applicant needs to be rescheduled, or for other relevant reasons; or

• Deny the application.

The officer must provide the applicant with a notice of results at the end of the interview regardless of the outcome. The notice should address the outcome of the interview and the next steps involved for continued cases.\footnote{1}

**A. Approval of Naturalization Application**

If an officer approves a naturalization application, the application goes through the appropriate internal procedures before the USCIS office schedules the applicant to appear at a ceremony for the administration of the Oath of Allegiance.\footnote{2} The internal procedures include a “re-verification” procedure where all approved applications are reviewed for quality. The officer who conducts the re-verification is not the same officer who conducts the interview. While the officer conducting the re-verification process does not adjudicate the application once again, the officer may raise any substantive eligibility issues.

USCIS does not schedule an applicant for the Oath of Allegiance in cases where USCIS receives or identifies potentially disqualifying information about the applicant after approval of his or her application.\footnote{3} If USCIS cannot resolve the disqualifying information and the adjudicating officer finds the applicant ineligible for naturalization, USCIS then issues a motion to reopen and re-adjudicates the naturalization application.

**B. Continuation of Examination**

1. **Continuation to Request Evidence**

An officer issues the applicant a written Request for Evidence if additional information is needed to make an accurate determination on the naturalization application.\footnote{4} In general, USCIS permits a period of 30 days for the applicant to respond to a Request for Evidence.\footnote{5}

The Request for Evidence should include:

• The specific documentation or information that the officer is requesting;

• The ways in which the applicant may respond; and

• The period of time that the applicant has to reply.

The applicant must respond to the Request for Evidence within the timeframe specified by the officer. If the applicant timely submits the evidence as requested, the officer makes a decision on the applicant’s eligibility. If the applicant fails to submit the evidence as requested, the officer may adjudicate the application based on the available evidence.\footnote{6}

2. **Scheduling Subsequent Re-examination**

If an applicant fails any portion of the naturalization test, an officer must provide the applicant a second opportunity to pass the test within 60 to 90 days after the initial examination unless the applicant is statutorily
ineligible for naturalization based on other grounds. An officer should also schedule a re-examination in order to resolve any issues on eligibility.

The outcome of the re-examination determines whether the officer conducting the second interview continues, approves, or denies the naturalization application.

If the applicant fails to appear for the re-examination and USCIS does not receive a timely or reasonable request to reschedule, the officer should deny the application based on the applicant’s failure to meet the educational requirements for naturalization. The officer also should include any other areas of ineligibility within the denial notice.

C. Denial of Naturalization Application

USCIS must deny a naturalization application when an applicant does not meet all eligibility requirements under the law. Furthermore, USCIS cannot consider the naturalization application of an applicant who is in removal proceedings. Therefore, effective November 18, 2020, when a removal proceeding is pending against a naturalization applicant, USCIS denies the naturalization application under INA 318, except for certain cases involving naturalizations based on military service.

The officer should deny the naturalization application if the applicant has already received a final order of removal from an immigration judge, unless:

- The applicant was removed from the United States and later reentered with the proper documentation and authorization; or
- The applicant is filing for naturalization under the military naturalization provisions.

If an officer denies a naturalization application, the officer must issue the applicant and his or her attorney or representative a written denial notice no later than 120 days after the initial interview on the application. The written denial notice should include:

- A clear and concise statement of the facts in support of the decision;
- Citation of the specific eligibility requirements the applicant failed to demonstrate; and
- Information on how the applicant may request a hearing on the denial.

The table below provides certain general grounds for denial of the naturalization application. An officer should review the pertinent parts of this volume that correspond to each ground for denial and its related eligibility requirement for further guidance.

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<th>Failure to Establish…</th>
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<td>• <strong>INA 316(a)(1)</strong></td>
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<td>Good Moral Character</td>
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<td>• <strong>INA 101(f)</strong></td>
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<td>• <strong>8 CFR 316.10</strong></td>
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<tr>
<td>Attachment and Favorable Disposition to the Good Order and Happiness of the United States</td>
<td>• <strong>INA 316(a)(3)</strong></td>
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<td></td>
<td>• <strong>8 CFR 316.11</strong></td>
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<tr>
<td>Understanding of English (Including Reading, Writing, and Speaking)</td>
<td>• <strong>INA 312(a)(1)</strong></td>
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<tr>
<td></td>
<td>• <strong>8 CFR 312.1</strong></td>
</tr>
</tbody>
</table>
D. Administrative Closure, Lack of Prosecution, Withdrawal, and Applications Not Held in Abeyance

1. Administrative Closure for Failing to Appear at Initial Interview

An applicant abandons his or her application if he or she fails to appear for his or her initial naturalization examination without good cause and without notifying USCIS of the reason for non-appearance within 30 days of the scheduled appointment. In the absence of timely notification by the applicant, an officer may administratively close the application without making a decision on the merits.[13]

An applicant may request to reopen an administratively closed application without fee by submitting a written request to USCIS within 1 year from the date the application was closed.[14] The date of the applicant’s request to reopen an application becomes the date of filing the naturalization application for purposes of determining eligibility for naturalization.[15]

If the applicant does not request reopening of an administratively closed application within 1 year from the date the application was closed, USCIS:

- Considers the naturalization application abandoned; and
- Dismisses the application without further notice to the applicant.[16]

2. Failing to Appear for Subsequent Re-examination or to Respond to Request for Evidence

If the applicant fails to appear at the subsequent re-examination or fails to respond to a Request for Evidence within 30 days, the officer must adjudicate the application on the merits.[17] This includes cases where the applicant fails to appear at a re-examination or to provide evidence as requested.

An officer should consider any good cause exceptions provided by the applicant for failing to respond or appear for an examination in adjudicating a subsequent motion to reopen.

3. Withdrawal of Application

The applicant may request, in writing, to withdraw his or her application. The officer must inform the
applicant that the withdrawal by the applicant constitutes a waiver of any future hearing on the application. If USCIS accepts the withdrawal, the applicant may submit another application without prejudice. USCIS does not send any further notice regarding the application.

If the District Director does not consent to the withdrawal, the officer makes a decision on the merits of the application.[18]

4. Applications Not Held in Abeyance if Applicant is in Removal Proceedings

USCIS cannot consider the naturalization application of an applicant who is in removal proceedings. Effective November 18, 2020, when a removal proceeding is pending against a naturalization applicant, USCIS denies the naturalization application under INA 318 and the naturalization application is not held in abeyance, except for certain applications for naturalization based on military service.[19]

Footnotes

[^1] The officer issues a Notice of Examination Results (Form N-652).


[^3] See 8 CFR 335.5. See Chapter 5, Motion to Reopen [12 USCIS-PM B.5].


[^5] See 8 CFR 335.7. The applicant has up to three more days after the 30-day period for responding to an RFE in cases where USCIS has mailed the request. See 8 CFR 103.8(b).


[^9] See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)). See Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization [12 USCIS-PM D.2].


[^13] See 8 CFR 103.2(b)(13)(ii), 8 CFR 335.6(a), and 8 CFR 335.6(b). Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families [12 USCIS-PM I].

[^14] See 8 CFR 335.6(b). See Chapter 5, Motion to Reopen [12 USCIS-PM B.5].

Chapter 5 - Motion to Reopen

A. USCIS Motion to Reopen

An officer must execute a motion to reopen a previously approved naturalization application if:

- USCIS receives or identifies disqualifying derogatory information about the applicant after approval of his or her application prior to the administration of the Oath of Allegiance;[1] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause.[2]

USCIS notifies the applicant in writing about the receipt of derogatory information or multiple failures to appear through the motion to reopen. The applicant has 15 days to respond to the motion to reopen and overcome the derogatory information or provide good cause for failing to appear at the Oath ceremony.[3]

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer denies the motion to reopen and schedules the applicant for the Oath of Allegiance. If the applicant is unable to overcome the derogatory information, the officer grants the motion to reopen and denies the application on its merits.[4]

USCIS must not schedule an applicant for the administration of the Oath of Allegiance if USCIS receives or identifies disqualifying derogatory information. USCIS must not administer the Oath of Allegiance to the applicant until the matter is resolved favorably.

An applicant who fails to appear for at least two ceremonies to administer the Oath of Allegiance without good cause abandons his or her intent to be naturalized. USCIS considers multiple failures to appear to be equivalent to receipt of derogatory information after the approval of a naturalization application.[5]

B. Motion to Reopen Administratively Closed Application

An applicant may request to reopen an administratively closed naturalization application with USCIS by submitting a written request to USCIS within one year of the date his or her application was administratively closed.[6] The applicant is not required to pay any additional fees. USCIS considers the date of the applicant’s request to reopen an application as the filing date of the naturalization application for purposes of determining eligibility for naturalization.[7] USCIS sends the applicant a notice approving or denying the motion to reopen.
Chapter 6 - USCIS Hearing and Judicial Review

A. Hearing Request

An applicant or his or her authorized representative[^1] may request a USCIS hearing before an officer on the denial of the applicant’s naturalization application. The applicant or authorized representative must file the request with USCIS within 30 days after the applicant receives the notice of denial. [^2]

B. Review of Timely Filed Hearing Request

1. Hearing Scheduled within 180 Days

Upon receipt of a timely hearing request, USCIS schedules the hearing within 180 days. The hearing should be conducted by an officer other than the officer who conducted the original examination or the officer who denied the application. The officer conducting the hearing must be classified at a grade level equal to or higher than the grade of the examining officer. [^3]

2. Review of Application

An officer may conduct a de novo review of the applicant’s naturalization application or may utilize a less formal review procedure based on:

- The complexity of the issues to be reviewed or determined; and
- The necessity of conducting further examinations essential to the naturalization requirements. [^4]

A de novo review means that the officer makes a new and full review of the naturalization application. [^5]

An officer conducting the hearing has the authority and discretion to:

[^1]: See 8 CFR 335.5.
[^2]: See 8 CFR 337.10.
[^3]: See 8 CFR 335.5.
[^5]: See 8 CFR 337.10.
[^6]: Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families, Chapter 6, Required Background Checks, Section C, Ways Service Members may Meet Fingerprint Requirement [12 USCIS-PM I.6(C)].
[^7]: See 8 CFR 335.6(b).
• Review all aspects of the naturalization application and examine the applicant anew;
• Review any record, file or report created as part of the examination;
• Receive new evidence and testimony relevant to the applicant’s eligibility; and
• Affirm the previous officer’s denial or re-determine the decision in whole or in part.

The officer conducting the hearing:
• Affirms the findings in the denial and sustains the original decision to deny;
• Re-determines the original decision but denies the application on newly discovered grounds of ineligibility;[6] or
• Re-determines the original decision and reverses the original decision to deny, and approves the naturalization application.

3. English and Civics Testing at Hearing

In hearings involving naturalization applications denied on the basis of failing to meet the educational requirements (English and civics),[7] officers must administer any portion of the English or civics tests that the applicant previously failed. Officers provide only one opportunity to pass the failed portion of the tests at the hearing.

C. Improperly Filed Hearing Request

1. Untimely Filed Request

If an applicant files a hearing request over 30 days after receiving the denial notice (33 days if notice was mailed by USCIS[8]), USCIS considers the request improperly filed. If an applicant’s untimely hearing request meets either the motion to reopen or motion to reconsider requirements, USCIS will treat the hearing request as a motion.[9] USCIS renders a decision on the merits of the case in such instances. If the request does not meet the motion requirements, USCIS rejects the request without refund of filing fee.[10]

Hearing Request Treated as a Motion to Reopen

USCIS treats an untimely request for a hearing as a motion to reopen if the applicant presents new facts and evidence. If the application or petition was denied due to abandonment, the request must be filed with evidence that the decision was in error because:

• The requested evidence leading to the denial was not material to the issue of eligibility;
• The required initial evidence was submitted with the application, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
• USCIS sent the relevant correspondence to the wrong address or the applicant filed a timely change of address before USCIS sent the correspondence.[11]

Hearing Request Treated as a Motion to Reconsider
USCIS handles an untimely hearing request for a hearing as a motion to reconsider if:

- The applicant explains the reasons for reconsideration;
- Pertinent precedent decisions establish that the decision to deny was based on an incorrect application of law or USCIS policy; and
- The applicant establishes that the decision to deny was incorrect based on the evidence of record at the time of the decision. [12]

2. Requests Improperly Filed by Unauthorized Persons or Entities

USCIS considers a hearing request improperly filed if an unauthorized person or entity files the request. [13] USCIS rejects these requests without refund of filing fee. [14]

3. Requests Improperly Filed by Attorneys or Authorized Representatives

USCIS considers a hearing request improperly filed if an attorney or representative files the request without properly filing a notice of entry of appearance entitling that person to represent the applicant. The officer must ask the attorney or representative to submit a proper filed notice within 15 days. [15]

If the attorney or representative replies with a properly executed notice within 15 days, the officer should handle the hearing request as properly filed. If the attorney or representative fails to do so, the officer may nevertheless make a new decision favorable to the applicant through the officer’s own motion to reopen without notifying the attorney or representative. [16]

D. Judicial Review

A naturalization applicant may request judicial review before a United States district court of his or her denied naturalization application after USCIS issues the decision following the hearing with a USCIS officer. [17] The applicant must file the request before the United States District Court having jurisdiction over the applicant’s place of residence. The district court reviews the case de novo and makes its own findings of fact and conclusions of law.

Footnotes


[^5] The term “de novo” is Latin for “anew.” In this context, it means the starting over of the application’s review.

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Part C - Accommodations

Chapter 1 - Purpose and Background

A. Purpose

USCIS accommodates naturalization applicants with disabilities by making modifications to the naturalization process. USCIS aims to provide applicants with disabilities an equal opportunity to successfully complete the process. While USCIS is not required to make major modifications that would result in a fundamental change to the naturalization process or an undue burden for the agency, USCIS makes every effort to provide accommodations to naturalization applicants with disabilities.

- USCIS evaluates disability accommodation requests on a case-by-case basis as accommodations vary according to the nature of the applicant’s disability. In determining what type of accommodation is necessary, USCIS gives primary consideration to the requests of the person with a disability.
- USCIS provides applicants with the requested accommodation or an effective alternative that addresses the unique needs of the applicant where appropriate.

Applicants may request an accommodation at the time of filing their naturalization application or at any other time during the naturalization process.
B. Background

The Rehabilitation Act requires all federal agencies to provide reasonable accommodations to persons with disabilities in the administration of their programs and benefits.[5] USCIS does not exclude persons with disabilities from its programs or activities based on their disability. The Rehabilitation Act and the implemented DHS regulations[6] require USCIS to provide accommodations that assist an applicant with a disability to have an equal opportunity to participate in its programs, to include the naturalization process.

C. Difference between Accommodations and Waivers

Accommodations are different from statutory waivers or exceptions. For example, if an officer grants an applicant a waiver for a naturalization educational requirement, the applicant is exempt from meeting that educational requirement. An accommodation is a modification of an existing practice or procedure that will enable an applicant with a disability to participate in the naturalization process.

The accommodation does not exempt the applicant from the obligation to satisfy any applicable requirement for naturalization. The accommodation is a modification to the way in which the applicant may establish that he or she meets the requirement.[7]

D. Legal Authorities

- Section 504 of the Rehabilitation Act of 1973 – Nondiscrimination under federal grants[8]
- 29 U.S.C. 794 – Nondiscrimination under federal grants and programs
- 6 CFR 15 – Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by DHS
- 8 CFR 334.4 – Investigation and report if applicant is sick or disabled

Footnotes

[^1] See 6 CFR 15.3 for the applicable definitions relating to enforcement of nondiscrimination on the basis of disability in programs or activities conducted by DHS.


[^3] See, for example, 6 CFR 15.50 and 6 CFR 15.60.

[^4] In some cases, applicants with physical impairments such as blindness or low vision or hearing loss may have submitted a medical disability exception form (Form N-648) along with their naturalization application to request an exception from the English and civics tests as they may be unable to take the tests, even with an accommodation. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648) [12 USCIS-PM E.3].

activities conducted by federal agencies solely on the basis of their disability.


[^7] The accommodations discussed in this part are distinguished from the oath waiver process by which the applicant’s complete examination is conducted by a legal guardian or surrogate appointed by a court of law, or an eligible designated representative. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].


Chapter 2 - Accommodation Policies and Procedures

USCIS has established policies and procedures for handling and processing accommodation requests, which include:

- Providing information locally as needed on how to request accommodations;
- Designating a point-of-contact to handle accommodation requests whenever possible;
- Responding to inquiries and reviewing accommodation requests timely;
- Establishing internal processes for receiving and for properly filing requests; and
- Processing requests and providing accommodations whenever appropriate.

A. Requesting an Accommodation

1. Submitting the Request

It is the applicant’s responsibility to request an accommodation in advance, each time an accommodation is needed. Generally, the applicant, his or her attorney or accredited representative, or legal guardian should request an accommodation concurrently with the filing of the naturalization application. However, an applicant may also call the USCIS Contact Center at 1-800-375-5283 (TTY: 1-800-767-1833), use the online accommodations request form in order to request an accommodation, or request an accommodation with the field office at any time during the naturalization process.

2. Timeliness of Request

The field office’s ability to provide an accommodation on the date that it is needed may be affected by the timeliness of the accommodation request. Some types of accommodations do not require advance notice and can be immediately provided. This may include a USCIS employee speaking loudly or slowly to an applicant, or allowing additional time for an applicant to answer during the examination. Other types of accommodations may be difficult to provide without advance planning. This may include providing a sign language interpreter, additional time for the examination, or scheduling an applicant for an off-site examination.

B. Documentation and Evidence
USCIS evaluates each request for an accommodation on a case-by-case basis. While an applicant is not required to include documentation of his or her medical condition, there may be rare cases where documentation is needed to evaluate the request.[1]

C. Providing Accommodations as Requested

If an accommodation is warranted, a field office should provide the accommodation on the date and time the applicant is scheduled for his or her appearance. The field office should aim to provide the requested accommodation without having to reschedule the applicant’s appointment. If an accommodation cannot be provided for the scheduled appointment, the applicant and his or her attorney or accredited representative should be notified as soon as possible. The applicant’s appointment should be rescheduled within a reasonable period of time.

Footnote

[^1] Officers should contact local USCIS counsel prior to contacting the applicant and his or her attorney or accredited representative for further information.

Chapter 3 - Types of Accommodations

There are many types of accommodations that USCIS provides for applicants with disabilities.[1] Accommodations typically relate to the following:

- Naturalization interview;
- Naturalization test; and
- Oath of Allegiance.

Each accommodation may apply to any aspect of the naturalization process as needed, to include any pre-examination procedures.

USCIS recognizes that some applicants may only require one accommodation, while others may need more. Some applicants may need one accommodation at a particular stage of the naturalization process and may require the same or another type of accommodation at a later date.

A. Accommodations for the Naturalization Examination

Field offices are able to make modifications to provide accommodations during the naturalization examination to applicants with disabilities. The table below serves as a quick reference guide listing common examples of accommodations to the naturalization examination for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation example.

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<th>Accommodation</th>
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### Accommodation Explanation

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<td>Extending examination time and breaks</td>
<td>Some applicants with disabilities may need more time than is regularly scheduled for the examination</td>
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<td>Providing sign language interpreters or other aids for deaf or hard of hearing applicants</td>
<td>Deaf or hard of hearing applicants may need a sign language interpreter, or other accommodation, to complete the examination</td>
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<tr>
<td>Allowing relatives to attend the examination and assist in signing forms</td>
<td>Presence of a relative may have a calming effect, and such persons may assist applicants who are unable to sign or make any kind of mark</td>
</tr>
<tr>
<td>Legal guardian, surrogate, or designated representative at examination</td>
<td>Some applicants are unable to undergo an examination because of a physical or developmental disability or mental impairment</td>
</tr>
<tr>
<td>Allowing nonverbal communication</td>
<td>Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in nonverbal ways</td>
</tr>
<tr>
<td>Off-site examination</td>
<td>Some applicants may be unable to appear at the field office because of their disability</td>
</tr>
</tbody>
</table>

### 1. Extending Examination Time and Breaks

An officer may provide additional time for the examination and allow breaks if necessary for applicants with disabilities who have requested that type of accommodation. USCIS recognizes that some applicants may need more time than is regularly scheduled.

### 2. Providing Accommodations for Deaf or Hard of Hearing Applicants

In determining what type of auxiliary aid is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

Unless the applicant chooses to bring his or her own sign language interpreter, the field office must provide a sign language interpreter for a deaf or hard of hearing applicant upon his or her request.[2]

The Rehabilitation Act requires USCIS to make an effective accommodation for the person's disability, and USCIS cannot transfer the accommodation burden back to the person. For example, if the person uses the sign language Pidgin English, USCIS must provide an interpreter who uses Pidgin English if one is reasonably available. USCIS cannot tell the person it will provide an American Sign Language (ASL)
interpreter and require the person to provide an interpreter to translate between Pidgin English and ASL.[3]

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allow the applicant to answer the officer’s questions in writing, as needed.

3. Allowing Relatives and Others to Attend Examinations and Assist in Signing Forms

In cases where an applicant has a disability, the officer may allow an applicant’s family member, legal guardian, or other person to attend the examination with the applicant. The presence of such a person or persons may help the applicant to remain calm and responsive during the examination. However, if the presence of such person or persons becomes disruptive to the examination, the officer may at any time remove the person from the examination and reschedule the examination if the applicant is unable to proceed at that time.

An officer may allow the person accompanying the applicant to repeat the officer’s questions in cases where such repetition facilitates the applicant’s responsiveness. An applicant’s mark is acceptable as the applicant’s signature on the naturalization application or documents relating to the application when an applicant is unable to sign. A family member may assist an applicant to sign, initial, or make a mark when completing the attestation on the naturalization application. Except as provided below, a family member or other person may not sign the naturalization application for the applicant.

4. Legal Guardian, Surrogate, or Designated Representative at Examinations

Currently, all applicants for naturalization are required to appear in person and give testimony under oath as to their eligibility for naturalization.[4] When an applicant is unable to undergo an examination because of a physical, developmental disability, or mental impairment, a legal guardian, surrogate, or an eligible designated representative completes the naturalization process for the applicant. USCIS waives the Oath of Allegiance and the legal guardian, surrogate, or designated representative attests to the applicant’s eligibility for naturalization. In addition to oath waiver, this process may require accommodations including off-site examinations.[5]

Persons eligible to act on behalf of the applicant include:

- A person who a proper court has designated as the applicant’s legal guardian or surrogate and who is authorized to exercise legal authority over the applicant’s affairs; or
- In the absence of a legal guardian or surrogate, a U.S. citizen, spouse, parent, adult son or daughter, or adult brother or sister who is the primary custodial caregiver and who takes responsibility for the applicant.

USCIS will only recognize one designated representative in the following order of priority:

- Legal guardian or surrogate (highest priority);
- U.S. citizen spouse;
- U.S. citizen parent;
- U.S. citizen adult son or daughter;
- U.S. citizen adult brother or sister (lowest priority).
If there is a priority conflict between the persons seeking to represent the applicant and the persons share the same degree of familial relationship, USCIS gives priority to the party with seniority in age.

The person acting on behalf of the applicant must provide proof of legal guardianship, or documentation to establish the familial relationship, such as a birth certificate, marriage certificate, or adoption decree. In addition, the person must provide documentation to establish that he or she has the primary custodial care and responsibility for the applicant (for example, income tax returns, Social Security Administration documents, and affidavits from other relatives). A spouse, parent, adult son or daughter, or adult brother or sister who is not the legal guardian or surrogate must provide evidence of U.S. citizenship.

5. Allowing Nonverbal Communication

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant’s representative (if any) should agree to the form of communication.

6. Off-Site Examination

An officer may conduct a naturalization examination in an applicant’s home or other residence such as a nursing home, hospice, hospital, or senior citizens center when appropriate. This applies to cases where the applicant’s illness or disability makes it medically unsuitable for him or her to appear at the field office in person.

B. Accommodations for the Naturalization Test

An applicant with a disability may require an accommodation to take the English and civics tests. The officer should use the appropriate accommodation to meet the applicant’s particular needs. In addition, some applicants with disabilities may qualify for an exception to these requirements for naturalization.

The table below serves as a quick reference guide listing common examples of accommodations to the naturalization test for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation.

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Providing reading tests in large print or braille</td>
<td>Applicants who have low vision or are blind or deafblind may need large print or braille in order to be able to read the test.</td>
</tr>
<tr>
<td>Oral writing test</td>
<td>Applicants with physical impairments or with limited use of their hands may be able to complete the writing test orally if they cannot write the sentences.</td>
</tr>
</tbody>
</table>
### Accommodation | Explanation
--- | ---
Allowing nonverbal communication | Applicants may be able to communicate in nonverbal ways if they cannot respond verbally to questions.\(^9\)
Providing sign language interpreters | Deaf or hard of hearing applicants may need a sign language interpreter to complete the tests.

1. **Providing Reading Test in Large Print or Braille**

An officer should provide the current reading naturalization test version in large print or braille for applicants who have low vision or are blind or deafblind.\(^{10}\) To request large print or braille-related or other accommodations, applicants should call the USCIS Contact Center at 1-800-375-5283 (TTY: 800-767-1833), use the online accommodations request form in order to request an accommodation, or request an accommodation with the field office at any time during the naturalization process.

2. **Oral Writing Test**

An officer should administer the writing portion of the naturalization test orally for applicants with physical impairments, which cause limited or no use of their hands in a way as to preclude the applicant’s ability to write. The applicant may satisfy the writing requirements by spelling out the words from the writing test.

3. **Allowing Nonverbal Communication**

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant’s representative (if any) should agree to the form of communication.

4. **Providing Sign Language Interpreters**

In determining what type of accommodation is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

The field office must provide a sign language interpreter for a deaf or hard of hearing applicant upon his or her request.\(^{11}\) An applicant may bring an interpreter of his or her choosing. To request a sign language interpreter, applicants should call the USCIS Contact Center at 1-800-375-5283 (TTY: 800-767-1833), use the online accommodations request form in order to request an accommodation, or request an accommodation with the field office at any time during the naturalization process.

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allow the applicant to answer the officer’s questions in writing, as needed.
C. Accommodations for the Oath of Allegiance

A disability or medical impairment may make it difficult for some applicants to take the Oath of Allegiance at the oath ceremony. The table below lists examples of accommodations to the Oath of Allegiance. The paragraphs that follow the table provide further guidance on each accommodation. Some applicants may qualify for a waiver of the Oath of Allegiance.[12]

<table>
<thead>
<tr>
<th>Accommodation</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simplifying language for assent to the oath</td>
<td>Applicants with disabilities may need simpler language to show they assent to the oath</td>
</tr>
<tr>
<td>Expedited scheduling for oath</td>
<td>Applicants with disabilities may be unable to attend a later ceremony because of their condition</td>
</tr>
<tr>
<td>Providing sign language interpreter at oath</td>
<td>Deaf or hard of hearing applicants may need a sign language interpreter to participate in the ceremony</td>
</tr>
<tr>
<td>Off-site administration of oath</td>
<td>Applicants with disabilities may be unable to attend the court or field office ceremony because of their condition</td>
</tr>
</tbody>
</table>

1. Simplifying Language for Assent to the Oath

An officer may question the applicant about the Oath of Allegiance in a clear, slow manner and in simplified language if the applicant presents difficulty understanding questions regarding the oath. This approach allows the applicant to understand and assent to the Oath of Allegiance and understand that he or she is becoming a U.S. citizen.

2. Expedited Scheduling for Oath

A field office should expedite administration of the Oath of Allegiance for an applicant who is unable to attend a ceremony at a later time because of his or her medical impairment. The expedited process may include a ceremony on the same day or an off-site visit.

3. Providing Sign Language Interpreter at Oath

A field office should provide an sign language interpreter for an applicant who is deaf or hard of hearing or permit the applicant to use his or her own interpreter during an administrative oath ceremony or for a judicial ceremony where a court is unable to provide an sign language interpreter.

4. Off-Site Administration of Oath
A field office should administer the Oath of Allegiance immediately following the off-site examination for an applicant who is unable to attend because of his or her medical condition. Some applicants may have appeared at the field office for the examination, but due to a deteriorating condition are unable to attend the oath ceremony. In such cases, an off-site visit may be scheduled to administer the Oath of Allegiance.

**Footnotes**

[^1] The lists of accommodations in this chapter are not exhaustive. USCIS determines and provides accommodations on a case-by-case basis.

[^2] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].

[^3] Contact the Registry of Interpreters for the Deaf (RID) at 703-838-0030 (voice), 703-838-0459 (TTY), or use RID's searchable interpreter agency referral database.


[^8] For additional information on how USCIS evaluates each request for a reasonable accommodation, see Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 6, Disability Accommodation Requests, Section C, Requesting Accommodation, Subsection 3, USCIS Review [1 USCIS-PM A.6(C)(3)].

[^9] While the inability to speak is considered a disability under the Rehabilitation Act, the inability to speak in the English language alone (while being able to speak in a foreign language) is not considered a disability under the Act. Therefore, no accommodation is required, and USCIS does not provide accommodations solely on the basis of the requestor being unable to speak English. See INA 312. See 8 CFR 312.1. In addition, a request for an interpreter is not approved unless the requestor is otherwise eligible. See 8 CFR 312.4.

[^10] Officers may photocopy the current versions of the test into larger print or increase the font electronically.

[^11] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].


**Part D - General Naturalization Requirements**

**Chapter 1 - Purpose and Background**
# A. Purpose

Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever. There are various ways to become a U.S. citizen through the process of naturalization. This chapter addresses the general naturalization requirements.

The applicant has the burden of establishing by a preponderance of the evidence that he or she meets the requirements for naturalization.

# B. General Eligibility Requirements

The following are the general naturalization requirements that an applicant must meet in order to become a U.S. citizen:

<table>
<thead>
<tr>
<th>General Eligibility Requirements for Naturalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant must be age 18 or older at the time of filing for naturalization</td>
</tr>
<tr>
<td>The applicant must be a lawful permanent resident (LPR) for at least five years before being eligible for naturalization</td>
</tr>
<tr>
<td>The applicant must have continuous residence in the United States as an LPR for at least five years immediately preceding the date of filing the application and up to the time of admission to citizenship</td>
</tr>
<tr>
<td>The applicant must be physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application</td>
</tr>
<tr>
<td>The applicant must have lived within the state or USCIS district with jurisdiction over the applicant’s place of residence for at least three months prior to the date of filing</td>
</tr>
<tr>
<td>The applicant must demonstrate good moral character for five years prior to filing for naturalization, and during the period leading up to the administration of the Oath of Allegiance</td>
</tr>
<tr>
<td>The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law</td>
</tr>
<tr>
<td>The applicant must be able to read, write, and speak and understand English and have knowledge and an understanding of U.S. history and government</td>
</tr>
</tbody>
</table>
C. Legal Authorities

- **INA 312; 8 CFR 312** – Educational requirements for naturalization
- **INA 316; 8 CFR 316** – General requirements for naturalization
- **INA 318** – Prerequisite to naturalization, burden of proof

Footnotes

[^1] See **INA 101(a)(23)**.


[^3] See **INA 316**.

Chapter 2 - Lawful Permanent Resident Admission for Naturalization

A. Lawful Permanent Resident at Time of Filing and Naturalization

1. Lawful Admission for Permanent Residence

Section 318 of the Immigration and Nationality Act (INA) requires a naturalization applicant to show that he or she has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of the INA in effect at the time of admission or adjustment.\(^1\) This requirement applies to the applicant’s initial admission as a lawful permanent resident (LPR) or adjustment to LPR status, as well as all subsequent reentries to the United States.\(^2\) The applicant generally must make this showing at the time he or she files the naturalization application. If the LPR status was not lawfully obtained for any reason, regardless of whether there was any fraud or willful misrepresentation by the applicant, the applicant is ineligible for naturalization even if the applicant was admitted as an LPR and possesses a Permanent Resident Card (PRC) (Form I-551).\(^3\)

In order for the applicant to establish that he or she was lawfully admitted for permanent residence, the applicant must have met all the requirements for admission as an immigrant for adjustment of status.\(^4\) An applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA if his or her LPR status was obtained by fraud, willful misrepresentation, or if the admission was otherwise not in compliance with the law.\(^5\) Any such applicant is ineligible for naturalization in accordance with INA 318.

2. Conditional Permanent Residents

A conditional permanent resident (CPR) filing for naturalization on the basis of his or her permanent resident status for 5 years (or 3 years for spouses of U.S. citizens) must have met all of the applicable requirements of the conditional residence provisions. CPRs are generally not eligible for naturalization unless the conditions on their permanent resident status have been removed because such CPRs have not been lawfully admitted.
for permanent residence in accordance with all applicable provisions of the INA.[6] However, there are certain exceptions,[7] and under certain circumstances, an officer may adjudicate a Petition to Remove Conditions on Residence (Form I-751) during a naturalization proceeding.[8]

If the record indicates that the alien spouse was admitted or adjusted as a spouse of a U.S. citizen married less than 2 years at the time of admission (CR-1 or CR-6), but should have been admitted or adjusted as a spouse of a U.S. citizen married more than 2 years at the time of admission (IR-1 or IR-6), the officer may update the alien spouse’s class of admission code accordingly. The erroneous classification of the alien spouse as a CR-1 or CR-6 instead of an IR-1 or IR-6 does not render the alien’s admission or adjustment unlawful. In addition, the applicant would be eligible for naturalization even if a Form I-751 was not filed or approved.

If the record indicates that the alien spouse was admitted or adjusted as a spouse of a U.S. citizen married more than 2 years at the time of admission (IR-1 or IR-6), but should have been admitted or adjusted as a spouse of a U.S. citizen married less than 2 years at the time of admission (CR-1 or CR-6), the officer should request the submission of Form I-751 and adjudicate Form I-751 before adjudicating the Application for Naturalization (Form N-400). The fact that the applicant was admitted or adjusted under the wrong code of admission does not render the adjustment unlawful, and the applicant is still eligible for naturalization, if otherwise qualified, upon the approval of Form I-751.

3. Effective Date of Permanent Residence

A person is generally considered an LPR at the time USCIS approves the applicant’s adjustment application or at the time the applicant is admitted into the United States with an immigrant visa.[9] Most applicants applying for adjustment of status become LPRs on the date USCIS approves the application.[10]

For certain classifications, however, the effective date of becoming an LPR may be a date that is earlier than the actual approval of the status (commonly referred to as a “rollback” date). For example:

- An alien admitted under the Cuban Adjustment Act (CAA) is generally an LPR as of the date of the alien’s last arrival and admission into the United States or 30 months before the filing of the adjustment application, whichever is later.[11]
- A refugee is generally considered an LPR as of the date of entry into the United States.[12]
- An asylee is generally considered an LPR 1 year before the date USCIS approves the adjustment application.[13]
- A parolee granted adjustment of status under the Lautenberg Amendment is considered an LPR as of the date of inspection and parole into the United States.[14]
- A principal applicant granted adjustment of status based on the Liberian Refugee Immigration Fairness (LRIF) provision of the Fiscal Year 2020 National Defense Authorization Act is an LPR as of the date of his or her earliest arrival into the United States or as of November 20, 2014 (if the principal applicant cannot establish residence earlier). An eligible family member granted adjustment of status under LRIF is an LPR as of the date of his or her earliest arrival in the United States or the receipt date of his or her adjustment application (if the eligible family member cannot establish residence earlier).[15]

4. Evidence of LPR Status
USCIS issues a PRC to each alien who has been admitted for permanent residence as evidence of his or her LPR status. LPRs over 18 years of age are required to have their PRC in their possession as evidence of their status. The PRC contains the date and the classification under which the alien was accorded LPR status.

If the PRC is expired or the applicant has lost the card, he or she generally must file an Application to Replace Permanent Resident Card (Form I-90) and provide the receipt notice at the time of the naturalization interview. Though USCIS may issue temporary evidence of LPR status in the form of an Alien Documentation Identification and Telecommunication (ADIT) stamp, USCIS does not provide such stamps to aliens with a pending Form N-400 unless the alien filed a Form I-90 or the alien filed Form N-400 more than 6 months before the expiration of his or her PRC.

A PRC alone is insufficient to establish that the applicant has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.

5. U.S. Government Error

An applicant is ineligible for naturalization under INA 318 if his or her LPR status was obtained in error, even in the absence of fraud or willful misrepresentation. Some examples of errors in the process of obtaining LPR status that generally render the applicant ineligible for naturalization include:

- The U.S. Department of State (DOS) incorrectly approved an alien’s immigrant visa application and issued a visa;
- USCIS incorrectly approved an alien’s adjustment application; or
- The alien was otherwise mistakenly admitted as an LPR.

The applicant is generally ineligible for naturalization under such circumstances, even if he or she did not commit any fraud in obtaining the immigrant visa, admission to the United States, or LPR status.

B. Abandonment of Lawful Permanent Residence

An applicant who has abandoned his or her LPR status is not eligible for naturalization. To naturalize under most provisions of the immigration laws, an alien must be lawfully admitted for permanent residence and have maintained LPR status through the naturalization process. USCIS may consider any relevant evidence of abandonment to assess whether the applicant is eligible for naturalization.

Abandonment of LPR status occurs when the LPR demonstrates his or her intent to no longer reside in the United States as an LPR after departing the United States. In addition, abandonment of LPR status by a parent is imputed to a minor child who is in the parent’s custody and control. While LPRs are permitted to travel outside the United States, depending on the length and circumstances of the trip abroad, the trip may lead to a determination that the LPR abandoned his or her LPR status.

If the evidence suggests that an applicant abandoned his or her LPR status and was subsequently erroneously permitted to enter as a returning LPR, the applicant is ineligible for naturalization. This is because the applicant failed to establish that he or she was a lawfully admitted for permanent residence at the time of the subsequent reentry and failed to meet the continuous residence requirement for naturalization.

If the officer determines that the naturalization applicant has failed to meet the burden of establishing that he...
or she maintained LPR status, DHS places the applicant in removal proceedings by issuing a Notice to
Appear (NTA) (Form I-862), where issuance would be in accordance with established guidance. USCIS
then denies the naturalization application. An immigration judge (IJ) makes a final determination as to
whether the applicant has abandoned his or her LPR status. The applicant does not lose his or her LPR status
unless and until the IJ issues an order of removal and the order becomes final.

1. Factors in Determining Abandonment of LPR Status

During the review of a naturalization application and interview, USCIS may determine that the applicant has
failed to establish that he or she is an LPR due to abandoning his or her LPR status. The applicant may not be
able to establish LPR status even if permitted to return to the United States as an LPR at a port of entry. In
order to demonstrate that an applicant did not abandon LPR status, an applicant must establish that he or she
did not objectively intend to abandon LPR status.

USCIS reviews multiple factors when assessing whether an applicant objectively intended to abandon his or
her LPR status, including:

- Length of absence from the United States;
- Purpose of travel outside the United States;
- Intent to return to the United States as an LPR; and
- Continued ties to the United States.

Length of Absences from the United States

While an extended absence from the United States alone is not conclusive evidence of abandonment of LPR
status, the length of an extended absence is an important factor. The longer an LPR spends outside the United
States, the more difficult for the LPR to show an intent to return to the United States to live permanently in
the United States as an LPR. The LPR’s visit outside the United States should terminate within a
relatively short period. If unforeseen circumstances cause an unavoidable delay in returning, the trip
retains its temporary character, so long as the LPR continued to intend to return as soon as his or her original
purpose of the visit was completed. A single visit every year to the United States, for those residing outside
of the United States, does not preserve LPR status.

An officer must review extended or frequent absences from the United States to determine whether an
applicant has met the burden of establishing that he or she has maintained LPR status. This applies regardless
of length of time or if the applicant was permitted to return to the United States as an LPR at the port of entry
after the absence.

Purpose of Travel Outside the United States

The applicant’s purpose for traveling outside the United States is another factor in determining whether the
applicant abandoned his or her LPR status. An LPR should ordinarily “have a definite reason for proceeding
abroad temporarily.” For example, an applicant may have traveled for a short vacation or may have
traveled to visit an ill family member.

Intent to Return to the United States as an LPR

AILA Doc. No. 19060633. (Posted 3/26/21)
The key factor in determining if an applicant abandoned his or her LPR status is the applicant’s intent to reside permanently in the United States. The focus is on the intent (as demonstrated by the applicant’s actions and objective circumstances) rather than the length of time spent abroad. The applicant must have intended to return to the United States as a place of employment or business or as an actual home. The applicant must not only possess the intent to return to the United States at the time of his or her departure, but must maintain the intent during the course of the visit outside the United States.

An applicant’s activities should be consistent with an intent to return to the United States as soon as it is practicable. If there is an absence of intent coupled with objective circumstances, the applicant may have abandoned his or her status even if the applicant returns to the United States often. For example, one common but mistaken assumption is that a single visit every year to the United States preserves LPR status for those residing outside of the United States. However, even though an LPR only needs a PRC to reenter the United States after an absence of less than 1 year, the PRC alone is not sufficient to indicate the intention to reside permanently in the United States.

In addition, a reentry permit does not automatically preserve LPR status or guarantee reentry into the United States. A reentry permit may demonstrate that the LPR intended to return to the United States. However, failure to obtain a reentry permit, alone, is not evidence that an applicant intended to abandon his or her LPR status. As in any abandonment case, USCIS considers this factor in the totality of the circumstances.

**Continued Ties to the United States**

An applicant should have multiple connections to the United States that establish an intent to reside permanently in the United States, such as:

- Filing federal and state income tax returns as a resident of the United States;
- Maintaining property and business affiliations in the United States;
- Maintaining a driver’s license with a U.S. address of record; and
- Immediate family members residing in the United States who are U.S. citizens, LPRs, or are seeking citizenship or LPR status.

USCIS also reviews whether the applicant maintains connections outside the United States including:

- Immediate family members residing outside of the United States;
- Property and business ties in a foreign country;
- Employment by a foreign employer or foreign government;
- Voting in foreign elections;
- Running for political office in a foreign country; and
- Frequent and extended trips outside of the United States.

An applicant who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, or fails to file either federal or state income tax returns because he or she considers himself or herself to be a nonresident alien, raises a rebuttable presumption that the applicant has abandoned his or her LPR status. The applicant may overcome that presumption with acceptable evidence establishing that he...
or she did not abandon LPR status.

To establish a continued intent to maintain permanent residence, an applicant may provide evidence of the following:

- Family ties, including children attending school and a spouse or other relatives residing lawfully in the United States;
- Real and personal property holdings or rentals in the United States; and
- Current or recent employment or education in the United States.

To assess maintenance of LPR status, USCIS reviews the information provided as part of the naturalization application and other available documentation. If needed, USCIS may issue a Request for Evidence (RFE) for residences, travel, and employment information, and other relevant evidence since the time of the adjustment of status. Failure to timely respond to an RFE will result in a denial of the naturalization application for failure to meet the burden of proof.

2. Preserving Residence

Certain applicants may seek to preserve their residence for naturalization if they leave the United States for 1 year or more to engage in qualifying employment outside the United States. Preservation of residence may permit an applicant to avoid breaking the continuity of his or her residence for purposes of the continuous residence requirement and, in some cases, the physical presence requirement. However, approval of an application to preserve residence does not guarantee that the applicant (or any family members) will not be found, upon returning to the United States, to have lost LPR status through abandonment.

For example, USCIS presumes an applicant who claimed special tax exemptions as a nonresident alien has lost LPR status through abandonment. The applicant may overcome that presumption with acceptable evidence establishing that he or she did not abandon his or her LPR status.

3. Record of Abandonment

Some LPRs may choose to record the abandonment of their LPR status by filing a Record of Abandonment of Lawful Permanent Resident Status (Form I-407). If an applicant has a completed Form I-407, and subsequently seeks naturalization, USCIS places the applicant in removal proceedings and denies the naturalization application. However, LPRs who seek to abandon LPR status are not required to record such abandonment by executing Form I-407. Therefore, an applicant may still have abandoned LPR status despite the absence of a Form I-407 in their immigration record.

C. Effect of Change in Law

In general, an alien who was lawfully admitted for permanent residence according to the applicable laws at the time of the alien’s initial entry and admission or subsequent reentry and admission (but would be ineligible for LPR status today based on a change in law) is still considered to have been lawfully admitted for permanent residence for purposes of INA 318. This does not apply if the controlling law specifically states otherwise.

1. Illegal Immigration Reform and Immigrant Responsibility Act
Effective September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) added new or amended grounds of inadmissibility.[57] If the applicant was admitted as an LPR or adjusted status to that of an LPR before the effective date of a particular provision of IIRIRA, the applicant was not subject to the new or amended inadmissibility grounds in that provision. In general, if the applicant became an LPR before September 30, 1996, the applicant would still be considered lawfully admitted for permanent residence even if he or she would have been found inadmissible under IIRIRA.

Some of the classes of inadmissible aliens and grounds of inadmissibility added or amended by IIRIRA include:

- Certain aliens previously removed;[58]
- Aliens unlawfully present,[59] including aliens unlawfully present after previous immigration violations;[60]
- Aliens present without admission or parole;[61]
- Failure to attend removal proceeding;[62]
- Falsely claiming U.S. citizenship;[63] and
- Student visa abusers.[64]

2. Case Law

New case law may change how the law is applied between the time an applicant is lawfully admitted for permanent residence and the time USCIS adjudicates his or her naturalization application. The interpretation and applicability of new case law may vary. In some cases, new case law may result in an applicant being considered lawfully admitted even if his or her admission would have been considered unlawful at the time of the adjudication (before the new case law). Officers should consult with USCIS counsel regarding the interpretation and application of new case law in a naturalization proceeding.

For example, in 2015, the Supreme Court held that a drug paraphernalia conviction was not a conviction “relating to a controlled substance” unless an element of the conviction could be connected to a federally controlled substance.[65] This decision overturned an earlier Board of Immigration Appeals (BIA) interpretation that held that a drug paraphernalia conviction “relates to” any and all controlled substances with which the drug paraphernalia can be used.[66]

Therefore, if an applicant adjusted status and applied for naturalization before 2015 and had a conviction for possession of drug paraphernalia under the applicable state law at that time, the conviction would likely have qualified as a violation of a law relating to a controlled substance, and rendered the applicant inadmissible at the time of adjustment, as outlined in the earlier BIA interpretation. The applicant in this scenario would therefore have been ineligible for naturalization under INA 318 prior to the Supreme Court decision.[67]

However, if the same applicant applied for naturalization after 2015, his or her conviction would be analyzed under the Supreme Court decision. Under the case law, the conviction would not qualify as a violation of a law relating to a controlled substance unless an element of the conviction could be connected to a federally controlled substance. Therefore, even though the applicant’s adjustment would have been considered unlawful before 2015, because of the new case law, the applicant is now likely considered to have been lawfully admitted for permanent residence for the purposes of INA 318.
Temporary Protected Status and Admission or Parole into the United States for Adjustment of Status

A grant of temporary protected status (TPS) is not an admission for purposes of adjustment of status under INA 245(a)[68] unless a circuit court has ruled otherwise.[69]

Therefore, a TPS recipient who was in the United States without having been inspected and admitted or inspected and paroled, and who was subsequently granted adjustment of status under INA 245(a), is not considered to be lawfully admitted for permanent residence for purposes of INA 318 unless:

- The circuit law where the alien resided at the time of the adjustment of status considered TPS an admission for purposes of INA 245(a);
- The alien was in TPS on the date he or she filed the adjustment of status application through the date USCIS approved the adjustment application; and
- The alien was otherwise eligible for lawful permanent residence at the time of adjustment.[70]

A TPS recipient may travel outside of the United States temporarily with the prior consent of DHS based on INA 244(f)(3).[71] The Administrative Appeals Office (AAO) adopted decision in Matter of Z-R-Z-C- holds that a TPS recipient who travels outside the United States under INA 244(f)(3) using a DHS-issued travel document generally retains the same immigration status upon return as he or she had upon departure. In addition, the decision holds that a TPS recipient’s return from such foreign travel does not satisfy the requirements of “inspected and admitted or paroled” into the United States for purposes of adjustment of status under INA 245(a).[72] Matter of Z-R-Z-C- applies only to TPS recipients who departed from and returned to the United States under INA 244(f)(3) after August 20, 2020 (the date of the AAO’s Adopted Decision).

Therefore, a TPS recipient who was in the United States without inspection and admission or inspection and parole is generally not considered to be lawfully admitted for permanent residence for purposes of INA 318 in cases where the TPS recipient:

- Departed from and returned to the United States on or after August 20, 2020; and
- Adjusted status under INA 245(a) by claiming that he or she met the “inspected and admitted or paroled” eligibility requirement on the basis of that authorized foreign travel.[73]

However, a TPS recipient who was in the United States without inspection and admission or inspection and parole is generally considered lawfully admitted for permanent residence for purposes of INA 318, if he or she was otherwise eligible for lawful permanent residence at the time of adjustment, in cases where the TPS recipient:

- Departed from and returned to the United States before August 20, 2020; and
- Adjusted status under INA 245(a) by claiming that he or she met the “inspected and admitted or paroled” eligibility requirement on the basis of that authorized foreign travel.

D. Underlying Basis of Admission

To adjust status to that of an LPR or be admitted as an LPR, an applicant must first be eligible for one of the immigrant visa categories established under the law. During a naturalization proceeding, the officer must verify the underlying immigrant visa petition or other basis for immigrating[74] that formed the basis of the adjustment of status or admission as an immigrant to the United States.[75]
1. Ineligible for Underlying Immigrant Petition

Even after the alien is admitted for permanent residence on an immigrant visa or USCIS approves the alien’s adjustment application, USCIS may find that the alien was not lawfully admitted to the United States for permanent residence. This may apply in cases where the underlying petition that formed the basis of the LPR status was approved in error, was incorrect, or was approved unlawfully. Officers must review the underlying family and employment-based petitions or other immigration benefits.

K-1 Fiancé(e) Requirements Not Met

For an applicant to be admitted to the United States on a K-1 fiancé(e) nonimmigrant visa and later adjust his or her status to an LPR, the applicant must have established that:

- He or she was free to marry, and intended to marry, his or her U.S. citizen fiancé(e) within 90 days of admission to the United States as a K nonimmigrant; and

- He or she and his or her U.S. citizen fiancé(e) met each other in person within the 2 years immediately preceding the date of filing Petition for Alien Fiancé(e) (Form I-129F), unless the requirement to meet in person was waived because it:
  - Would have violated long-established customs of the applicant’s foreign culture or social practice, and all aspects of traditional arrangements were met in accordance with the custom or practice; or
  - Would have resulted in extreme hardship to the U.S. citizen fiancé(e).[76]

If an applicant entered the United States with a K-1 fiancé(e) nonimmigrant visa after the petition was granted when one of these requirements had not been met, the applicant is not eligible for naturalization in accordance with INA 318.[77]

2. Inadmissible at Time of Admission or Adjustment

An alien who was admitted as an LPR may have been inadmissible to the United States if he or she fell into any of the classes of inadmissible aliens.[78] As such, the alien is ineligible to be admitted as an LPR or for adjustment of status.[79] Aliens who are inadmissible to the United States may also be eligible to apply for a waiver of the ground(s) of inadmissibility in certain instances.[80]

If an inadmissible alien was required to obtain a waiver of inadmissibility and no waiver request was approved, or the alien was inadmissible under a ground for which no waiver was available, the alien was not lawfully admitted for permanent residence.[81] Grounds for which an alien may be inadmissible are listed in the following table.

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AILA Doc. No. 19060633. (Posted 3/26/21)
# Overview of Inadmissibility Grounds

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Officers may encounter some naturalization cases where the alien was inadmissible at the time of admission as an LPR or adjustment of status and was not granted a waiver of inadmissibility or other relief. Evidence of such inadmissibility may be available at the time of the initial review of eligibility for LPR status or may be discovered after admission or adjustment as an LPR, including during a naturalization proceeding. An LPR admission or adjustment of status that was unlawful when it occurred cannot be cured by an applicant’s submission of an Application for Waiver of Grounds of Inadmissibility (Form I-601) or an Application by Refugee for Waiver of Inadmissibility Grounds (Form I-602) during a naturalization proceeding.

**Terrorism-Related Inadmissibility Grounds**

In general, an alien who, before obtaining LPR status, committed an act that would have rendered him or her inadmissible under one or more of the terrorism-related inadmissibility grounds (TRIG) at the time of adjustment or admission as an LPR, may not be considered lawfully admitted for permanent residence for purposes of INA 318. This is the case even if the conduct upon which the inadmissibility is based on occurred before the inadmissibility ground existed.

Some examples of activities pertaining to TRIG that could result in denial of the alien’s naturalization application under INA 318 if occurring before obtaining LPR status may include:

- An alien who engaged in terrorist activity, including providing material support to a person who committed or plans to commit a terrorist activity, or to a terrorist organization.
• An alien who is a representative of a terrorist organization or other group that endorses or espouses terrorist activity;[^86]

• An alien who is a member of a terrorist organization at the time of adjustment or admission for LPR status, including a Foreign Terrorist Organization (Tier I) as designated by the Secretary of State or a terrorist organization designated by the Secretary of State and listed on the Terrorist Exclusion List (Tier II),[^87] or an undesignated terrorist organization (Tier III);[^88]

• Certain spouses and children of aliens who were inadmissible on terrorism-related grounds;[^89] and

• An alien who received military-type training from or on behalf of a terrorist organization.[^90]

3. Public Charge Inadmissibility [Reserved]

4. Fraud and Willful Misrepresentation

An alien was not lawfully admitted for permanent residence if he or she “obtained [his or her] permanent resident status by fraud, or had otherwise not been entitled to it.”[^91] Therefore, an alien was not lawfully admitted for permanent residence for purposes of INA 318 if the alien:

• Procured or sought to procure a visa or other documentation, admission, or other benefit provided under the INA by fraud or willful misrepresentation of a material fact before his or her adjustment or admission as an LPR; and

• The alien did not obtain a waiver of that inadmissibility.[^92]

Some examples of fraud and willful misrepresentation for which the applicant is not lawfully admitted for permanent residence and is therefore not eligible for naturalization, include, but are not limited to cases where:

• The alien consciously concealed or made a willful misrepresentation of a material fact regarding a previous immigration record (A-file number) or previous final order of removal before adjusting.[^93]

• The alien presented fraudulent identity documentation, or valid identity documentation obtained by fraud, to a U.S. official in order to procure, or attempt to procure, an immigration benefit before DHS admitted him or her as an LPR.[^94]

• The alien obtained LPR status based on an employment-based immigrant petition that contained material misrepresentations related to the alien’s employment or qualifications such that the alien would have been otherwise ineligible for adjustment of status. In many instances, the underlying employment-based immigrant petition is filed by the U.S. employer on behalf of the alien worker. Nonetheless, an alien makes a willful misrepresentation of a material fact when he or she knows of or authorizes false statements submitted on his or her behalf.[^95]

• The alien applied for adjustment of status or an immigrant visa in the family-sponsored preference category based on being the unmarried son or daughter of a U.S. citizen or LPR (unmarried son or daughter of a U.S. citizen) and misrepresented his or her marital status[^96] on an application or during an interview by indicating he or she was single (even though the alien was married at that time).[^97]

• The alien obtained a divorce solely for immigration purposes.[^98]
• The alien misrepresented material facts to obtain asylum or refugee status.[99]

• The alien misrepresented material facts in order to conceal any group memberships that would have made him or her ineligible for LPR status.[100]

• The alien misrepresented material facts, at the time of his or her application for adjustment of status or an immigrant visa, in order to conceal that he or she was inadmissible for engaging or having engaged in terrorist activity.[101]

5. Underlying Marriage[102]

Where an alien’s LPR status was based on a marriage, an officer in a naturalization proceeding may review conduct pertaining to the intent of the parties at the time they married.[103] Evidence discovered during or after the adjudication of the Petition to Remove the Conditions on Residence (Form I-751) may also raise questions about whether the underlying admission or adjustment to permanent residence was proper.

**Marriage Entered into in Good Faith**

A naturalization applicant was not lawfully admitted for permanent residence where he or she obtained LPR status through a marriage that was not entered into in good faith. The key issue in determining whether a marriage was entered into in good faith is whether the parties intended to establish a life together at inception of the marriage.[104]

If there is an issue as to whether the marriage was entered into in good faith, the applicant must present sufficient evidence to show that the marriage was bona fide in that it was “not a sham or fraudulent from its inception.”[105] If the applicant fails to provide sufficient evidence, USCIS should issue a Notice of Intent to Deny (NOID) under INA 318. In notifying the applicant of the intent to deny the naturalization application, the officer must explain the basis for the intent to deny and afford the applicant a meaningful opportunity to respond.[106]

**Validity of the Underlying Marriage**

In cases where an applicant’s LPR status was based on his or her marriage (or his or her parent’s marriage) to a U.S. citizen or LPR, an officer in a naturalization proceeding may also review whether the marriage was valid at the time the LPR status was granted.

In general, an applicant would have already established a valid marriage before being granted LPR status. However, there may be instances where additional information is available after the applicant is granted LPR status that may lead to a determination that the alien’s marriage was not valid at the time the LPR status was granted, even when there was no fraud or misrepresentation.[107] For example, this may include evidence that the applicant or the applicant’s spouse had a prior marriage that was not terminated before they entered into their current marriage, rendering the current marriage invalid due to bigamy.

Where an officer determines that a naturalization applicant’s marriage was invalid, and the applicant’s LPR status was based on the marriage, the officer should deny the naturalization application under INA 318.

6. LPR Status Obtained through Cuban Adjustment Act

*Cuban Adjustment Act and Lawful Presence in the United States*
To be eligible for LPR status under the CAA, an applicant must have accrued at least 1 year of physical presence in the United States. While the CAA does not stipulate when this 1-year physical presence requirement must be met, regulations generally require that an applicant is eligible for the benefit sought at the time of filing the benefit request. Additionally, USCIS guidance specifies that this 1-year physical presence requirement must be met at the time of filing of the adjustment of status application.

Therefore, USCIS denies naturalization applications under INA 318 if, after November 18, 2020, the applicant obtained LPR status under the CAA and the applicant did not accrue 1 year of physical presence in the United States before filing his or her adjustment application.

Cuban Adjustment Act and Proof of Cuban Citizenship for Aliens Born Outside of Cuba to Cuban Parent

An officer may find that a naturalization applicant who was granted LPR status under the CAA and provided a consular certificate documenting birth outside of Cuba to a Cuban parent as proof of Cuban citizenship failed to meet his or her burden of proof in establishing Cuban citizenship. A consular certificate alone is not legally sufficient to demonstrate Cuban citizenship for persons born outside of Cuba to at least one Cuban parent. Therefore, naturalization applicants who became LPRs under the CAA by virtue of birth outside of Cuba to a Cuban parent, and who provided only a consular certificate as proof of Cuban citizenship, may be required to provide additional proof of Cuban citizenship. An officer may issue an RFE to request documentation of Cuban citizenship.

The following are examples of acceptable documents to prove Cuban citizenship:

- An unexpired Cuban passport (“Pasaporte de la Republica Cuba”);
- Nationality certificate (“Certificado de Nacionalidad”); and
- Citizenship letter (“Carta de Ciudadania”).

USCIS may deny a naturalization application under INA 318 if an applicant who was born to a Cuban parent outside of Cuba and granted LPR status under the CAA was in fact not a Cuban citizen at the time of adjustment to permanent residence.

An applicant for naturalization who was granted LPR status under the Violence Against Women Act (VAWA) amendments to the CAA as a battered or abused spouse or child of a qualifying Cuban principal need only provide sufficient information to enable USCIS to verify the qualifying Cuban principal’s Cuban citizenship or nationality. Such information may include the Cuban principal’s full name, date of birth, place of birth, parents’ names, alien registration number, Form I-94, Social Security number, or other identifying information. Failure to provide such information may result in denial of the naturalization application under INA 318.

7. Refugee Adjustment

In order to adjust to lawful permanent residence status, refugees must accrue 1 year of physical presence in the United States as a refugee. Since November 15, 2018, USCIS does not accept adjustment of status applications from refugees before accrual of 1 year of physical presence in the United States.

However, before November 15, 2018, USCIS may have accepted the adjustment application from refugees before accruing 1 year of physical presence. Therefore, an applicant for naturalization who filed an adjustment application before November 15, 2018, is considered lawfully admitted for purposes of INA 318 even if he or she had not accrued 1 year of physical presence at the time of filing.
However, any applicant for naturalization who filed his or her adjustment application on or after November 15, 2018, and had not accrued 1 year of physical presence by the time of filing, is not considered to be lawfully admitted for permanent residence and therefore would be ineligible for naturalization under INA 318.\[118\]

The following table summarizes when a refugee applicant would have lawful permanent residence under INA 318.

Refugee Adjustment: Impact on Form N-400 Based on When Form I-485 Was Filed

<table>
<thead>
<tr>
<th>If</th>
<th>Then</th>
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<tbody>
<tr>
<td>Adjustment application filed before November 15, 2018, and applicant did not accrue 1 year of physical presence before filing.</td>
<td>The refugee was lawfully admitted for permanent residence if the admission was otherwise lawful. Naturalization application is not denied on INA 318 grounds based solely on the early filing.</td>
</tr>
<tr>
<td>Adjustment application filed on or after November 15, 2018, and the applicant did not accrue 1 year of physical presence before filing.</td>
<td>The refugee was not lawfully admitted for permanent residence. Naturalization application is denied on INA 318 grounds based solely on the early filing.</td>
</tr>
</tbody>
</table>

8. Other Factors to Consider

Otherwise Ineligible for Adjustment of Status

If an applicant was ineligible for adjustment of status, the applicant was not lawfully admitted for permanent residence and therefore is ineligible for naturalization.\[119\] The following are examples of eligibility for adjustment of status:

- A crewman is ineligible for adjustment of status under INA 245.\[120\]
- An exchange visitor who did not fulfill the 2-year foreign residence requirement or did not obtain a waiver of the requirement is ineligible for adjustment of status or an immigrant visa.\[121\]

Disqualifying Material Facts Unknown at Time of Filing for Admission or Adjustment

After an alien files an application for LPR status (either adjustment of status or an immigrant visa) but before the alien is granted adjustment of status or admitted to the United States as an LPR, the alien may experience new or additional circumstances that render him or her ineligible or inadmissible for LPR status. In such
situations, the officer may not have considered the new or additional facts in approving the adjustment application or admission to the United States on an immigrant visa. Therefore, for purposes of INA 318, USCIS does not consider a naturalization applicant to be lawfully admitted for permanent residence where facts arising after the date of filing of the application for LPR status show that he or she was inadmissible or otherwise ineligible for LPR status.

**Derivative Applicants**

Derivatives who do not have their own underlying immigrant petition may only be admitted as an LPR or adjust status under INA 245 based on the principal’s adjustment of status. In general, a derivative applicant must have the requisite relationship to the principal both at the time of filing the immigration petition or filing the adjustment application and at the time of final adjudication.[122]

There are certain circumstances in which a derivative may not have obtained lawful permanent residence based on the principal’s status and therefore would not be eligible for naturalization, including:

- A derivative was admitted as an immigrant or adjusted to LPR status under INA 245 before the principal was admitted as an immigrant or adjusted to LPR status.[123]

- A derivative adjusted to LPR status after the principal applicant naturalizes. A derivative is only eligible for classification as an accompanying or following-to-join family member of the principal so long as the principal applicant remains an LPR. Once the principal applicant naturalizes, the derivative is no longer eligible to adjust status based on the principal applicant.[124]

- A principal applicant’s LPR status was rescinded which establishes that the principal applicant was not lawfully admitted or did not lawfully adjust status. Therefore, if the principal’s LPR status was rescinded, at any time, even after the derivative is admitted or adjusts, the derivative would have been ineligible to adjust to LPR status based on the principal.[125]

- A principal applicant was denaturalized because he or she was not lawfully admitted or lawfully adjusted as an LPR. Depending on the circumstances, the principal’s denaturalization may be evidence that the dependent’s LPR status is not lawful.[127]

- The principal applicant committed fraud in order to obtain the LPR status. For example, this may occur in instances where:
  - A derivative was granted LPR status based on a parent’s asylee status that was obtained through fraud or misrepresentation.[128] or
  - A stepchild obtained LPR status based on a parent’s marriage to the stepparent that was fraudulently entered into for the purpose of an immigration benefit.[129]

**E. Applicants Considered Lawfully Admitted**

Under certain circumstances, USCIS may consider an applicant lawfully admitted for permanent residence, despite errors, for INA 318 purposes.

**1. Availability of Immigrant Visa at Time of Filing for Adjustment of Status**

In order for an applicant to be eligible for adjustment of status under INA 245(a), an immigrant visa must be
immediately available to the applicant at the time of filing and at the time of final adjudication.\[^{130}\] An officer may not approve an application for adjustment of status as a preference alien until an immigrant visa number has been allocated by DOS.\[^{131}\]

If at the time of adjustment an officer did not request the visa number from DOS, or DOS had not yet allocated a visa number, but a visa was available at the time of filing and decision and the officer approved the adjustment of status application, USCIS considers the applicant to have been lawfully admitted for permanent residence, despite the error.\[^{132}\]

If at the time of adjustment, the officer annotated the wrong class of admission code, but there was still an immigrant visa immediately available to the alien, and there was no misrepresentation by the alien, USCIS still considers the alien to have been lawfully admitted permanent residence. In this case, the officer should correct the class of admission code.

2. INA 245(i) Statutory Sum

To qualify for adjustment of status under INA 245(a), an alien must prove that he or she has been inspected and admitted or paroled into the United States and he or she is not barred from adjustment of status under INA 245(c). The adjustment bars in INA 245(c) may apply to aliens who either entered the United States in a particular status or manner or committed a particular act or violation of immigration law.\[^{133}\]

However, an alien who entered the United States without inspection and admission or parole or is barred from adjusting status by INA 245(c) may qualify for adjustment of status under INA 245(i). To qualify under INA 245(i):

- The alien must be the beneficiary (or derivative beneficiary) of an immigrant petition or labor certification application filed on or before April 30, 2001, that was approvable when filed;

- If such immigrant petition or labor certification was filed after January 14, 1998, the principal beneficiary must have been physically present in the United States on December 21, 2000; and

- The alien must pay a statutorily required sum, unless exempt from paying the sum.\[^{134}\]

Where a naturalization applicant’s sole ground of ineligibility is that he or she was not lawfully admitted for permanent residence because the applicant failed to pay the statutory sum prescribed by INA 245(i) at the time of adjustment, USCIS, in its discretion, may allow the applicant to submit the statutory sum with Supplement A to Form I-485, Adjustment of Status under Section 245(i) (Form I-485 Supplement A).

If the statutory sum is paid and all other eligibility requirements are met, USCIS approves the naturalization application. However, USCIS does not accept the payment of the statutory sum at the time of the naturalization proceeding if the naturalization applicant is ineligible to naturalize for any other reason.

F. Removal Proceedings

USCIS may not consider the merits of any application for naturalization for an applicant in removal proceedings,\[^{135}\] except for certain applications for naturalization based on military service.\[^{136}\] Furthermore, an applicant subject to an order of deportation or removal is not eligible for naturalization, and the naturalization application is denied, except for certain applications for naturalization based on military service.\[^{137}\]
Upon resolution of the removal proceeding, the applicant may timely file a Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336 (Form N-336) or file a new naturalization application if otherwise eligible for naturalization.\[138\]

1. Final Order of Removal

USCIS denies a naturalization application if the applicant is or has been subject to a final order of removal from an IJ,\[139\] unless:

- The order has been vacated;
- The applicant is eligible for naturalization under INA 329(a) for certain honorable service in the U.S. armed forces, or is currently in the U.S. armed forces and is eligible for naturalization under INA 328(a) based upon honorable service in the U.S. armed forces;\[140\] or
- The applicant departed the United States and later was lawfully admitted for permanent residence under a different visa from the one under which the applicant was previously admitted and then ordered removed.

2. Pending Removal Proceedings

Except for certain applications for naturalization based on military service,\[141\] USCIS lacks the authority to grant naturalization to an applicant against whom there is a pending removal proceeding initiated by a warrant of arrest.\[142\] An NTA is a warrant of arrest for purposes of INA 318,\[143\] except in the 9th Circuit.\[144\] Officers should consult with USCIS counsel on any INA 318 cases in the 9th Circuit involving pending removal proceedings.

Effective November 18, 2020, where a removal proceeding is pending against a naturalization applicant, USCIS denies the naturalization application under INA 318 based solely on the existence of pending removal proceedings against the applicant.\[145\] The officer may not issue a decision based on the merits of the naturalization application.\[146\]

Therefore, if an NTA is issued and a removal proceeding is pending against a naturalization applicant on or before the date of the decision on the naturalization application, the officer should deny the naturalization application under INA 318,\[147\] even if the removal proceeding was administratively closed.\[148\]

3. Rescission

A naturalization applicant who was ineligible for adjustment of status to that of an LPR may have his or her LPR status rescinded or be placed in removal proceedings.\[149\] Upon the rescission of the adjustment of status, or if an administratively final order of removal\[150\] is entered against the applicant, the officer must deny the naturalization application under INA 318 and INA 316(a)(1).

4. Deportable Aliens

If an officer finds that an applicant for naturalization is deportable, DHS issues an NTA where issuance would be in accordance with established guidance.\[151\] After the NTA is filed with an immigration court,\[152\] the officer should deny the naturalization application based on INA 318.
G. Exceptions to Lawful Permanent Resident Status Requirements

1. Nationals of the United States

The law provides an exception to the LPR requirement for naturalization for non-citizen nationals of the United States. Currently, persons who are born in American Samoa or Swains Island, which are outlying possessions of the United States, are considered non-citizen nationals of the United States.[153]

A non-citizen national of the United States may be naturalized without establishing lawful admission for permanent residence if he or she becomes a resident of any state[154] and complies with all other applicable requirements of the naturalization laws. These nationals are not aliens as defined in the INA and do not possess a PRC.[155]

2. Certain Members of the U.S. Armed Forces

Certain members of the U.S. armed forces with service under specified conditions are exempt from the LPR requirement.[156]

Footnotes

[^1] See INA 318 and INA 334(b). See 8 CFR 316.2(a)(2) and 8 CFR 316.2(b). See INA 101(a)(20). See 8 CFR 1.2. See Berenyi v. Dist. Dir., Immigration & Naturalization Serv., 385 U.S. 630, 637 (1967) (“it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect”). For limited exceptions, see Section G, Exceptions to Lawful Permanent Resident Status Requirements [12 USCIS-PM D.2(G)].


[^7] See Part G, Spouses of U.S. Citizens, Chapter 5, Conditional Permanent Resident Spouses and Naturalization [12 USCIS-PM G.5] for special circumstances under which the applicant may not be required to have an approved Petition to Remove Conditions on Residence (Form I-751) prior to naturalization.


[^9] See INA 245(b).

[^10] In general, a PRC should note the correct date that the LPR status was acquired. For additional information on adjustment of status, see Volume 7, Adjustment of Status [7 USCIS-PM].


[^14] See 8 CFR 1245.7(e).


[^16] See INA 264(e).

[^17] For more information, see Volume 11, Travel and Identity Documents, Part B, Permanent Resident Cards [11 USCIS-PM B].


[^23] Abandonment of LPR status is different from rescission. Rescission is the process USCIS uses to remove LPR status if adjustment of status was improperly granted to an alien. See INA 246. See Volume 7, Adjustment of Status, Part Q, Rescission of Lawful Permanent Residence [7 USCIS-PM Q].

[^24] See Khoshfahm v. Holder, 655 F.3d 1147 (9th Cir 2011) (approving “the imputation of a parent's
abandonment of [LPR] status to the parent's unemancipated child” as “consistent with well-established authority”). See Matter of Huang (PDF), 19 I&N Dec. 749, 750 n.1 (BIA 1988) (“Abandonment of lawful permanent resident status of a parent is imputed to a minor child who is subject to the parent's custody and control.”). See Matter of Zamora (PDF), 17 I&N Dec. 395, 396 (BIA 1980) (“We hold that this voluntary and intended abandonment by the mother is imputed to the applicant, who was an unemancipated minor . . . at the time his mother abandoned her lawful resident status.”).


[^27] See 8 CFR 316.2(b) (applicant bears the burden to prove that he or she was lawfully admitted as a permanent resident “in accordance with the immigration laws in effect at the time of the applicant’s initial entry or any subsequent reentry”). See Pineda v. Nielsen, 729 F. App'x 348 (5th Cir.) (unpublished), cert. denied sub nom. Pineda v. Nielsen, 139 S. Ct. 461 (2018) (finding that Plaintiff was inadmissible upon return from foreign travel to the United States because of his post-adjustment convictions for possession of a controlled substance and was therefore ineligible for naturalization).

[^28] See INA 316(a)(1).

[^29] This does not apply in certain cases involving naturalizations based on military service. See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)). See Section F, Removal Proceedings [12 USCIS-PM D.2(F)]. One possible basis for the NTA would be that the applicant lacked a valid entry document at the time of entry into the United States. See INA 237(a)(1)(A). See INA 212(a)(7)(A)(i).

[^30] See Section F, Removal Proceedings, Subsection 2, Pending Removal Proceedings [12 USCIS-PM D.2(F)(2)]. In removal proceedings, DHS has the burden of establishing by clear and convincing evidence that the applicant has abandoned his or her LPR status. See INA 240(c)(3)(4).

[^31] See 8 CFR 1241.1. For more information on the effect of removal proceedings on eligibility for naturalization, see Section F, Removal Proceedings [12 USCIS-PM D.2(F)].


[^34] See Khodagholian v. Ashcroft, 335 F.3d 1003 (9th Cir. 2003). See Matter of Huang (PDF), 19 I&N Dec. 749 (BIA 1988).

[^35] See Matter of Kane (PDF), 15 I&N Dec. 258 (BIA 1975) (alien found to have abandoned her permanent residence in the United States after she routinely spent 11 months of each year living in her native country in which she operated a business and returned to the United States for 1 month a year).

[^36] See Matter of Kane (PDF), 15 I&N Dec. 258, 262 (BIA 1975). See Singh v. Reno, 113 F.3d 1512 (9th Cir. 1997). See Ahmed v. Ashcroft, 286 F.3d 611, 613 (2nd Cir. 2002) (When the visit “relies upon an event with a reasonable possibility of occurring within a short period of time . . .[,] the intention of the visitor must still be to return within a period relatively short, fixed by some early event”) (internal quotations omitted).


[\^42] See Moin v. Ashcroft, 335 F.3d 415 (5th Cir. 2003) (An LPR's reentry permit, in and of itself, does not prevent a finding that the alien has abandoned her LPR status and is therefore inadmissible on seeking reentry). See Hana v. Gonzales, 400 F.3d 472 (6th Cir. 2005) (while Hana did not possess a family, property or job in the United States, she still had an intent to return to the United States upon the approval of her family member’s immigrant visa petitions, which she had filed when she first obtained LPR status. The Court’s decision was influenced by Hana’s decision to remain in the country abroad with her family to ensure their safety in a country with an extreme regime in addition to taking care of her terminally ill mother-in-law.).

[\^43] See Singh v. Reno, 113 F.3d 1512, 1514 (9th Cir. 1997).


[\^45] See Katebi v. Ashcroft, 396 F.3d 463 (1st Cir. 2005).

[\^46] Also known as Form I-551.

[\^47] See Singh v. Reno, 113 F.3d 1512 (9th Cir. 1997) (returning to the United States every year is not, without more, enough to indicate intent to remain an LPR).

[\^48] See 8 CFR 223.3(d)(1).

[\^49] See Singh v. Reno, 113 F.3d 1512, 1514-15 (9th Cir. 1997) (The alien's few established connections to the United States, despite over 2 1/2 years of LPR status, and his extended time abroad supported a finding that he abandoned his LPR status).

[\^50] See 8 CFR 316.5(c)(2).

[\^51] See 8 CFR 316.5(c)(2).

[\^52] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5], for classes of applicants eligible to preserve residence.

[\^53] The applicant may also need to apply for a reentry permit to be permitted to enter the United States.

[\^54] See 8 CFR 316.5(d)(1)(iii).


[\^56] See 8 CFR 316.2(b).


See INA 212(a)(9)(C). See Volume 8, Admissibility, Part P, Alien Present After Previous Immigration Violation [8 USCIS-PM P].

See INA 212(a)(6)(A).

See INA 212(a)(6)(B).

See INA 212(a)(6)(C)(ii). If an alien made a false claim to U.S. citizenship before IIRIRA's enactment (that is, September 30, 1996), then the officer must analyze whether the alien is inadmissible under the fraud and willful misrepresentation ground of inadmissibility. See Volume 8, Admissibility, Part K, False Claim to U.S. Citizenship, Chapter 1, Purpose and Background, Section B, Background [8 USCIS-PM K.1(B)].

See INA 212(a)(6)(G).


See Flores v. USCIS, 718 F.3d 548 (6th Cir. 2013) (TPS is considered an admission for purposes of INA 245(a) adjustment). See Ramirez v. Brown, 852 F.3d 954 (9th Cir. 2017) (TPS is considered an admission for purposes of INA 245(a) adjustment). See Sanchez v. Sec’y United States Dep’t of Homeland Sec., No. 19-1311, 2020 WL 4197523 (3rd Cir. July 22, 2020) (TPS is not an admission for purposes of INA 245(a) adjustment). See Serrano v. United States Att’y General, 655 F. 3d 1260 (11th Cir. 2011) (TPS is not an admission for purposes of INA 245(a) adjustment).

See Geographic Boundaries of the United States Courts of Appeal and United States District Courts (PDF) to determine the applicable circuit.

See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, “Inspected and Admitted” or “Inspected and Paroled,” Subsection 5, Temporary Protected Status [7 USCIS-PM B.2(A)(5)].


Regardless of foreign travel, an applicant may still be lawfully admitted for permanent residence if the circuit law where the applicant resided at the time of the adjustment of status considers TPS is an admission for purposes of adjustment of status under INA 245(a) so long as the applicant remained in TPS at the time of adjustment. See Flores v. USCIS, 718 F.3d 548 (6th Cir. 2013). See Ramirez v. Brown, 852 F.3d 954 (9th Cir. 2017).
For example, refugee status or LPR status under the CAA.


See 8 CFR 214.2(k)(2). See Instructions for Petition for Alien Fiancé(e) (Form I-129F).

See Nesari v. Taylor, 806 F. Supp. 2d 848 (E.D.Va. 2011) (finding that the applicant was not lawfully admitted for permanent residence because he entered the United States under a K-1 fiancé visa for which he was ineligible due to failure to fulfill the in-person meeting requirement prior to entry, and the applicant did not obtain a waiver of the requirement).

See INA 212. See Volume 8, Admissibility [8 USCIS-PM].

See INA 245(a)(2).


In general, immigrant waivers for grounds of inadmissibility are requested by filing one of the following forms: Application for Waiver of Grounds of Inadmissibility (Form I-601), Application for Provisional Unlawful Presence Waiver (Form I-601A), or Application By Refugee For Waiver of Grounds of Excludability (Form I-602). However, in the case of refugee adjustment, there may be little or no documentation of a waiver request or approval, as USCIS may grant a waiver of inadmissibility without requiring the applicant to file a Form I-602. See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 3, Admissibility and Waiver Requirements [7 USCIS-PM L.3]. The terrorist-related inadmissibility grounds described in INA 212(a)(3)(B) may only be waived by application of an exercise of the Secretary’s discretionary authority under INA 212(d)(3)(B)(i).

An applicant may not have met other requirements for naturalization, such as good moral character. If a naturalization application is deniable on grounds other than those related to TRIG, then the officer should deny the naturalization application on those grounds as well.

An applicant may have received an exemption that covered the terrorism-related inadmissibility ground during the adjudication of the adjustment of status application, or during the adjudication of an earlier application such as asylum or refugee status. If the relevant inadmissibility grounds were covered by the exemption, then the applicant’s adjustment would have been in accordance with the law and INA 318 would not bar naturalization.

The relevant provision must have become effective prior to the applicant’s adjustment or admission on an immigrant visa. Officers should consult with counsel for questions regarding the effect of the enactment of relevant provisions.


INA 212(a)(3)(B)(i)(V)-(VI) addresses present membership in a terrorist organization, officers should review prior activities and involvement when considering if the alien has engaged in terrorist activity.


[^92] For further discussion of fraud and willful misrepresentation, see Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation, Chapter 2, Overview of Fraud and Willful Misrepresentation [8 USCIS-PM J.2].

[^93] See Koszelnik v. DHS, 828 F.3d 175 (3rd Cir. 2016). See Gallimore v. Attorney General of U.S., 619 F.3d 216, 224 (3rd Cir. 2010). For information regarding applicability to derivative applicants, see Subsection 8, Other Factors to Consider [12 USCIS-PM D.2(D)(8)].


[^95] See Matter of A.J. Valdez, 27 I&N Dec. 496 (BIA 2018) (noting that the applicant is presumed to know the contents of an application he or she signs).

[^96] See 8 CFR 204.2(d). See INA 203(a)(1) and INA 203(a)(2).

[^97] See INA 318. An officer reviews the information in the naturalization application regarding marital history and compares that with previous immigration benefit requests.

[^98] See Matter of Aldecoaotalora (PDF), 18 I&N Dec. 430 (BIA 1983). Where the beneficiary was divorced for the sole purpose of obtaining immigration benefits and continued to reside with and own property jointly with her former husband in what by all appearances is a marital relationship, such a divorce is considered a sham and is not acceptable for immigration purposes.

[^99] See Lucaj v. Dedvukaj, 13 F.Supp.3d 753 (E.D.M.I. 2014) (evidence established that her asylum application was implicated in a bribery fraud scheme in which an immigration official received money for favorable consideration of her application, resulting in the alteration of a recommendation that she be placed in removal proceedings).


[^102] Generally, if USCIS determines that a visa petition beneficiary previously entered into or sought to enter into a marriage for the purpose of evading the immigration laws of the United States, then the petition filed on behalf of the applicant must be denied. See INA 204(c). This applies even if the applicant’s current marriage is bona fide. See Matter of Kahy (PDF), 19 I&N Dec. 803, 805 (BIA 1998).
[^103] See *Bark v. I.N.S.*, 511 F.2d 1200, 1202 (9th Cir. 1975).


[^105] See *Agyeman v. I.N.S.*, 296 F.3d 871, 883 (9th Cir. 2002) (detailing types of evidence that may prove bona fides of marriage besides spouse’s testimony including joint tax returns, shared bank accounts or credit cards, or telephone bills).


[^107] For additional information on valid marriages, see Part G, Spouses of U.S. Citizens, Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].


[^110] See 8 CFR 103.2(b)(1).

[^111] See instructions for Application to Register Permanent Residence or Adjust Status (Form I-485) (Additional Instructions for Applicants Filing under Special Adjustment Programs, Cuban Adjustment Act (CAA) section).

[^112] An alien may be granted LPR status under the CAA as a Cuban native or citizen.


[^114] See instructions for Application to Register Permanent Residence or Adjust Status (Form I-485) (Additional Instructions for Applicants Filing under Special Adjustment Programs, Cuban Adjustment Act (CAA) section).


[^116] A naturalization applicant who obtained LPR status through the VAWA amendments to the CAA must provide “any credible evidence” that the qualifying Cuban principal is a Cuban citizen or national. See INA 204(a)(1)(J) and 8 CFR 204.2(c)(2)(i). In recognition of the “any credible evidence” standard, as a matter of policy, USCIS verifies the qualifying Cuban principal’s status. See 8 CFR 103.2(b)(17)(ii).

[^117] See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section B, Physical Presence in the United States for at Least 1 Year [7 USCIS-PM L.2(B)].

[^118] Adjustment is unavailable to refugees who have already “acquired permanent resident status.” See INA 209(a). See *Sainth v. Mukasey*, 516 F.3d 243 (4th Cir. 2008) (upholding a BIA determination that a
refugee who has already acquired permanent resident status is ineligible to adjust again under INA 209(a). Therefore, USCIS cannot grant adjustment of status under INA 209(a) to applicants who were previously granted adjustment of status under INA 209(a) in error due to not accruing the 1 year of physical presence before filing. See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements [7 USCIS-PM L.2]. However, such an applicant remains an LPR after his or her application for naturalization is denied, unless the LPR status is rescinded or the applicant is ordered removed by an immigration judge.

[^119] See *Reganit v. Secretary, Dept. of Homeland Sec.*, 814 F.3d 1253 (11th Cir. 2016) (naturalization applicant's adjustment to LPR status must be “in compliance with the substantive requirements of the law”).

[^120] See INA 245(c)(1).

[^121] See INA 212(e). To be eligible for an immigrant visa or lawful permanent residence, certain J-1 and J-2 nonimmigrant exchange visitors must have resided and been physically present in their country of nationality or country of last foreign residence for an aggregate of at least 2 years after departing the United States. See Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended) (Form I-612). See INA 214(l).

[^122] See 8 CFR 103.2(b)(1). Certain exceptions may apply to this general rule, such as adjustment of status approved for a surviving relative under INA 204(l), which allows for approval of the dependent’s application even though the principal passed away while the qualifying petition or application was pending and therefore never obtained LPR status. For further information on derivatives, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^123] See INA 203(d). See *Turfah v. United States Citizenship and Immigration Services*, 845 F.3d 668 (6th Cir. 2017) (USCIS properly denied a derivative son’s naturalization application where the derivative son was mistakenly admitted as an LPR before his father, the principal, who was not admitted as an LPR until 1 month after the derivative son). Certain exceptions may apply to this general rule, such as adjustment of status approved for a surviving relative under INA 204(l), which allows for approval of the dependent’s application even though the principal passed away while the qualifying petition or application was pending and therefore never obtained LPR status. For more information on derivatives, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^124] While a derivative would no longer be eligible to adjust status based on the principal applicant if the principal naturalizes (and is no longer an alien), the principal applicant who naturalizes may file a Petition for Alien Relative (Form I-130) for any eligible family member.


[^126] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3].

[^127] For more information, see Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3].


[^129] See *Matter of Awwal (PDF)*, 19 I&N Dec. 617, 621 (BIA 1988) (noting that “a marriage which is a sham from the outset cannot form the basis for a step relationship” under the INA). Even if the derivative beneficiary was not involved in the fraud or misrepresentation committed by the principal, the derivative
would still be ineligible for naturalization under INA 318 based on inadmissibility on a different ground at
the time of adjustment to LPR status. See Matter of Teng (PDF), 15 I&N Dec. 516, 519 (BIA 1975) (finding
that even though the beneficiary did not participate in the fraud, he or she was nonetheless deportable under
INA 237(a)(1)(A) as inadmissible at the time of admission or adjustment).

[^130] See INA 245(a). See 8 CFR 245.1(g)(1) and 8 CFR 245.2(a)(2)(i)(A). See Volume 7, Adjustment of
Status, Part B, 245(a) Adjustment [7 USCIS-PM B]. For detailed guidance on the availability of immigrant
visas, including for aliens who file using the Dates for Filing chart of the DOS Visa Bulletin, see Volume 7,
Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions,
Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [7 USCIS-PM
A.3(B)(4)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^131] See 8 CFR 245.2(a)(5)(ii). See INA 203(a)-(c) (enumerating immigrant visa categories for which an
alien is considered a “preference alien”).

possession of an allocated visa number is not necessary and that the applicant need only show that a visa
number was immediately available to her at the time she filed the application to adjust status). See 8 CFR
245.1(g)(1) and 8 CFR 245.2(a)(2)(i)(A).

[^133] For more information on adjustment of status under INA 245(a), see Volume 7, Adjustment of Status
Policies and Procedures, Part B, 245(a) Adjustment [7 USCIS-PM B].

required for INA 245(i) has changed over time. IIRIRA increased the sum to $1,000 in 1996. The increased
sum applies to applications made on or after April 1, 1997. See Section 376 of IIRIRA, Pub. L. 104-208
(PDF), 110 Stat. 3009, 3009-648 (September 30, 1996). Officers should confirm what sum was required at
the time an applicant applied to adjust under INA 245(i).

[^135] See 8 CFR 1239.1(a) (removal proceedings commence by the filing of an NTA with the immigration
court). See INA 318, See Klene v. Napolitano, 697 F.3d 666, 669 (7th Cir. 2012). See Rumierz v. Gonzales,
902 (6th Cir. 2004). See De Lara Bellajaro v. Schiltgen, 378 F.3d 1042, 1043 (9th Cir. 2004), as amended.

[^136] See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military
naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under
INA 329(a)). See 8 CFR 329.2(e)(3).

[^137] See INA 318. See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military
naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization
under INA 329(a)). See Part I, Military Members and their Families, Chapter 2, One Year of Military Service
during Peacetime (INA 328) [12 USCIS-PM I.2] and Chapter 3, Military Service during Hostilities (INA
329) [12 USCIS-PM I.3].

[^138] See Notice of Appeal or Motion (Form I-290B).

[^139] Officers should consult with OCC where an applicant is subject to an order of deportation or removal
or was subject to an order of deportation or removal at the time of adjustment of status.

[^140] See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military
naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under
AILA Doc. No. 19060633. (Posted 3/26/21)
INA 329(a)).

[^141] See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)).

[^142] See INA 318.


[^144] See Yith v. Nielsen, 881 F.3d 1155 (9th Cir. 2018) (declining to give effect to 8 CFR 318.1 by holding that an NTA is not a “warrant of arrest”). A Warrant for Arrest of Alien (Form I-200) is issued by U.S. Immigration and Customs Enforcement (ICE) under to 8 CFR 236.1(b). For deportation proceedings that commenced before IIRIRA, the Warrant of Arrest may be Form I-221S, which is part of the Order to Show Cause (Form I-221).

[^145] This applies to naturalization applications filed on or after November 18, 2020 (effective date of policy). See INA 318. See De Lara Bellajaro v. Schiltgen, 378 F.3d 1042, 1043 (9th Cir. 2004), as amended (agency’s denial of applicant’s naturalization application on the ground that INA 318 precludes the application from being considered while removal proceedings are pending is “unquestionably correct”).

[^146] See Saba-Bakare v. Chertoff, 507 F.3d 337, 340 (5th Cir. 2007) (denial of application for naturalization on the merits while applicant in removal proceedings is improper).

[^147] See Zayed v. U.S., 368 F.3d 902, 907 (6th Cir. 2004) (“Regardless of when removal proceedings are initiated, the Attorney General may not naturalize an alien while such proceedings remain pending.”).


[^149] See INA 246(a). For additional information on rescission of lawful permanent residence see Volume 7, Adjustment of Status, Part Q, Rescission of Lawful Permanent Residence [7 USCIS-PM Q].

[^150] An order of removal is generally considered an administratively final order when either a decision by the BIA affirms an order of removal or the period in which the alien is permitted to seek review of such order by the BIA has expired, whichever date is earlier.

[^151] For further discussion of when USCIS issues or may issue an NTA in connection with a Form N-400, see Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (PDF, 327.19 KB), PM-602-0050.1, issued June 28, 2018. Officers must refer to component-specific operational guidance related to the issuance of NTAs to determine if USCIS may issue the NTA or if the case must be referred to ICE.

[^152] See 8 CFR 1239.1(a). This does not apply in certain cases involving naturalizations based on military service. See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)).

[^153] See INA 101(a)(29) and INA 308.
An applicant for naturalization under the general provision[1] must have resided continuously in the United States after his or her lawful permanent resident (LPR) admission for at least 5 years prior to filing the naturalization application and up to the time of naturalization. An applicant must also establish that he or she has resided in the state or service district having jurisdiction over the application for 3 months prior to filing.[2]

The concept of continuous residence involves the applicant maintaining a permanent dwelling place in the United States over the period of time required by the statute. The residence in question “is the same as that alien’s domicile, or principal actual dwelling place, without regard to the alien’s intent, and the duration of an alien’s residence in a particular location measured from the moment the alien first establishes residence in that location.”[3] Accordingly, the applicant’s residence is generally the applicant’s actual physical location regardless of his or her intentions to claim it as his or her residence.

Certain classes of applicants may be eligible for a reduced period of continuous residence, for constructive continuous residence while outside the United States, or for an exemption from the continuous residence requirement altogether.[4] These classes of applicants include certain military members and certain spouses of U.S. citizens.[5]

The requirements of “continuous residence” and “physical presence” are interrelated but are different requirements. Each requirement must be satisfied (unless otherwise specified) in order for the applicant to be eligible for naturalization.[6]

B. Maintenance of Continuous Residence for Lawful Permanent Residents

USCIS will consider the entire period from the LPR admission until the present when determining an applicant’s compliance with the continuous residence requirement.

An order of removal terminates the applicant's status as an LPR and therefore disrupts the continuity of residence for purposes of naturalization. However, an applicant who has been readmitted as an LPR after a deferred inspection or by an immigration judge in removal proceedings can satisfy the residence and physical presence requirements in the same manner as any other applicant for naturalization.[7]
Other examples that may raise a rebuttable presumption that an applicant has abandoned his or her LPR status include cases where there is evidence that the applicant voluntarily claimed nonresident alien status to qualify for special exemptions from income tax liability or fails to file either federal or state income tax returns because he or she considers himself or herself to be a non-resident alien.[8]

C. Breaks in Continuous Residence

An applicant for naturalization has the burden of establishing that he or she has complied with the continuous residence requirement, if applicable. Generally, there are two ways outlined in the statute in which the continuity of residence can be broken:[9]

- The applicant is absent from the United States for more than 6 months but less than 1 year; or
- The applicant is absent from the United States for 1 year or more.

An officer may also review whether an applicant with multiple absences of less than 6 months each will be able to satisfy the continuous residence requirement. In some of these cases, an applicant may not be able to establish that his or her principal actual dwelling place is in the United States or establish residence within the United States for the statutorily required period of time.[10]

An LPR’s lengthy or frequent absences from the U.S. can also result in a denial of naturalization due to abandonment of permanent residence.

An applicant who has an approved Application to Preserve Residence for Naturalization Purposes (Form N-470) maintains his or her continuous residence in the United States.[11]

1. Absence of More than 6 Months (but Less than 1 Year)

An absence of more than 6 months (more than 180 days) but less than 1 year (less than 365 days) during the period for which continuous residence is required (also called “the statutory period”) is presumed to break the continuity of such residence.[12] This includes any absence that takes place during the statutory period before the applicant files the naturalization application and any absence between the filing of the application and the applicant’s admission to citizenship.[13]

An applicant’s intent is not relevant in determining the location of his or her residence. The length of the period of absence from the United States is the defining factor in determining whether the applicant is presumed to have disrupted the continuity of his or her residence.

However, an applicant may overcome the presumption of a break in the continuity of residence by providing evidence to establish that the applicant did not disrupt the continuity of his or her residence. Such evidence may include, but is not limited to, documentation that during the absence:[14]

- The applicant did not terminate his or her employment in the United States or obtain employment while abroad;
- The applicant’s immediate family members remained in the United States; and
- The applicant retained full access to or continued to own or lease a home in the United States.

Eligibility After Break in Residence
An applicant who USCIS determines to have broken the continuity of residence must establish a new period of continuous residence in order to become eligible for naturalization. The requisite duration of that period depends on the basis upon which the applicant seeks to naturalize. In general, such an applicant may become eligible and may apply for naturalization at least 6 months before reaching the end of the pertinent statutory period.

Example

An applicant who is subject to a 5-year statutory period for naturalization is absent from the United States for 8 months, returning on August 1, 2018. The applicant has been absent from the United States for more than 6 months (180 days) but less than 1 year (365 days). As such, the applicant must be able to rebut the presumption of a break in the continuity of residence in order to meet the continuous residence requirement for naturalization.

If the applicant is unable to rebut the presumption, he or she must wait until at least 6 months from reaching the 5-year anniversary of the newly established statutory period following the applicant’s return to the United States. In this example, the newly established statutory period began on August 1, 2018, when the applicant returned to the United States. Therefore, the earliest the applicant may re-apply for naturalization is February 1, 2023, which is at least 6 months from the 5-year anniversary of the pertinent statutory period.

2. Absence of 1 Year or More

An absence from the United States for a continuous period of 1 year or more (365 days or more) during the period for which continuous residence is required will automatically break the continuity of residence. This applies whether the absence takes place before or after the applicant files the naturalization application.

Unless an applicant has an approved Application to Preserve Residence for Naturalization Purposes (Form N-470), USCIS must deny a naturalization application for failure to meet the continuous residence requirement if the applicant has been continuously absent for a period of 1 year or more during the statutory period. Form N-470 preserves residence for LPRs engaged in qualifying employment abroad with the U.S. government, private sector, or a religious organization.

Eligibility After Break in Residence

An applicant applying for naturalization under INA 316, which requires 5 years of continuous residence, must then wait at least 4 years and 1 day after returning to the United States (whenever 364 days or less of the absence remains within the statutory period), to have the requisite continuous residence to apply for naturalization. The statutory period preceding the filing of the application is calculated from the date of filing.

Once 4 years and 1 day have elapsed from the date of the applicant’s return to the United States, the period of absence from the United States that occurred within the past 5 years is now less than 1 year. Since the period of absence is still more than 6 months, an applicant for naturalization in these circumstances must also overcome the presumption of a break in the continuity of residence.

If the same applicant reapsplies for naturalization at least 4 years and 6 months after reestablishing residence in the United States, he or she would not be subject to the presumption of a break in residence because the period of absence immediately preceding the application date is now less than 6 months.

Example
An applicant for naturalization under INA 316 departs the United States on January 1, 2010, and returns January 2, 2011.[24] The applicant has been outside the United States for exactly 1 year (365 days) and has therefore broken the continuity of his or her residence in the United States. The applicant must wait until at least January 3, 2015, to apply for naturalization, when the 5-year statutory period immediately preceding the application will date back to January 3, 2010. At that time, although the applicant will have been absent from the United States for less than 1 year during the statutory period, the applicant will still have been absent from the United States for more than 6 months (180 days) during the statutory period and may be eligible for naturalization if he or she successfully rebuts the presumption that he or she has broken the continuity of her residence.

If the applicant cannot overcome the presumption of a break in the continuity of his or her residence, the applicant must wait until at least July 6, 2015, to apply for naturalization, when the 5-year statutory period immediately preceding the application will date back to July 6, 2010. During the 5-year period of July 6, 2010 to July 6, 2015, assuming the applicant did not make any additional trips outside the United States that would cause USCIS to presume a break in continuity of residence, the applicant was only absent from the United States between July 6, 2010 and January 2, 2011, a period that is not more than 6 months. Therefore, no presumption of a break in continuous residence applies.

3. Summary

The following table provides a summary of how an applicant’s absence from the United States may impact his or her eligibility to naturalize.

<table>
<thead>
<tr>
<th>Duration of Absence</th>
<th>Must Applicant Overcome Presumption of a Break in the Continuity of Residence?</th>
<th>Eligible to Naturalize?</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 months or less</td>
<td>No[26]</td>
<td>Yes</td>
</tr>
<tr>
<td>More than 6 months but less than 1 year</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>1 year or more (without USCIS approval via N-470 process)</td>
<td>Not eligible to apply</td>
<td>No</td>
</tr>
</tbody>
</table>

The following table illustrates the length of time needed to re-establish eligibility and residence in the United States following an absence of 1 year or more from the United States.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Absence During Statutory Period</th>
<th>May Apply After…</th>
</tr>
</thead>
</table>

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Provision | Absence During Statutory Period | May Apply After…
--- | --- | ---
INA 316 5-year statutory period | More than 1 year | • 4 years and 6 months, or<br>• 4 years and 1 day (but must overcome presumption of break in continuity of residence)[27]
INA 319 3-year statutory period | More than 1 year | • 2 years and 6 months, or<br>• 2 years and 1 day (but must overcome presumption of break in continuity of residence)

### D. Preserving Residence for Naturalization (Form N-470)

Certain applicants[28] may seek to preserve their residence for an absence of 1 year or more to engage in qualifying employment abroad[29]. Such applicants must file an Application to Preserve Residence for Naturalization Purposes (Form N-470) in accordance with the form instructions.

In order to qualify, the following criteria must be met:

- The applicant must have been physically present in the United States as an LPR for an uninterrupted period of at least 1 year prior to working abroad.

- The application may be filed either before or after the applicant’s employment begins, but before the applicant has been abroad for a continuous period of 1 year.[30]

In addition, the applicant must have been:

- Employed with or under contract with the U.S. government or an American institution of research[31] recognized as such by the Attorney General;

- Employed by an American firm or corporation engaged in the development of U.S. foreign trade and commerce, or a subsidiary thereof if more than 50 percent of its stock is owned by an American firm or corporation; or

- Employed by a public international organization of which the United States is a member by a treaty or statute and by which the applicant was not employed until after becoming an LPR.[32]

The applicant’s spouse and dependent unmarried sons and daughters are also entitled to such benefits during the period when they were residing abroad as dependent members of the principal applicant’s household. The application’s approval notice will include the applicant and any dependent family members who were also granted the benefit.

The approval of an application to preserve residence does not relieve an applicant (or any family members) from any applicable required period of physical presence, unless the applicant was employed by, or under contract with, the U.S. government.[33]
In addition, the approval of an application to preserve residence does not guarantee that the applicant (or any family members) will not be found, upon returning to the United States, to have lost LPR status through abandonment. USCIS may find that an applicant who claimed special tax exemptions as a nonresident alien to have lost LPR status through abandonment. The applicant may overcome that presumption with acceptable evidence establishing that he or she did not abandon his or her LPR status.\[34]\n
Approval of an application to preserve residence also does not relieve the LPR of the need to have an appropriate travel document when the LPR seeks to return to the United States.\[35]\n
A Permanent Resident Card (PRC) card, generally, is acceptable as a travel document only if the person has been absent for less than 1 year.\[36] If an LPR expects to be absent for more than 1 year, the LPR should also apply for a reentry permit. The LPR must actually be in the United States when he or she applies for a reentry permit.\[37]\n
**E. Residence in the Commonwealth of the Northern Mariana Islands**

As of November 28, 2009, the Commonwealth of the Northern Mariana Islands (CNMI) is defined as a state in the United States for naturalization purposes.\[38]\n
Previously, residence in the CNMI only counted as residence in the United States for naturalization purposes for an alien who was an immediate relative of a U.S. citizen residing in the CNMI.

All other noncitizens, including any non-immediate relative LPRs, were considered to be residing outside of the United States for immigration purposes. Therefore, some LPRs residing in the CNMI, before the Consolidated Natural Resources Act of 2008 (CNRA) was enacted, were considered to have abandoned their lawful permanent resident status if they continuously lived in the CNMI.

Under the current law, USCIS no longer considers lawful permanent residents to have abandoned their LPR status solely by residing in the CNMI. This provision is retroactive and provides for the restoration of permanent resident status. However, the provision did not provide that the residence would count towards the naturalization continuous and physical presence requirements. Therefore, USCIS will only count residence in the CNMI on or after November 28, 2009, as continuous residence within the United States for naturalization purposes.\[39]\n
**F. Documentation and Evidence**

Mere possession of a PRC for the period of time required for continuous residence does not in itself establish the applicant’s continuous residence for naturalization purposes. The applicant must demonstrate actual maintenance of his or her principal dwelling place, without regard to intent, in the United States through testimony and documentation.

For example, a “commuter alien” may have held and used a PRC\[40]\ for 7 years, but would not be eligible for naturalization until he or she had actually taken up permanent residence in the United States and maintained such residence for the required statutory period.

USCIS will review all of the relevant records to determine whether the applicant has met the required period of continuous residence. The applicant's testimony will also be considered to determine whether the applicant met the required period of continuous residence.

**Footnotes**

[^2] See INA 316(a). See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].


[^7] See 8 CFR 316.5(c)(3) and 8 CFR 316.5(c)(4).


[^9] See INA 316(b).


[^11] For more information, see Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].

[^12] See INA 316(a) and INA 316(b). See 8 CFR 316.2(a)(3), 8 CFR 316.2(a)(6), and 8 CFR 316.5(c)(1).


[^15] For example, this applies to applicants who were not able to overcome the presumption of the disruption of the continuity of residence after an absence of more than 6 months but less than 1 year during the pertinent statutory period.

[^16] For example, the pertinent statutory period under INA 316(a) is 5 years. For certain spouses of U.S. citizens, the statutory period is 3 years under INA 319(a). Under certain spousal provisions, there is no required statutory period residence (or period of physical presence) as provided under INA 319(b). See Part G, Spouses of U.S. Citizens [12 USCIS-PM G].

[^17] This is assuming that the applicant did not make any additional trips outside the United States that would cause USCIS to presume a break in continuity of residence after the previous disqualifying absence.

[^18] This is assuming that the applicant did not make any additional trips outside the United States that would cause USCIS to presume a break in the continuity of residence.

[^19] See INA 316(b).

[^20] See Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].


[^22] See Subsection 1, Absence of More than 6 Months (but Less than 1 Year) [12 USCIS-PM D.3(C)(1)].
Subject to certain conditions, spouses (and battered spouses and children) of U.S. citizens may apply for citizenship after 3 years of continuous residence. See INA 319. The same conditions apply to these applicants, however, the periods in question are 2 years and 1 day (eligible for naturalization if they can successfully rebut the presumption of a break in residence) and 2 years and 6 months (to avoid any presumption of a break in continuous residence).

For purposes of calculating time spent outside the United States, USCIS does not count the dates of travel among the dates spent outside the United States. Therefore, in this example, January 2, 2010 is the first date counted as outside the United States; January 1, 2011 is the last date counted as outside the United States.

In this example, the applicant is not the spouse (or battered spouse or child) of a U.S. citizen.

An applicant who has not been absent from the United States for any single period of greater than 6 months during the statutory period is neither considered nor presumed to have broken the continuity of his or her residence. However, there are circumstances in which an applicant who has multiple absences of less than 6 months each during the statutory period may nevertheless have broken the continuity of his or her residence even though the presumption does not apply.

See 8 CFR 316.5(c)(1)(ii). The applicant would still have an absence of over 6 months that occurred during the statutory period and therefore would still have a presumption of a break in continuous residence. See INA 316(b). See 8 CFR 316.2(a)(6) and 8 CFR 316.5(c)(1).

See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5], for classes of applicants eligible to preserve residence.

The applicant may also need to apply for a reentry permit to be permitted to enter the United States.

See 8 CFR 316.5(d).

See 8 CFR 316.20. See uscis.gov/AIR for lists of recognized organizations.

See INA 316(b). See 8 CFR 316.20.

See INA 316(c). See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

See Matter of Huang (PDF), 19 I&N Dec. 749 (BIA 1988). In removal proceedings, the Department of Homeland Security bears the burden of proving abandonment by clear and convincing evidence. But if the probative evidence is sufficient to meet that standard of proof, approval of the application to preserve residence, by itself, would not preclude a finding of abandonment.

See INA 212(a)(7)(A).

See 8 CFR 211.1(a)(2).

See 8 CFR 223.2(b)(1).


Chapter 4 - Physical Presence

A. Physical Presence Requirement

An applicant for naturalization is generally required to have been physically present in the United States for at least half the time for which his or her continuous residence is required. Applicants for naturalization under INA 316(a) are required to demonstrate physical presence in the United States for at least 30 months (at least 913 days) before filing the application. [1]

Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization. The continuous residence and physical presence requirements are interrelated but each must be satisfied for naturalization.

USCIS will count the day that an applicant departs from the United States and the day he or she returns as days of physical presence within the United States for naturalization purposes. [3]

B. Documentation and Evidence

Mere possession of a Permanent Resident Card (PRC) for the period of time required for physical presence does not in itself establish the applicant’s physical presence for naturalization purposes. The applicant must demonstrate actual physical presence in the United States through documentation. USCIS will review all of the relevant records to assist with the determination of whether the applicant has met the required period of physical presence. The applicant's testimony will also be considered in determining whether the applicant met the required period of physical presence.

Footnotes

[3] USCIS will only count residence in the Commonwealth of the Northern Mariana Islands on or after November 28, 2009, as time counted for physical presence within the United States for naturalization purposes.

Chapter 5 - Modifications and Exceptions to Continuous Residence and Physical Presence

Certain classes of applicants may be eligible for a reduced period of continuous residence and physical presence. Certain applicants may also be eligible to count time residing abroad as residence and physical presence in the United States for naturalization purposes.

Other applicants may be exempt from the residence or physical presence requirement, or both. Although not
required in all cases, applicants are generally required to have been “physically present and residing within the United States for an uninterrupted period of at least one year” at some time after becoming a lawful permanent resident (LPR) and before filing to qualify for an exemption.

## A. Qualifying Employment Abroad

The table below serves as a quick reference guide on certain continuous residence and physical presence provisions for persons residing abroad under qualifying employment. The paragraphs that follow the table provide further guidance on each class of applicant.

### Continuous Residence and Physical Presence for Qualifying Employment Abroad

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<th>Employer or Vocation</th>
<th>Provision</th>
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<td>Preserves residence through N-470 process</td>
<td>Exempt through N-470 process</td>
</tr>
<tr>
<td>American institution of research</td>
<td>INA 316(b), INA 316(c)</td>
<td>Preserves residence through N-470 process</td>
<td>Must meet regular statutory requirement</td>
</tr>
<tr>
<td>American firm</td>
<td>INA 316(b), INA 316(c)</td>
<td>Preserves residence through N-470 process</td>
<td>Must meet regular statutory requirement</td>
</tr>
<tr>
<td>Media organizations</td>
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<td>Exempt</td>
</tr>
<tr>
<td>Interpreter, translator, or security-related position (executive or manager)</td>
<td>Sec. 1059(e) of Pub. L. 109-163</td>
<td>Entire period abroad may count as continuous residence and physical presence in United States if engaged in qualifying employment for any portion of period abroad</td>
<td></td>
</tr>
<tr>
<td>Religious vocation</td>
<td>INA 317</td>
<td>Time residing abroad in religious vocation may count as residence and physical presence in United States</td>
<td></td>
</tr>
</tbody>
</table>

### 1. Employee of U.S. Government or Specified Entities

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment by or contract with the U.S. government abroad will not break the continuity of their residence during such
time abroad. Such persons are exempt from the physical presence requirement. Persons employed by or under contract with the Central Intelligence Agency can accrue the required year of continuous physical presence at any time prior to applying for naturalization and not just before filing the application to preserve residence.

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment abroad by an American institution of research recognized as such by the Attorney General (now DHS Secretary) or by an American firm engaged in development of U.S. foreign trade and commerce or its subsidiary, or a public international organization, will not break the continuity of their residence during such time abroad. Such applicants are subject to the physical presence requirement.

Only applicants who are employed by or under contract with the U.S. government may be exempt from the physical presence requirements. All other applicants who are eligible to preserve their residence remain subject to the physical presence requirement.

The applicant’s spouse and dependent unmarried sons and daughters, included in the application, are entitled to the same benefits for the period during which they were residing abroad with the applicant.

2. Employee of Certain Media Organizations Abroad

An applicant for naturalization employed by a U.S. incorporated nonprofit communications media organization that disseminates information significantly promoting United States interests abroad, that is so recognized by the Secretary of Homeland Security, is exempt from the continuous residence and physical presence requirements if:

- The applicant files the application for naturalization while still employed, or within six months of termination of employment;
- The applicant has been continuously employed with the organization for at least five years after becoming an LPR;
- The applicant is within the United States at the time of naturalization; and
- The applicant declares a good faith intention to take up residence within the United States immediately upon termination of employment.

3. Employed as an Interpreter, Translator, or Security-Related Position (Executive or Manager)

Time Abroad as Continuous Residence and Physical Presence in the United States

An applicant’s time employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter, translator, or in a security-related position in an executive or managerial capacity does not break any period for which continuous residence or physical presence in the United States is required for naturalization. The period abroad under such employment is treated as a period of residence and physical presence in the United States for naturalization purposes.

This benefit commonly referred to as the “section 1059(e)” provision only applies to the continuous residence and physical presence naturalization requirements. Applicants must still meet all other requirements for
naturalization. The applicant has the responsibility of providing all documentation to establish eligibility.\[10\]

Qualifying Employment Abroad

In order to count time abroad as continuous residence and physical presence in the United States for purposes of naturalization under the “section 1059(e)” provision, the applicant must meet all of the following requirements during such time abroad:

- The applicant must be:
  - Employed by the Chief of Mission or the U.S. armed forces;
  - Under contract with the Chief of Mission or the U.S. armed forces; or
  - Employed by a firm or corporation under contract with the Chief of Mission or the U.S. armed forces;

- The applicant must be employed as:
  - An interpreter;
  - Translator; or
  - In a security-related position in an executive or managerial capacity; and

- The applicant must have spent at least a portion of the time abroad working directly with the Chief of Mission or the U.S. armed forces.

Security-Related Position Must be in an Executive or Managerial Capacity\[11\]

An applicant who was in a security-related position must have been in an executive or managerial capacity under such employment to qualify for the section 1059(e) benefits. USCIS uses the same definitions and general considerations that apply to other employment-based scenarios in the immigration context when determining whether an applicant worked in an executive or managerial capacity.

In general, an executive or managerial capacity requires a high level of authority and a broad range of job responsibilities. Managers and executives plan, organize, direct, and control an organization’s major functions and work through other employees to achieve the organization’s goals. The duties of the security-related position must primarily be of an executive or managerial nature, and a majority of the executive’s or manager’s time must be spent on duties relating to policy or operational management. This does not preclude the executive or manager from regularly applying his or her professional expertise to functions that are not executive or managerial in nature.

To be employed in an “executive capacity” means an assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher level executives, the board of directors, or
stockholders of the organization.[12]

To be employed in a “managerial capacity” means an assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function, or component of the organization;
- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. [13]

USCIS does not deem an applicant to be an executive or manager simply because he or she has such a title in an organization or because the applicant periodically directs the organization as the owner or sole managerial employee. The focus is on the applicant’s primary duties. In this regard, there must be sufficient staff, such as contract employees or others, to perform the day-to-day operations of the organization in order to enable the applicant to be primarily employed in an executive or managerial function. [14]

USCIS does not consider a person to be acting in a managerial or executive capacity merely on the basis of the number of employees that the person supervises. USCIS takes into account the reasonable needs of the organization with regard to the overall purpose and stage of development of the organization in cases where staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity. [15]

Applicable Period of Absence

Section 1059(e) benefits are available for an absence from the United States when an applicant is employed in a qualifying position and has worked directly with the Chief of Mission or the U.S. armed forces for any period of time during that absence. However, if the applicant spent part of that time abroad in employment other than the specified qualifying employment, then the applicant does not receive credit for that part of the time.

Other employment abroad, or employment as an interpreter, translator, or in a security-related position (as described above) by an entity other than the Chief of Mission or the U.S. armed forces, or under contract with them, does not provide a benefit to the applicant. Such an applicant would still be required to meet the continuous residence and physical presence requirements unless the applicant qualified for the preservation of his or her residence (through the N-470 process). [16]

4. Employed Abroad in Religious Vocation

LPRs who go abroad temporarily for the purpose of performing the ministerial or priestly functions of a religious denomination, or of serving as a missionary, [17] brother, nun, or sister for a religious denomination or interdenominational mission having a bona fide organization within the United States, may treat such time abroad as continuous residence and physical presence in the United States for naturalization.
purposes.

LPRs must have been physically present and residing within the United States for an uninterrupted period of at least one year in order to qualify. [18]

**B. Qualifying Military Service**

Applicants with certain types of military service may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part I, Military Members and their Families, [19] for modifications and exceptions for applicants with certain types of military service, to include:

- One Year of Military Service – **INA 328**;
- Service during Hostilities – **INA 329**;
- Service in WWII Certain Natives of Philippines – Section 405 of IMMACT90; and

**C. Spouse, Child, or Parent of Certain U.S. Citizens**

The spouse, child, or parent of certain U.S. citizens may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part G, Spouses of U.S. Citizens, [20] for modifications and exceptions for spouses of certain U.S. citizens, to include:

- Spouse of U.S. Citizen for 3 Years – **INA 319(a)**;
- Spouse of Military Member Serving Abroad – **INA 319(e)**;
- Surviving Spouse of U.S. Citizen – **INA 319(d)**; and
- Surviving Spouse Person Conducting U.S. Intelligence. [21]


- Child of U.S. Government Employee (Abroad) – **INA 320**;
- Surviving Child of U.S. Citizen – **INA 319(d)**; and
- Surviving Child of Person Conducting U.S. Intelligence. [23]

These parts will also include information on modifications and exceptions to the continuous residence and physical presence requirements for surviving parents of certain U.S. citizens.

**D. Other Special Classes of Applicants**
The table below serves as a quick reference guide to certain continuous residence and physical presence provisions for special classes of applicants. The paragraphs that follow the table provide further guidance on each class of applicant.

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<td></td>
</tr>
<tr>
<td>Service contributing to national security</td>
<td>INA 316(f)</td>
<td></td>
<td>Exempt</td>
</tr>
</tbody>
</table>

1. **Citizens who Lost U.S. Citizenship through Foreign Military Service** [24]

Former citizens who lost citizenship through service during the Second World War in foreign armed forces not then at war with the United States can regain citizenship. The applicant must be admitted as an LPR. However, the applicant is exempt from the continuous residence and physical requirements for naturalization. [25]

2. **Noncitizen Nationals of the United States**

The time a noncitizen national of the United States spends within any of the outlying possessions of the United States counts as continuous residence and physical presence in the United States. [26]

3. **Service on Certain U.S. Vessels**

Any time an LPR has spent in qualifying honorable service on board a vessel operated by the United States or on board a vessel whose home port is in the United States will be considered residence and physical presence within the United States. [27] The qualifying service must take place within five years immediately preceding the date the applicant files for naturalization.

4. **Service Contributing to National Security**

The Director of Central Intelligence, the Attorney General, and the Director of USCIS may designate
annually up to five persons who have “made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities.” Such persons are exempted from the continuous residence and physical presence requirements.\[28\]

### Footnotes


[^2] See INA 316(b) and INA 316(c).


[^4] USCIS has adopted the AAO decision in Matter of Chawathe (PDF), 25 I&N Dec. 369 (AAO 2010). The decision states that under INA 316(b), a publicly held corporation may be deemed an “American firm or corporation” if the applicant establishes that the corporation is both incorporated and trades its stock exclusively on U.S. Stock Exchange markets. If the applicant is unable to meet this qualification, then he or she must meet the requirements under Matter of Warrach (PDF), 17 I&N Dec. 285, 286-287 (Reg. Comm. 1979). USCIS then determines the nationality of the corporation by reviewing whether more than 50 percent is owned by U.S. citizens. The applicant must establish this by a preponderance of the evidence.

[^5] See INA 316(b) and INA 316(c). See 8 CFR 316.20. See uscis.gov/AIR for a list of recognized organizations.


[^8] See Section 1059(e) of the National Defense Authorization Act of 2006, Pub. L. 109-163 (PDF) [8 U.S.C. 1101 Note] (January 6, 2006), as amended. The subsection ‘(e)’ provision relating to naturalization was added to Section 1059 on June 15, 2007. The amendments state that certain persons do not break the continuity of their residence in the United States for naturalization purposes during time abroad if employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter or translator in Iraq or Afghanistan. See Pub. L. 110-36 (PDF) (June 15, 2007). On December 28, 2012, Section 1059(e) was further amended by adding certain security-related positions (in an executive or managerial capacity), in addition to interpreters and translators, as types of qualifying employment. The amendments also removed the geographical limitation of qualifying employment within Iraq or Afghanistan. See Pub. L. 112-227 (PDF) (December 28, 2012).


[^10] Pub. L. 110-36 (PDF) added Section 1059(e) to the National Defense Authorization Act for Fiscal Year
2006, which added the interpreter and translator provisions.


[^16] See INA 316(b) and INA 316(c). Certain applicants who meet the requirements of INA 316(b) to preserve residence may also qualify for benefits under INA 316(c) dealing with physical presence. See Section A, Qualifying Employment Abroad [12 USCIS-PM D.5(A)].

[^17] See INA 317. A missionary is a member of a religious group sent into an area to do religious teaching or evangelism. See Matter of Rhee (PDF), 16 I&N Dec. 607 (BIA 1978) (The term “minister” means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergy of such denomination). See 8 CFR 204.5(m)(5) and 8 CFR 214.2(r)(3).


[^19] See 12 USCIS-PM I.

[^20] See 12 USCIS-PM G.


[^22] See 12 USCIS-PM H.


[^26] See INA 325. See 8 CFR 325.2. Unless otherwise provided under INA 301, the following persons are nationals, but not citizens of the United States at birth: (1) a person born in an outlying possession of the United States on or after the date of formal acquisition of such possession; (2) a person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the
birth of such person; (3) a person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and (4) a person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years: during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and at least five years of which were after attaining the age of fourteen years. See INA 101(a)(22) and INA 308.


[^28] See INA 316(f).

Chapter 6 - Jurisdiction, Place of Residence, and Early Filing

A. Three-Month Residency Requirement (in State or Service District)

In general, an applicant for naturalization must file his or her application for naturalization with the state or service district that has jurisdiction over his or her place of residence. The applicant must have resided in that location for at least three months prior to filing.

The term “state” includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands (CNMI).[^1] The term “service district” is defined as the geographical area over which a USCIS office has jurisdiction.[^2]

The service district that has jurisdiction over an applicant’s application may or may not be located within the state where the applicant resides. In addition, some service districts may have jurisdiction over more than one state and most states contain more than one USCIS office.

In cases where an applicant changes or plans to change his or her residence after filing the naturalization application, the applicant is required to report the change of address to USCIS so that the applicant’s A-file (with application) can be transferred to the appropriate office having jurisdiction over the applicant’s new place of residence.

B. Place of Residence

The applicant’s “residence” refers to the applicant’s principal, actual dwelling place in fact, without regard to intent.[^3] The duration of an applicant’s residence in a particular location is measured from the moment the applicant first establishes residence in that location.[^4]

C. Place of Residence in Certain Cases

There are special considerations regarding the place of residence for the following applicants:[^5]

1. Military Member
Special provisions exist for applicants who are serving or have served in the U.S. armed forces but who do not qualify for naturalization on the basis of the military service for one year. [6]

- The service member’s place of residence may be the state or service district where he or she is physically present for at least three months immediately prior to filing (or the examination if filed early);
- The service member’s place of residence may be the location of the residence of his or her spouse or minor child, or both; or
- The service member’s place of residence may be his or her home of record as declared to the U.S. armed forces at the time of enlistment and as currently reflected in the service member’s military personnel file.

2. Spouse of Military Member (Residing Abroad)

The spouse of a U.S. armed forces member may be eligible to count the time he or she is residing (or has resided) abroad with the service member as continuous residence and physical presence in any state or district of the United States. [7] Such a spouse may consider his or her place of residence abroad as a place of residence in any state or district in the United States.

3. Students

An applicant who is attending an educational institution in a state or service district other than the applicant's home residence may apply for naturalization where that institution is located, or in the state of the applicant's home residence if the applicant is financially dependent upon his or her parents at the time of filing and during the naturalization process. [8]

4. Commuter

A commuter must have taken up permanent residence (principal dwelling place) in the United States for the required statutory period and must meet the residency requirements to be eligible for naturalization. [9]

5. Residence in Multiple States

If an applicant claims residence in more than one state, the residence for purposes of naturalization will be determined by the location from which the applicant’s annual federal income tax returns have been and are being filed. [10]

6. Residence During Absences of Less than One Year

An applicant's residence during any absence abroad of less than one year will continue to be the state or service district where the applicant resided before departure. If the applicant returns to the same residence, he or she will have complied with the three-month jurisdictional residence requirement when at least three months have elapsed, including any part of the absence, from when the applicant first established that residence. [11]

If the applicant establishes residence in a different state or service district from where he or she last resided, the applicant must reside three months at that new residence before applying in order to meet the three-month
jurisdictional residence requirement.[12]

7. Noncitizen Nationals of the United States

A noncitizen national may naturalize if he or she becomes a resident of any state and is otherwise qualified. [13] Noncitizen nationals will satisfy the continuous residence and physical presence requirements while residing in an outlying possession. Such applicants must reside for three months prior to filing in a state or service district to be eligible for naturalization.

D. 90-Day Early Filing Provision (INA 334)

An applicant filing under the general naturalization provision may file his or her application up to 90 days before he or she would first meet the required 5-year period of continuous residence as an LPR. [14] Although an applicant may file early according to the 90 day early filing provision, the applicant is not eligible for naturalization until he or she has reached the required five-year period of continuous residence as a lawful permanent resident (LPR).

USCIS calculates the early filing period by counting back 90 days from the day before the applicant would have first satisfied the continuous residence requirement for naturalization. For example, if the applicant would satisfy the five-year continuous residence requirement for the first time on June 10, 2010 USCIS will begin to calculate the 90-day early filing period from June 9, 2010. In such a case, the earliest that the applicant is allowed to file would be March 12, 2010 (90 calendar days earlier).

In cases where an applicant has filed early and the required three month period of residence in a state or service district falls within the required five-year period of continuous residence, jurisdiction for filing will be based on the three-month period immediately preceding the examination on the application. [15]

E. Expediting Applications from Certain Supplemental Security Income (SSI) Beneficiaries

USCIS will expedite naturalization applications filed by applicants:

- Who are within one year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and

- Whose naturalization application has been pending for four months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants must inform USCIS of the approaching termination of benefits by InfoPass appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within one year or less and that their naturalization application has been pending for four months or more from the date of receipt by USCIS; and

- A copy of the applicant’s most recent SSA letter indicating the termination of their SSI benefits. (The USCIS alien number must be written at the top right of the SSA letter).
Chapter 7 - Attachment to the Constitution

A. Attachment to the Constitution

An applicant for naturalization must show that he or she has been and continues to be a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States during the statutorily prescribed period. [1] “Attachment” is a stronger term than “well disposed” and implies a depth of conviction, which would lead to active support of the Constitution. [2]
Attachment includes both an understanding and a mental attitude including willingness to be attached to the principles of the Constitution. An applicant who is hostile to the basic form of government of the United States, or who does not believe in the principles of the Constitution, is not eligible for naturalization.\[3\]

To be admitted to citizenship, naturalization applicants must take the Oath of Allegiance in a public ceremony. At that time, an applicant declares his or her attachment to the United States and its Constitution. \[4\] To be admitted to citizenship:

- The applicant must understand that he or she is taking the Oath freely without any mental reservation or purpose of evasion;
- The applicant must understand that he or she is sincerely and absolutely renouncing all foreign allegiance;
- The applicant must understand that he or she is giving true faith and allegiance to the United States, its Constitution and laws; and
- The applicant must understand that he or she is discharging all duties and obligations of citizenship including military and civil service when required by the law.

The applicant’s true faith and allegiance to the United States includes supporting and defending the principles of the Constitution by demonstrating an acceptance of the democratic, representational process established by the U.S. Constitution, and the willingness to obey the laws which result from that process. \[5\]

**B. Selective Service Registration**

**1. Males Required to Register**

In general, males must register with Selective Service within 30 days of their 18th birthday but not after reaching 26 years of age. The U.S. government suspended the registration in April of 1975 and resumed it in 1980. An applicant who refused to or knowingly and willfully failed to register for Selective Service negates his disposition to the good order and happiness of the United States, attachment to the principles of the Constitution, good moral character, and willingness to bear arms on behalf of the United States. \[6\]

Applicants may register for Selective Service at their local post office, return a Selective Service registration card received by mail, or online at the Selective Service System website. \[7\] Confirmation of registration may be obtained by calling (847) 688-6888 or online at sss.gov. The officer may also accept other persuasive evidence presented by an applicant as proof of registration.

USCIS assists with the registration process by transmitting the appropriate data to the Selective Service System (SSS) for male applicants between the ages of 18 and 26 who apply for adjustment of status. After registering the eligible male, Selective Service will send an acknowledgement to the applicant that can be used as his official proof of Selective Service registration.

**2. Failure to Register for Selective Service**

USCIS will deny a naturalization application when the applicant refuses to register with Selective Service or has knowingly and willfully failed to register during the statutory period. \[8\] The officer may request for the applicant to submit a status information letter and registration acknowledgement card before concluding that he failed to register.
The status information letter will indicate whether a requirement to register existed. The applicant must show by a preponderance of the evidence that his failure to register was not a knowing or willful act. Failure on the part of USCIS or SSS to complete the process on behalf of the applicant, however, will not constitute a willful failure to register on the part of the applicant.

The denial notice in cases where willful failure to register is established may also show that in addition to failing to register, the applicant is not well disposed to the good order and happiness of the United States. This determination depends on the applicant’s age at the time of filing the application and up until the time of the oath:

**Applicants Under 26 Years of Age**

The applicant is generally ineligible.

**Applicants Between 26 and 31 Years of Age**

The applicant may be ineligible for naturalization. USCIS will allow the applicant an opportunity to show that he did not knowingly or willfully fail to register, or that he was not required to do so.

**Applicants Over 31 Years of Age**

The applicant is eligible. This is the case even if the applicant knowingly and willfully failed to register because the applicant’s failure to register would be outside of the statutory period.

### 3. Males Not Required to Register

The following classes of males are not required to register for Selective Service:

- Males over the age of 26;
- Males who did not live in the United States between the ages of 18 and 26 years;
- Males who lived in the United States between the ages of 18 and 26 years but who maintained lawful nonimmigrant status for the entire period; and

### C. Draft Evaders

In general, the law prohibits draft evaders and deserters from the U.S. armed forces during wartime from naturalizing for lack of attachment to the Constitution and favorable disposition to the good order of the United States.

A conviction by a court martial or a court of competent jurisdiction for a military desertion or a departure from the United States to avoid a military draft will preclude naturalization. USCIS may obtain such information from the applicant’s testimony during the naturalization examination (interview), security checks, and from the Request for Certification of Military or Naval Service (Form N-426).

An applicant who admits to desertion during wartime, but who has not been convicted of desertion by court martial or court of competent jurisdiction may still be eligible for naturalization. An applicant’s military record may list him or her as a deserter but without a final conviction.
D. Membership in Certain Organizations

The officer will review an applicant’s record and testimony during the interview on the naturalization application to determine whether he or she was ever a member of or in any way associated (either directly or indirectly) with:

- The Communist Party;
- Any other totalitarian party; or
- A terrorist organization.

Current and previous membership in these organizations may indicate a lack of attachment to the Constitution and an indication that the applicant is not well disposed to the good order and happiness of the United States. Membership in these organizations may also raise issues of lawful admission, good moral character, or may even render the applicant removable.

The burden rests on the applicant to prove that he or she has an attachment to the Constitution and that he or she is well disposed to the good order and happiness of the United States, among the other naturalization requirements. An applicant who refuses to testify or provide documentation relating to membership in such organizations has not met the burden of proof. USCIS may still deny the naturalization application under such grounds in cases where such an applicant was not removed at the end of removal proceedings.

1. Communist Party Affiliation

An applicant cannot naturalize if any of the following are true within 10 years immediately preceding his or her filing for naturalization and up until the time of the Oath of Allegiance:

- The applicant is or has been a member of or affiliated with the Communist Party or any other totalitarian party;
- The applicant is or has advocated communism or the establishment in the United States of a totalitarian dictatorship;
- The applicant is or has been a member of or affiliated with an organization that advocates communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterance or through any written or printed matter published by such organization;
- The applicant is or has been a subversive, or a member of, or affiliated with, a subversive organization;
- The applicant is knowingly publishing or has published any subversive written or printed matter, or written or printed matter advocating communism;
- The applicant is knowingly circulating or has circulated, or knowingly possesses or has possessed for the purpose of circulating, subversive written or printed matter, or written or printed matter advocating communism; or
- The applicant is or has been a member of, or affiliated with, any organization that publishes or circulates, or that possesses for the purpose of publishing or circulating, any subversive written or printed matter, or any written or printed matter advocating communism.
2. Exemptions to Communist Party Affiliation

The burden is on the applicant to establish eligibility for an exemption. An applicant may be eligible for naturalization if he or she establishes that:

- The applicant’s membership or affiliation was involuntary;
- The applicant’s membership or affiliation was without awareness of the nature or the aims of the organization, and was discontinued when the applicant became aware of the nature or aims of the organization;
- The applicant’s membership or affiliation was terminated prior to his or her attaining the age of 16;
- The applicant’s membership or affiliation was terminated more than 10 years prior to the filing for naturalization;
- The applicant’s membership or affiliation was by operation of law; or
- The applicant’s membership or affiliation was necessary for purposes of obtaining employment, food rations, or other essentials of living.[19]

Even if participating without awareness of the nature or the aims of the organization, the applicant’s participation must have been minimal in nature. The applicant must also demonstrate that membership in the covered organization was necessary to obtain the essentials of living like food, shelter, clothing, employment, and an education, which were routinely available to the rest of the population.

For purposes of this exemption, higher education qualifies as an essential of living only if the applicant can establish the existence of special circumstances which convert the need for higher education into a need as basic as the need for food or employment, and that he or she participated only to the minimal extent necessary to receive the essentials of living.

However, unless the applicant can show special circumstances that establish a need for higher education as basic as the need for food or employment, membership to obtain a college education is not excusable for obtaining an essential of living.[20]

3. Nazi Party Affiliation

Applicants who were affiliated with the Nazi government of Germany or any government occupied by or allied with the Nazi government of Germany, either directly or indirectly, are ineligible for admission into the United States and permanently barred from naturalization.[21] The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in the Nazi Party.

4. Persecution and Genocide

An applicant who has engaged in persecution or genocide is permanently barred from naturalization because he or she is precluded from establishing good moral character.[22] Additionally, an applicant who engaged in persecution or genocide prior to admission as a lawful permanent resident (LPR) would have been inadmissible. Such an applicant would not have lawfully acquired LPR status in accordance with all applicable provisions and would be ineligible for naturalization.[23] Such persons may also be deportable.[24]
5. Membership or Affiliation with Terrorist Organizations

Information concerning an applicant’s membership in a terrorist organization implicates national security issues. Such information is important in determining the applicant’s eligibility in terms of the good moral character and attachment requirements.

Footnotes


[^5] The oath requirements may be modified for religious objections or waived for applicants with an inability to comprehend the oath. Prior to November 6, 2000, certain disabled applicants were precluded from naturalization because they could not personally express intent or voluntary assent to the oath requirement. However, subsequent legislation authorized USCIS to waive the oath requirements for anyone who has a medical condition constituting physical or developmental disability or mental impairment that makes him or her unable to understand or communicate an understanding of the meaning of the oath. An applicant for whom USCIS granted an oath waiver is considered to have met the requirement of attachment to the principles of the Constitution of the United States. See Pub. L. 106-448 (PDF) (November 6, 2000). See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].


[^8] Failure to register is not a permanent bar to naturalization.


[^16] See Part F, Good Moral Character [12 USCIS-PM F].
Chapter 8 - Educational Requirements

In general, applicants for naturalization must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. Applicants must also demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization.

An applicant may be eligible for an exception to the English requirements if he or she is a certain age and has been an LPR for a certain period of time. In addition, an applicant who has a physical or developmental disability or mental impairment may be eligible for a medical exception of both the English and civics requirements. [1]

Footnote


Chapter 9 - Good Moral Character

One of the requirements for naturalization is good moral character (GMC). An applicant for naturalization must show that he or she has been, and continues to be, a person of good moral character. In general, the applicant must show GMC during the five-year period immediately preceding his or her application for naturalization and up to the time of the Oath of Allegiance. Conduct prior to the five-year period may also impact whether the applicant meets the requirement. [1]

Footnote

Part E - English and Civics Testing and Exceptions

Chapter 1 - Purpose and Background

A. Purpose

In general, a naturalization applicant must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. An applicant must also demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization.¹

B. Background

Prior to 1906, an applicant was not required to know English, history, civics, or understand the principles of the constitution to naturalize. If the court determined the applicant was a “thoroughly law-abiding and industrious man, of good moral character,” the applicant became a U.S. citizen.² As far back as 1908, the former Immigration Service and the Courts determined that a person could not establish the naturalization requirement of showing an attachment to the Constitution unless he or she had some understanding of its provisions.³

In 1940, Congress made amendments to include an English language requirement and certain exemptions based on age and residence, as well as a provision for questioning applicants on their understanding of the principles of the Constitution.⁴ In 1994, Congress enacted legislation providing an exception to the naturalization educational requirements for applicants who cannot meet the requirements because of a medical disability. Congress also amended the exceptions to the English requirement based on age and residence that are current today.⁵

On October 1, 2008, USCIS implemented a redesigned English and civics test. With this redesigned test, USCIS ensures that all applicants have the same testing experience and have an equal opportunity to demonstrate their understanding of English and civics.

C. Legal Authorities

- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization

Footnotes

¹ See INA 312. See 8 CFR 312.
² See In re Rodriguez, 81 F. 337 (W.D. Tex. 1897).
Chapter 2 - English and Civics Testing

A. Educational Requirements

An officer administers a naturalization test to determine whether an applicant meets the English and civics requirements. The naturalization test consists of two components:

- English language proficiency, which is determined by the applicant’s ability to read, write, speak and understand English; and
- Knowledge of U.S. history and government, which is determined by a civics test.

An applicant has two opportunities to pass the English and civics tests: the initial examination and the re-examination interview. USCIS denies the naturalization application if the applicant fails to pass any portion of the tests after two attempts. In cases where an applicant requests a USCIS hearing on the denial, officers must administer any failed portion of the tests.

Unless excused by USCIS, the applicant’s failure to appear at the re-examination for testing or to take the tests at an examination or hearing counts as a failed attempt to pass the test.

B. Exceptions

An applicant may qualify for an exception from the English requirement, civics requirement, or both requirements. The table below serves as a quick reference guide on the exceptions to the English and civics requirements for naturalization.

<table>
<thead>
<tr>
<th>Exceptions [INA 312(b)]</th>
<th>Educational Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age 50 or older and resided in the United States as a lawful permanent resident (LPR) for at least 20 years at time of filing</td>
<td>Exempt</td>
</tr>
</tbody>
</table>

[INA 312(b)] See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940).

[2] Unless excused by USCIS, the applicant’s failure to appear at the re-examination for testing or to take the tests at an examination or hearing counts as a failed attempt to pass the test.
Age 55 or older and resided in the United States as an LPR for at least 15 years at time of filing | Exempt

Age 65 or older and resided in the United States as an LPR for at least 20 years at time of filing | Exempt

Medical Disability Exception (Form N-648) | May be exempt from English, civics, or both

1. Age and Residency Exceptions to English

An applicant is exempt from the English language requirement but is still required to meet the civics requirement if:

- The applicant is age 50 or older at the time of filing for naturalization and has lived as an LPR in the United States for at least 20 years; or
- The applicant is age 55 or older at the time of filing for naturalization and has lived as an LPR in the United States for at least 15 years.

The applicant may take the civics test in his or her language of choice with the use of an interpreter.

2. Special Consideration for Civics Test

An applicant receives special consideration in the civics test if, at the time of filing the application, the applicant is 65 years of age or older and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence.[3] An applicant who qualifies for special consideration is administered specific test forms.

3. Medical Disability Exception to English and Civics

An applicant who cannot meet the English and civics requirements because of a medical disability may be exempt from the English requirement, the civics requirement, or both requirements.

C. Meeting Requirements under IRCA 1986

The Immigration Reform and Control Act of 1986 (IRCA) mandated that persons legalized under INA 245A meet a basic citizenship skills requirement in order to be eligible for adjustment to LPR status. An applicant was permitted to demonstrate basic citizenship skills by:

- Passing the English and civics tests administered by legacy Immigration and Naturalization Service (INS); or
- Passing standardized English and civics tests administered by organizations then authorized by the INS. [4]

At the time of the naturalization re-examination, the officer only retests the applicant on any portion of the test that the applicant did not satisfy under IRCA. In all cases, the applicant must demonstrate the ability to speak English at the time of the naturalization examination, unless the applicant meets one of the age and time as resident exemptions of English or qualifies for a medical waiver. [5]

**D. English Portion of the Test**

A naturalization applicant must only demonstrate an ability to read, write, speak, and understand words in ordinary usage. [6] Ordinary usage means comprehensible and pertinent communication through simple vocabulary and grammar, which may include noticeable errors in pronouncing, constructing, spelling, and understanding completely certain words, phrases, and sentences.

An applicant may ask for words to be repeated or rephrased and may make some errors in pronunciation, spelling, and grammar and still meet the English requirement for naturalization. An officer should repeat and rephrase questions until the officer is satisfied that the applicant either fully understands the question or is unable to understand English. [7]

1. **Speaking Test**

An officer determines an applicant’s ability to speak and understand English based on the applicant’s ability to respond to questions normally asked in the course of the naturalization examination. The officer’s questions relate to eligibility and include questions provided in the naturalization application. [8] The officer should repeat and rephrase questions during the naturalization examination until the officer is satisfied that the applicant either understands the questions or does not understand English.

An applicant who does not qualify for a waiver of the English requirement must be able to communicate in English about his or her application and eligibility for naturalization. An applicant does not need to understand every word or phrase on the application.

*Passing the Speaking Test*

If the applicant generally understands and responds meaningfully to questions relevant to his or her naturalization eligibility, then he or she has sufficiently demonstrated the ability to speak English.

*Failing the Speaking Test*

An applicant fails the speaking test when he or she does not understand sufficient English to be placed under oath or to answer the eligibility questions on his or her naturalization application. The officer must still administer all other parts of the naturalization test, including the portions on reading, writing, and civics.

An officer cannot offer or accept a withdrawal of a naturalization application from an applicant who does not speak English unless the applicant has an interpreter present who is able to clearly understand the consequences of withdrawing the application. [9]

2. **Reading Test**

To sufficiently demonstrate the ability to read in English, applicants must read one sentence out of three
sentences. The reading test is administered by the officer using standardized reading test forms. Once the applicant reads one of the three sentences correctly, the officer stops the reading test.

**Passing the Reading Test**

An applicant passes the reading test if the applicant reads one of the three sentences without extended pauses in a manner that the applicant is able to convey the meaning of the sentence and the officer is able to understand the sentence. In general, the applicant must read all content words but may omit short words or make pronunciation or intonation errors that do not interfere with the meaning.

**Failing the Reading Test**

An applicant fails the reading test if he or she does not successfully read at least one of the three sentences. An applicant fails to read a sentence successfully when he or she:

- Omits a content word or substitutes another word for a content word;
- Pauses for extended periods of time while reading the sentence; or
- Makes pronunciation or intonation errors to the extent that the applicant is not able to convey the meaning of the sentence and the officer is not able to understand the sentence.

### 3. Writing Test

To sufficiently demonstrate the ability to write in English, the applicant must write one sentence out of three sentences in a manner that the officer understands. The officer dictates the sentence to the applicant using standardized writing test forms. An applicant must not abbreviate any of the words. Once the applicant writes one of the three sentences in a manner that the officer understands, the officer stops the writing test.

An applicant does not fail the writing test because of spelling, capitalization, or punctuation errors, unless the errors interfere with the meaning of the sentence and the officer is unable to understand the sentence.

**Passing the Writing Test**

The applicant passes the writing test if the applicant is able to convey the meaning of one of the three sentences to the officer. The applicant’s writing sample may have the following:

- Some grammatical, spelling, or capitalization errors;
- Omitted short words that do not interfere with meaning; or
- Numbers spelled out or written as digits.

**Failing the Writing Test**

An applicant fails the writing test if he or she makes errors to a degree that the applicant does not convey the meaning of the sentence and the officer is not able to understand the sentence.

An applicant fails the writing test if he or she writes the following:

- A different sentence or words;
- An abbreviation for a dictated word;[10]


- Nothing or only one or two isolated words; or
- A sentence that is completely illegible.

**E. Civics Portion of the Test**

1. Civics Test

A naturalization applicant must demonstrate a knowledge and understanding of the fundamentals of the history, the principles, and the form of government of the United States (civics).[11] To sufficiently demonstrate knowledge of civics, an applicant for naturalization must pass a civics test by answering a certain number of questions correctly. USCIS is committed to administering a test that is an instrument of civic learning and fosters civic integration as part of the test preparation process.

A USCIS system randomly selects the test questions and an officer administers the test orally.[12] The officer stops the test when the applicant correctly answers the minimum number of questions required to pass the test.

On December 1, 2020, USCIS implemented a revised naturalization civics test (“2020 civics test”) as part of a decennial test review and update process. USCIS received approximately 2,500 comments from the public regarding the 2020 civics test and the policy. Multiple commenters noted that there was little advance notice before implementation of the 2020 civics test, which raised concerns about limited time for study and preparation of training materials and resources. Due to the comments and in keeping with the Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,[13] USCIS will revert to the 2008 test.

There are currently two versions of the civics test: the 2020 civics test with 128 questions to study, and the 2008 civics test with 100 questions to study. The date the applicant filed the naturalization application and the date of the initial interview determine which test the applicant may take.

**Applicable Test for Applications Filed Before December 1, 2020 or On or After March 1, 2021**

An applicant who files for naturalization before December 1, 2020 or on or after March 1, 2021 takes the 2008 civics test.

- Passing the 2008 Civics Test – An applicant passes the civics test if he or she provides a correct answer or provides an alternative phrasing of the correct answer for six of the 10 questions.
- Failing the 2008 Civics Test – An applicant fails the civics test if he or she provides an incorrect answer or fails to respond to five out of the 10 questions.

**Applicable Test for Applications Filed On or After December 1, 2020 and Before March 1, 2021**

An applicant who files for naturalization on or after December 1, 2020 and before March 1, 2021 may choose to take the 2008 civics test or the 2020 civics test, so long as his or her initial examination (interview) takes place before April 19, 2021. If the applicant has already taken the 2020 civics test at the initial exam and failed, he or she may choose to take either the 2008 civics test or the 2020 civics test at re-examination or N-336 hearing, if applicable.[14]

In cases where the initial interview takes place on or after April 19, 2021, the applicant takes the 2008 civics test.
The table below serves as a quick reference guide on the applicable version of the test for applications filed during this time frame.

<table>
<thead>
<tr>
<th>Applications Filed On or After December 1, 2020 and Before March 1, 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date of Initial Exam (Interview)</strong></td>
</tr>
<tr>
<td>Before April 19, 2021</td>
</tr>
<tr>
<td>On or After April 19, 2021</td>
</tr>
</tbody>
</table>

An applicant who chooses to take the 2020 civics test (when applicable, as shown above) is subject to the requirements of the 2020 civics test. To sufficiently demonstrate knowledge of civics with the 2020 civics test, the applicant must answer correctly at least 12 of 20 questions.

- **Passing the 2020 Civics Test** – An applicant passes the civics test if he or she provides a correct answer or provides an alternative phrasing of the correct answer for at least 12 of the 20 questions.

- **Failing the 2020 Civics Test** – An applicant fails the civics test if he or she provides an incorrect answer or fails to respond to nine out of the 20 questions.

## 2. Special Consideration

An officer gives special consideration to an applicant who is 65 years of age or older and who has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence. The age and time requirements must be met at the time of filing the naturalization application.

An applicant who meets the criteria for special consideration passes either the 2008 or the 2020 civics test if he or she provides a correct answer or provides an alternative phrasing of the correct answer for at least six of the 10 test questions from the specially designated list of 20 questions from the applicable test.

### Applicable Test for Applications Filed Before December 1, 2020 or On or After March 1, 2021

An applicant who files for naturalization before December 1, 2020 or on or after March 1, 2021 takes the **2008 civics test**. The test for applicants given special consideration contains 20 specially designated civics questions from the list of 100 questions on the 2008 civics test for applicants to study.

### Applicable Test for Applications Filed On or After December 1, 2020 and Before March 1, 2021

An applicant who files for naturalization filed on or after December 1, 2020 and before March 1, 2021 may choose to take the **2008 civics test** or the **2020 civics test**, so long as his or her initial examination (interview) takes place before April 19, 2021. If the applicant has already taken the 2020 civics test at the initial exam and failed, he or she may choose to take either the 2008 civics test or the 2020 civics test at re-examination or N-336 hearing, if applicable.

In cases where the initial interview takes place on or after April 19, 2021, the officer administers the 2008 civics test version. The test for applicants given special consideration contains 20 specially designated civics questions from the list of 128 questions on the 2020 civics test for applicants to study.
3. Due Consideration

An officer should exercise “due consideration” on a case-by-case basis in choosing subject matters, phrasing questions, and evaluating responses when administering the civics test. The officer’s decision to exercise due consideration should be based on a review of the applicant’s:

- Age;
- Background;
- Level of education;
- Length of residence in the United States;
- Opportunities available and efforts made to acquire the requisite knowledge; and
- Any other relevant factors relating to the applicant’s knowledge and understanding. [18]

F. Failure to Meet the English or Civics Requirements

If an applicant fails any portion of the English test, the civics test, or all tests during the initial naturalization examination, USCIS reschedules the applicant to appear for a second examination between 60 and 90 days after the initial examination. [19]

In cases where the applicant appears for a re-examination, the reexamining officer must not administer the same English or civics test forms administered during the initial examination. The officer must only retest the applicant in those areas that the applicant previously failed. For example, if the applicant passed the English speaking, reading, and civics portions but failed the writing portion during the initial examination, the officer must only administer the English writing test during the re-examination. [20]

If an applicant fails any portion of the naturalization test a second time, the officer must deny the application based upon the applicant’s failure to meet the educational requirements for naturalization. The officer also must address any other areas of ineligibility in the denial notice. An applicant who refuses to be tested or to respond to individual questions on the reading, writing, or civics test, or fails to respond to eligibility questions because he or she did not understand the questions as asked or rephrased, fails to meet to the educational requirements. An officer should treat an applicant’s refusal to be tested or to respond to test questions as a failure of the test. [21]

G. Documenting Test Results

All officers administering the English and civics tests are required to record the test results in the applicant’s A-file. Officers are required to complete and provide to each applicant at the end of the naturalization examination the results of the examination and testing, unless the officer serves the applicant with a denial notice at that time. [22] The results of the examination include the results of the English and civics tests.

Footnotes

[^1] USCIS coordinates with external stakeholders to provide instruction and training materials related to the
citizenship educational requirements. USCIS provides these educational materials and a list of all naturalization civics test items to applicants for study through the USCIS Citizenship Resource Center site.

[^2] Only one opportunity to pass the failed portion of the tests is provided at the hearing. See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request [12 USCIS-PM B.6(B)].


[^9] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination, Section D, Administrative Closure, Lack of Prosecution, Withdrawal, and Applications Not Held in Abeyance [12 USCIS-PM B.4(D)].

[^10] An abbreviation for a dictated word may be accepted if the officer has approved the abbreviation.


[^14] For information on re-examination, see Chapter 3, Naturalization Interview, Section D, Subsequent Re-examination [12 USCIS-PM B.3(D)]. For information on N-336 hearings, see Chapter 6, USCIS Hearing and Judicial Review [12 USCIS-PM B.6].

[^15] This includes interviews scheduled or to be scheduled.

[^16] See INA 312(b)(3).

[^17] For information on re-examination, see Chapter 3, Naturalization Interview, Section D, Subsequent Re-examination [12 USCIS-PM B.3(D)]. For information on N-336 hearings, see Chapter 6, USCIS Hearing and Judicial Review [12 USCIS-PM B.6].

[^18] See 8 CFR 312.2(c)(2).

[^19] See 8 CFR 335.3(b) (re-examination no earlier than 60 days from initial examination). See 8 CFR 312.5(a) (re-examination no later than 90 days from initial examination).


Officer must use Naturalization Interview Results (Form N-652).

Chapter 3 - Medical Disability Exception (Form N-648)

A. Medical Disability Exception Requirements

In 1994, Congress enacted legislation providing an exception to the English and civics requirements for naturalization applicants who cannot meet the requirements because of a physical or developmental disability or mental impairment.

The English and civics requirements do not apply to naturalization applicants who are unable to comply due to a “medically determinable” physical or developmental disability or mental impairment that has lasted, or is expected to last, at least 12 months. The regulations define medically determinable as an impairment that results from abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques.

The applicant has the burden of proof, by a preponderance of the evidence standard, to demonstrate that he or she has a disability or impairment that affects functioning such that, even with reasonable accommodations, he or she is unable to meet the English and civics requirements for naturalization. Illiteracy alone is not a valid reason to seek an exception to the English and civics requirements. In addition, advanced age, in and of itself, is not a medically determinable physical or developmental disability or mental impairment.

A licensed medical professional must complete the form and certify, under penalty of perjury, that the applicant’s medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements.

B. Filing

1. Initial Submission

An applicant seeking an exception to the English and civics requirements must submit a Medical Certification for Disability Exceptions (Form N-648) as an attachment to the Application for Naturalization (Form N-400). USCIS generally only considers a Form N-648 that is concurrently filed with a Form N-400 to be filed timely, but later-filed or multiple Forms N-648 may be accepted in certain circumstances as set forth below.

2. Late Submissions

USCIS may consider a later-filed Form N-648 if the applicant provides a credible explanation for filing the N-648 after filing the Form N-400 and submits sufficient evidence in support of that explanation. For example, if a significant change in the applicant’s medical condition since the submission of the initial Form N-648 has taken place, a later-filed Form N-648 would be appropriate. Other explanations for not filing the Form N-648 with the initial Form N-400 may also be acceptable, and an officer should consult with his or her supervisor and USCIS counsel in those cases.

The officer should review the explanation and documentation carefully, because without sufficient probative evidence, a late submission can raise credible doubts about the validity of the medical certification, especially where little or no effort is made to explain the delay, and the applicant claims that the stated disability or...
impairment was present before the naturalization application was filed.[6] USCIS may require the submission of an additional Form N-648, which may be from the same medical professional, or refer the applicant to another medical professional for a new Form N-648, if there are credible doubts as to the veracity of the medical certification.

3. Multiple Submissions

If multiple Forms N-648 are submitted at the same time, an officer should question the applicant about the reasons for any additional Forms N-648, and carefully examine any discrepancies between the documents. Two different Forms N-648 from different medical professionals may also raise questions of credibility about the validity of the medical certification. Significant discrepancies may be a basis for finding the Form N-648 insufficient. In the absence of a reasonable justification, multiple submissions may raise credible doubts about the validity of the medical certification, especially where the stated disability or impairment was not identified or discussed earlier.[7] USCIS may require the submission of an additional Form N-648, which may be from the same medical professional, or refer the applicant to another medical professional for a new Form N-648, if there are credible doubts as to the veracity of the medical certification.

4. Properly Filed

Completed, certified, and signed by all appropriate parties.

In addition, the medical certification must contain the following information:

- Clinical diagnosis of the applicant’s medical condition(s) and, if applicable, the relevant medical code recognized by the U.S. Department of Health and Human Services (HHS).[8] This includes the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Classification of Diseases (ICD) codes.

- Description of the medical condition(s) forming the basis for the disability exception.

- Date(s) when each disability or impairment began and the date(s) of diagnosis.

- Date(s) and location(s) the medical professional examined the applicant.

- Description of the doctor-patient relationship indicating whether the medical professional regularly treats the applicant for the cited conditions or an explanation of why he or she is certifying the disability form instead of any regularly treating medical professional.

- Statement that the medical condition has lasted, or is expected to last, at least 12 months, including an explanation of which disabilities or impairments are expected to last over 12 months.

- Statement whether the medical condition is the result of the illegal use of drugs.

- Explanation of what caused the medical condition, if known.

- Description of the clinical methods used to diagnose the medical condition.
Properly Filed Medical Certification for Disability Exceptions (Form N-648)

- Description of the severity of each disability or impairment.
- Description of how each relevant disability or impairment affects specific functions of the applicant’s daily life (including the ability to work or go to school) that may be related to the ability to learn civics or the ability to learn to read, write, and speak words in ordinary usage of the English language.
- Clear description of the medical condition’s effect on the applicant’s ability to successfully complete the educational requirements for naturalization.
- Statement whether the medical professional used an interpreter to examine the applicant.

The Form N-648 should be completed by the certifying medical professional no more than 6 months before the applicant files the naturalization application.

C. Distinction Between Medical Disability Exception and Accommodation

Requesting an exception to the English and civics requirements is different from requesting an accommodation for the naturalization examination process. An approved exception exempts the applicant from the English requirement, the civics requirement, or both requirements completely or partially, depending on the facts of the specific case. An accommodation, on the other hand, simply modifies the manner in which an applicant meets the educational requirements; it does not exempt the applicant from the English or civics requirements.

Reasonable accommodations may include, but are not limited to, sign language interpreters, extended time for completing the English and civics requirements, and completing the English and civics requirements at an off-site location. A disability exception requires an applicant to show that his or her medical condition prevents the applicant from complying with the English or civics requirements or both, even with reasonable accommodations. The impact of a particular medical condition may vary between individual cases. It may be possible to accommodate one applicant who is affected by a particular medical condition, while another applicant affected by the same condition may be eligible for a disability exception. For example, someone who has low vision may require the accommodation of a large print version of the reading test in order to complete the requirement. However, if a person is not able to read because of the medical condition even with an accommodation, then the person needs to file a Form N-648. In such cases, where an accommodation is insufficient, USCIS may accept a later-filed Form N-648.

D. Authorized Medical Professionals

USCIS only authorizes the following licensed medical professionals to certify the disability exception form:

- Medical doctors;
- Doctors of osteopathy; and
- Clinical psychologists

AILA Doc. No. 19060633. (Posted 3/26/21)
These medical professionals must be licensed to practice in any state of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, or the Commonwealth of the Northern Mariana Islands.

The medical professional must, at a minimum:

- Conduct at least one in-person examination of the applicant;
- Explain the nature and extent of the medical condition on Form N-648;
- Explain how the medical condition relates to the applicant’s inability to comply with the educational requirements;
- Attest that the medical condition has lasted or is expected to last at least 12 months; and
- Attest that the cause of the medical condition is not related to the illegal use of drugs.

The medical professional must complete the Form N-648 using common terminology that a person without medical training can understand. While staff associated with the medical professional may assist in completing the form, the medical professional alone is responsible for providing the necessary information, answering the questions, and verifying and attesting to the accuracy of the form’s content.

The medical professional certifying the form may choose to provide medical diagnostic reports, records, and statements as attachments to the Form N-648 as evidence of the disability. Any supporting documentation should be clearly probative of the medical disability that prevents the applicant from completing the required English and civics requirements.

Failure to correctly fill out each question with the appropriate, corresponding responses may result in a finding that the Form N-648 is insufficient.

**E. Review of Medical Certification for Sufficiency**

**1. General Guidelines for Review**

The officer must carefully review the form to determine whether the applicant is eligible for the exception. The table below provides general guidelines on what steps the officer should and should not take when reviewing the Form N-648.

<table>
<thead>
<tr>
<th>N-648 Review Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When reviewing the form, the officer should:</strong></td>
</tr>
<tr>
<td>• Determine whether the form has been properly completed.</td>
</tr>
<tr>
<td>• Ensure that the medical professional has fully answered all of the required questions and has signed and certified the Form N-648 along with the applicant.</td>
</tr>
</tbody>
</table>
N-648 Review Guidelines

- Ensure that the Form N-648 relates to the applicant and that there are no discrepancies between the form and other available information, including biographic data, testimony during the interview, or information contained in the applicant’s A-file.

- Determine whether the Form N-648 contains enough information to establish that the applicant is eligible for the exception by a preponderance of the evidence. This determination includes ensuring that the medical professional’s explanation is both sufficiently detailed as well as specific to the applicant and to the applicant’s stated disability (rather than a generic, “one size fits all” explanation).

- Ensure the Form N-648 fully addresses the underlying medical condition and its causal connection or nexus with the applicant’s inability to comply with the English or civics requirements or both.

- If the record reflects that the applicant has a regularly treating medical professional, but another medical professional has completed the Form N-648, ensure that the Form N-648 includes a credible and sufficiently detailed explanation for the reason that the regularly treating medical professional did not complete the Form N-648.

When reviewing the form, the officer should not:

- Attempt to determine the validity of the medical diagnosis or second guess why this diagnosis precludes the applicant from complying with the English and civics requirements.

- Request to see an applicant’s medical or prescription records solely to question whether there was a proper basis for the medical professional’s diagnosis unless evidence exists that creates discrepancies or anomalies that those records can help resolve. The officer may ask follow-up questions to resolve any outstanding issues.

- Require that an applicant undergo specific medical, clinical, or laboratory diagnostic techniques, tests, or methods.

- Conclude that the applicant has failed to meet the burden of proof simply because he or she did not previously disclose the alleged medical condition in other immigration-related medical examinations or documents. It is appropriate, however, to consider this as a factor when determining the sufficiency of the Form N-648. The officer should always carefully examine the evidence of record and ask follow-up questions to resolve any outstanding issues.
N-648 Review Guidelines

- Refer an applicant to another medical professional solely because the applicant sought care from a professional who shares the same language, culture, ethnicity, or nationality.

2. Medical Examination and Demonstrating Nexus

Reviewing the request for the medical disability exception, the officer must focus on whether the medical professional has sufficiently explained with enough supporting details that the applicant has a disability or impairment and its nature. The medical professional must also explain how the applicant's disability or impairment prohibits the applicant from being able to demonstrate the English or civics requirements or both. The explanation should be sufficiently detailed and tailored to the individual applicant’s diagnosed medical disabilities or impairment.

After review of the record, the officer may only grant an exception if the applicant has demonstrated by a preponderance of the evidence that there is a nexus (or causal connection) between the disability or impairment and:

- The applicant’s inability to read, write, and speak words in ordinary usage in the English language;
- The applicant’s inability to know and understand the fundamentals of history and of the principal form of government of the United States; or
- Both.

Form N-648 requires the medical professional to describe the severity of the medical condition. The medical professional must explain the basis of his or her assessment, such as known symptoms of the condition, tests conducted, and observations. The medical professional must also explain how the applicant’s medical condition(s) affects his or her daily life activities. An officer may question the applicant during the naturalization interview about the applicant’s daily life activities, as listed on the form. If discrepancies exist regarding the applicant’s daily life activities between the naturalization application and information contained in the A-file, the Form N-648 itself, or from any other source of information, the officer should question the applicant during the interview about those discrepancies.

3. Use of Interpreters

Certification on Form N-648 and Presence of Interpreter at Medical Examination

If it is unclear whether an interpreter was used during the medical examination, the officer must ask the applicant whether the medical examination that formed the basis of the Form N-648 was performed with the assistance of an interpreter.

For example, the officer may question the applicant during the interview:

- About the applicant’s visits with the medical professional and the nature of their relationship.
- About the manner of communication used to conduct the medical examination.

If an interpreter was used during the medical examination but the interpreter’s certification on the Form...
N-648 is blank, the form is considered incomplete. The officer must then provide the applicant with notice of the deficiency and an opportunity to bring a properly completed Form N-648 to the re-examination.

If necessary, the officer may also choose to subpoena and question the interpreter, if any, who was present at the medical examination about their translations during a medical examination in connection with the applicant's Form N-648. If the officer wishes to question an interpreter he or she must be under the general oath. If the person who interpreted at the medical examination is to be questioned as a witness and is the same person as the person interpreting at the naturalization interview, the interpreter must then be disqualified from interpreting for that applicant at the naturalization interview. In this case, the officer should reschedule the interview, as needed, to permit the applicant an opportunity to find a new interpreter.

Interpreter at Interview

During the interview, the officer should question the applicant under oath in the applicant’s preferred language, with use of an interpreter if needed, to address any issues of concern related to the Form N-648. In the agency’s discretion, and in all cases, the officer may also disqualify an interpreter provided by the applicant for cause and reschedule the interview. If the office has a language service available, the officer may use the language service when the interpreter is disqualified.

4. Requesting Supplemental Form N-648

In general, USCIS does not request a supplemental disability determination from another doctor after evaluating the originally submitted Form N-648. However, if there is a question as to whether the medical professional actually examined and diagnosed the applicant or there are credible doubts as to the veracity of the medical certification because it is clearly contradicted by other evidence, the officer may request a new Form N-648 from a different doctor. The officer should exercise caution when requesting an applicant obtain a supplemental disability determination from another authorized medical professional. The officer should:

- Explain the reasons for doubting the veracity of the information on the original Form N-648, to include any observations or applicant responses to questions during the interview that raised issues of credible doubt or sworn statements submitted at the time of the interview;
- Consult with a supervisor and receive approval before requesting that the applicant undergo a supplemental disability determination; and
- Provide the applicant with the relevant state medical board contact information to facilitate the applicant’s ability to find another medical professional.

5. Credible Doubt, Discrepancies, Misrepresentation, and Fraud

In general, USCIS should accept the medical professional’s diagnosis. However, an officer may find a Form N-648 insufficient if there is a finding of credible doubt, discrepancies, misrepresentation or fraud as to the applicant’s eligibility for the disability exception.

The officer must provide the applicant an opportunity to address any specific discrepancies or inconsistencies during the interview. When issuing a Request for Evidence, the officer should only request the information necessary to make a determination on the sufficiency of the Form N-648. In some cases, USCIS may require the submission of an additional Form N-648 or request the applicant's medical reports or other supplementary medical background information if there is a question whether the medical professional actually examined and diagnosed the applicant or there are credible doubts as to the veracity of the medical certification because it is clearly contradicted by other evidence.
Below are some factors that may give rise to credible doubts during the course of the Form N-648 adjudication:

- The medical professional’s responses on the Form N-648 lack probative value because the responses do not contain a reasonable degree of detail or fail to provide any basis for the stated diagnosis and the nexus to the inability to learn, speak or read or understand English;

- The medical professional did not explain the specific medical, clinical, or laboratory diagnostic techniques used in diagnosing the applicant’s medical condition on the Form N-648;

- The Form N-648 does not include an explanation of the doctor-patient relationship indicating that the medical professional completing the Form N-648 regularly treats the applicant for the cited conditions, or a reasonable justification for not having the Form N-648 completed by the regularly treating medical professional (if applicable);

- The medical professional who certified the Form N-648 does not regularly treat that patient. However, such a factor, by itself, may not be determinative for an officer's finding that the Form N-648 is insufficient;

- The Form N-648 was completed by the certifying medical professional more than 6 months before the applicant filed the naturalization application;

- The Form N-648 provides information inconsistent with information provided on the naturalization application or at the interview. For example, the effects of the medical condition on the applicant’s daily life such as employment capabilities or ability to attend educational programs;

- Previous medicals including Report of Medical Examination and Vaccination Record, Form I-693 did not identify long-term medical condition which may be inconsistent with the Form N-648’s indication of when the condition began, if indicated;

- The applicant or the medical professional failed to provide a reasonable justification for the late filing of the Form N-648;

- The applicant during the interview indicates that he or she was not examined or diagnosed by the medical professional, the medical professional did not certify the form him or herself, or the applicant merely paid for the Form N-648 without a doctor’s examination and diagnosis;

- The medical professional completing the Form N-648 is under investigation for immigration fraud, Medicaid fraud, or other fraud schemes by USCIS Fraud Detection and National Security (FDNS) Directorate, Immigration and Customs Enforcement, or another federal, state, or local agency, or a state medical board;

- The medical professional has engaged in a pattern of submitting Forms N-648 with similar or “boiler plate” language that does not reflect a case-specific analysis;

- The interpreter used during the medical examination, the Form N-400 interview, or both, is known or suspected, by FDNS or another state or federal agency, to be involved in any immigration fraud, including and especially Form N-648 related fraud;

- The evidence in the record or other credible information available to the officer indicates fraud or misrepresentation;

- The applicant provides multiple Forms N-648 with different diagnoses and information and from
different doctors; or

- Any other articulable grounds that are supported by the record.

If any one or more of these indicators are present, the officer should consult with his or her supervisor for next steps, which may include requesting additional documentation or finding the Form N-648 insufficient.

In addition, there may be cases where USCIS suspects or determines that an applicant, interpreter, or medical professional has committed fraud in the process of seeking a medical disability exception. The officer should consult with his or her supervisor to determine whether to refer such a case to FDNS. If an officer or the local FDNS office determines that an applicant, interpreter, or medical professional has made material misrepresentations or committed fraud, the officer must explain those findings in the naturalization denial notice.

The officer should determine that a request for a medical disability exception is insufficient if:

- The Form N-648 is not properly completed;
- The medical professional fails to explain how the applicant’s medical condition prohibits the applicant from meeting the English requirement, the civics requirement, or both requirements;
- The medical professional fails to explain how the applicant’s medical condition(s) affects the applicant’s daily life activities;
- The medical professional who certified the Form N-648 is not authorized to make such certification;
- The applicant was not examined or diagnosed by the certifying medical professional;
- The applicant described in the Form N-648 is not the same person as the naturalization applicant;
- The Form N-648 was completed or certified by someone other than the certifying medical professional; or
- Significant anomalies, discrepancies, or fraud indicators exist that preclude a finding of eligibility under a preponderance of the evidence standard.

The table below provides the general procedures for finding the Form N-648 to be insufficient. The procedures apply to any phase of the naturalization examination, including the initial examination, re-examination, or hearing on a denial.

<table>
<thead>
<tr>
<th>General Procedures Upon Determination the Form N-648 is Insufficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the Form N-648 is insufficient at the naturalization examination or hearing:</td>
</tr>
<tr>
<td>• USCIS proceeds with the initial or re-examination or hearing on a denial as if the applicant had not submitted a Form N-648.</td>
</tr>
<tr>
<td>• USCIS must provide the applicant with an opportunity to take all portions of the English and civics requirements.</td>
</tr>
</tbody>
</table>
General Procedures Upon Determination the Form N-648 is Insufficient

- An applicant has a total of two opportunities to pass the English and civics requirements before the application for naturalization is adjudicated: once during the initial examination and then later during the re-examination interview.

- An applicant may decline to complete the English and civics requirements. However, declining to continue the interview or complete the requirements counts as a failed attempt to pass the English and civics requirements.[15]

- An applicant’s failure to appear at the re-examination or hearing on a denial, or to complete the requirements for any reason results in a denial, unless excused by USCIS for good cause.

F. Interview, Re-Examination, and Hearing after an Insufficient Form N-648

1. Initial Interview

*Passing the English and Civics Requirements*[16]*

If an applicant’s Form N-648 is found to be insufficient, but the applicant subsequently meets the English and civics requirements in the same examination:

- The officer must provide the applicant the opportunity to proceed with the naturalization examination to determine if the applicant meets the other applicable eligibility requirements.

- The officer should not determine that the applicant engaged in fraud or lacks good moral character for the sole reason that the applicant met the educational requirements after submitting an insufficient Form N-648.

- The officer may question the applicant further, however, on the reasons for submitting the form, the applicant’s relationship to the medical professional, and any other relevant factors, if deemed necessary.

*Failing the English and Civics Requirements*

If an applicant’s Form N-648 is found to be insufficient, and the applicant fails to meet the English and civics requirements:

- The officer must notify the applicant of the Form N-648 deficiencies in writing. USCIS may choose to issue the applicant a Request for Evidence that specifically addresses the issues with the Form N-648.

- The officer should schedule the applicant to appear for a re-examination, and for a second opportunity to meet the English and civics requirements, between 60 and 90 days after the initial examination.

2. Re-Examination
If new information is received in support of a Form N-648 that USCIS found insufficient at the initial interview, the officer must review the evidence at the re-examination. In addition, the officer conducting the re-examination should review the original Form N-648 and accompanying evidence for consistency with the new information.

If an applicant submits a Form N-648 for the first time at the re-examination interview, the officer should carefully question the applicant as to why he or she did not submit the Form N-648 at the time of filing the naturalization application as required by the regulations, or at the initial interview.

The officer should follow the same procedure and apply the same criteria during the re-examination regarding late or multiple Form N-648 submissions. The officer should carefully consider whether there is any evidence of change in medical conditions or other credible explanation justifying the initial submission of the Form N-648 at the re-examination. The officer should then weigh the explanation and evidence provided by the applicant regarding the late filing. USCIS may consider the timing of the filing and any additional Form N-648s submitted by the applicant when assessing the applicant’s credibility with regard to the disability exception.

If the applicant has established that he or she is eligible for the disability exception, the officer should then allow the naturalization interview and examination to continue with the use of an interpreter, if applicable, exempting the applicant from the English or civics requirements, or both, as indicated on the form.

If, on the other hand, the applicant does not provide sufficient evidence that the late submission is due to a material change in his or her medical condition, or does not provide another credible explanation, the applicant may not be eligible for the disability exception. If the officer determines for any reason that the Form N-648 is insufficient to establish eligibility for the disability waiver, the officer may not grant the exception but should afford the applicant a second opportunity to take the English and civics tests.

If the applicant fails any portion of the test or declines to continue with the re-examination, the officer must deny the naturalization application based on the applicant’s failure to meet the English and civics requirements. In the naturalization denial notice, the officer must provide an explanation for finding the form insufficient to show eligibility for the disability exception.

If the officer issued a Request for Evidence at the initial interview and determines that the evidence submitted in response to the Request for Evidence is insufficient:

- The officer must proceed with the re-examination as if the applicant had not submitted a Form N-648;
- The officer must provide the applicant with a second opportunity before adjudication to take any portion of the English and civics tests that the applicant previously failed;
- The officer must not provide the applicant a third opportunity to submit a Form N-648 or to take the English and civics tests;
- If the applicant fails any portion of the testing, including declining the test or failing to respond to test questions correctly, the officer must deny the naturalization application based on the applicant’s failure to meet the English and civics requirements; and
- The officer must provide an explanation of the Form N-648’s deficiencies in the naturalization application’s denial notice.

3. Hearing on Denial
All denied naturalization applicants may file a Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA) (Form N-336) within 30 calendar days of receiving the adverse decision.[17]

USCIS may conduct a full de novo hearing on a denied naturalization application, including a full review of any previously submitted Form N-648 as well as other information contained in the record.[18] An applicant may submit additional documentation at the hearing, including a new or initial Form N-648 and relevant medical diagnostic reports, records, or statements. Although an applicant may submit a Form N-648 for the first time during a hearing, the officer may question the credibility of the N-648 as described above. At the hearing, an applicant will only be allowed to submit one Form N-648 and only allowed to attempt to satisfy the educational requirements once.

In addition, the officer also should follow the same procedures in the hearing as provided in this chapter when making a determination that a Form N-648 filed for the first time at the hearing is sufficient or insufficient.

**G. Sufficient Form N-648**

The officer should determine that a request for a medical disability exception is sufficient if, at a minimum:

- The Form N-648 is properly completed per the form instructions;
- The medical professional explains in detail how the applicant’s medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements; and
- No anomalies, discrepancies, or fraud indicators exist, based on the totality of evidence of record, that call into question a finding of eligibility under a preponderance of the evidence standard.

The table below provides the general procedures for cases where an applicant qualifies for a disability exception. The procedures apply to any phase of the naturalization examination, including the initial examination or re-examination, or hearing on a denial.

<table>
<thead>
<tr>
<th>General Procedures Upon Determination the Form N-648 is Sufficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the officer determines an applicant’s Form N-648 is sufficient at the naturalization examination or hearing:</td>
</tr>
<tr>
<td>• USCIS first proceeds with the interview in the applicant’s preferred language with the use of an interpreter, if applicable.</td>
</tr>
<tr>
<td>• If the medical professional indicated on the form that the applicant is unable to comply with any or part of the English and civics requirements, USCIS waives the indicated requirement(s).</td>
</tr>
<tr>
<td>• USCIS then proceeds to determine whether the applicant meets all other naturalization eligibility requirements.</td>
</tr>
</tbody>
</table>
The term “English and civic requirements” refers to demonstrating English language proficiency, which is determined by an ability to read, write, speak, and understand English, as well as knowledge of U.S. history and government, which is determined by a civics test. See Chapter 2, English and Civics Testing, Section A, Educational Requirements [12 USCIS-PM E.2(A)].


See INA 312(b). See 8 CFR 312.1(b)(3). See 8 CFR 312.2(b).

See Section D, Authorized Medical Professionals [12 USCIS-PM E.3(D)].

See 8 CFR 312.2(b)(2).

For more information about credible doubt, see Section E, Review of Medical Certification for Sufficiency, Subsection 5, Credible Doubt, Discrepancies, Misrepresentation, and Fraud [12 USCIS-PM E.3(E)(5)].

For more information on adjudicating late or multiple submissions, see Section B, Filing [12 USCIS-PM E.3(B)].

See 45 CFR 162.1002. The relevant medical codes, if any, are required to ensure the medical professional provides his or her medical opinion with a certain level of specificity. Officers should not use the codes to attempt to determine the validity of the medical diagnosis or second-guess why the diagnosis precludes the applicant from complying with the educational requirements.

See Part C, Accommodations [12 USCIS-PM C].

See 8 CFR 312.2(b)(2).

However, in the officer’s discretion, a “good cause” exception may be granted that would allow the witness to interpret. See Adjudicator’s Field Manual (AFM) Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation (PDF, 423.86 KB).

The interpreter must be under oath. See AFM Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation (PDF, 423.86 KB).

The list provided is not exhaustive and is meant only to provide some examples for officers when reviewing Form N-648 sufficiency. Officers should consult with their supervisor if there are any questions.

An officer should annotate that the applicant declined to take any part of the educational requirements in the record.

See INA 312.

See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review [12 USCIS-PM B.6].
Part F - Good Moral Character

Chapter 1 - Purpose and Background

A. Purpose

One of the general requirements for naturalization is good moral character (GMC). GMC means character which measures up to the standards of average citizens of the community in which the applicant resides. In general, an applicant must show that he or she has been and continues to be a person of GMC during the statutory period prior to filing and up to the time of the Oath of Allegiance.

The applicable naturalization provision under which the applicant files determines the period during which the applicant must demonstrate GMC. The applicant’s conduct outside the GMC period may also impact whether he or she meets the GMC requirement.

While USCIS determines whether an applicant has met the GMC requirement on a case-by-case basis, certain types of criminal conduct automatically preclude applicants from establishing GMC and may make the applicant subject to removal proceedings. An applicant may also be found to lack GMC for other types of criminal conduct (or unlawful acts).

An officer’s assessment of whether an applicant meets the GMC requirement includes an officer’s review of:

- The applicant’s record;
- Statements provided in the naturalization application; and
- Oral testimony provided during the interview.

There may be cases that are affected by specific jurisdictional case law. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense rises to the level of precluding an applicant from establishing GMC. In addition, the offenses and conduct which affect the GMC determination may also render an applicant removable.

B. Background

The Naturalization Act of 1790 introduced the long-standing GMC requirement for naturalization. Any conduct or act that offends the accepted moral character standards of the community in which the applicant resides should be considered without regard to whether the applicant has been arrested or convicted of an offense.

In general, an applicant for naturalization must establish GMC throughout the requisite periods of continuous residence in the United States. In prescribing specific periods during which GMC must be established, Congress generally intended to make provision for the reformation and eventual naturalization of persons who were guilty of certain past misconduct.

C. Legal Authorities
• **INA 101(f)** – Good moral character definition

• **INA 316; 8 CFR 316** – General naturalization requirements

• **INA 316(e); 8 CFR 316.10** – Good moral character requirement

• **INA 318** – Prerequisite to naturalization, burden of proof

**Footnotes**


**Chapter 2 - Adjudicative Factors**

**A. Applicable Statutory Period**

The applicable period during which an applicant must show that he or she has been a person of good moral character (GMC) depends on the corresponding naturalization provision.[^1] In general, the statutory period for GMC for an applicant filing under the general naturalization provision starts 5 years prior to the date of filing.[^2]

The statutory period starts 3 years prior to the date of filing for certain spouses of U.S. citizens.[^3] The period during which certain service members or veterans must show GMC starts 1 or 5 years from the date of filing depending on the military provision.[^4]

In all cases, the applicant must also show that he or she continues to be a person of GMC until the time of his or her naturalization.[^5]

**B. Conduct Outside of the Statutory Period**

USCIS is not limited to reviewing the applicant's conduct only during the applicable GMC period. An applicant’s conduct prior to the GMC period may affect the applicant’s ability to establish GMC if the applicant’s present conduct does not reflect a reformation of character or the earlier conduct is relevant to the applicant’s present moral character.[^6]

In general, an officer must consider the totality of the circumstances and weigh all factors, favorable and unfavorable, when considering reformation of character in conjunction with GMC within the relevant period.[^7] The following factors may be relevant in assessing an applicant’s current moral character and
reformation of character:

- Family ties and background;
- Absence or presence of other criminal history;
- Education;
- Employment history;
- Other law-abiding behavior (for example, meeting financial obligations, paying taxes);
- Community involvement;
- Credibility of the applicant;
- Compliance with probation; and
- Length of time in United States.

C. Definition of Conviction

1. Statutory Definition of Conviction for Immigration Purposes

Most of the criminal offenses that preclude a finding of GMC require a conviction for the disqualifying offense or arrest. A “conviction” for immigration purposes means a formal judgment of guilt entered by the court. A conviction for immigration purposes also exists in cases where the adjudication of guilt is withheld if the following conditions are met:

- A judge or jury has found the alien guilty or the alien entered a plea of guilty or nolo contendere[8] or has admitted sufficient facts to warrant a finding of guilt; and
- The judge has ordered some form of punishment, penalty, or imposed a restraint on the alien’s liberty.[9]

It is not always clear if the outcome of the arrest resulted in a conviction. Various states have provisions for diminishing the effects of a conviction. In some states, adjudication may be deferred upon a finding or confession of guilt. Some states have a pretrial diversion program whereby the case is removed from the normal criminal proceedings. This way the person may enter into a counseling or treatment program and potentially avoid criminal prosecution.

If the accused is directed to attend a pre-trial diversion or intervention program, where no admission or finding of guilt is required, the order may not count as a conviction for immigration purposes.[10]

2. Juvenile Convictions

In general, a guilty verdict, ruling, or judgment in a juvenile court does not constitute a conviction for immigration purposes.[11] A conviction for a person who is under 18 years of age and who was charged as an adult constitutes a conviction for immigration purposes.

3. Court Martial Convictions
A general “court martial” is defined as a criminal proceeding under the governing laws of the U.S. armed forces. A judgment of guilt by a court martial has the same force and effect as a conviction by a criminal court.[12] However, disciplinary actions in lieu of a court martial are not convictions for immigration purposes.

4. Deferrals of Adjudication

In cases where adjudication is deferred, the original finding or confession of guilt and imposition of punishment is sufficient to establish a conviction for immigration purposes because both conditions establishing a conviction are met. If the court does not impose some form of punishment, then it is not considered a conviction even with a finding or confession of guilt. A decision or ruling of nolle prosequi[13] does not meet the definition of conviction.

5. Vacated Judgments

If a judgment is vacated for cause due to Constitutional defects, statutory defects, or pre-conviction errors affecting guilt, it is not considered a conviction for immigration purposes. The judgment is considered a conviction for immigration purposes if it was dismissed for any other reason, such as completion of a rehabilitative period (rather than on its merits) or to avoid adverse immigration consequences.[14]

A conviction vacated where a criminal court failed to advise a defendant of the immigration consequences of a plea, which resulted from a defect in the underlying criminal proceeding, is not a conviction for immigration purposes.[15]

6. Foreign Convictions

USCIS considers a foreign conviction to be a “conviction” in the immigration context if the conviction was the result of an offense deemed to be criminal by United States standards.[16] In addition, federal United States standards on sentencing govern the determination of whether the offense is a felony or a misdemeanor regardless of the punishment imposed by the foreign jurisdiction.[17] The officer may consult with local USCIS counsel in cases involving foreign convictions.

7. Pardons

An applicant who has received a full and unconditional executive pardon[18] prior to the start of the statutory period may establish GMC if the applicant shows that he or she has been reformed and rehabilitated prior to the statutory period.[19] If the applicant received a pardon during the statutory period, the applicant may establish GMC if he or she shows evidence of extenuating or exonerating circumstances that would establish his or her GMC.[20]

Foreign pardons do not eliminate a conviction for immigration purposes.[21]

8. Expunged Records

Expunged Records and the Underlying Conviction

A record of conviction that has been expunged does not remove the underlying conviction.[22] For example, an expunged record of conviction for a controlled substance violation[23] or any crime involving moral
turpitude (CIMT) does not relieve the applicant from the conviction in the immigration context. In addition, foreign expungements are still considered convictions for immigration purposes.

The Board of Immigration Appeals (BIA) has held that a state court action to “expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute” has no effect on removing the underlying conviction for immigration purposes.

The officer may require the applicant to submit evidence of a conviction regardless of whether the record of the conviction has been expunged. It remains the applicant’s responsibility to obtain his or her records regardless of whether they have been expunged or sealed by the court. USCIS may file a motion with the court to obtain a copy of the record in states where the applicant is unable to obtain the record.

9. Change in Sentence

“Term of imprisonment or a sentence” generally refers to an alien’s original criminal sentence, without regard to post-sentencing alterations. Therefore, state-court orders that modify, clarify, or otherwise alter a criminal alien’s original sentence will only be relevant for immigration purposes if they are based on a procedural or substantive defect in the underlying criminal proceeding.

D. Effect of Probation

An officer may not approve a naturalization application while the applicant is on probation, parole, or under a suspended sentence. However, an applicant who has satisfactorily completed probation, parole, or a suspended sentence during the relevant statutory period is not automatically precluded from establishing GMC. The fact that an applicant was on probation, parole, or under a suspended sentence during the statutory period, however, may affect the overall GMC determination.

E. Admission of Certain Criminal Acts

An applicant may be unable to establish GMC if he or she admits committing certain offenses even if the applicant has never been formally charged, indicted, arrested or convicted. This applies to offenses involving “moral turpitude” or any violation of, or a conspiracy or attempt to violate, any law or regulation relating to a controlled substance. When determining whether an applicant committed a particular offense, the officer must review the relevant statute in the jurisdiction where it is alleged to have been committed.

The officer must provide the applicant with a full explanation of the purpose of the questioning stemming from the applicant’s declaration that he or she committed an offense. In order for the applicant’s declaration to be considered an “admission,” it must meet the long held requirements for a valid “admission” of an offense:

- The officer must provide the applicant the text of the specific law from the jurisdiction where the offense was committed;
- The officer must provide an explanation of the offense and its essential elements in “ordinary” language; and
- The applicant must voluntarily admit to having committed the particular elements of the offense under oath.
The officer must ensure that the applicant is under oath when taking the sworn statement to record the
admission. The sworn statement must cover the requirements for a valid admission, to include the specifics of
the act or acts that may prevent the applicant from establishing GMC. The officer may consult with his or her
supervisor to ensure that sufficient written testimony has been received from the applicant prior to making a
decision on the application.

F. “Purely Political Offense” Exception

There is an exception to certain conditional bars to GMC in cases where the offense was a “purely political
offense” that resulted in conviction, or in conviction and imprisonment, outside of the United
States. [35] Purely political offenses are generally offenses that “resulted in convictions obviously based on
fabricated charges or predicated upon repressive measures against racial, religious or political minorities.” [36]
The “purely political offense” exception applies to the following conditional bars to GMC: [37]

- Conviction for one or more crimes involving moral turpitude (CIMTs); [38]
- Conviction of two or more offenses with a combined sentence of 5 years or more; [39] and
- Incarceration for a total period of 180 days or more. [40]

These conditional bars to GMC do not apply if the underlying conviction was for a “purely political offense”
abroad. The officer should rely on local USCIS counsel in cases where there is a question about whether a
particular offense should be considered a “purely political offense.”

G. Extenuating Circumstances

Certain conditional bars to GMC should not adversely affect the GMC determination if the applicant shows
extenuating circumstances. [41] The extenuating circumstance must precede or be contemporaneous with the
commission of the offense. USCIS does not consider any conduct or equity (including evidence of
reformation or rehabilitation) subsequent to the commission of the offense as an extenuating circumstance.
The “extenuating circumstances” provision applies to the following conditional bars to GMC: [42]

- Failure to support dependents; [43]
- Adultery; [44] and
- Unlawful acts. [45]

These conditional bars to GMC do not apply if the applicant shows extenuating circumstances. The officer
should provide the applicant with an opportunity during the interview to provide evidence and testimony of
extenuating circumstances in relevant cases.

H. Removability and GMC

Certain permanent and conditional bars to GMC may also render the applicant amenable to removal
proceedings. [46] This depends on various factors specific to each case. Not all applicants who are found to
lack GMC are removable. An applicant may be found to lack GMC and have his or her naturalization application denied under those grounds without DHS issuing a Notice to Appear.[47]

Footnotes

[^1] See the relevant Volume 12 [12 USCIS-PM] part for the specific statutory period pertaining to each naturalization provision.


[^4] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [12 USCIS-PM I.9(B)]. See INA 328(c) and INA 329. See 8 CFR 328.2(d) and 8 CFR 329.2(d).


[^7] See Ralich v. United States, 185 F.2d 784 (1950) (provided false testimony within the statutory period and operated a house of prostitution prior to the statutory period). See Marcantonio v. United States, 185 F.2d 934 (1950) (applicant had rehabilitated his character after multiple arrests before statutory period).

[^8] The term “nolo contendere” is Latin for “I do not wish to contest."


[^13] The term “nolle prosequi” is Latin for “we shall no longer prosecute.”


[^18] Executive pardons are given by the President or a governor of the United States.

See 8 CFR 316.10(c)(2)(ii).


For cases arising in the Ninth Circuit involving state law convictions for simple possession of a controlled substance, please consult local counsel as the date of the conviction may affect whether possible treatment under the Federal First Offender Act renders the conviction invalid for immigration purposes. See Nunez-Reyes v. Holder, 646 F.3d 684 (9th Cir 2011).

See 8 CFR 316.10(c)(3)(i) and 8 CFR 316.10(c)(3)(ii).

See Danso v. Gonzales, 489 F.3d 709 (5th Cir. 2007). See Elkins v. Comfort, 392 F.3d 1159 (10th Cir. 2004).

See In re Roldan-Santoyo (PDF), 22 I&N Dec. 512 (BIA 1999).

See INA 101(a)(48)(B).

See Matter of Thomas and Thompson, 27 I&N Dec. 674 (A.G. 2019) (“the phrase ‘term of imprisonment or a sentence’ in paragraph (B) [of INA 101(a)(48)] is best read to concern an alien’s original criminal sentence, without regard to post-sentencing alterations that, like a suspension, merely alleviate the impact of that sentence.”).

See Matter of Thomas and Thompson, 27 I&N Dec. 674, 682 (A.G. 2019) (holding that the tests set forth in Matter of Cota-Vargas (PDF), 23 I&N Dec. 849 (BIA 2005), Matter of Song (PDF), 23 I&N Dec. 173 (BIA 2001), and Matter of Estrada, 26 I&N Dec. 749 (BIA 2016), will no longer govern the effect of state-court orders that modify, clarify, or otherwise alter a criminal alien’s sentence.) For questions on procedural or substantive defects, officers should consult the Office of Chief Counsel (OCC).

See 8 CFR 316.10(c)(1).

See 8 CFR 316.10(b)(2)(iv).


See In re O’Cealleagh (PDF), 23 I&N Dec. 976 (BIA 2006) (finding that a CIMT offense must be completely or totally political for “purely political offense” exception to apply).

See 22 CFR 40.21(a)(6).

See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5], for further guidance on each bar to GMC.

Chapter 3 - Evidence and the Record

A. Applicant Testimony

Issues relevant to the good moral character (GMC) requirement may arise at any time during the naturalization interview. The officer’s questions during the interview should elicit a complete record of any criminal, unlawful, or questionable activity in which the applicant has ever engaged regardless of whether that information eventually proves to be material to the GMC determination.

The officer should take into consideration the education level of the applicant and his or her knowledge of the English language. The officer may rephrase questions and supplement the inquiry with additional questions to better ensure that the applicant understands the proceedings. [1]

The officer must take a sworn statement from an applicant when the applicant admits committing an offense for which the applicant has never been formally charged, indicted, arrested or convicted. [2]

B. Court Dispositions

In general, an officer has the authority to request the applicant to provide a court disposition for any criminal offense committed in the United States or abroad to properly determine whether the applicant meets the GMC requirement. USCIS requires applicants to provide court dispositions certified by the pertinent jurisdiction for any offense committed during the statutory period. In addition, USCIS may request any additional evidence that may affect a determination regarding the applicant’s GMC. The burden is on the applicant to show that an offense does not prevent him or her from establishing GMC.
An applicant is required to provide a certified court disposition for any arrest involving the following offenses and circumstances, regardless of whether the arrest resulted in a conviction:

- Arrest for criminal act committed during the statutory period;
- Arrest that occurred on or after November 29, 1990, that may be an aggravated felony;[^3]
- Arrest for murder;
- Arrest for any offense that would render the applicant removable;
- Arrest for offenses outside the statutory period, if when combined with other offenses inside the statutory period, the offense would preclude the applicant from establishing GMC; and
- Arrest for crime where the applicant would still be on probation at the time of adjudication of the naturalization application or may have been incarcerated for 180 days during the statutory period.

These procedures are not intended to limit the discretion of any officer in requesting documentation that the officer needs to properly assess an applicant’s GMC.

In cases where a court disposition or police record is not available, the applicant must provide original or certified confirmation that the record is not available from the applicable law enforcement agency or court.

C. Failure to Respond to Request for Evidence

In cases where the initial naturalization examination has already been conducted, the officer should adjudicate the naturalization application on the merits where the applicant fails to respond to a request for additional evidence.[^4] The officer should not deny the application for lack of prosecution after the initial naturalization examination.[^5]

Footnotes


[^3] See INA 101(a)(43). See Chapter 4, Permanent Bars to Good Moral Character (GMC), Section B, Aggravated Felony [12 USCIS-PM F.4(B)].

[^4] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4], for guidance on decisions on the application, to include cases where the applicant fails to respond.


Chapter 4 - Permanent Bars to Good Moral Character
A. Murder

An applicant who has been convicted of murder at any time is permanently barred from establishing good moral character (GMC) for naturalization. [1]

B. Aggravated Felony

In 1996, Congress expanded the definition and type of offense considered an “aggravated felony” in the immigration context. [2] An applicant who has been convicted of an “aggravated felony” on or after November 29, 1990, is permanently barred from establishing GMC for naturalization. [3]

While an applicant who has been convicted of an aggravated felony prior to November 29, 1990, is not permanently barred from naturalization, the officer should consider the seriousness of the underlying offense (aggravated felony) along with the applicant's present moral character in determining whether the applicant meets the GMC requirement. If the applicant's actions during the statutory period do not reflect a reform of his or her character, then the applicant may not be able to establish GMC. [4]

Some offenses require a minimum term of imprisonment of one year to qualify as an aggravated felony in the immigration context. The term of imprisonment is the period of confinement ordered by the court regardless of whether the court suspended the sentence. [5] For example, an offense involving theft or a crime of violence is considered an aggravated felony if the term of imprisonment ordered by the court is one year or more, even if the court suspended the entire sentence. [6]

The table below serves as a quick reference guide listing aggravated felonies in the immigration context. The officer should review the specific statutory language for further information.

<table>
<thead>
<tr>
<th>Aggravated Felony</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder, Rape, or Sexual Abuse of a Minor</td>
<td>INA 101(a)(43)(A)</td>
</tr>
<tr>
<td>Illicit Trafficking in Controlled Substance</td>
<td>INA 101(a)(43)(B)</td>
</tr>
<tr>
<td>Illicit Trafficking in Firearms or Destructive Devices</td>
<td>INA 101(a)(43)(C)</td>
</tr>
<tr>
<td>Money Laundering Offenses (over $10,000)</td>
<td>INA 101(a)(43)(D)</td>
</tr>
<tr>
<td>Explosive Materials and Firearms Offenses</td>
<td>INA 101(a)(43)(E)(i)–(iii)</td>
</tr>
<tr>
<td>Crime of Violence (imprisonment term of at least 1 yr)</td>
<td>INA 101(a)(43)(F)</td>
</tr>
<tr>
<td>Aggravated Felony</td>
<td>Citation</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Theft Offense (imprisonment term of at least 1 yr)</td>
<td>INA 101(a)(43)(G)</td>
</tr>
<tr>
<td>Demand for or Receipt of Ransom</td>
<td>INA 101(a)(43)(H)</td>
</tr>
<tr>
<td>Child Pornography Offense</td>
<td>INA 101(a)(43)(I)</td>
</tr>
<tr>
<td>Racketeering, Gambling (imprisonment term of at least 1 yr)</td>
<td>INA 101(a)(43)(J)</td>
</tr>
<tr>
<td>Prostitution Offenses (managing, transporting, trafficking)</td>
<td>INA 101(a)(43)(K)(i)–(iii)</td>
</tr>
<tr>
<td>Gathering or Transmitting Classified Information</td>
<td>INA 101(a)(43)(L)(i)–(iii)</td>
</tr>
<tr>
<td>Fraud or Deceit Offenses or Tax Evasion (over $10,000)</td>
<td>INA 101(a)(43)(M)(i), (ii)</td>
</tr>
<tr>
<td>Alien Smuggling</td>
<td>INA 101(a)(43)(N)</td>
</tr>
<tr>
<td>Illegal Entry or Reentry by Removed Aggravated Felon</td>
<td>INA 101(a)(43)(O)</td>
</tr>
<tr>
<td>Passport, Document Fraud (imprisonment term of at least 1 yr)</td>
<td>INA 101(a)(43)(P)</td>
</tr>
<tr>
<td>Failure to Appear Sentence (offense punishable by at least 5 yrs)</td>
<td>INA 101(a)(43)(Q)</td>
</tr>
<tr>
<td>Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles</td>
<td>INA 101(a)(43)(R)</td>
</tr>
<tr>
<td>Obstruction of Justice, Perjury, Bribery of Witness</td>
<td>INA 101(a)(43)(S)</td>
</tr>
<tr>
<td>Failure to Appear to Court (offense punishable by at least 2 yrs)</td>
<td>INA 101(a)(43)(T)</td>
</tr>
<tr>
<td>Attempt or Conspiracy to Commit an Aggravated Felony</td>
<td>INA 101(a)(43)(U)</td>
</tr>
</tbody>
</table>
C. Persecution, Genocide, Torture, or Severe Violations of Religious Freedom

The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in any of the activities addressed in this section.

1. Nazi Persecutions

An applicant who ordered, incited, assisted, or otherwise participated in the persecution of any person or persons in association with the Nazi Government of Germany or any government in an area occupied by or allied with the Nazi Government of Germany is permanently barred from establishing GMC for naturalization. [7]

2. Genocide

An applicant who has ordered, incited, assisted, or otherwise participated in genocide, at any time is permanently barred from establishing GMC for naturalization. [8] The criminal offense of “genocide” includes any of the following acts committed in time of peace or time of war with the specific intent to destroy in whole or in substantial part a national, ethnic, racial, or religious group as such:

- Killing members of that group;
- Causing serious bodily injury to members of that group;
- Causing the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- Subjecting the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- Imposing measures intended to prevent births within the group; or
- Transferring by force children of the group to another group. [9]

3. Torture or Extrajudicial Killings

An applicant who has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture or under color of law of any foreign nation any extrajudicial killing is permanently barred from establishing GMC for naturalization. [10]

“Torture” is defined as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his or her custody or physical control. [11]

An “extrajudicial killing” is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized peoples. [12]

4. Particularly Severe Violations of Religious Freedom
An applicant who was responsible for, or directly carried out, particularly severe violations of religious freedom while serving as a foreign government official at any time is not able to establish GMC. [13] “Particularly severe violations of religious freedom” are defined as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to life, liberty, or the security of persons. [14]

Footnotes


Chapter 5 - Conditional Bars for Acts in Statutory Period

In addition to the permanent bars to good moral character (GMC), the Immigration and Nationality Act (INA) and corresponding regulations include bars to GMC that are not permanent in nature. USCIS refers to these bars as “conditional bars.” These bars are triggered by specific acts, offenses, activities, circumstances,
or convictions within the statutory period for naturalization, including the period prior to filing and up to the
time of the Oath of Allegiance.\[1\] An offense that does not fall within a permanent or conditional bar to GMC
may nonetheless affect an applicant’s ability to establish GMC.\[2\]

With regard to bars to GMC requiring a conviction, the officer reviews the relevant federal or state law or
regulation of the United States, or law or regulation of any foreign country to determine whether the applicant
can establish GMC.

The table below serves as a quick reference guide on the general conditional bars to establishing GMC for
acts occurring during the statutory period. The sections and paragraphs that follow the table provide further
guidance on each bar and offense.

Conditional Bars to GMC for Acts Committed in Statutory Period

<table>
<thead>
<tr>
<th>Offense</th>
<th>Citation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One or More Crimes Involving Moral Turpitude (CIMTs)</strong></td>
<td>• INA 101(f)(3)</td>
<td>Conviction or admission of one or more CIMTs (other than political offense), except for one petty offense</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)(2)(i), (iv)</td>
<td></td>
</tr>
<tr>
<td><strong>Aggregate Sentence of 5 Years or More</strong></td>
<td>• INA 101(f)(3)</td>
<td>Conviction of two or more offenses with combined sentence of 5 years or more (other than political offense)</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)(2)(ii), (iv)</td>
<td></td>
</tr>
<tr>
<td><strong>Controlled Substance Violation</strong></td>
<td>• INA 101(f)(3)</td>
<td>Violation of any law on controlled substances, except for simple possession of 30g or less of marijuana</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)(2)(iii), (iv)</td>
<td></td>
</tr>
<tr>
<td><strong>Incarceration for 180 Days</strong></td>
<td>• INA 101(f)(7)</td>
<td>Incarceration for a total period of 180 days or more, except political offense and ensuing confinement abroad</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)(2)(v)</td>
<td></td>
</tr>
<tr>
<td><strong>False Testimony under Oath</strong></td>
<td>• INA 101(f)(6)</td>
<td>False testimony for the purpose of obtaining any immigration benefit</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)(2)(vi)</td>
<td></td>
</tr>
<tr>
<td>Offense</td>
<td>Citation</td>
<td>Description</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>---------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Prostitution Offenses</td>
<td>• INA 101(f)(3)</td>
<td>Engaged in prostitution, attempted or procured to import prostitution, or received proceeds from prostitution</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2)(vii)</td>
<td></td>
</tr>
<tr>
<td>Smuggling of a Person</td>
<td>• INA 101(f)(3)</td>
<td>Involved in smuggling of a person to enter or try to enter the United States in violation of law</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2)(viii)</td>
<td></td>
</tr>
<tr>
<td>Polygamy</td>
<td>• INA 101(f)(3)</td>
<td>Practiced or is practicing polygamy (the custom of having more than one spouse at the same time)</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2)(ix)</td>
<td></td>
</tr>
<tr>
<td>Gambling Offenses</td>
<td>• INA 101(f)(4)–(5)</td>
<td>Two or more gambling offenses or derives income principally from illegal gambling activities</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2)(x)–(xi)</td>
<td></td>
</tr>
<tr>
<td>Habitual Drunkard</td>
<td>• INA 101(f)(1)</td>
<td>Is or was a habitual drunkard</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2)(xii)</td>
<td></td>
</tr>
<tr>
<td>Two or More Convictions for Driving Under the Influence (DUI)</td>
<td>• INA 101(f)</td>
<td>Two or more convictions for driving under the influence during the statutory period</td>
</tr>
<tr>
<td>Failure to Support Dependents</td>
<td>• INA 101(f)</td>
<td>Willful failure or refusal to support dependents, unless extenuating circumstances are established</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3)(i)</td>
<td></td>
</tr>
<tr>
<td>Adultery</td>
<td>• INA 101(f)</td>
<td>Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established</td>
</tr>
<tr>
<td></td>
<td>• 8 CFR 316.10(b)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3)(ii)</td>
<td></td>
</tr>
</tbody>
</table>
A. One or More Crimes Involving Moral Turpitude

1. Crime Involving Moral Turpitude

“Crime involving moral turpitude” (CIMT) is a term used in the immigration context that has no statutory definition. Extensive case law, however, has provided sufficient guidance on whether an offense rises to the level of a CIMT. The courts have held that moral turpitude “refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.”[3]

Whether an offense is a CIMT is largely based on whether the offense involves willful conduct that is morally reprehensible and intrinsically wrong, the essence of which is a reckless, evil or malicious intent. The Attorney General has decreed that a finding of “moral turpitude” requires that the perpetrator committed a reprehensible act with some form of guilty knowledge.[4]

The officer should consider the nature of the offense in determining whether it is a CIMT.[5] In many cases, the CIMT determination depends on whether the relevant state statute includes one of the elements that involves moral turpitude. For example, an offense or crime may be a CIMT in one state, but a similarly named crime in another state may not be a CIMT because of differences in the definition of the crime or offense. The officer may rely on local USCIS counsel in cases where there is a question about whether a particular offense is a CIMT.

The table below serves as a quick reference guide on the general categories of CIMTs and their respective elements or determining factors. The paragraphs that follow the table provide further guidance on each category.

### General Categories of Crimes Involving Moral Turpitude (CIMTs)

<table>
<thead>
<tr>
<th>CIMT Category</th>
<th>Elements of Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crimes Against a Person</td>
<td>Criminal intent or recklessness, or is defined as morally reprehensible by state (may include statutory rape)</td>
</tr>
<tr>
<td>Crimes Against Property</td>
<td>Involving fraud against the government or an individual (may include theft, forgery, robbery)</td>
</tr>
<tr>
<td>CIMT Category</td>
<td>Elements of Crime</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Sexual and Family Crimes</td>
<td>No one set of principles or elements; see further explanation below (may include spousal or child abuse)</td>
</tr>
<tr>
<td>Crimes Against Authority of the Government</td>
<td>Presence of fraud is the main determining factor (may include offering a bribe, counterfeiting)</td>
</tr>
</tbody>
</table>

**Crimes Against a Person**

Crimes against a person involve moral turpitude when the offense contains criminal intent or recklessness or when the crime is defined as morally reprehensible by state statute. Criminal intent or recklessness may be inferred from the presence of unjustified violence or the use of a dangerous weapon. For example, aggravated battery is usually, if not always, a CIMT. Simple assault and battery is not usually considered a CIMT.

**Crimes Against Property**

Moral turpitude attaches to any crime against property which involves fraud, whether it entails fraud against the government or against an individual. Certain crimes against property may require guilty knowledge or intent to permanently take property. Petty theft, grand theft, forgery, and robbery are CIMTs in some states.

**Sexual and Family Crimes**

It is difficult to discern a distinguishing set of principles that the courts apply to determine whether a particular offense involving sexual and family crimes is a CIMT. In some cases, the presence or absence of violence seems to be an important factor. The presence or absence of criminal intent may also be a determining factor. The CIMT determination depends upon state statutes and the controlling case law and must be considered on a case-by-case basis.

Offenses such as spousal or child abuse may rise to the level of a CIMT, while an offense involving a domestic simple assault generally does not. An offense relating to indecent exposure or abandonment of a minor child may or may not rise to the level of a CIMT. In general, if the person knew or should have known that the victim was a minor, any intentional sexual contact with a child involves moral turpitude.[6]

**Crimes Against the Authority of the Government**

The presence of fraud primarily determines the presence of moral turpitude in crimes against the authority of the government. Offering a bribe to a government official and offenses relating to counterfeiting are generally CIMTs. Offenses relating to possession of counterfeit securities without intent and contempt of court, however, are not generally CIMTs.

2. Committing One or More CIMTs in Statutory Period

An applicant who is convicted of or admits to committing one or more CIMTs during the statutory period cannot establish GMC for naturalization.[7] If the applicant has only been convicted of (or admits to) one CIMT, the CIMT must have been committed within the statutory period as well. In cases of multiple CIMTs, only the commission and conviction (or admission) of one CIMT needs to be within the statutory period.
**Petty Offense Exception**

An applicant who has committed only one CIMT that is considered a “petty offense,” such as petty theft, may be eligible for an exception if all of the following conditions are met:

- The “petty offense” is the only CIMT the applicant has ever committed;
- The sentence imposed for the offense was 6 months or less; and
- The maximum possible sentence for the offense does not exceed one year.[8]

The petty offense exception does not apply to an applicant who has been convicted of or who admits to committing more than one CIMT even if only one of the CIMTs was committed during the statutory period. An applicant who has committed more than one petty offense of which only one is a CIMT may be eligible for the petty offense exception.[9]

**Purely Political Offense Exception**

This bar to GMC does not apply to a conviction for a CIMT occurring outside of the United States for a purely political offense committed abroad.[10]

**B. Aggregate Sentence of 5 Years or More**

An applicant may not establish GMC if he or she has been convicted of two or more offenses during the statutory period for which the combined, imposed sentence was 5 years or more.[11] The underlying offenses must have been committed within the statutory period.

**Purely Political Offense Exception**

The GMC bar for having two or more convictions does not apply if the convictions and resulting sentence or imprisonment of 5 years or more occurred outside of the United States for purely political offenses committed abroad.[12]

**C. Controlled Substance Violation**

**1. Controlled Substance Violations**

An applicant cannot establish good moral character (GMC) if he or she has violated any controlled substance-related federal or state law or regulation of the United States or law or regulation of any foreign country during the statutory period. [13] This includes conspiring to violate or aiding and abetting another person to violate such laws or regulations.

This conditional bar to establishing GMC applies to a conviction for such an offense or an admission to such an offense, or an admission to committing acts that constitute the essential elements of a violation of any controlled substance law. [14] Furthermore, a conviction or admission that the applicant has been a trafficker in a controlled substance, or benefited financially from a spouse or parent’s trafficking is also a conditional bar. [15]

Controlled substance is defined in the Controlled Substances Act (CSA) as a “drug or other substance, or immediate precursor” that is included in the schedule or attachments in the CSA. [16] The substance...
underlying the applicant’s state law conviction or admission must be listed in the CSA. Possession of
controlled substance related paraphernalia may also constitute an offense “relating to a controlled substance”
and may preclude the applicant from establishing GMC.

2. Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana

A number of states and the District of Columbia (D.C.) have enacted laws permitting “medical” or
“recreational” use of marijuana. Marijuana, however, remains classified as a “Schedule I” controlled
substance under the federal CSA. Schedule I substances have no accepted medical use pursuant to the
CSA. Classification of marijuana as a Schedule I controlled substance under federal law means that
certain conduct involving marijuana, which is in violation of the CSA, continues to constitute a conditional
bar to GMC for naturalization eligibility, even where such activity is not a criminal offense under state
law.

Such an offense under federal law may include, but is not limited to, possession, manufacture or production,
distribution or dispensing of marijuana. For example, possession of marijuana for recreational or
medical purposes or employment in the marijuana industry may constitute conduct that violates federal
controlled substance laws. Depending on the specific facts of the case, these activities, whether established by
a conviction or an admission by the applicant, may preclude a finding of GMC for the applicant during the
statutory period. An admission must meet the long held requirements for a valid “admission” of an
offense. Note that even if an applicant does not have a conviction or make a valid admission to a
marijuana-related offense, he or she may be unable to meet the burden of proof to show that he or she has not
committed such an offense.

3. Exception for Single Offense of Simple Possession

The conditional bar to GMC for a controlled substance violation does not apply if the violation was for a
single offense of simple possession of 30 grams or less of marijuana. This exception is also applicable to
paraphernalia offenses involving controlled substances as long as the paraphernalia offense is “related to”
simple possession of 30 grams or less of marijuana.

D. Imprisonment for 180 Days or More

An applicant cannot establish GMC if he or she is or was imprisoned for an aggregate period of 180 days or
more during the statutory period based on a conviction. This bar to GMC does not apply if the conviction
resulted only in a sentence to a period of probation with no sentence of incarceration for 180 days or more.
This bar applies regardless of the reason for the conviction. For example, this bar still applies if the term of
imprisonment results from a violation of probation rather than from the original sentence.

The commission of the offense resulting in conviction and confinement does not need to have occurred
during the statutory period for this bar to apply. Only the confinement needs to be within the statutory period
for the applicant to be precluded from establishing GMC.

Purely Political Offense Exception

This bar to GMC does not apply to a conviction and resulting confinement of 180 days or more occurring
outside of the United States for a purely political offense committed abroad.
E. False Testimony

1. False Testimony in Statutory Period

An applicant who gives false testimony to obtain any immigration benefit during the statutory period cannot establish GMC. False testimony occurs when the applicant deliberately intends to deceive the U.S. Government while under oath in order to obtain an immigration benefit. This holds true regardless of whether the information provided in the false testimony would have impacted the applicant’s eligibility. The statute does not require that the benefit be obtained, only that the false testimony is given in an attempt to obtain the benefit.

While the most common occurrence of false testimony is failure to disclose a criminal or other adverse record, false testimony can occur in other areas. False testimony may include, but is not limited to, facts about lawful admission, absences, residence, marital status or infidelity, employment, organizational membership, or tax filing information.

2. Three Elements of False Testimony

There are three elements of false testimony established by the Supreme Court that must exist for a naturalization application to be denied on false testimony grounds:

Oral Statements

The “testimony” must be oral. False statements in a written application and falsified documents, whether or not under oath, do not constitute “testimony.” However, false information provided orally under oath to an officer in a question-and-answer statement relating to a written application is “testimony.” The oral statement must also be an affirmative misrepresentation. The Supreme Court makes it clear that there is no “false testimony” if facts are merely concealed, to include incomplete but otherwise truthful answers.

Oath

The oral statement must be made under oath in order to constitute false testimony. Oral statements to officers that are not under oath do not constitute false testimony.

Subjective Intent to Obtain an Immigration Benefit

The applicant must be providing the false testimony in order to obtain an immigration benefit. False testimony for any other reason does not preclude the applicant from establishing GMC.

F. Prostitution

An applicant may not establish GMC if he or she has engaged in prostitution, procured or attempted to procure or to import prostitutes or persons for the purpose of prostitution, or received proceeds from prostitution during the statutory period. The Board of Immigration Appeals (BIA) has held that to “engage in” prostitution, one must have engaged in a regular pattern of behavior or conduct. The BIA has also determined that a single act of soliciting prostitution on one’s own behalf is not the same as procurement.

G. Smuggling of a Person
An applicant is prohibited from establishing GMC if he or she is or was involved in the smuggling of a person or persons by encouraging, inducing, assisting, abetting or aiding any alien to enter or try to enter the United States in violation of law during the statutory period.\[42]\n
**Family Reunification Exception**

This bar to GMC does not apply in certain cases where the applicant was involved in the smuggling of his or her spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law before May 5, 1988.\[43]\n
**H. Polygamy**

An applicant who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC.\[44]\n
Polygamy is the custom of having more than one spouse at the same time.\[45]\n
The officer should review documents in the file and any documents the applicant brings to the interview for information about the applicant’s marital history, to include any visa petitions or applications, marriage and divorce certificates, and birth certificates of children.

**I. Gambling**

An applicant who has been convicted of committing two or more gambling offenses or who derives his or her income principally from illegal gambling activities during the statutory period is precluded from establishing GMC.\[46]\n
The gambling offenses must have been committed within the statutory period.

**J. Habitual Drunkard**

An applicant who is or was a habitual drunkard during the statutory period is precluded from establishing GMC.\[47]\n
Certain documents may reveal habitual drunkenness, to include divorce decrees, employment records, and arrest records. In addition, termination of employment, unexplained periods of unemployment, and arrests or multiple convictions for public intoxication or driving under the influence may be indicators that the applicant is or was a habitual drunkard.

**K. Certain Acts in Statutory Period**

Although the INA provides a list of specific bars to good moral character,\[48]\n
the INA also allows a finding that “for other reasons” a person lacks good moral character, even if none of the specific statutory bars applies.\[49]\n
The following sections provide examples of acts that may lead to a finding that an applicant lacks GMC “for other reasons.”\[50]\n
**1. Driving Under the Influence**

The term “driving under the influence” (DUI) includes all state and federal impaired-driving offenses, including “driving while intoxicated,” “operating under the influence,” and other offenses that make it unlawful for a person to operate a motor vehicle while impaired. This term does not include lesser included offenses, such as negligent driving, that do not require proof of impairment.

Evidence of two or more DUI convictions during the statutory period establishes a rebuttable presumption
that an alien lacks GMC. The rebuttable presumption may be overcome if the applicant is able to provide “substantial relevant and credible contrary evidence” that he or she “had good moral character even during the period within which he [or she] committed the DUI offenses,” and that the “convictions were an aberration.” An alien’s efforts to reform or rehabilitate himself or herself after multiple DUI convictions do not in and of themselves demonstrate GMC during the period that includes the convictions.

2. Failure to Support Dependents

An applicant who willfully failed or refused to support his or her dependents during the statutory period cannot establish GMC unless the applicant establishes extenuating circumstances. The GMC determination for failure to support dependents includes consideration of whether the applicant has complied with his or her child support obligations abroad in cases where it is relevant.

Even if there is no court-ordered child support, the courts have concluded that parents have a moral and legal obligation to provide support for their minor children, and a willful failure to provide such support demonstrates that the individual lacks GMC.

An applicant who fails to support dependents may lack GMC if he or she:

- Deserts a minor child;
- Fails to pay any support; or
- Obviously pays an insufficient amount.

If the applicant has not complied with court-ordered child support and is in arrears, the applicant must identify the length of time of non-payment and the circumstances for the non-payment. An officer should review all court records regarding child support, and non-payment if applicable, in order to determine whether the applicant established GMC.

Extenuating Circumstances

If the applicant shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination.

The officer should consider the following circumstances:

- An applicant’s unemployment and financial inability to pay the child support;
- Cause of the unemployment and financial inability to support dependents;
- Evidence of a good-faith effort to reasonably provide for the support of the child;
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated; and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears.

3. Adultery
An applicant who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC.\[66\]

**Extenuating Circumstances**

If the applicant shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination.\[67\] Extenuating circumstances may include instances where the applicant divorced his or her spouse but later the divorce was deemed invalid or the applicant and the spouse mutually separated and they were unable to obtain a divorce.\[68\]

**L. Unlawful Acts**

1. **Unlawful Acts Provision**

An applicant who has committed, was convicted of, or was imprisoned for an unlawful act during the statutory period may be found to lack GMC if the act adversely reflects on his or her moral character, unless the applicant can demonstrate extenuating circumstances.\[69\] An act is unlawful if it violates a criminal or civil law of the jurisdiction where it was committed. The provision addressing “unlawful acts” does not require the applicant to have been charged with or convicted of the offense.\[70\] The fact that none of the statutorily enumerated bars to GMC applies does not preclude a finding under this provision that the applicant lacks the GMC required for naturalization.\[71\]

2. **Case-by-Case Analysis**

USCIS officers determine on a case-by-case basis whether an unlawful act committed during the statutory period is one that adversely reflects on moral character.\[72\] The officer may make a finding that an applicant did not have GMC due to the commission of an unlawful act evidenced through admission, conviction, or other relevant, reliable evidence in the record.\[73\] The case-by-case analysis must address whether:

- The act is unlawful (meaning the act violates a criminal or civil law in the jurisdiction where committed);
- The act was committed or the person was convicted of or imprisoned for the act during the statutory period;
- The act adversely reflects on the person’s moral character; and
- There is evidence of any extenuating circumstances.\[74\]

In addition, in cases under the jurisdiction of the Ninth Circuit, the officer’s analysis must also consider any counterbalancing factors that bear on the applicant’s moral character.\[75\]

The following steps provide officers with further guidance on making GMC determinations based on the unlawful acts provision.

**Step 1 – Determine Whether the Applicant Committed, Was Convicted of, or Was Imprisoned for an Unlawful Act during Statutory Period**

The officer should determine if the applicant committed, was convicted of, or was imprisoned for any unlawful acts during the statutory period. To determine if an act qualifies as an unlawful act, the officer...
should identify the applicable law, then look to whether the act violated the relevant law regardless of whether criminal or civil proceedings were initiated or concluded during the statutory period.[76]

Officers should only conclude that a person committed the acts in question based on a conviction record, an admission to the elements of the criminal or civil offense, or other relevant, reliable evidence in the record showing commission of the unlawful act.[77]

Step 2 – Determine Whether Unlawful Act Adversely Reflects on GMC

The officer should evaluate whether the unlawful act adversely reflects on the moral character of the applicant. Unlawful acts that reflect adversely on moral character are not limited to conduct that would be classified as a CIMT.[78] In general, an act that is classified as a CIMT[79] would be an unlawful act that adversely reflects on the applicant’s moral character.[80] An officer should also consider whether the act is against the standards of an average member of the community. For example, mere technical or regulatory violations may not be against the standards of an average member of the community.[81]

Step 3 – Review for Extenuating Circumstances

The officer should review whether the applicant has shown extenuating circumstances which render the crime less reprehensible than it otherwise would be or the actor less culpable than he or she otherwise would be.[82] Extenuating circumstances must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act.[83] It is the applicant’s burden to show extenuating circumstances that mitigate the effect of the unlawful act on the applicant’s moral character.[84]

If the applicant meets his or her burden of proof to demonstrate extenuating circumstances, the officer may find that commission of the unlawful act[85] does not preclude the applicant from establishing GMC.[86] An officer may not, however, consider conduct or equities (including evidence of reformation or rehabilitation) subsequent to the commission of the unlawful act as an extenuating circumstance. Consequences after the fact and future hardship(s) are not extenuating circumstances.[87]

3. Examples of Unlawful Acts

There is no comprehensive list of unlawful acts in the INA or regulations. Examples of unlawful acts recognized by case law as barring GMC include, but are not limited to the following:

- Bail jumping;[88]
- Bank fraud;[89]
- Conspiracy to distribute a controlled substance;[90]
- Failure to file or pay taxes (discussed below);
- Falsification of records;[91]
- False claim to U.S. citizenship;[92]
- Forgery-uttering;[93]
- Insurance fraud;[94]
• Obstruction of justice;[95]
• Sexual assault;[96]
• Social Security fraud;[97]
• Unlawful harassment;[98]
• Unlawfully registering to vote (discussed below);
• Unlawful voting (discussed below); and
• Violating a U.S. embargo.[99]

Despite these examples, officers must still perform the case-by-case analysis described above, including whether the act adversely reflects on one's moral character and the existence of any extenuating circumstances, in every case.[100]

**Unlawful Voting, False Claim to U.S. Citizenship in Order to Register to Vote**

An applicant may fail to show GMC if he or she engaged in unlawful voting or falsely claimed U.S. citizenship in order to register to vote or to vote,[101] depending on the circumstances of the case.[102] For unlawful voting, the applicant’s conduct must be unlawful under the relevant federal, state, or local election law.[103] False claims to U.S. citizenship for the purpose of voting or registering to vote are unlawful under federal law.[104]

Where appropriate, the officer should take a sworn statement regarding the applicant’s testimony on unlawful voting or false claim to citizenship. The officer may also require an applicant to obtain any relevant evidence, such as the voter registration card, applicable voter registration form, and voting record from the relevant board of elections commission.

When there is evidence of one of the aforementioned unlawful acts, as with all unlawful acts, the officer must make an assessment regarding whether the act reflects adversely on moral character and must consider any extenuating circumstances, in addition to the below exception for unlawful voting and false claims to U.S. citizenship for voting.[105]

**GMC Exception for Unlawful Voting and False Claims to U.S. Citizenship Unlawful Acts**

In 2000, Congress added an exception for GMC determinations for unlawful voting and false claims to U.S. citizenship.[106] An applicant qualifies for an exception if all of the following conditions are met:

- The applicant’s natural or adoptive parents are or were U.S. citizens at the time of the violation;[107]
- The applicant permanently resided in the United States before reaching the age of 16 years; and
- The applicant “reasonably believed” at the time of the violation that he or she was a U.S. citizen.

To assess whether the applicant “reasonably believed” that he or she was a U.S. citizen at the time of the violation, the officer must consider the totality of the circumstances in the case, weighing such factors as the length of time the applicant resided in the United States and the age when the applicant became an LPR.

**Failure to File Tax Returns or Pay Taxes in Accordance with Tax Authority**
An applicant who fails to file tax returns, if required to do so, or fully pay his or her tax liability, as required under the relevant tax laws, may be precluded from establishing GMC. If there are inconsistencies between the record and the applicant’s tax returns, the applicant may be precluded from establishing GMC due to the commission of an unlawful act. Once the failure to file tax returns or pay taxes and the relevant law has been identified, the officer must assess on a case-by-case basis whether the applicant is ineligible for naturalization under the unlawful acts provision. If the officer determines that the unlawful conduct violates the standards of an average member of the community, the applicant will not be able to establish GMC. However, recognizing the complexities of filing taxes, there may be instances where the officer may determine that the applicant’s conduct regarding his or her tax return or tax payment did not violate the standards of an average member of the community, or that the applicant established extenuating circumstances. In such cases, GMC may be established by the applicant showing that he or she has corrected all inconsistencies or errors. An example of when an applicant may not be prevented from establishing GMC despite filing taxes incorrectly could be where the applicant is divorced and mistakenly claimed a child as a dependent on his or her tax return for a tax year that the former spouse was entitled to claim the child as a dependent based on the terms of the divorce.

Examples of corrections of such inconsistencies or errors might include a letter from the tax authority to evidence indicating that:

- The applicant has filed the appropriate forms and returns; and
- The applicant has paid the required taxes, or has made arrangements for payment and is doing so in accordance with the pertinent tax authority.

Footnotes


[^2] See INA 101(f). See Chapter 1, Purpose and Background [12 USCIS-PM F.1].


See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [12 USCIS-PM F.2(F)].

See 21 U.S.C. 802 for federal definition of “controlled substance.” For good moral character provisions, see INA 101(f)(3), INA 212(a)(2)(A)(i)(II), and INA 212(a)(2)(C). Also, see 8 CFR 316.10(b)(2)(iii) and (iv). Note that the conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana. See Subsection 3, Exception for Single Offense of Simple Possession [12 USCIS-PM F.5(C)(3)].

An admission must comply with the requirements outlined in Matter of K (PDF), 7 I&N Dec 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense); See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].

An admission must comply with the requirements outlined in Matter of K (PDF), 7 I&N Dec 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense); See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].

See 12 USCIS-PM F.2(F).

See INA 101(f)(3) and INA 212(a)(2)(C).

See 21 U.S.C. 802(6). The term “controlled substance” does not include distilled spirits, wine, malt beverages, or those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.


See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3), Colo Rev. State. Sections 44-12-101, et. seq. These laws are commonly known as permitting certain “recreational use” of marijuana and may include conduct such as use, possession, purchase, transport, and consumption. See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3).

“Marihuana” is defined by the Controlled Substances Act (21 U.S.C. 802(16)):

(A) Subject to subparagraph (B), the term “marihuana” means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B) The term “marihuana” does not include –

(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.


[^27] The BIA defined “offense” in INA 212(h) as “refer[ring] to the specific unlawful acts that made the alien inadmissible, rather than to any generic crime.” Matter of Martinez Espinoza (PDF), 25 I&N Dec. 118, 124 (2009). Multiple offenses that are parts of a single act and are committed simultaneously may be considered a “single offense.” Matter of Davey (PDF), 26 I&N Dec. 37 (BIA 2012).

[^28] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(iii). As explained in subsection 2, the decriminalization of certain activities involving marijuana in certain states and the District of Columbia (D.C.) does not affect the applicability of the controlled substances violation conditional bar to establishing GMC.


[^32] See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [12 USCIS-PM F.2(F)].


Polygamy is not the same as bigamy. Bigamy is the crime of marrying a person while being legally married to someone else. An applicant who has committed bigamy may be susceptible to a denial under the “unlawful acts” provision.

For information on “unlawful acts” under 8 CFR 316.10(c)(iii), see Section L, Unlawful Acts [12 USCIS-PM F.5(L)]. As is the case for finding a person lacks GMC “for other reasons,” the statutory authority for the conditional bar to GMC for “unlawful acts” is the last paragraph of INA 101(f).

For specific questions on whether the applicant may overcome the presumption, officers should consult the Office of Chief Counsel.


See 8 CFR 316.10(b)(3)(ii).

See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].


See INA 101(f). See 8 CFR 316.10(b)(3)(iii). For cases arising in the Ninth Circuit, in addition to extenuating circumstances, USCIS must also consider and weigh all factors relevant to the determination of GMC, which include education, family background, employment history, financial status, and lack of criminal record. See Hussein v. Barrett, 820 F.3d 1083 (9th Cir. 2016).

See United States v. Jean-Baptiste, 395 F.3d 1190 (11th Cir. 2005) (finding that even where a conviction for a crime occurs after naturalization, the applicant lacked the good moral character for naturalization when the crime was committed during the statutory period). Likewise, if the unlawful act is committed outside the statutory period, but the applicant is convicted or imprisoned for the unlawful act during the statutory period, they will be barred from establishing good moral character.

See INA 101(f). See 8 CFR 316.10(b)(3)(iii), 8 CFR 316.10(b)(1), and 8 CFR 316.10(b)(2) (other relevant GMC regulations). See United States v. Jean-Baptiste, 395 F.3d 1190 (11th Cir. 2005).

See INA 101(f) and INA 316(a)(3). See 8 CFR 316.10(b)(3)(iii).

An admission must comply with the requirements outlined in Matter of K (PDF), 7 I&N Dec 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense). See Chapter 2, Adjudicative Factors, Section C, Definition of Conviction [12 USCIS-PM F.2(C)] and Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. See INA 101(f). See 8 CFR 316.10(b)(3)(iii). Other significant evidence, for example, includes but is not limited to a fine, civil judgment, guilty plea which was later withdrawn after completion of rehabilitation program, voting records, or unexplained discrepancies on tax filings.

See, generally, United States v. Jean-Baptiste, 395 F.3d 1190, 1195 (11th Cir. 2005).

See Hussein v. Barrett, 820 F.3d 1083 (9th Cir. 2016).

See Etape v. Napolitano, 664 F. Supp.2d 498, 507 (D. Md. 2009). See Meyersiek v. USCIS, 445 F. Supp.2d 202, 205–06 (D.R.I. 2006) (“Although the words ‘unlawful acts’ are not further defined, the Court interprets them to mean bad acts that would rise to the level of criminality, regardless of whether a criminal prosecution was actually initiated.”). See United States v. Jean-Baptiste, 395 F.3d 1190, 1193 (11th Cir. 2005).

See 8 CFR 316.10(b)(3)(iii). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. Other relevant, reliable evidence, for example, includes but is not limited to a fine, civil judgment, guilty plea which was later withdrawn after completion of rehabilitation program, voting records, or unexplained discrepancies on tax filings.


See Section A, One or More Crimes Involving Moral Turpitude, Subsection 1, Crime Involving Moral
Turpitude [12 USCIS-PM F.5(A)(1)].

[^80] See United States v. Teng Jiao Zhou, 815 F.3d 639 (9th Cir. 2016) (finding that first degree robbery under California Penal Code, Section 211 was a CIMT and therefore an unlawful act that adversely reflected on one’s moral character).


[^86] See INA 101(f). See 8 CFR 316.10(b)(3)(iii). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)]. For cases under the jurisdiction of the Ninth Circuit Court of Appeals, however, the officer must also consider and weigh the applicant’s evidence relevant to moral character beyond that which precedes or is contemporaneous with and applies directly to the unlawful act. See Hussein v. Barrett, 820 F.3d 1083, 1089-90 (9th Cir. 2016) (finding that the officer must consider all of the applicant’s evidence on factors relevant to the GMC determination to determine if the catch-all provision in the statute precludes the applicant from establishing GMC). In the Ninth Circuit, positive additional factors counterbalance an unlawful act committed in the statutory period if the factors are sufficient to overcome the weight of the negative act.


[^92] See, for example, 18 U.S.C. 1001.


[^101] Falsely claiming U.S. citizenship may also be an unlawful act, regardless of whether the false claim was for the purpose of voting or registering to vote. See, for example, 18 U.S.C. 1001.


[^103] The officer should consider the controlling statutes in cases involving potential unlawful voting offenses, as some local municipalities permit LPRs or other noncitizens to vote in municipal elections.

[^104] See 18 U.S.C. 1015(f) (false claim to U.S. citizenship to vote or register to vote). There are exceptions to the false claim to U.S. citizenship unlawful act set forth in INA 101(f). False claims to U.S. citizen status for any purpose or benefit under the law, where an exception does not apply, including for registering to vote or voting, may affect an applicant’s GMC as an unlawful act, as a CIMT, as an aggregate sentence of 5 years or more, or where there was reincarceration of the applicant for 180 days or more. See, for example, 18 U.S.C. 1001. See INA 101(f)(3) (one or more CIMTs, INA 101(f)(3) (aggregate sentence of 5 or more years), and INA 101(f)(7) (incarceration for 180 days or more) as discussed in Section A, One or More Crimes Involving Moral Turpitude [12 USCIS-PM F.5(A)] and Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)].


[^106] See INA 101(f). These provisions were added by the CCA, but they apply to all applications filed on or after September 30, 1996. See Section 201(a)(2) of the CCA, Pub. L. 106-395 (PDF), 114 Stat. 1631, 1636 (October 30, 2000).

[^107] As a matter of policy, USCIS has determined that the applicant’s parents had to be U.S. citizens at the time of the unlawful voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

[^108] Examples of material facts include marital status, number of dependents, and income.


**Part G - Spouses of U.S. Citizens**

**Chapter 1 - Purpose and Background**

**A. Purpose**
Spouses of United States citizens may be eligible for naturalization on the basis of their marriage under special provisions of the Immigration and Nationality Act (INA), to include overseas processing. In general, spouses of U.S. citizens are required to meet the general naturalization requirements. The special provisions, however, provide modifications to those requirements.

The spouse of a U.S. citizen may naturalize through various provisions:

- The spouse of a U.S. citizen may naturalize under the general naturalization provisions for applicants who have resided in the United States for at least five years after becoming a lawful permanent resident (LPR). [2]

- The spouse of a U.S. citizen may naturalize after residing in the United States for three years after becoming an LPR, rather than five years as generally required. [3]

- The spouse of a U.S. citizen employed abroad who is working for the U.S. Government (including the armed forces) or other qualified entity may naturalize in the United States without any required period of residence or physical presence in the United States after becoming an LPR. [4]

- The spouse of a U.S. citizen who is serving abroad in the U.S. armed forces may naturalize abroad while residing with his or her spouse, and time spent abroad under these circumstances is considered residence and physical presence in the United States for purposes of the general five-year or three-year provision for spouses. [5]

- The surviving spouse of a U.S. citizen who dies during a period of honorable service in an active-duty status in the U.S. armed forces or was granted citizenship posthumously may naturalize in the United States without any required period of residence or physical presence after becoming an LPR. [6]

In addition, spouses, former spouses, or intended spouses of U.S. citizens may naturalize if they obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse. [7]

### B. Background

The current naturalization provisions for spouses of U.S. citizens reflect legislation dating back to 1922. Congress considered it inefficient and undesirable to require the spouse of a U.S. citizen to wait five years before naturalization. [8] Congress made further amendments in 1934, to include a required period of three years of residence. In 1940, Congress incorporated provisions into the Nationality Act of 1940 that were substantially similar to those of the 1922 and 1934 acts. Today’s statutes reflect Congress' long-standing aim to facilitate the naturalization process for spouses of U.S. citizens to provide spouses with the protections afforded by U.S. citizenship.

### C. Table of General Provisions

The table below serves as a quick reference guide to the pertinent naturalization authorities for spouses of U.S. citizens. The chapters that follow the table provide further guidance.
## General Provisions for Applicants filing as Spouses of U.S. Citizens

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### D. Legal Authorities

- **INA 316; 8 CFR 316** – General requirements for naturalization
- **INA 319; 8 CFR 319** – Spouses of U.S. citizens
- **INA 319(e); 8 CFR 316.5(b)(6) and 8 CFR 316.6** – Residence, physical presence, and overseas naturalization for certain spouses of military personnel
- **8 U.S.C. 1443a** – Overseas naturalization for service members and their family

### Footnotes

AILA Doc. No. 19060633. (Posted 3/26/21)
Chapter 2 - Marriage and Marital Union for Naturalization

A. Validity of Marriage

1. Validity of Marriages in the United States or Abroad

Validity of Marriage for Immigration Purposes

The applicant must establish validity of his or her marriage. In general, the legal validity of a marriage is determined by the law of the place where the marriage was celebrated (“place-of-celebration rule”). Under this rule, a marriage is valid for immigration purposes in cases where the marriage is valid under the law of the jurisdiction in which it is performed. [1]

In all cases, the burden is on the applicant to establish that he or she has a valid marriage with his or her U.S. citizen spouse for the required period of time. [2] In most cases, a marriage certificate is prima facie evidence that the marriage was properly and legally performed.

USCIS does not recognize the following relationships as marriages, even if valid in the place of celebration:

- Polygamous marriages; [3]
- Certain marriages that violate the strong public policy of the state of residence of the couple; [4]
- Civil unions, domestic partnerships, or other such relationships not recognized as marriages in the place of celebration; [5]
- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated; [6] or


- Relationships entered into for purposes of evading immigration laws of the United States. [7]

**Validity of Marriage Between Two Persons of the Same Sex**

In June 2013, the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA), which had limited the terms “marriage” and “spouse” to opposite-sex marriages for purposes of all federal laws, was unconstitutional. [8] In accordance with the Supreme Court decision, USCIS determines the validity of a same-sex marriage by the place-of-celebration rule, just as USCIS applies this rule to determine the validity of an opposite-sex marriage. [9]

Therefore, in cases of marriage between persons of the same sex, officers will review the laws of the jurisdiction in which the marriage took place to determine if the jurisdiction recognizes same-sex marriages and the marriage otherwise is legally valid.

Since the place-of-celebration rule governs same-sex marriages in exactly the same way that it governs opposite-sex marriages, unless the marriage is polygamous or otherwise falls within an exception to the place-of-celebration rule as discussed above, the legal validity of a same-sex marriage is determined exclusively by the law of the jurisdiction where the marriage was celebrated.

If the same-sex couple now resides in a jurisdiction different from the one in which they celebrated their marriage, and that jurisdiction does not recognize same-sex marriages, the officer will look to the law of the state where the marriage was celebrated in order to determine the validity of the marriage. The domicile state’s laws and policies on same-sex marriages will not affect whether USCIS will recognize a marriage as valid.

**Validity of Marriage in Cases Involving Transgender Persons**

USCIS accepts the validity of a marriage in cases involving transgender persons if the state or local jurisdiction in which the marriage took place recognizes the marriage as a valid marriage, subject to the exceptions described above (such as polygamy). [10]

2. **Validity of Foreign Divorces and Subsequent Remarriages**

The validity of a divorce abroad depends on the interpretation of the divorce laws of the foreign country that granted the divorce and the reciprocity laws in the state of the United States where the applicant remarried. [11] If the divorce is not final under the foreign law, remarriage to a U.S. citizen is not valid for immigration purposes. [12]

An officer should ensure that the court issuing the divorce had jurisdiction to do so. [13] Foreign divorce laws may allow for a final decree even when the applicants are not residing in the country. Some states, however, do not recognize these foreign divorces and do not provide reciprocity. The applicant and his or her former spouse’s place of domicile at the time of the divorce is important in determining whether the court had jurisdiction.

3. **Evidence**

The burden is on the applicant to establish that he or she is in a valid marriage with his or her U.S. citizen spouse for the required period of time. [14] A spouse of a U.S. citizen must submit with the naturalization application an official civil record to establish that the marriage is legal and valid. If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to
request an original record if there is doubt as to the authenticity of the record. \[15\]

**B. Common Law Marriage**

The concept of common law marriage presupposes an honest good-faith intention on the part of two persons, free to marry, to live together as husband and wife from the inception of the relationship. Some states recognize common law marriages and consider the parties to be married. \[16\] In order for a common law marriage to be valid for immigration purposes:

- The parties must live in that jurisdiction; and
- The parties must meet the qualifications for common law marriage for that jurisdiction.

Other states may recognize a common law marriage contracted in another state even if the recognizing state does not accept common law marriage as a means for its own residents to contract marriage.

USCIS recognizes common law marriages for purposes of naturalization if the marriage was valid and recognized by the state in which the marriage was established. \[17\] This applies even if the naturalization application is filed in a jurisdiction that does not recognize or has never recognized the principle of common law marriage.

The officer should review the laws of the relevant jurisdiction on common law marriages to determine whether the applicant and spouse should be considered to be married for purposes of naturalization and when the marriage commenced.

**C. U.S. Citizenship from Time of Filing until Oath**

In order to take advantage of the special naturalization provisions for spouses of U.S. citizens, the applicant’s spouse must be and remain a U.S. citizen from the time of filing until the time the applicant takes the Oath of Allegiance. An applicant is ineligible for naturalization under these provisions if his or her spouse is not a U.S. citizen or loses U.S. citizenship status by denaturalization or expatriation prior to the applicant taking the Oath of Allegiance. \[18\]

**D. Marital Union and Living in Marital Union**

**1. Married and Living in Marital Union**

In general, all naturalization applicants filing on the basis of marriage to a U.S. citizen must continue to be the spouse of a U.S. citizen from the time of filing the naturalization application until the applicant takes the Oath of Allegiance. In addition, some spousal naturalization provisions require that the applicant “live in marital union” with his or her citizen spouse for at least 3 years immediately preceding the date of filing the naturalization application. \[19\] USCIS considers an applicant to “live in marital union” with his or her citizen spouse if the applicant and the citizen actually reside together.

An applicant does not meet the married and “living in marital union” requirements if:

- The applicant is not residing with his or her U.S. citizen spouse at the time of filing or during the time in which the applicant is required to be living in marital union with the U.S. citizen spouse; or
The marital relationship is terminated at any time prior to taking the Oath of Allegiance.

If the applicant ceases to reside with his or her U.S. citizen spouse between the time of filing and the time at which the applicant takes the Oath of Allegiance, the officer should consider whether the applicant met the living in marital union requirement at the time of filing.

There are limited circumstances where an applicant may be able to establish that he or she is living in marital union with his or her citizen spouse even though the applicant does not actually reside with the citizen spouse.\[20\]

In all cases where it is applicable, the burden is on the applicant to establish that he or she has lived in marital union with his or her U.S. citizen spouse for the required period of time.\[21\]

2. Loss of Marital Union due to Death, Divorce, or Expatriation

Death of U.S. Citizen Spouse

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen dies any time prior to the applicant taking the Oath of Allegiance.\[22\] However, if the applicant is the surviving spouse of a U.S. citizen who died during a period of honorable service in an active-duty status in the U.S. armed forces, the applicant may be eligible for naturalization based on his or her marriage under a special provision.\[23\]

Divorce or Annulment

A person’s marital status may be terminated by a judicial divorce or by an annulment. A divorce or annulment breaks the marital relationship. The applicant is no longer the spouse of a U.S. citizen if the marriage is terminated by a divorce or annulment. Accordingly, such an applicant is ineligible to naturalize as the spouse of a U.S. citizen if the divorce or annulment occurs before or after the naturalization application is filed.\[24\]

The result of annulment is to declare a marriage null and void from its inception. An annulment is usually retroactive, meaning that the marriage is considered to be invalid from the beginning. A court's jurisdiction to grant an annulment is set forth in the various divorce statutes and generally requires residence or domicile of the parties in that jurisdiction. When a marriage has been annulled, it is documented by a court order or decree.

In contrast, the effect of a judicial divorce is to terminate the status as of the date on which the court entered the final decree of divorce. When a marriage is terminated by divorce, the termination is entered by the court with jurisdiction and is documented by a copy of the final divorce decree. USCIS determines the validity of a divorce by examining whether the state or country which granted the divorce properly assumed jurisdiction over the divorce proceeding.\[25\] USCIS also determines whether the parties followed the proper legal formalities required by the state or country in which the divorce was obtained to determine if the divorce is legally binding.\[26\] In all cases, the divorce must be final.

An applicant’s ineligibility for naturalization as the spouse of a U.S. citizen due to the death of the citizen spouse or to divorce is not cured by the subsequent marriage to another U.S. citizen.

Expatriation of U.S. Citizen Spouse

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen has expatriated any time prior to the applicant taking the Oath of Allegiance for naturalization.\[27\]
3. Failure to be Living in Marital Union due to Separation

Legal Separation

A legal separation is a formal process by which the rights of a married couple are altered by a judicial decree but without eliminating the marital relationship. In most cases, after a legal separation, the applicant will no longer be actually residing with his or her U.S. citizen spouse, and therefore will not be living in marital union with the U.S. citizen spouse.

However, if the applicant and the U.S. citizen spouse continue to reside in the same household, the marital relationship has been altered to such an extent by the legal separation that they will not be considered to be living together in marital union.

Accordingly, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are legally separated. An applicant who is legally separated from his or her spouse during the time period in which he or she must be living in marital union is ineligible to naturalize as the spouse of a U.S. citizen.

Informal Separation

In many instances, spouses will separate without obtaining a judicial order altering the marital relationship or formalizing the separation. An applicant who is no longer actually residing with his or her U.S. citizen spouse following an informal separation is not living in marital union with the U.S. citizen spouse.

However, if the U.S. citizen spouse and the applicant continue to reside in the same household, an officer must determine on a case-by-case basis whether an informal separation before the filing of the naturalization application renders an applicant ineligible for naturalization as the spouse of a U.S. citizen. Under these circumstances, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are informally separated if such separation suggests the possibility of marital disunity.

Factors to consider in making this determination may include:

- The length of separation;
- Whether the applicant and his or her spouse continue to support each other and their children (if any) during the separation;
- Whether the spouses intend to separate permanently; and
- Whether either spouse becomes involved in a relationship with others during the separation.

Involuntary Separation

Under very limited circumstances and where there is no indication of marital disunity, an applicant may be able to establish that he or she is living in marital union with his or her U.S. citizen spouse even though the applicant does not actually reside with citizen spouse. An applicant is not made ineligible for naturalization for not living in marital union if the separation is due to circumstances beyond his or her control, such as:

- Service in the U.S. armed forces; or
- Required travel or relocation for employment.
USCIS does not consider incarceration during the time of required living in marital union to be an involuntary separation.

Footnotes


[^4] This is a narrow exception that under BIA case law generally has been limited to situations, such as certain incestuous marriages, where the marriage violates the criminal law of the state of residence. See Matter of Da Silva, 15 I&N Dec 778 (BIA 1976); Matter of Zappia, 12 I&N Dec. 439 (BIA 1967); Matter of Hirabayashi, 10 I&N Dec 722 (BIA 1964); Matter of M, 3 I&N Dec. 465 (BIA 1948). Note that as discussed below, if the state of residence has a public policy refusing to recognize same-sex marriage, this will not result in a same-sex marriage being considered invalid for immigration purposes if it is valid in the place of celebration.

[^5] If the relationship is treated as a marriage, however, such as a “common law marriage,” it will be recognized.


[^9] Prior to the Supreme Court decision, United States v. Windsor, USCIS did not recognize relationships between two persons of the same sex as marriages or intended marriages in accordance with section 3 of DOMA.

[^10] Officers should consult OCC in cases where the marriage was originally an opposite-sex marriage celebrated in a state that does not recognize same-sex marriage, and one of the spouses changed gender after the marriage.


Chapter 3 - Spouses of U.S. Citizens Residing in the United States

A. General Eligibility for Spouses Residing in the United States

The spouse of a U.S. citizen who resides in the United States may be eligible for naturalization on the basis of his or her marriage. The spouse must have continuously resided in the United States after becoming a lawful permanent resident (LPR) for at least 3 years immediately preceding the date of filing the naturalization application and must have lived in marital union with his or her citizen spouse for at least those
3 years.

The spouse must establish that he or she meets the following criteria in order to qualify:

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Living in marital union with the citizen spouse for at least 3 years preceding the time of filing the naturalization application (the citizen spouse must have been a U.S. citizen for those 3 years).
- Continuous residence in the United States as an LPR for at least 3 years immediately preceding the date of filing the application and up to the time of naturalization.
- Physically present in the United States for at least 18 months (548 days) out of the 3 years immediately preceding the date of filing the application.
- Living within the state or USCIS district with jurisdiction over the applicant’s place of residence for at least 3 months prior to the date of filing.
- Demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage.
- Demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics).
- Demonstrate good moral character for at least 3 years prior to filing the application until the time of naturalization.
- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the United States during all relevant periods under the law.

The spouse of a U.S. citizen residing in the United States may also naturalize under the general naturalization provisions for applicants who have been LPRs for at least 5 years.[2] In addition, in some instances the spouse of a member of the U.S. armed forces applying pursuant to INA 319(a) or INA 316(a) may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[3]

**B. Living in Marital Union for Spouses Residing in the United States**

The spouse of a U.S. citizen residing in the United States must have been living in marital union with his or her citizen spouse for at least 3 years immediately preceding the time of filing the naturalization application. This provision requires that the spouse live in marital union with the citizen spouse during the entire period of 3 years before filing.[4]

However, the statute does not require living in marital union for the period between the date of filing the application and the date of naturalization (date applicant takes the Oath of Allegiance). The corresponding regulation conflicts with the statute in stating that the spouse must have been living in marital union with his or her citizen spouse for at least 3 years at the time of the examination on the application, and not at the time.
of filing.

USCIS follows the language of the statute in requiring living in marital union only up until the time of filing. Accordingly, only the existence of a legally valid marriage is required from the date of filing the application until the time of the applicant’s naturalization.

A person who was a spouse subjected to battery or extreme cruelty by their citizen spouse is exempt from the marital union requirement.

C. 3 Years of Continuous Residence

The spouse of a U.S. citizen residing in the United States must have continuously resided in the United States as an LPR for at least 3 years immediately preceding the date of the filing the application and up to the time of the Oath of Allegiance. Continuous residence involves the applicant maintaining a permanent dwelling place in the United States for the required period of time. The residence is the applicant’s actual dwelling place regardless of his or her intentions to claim it as his or her residence.

D. 18 Months of Physical Presence

The spouse must have been physically present in the United States for at least 18 months (548 days) out of the 3 years immediately preceding the date of filing the application. Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization.

E. 90-Day Early Filing Provision (INA 334)

The spouse of a U.S. citizen filing for naturalization on the basis of his or her marriage may file the naturalization application up to 90 days before the date he or she would first meet the required 3-year period of continuous residence. Although an applicant may file early and may be interviewed during that period, the applicant is not eligible for naturalization until he or she has satisfied the required 3-year period of residence. All other requirements for naturalization must be met at the time of filing.

USCIS calculates the early filing period by counting back 90 days from the day before the applicant would have first satisfied the continuous residence requirement for naturalization. For example, if the day the applicant would satisfy the 3-year continuous residence requirement for the first time is on June 10, 2010, USCIS will begin to calculate the 90-day early filing period from June 9, 2010.

In cases where an applicant has filed early and the required 3-month period of residence in a state or service district falls within the required 3-year period of continuous residence, jurisdiction is based on the 3-month period immediately preceding the examination on the application (interview).

F. Eligibility for Persons Subjected to Battery or Extreme Cruelty

1. General Eligibility for Persons Subjected to Battery or Extreme Cruelty

On October 28, 2000, Congress expanded the provision regarding naturalization based on marriage to a U.S. citizen for persons who reside in the United States. The amendments added that any person who obtained...
LPR status as the spouse, former spouse, or intended spouse\textsuperscript{[13]} of a U.S. citizen who subjected him or her to battery or extreme cruelty may naturalize under this provision\textsuperscript{[14]}

Specifically, the person must have obtained LPR status based on:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning spouse of an abusive U.S. citizen;

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning spouse of an abusive LPR, if the abusive spouse naturalizes after the petition has been approved;\textsuperscript{[15]} or

- Special rule cancellation of removal for battered spouses and children in cases where the applicant was the spouse, or intended spouse of a U.S. citizen, who subjected him or her to battery or extreme cruelty.\textsuperscript{[16]}

A person is also eligible for naturalization under the spousal naturalization provisions if he or she had the conditions on his or her residence removed based on:

- An approved battery or extreme cruelty waiver of the joint filing requirement for Petition to Remove Conditions on Residence (Form I-751), for a conditional permanent resident, if the marriage was entered into in good faith and the spouse was subjected to battery or extreme cruelty by the petitioning citizen or LPR spouse.\textsuperscript{[17]}

2. Exception to Marital Union and U.S. Citizenship Requirements for Spouses

A person subjected to battery or extreme cruelty by his or her U.S. citizen spouse is exempt from the following naturalization requirements:\textsuperscript{[18]}

- Married to the U.S. citizen spouse at the time of filing the naturalization application;

- Living in marital union with the citizen spouse for at least 3 years at the time of filing the naturalization application; and

- Applicant’s spouse has U.S. citizenship from the time of filing until the time the applicant takes the Oath of Allegiance.\textsuperscript{[19]}

The spouse must meet all other eligibility requirements for naturalization.\textsuperscript{[20]}

G. Application and Evidence

1. Application for Naturalization (Form N-400)

To apply for naturalization, the applicant must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee.\textsuperscript{[21]} The applicant should check the appropriate eligibility option on the naturalization application to indicate that he or she is applying on the basis of marriage to a U.S. citizen.

2. Evidence of Spouse’s United States Citizenship
Under this provision, the burden is on the applicant to establish that he or she is married and living in marital union with a U.S. citizen. A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.

### Footnotes


[^4] There are limited circumstances where an applicant may be able to establish that he or she is living in marital union with the citizen spouse even though the applicant does not actually reside with the citizen spouse. See Chapter 2, Marriage and Marital Union for Naturalization, Section D, Marital Union and Living in Marital Union [12 USCIS-PM G.2(D)].


[^7] See INA 319(a). See Section F, Eligibility for Persons Subjected to Battery or Extreme Cruelty [12 USCIS-PM G.3(F)].


Chapter 4 - Spouses of U.S. Citizens Employed Abroad

A. General Eligibility for Spouses of U.S. Citizens Employed Abroad

The spouse of a U.S. citizen who is “regularly stationed abroad” in qualifying employment may be eligible for naturalization on the basis of their marriage.[1] Spouses otherwise eligible under this provision are exempt from the continuous residence and physical presence requirements for naturalization.[2]

The spouse must establish that he or she meets the following criteria in order to qualify:

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Married to a U.S. citizen spouse regularly stationed abroad in qualifying employment for at least one year.
- Has a good faith intent to reside abroad with the U.S. citizen spouse upon naturalization and to reside...
in the United States immediately upon the citizen spouse’s termination of employment abroad.

- Establish that he or she will depart to join the citizen spouse within 30 to 45 days after the date of naturalization.[3]
- Understanding of basic English, including the ability to read, write, and speak.
- Knowledge of basic U.S. history and government.
- Demonstrate good moral character for at least three years prior to filing the application until the time of naturalization.[4]
- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the U.S. during all relevant periods under the law.

The period for showing good moral character (GMC) for spouses employed abroad is not specifically stated in the corresponding statute and regulation.[5] USCIS follows the statutory three-year GMC period preceding filing (until naturalization) specified for spouses of U.S. citizens residing in the United States.[6]

In general, the spouse is required to be present in the United States after admission as an LPR for his or her naturalization examination and for taking the Oath of Allegiance for naturalization.[7]

A spouse of a member of the U.S. military applying under this provision may also qualify for naturalization under INA 316(a) or INA 319(a), which could permit him or her to be eligible for overseas processing of the naturalization application, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[8]

B. Marital Union for Spouses Employed Abroad

The spouse of a U.S. citizen employed abroad is not required to have lived in marital union with his or her citizen spouse.[9] The spouse only needs to show that he or she is in a legally valid marriage with a U.S. citizen from the date of filing the application until the time of the Oath of Allegiance.[10] Such spouses who are not living in marital union still have to show intent to reside abroad with the U.S. citizen spouse abroad and take up residence in the United States upon termination of the qualifying employment abroad.[11]

C. Qualifying Employment Abroad

Qualifying employment abroad means to be under employment contract or orders and to assume the duties of employment in any of following entities or positions:[12]

- Government of the United States (including the U.S. armed forces);
- American institution of research recognized as such by the Attorney General;[13]
- American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof;
- Public international organization in which the United States participates by treaty or statute;[14]
- Authorized to perform the ministerial or priestly functions of a religious denomination having a bona
D. Calculating Period “Regularly Stationed Abroad”

A person applying for naturalization based on marriage to a U.S. citizen employed abroad must establish that his or her citizen spouse is regularly stationed abroad. A citizen spouse is regularly stationed abroad if he or she engages in qualifying employment abroad for at least one year. Both the statute and its corresponding regulation are silent on when to begin calculating the specified period regularly stationed abroad.

As a matter of policy, USCIS calculates the period of qualifying employment abroad from the time the applicant spouse properly files for naturalization. However, this policy does not alter the requirement that the applicant must intend to reside abroad with the U.S. citizen spouse after naturalization.

Accordingly, the spouse of the U.S. citizen employed abroad may naturalize if his or her U.S. citizen’s qualifying employment abroad is scheduled to last for at least one year at the time of filing, even if less than one year of such employment remains at the time of the naturalization interview or Oath of Allegiance provided that the spouse remains employed abroad at the time of naturalization.

The burden is on the applicant to establish that his or her U.S. citizen’s qualifying employment abroad is scheduled to last for at least one year from the time of filing.

E. Exception to Continuous Residence and Physical Presence Requirements

Spouses of U.S. citizens who are regularly stationed abroad under qualifying employment may be eligible to file for naturalization immediately after obtaining LPR status in the United States. Such spouses are not required to have any prior period of residence or specified period of physical presence within the United States in order to qualify for naturalization.

F. In the United States for Examination and Oath of Allegiance

A spouse of a U.S. citizen who is regularly stationed abroad under qualifying employment is required to be in the United States pursuant to an admission as an LPR for the naturalization examination and the Oath of Allegiance for naturalization.

G. Application and Evidence

Application for Naturalization (Form N-400)

To apply for naturalization, the spouse of a U.S. citizen employed abroad must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee. The applicant should check the “other” eligibility option on the naturalization application and indicate that he or she is applying pursuant to INA 319(b) on the basis of marriage to a U.S. citizen who is or will be regularly stationed abroad.
Evidence of Spouse’s United States Citizenship

Under this provision, the burden is on the applicant to establish that he or she is married to a U.S. citizen.[22] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.[23]

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.[24]

Evidence of Citizen Spouse’s Employment Abroad

Along with his or her naturalization application, the applicant must submit evidence demonstrating the spouse’s qualifying employment abroad.[25]

Such evidence may include:

- The name of the employer and either the nature of the employer’s business or the ministerial, religious, or missionary activity in which the employer is engaged;
- Whether the employing entity is owned in whole or in part by United States interests;
- Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;
- The nature of the activity in which the citizen spouse is engaged; and
- The anticipated period of employment abroad.

Evidence of Applicant’s Intent to Reside Abroad with Citizen Spouse and Return to the United States Upon Termination of Qualifying Employment

Along with his or her naturalization application, an applicant for naturalization under INA 319(b) must submit a statement describing his or her intent to reside abroad with the citizen spouse and his or her intent to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse.[26]

Footnotes

G.4(C)].


[^17] This policy is effective as of January 22, 2013, effective date of first publication of the USCIS Policy Manual and will not be applied retroactively.


[^20] See INA 319(b). See 8 CFR 319.2. Spouses of members of the U.S. armed forces may be eligible for overseas processing. See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [12 USCIS-PM I.9(B)].


[^22] See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].

Chapter 5 - Conditional Permanent Resident Spouses and Naturalization

A. General Requirements for Conditional Permanent Residents

Since 1986, certain spouses of U.S. citizens have been admitted to the United States as lawful permanent residents on a conditional basis for a period of 2 years.\[1\] In general, a conditional permanent resident (CPR) must jointly file with his or her petitioning spouse a Petition to Remove Conditions on Residence (Form I-751) with USCIS during the 90-day period immediately preceding the second anniversary of his or her admission as a CPR in order to remove the conditions.\[2\] An approval of a petition to remove conditions demonstrates the bona fides of the marital relationship.

In order for USCIS to approve the petition to remove conditions, the CPR must establish that:

- The marriage upon which the CPR admitted to the United States was valid;
- The marriage has not been terminated; and
- The marriage was not entered into for purposes of evading the immigration laws of the United States.\[3\]

In general, USCIS requires that an applicant for naturalization must have an approved petition to remove conditions before an officer adjudicates the naturalization application. However, certain CPRs may be eligible for naturalization without filing a petition or having the conditions removed if applying for naturalization on the basis of:

- Marriage to a U.S. citizen employed abroad; or
- Qualifying military service.\[4\]

B. Spouses who Must Have an Approved Petition Prior to Naturalization

In all cases, a CPR applying for naturalization on the basis of marriage must have an approved petition prior to naturalization if the CPR:

- Has a pending petition to remove conditions at the time of filing the Application for Naturalization; or
- Reaches the 90-day period to file the petition to remove conditions prior to taking the Oath of Allegiance.\[5\]

1. Spouses who Reach Petition Filing Period Prior to Naturalization


[\[25\]] See INA 319(b). See 8 CFR 319.11(a).

[\[26\]] See 8 CFR 319.2(a)(4).
In most cases, the 90-day period for filing the petition to remove conditions will have passed prior to an applicant becoming eligible to apply for naturalization. However, in some cases involving applicants whose citizen spouse is employed abroad and in cases in which a late filing of the petition to remove conditions is permitted, the 90-day filing period will start after filing for naturalization.

Under these circumstances, the applicant must file the petition to remove conditions and the petition must be adjudicated prior to or concurrently with the naturalization application.

2. Spouses with Pending Petitions and Naturalization Applications

An application for naturalization may not be approved if there is a pending petition for removal of conditions. If an applicant’s petition to remove conditions is pending at the time of filing or is filed prior to the interview, USCIS will adjudicate the petition to remove conditions prior to or concurrently with the adjudication of the naturalization application.[6]

3. Failure to File or Denial of the Petition to Remove Conditions

The CPR status of an applicant is terminated and he or she must be placed into removal proceedings if:

- The applicant fails to file the petition to remove conditions; or
- If the petition to remove conditions is filed, but the petition is denied.[7]

C. Spouses Eligible to Naturalize without Filing Petition to Remove Conditions

1. Conditional Residents Filing on the Basis of Qualifying Military Service

Applicants for naturalization who qualify on the basis of honorable military service in periods of hostilities may be naturalized whether or not they have been lawfully admitted for permanent residence.[8] For this reason, such applicants are not required to comply with all of the requirements for admission to the United States, including the requirements for removal of conditions.

Accordingly, CPRs who are filing on the basis of such qualifying military service are not required to file a petition to remove conditions and may be naturalized without the removal of conditions from their permanent resident status.

2. Conditional Residents Filing as the Spouse of a U.S. Citizen Employed Abroad

A spouse of a U.S. citizen employed abroad based on authorized employment is not required to have any specific period of residence or physical presence in order to naturalize.[9] Consequently, a CPR spouse is not required to file the petition to remove conditions if the spouse files his or her naturalization application before he or she reaches the 90-day filing period to remove the conditions on residence.[10]

A CPR spouse of a U.S. citizen employed abroad may naturalize without filing a petition to remove conditions if:

- The CPR spouse has been a CPR for less than 1 year and 9 months; and
The CPR spouse does not reach the 90-day filing period for the petition to remove conditions prior to the final adjudication of his or her naturalization application or the time of the Oath of Allegiance. [11]

Even though the CPR spouse is not required to file the petition to remove conditions, he or she must satisfy the substantive requirements for removal of the conditions. [12] Therefore, the CPR spouse must establish that:

- The marriage was entered into in accordance with the laws of the place where the marriage occurred;
- The marriage has not been judicially annulled or terminated;
- The marriage was not entered into for the purpose of procuring an alien's admission as an immigrant; and
- No fee or other consideration was given (other than attorney's fees) for filing the immigrant or fiancé(e) visa petition that forms the basis for admission to the United States. [13]

An officer must not approve a CPR spouse’s naturalization application unless the spouse meets these requirements. [14]

D. Conditional Permanent Residents Admitted as Investors

If a CPR spouse is admitted as an alien investor, or the spouse or child of an investor, [15] USCIS will make a determination on the CPR’s petition to remove conditions before approving the CPR’s naturalization application.

Footnotes


[^6] An officer should conduct the naturalization examination even if the petition to remove conditions is not in the CPR spouse’s A-file. The officer should follow internal procedures to request the petition. The officer must not approve the CPR spouse’s naturalization application until the officer has reviewed and approved the petition to remove conditions.

[^7] See INA 216(c)(2) and INA 216(c)(3).

Part H - Children of U.S. Citizens

In May 2020, USCIS retired its Adjudicator’s Field Manual (AFM), a collection of our immigration policies and procedures. We are working quickly to update and incorporate all of the AFM content into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, we have moved any remaining AFM content to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact USCISPolicyManual@uscis.dhs.gov.

AFM Chapter 83 - Liaison (External) (PDF, 438.33 KB)

Chapter 1 - Purpose and Background

A. Purpose

United States laws allow for children to acquire U.S. citizenship other than through birth in the United States. Persons who were born outside of the United States to a U.S. citizen parent or parents may acquire or derive U.S. citizenship at birth. Persons may also acquire citizenship after birth, but before the age of 18, through their U.S. citizen parents.

Previously, acquisition of citizenship generally related to those persons who became U.S. citizens at the time of birth, and derivation of citizenship to those who became U.S. citizens after birth due to the naturalization of a parent.
In general, current nationality laws only refer to acquisition of citizenship for persons who automatically become U.S. citizens either at the time of birth or after. In general, a person must meet the applicable definition of child at the time he or she acquires citizenship and must be under 18 years of age.

**B. Background**

The law in effect at the time of birth determines whether someone born outside the United States to a U.S. citizen parent or parents is a U.S. citizen at birth. In general, these laws require a combination of at least one parent being a U.S. citizen when the child was born and having lived in the United States for a period of time. In addition, children born abroad may become U.S. citizens after birth. Citizenship laws have changed extensively over time with two major changes coming into effect in 1978 and 2001.

Prior to the Act of October 10, 1978, U.S. citizens who had acquired citizenship through birth abroad to one citizen parent had to meet certain physical presence requirements in order to retain citizenship. This legislation removed all retention requirements. Prior to the Child Citizenship Act of 2000 (CCA), effective February 27, 2001, the INA had two provisions for derivation of citizenship. The CCA removed one provision and revised the other making it the only method for children under 18 years of age in the United States to automatically acquire citizenship after birth.

**C. Table of General Provisions**

A child born outside of the United States may acquire U.S. citizenship through various ways. The table below serves as a quick reference guide to the acquisition of citizenship provisions. The chapters that follow the table provide further guidance.

<table>
<thead>
<tr>
<th>INA Section</th>
<th>Status of Parents</th>
<th>Residence or Physical Presence Requirements</th>
<th>Child is a U.S. Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>301(c)</td>
<td>Both parents are U.S. citizens</td>
<td>At least one U.S. citizen parent has resided in the United States or outlying possession prior to child’s birth</td>
<td>At Birth</td>
</tr>
<tr>
<td>301(d)</td>
<td>One parent is a U.S. citizen; other parent is U.S. national</td>
<td>U.S. citizen parent was physically present in the United States or its outlying possession for one year prior to child’s birth</td>
<td>At Birth</td>
</tr>
<tr>
<td>301(f)</td>
<td>Unknown parentage</td>
<td>Child is found in the United States while under 5 years of age</td>
<td>At Birth</td>
</tr>
<tr>
<td>INA Section</td>
<td>Status of Parents</td>
<td>Residence or Physical Presence Requirements</td>
<td>Child is a U.S. Citizen</td>
</tr>
<tr>
<td>-------------</td>
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<td>-----------------------</td>
</tr>
<tr>
<td>301(g)</td>
<td>One parent is a U.S. citizen; other parent is an alien</td>
<td>U.S. citizen parent was physically present in United States or its outlying possessions for at least 5 years (2 after age 14) prior to child’s birth</td>
<td>At Birth</td>
</tr>
<tr>
<td>301(h)</td>
<td>Mother is a U.S. citizen and father is an alien</td>
<td>U.S. citizen mother resided in the United States prior to child’s birth</td>
<td>At Birth (only applies to birth prior to 1934)</td>
</tr>
<tr>
<td>309(a)</td>
<td>Out of wedlock birth, claiming citizenship through father</td>
<td>Requirements depend on applicable provision: INA 301(c), (d), (e), or (g)</td>
<td>At Birth (Out of wedlock)</td>
</tr>
<tr>
<td>309(c)</td>
<td>Out of wedlock birth, claiming citizenship through mother</td>
<td>U.S. citizen mother physically present in the U.S. or its outlying possessions for one year prior to the child’s birth</td>
<td>At Birth (for birth after December 23, 1952)</td>
</tr>
<tr>
<td>320</td>
<td>At least one parent is a U.S. citizen (through birth or naturalization)</td>
<td>Child resides in the United States as a lawful permanent resident</td>
<td>At Time Criteria is Met</td>
</tr>
<tr>
<td>321</td>
<td>Both parents naturalize, or in certain cases, one parent naturalizes</td>
<td>Child resides in the United States as a lawful permanent resident</td>
<td>At Time Criteria is Met</td>
</tr>
<tr>
<td>322</td>
<td>At least one parent is a U.S. citizen (through birth or naturalization)</td>
<td>Child resides outside of the United States and child’s parent (or grandparent) was physically present in the U.S. or its outlying possessions for at least 5 years (2 after age 14)</td>
<td>At Time Oath is Administered</td>
</tr>
</tbody>
</table>

D. Legal Authorities

- **INA 101(c)** – Definition of child for citizenship and naturalization
- **INA 301** – Nationals and citizens of the United States at birth
Footnotes

[^1] See INA 301, INA 320, and INA 322.


[^4] The CCA amended INA 320 and removed INA 321 to create only one statutory provision and method for children in the United States to automatically acquire citizenship after birth. See INA 320. See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

[^5] Except for the reference to INA 321, the references in the table are to the current statutory requirements for citizenship. Previous versions of the law may apply.

Chapter 2 - Definition of Child and Residence for Citizenship and Naturalization

A. Definition of Child

The definition of “child” for citizenship and naturalization differs from the definition used for other parts of the Immigration and Nationality Act (INA).[1] The INA provides two different definitions of “child.”

- One definition of child applies to approval of visa petitions, issuance of visas, and similar issues.[2]

- The other definition of child applies to citizenship and naturalization.[3]

The most significant difference between the two definitions of child is that a stepchild is not included in the definition relating to citizenship and naturalization. Although a stepchild may be the stepparent’s “child” for purposes of visa issuance, the stepchild is not the stepparent’s “child” for purposes of citizenship and naturalization. A stepchild is ineligible for citizenship or naturalization through the U.S. citizen stepparent, unless the stepchild is adopted and the adoption meets certain requirements.[4]

In general, a child for the citizenship and naturalization provisions is an unmarried person under 21 years of age who is:

- The genetic, legitimated,[5] or adopted son or daughter of a U.S. citizen; or

- The son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child’s legal parent.

The term “genetic child” refers to a child who shares genetic material with his or her parent, and “gestational
mother” is the person who carries and gives birth to the child. A genetic parent, as well as a non-genetic gestational mother who is recognized by the relevant jurisdiction as the child’s legal parent, is included within the phrase “natural” parent as referenced in the INA. In general, absent other evidence, USCIS considers a child’s birth certificate as recorded by a proper authority as sufficient evidence to determine a child’s genetic relationship to the parent (or parents). The child’s parent (or parents) who is included in the birth certificate is presumed to have legal custody of the child absent other evidence.

In addition to meeting the definition of a child, the child must also meet the particular requirements of the specific citizenship or naturalization provision, which may include references to birth in wedlock or out of wedlock, and which may require that certain conditions be met by 18 years of age, instead of 21.

B. Legitized Child

Legitimation means “placing a child born out of wedlock in the same legal position as a child born in wedlock.” The law of the child’s residence or domicile, or the law of the father’s residence or domicile, is the relevant law to determine whether a child has been legitimated. Generally, unless otherwise specified by the specific provision, if the father or child had various residences or domiciles before the child reached 16, 18 or 21 years of age (depending on the applicable provision), then the laws of the various places of residence or domicile must be analyzed to determine whether the requirements for legitimation have been met.

A child is considered the legitimated child of his or her parent if:

- The child is legitimated in the United States or abroad under the law of either the child's residence or domicile, or the law of the child’s father's residence or domicile, depending on the applicable provision;
- The child is legitimated before he or she reaches 16 years of age (except for certain cases where the child may be legitimated before reaching 18 or 21 years of age); and
- The child is in the legal custody of the legitimating parent or parents at the time of the legitimation.

A non-genetic gestational mother may legitimate her child. While legitimation has been historically applied to father-child relationships, the gestational mother of a child conceived through Assisted Reproductive Technology (ART) may be required to take action after the birth of the child to formalize the legal relationship. Whether such action is required depends on the law of the relevant jurisdiction.

Post-birth formalization of the legal relationship between a gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction’s recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child’s birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.

An officer reviews the specific facts of a case when determining whether a child has been legitimated accordingly and to determine the appropriate citizenship provision.

C. Adopted Child

An adopted child means that the child has been adopted through a full, final, and complete adoption. This
includes certain siblings of adopted children who are permitted to be adopted while under 18 years of age.[17]

A child is an adopted son or daughter of his or her U.S. citizen parent if the following conditions are met:

- The child is adopted in the United States or abroad;
- The child is adopted before he or she reaches 16 years of age (except for certain cases where the child may be adopted before reaching 18 years of age);[18] and
- The child is in the legal custody of the adopting parent or parents at the time of the adoption.[19]

In general, the adoption must:

- Be valid under the law of the country or place granting the adoption;
- Create a legal permanent parent-child relationship between a child and someone who is not already the child’s legal parent; and
- Terminate the legal parent-child relationship with the prior legal parent(s).[20]

D. Orphan[21]

In general, the definition for adopted children applies to adopted orphans. USCIS, however, does not consider an orphan adopted if any of the following conditions apply:

- The foreign adoption was not full and final;
- The foreign adoption was defective; or
- An unmarried U.S. citizen parent or a U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings.[22]

If the orphan is not considered adopted:

- The child must be must be readopted in the United States; or
- The child must be adopted while under 16 years of age and must have been residing in the legal custody of the adopting parent or parents for at least two years.[23]

In all cases, the condition that the child must have been residing in the legal custody of the adopting parent or parents is not required if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household.

E. Child Born Abroad through Assisted Reproductive Technology

1. Background

Assisted Reproductive Technology (ART)

A child may be born through ART. ART refers to fertility treatments where either the egg or sperm, or both,
is handled outside the body. ART includes intrauterine insemination (IUI) and in vitro fertilization (IVF), among other reproductive technology procedures. In these procedures, the parent or parents may use a combination of his or her own genetic material or donated genetic material (donated egg, sperm, or both) in order to conceive a child.

**ART and the INA**

ART was not considered at the time the INA and many of its subsequent amendments were enacted. One of the most significant impacts of ART is that ART allows for a woman to bear a child to whom she does not have a genetic relationship through the use of a donor egg. As such, a mother could have a biological relationship to her child but not a genetic relationship.

**Children Born Abroad through ART**

USCIS and the Department of State (DOS), who share authority over these issues, collaborated in the development of this policy. A non-genetic gestational mother (person who carried and gave birth to the child) who is also the child’s legal mother may be recognized in the same way as genetic legal mothers are treated under the INA. A mother who is the gestational and legal parent of a child under the law of the relevant jurisdiction at the time of the child’s birth consequently may transmit U.S. citizenship to the child if all other requirements are met.

**Child Born Abroad through ART in the Citizenship and Naturalization Contexts**

A child born through ART may acquire U.S. citizenship from his or her non-genetic gestational mother at the time of birth, or after birth, depending on the applicable citizenship or naturalization provision, if:

- The child’s gestational mother is recognized by the relevant jurisdiction as the child’s legal parent at the time of the child’s birth; and
- The child meets all other applicable requirements under the relevant citizenship or naturalization provision.

**2. Jurisdiction’s Recognition of Mother-Child Relationship**

The relevant jurisdiction must recognize the mother-child relationship as the legal parental relationship. Whether a parent is recognized as the legal parent is generally assessed under the jurisdiction of the child’s birth at the time of birth. In some jurisdictions, the non-genetic gestational mother is recognized as the legal mother without her having to take any additional affirmative steps after birth. However, in other jurisdictions, a non-genetic gestational mother may be required to take certain action after the child’s birth to establish the legal relationship.

Post-birth formalization of the legal relationship between a non-genetic gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction’s recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child’s birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.

In either case, the law of the relevant jurisdiction governs whether the non-genetic gestational mother is the legal mother for purposes of U.S. immigration law. Importantly, a non-genetic gestational mother who is not the legally recognized mother may not transmit U.S. citizenship to the child. USCIS will follow a court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS will not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a determination by a
proper authority.

The applicable citizenship provision may depend upon whether the child is born in wedlock or out of wedlock. USCIS must determine whether a child born through ART is born in wedlock or out of wedlock and will treat a child born to a legal gestational mother in the same manner as a child born to a genetic mother when determining if the child is born in or out of wedlock.

**F. Definition of U.S. Residence**

The term residence is defined in the INA as the person's principal actual dwelling place in fact, without regard to intent. [27] A person is not required to live in a particular place for a specific period of time in order for that place to be considered his or her “residence.” However, the longer a stay in a particular place, the more likely it is that a person can establish that place is his or her residence.

1. **Difference between Residence and Physical Presence**

The term residence should not be confused with physical presence, which refers to the actual time a person is in the United States, regardless of whether he or she has a residence in the United States. [28] Although some provisions related to naturalization and citizenship require specific time periods of physical presence, residence, or both, [29] in contrast, there is no specific time period of residence required for purposes of acquiring citizenship where a child is born outside the United States of two U.S. citizen parents. [30]

For example, a person who spent time travelling in the United States for a year living in different hotel rooms in different cities or towns every week and who did not own or rent any property or have another principal dwelling place in the United States, would likely be able to establish 1 year of physical presence. However, without additional evidence of a principal actual dwelling place in the United States, that person could not establish residence in the United States. The table below provides a few examples on how travel would affect the physical presence and the residence requirements. However, the examples are not dispositive and individual cases will be determined based on the individual merits and evidence presented.

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Physical Presence</th>
<th>Residence</th>
</tr>
</thead>
</table>
| U.S. citizen parent owns a home and works in a foreign country. Parent travels to the United States and:  
  - Stays 2 weeks with a cousin in New York,  
  - Stays 2 weeks in New York with his or her parents, and  
  - Travels to Florida on vacation for 2 weeks.  | 6 weeks | No U.S. residence (Residence is outside the United States) |
<p>| Parent is a U.S. citizen born in a foreign country, who never lived in or visited the United States. His child moved to the United States as an adult and claimed U.S. citizenship. | No physical presence[31] | No U.S. residence |</p>
<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Physical Presence</th>
<th>Residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>As a child, U.S. citizen parent came to the United States for 3 consecutive summers to attend a 2-month long camp. The parent lived and went to school in a foreign country for the rest of the year.</td>
<td>6 months</td>
<td>No U.S. residence (Residence is outside the United States)</td>
</tr>
<tr>
<td>U.S. citizen parent worked in the United States for 9 months in a year for 8 years out of a 9-year period. (Parent returned to Mexico to spend the remaining 3 months of each year with family, who never visited the United States.)</td>
<td>9 months in a year for 8 years</td>
<td>U.S. residence established[32]</td>
</tr>
</tbody>
</table>

2. Special Considerations

Various circumstances may affect whether USCIS considers a person to be residing in the United States, and therefore whether a U.S. citizen may transmit citizenship to his or her children.

**U.S. Citizens who were Born, But Did Not Reside, in the United States**

A U.S. citizen may have automatically acquired U.S. citizenship based on birth in the United States,[33] but never actually resided in the United States. This U.S. citizen will not have established residence in the United States, and may be unable to transmit U.S. citizenship to his or her own children.

For example, if the U.S. citizen, still having never resided in the United States, subsequently marries another U.S. citizen who never resided in the United States, and they give birth to a child outside the United States, the child will not acquire citizenship at birth under INA 301(c) because neither U.S. citizen parent can show the requisite residence in the United States. However, if the U.S. citizen parent had returned to the United States after his or her birth and established residence before giving birth to the child outside the United States, then he or she may be able to meet the residence requirement based on that period of residence and transmit U.S. citizenship to his or her children.

**Children of Armed Forces Members or U.S. Government Employees (or their Spouses)**

Certain children of U.S. armed forces members or U.S. government employees (or their spouses) who are residing outside the United States are exempt from the requirement to be residing in the United States for purposes of acquiring citizenship under INA 320.[34]

**Commuters and Temporary Visits to the United States**

Residence is more than a temporary presence or a visit to the United States. Therefore, temporary presences and visits are insufficient to establish residence for the purposes of transmitting citizenship. For example, someone who resides along the border in Mexico or Canada, but works each day in the United States, cannot use his or her workplace to establish a residence.

Vacations or brief stays in the United States do not qualify as residence in the United States. However,
attendance at school, college, or university in the United States for an extended period of time may be considered as residence in the United States depending upon the totality of the circumstances.[35]

_Owning or Renting Property_

A person does not need to own or rent property in the United States in order to establish residence. In addition, owning or renting property outside of the United States does not automatically establish lack of residence in the United States. Owning and renting property in the United States may help to establish residence in the United States if the person also establishes that he or she actually lived in that property, for example. A person who owns property but never lived in the property would not be able to establish residence based on owning that property.

3. _Evidence_

A U.S. citizen who was born in the United States generally meets the residence requirement as long as he or she can present evidence to demonstrate that his or her mother was not merely transiting through or visiting the United States at the time of his or her birth.[36] For example, a long form birth certificate is sufficient evidence if it shows a U.S. address listed as the mother’s residence at the time of the U.S. citizen’s birth.

If a U.S. citizen’s birth certificate indicates that his or her mother’s address was outside of the United States at the time of the birth, USCIS may find that the U.S. citizen does not meet the residence requirement unless the U.S. citizen can prove U.S. residence.

Documents that can help demonstrate residence include, but are not limited to, the following:

- U.S. marriage certificate indicating the address of the bride and groom;
- Property rental leases, property tax records, and payment receipts;
- Deeds;
- Utility bills;
- Automobile registrations;
- Professional licenses;
- Employment records or information;
- Income tax records and income records, including W-2 salary forms;
- School transcripts;
- Military records; and
- Vaccination and medical records.

Footnotes

[^1] See INA 101(b) and INA 101(c).
A child can be legitimated under the laws of the child’s residence or domicile, or under the law of the father’s residence or domicile. See INA 101(c). A person’s “residence” is his or her place of general abode, that is, his or her principal, actual dwelling place without regard to intent. See INA 101(a)(33). A person’s “domicile” refers to a person’s legal permanent home and principal establishment, to include an intent to return if absent. Black’s Law Dictionary (9th ed. 2009). In most cases, a person’s residence is the same as a person’s domicile.

In certain cases, a court may terminate a parent’s parental rights or a parent may relinquish his or her parental rights depending on the laws of the relevant jurisdiction.

Importantly, certain citizenship provisions limit the place of legitimation to the child’s residence. See INA 309(a)(4)(A). In such cases, only the law of the place of residence will be analyzed to determine whether the requirements for legitimation have been met.

For example, the current version of INA 309 allows for legitimation until the age of 18, while INA 101(c) requires legitimation by the age of 16.

See INA 101(c)(1). See also Matter of Rivers, 17 I&N Dec. 419, 422 (BIA 1980) (presuming a legitimated child to be in the legal custody of the legitimating parent).

See Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

See INA 101(b)(1)(E).


In addition, a couple may use a gestational carrier (also called a gestational surrogate). A gestational surrogate is a woman, who gestates, or carries, an embryo that was formed from the egg of another woman on behalf of the intended parent or parents. The gestational carrier usually has a contractual obligation to return the infant to his or her intended legal parents. For additional information on ART, see the Centers for Disease Control (CDC) Web site.

Previously, a genetic relationship with a U.S. citizen parent was required in order for a child born abroad to acquire U.S. citizenship through that parent.

Examples of documentary evidence showing physical presence may include: academic transcripts, military records, official vaccination records, medical records, employment records, and lease agreements.

For more information on physical presence, see Part D, General Naturalization Requirements, Chapter 4, Physical Presence [12 USCIS-PM D.4].

See INA 301(c).

See Madar v. USCIS, 918 F.3d 120 (3rd Cir. 2019). In that case, the appellant argued that he was “constructively resident” in the United States because his U.S. citizen father lived during the relevant time in what was then Communist Czechoslovakia and was not free to leave the country. The court rejected that claim noting that physical presence requirements can be constructively satisfied only in extraordinary circumstances, such as, for example, when a U.S. government error causes citizenship to lapse, preventing the foreign-born parent from complying with the physical presence requirements.

See Alcarez-Garcia v. Ashcroft, 293 F.3rd 1155 (9th Cir. 2002).

See U.S. Const. amend XIV. See INA 301(a).

See Chapter 4, Section C, Children of Armed Forces Members or Government Employees (or their Spouses) [12 USCIS PM H.4(C)]. See INA 320(c) (added by the Citizenship for Children of Military Members and Civil Servants Act, Pub. L. 116-133 (PDF) (March 26, 2020)).

See Matter of M--, 4 I&N Dec. 418 (BIA 1951) (continuous stay in the United States as a college student for almost 3 years held to have residence in the United States for purposes of Section 201(g) of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137, 1139 (October 14, 1940)).

For more information on how the rules may vary depending on whether the U.S. citizen is the mother or father of a child seeking to acquire citizenship, see Chapter 3, U.S. Citizens at Birth (INA 301 and 309), Section A, General Requirements for Acquisition of Citizenship at Birth [12 USCIS-PM H.3(A)] through Section C, Child Born Out of Wedlock [12 USCIS-PM H.3(C)].
A. General Requirements for Acquisition of Citizenship at Birth

A person born in the United States who is subject to the jurisdiction of the United States is a U.S. citizen at birth, to include a person born to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.\(^1\)

In general, a person born outside of the United States may acquire citizenship at birth if:

- The person has at least one parent who is a U.S. citizen; and
- The U.S. citizen parent meets certain residence or physical presence requirements in the United States or an outlying possession prior to the person’s birth in accordance with the pertinent provision.\(^2\)

A person born abroad through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother acquires U.S. citizenship at birth under INA 301 or INA 309 if:

- The person’s gestational mother is recognized by the relevant jurisdiction as the child’s legal parent at the time of the person’s birth; and
- The person meets all other applicable requirements under either INA 301 or INA 309.\(^3\)

Until the Act of October 10, 1978, persons who had acquired U.S. citizenship through birth outside of the United States to one U.S. citizen parent had to meet certain physical presence requirements to retain their citizenship. This legislation eliminated retention requirements for persons who were born after October 10, 1952. There may be cases where a person who was born before that date, and therefore subject to the retention requirements, may have failed to retain citizenship.\(^4\)

An officer should determine whether a person acquired citizenship at birth by referring to the applicable statutory provisions and conditions that existed at the time of the person’s birth. These provisions have been modified extensively over the years.\(^5\) The following sections provide the current law.

B. Child Born in Wedlock\(^6\)

1. Child of Two U.S. Citizen Parents\(^7\)

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- Both of the child’s parents are U.S. citizens; and
- At least one parent had resided in the United States or one of its outlying possessions.

2. Child of U.S. Citizen Parent and U.S. National\(^8\)

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- One parent is a U.S. citizen and the other parent is a U.S. national; and
- The U.S. citizen parent was physically present in the United States or one of its outlying possessions for a continuous period of at least one year.

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the
time of birth:

- One parent is an alien and the other parent is a U.S. citizen; and
- The U.S. citizen parent was physically present in the United States for at least 5 years, including at
  least 2 years after 14 years of age.

Time abroad counts as physical presence in the United States if the time abroad was:

- As a member of the U.S. armed forces in honorable status;
- Under the employment of the U.S. government or other qualifying organizations; or
- As a dependent unmarried son or daughter of such persons.


A child born outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child was born before noon (Eastern Standard Time) May 24, 1934;
- The child’s father is an alien;
- The child’s mother was a U.S. citizen at the time of the child’s birth; and
- The child’s U.S. citizen mother resided in the United States prior to the child’s birth.


1. Child of U.S. Citizen Father

General Requirements for Fathers of Children Born Out of Wedlock

The general requirements for acquisition of citizenship at birth[12] for a child born in wedlock also apply to a
child born out of wedlock outside of the United States (or one of its outlying possessions) who claims
citizenship through a U.S. citizen father. Specifically, the provisions apply in cases where:

- A blood relationship between the child and the father is established by clear and convincing evidence;
- The child’s father was a U.S. citizen at the time of the child’s birth;
- The child’s father (unless deceased) has agreed in writing to provide financial support for the child
  until the child reaches 18 years of age; and
- One of the following criteria is met before the child reaches 18 years of age:
  - The child is legitimated under the law of his or her residence or domicile;
The father acknowledges in writing and under oath the paternity of the child; or

- The paternity of the child is established by adjudication of a competent court.

In addition, the residence or physical presence requirements contained in the relevant paragraph of INA 301 continue to apply to children born out of wedlock, who are claiming citizenship through their fathers.

**Written Agreement to Provide Financial Support**

In order for a child born out of wedlock outside of the United States (or one of its outlying possessions) to acquire U.S. citizenship through his or her father, Congress included a requirement that the father agree in writing to provide financial support for the child until the child reaches the age of 18. Congress included the language to prevent children from becoming public charges. USCIS interprets the phrase in the statute “has agreed in writing to provide financial support” to mean that there must be documentary evidence that supports a finding that the father accepted the legal obligation to support the child until the age of 18.

The written agreement of financial support may be dated at any time before the child’s 18th birthday. If the child is under the age of 18 at the time of filing an Application for Certificate of Citizenship, the father may provide the written agreement of financial support either concurrently with the filing of the application or prior to the adjudication of the application. USCIS may request the written agreement of financial support at the time of issuance of a Request for Evidence or at the time of an interview (unless the interview is waived).

Alternatively, if the applicant is already over the age of 18, he or she may meet the requirement if one or more documents support a finding that the father accepted his legal obligation to support the child. In such cases, the evidence must have existed (and have been finalized) prior to the child’s 18th birthday and must have met any applicable foreign law or U.S. law governing the child’s or father’s residence to establish acceptance of financial responsibility.

In all cases, the applicant has the burden of proving the father has met any applicable requirements under the law to make an agreement to provide financial support. A written agreement of financial support is not required if the father died before the child’s 18th birthday.

**Written Agreement Requirements**

In order for a document to qualify as a written agreement of financial support under INA 309(a)(3), the document:

- Must be in writing and acknowledged by the father;
- Must indicate the father’s agreement to provide financial support for the child; and
- Must be dated before the child’s 18th birthday.

In addition, USCIS considers whether the agreement was voluntary.

**Other Acceptable Documentation**

A written agreement of financial support may come in different forms and documents. USCIS may consider other similar documentation in which the father accepts financial responsibility of the child until the age of 18. Some examples of documents USCIS may consider include:
A previously submitted Affidavit of Support (Form I-134) or Affidavit of Support Under Section 213A of the INA (Form I-864);

- Military Defense Enrollment Eligibility Reporting System (DEERS) enrollment;
- Written voluntary acknowledgement of a child in a jurisdiction where there is a legal requirement that the father provide financial support;[20]
- Documentation establishing paternity by a court or administrative agency with jurisdiction over the child’s personal status, if accompanied by evidence from the record of proceeding establishing the father initiated the paternity proceeding and the jurisdiction legally requires the father to provide financial support; or
- A petition by the father seeking child custody or visitation with the court of jurisdiction with an agreement to provide financial support and the jurisdiction legally requires the father to provide financial support.

2. Child of U.S. Citizen Mother

The rules that determine whether a child born out of wedlock outside of the United States derives citizenship at birth from his or her U.S. citizen mother vary depending on when the child was born.

Child Born On or After December 23, 1952 and Before June 12, 2017

A child born between December 23, 1952 and June 12, 2017 who is born out of wedlock outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child’s mother was a U.S. citizen at the time of the child’s birth; and
- The child’s U.S. citizen mother was physically present in the United States or one of its outlying possessions for 1 continuous year prior to the child’s birth.[21]

Child Born On or After June 12, 2017

A child born on or after June 12, 2017, who is born out of wedlock outside of the United States or one of its outlying possessions acquires citizenship at birth if:

- The child’s mother was a U.S. citizen at the time of the child’s birth; and
- The child’s U.S. citizen mother was physically present in the United States or one of its outlying possessions for at least 5 years prior to the child’s birth (at least 2 years of which were after age 14).[22]

Effect of Sessions v. Morales-Santana Decision

Prior to the U.S. Supreme Court’s decision in Sessions v. Morales-Santana,[23] the physical presence requirements for children born out of wedlock were different for a child acquiring citizenship through a U.S. citizen mother than for those acquiring through a U.S. citizen father. An unwed U.S. citizen mother could transmit citizenship to her child if the mother was physically present in the United States for 1 continuous year prior to the child's birth. An unwed U.S. citizen father, by contrast, was held to the longer physical presence requirement of 5 years (at least 2 years of which were after age 14) in the United States or one of its outlying possessions.[24]

AILA Doc. No. 19060633. (Posted 3/26/21)
On June 12, 2017, the U.S. Supreme Court held, in Sessions v. Morales-Santana, that the different physical presence requirements for an unwed U.S. citizen father and an unwed U.S. citizen mother violated the U.S. Constitution’s Equal Protection Clause. The U.S. Supreme Court indicated that the 5 years of physical presence (at least 2 years of which were after age 14) requirement should apply prospectively to all cases involving a child born out of wedlock outside the United States to one U.S. citizen parent and one alien parent, regardless of the gender of the parent.

The U.S. Supreme Court decision effectively eliminated, prospectively, the 1 year continuous physical presence requirement that previously applied to unwed U.S. citizen mothers, and replaced it with the higher physical presence requirement that previously applied to unwed U.S. citizen fathers. After Sessions v. Morales-Santana, the 1-year continuous physical presence requirement remains in effect only for those children born prior to June 12, 2017 outside of the United States to unwed U.S. citizen mothers.

D. Application for Certificate of Citizenship (Form N-600)

A person born abroad who acquires U.S. citizenship at birth is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. passport with the Department of State to serve as evidence of his or her U.S. citizenship.

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen parent or legal guardian must submit the application.

USCIS will issue a proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so.

E. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or legal guardian if the application is filed on behalf of a child under 18 years of age. USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records, or if the application is accompanied by one of the following:

- Consular Report of Birth Abroad (FS-240);
- Applicant’s unexpired U.S. passport issued initially for a full 5 or 10-year period; or
- Certificate of Naturalization of the applicant's parent or parents.

F. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.
However, the Immigration and Nationality Act (INA) permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice. An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

[^1] See INA 301(a) and INA 301(b). Children of certain diplomats who are born in the United States are not U.S. citizens at birth because they are not subject to the jurisdiction of the United States. See 8 CFR 101.3.

[^2] Any time spent abroad in the U.S. armed forces or other qualifying organizations counts towards that physical presence requirement. See INA 301(g).

[^3] For a more thorough discussion, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

[^4] The Act of October 10, 1978, Pub. L. 95–432 (PDF), repealed the retention requirements of former INA 301(b). The amending legislation was prospective only and did not restore citizenship to anyone who, prior to its enactment, had lost citizenship for failing to meet the retention requirements.

[^5] Officers should use the Nationality Charts to assist with the adjudication of these applications.


[^7] See INA 301(c).

[^8] See INA 301(d).

[^9] See INA 301(g).

[^10] See INA 301(h).


[^12] See INA 301(c), INA 301(d), INA 301(e), and INA 301(g). See Section A, General Requirements for Acquisition of Citizenship at Birth [12 USCIS-PM H.3(A)].


1986). The Immigration and Nationality Act (INA) was intended to keep families together and generally construed in favor of family unity and the acceptance of responsibility by family members. See *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005).


[^16] In many cases, the issue of whether the father agreed to provide financial support depends on foreign law. The applicant bears the burden of proving the father has met any applicable requirements to make a binding agreement under the law. See *Matter of Annang* (PDF), 14 I&N Dec. 502 (BIA 1973). Officers should consult USCIS counsel about any requirements under the law.


[^18] A court document may be signed by a judge rather than the father, but may still serve as evidence to meet this requirement if there is an indication in the record of proceedings that the father consented to the determination of paternity.

[^19] Since the statute only provides for the agreement of the father to provide support and does not provide for any loss of citizenship if the agreement is not met, USCIS does not consider whether the father actually provided financial support.

[^20] For example, a birth certificate or acknowledgement document submitted and certified by the father. Under U.S. jurisdictions, a written voluntary acknowledgement of a child generally triggers a legal obligation to support the child. However, under foreign jurisdictions, a voluntary written agreement may not always trigger a legal obligation to support the child. The officer may consult with local USCIS counsel for questions regarding the effect of the law.

[^21] See INA 309(c).


[^25] See INA 301(g).


[^27] See INA 301(g).


[^29] See INA 309(c).


[^31] See 8 CFR 341.1. The Secretary of State has jurisdiction over claims of U.S. citizenship made by persons who are abroad, and the Secretary of Homeland Security has jurisdiction over the administration and enforcement of the INA within the United States. See INA 103(a)(1) and INA 104(a)(3). There is nothing precluding USCIS from accepting a Form N-600 filed under INA 301 or INA 309 by a person who does not live in the United States. See INA 341(a).

### Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)

#### A. General Requirements: Genetic, Legitimated, or Adopted Child Automatically Acquiring Citizenship after Birth[^1]

A child born outside of the United States automatically becomes a U.S. citizen when all of the following conditions have been met on or after February 27, 2001:[^2]

- The child has at least one parent, including an adoptive parent[^3] who is a U.S. citizen by birth or through naturalization;
- The child is under 18 years of age;
- The child is a lawful permanent resident (LPR);[^4] and
- The child is residing[^5] in the United States in the legal and physical custody of the U.S. citizen parent.[^6]

A child born outside of the United States through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother may acquire U.S. citizenship under INA 320 if:

- The child’s gestational mother is recognized by the relevant jurisdiction as the child’s legal parent at the time of the child’s birth; and
- The child meets all other requirements under INA 320, including that the child is residing in the United States in the legal and physical custody of the U.S. citizen parent.[^7]

A stepchild of a U.S. citizen who has not been adopted and does not have another U.S. citizen parent does not qualify for citizenship under this provision.

#### B. Legal and Physical Custody of U.S. Citizen Parent

Legal custody refers to the responsibility for and authority over a child. For purposes of this provision, USCIS presumes that a U.S. citizen parent has legal custody of a child and recognizes that the parent has lawful authority over the child, absent evidence to the contrary, in all of the following scenarios:[^8]
• A biological child who currently resides with both biological parents who are married to each other, living in marital union, and not separated;

• A biological child who currently resides with a surviving biological parent, if the other parent is deceased;

• A biological child born out of wedlock who has been legitimated and currently resides with the parent;

• An adopted child with a final adoption decree who currently resides with the adoptive U.S. citizen parent;[9]

• A child of divorced or legally separated parents where a court of law or other appropriate government entity has awarded primary care, control, and maintenance of the child to a parent under the laws of the state or country of residence.

USCIS considers a U.S. citizen parent who has been awarded “joint custody” to have legal custody of a child. There may be other factual circumstances under which USCIS may find the U.S. citizen parent to have legal custody to be determined on a case-by-case basis.

C. Children of Armed Forces Members or U.S. Government Employees (or their Spouses)[10]

On March 26, 2020, the Citizenship for Children of Military Members and Civil Servants Act was enacted into law.[11] This Act provides that, under certain conditions, children of U.S. armed forces members or U.S. government employees (or their spouses)[12] who are residing outside the United States acquire citizenship under INA 320.[13] This applies to such children who were under the age of 18 on that date.[14]

A child born outside of the United States acquires automatic citizenship under INA 320 in cases where the child is an LPR and is in the legal and physical custody of his or her U.S. citizen parent who is:[15]

• Stationed and residing outside of the United States as a member of the U.S. armed forces;[16]

• Stationed and residing outside of the United States as an employee of the U.S. government;[17] or

• The spouse residing outside the United States in marital union[18] with a U.S. armed forces member or U.S. government employee who is stationed outside of the United States. [19]

In cases involving the child of a U.S. armed forces member residing outside the United States, the child must be authorized to accompany and reside with the U.S. armed forces member as provided by the member’s official orders.[20] If the spouse of the U.S. armed forces member is the qualifying U.S. citizen parent, the spouse must be authorized to accompany and reside with the U.S. armed forces member as provided by the member’s official orders.[21]

The official orders that authorize a child and, if applicable, his or her U.S. citizen parent, to accompany and reside with the member of the U.S. armed forces outside of the United States are a statutory requirement for that child to acquire citizenship under INA 320. If the child (and, if applicable, U.S. citizen parent) being added to the orders is the last action for the child to qualify for acquisition, then the date of the order becomes the date of acquisition. There is no statutory requirement for children of U.S. government employees or their spouses to be included on the employee’s official orders.
The child of a U.S. armed forces member or a U.S. government employee (or his or her spouse) must meet the general requirements under INA 320(a)(1)-(2) in addition to being an LPR residing in the legal and physical custody of his or her U.S. citizen parent. All statutory requirements must be met before the child reaches the age of 18, including, if applicable, the issuance of the official orders for the child (and, if applicable, the U.S. citizen parent) to accompany and reside with the U.S. armed forces member who is stationed outside the United States.

**D. Acquiring Citizenship Before the Child Citizenship Act of 2000**

The Child Citizenship Act (CCA) applies only to those children born on or after February 27, 2001, or those who were under 18 years of age as of that date. Persons who were 18 years of age or older on February 27, 2001, do not qualify for citizenship under INA 320. For such persons, the law in effect at the time the last condition was met before reaching 18 years of age is the relevant law to determine whether they acquired citizenship.[22]

In general, former INA 321 applies to children who were already 18 years of age on February 27, 2001, but who were under 18 years of age in 1952, when the current Immigration and Nationality Act became effective.

In general, a child born outside of the United States to two alien parents, or one alien parent and one U.S. citizen parent who subsequently lost U.S. citizenship, acquires citizenship under former INA 321 if:

- The child’s parent(s) meet one of the following conditions:
  - Both parents naturalize;
  - One surviving parent naturalizes if the other parent is deceased;
  - One parent naturalizes who has legal custody of the child if there is a legal separation of the parents; or
  - The child’s mother naturalizes if the child was born out of wedlock and paternity has not been established by legitimation.

- The child is under 18 years of age when his or her parent(s) naturalize; and

- The child is residing in the United States pursuant to a lawful admission for permanent residence at the time the parent(s) naturalized or thereafter begins to reside permanently in the United States.

As originally enacted in 1952, this section did not apply to adopted children of naturalized citizens.[23] Beginning on October 5, 1978, however, INA 321 became generally applicable to an adopted child if the child was residing in the United States at the time the adoptive parent or parents naturalized and the child was in the custody of his or her adoptive parents pursuant to a lawful admission for permanent residence.[24]

**E. Application for Certificate of Citizenship (Form N-600)**

A person who automatically obtains citizenship is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. passport with the Department of State to serve as evidence of his or her U.S. citizenship.
A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen biological parent, adoptive parent, or legal guardian must submit the application.\[25\]

USCIS will issue proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so.\[26\]

### F. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in the USCIS administrative record or do not apply:\[27\]

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
  - Divorce Decree; or
  - Death Certificate.
- Evidence of United States citizenship of parent:
  - Birth Certificate;
  - Naturalization Certificate;
  - Consular Report of Birth Abroad (FS-240);
  - A valid unexpired U.S. passport; or
  - Certificate of Citizenship.
- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.
- Documentation of legal custody in the case of divorce, legal separation, or adoption.
- If applicable, official orders (that is, a Permanent Change of Station (PCS)) from the respective department that authorized the child of the U.S. armed forces member, or the child of the spouse of such member and the spouse,\[28\] to accompany the U.S. citizen parent.
- Copy of Permanent Resident Card or Alien Registration Receipt Card or other evidence of lawful permanent resident status, such as an I-551 stamp in a valid foreign passport or travel document issued by USCIS.
- Copy of the full, final adoption decree, if applicable:
  - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parent(s) had custody
of, and lived with, the child for at least 2 years.[29]

- For an adopted orphan, a copy of notice of approval of the orphan petition and supporting
documentation for such petition (except the home study) or evidence that the child has been
admitted for lawful permanent residence in the United States with the immigrant classification of
IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S.
citizen).[30]

- For a Hague Convention adoptee, a copy of the notice of approval of Convention adoptee
petition and its supporting documentation, or evidence that the child has been admitted for lawful
permanent residence in the United States with the immigrant classification of IH-3 (Hague
Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be
adopted by a U.S. citizen).[31]

- If the child was admitted as an LPR as an orphan or Hague Convention adoptee[32] (this
evidence may already be in the child’s A-file).

  - Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa
package; or

- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision
on the application.

### G. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an
Application for Certificate of Citizenship. This includes the U.S. citizen parent or parents if the application is
filed on behalf of a child under 18 years of age.[33] USCIS, however, may waive the interview requirement if
all the required documentation necessary to establish the applicant's eligibility is already included in USCIS
administrative records or if the required documentation is submitted along with the application.[34]

### H. Decision and Oath of Allegiance

#### 1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of
Allegiance before issuing a Certificate of Citizenship.[35]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the
person is unable to understand its meaning.[36] USCIS has determined that children under the age of 14 are
generally unable to understand the meaning of the oath.
Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice. An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

[^1] See INA 320. See Nationality Chart 3 [12 USCIS-PM H.3, Appendices Tab].

[^2] These provisions were created by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000), which amended earlier provisions of the Immigration and Nationality Act (INA) regarding acquisition of citizenship after birth for foreign-born children who have U.S. citizen parent(s). These CCA amendments became effective on February 27, 2001.

[^3] As long as the child meets the requirements to be considered an adopted child for immigration purposes, as outlined in INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).

[^4] A person is generally considered to be an LPR once USCIS approves his or her adjustment application or once he or she enters the United States with an immigrant visa. See INA 245(b). For certain classifications, however, the effective date of becoming an LPR is a date that is earlier than the actual approval of the status (commonly referred to as a “rollback” date). See Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization, Section A, Lawful Permanent Resident at Time of Filing and Naturalization [12 USCIS-PM D.2(A)]. In addition, a person who is born a U.S. national and is the child of a U.S. citizen may establish eligibility for a Certificate of Citizenship without having to establish LPR status.

[^5] For the definition of residence, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section F, Definition of U.S. Residence [12 USCIS-PM H.2(F)].

[^6] See INA 320(a)(3). See 8 CFR 320.2. Certain children of U.S. armed forces members or U.S. government employees (or their spouses) who are residing outside the United States may acquire citizenship under INA 320. See Section C, Children of Armed Forces Members or U.S. Government Employees (or their Spouses) [12 USCIS-PM H.4(C)]. See INA 320(g) (added by the Citizenship for Children of Military Members and Civil Servants Act, Pub. L. 116-133 (PDF) (March 26, 2020)).

[^7] For a more thorough discussion, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].


[^9] If the requirements of INA 101(b)(1)(E), or INA 101(b)(1)(F), or INA 101(b)(1)(G) are met.

[^10] For information about USCIS policies pertaining to this group of children before March 26, 2020, see Appendix: History of Acquiring Citizenship under INA 320 for Children of U.S. Citizens who are Members of the U.S. Armed Forces, U.S. Government Employees, or their Spouses [12 USCIS-PM, Appendices Tab].

[^12] Spouses must be U.S. citizens if the child seeks to acquire citizenship under INA 320 based on the child’s residence with that spouse.

[^13] The Citizenship for Children of Military Members and Civil Servants Act, Pub. L. 116-133 (PDF) (March 26, 2020), did not redefine “residence in the United States” for these children. Instead, it created an exception to the U.S. residence requirement by providing that INA 320(a)(3) is deemed satisfied in applicable cases.

[^14] These provisions do not affect children who have already been recognized by USCIS or the Department of State as having acquired U.S. citizenship under INA 320 through the issuance of a Certificate of Citizenship or passport.

[^15] This provision would also apply to a child adopted by a U.S. citizen parent if the child satisfies the requirements applicable to adopted children under INA 101(b)(1) and INA 320(b).

[^16] See INA 320(c)(2)(A)(i). For a list of qualifying military branches, see Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328), Section B, Honorable Service [12 USCIS-PM I.2(B)] and Section C, National Guard Service [12 USCIS-PM I.2(C)]. Service is not required to be “honorable” for the purposes of INA 320(c)(2)(A)(i) and a Request for Certification of Military or Naval Service (Form N-426) is not required as evidence.


[^18] Temporary orders, such as to serve in a combat zone or for mission support performance, do not affect the marital union between a military member and his or her spouse and would not impact acquisition of citizenship provisions under INA 320(c).


[^22] See Chapter 3, United States Citizens at Birth (INA 301 and 309) [12 USCIS-PM H.3].

Chapter 5 - Child Residing Outside of the United States (INA 322)

A. General Requirements: Genetic, Legitimated, or Adopted Child Residing Outside the United States[^1]

The Child Citizenship Act of 2000 (CCA) amended the INA to cover foreign-born children who did not automatically acquire citizenship under INA 320 and who generally reside outside the United States with a U.S. citizen parent.[^2]

A genetic, legitimated, or adopted child who regularly resides outside of the United States is eligible for...
naturalization if all of the following conditions have been met:

- The child has at least one U.S. citizen parent by birth or through naturalization, (including an adoptive parent);[3]

- The child’s U.S. citizen parent or citizen grandparent meets certain physical presence requirements in the United States or an outlying possession;[4]

- The child is under 18 years of age;

- The child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent, or of a person who does not object to the application if the U.S. citizen parent is deceased; and

- The child is lawfully admitted, physically present, and maintaining a lawful status in the United States at the time the application is approved and the time of naturalization.

A child born abroad through Assisted Reproductive Technology (ART) may be eligible for naturalization under **INA 322** based on a relationship with his or her U.S. citizen gestational mother under **INA 322** if:

- The child’s gestational mother is recognized by the relevant jurisdiction as the child’s legal parent at the time of the child’s birth; and

- The child meets all other requirements under **INA 322**, including that the child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent, or a person who does not object to the application if the U.S. citizen parent is deceased.[5]

There are certain exceptions to these requirements for children of U.S. citizens in the U.S. armed forces accompanying their parent outside the United States on official orders.[6]

**B. Eligibility to Apply on the Child’s Behalf**

Typically, a child’s U.S. citizen parent files a Certificate of Citizenship application on the child’s behalf. If the U.S. citizen parent has died, the child’s citizen grandparent or the child’s U.S. citizen legal guardian may file the application on the child’s behalf within 5 years of the parent's death.[7]

**C. Physical Presence of the U.S. Citizen Parent or Grandparent[8]**

1. **Physical Presence of Child’s U.S. Citizen Parent**

A child’s U.S. citizen parent must meet the following physical presence requirements:

- The parent has been physically present in the United States or its outlying possessions for at least 5 years; and

- The parent met such physical presence for at least 2 years after he or she reached 14 years of age.

A parent’s physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the parent was not a U.S. citizen.

2. **Exception for U.S. Citizen Member of the U.S. Armed Forces**

AILA Doc. No. 19060633. (Posted 3/26/21)
The child’s U.S. citizen service member parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.\[9\]

3. Reliance on Physical Presence of Child’s U.S. Citizen Grandparent

If the child’s parent does not meet the physical presence requirement, the child may rely on the physical presence of the child’s U.S. citizen grandparent to meet the requirement. In such cases, the officer first must verify that the citizen grandparent, the citizen parent’s mother or father, is a U.S. citizen at the time of filing. If the grandparent has died, the grandparent must have been a U.S. citizen and met the physical presence requirements at the time of his or her death.

Like in the case of the citizen parent, the officer also must ensure that:

- The U.S. citizen grandparent has been physically present in the United States or its outlying possessions for at least 5 years; and
- The U.S. citizen grandparent met such physical presence for at least 2 years after he or she reached 14 years of age.

Like the citizen parent, a grandparent’s physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the grandparent was not a U.S. citizen.

D. Temporary Presence by Lawful Admission and Status in United States

1. Temporary Presence and Status Requirements

In most cases, the citizenship process for a child residing abroad cannot take place solely overseas.

- The child is required to be lawfully admitted to United States, in any status, and be physically present in the United States;\[10\]
- The child is required to maintain the lawful status that he or she was admitted under while in the United States;\[11\] and
- The child is required to take the Oath of Allegiance in the United States unless the oath requirement is waived.\[12\]

2. Exception for Child of U.S. Citizen Service Member of the U.S. Armed Forces

Certain children of U.S. citizen members of the U.S. armed forces are not required to be lawfully admitted to or physically present in the United States\[13\].

E. Children of U.S. Government Employees and Members of the Armed Forces Employed or Stationed Outside the United States

In addition to certain provisions for children of U.S. armed forces members and U.S. government employees stationed or employed outside the United States under INA 320, such U.S. citizen parents may apply for U.S.
citizenship under INA 322 on behalf of their children under age 18 (if the children have not acquired citizenship under INA 320).[14] Children of members of the U.S. armed forces who are accompanying their parents outside of the United States on official orders may be eligible to complete all aspects of the naturalization proceedings outside the United States. This includes interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[15]

F. Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)

A U.S. citizen parent of a biological, legitimated, or adopted child born outside of the United States who did not acquire citizenship automatically may file an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) for the child to become a U.S. citizen and obtain a Certificate of Citizenship. The application may be filed from outside of the United States.

If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than 5 years after the death of the U.S. citizen parent.[16]

The child of a U.S. citizen member of the U.S. armed forces accompanying his or her parent abroad on official orders may be eligible to complete all aspects of the naturalization proceedings abroad. This includes interviews, filings, oaths, ceremonies, or other proceedings relating to citizenship and naturalization.

G. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in USCIS administrative record or do not apply.[17]

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
  - Divorce Decree; or
  - Death Certificate.
- Evidence of United States citizenship of parent:
  - Birth Certificate;
  - Naturalization Certificate;
  - Consular Report of Birth Abroad (FS-240);
  - A valid unexpired U.S. passport; or
  - Certificate of Citizenship.
• Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.

• Documentation of legal custody in the case of divorce, legal separation, or adoption.

• Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements, such as school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations.

• Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status or evidence establishing that the child qualifies for an exception to these requirements as provided for children of members of the U.S. armed forces.[18] Such evidence may be presented at the time of interview when appropriate.

• Copy of the full, final adoption decree, if applicable
  ○ For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parents have had custody of, and lived with, the child for at least 2 years.[19]
  ○ For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen).[20]
  ○ For a Hague Convention adoptee applying under INA 322, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen).[21]

• Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent or U.S. citizen legal guardian.

An applicant does not need to submit documents that were submitted in connection with:

• An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or

• An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

**H. Citizenship Interview and Waiver**

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K). This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.
age. USCIS, however, waives the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if any of the following documentation is submitted along with the application.

I. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K), USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship. However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice. An applicant may file an appeal within 30 days of service of the decision.

Footnotes

[^1] See Nationality Chart 4 [12 USCIS-PM H.3, Appendices Tab].


[^5] For a more thorough discussion, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].


See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)]. See INA 322(d). See 8 CFR 322.2(c).

See INA 322(a)(5). See 8 CFR 322.2(a)(5).


[^14] See INA 322(a). To be eligible for citizenship under INA 322, the child must be under 18 and “residing outside of the United States in the legal and physical custody of the applicant.” If the child has already acquired U.S. citizenship under INA 320, USCIS denies the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K).


[^16] See 8 CFR 322.3(a).

[^17] See 8 CFR 322.3(b).

[^18] See INA 322(d)(2).


[^20] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either “readopted” the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

[^21] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

[^22] See 8 CFR 322.4.

[^23] See 8 CFR 341.2. See Section G, Documentation and Evidence [12 USCIS-PM H.5(G)].


[^26] See 8 CFR 322.5(b) and 8 CFR 103.3(a).

Chapter 6 - Special Provisions for the Naturalization of Children
A. Children Subjected to Battery or Extreme Cruelty

In general, the spouse of a U.S. citizen who resides in the United States may be eligible for naturalization based on his or her marriage under section 319(a) of the Immigration and Nationality Act (INA). On October 28, 2000, Congress expanded the naturalization provision based on a family relationship to a U.S. citizen. The amendments added that children of U.S. citizens may naturalize if they obtained lawful permanent resident (LPR) status based on having been battered or subjected to extreme cruelty by their citizen parent. [1]

1. Eligibility for Special Provision

A child [2] is eligible for naturalization under the spousal naturalization provisions [3] if he or she obtained LPR status based on:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive U.S. citizen;

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive LPR, if the abusive parent naturalizes after USCIS approves the petition; [4]

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the derivative child [5] of a self-petitioning spouse of a U.S. citizen who was battered or subjected to extreme cruelty by a U.S. citizen spouse; [6] or

- Cancellation of removal where the applicant was the child of a U.S. citizen who subjected him or her to battery or extreme cruelty. [7]

A child is also eligible for naturalization under the spousal naturalization provisions if he or she had the conditions on his or her residence removed based on:

- An approved battery or extreme cruelty waiver of the joint filing requirement for the Petition to Remove Conditions on Residence (Form I-751). [8]

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant is over the age of 18 at the time of filing. The applicant must be the genetic, legitimated, or adopted son or daughter of a U.S. citizen, or the son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child’s legal parent. [9]

Stepchildren of U.S. citizens may also naturalize under this provision if otherwise eligible. [10]

2. Exception to General Naturalization Requirements

An applicant subjected to battery or extreme cruelty by his or her U.S. citizen parent is exempt from the following naturalization requirements: [11]

- Living with the U.S. citizen parent for at least 3 years at the time of filing the naturalization application; and

- The applicant's U.S. citizen parent, who petitioned for him or her, has U.S. citizenship from the time of...
filing until the time the applicant takes the Oath of Allegiance.\[12\]

These exceptions also apply to derivative children.

**B. Surviving Child of Members of the U.S. Armed Forces**

On November 24, 2003, Congress amended certain military-related immigration provisions of the INA. This included extending certain immigration benefits to surviving spouses, children, and parents of deceased U.S. citizen service members.\[13\]

**1. Eligibility for Special Provision**

A surviving child, who has not already acquired U.S. citizenship, may be eligible for naturalization.\[14\] In addition, the child may qualify for certain exemptions from the general naturalization requirements. To qualify for this special provision, the applicant must be the child\[15\] of a U.S. citizen service member who died during a period of honorable service in an active duty status in the U.S. armed forces.\[16\] This includes service members who were not U.S. citizens at the time of their death but were later granted posthumous U.S. citizenship.

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant be over the age of 18 at the time of filing. The applicant must be the genetic, legitimated, or adopted son or daughter of a U.S. citizen, or the son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child’s legal parent.\[17\] A person who is the surviving stepchild of a member of the U.S. armed forces is not eligible to naturalize under this provision.

**2. Exceptions to General Naturalization Requirements**

Under the special provision, the qualified surviving child is exempt from the following requirements:

- Continuous residence;
- Physical presence; and
- Three-month physical presence within the state or jurisdiction.

**Footnotes**


[^2] The child must be 18 years of age or older to apply for naturalization.

[^3] Under spousal naturalization provisions, the child is required to show 3 years of continuous residence and physical presence at least half of that time. See INA 319(a).

A derivative child is an unmarried child who can accompany the principal beneficiary based on a parent-child relationship.


The waiver must be based on either the parent being subjected to battery or extreme cruelty by the petitioning citizen or LPR spouse, or the child being subjected to battery or extreme cruelty by the conditional permanent resident parent or the petitioning citizen or LPR spouse. See INA 216(c)(4)(C).

For further guidance on the definition of child for citizenship and naturalization purposes, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

See INA 101(b)(1).

See INA 319(a).


For information on eligibility for surviving parents and spouses, see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].

The child must meet the definition of child applicable to citizenship and naturalization. See Part H, Children of U.S. Children, Chapter 2, Definition of Child [12 USCIS-PM H.2].


For further guidance on the definition of child for citizenship and naturalization purposes, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

Part I - Military Members and their Families

Chapter 1 - Purpose and Background

A. Purpose

Service members, certain veterans of the U.S. armed forces, and certain military family members may be eligible to become citizens of the United States under special provisions of the Immigration and Nationality Act (INA), to include expedited and overseas processing.

There are general requirements and qualifications that an applicant for naturalization must meet in order to become a U.S. citizen. These general requirements include:
Good Moral Character (GMC);
- Residence and physical presence in the U.S.;
- Knowledge of the English language;
- Knowledge of U.S. government and history; and
- Attachment to the principles of the U.S. Constitution.

The periods of residence and physical presence in the United States normally required for naturalization may not apply to military members and certain military family members. In addition, qualifying children of military members may not need to be present in the United States to acquire citizenship. Finally, qualifying members of the military and their family members may be able to complete the entire process from overseas.

Military members and their families may call the Military Help Line for assistance: 1-877-CIS-4MIL (1-877-247-4645).

**B. Background**

Special naturalization provisions for members of the U.S. armed forces date back at least to the Civil War. Currently, the special naturalization provisions provide for expedited naturalization through military service during peacetime or during designated periods of hostilities. In addition, some provisions benefit certain relatives of members of the U.S. armed forces.

As of March 6, 1990, citizenship may be granted posthumously to service members who died as a direct result of a combat-related injury or disease. Before this legislation, posthumous citizenship could only be granted through the enactment of private legislation for specific individuals.

Congress and the President have continued to express interest in legislation to expand the citizenship benefits of non-U.S. citizens serving in the military since the events of September 11, 2001. Legislation to benefit service members and their family members has increased considerably since 2003.

1. **Executive Order Designating Period since September 11, 2001 as a Period of Hostility**

On July 3, 2002, then President, George W. Bush, officially designated by Executive Order the period beginning on September 11, 2001 as a “period of hostilities.” The Executive Order triggered immediate naturalization eligibility for qualifying service members.

At the time of the designation, the Department of Defense (DOD) and legacy INS announced that they would work together to ensure that military naturalization applications would be processed expeditiously. USCIS adjudication procedures for military naturalization applications reflect that commitment.

2. **Legislation Affecting Service Period, Overseas Naturalization, and Benefits for Relatives**

On November 24, 2003, Congress enacted legislation to:

- Reduce the period of service required for military naturalization based on peacetime service from three years to one year.
• Add service in the Selected Reserve of the Ready Reserve during periods of hostilities as a basis to qualify for naturalization.[9]

• Expand the immigration benefits available to the spouses, children, and parents of U.S. citizens who die from injuries or illnesses resulting from or aggravated by serving in combat. These benefits extend to such relatives of service members who were granted citizenship posthumously.

• Waive fees for naturalization applications based on military service during peacetime or during periods of hostilities.[10]

• Permit naturalization processing overseas in U.S. embassies, consulates, and military bases for members of the U.S. armed forces.[11]

Efforts since the 2003 legislation have focused on further streamlining procedures or extending immigration benefits to immediate relatives of service members.

3. Legislation Affecting Residence, Physical Presence, and Naturalization while Abroad for Spouses and Children

On January 28, 2008, Congress amended existing statutes to allow residence abroad to qualify as “continuous residence” and “physical presence” in the United States for a spouse or child of a service member who is authorized to accompany the service member by official orders and is residing abroad with the service member.[12]

Under certain conditions, a spouse or child of a service member may count any period of time that he or she is residing (or has resided) abroad with the service member as residence and physical presence in the United States. This legislation also prescribes that such a spouse or child may be eligible to have any or all of their naturalization proceedings conducted abroad. Before this legislation, the law only permitted eligible service members to participate in naturalization proceedings abroad.

• **INA 284(b)** limits the circumstances under which the lawful permanent resident (LPR) spouse or child is considered to be seeking admission to the United States. This means that the spouse or child will not be deemed to have abandoned or relinquished his or her LPR status while residing abroad with the service member. The provision ensures reentry into the United States by LPR spouses and children whose presence abroad might otherwise be deemed as abandonment of LPR status.

• **INA 319(e)** allows certain LPR spouses to count any qualifying time abroad as continuous residence and physical presence in the United States and permits eligible spouses to naturalize overseas.

• **INA 322(d)** allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and allows the child to naturalize overseas.

4. Fingerprint Requirement (Kendell Frederick Citizenship Assistance Act)

On June 26, 2008, Congress mandated that USCIS use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the naturalization background check requirements unless a more efficient method is available.[13]

5. Expedited Application Processing (Military Personnel Citizenship Processing Act)

On October 9, 2008, Congress amended existing statutes to mandate USCIS to process and adjudicate
naturalization applications filed under certain military-related provisions within six months of the receipt date or provide the applicant with an explanation for why his or her application is still pending and an estimated adjudication completion date. [14]

C. Legal Authorities

- **INA 319; 8 CFR 319** – Spouses of U.S. Citizens
- **INA 322; 8 CFR 322** – Children born outside of the United States
- **INA 328; 8 CFR 328** – Naturalization through peacetime military service for one year
- **INA 329; 8 CFR 329** – Naturalization through military Service during hostilities
- **INA 329A; 8 CFR 392** – Posthumous citizenship
- **8 U.S.C. 1443a** – Overseas naturalization for service members and their qualifying spouses and children

Footnotes


[^2] See Appendix 1 for a table listing legislation affecting military members and their families.

[^3] See Chapter 2, One Year of Military Service during Peacetime (INA 328) [12 USCIS-PM I.2].


[^10] See INA 328(b) and INA 329(b) (Fee exemptions).


[^13] See Chapter 6, Required Background Checks [12 USCIS-PM I.6]. See the Kendell Frederick


Chapter 2 - One Year of Military Service during Peacetime (INA 328)

A. General Eligibility through One Year of Military Service during Peacetime

A person who has served honorably in the U.S. armed forces for one year at any time may be eligible to apply for naturalization, which is sometimes referred to as “peacetime naturalization.” [1] While some of the general naturalization requirements apply to qualifying members or veterans of the U.S. armed forces seeking to naturalize based on one year of service,[2] other requirements may not apply or are reduced.

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant must be 18 years of age or older.
- The applicant must have served honorably in the U.S. armed forces for at least one year.
- The applicant must be a lawful permanent resident (LPR) at the time of examination on the naturalization application.
- The applicant must meet certain residence and physical presence requirements.
- The applicant must demonstrate an ability to understand English including an ability to read, write, and speak English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least five years prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the U.S. during all relevant periods under the law.

B. Honorable Service

Qualifying military service is honorable active or reserve service in the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, or service in a National Guard unit. Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both “Honorable” and “General-Under Honorable Conditions” discharge types qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.
C. National Guard Service

Honorable service as a member of the National Guard is limited to service in a National Guard unit during such time as the unit is federally recognized as a reserve component of the U.S. armed forces. This applies to applicants for naturalization on the basis of one year of military service. [3]

D. Continuous Residence and Physical Presence Requirements

An applicant who files on the basis of one year of military service while he or she is still serving in the U.S. armed forces or within six months of an honorable discharge is exempt from the residence and physical presence requirements for naturalization. [4]

An applicant who files six months or more from his or her separation from the U.S. armed forces must have continuously resided in the United States for at least five years. In addition, the applicant must have been physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application. [5] However, any honorable service within the five years immediately preceding the date of filing the application will be considered towards residence and physical presence within the United States. [6]

An applicant with military service who does not qualify on the basis of one year of military service [7] may be eligible under another non-military naturalization provision. The period that the applicant has resided outside of the United States on official military orders does not break his or her continuous residence. USCIS will treat such time abroad as time in the United States. [8]

Footnotes


[^2] See INA 316(a) for the general naturalization requirements. See Part D, General Naturalization Requirements [12 USCIS-PM D].

[^3] See INA 328. The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 3, Military Service during Hostilities (INA 329), Section C, National Guard Service [12 USCIS-PM I.3(C)].


[^5] See INA 316(a) and INA 328(d). See Part D, General Naturalization Requirements [12 USCIS-PM D].


[^8] Special provisions also exist regarding the “place of residence” for applicants who are serving in the U.S. armed forces but who do not qualify for naturalization through the military provisions. See 8 CFR 316.5(b). See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].
Chapter 3 - Military Service during Hostilities (INA 329)

A. General Eligibility through Military Service during Hostilities

Members of the U.S. armed forces who serve honorably for any period of time during specifically designated periods of hostilities may be eligible to naturalize.\[1\]

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant may be of any age.
- The applicant must have served honorably in the U.S. armed forces during a designated period of hostility.
- The applicant must either be a lawful permanent resident (LPR) or have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces:
  - In the United States or its outlying possessions, including the Canal Zone, American Samoa, or Swains Island, or
  - On board a public vessel owned or operated by the United States for noncommercial service.
- The applicant must be able to read, write, and speak basic English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least 1 year prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law.

An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence.\[2\]

B. Honorable Service

Qualifying military service is honorable service in the Selected Reserve of the Ready Reserve or active duty service in the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard. Service in a National Guard Unit may also qualify.\[3\]

Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both “Honorable” and “General-Under Honorable Conditions” discharge types qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.

C. National Guard Service
An applicant filing on the basis of military service during hostilities[4] who has National Guard service may qualify if he or she has honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve.[5] USCIS does not require proof of federal activation for a National Guard applicant if the applicant served in the Selected Reserve of the Ready Reserve during a designated period of hostility.[6]

D. Designated Periods of Hostilities

The Immigration and Nationality Act (INA) and Presidential Executive Orders have designated the following military engagements and ranges of dates as periods of hostilities.[7]

<table>
<thead>
<tr>
<th>Designated Periods of Hostilities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>World War I</strong>[8]</td>
</tr>
<tr>
<td><strong>World War II</strong>[9]</td>
</tr>
<tr>
<td><strong>War on Terrorism</strong>[13]</td>
</tr>
</tbody>
</table>

On July 3, 2002, President George W. Bush issued Executive Order 13269, which has designated a period of hostilities and has permitted the expedited naturalization for aliens and noncitizen nationals eligible under INA 329 as of September 11, 2001. The current designated period continues to be a designated period of hostilities for INA 329 purposes until the President issues a new Executive Order terminating the designation.[14]

E. Eligibility as Permanent Resident or if Present in United States at Induction or Enlistment

In general, an applicant who files on the basis of military service during hostilities[15] is not required to be an LPR if he or she was physically present at the time of induction, enlistment, reenlistment, or extension of service in the U.S. armed forces:

- In the United States, the Canal Zone, American Samoa, or Swains Island; or
• On board a public vessel owned or operated by the United States for noncommercial service.

In addition, an applicant who is lawfully admitted for permanent residence after enlistment or induction is also eligible for naturalization under this provision regardless of the place of enlistment or induction.

F. Conditional Permanent Residence and Naturalization during Hostilities

If the applicant is a conditional permanent resident and is eligible to naturalize on the basis of military service during hostilities,[16] without being an LPR based on being in the United States during enlistment or induction, the applicant is not required to file or have an approved Petition to Remove Conditions on Residence (Form I-751) before his or her Application for Naturalization (Form N-400) may be approved.

G. Department of Defense Military Accessions Vital to National Interest Program

The general guidance in this section is from information provided by the Department of Defense (DOD) on its Military Accessions Vital to National Interest (MAVNI) program. USCIS is providing this general information in the Policy Manual to assist potential service members and their families.[17]

1. Military Accessions Vital to National Interest Program

In 2009, DOD authorized the MAVNI pilot program as a recruitment tool to enlist certain nonimmigrants and other aliens who have skills that are considered vital to the national interest of the United States.[18] The program applies to certain health care professionals and aliens who are fluent in certain foreign languages.[19]

An alien entering active duty status or service in the Selected Reserve of the Ready Reserve may apply for military naturalization after the alien’s Request for Certification of Military or Naval Service (Form N-426) has been properly authorized, completed, and signed by the appropriate person authorized by DOD.[20] USCIS is unable to adjudicate a naturalization application without a properly submitted N-426.

2. General Eligibility Requirements

Eligible Candidates

To be eligible for the MAVNI program, the DOD requires applicants to be in one of the following immigration categories or authorized stays at the time of enlistment into the U.S. armed forces:

• Asylee;
• Refugee;
• Beneficiary of Temporary Protected Status (TPS);
• Person granted deferred action by USCIS under the Deferred Action for Childhood Arrivals (DACA) policy; or
• Nonimmigrant in any of the following categories: E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN,
Valid Status for 2 Years

The DOD requires most applicants for MAVNI to have been in a valid status in one of the eligible immigration categories or authorized stays listed above for at least 2 years immediately preceding the date of enlistment. The applicant is not required to be in the same qualifying category or authorized stay listed above for those 2 years on the date of enlistment.

The DOD may exempt or waive the 2-year requirement for certain applicants. Specifically, the DOD does not require DACA recipients to meet the 2-year requirement. In addition, the DOD will consider waiving the requirement that an applicant to the MAVNI program be in valid immigration status or within a period of authorized stay at the time of enlistment on a case-by-case basis under certain circumstances. [21]

3. Other Factors to Consider

Nonimmigrants and Absences from United States

Under DOD guidance, most applicants to the MAVNI program under a qualifying nonimmigrant category at the time of enlistment must not have been absent from the United States for more than 90 days during the 2-year period immediately preceding the date of enlistment. [22] The DOD does not apply this 90-day limitation on absences to DACA recipients.

Foreign Residency Requirement

A nonimmigrant exchange visitor under the J nonimmigrant visa classification may be eligible to apply for the MAVNI program with the DOD. Certain nonimmigrant exchange visitors are subject to a statutory foreign residence requirement. [23] J exchange visitors who enlist in the military through the MAVNI program are not required to comply with the foreign residence requirement in order to naturalize. [24] In addition, the dependent spouse or child of the exchange visitor is not required to comply with the foreign residence requirement. [25]

Adjustment of Status Applicants

The DOD does not disqualify otherwise eligible applicants to the MAVNI program by virtue of having a pending adjustment of status application with USCIS. [26]

Footnotes


[^3] See Section C, National Guard Service [12 USCIS-PM I.3(C)].


The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 2, One Year of Military Service during Peacetime (INA 328), Section C, National Guard Service [12 USCIS-PM I.2(C)].

See 8 CFR 329.1 and 8 CFR 329.2.


See 8 CFR 329.2.


See 8 CFR 329.2. See Exec. Order No. 13269, Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45287 (July 3, 2002).

See 8 CFR 329.2. See Exec. Order No. 13269, Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45287 (July 3, 2002).

See INA 329.

See INA 329.

For further information and details of the DOD program, see the DOD MAVNI Fact Sheet (PDF) or contact the DOD.

The Secretary of Defense authorized the pilot program. See the DOD MAVNI Fact Sheet (PDF).

See sections on health care professionals and eligible languages in the DOD MAVNI Fact Sheet (PDF).

MAVNI enlistees should speak with their commanding officers for additional information regarding the circumstances under which the military departments will sign and certify the Form N-426.

See section on eligibility in the DOD MAVNI Fact Sheet (PDF).

See section on eligibility in the DOD MAVNI Fact Sheet (PDF).

See INA 212(e).

The J exchange visitor is not required to obtain a waiver of the INA 212(e) foreign residence requirement. See INA 329.

A J-1 exchange visitor’s dependent spouse or child is issued a J-2 nonimmigrant visa.
Chapter 4 - Permanent Bars to Naturalization

A. Exemption or Discharge from Military Service Because of Alienage

1. Permanent Bar for Exemption or Discharge from Military Service

An applicant who requested, applied for, and obtained a discharge or exemption from military service from the U.S. armed forces on the ground that he or she is an alien (“alienage discharge”) is permanently ineligible for naturalization unless he or she qualifies for an exception (discussed below). [1]

An exemption from military service is either a permanent exemption from induction into the U.S. armed services or the release or discharge from military training or service in the U.S. armed forces. [2] Induction means compulsory entrance into military service of the United States by conscription or by enlistment after being notified of a pending conscription.

Until 1975, applicants were required to register for the military draft. The failure to register for the draft or to comply with an induction notice is relevant to the determination of whether the applicant was liable for military service, especially in cases where an exemption was based on alienage.

Certain persons were granted exemptions from the draft for reasons other than alienage, including medical disability and conscientious objector. An applicant may present a draft registration card with an exempt classification under circumstances that do not relate to alienage.

2. Exceptions to Permanent Bar

There are exceptions to the permanent bar to naturalization for obtaining a discharge or exemption from military service on the ground of alienage. [3]

The permanent bar does not apply to the applicant if he or she establishes by clear and convincing evidence that:

- The applicant had no liability for military service (even in the absence of an exemption) at the time he or she requested an exemption from military service;
- The applicant did not request or apply for the exemption from military service, but such exemption was automatically granted by the U.S. Government; [4]
- The exemption from military service was based upon a ground other than the applicant's alienage;
- The applicant was unable to make an intelligent choice between an exemption from military service and citizenship because he or she was misled by an authority from the U.S. Government or from the government of his or her country of nationality;
- The applicant applied for and received an exemption from military service on the basis of alienage, but was subsequently inducted into the U.S. armed forces or the National Security Training Corps; [5]

[^26] See Form I-485, Application to Register Permanent Residence or Adjust Status. See section on eligibility in the DOD MAVNI Fact Sheet (PDF).
Prior to requesting the exemption from military service, the applicant served a minimum of eighteen months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of his or her service, or the applicant served a minimum of twelve months and applied for registration with the Selective Service Administration after September 28, 1971; or

Prior to requesting the exemption from military service, the applicant was a “treaty national” [6] who had served in the armed forces of the country of which he or she was a national. [7]

3. Countries with Treaties Providing Reciprocal Exemption from Military Service

The tables below provide lists of countries that currently have (or previously had) effective treaties providing reciprocal exemption from military service. [8]

<table>
<thead>
<tr>
<th>Countries with Effective Treaties Providing Reciprocal Exemption from Military Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
</tr>
<tr>
<td>Art. X, 10 Stat. 1005, 1009, effective 1853</td>
</tr>
<tr>
<td>Austria</td>
</tr>
<tr>
<td>Art. VI, 47 Stat. 1876, 1880, effective 1928</td>
</tr>
<tr>
<td>China</td>
</tr>
<tr>
<td>Art. XIV, 63 Stat. 1299, 1311, effective 1946</td>
</tr>
<tr>
<td>Costa Rica</td>
</tr>
<tr>
<td>Art. IX, 10 Stat. 916, 921, effective 1851</td>
</tr>
<tr>
<td>Estonia</td>
</tr>
<tr>
<td>Art. VI, 44 Stat. 2379, 2381, effective 1925</td>
</tr>
<tr>
<td>Honduras</td>
</tr>
<tr>
<td>Art. VI, 45 Stat. 2618, 2622, effective 1927</td>
</tr>
<tr>
<td>Ireland</td>
</tr>
<tr>
<td>Art. III, 1 US 785, 789, effective 1950</td>
</tr>
<tr>
<td>Italy</td>
</tr>
<tr>
<td>Art. XIII, 63 Stat. 2255, 2272, effective 1948</td>
</tr>
<tr>
<td>Latvia</td>
</tr>
<tr>
<td>Art. VI, 45 Stat. 2641, 2643, effective 1928</td>
</tr>
<tr>
<td>Liberia</td>
</tr>
<tr>
<td>Art. VI, 54 Stat. 1739, 1742, effective 1938</td>
</tr>
<tr>
<td>Norway</td>
</tr>
<tr>
<td>Art. VI, 47 Stat. 2135, 2139, effective 1928</td>
</tr>
</tbody>
</table>
### Countries with Effective Treaties Providing Reciprocal Exemption from Military Service

<table>
<thead>
<tr>
<th>Country</th>
<th>Article</th>
<th>Statute</th>
<th>Effective Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paraguay</td>
<td>XI</td>
<td>1091, 1096</td>
<td>1859</td>
</tr>
<tr>
<td>Spain</td>
<td>V</td>
<td>2105, 2108</td>
<td>1902</td>
</tr>
<tr>
<td>Switzerland</td>
<td>II</td>
<td>587, 589</td>
<td>1850</td>
</tr>
<tr>
<td>Yugoslavia Serbia</td>
<td>IV</td>
<td>963, 964</td>
<td>1881</td>
</tr>
</tbody>
</table>

### Countries with Expired Treaties Providing Reciprocal Exemption from Military Service

<table>
<thead>
<tr>
<th>Country</th>
<th>Article</th>
<th>Statute</th>
<th>Effective Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>El Salvador</td>
<td>VI</td>
<td>2817, 2821</td>
<td>1926 to 1958</td>
</tr>
<tr>
<td>Germany</td>
<td>VI</td>
<td>2132, 2136</td>
<td>1923 to 1954</td>
</tr>
<tr>
<td>Hungary</td>
<td>VI</td>
<td>2441, 2445</td>
<td>1925 to 1952</td>
</tr>
<tr>
<td>Thailand (Siam)</td>
<td>1</td>
<td>1731, 1732</td>
<td>1937 to 1968</td>
</tr>
</tbody>
</table>

### 4. Documentation and Evidence

The Application for Naturalization (Form N-400) and Request for Certification of Military or Naval Service (Form N-426) contain questions pertaining to discharge due to alienage. The fact that an applicant is exempted or discharged from service in the U.S. armed forces on the grounds that he or she is an alien may impact the applicant’s eligibility for naturalization.

Selective Service and military department records are conclusive evidence of service and discharge.\[9\] Proof of an applicant’s request and approval for an exemption or discharge from military service because the applicant is an alien may be grounds for denial of the naturalization application.\[10\]

### B. Deserters or Persons Absent Without Official Leave (AWOL)

An applicant who is convicted by court martial as a deserter may be permanently barred from naturalization.\[11\] A person not ultimately court martialed for being a deserter or for being Absent without
Official Leave (AWOL), however, is not permanently barred from naturalization.

An applicant who deserted or was AWOL during the relevant period for good moral character may be ineligible for naturalization under the “unlawful acts” provision. [12]

Footnotes


[^2] See 8 CFR 315.1. The Ninth Circuit has found that an exemption from voluntary military service is not a permanent bar under INA 315. See Gallarde v. I.N.S., 486 F.3d 1136 (9th Cir 2007). INA 329 has similar language about exemptions, and that language has been found to cover discharges based on alienage even in cases of voluntary enlistment. See Sakarapanee v. USCIS, 616 F.3d 595, (6th Cir 2010). Officers should consult with local OCC counsel in handling discharges based on alienage.


[^5] However, an applicant who voluntarily enlists in and serves in the U.S. armed forces after applying for and receiving an exemption from military service on the basis of alienage is not exempt from the permanent bar.

[^6] “Treaty national” means a person who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service.


Chapter 5 - Application and Filing for Service Members (INA 328 and 329)

This section provides relevant information for applying for naturalization on the basis of military service. [1]

Service members should file their applications in accordance with the instructions for the Application for Naturalization (Form N-400) and other required forms.

A. Required Forms

An applicant filing for naturalization based on one year of honorable military service during peacetime [2] or
honorable service during a designated period of hostility[3] must complete and submit all of the following to USCIS:

**Form N-400, Application for Naturalization**

The applicant should check the appropriate eligibility option on the Application for Naturalization to indicate that he or she is applying on the basis of qualifying military service. The applicant should file the application in accordance with the form instructions.

**Form N-426, Request for Certification of Military or Naval Service**

The Request for Certification of Military or Naval Service confirms whether the applicant served honorably in an active duty status or in the Selected Reserve of the Ready Reserve. The form may also establish whether the applicant has ever been released from military service on the grounds that he or she is an alien. Only those applicants applying under INA 328 or INA 329 are required to submit the form. An applicant applying under a different naturalization provision is not required to submit the form, even if the applicant has prior military service.

The military must complete and certify (sign) the Request for Certification of Military or Naval Service before it is submitted to USCIS. USCIS, however, will accept a completed but uncertified form submitted by an applicant who has separated from the U.S. armed forces if:

- The applicant submitted a photocopy of his or her Certificate or Release from Active Duty (DD Form 214) or National Guard Report of Separation and Record of Service (NGB Form 22) for applicable periods of service listed on Form N-426; and

- The DD Form 214 or NGB Form 22 lists information on the type of separation and character of service. Such information is typically found on page “Member-4” of DD Form 214 or Block 24 of NGB Form 22.

Most military installations have a designated office that serves as a point-of-contact to assist service members with their naturalization application packets. Service members should inquire through their chain of command for the appropriate office to assist with preparing the naturalization packet.

**B. Fee Exemptions**

- USCIS charges no fees for filing an Application for Naturalization (Form N-400) or for biometrics capturing for applications filed under INA 328 or INA 329.

- There is no fee for filing a Request for a Hearing on a Decision in Naturalization Proceedings (Form N-336) for applicants whose naturalization application filed under INA 328 or INA 329 has been denied.[4]

- There is no filing fee for current and former service members for an Application for Certificate of Citizenship (Form N-600).[5]

**C. Filing Location and Initial Processing**

Naturalization applications filed on the basis of military service should be filed in accordance with the form instructions.[6] USCIS will permit an applicant residing abroad the option to file his or her application for...
naturalization with the USCIS overseas office having jurisdiction over his or her place of residence, as practicable.

An applicant serving abroad may complete all aspects of the naturalization process, including fingerprinting, interviews and oath ceremonies while residing abroad on official orders. The applicant may request overseas processing at any time of the naturalization process.

**Footnotes**


Chapter 6 - Required Background Checks

USCIS conducts security and background checks on all applicants for naturalization. Members or former members of the U.S. armed forces applying for naturalization must comply with those requirements. This chapter provides information on specific background checks required of such applicants. This chapter also provides information on the ways service members may meet the fingerprint requirement for naturalization.

**A. Defense Clearance Investigative Index (DCII) Query**

USCIS must conduct a Defense Clearance Investigative Index (DCII) query with the DOD as part of the background check process on any applicant with military service regardless of the section of law under which he or she is applying for naturalization. The DCII check is valid for 15 months from the initial response. The DCII check should show whether the applicant has any derogatory information in his or her military records.

**B. Fingerprint Requirement and the Kendell Frederick Citizenship Assistance Act**

USCIS must collect fingerprint records as part of the background check process on most applicants for naturalization. The Kendell Frederick Citizenship Assistance Act (KFCAA) mandates USCIS to use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the fingerprint requirement for service members unless a more efficient method is available.

If DHS determines that new biometrics would “result in more timely and effective adjudication of the
individual’s naturalization application,” DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints.\[2\]

## C. Ways Service Members may Meet Fingerprint Requirement

The table below provides the ways in which a service member may meet the fingerprint requirement for naturalization on the basis of military service.\[3\] Such applicants may meet the requirement through any of the following ways provided in the table. These procedures aim at USCIS compliance with the KFCAA.

<table>
<thead>
<tr>
<th>Ways Service Members may Meet Fingerprint Requirement for Naturalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The service member may appear at any stateside USCIS Application Support Center (ASC) for fingerprint capture with or without an appointment</td>
</tr>
<tr>
<td>• The service member may have his or her fingerprints taken by USCIS personnel at select military installations in the United States via mobile fingerprinting equipment</td>
</tr>
<tr>
<td>• USCIS may re-submit the service member’s fingerprints for up-to-date records if such records are on file with USCIS</td>
</tr>
<tr>
<td>• USCIS may acquire and use the service member’s fingerprints taken at the time of enlistment into the military (“OPM fingerprints”)</td>
</tr>
<tr>
<td>• The service member may have his or her fingerprints taken using the FD-258 fingerprint cards at a U.S. military installation (or U.S. embassy or consulate if overseas)</td>
</tr>
<tr>
<td>• USCIS will accept FD-258 fingerprint cards or comparable DOD fingerprint cards from domestic or overseas military installations (However, fingerprints captured electronically, either at an ASC or through a mobile fingerprinting unit, remain the more advantageous method for both the applicant and USCIS)</td>
</tr>
</tbody>
</table>

USCIS will consider an applicant’s naturalization application to be abandoned and will deny the application for failure to appear for biometrics capture (fingerprinting) \[4\] if all of the following conditions are true:

- The NSC is unable to locate the applicant or three days have elapsed from the last day of the time period allotted for the applicant to appear for fingerprinting (as stated on the second ASC appointment notice);
- The applicant is stationed stateside (and is otherwise able to report to an ASC) and has not submitted FD-258 fingerprint cards;
- The applicant has not fulfilled the fingerprint requirement; and
USCIS has determined that the enlistment fingerprints are unavailable or are unclassifiable.

Any subsequent correspondence from an affected applicant whose application was denied for failure to appear for fingerprinting within one year is considered a Service motion to reopen. USCIS grants the motion and continues with the processing of the naturalization application. USCIS does not deny an application for abandonment for failure to provide fingerprints if USCIS has evidence that the applicant is deployed inside the United States or overseas and is unable to be fingerprinted.

**Footnotes**

[^1] Previously, a military applicant was required to submit Form G-325B, Biographic Information, which USCIS used to initiate the DCII query. USCIS determined, however, that the information collected on Form N-400 is sufficient to perform the queries and deemed Form G-325B obsolete. As of February 18, 2010, Form G-325B is no longer required for any pending naturalization application.


**Chapter 7 - Revocation of Naturalization**

A military member whose naturalization was granted on the basis of military service on or after November 24, 2003 may be subject to revocation of naturalization if he or she was separated from the U.S. armed forces under other than honorable conditions before he or she has served honorably for a period or periods totaling at least five years. [^1]

**Footnote**

[^1] See INA 328(f), INA 329(e), and INA 340. See Pub. L. 108-136 (PDF). Such cases should be referred to U.S. Immigration and Customs Enforcement (ICE).

**Chapter 8 - Posthumous Citizenship (INA 329A)**

**A. Eligibility for Posthumous Citizenship**

In general, a person who serves honorably in the U.S. armed forces during designated periods of hostilities and dies as a result of injury or disease incurred in or aggravated by that service may be eligible for posthumous citizenship[^1] Posthumous citizenship establishes that the deceased service member is considered a citizen of the United States as of the date of his or her death.[^2]

The military branch under which the deceased service member served will determine whether he or she
served honorably in an active-duty status during a qualified period and whether the death was combat related.

Spouses and children of U.S. citizen service members who qualify for posthumous citizenship may be eligible for immigration benefits under special provisions of the INA.[3]

**B. Application and Filing**

The service member’s next of kin, the Secretary of Defense, or the Secretary’s designee in USCIS must submit an Application for Posthumous Citizenship (Form N-644) within two years of the service member’s death and in accordance with the form instructions and with appropriate fee.[4] USCIS uses the posthumous citizenship application to verify the deceased service member’s place of induction, enlistment or reenlistment; military service; and service-connected death.[5]

The following documents should be submitted along with the completed Application for Posthumous Citizenship, if available:

- DD Form 214, Certificate of Release or Discharge from Active Duty
- DD Form 1300, Report of Casualty/Military Death Certificate (or other military or State issued death certificate)
- Any other military or state issued certificate of the decedent’s death

**C. Adjudication**

USCIS will issue a Certificate of Citizenship (Form N-645) in the name of the deceased service member establishing posthumously that he or she was a U.S. citizen on the date of his or her death if the Application for Posthumous Citizenship is approved.[6] In cases where USCIS denies the Form N-644, USCIS will notify the applicant of the decision and the reason(s) for denial. There is no appeal for a denied posthumous citizenship application.[7]

**Footnotes**

[^1] See Chapter 3, Military Service during Hostilities (INA 329), Section D, Designated Periods of Hostilities [12 USCIS-PM I.3(D)].


Chapter 9 - Spouses, Children, and Surviving Family Benefits

A. General Provisions for Spouses, Children, and Parents of Military Members

1. Benefits for Family Members

Spouses and children of U.S. citizen service members may be eligible for naturalization under special provisions in the INA. Certain spouses may be eligible for expedited naturalization in the United States and may not be required to establish any prior period of residence or specified period of physical presence within the United States, as generally required for naturalization.

The surviving spouse, child, or parent of a U.S. citizen who dies during a period of honorable service in an active duty status in the U.S. armed forces may be eligible for naturalization. Surviving family members seeking immigration benefits are given special consideration in the processing of their applications for permanent residence or for classification as an immediate relative.

On January 28, 2008, legislation was enacted to permit a spouse or child to count any period of time that he or she is residing abroad with the service member as authorized by official orders as residence and physical presence in the United States, under certain conditions. The same legislation also prescribes that such a spouse or child may be eligible for overseas proceedings relating to naturalization, as previously only permitted for an eligible member of the U.S. armed forces.

Specifically, one provision limits the circumstances under which the lawful permanent resident (LPR) spouse or child is considered to be seeking admission to the United States. Another provision allows the LPR spouse to count any qualifying time abroad as continuous residence and physical presence in the United States and permits the spouse to naturalize overseas. Another provision allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and permits the child to naturalize overseas.

2. Documenting “Official Orders”

In order to count any qualifying time abroad as continuous residence and physical presence in the United States, a spouse or child of a member of the U.S. armed forces must have official military orders authorizing him or her to accompany his or her service member spouse or parent abroad, and must accompany or live with that service member as provided in those orders.

USCIS will only accept the following documents issued by the U.S. armed forces as “official orders”:

- Copy of Permanent Change of Station (PCS) orders issued to a service member for permanent tour of duty overseas that specifically name the spouse or child applying for naturalization; or
- If the submitted PCS orders do not specifically name the applicant beyond reference to “spouse,” “child,” or “dependent,” then the applicant must submit:
  - PCS orders (copy);
  - Form DD-1278 (Certificate of Overseas Assignment to Support Application to File Petition for Naturalization); and
- Service member’s Form DD1172 (Application for Uniformed Services Identification Card DEERS Enrollment) naming dependents.

B. Spouses of Military Members

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for spouses of service members. The paragraphs that follow the table provide further guidance on each provision.[6]

<table>
<thead>
<tr>
<th>INA Section</th>
<th>Residence</th>
<th>Physical Presence</th>
<th>Treatment of Time Residing Abroad</th>
<th>Overseas Naturalization</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>316(a)</strong></td>
<td>LPR for 5 years</td>
<td>30 months</td>
<td>Time residing with U.S. citizen spouse serving abroad may be treated as residence and physical presence in the United States (INA 319(e))</td>
<td>May complete entire naturalization process from abroad</td>
</tr>
<tr>
<td><strong>319(a)</strong></td>
<td>LPR for 3 years</td>
<td>18 months</td>
<td></td>
<td>Must complete interview and oath in United States</td>
</tr>
<tr>
<td><strong>319(b)</strong></td>
<td>Must be LPR but no specified period of residence or physical presence is required</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Spouses of Service Members (INA 316(a) and INA 319(a))

Spouses of service members may qualify for naturalization through the general naturalization provision or on the basis of their marriage to a U.S. citizen.[7] The general provision applies to spouses who have been LPRs for 5 years immediately preceding the date of filing the naturalization application.[8] Naturalization on the basis of marriage applies to spouses of U.S. citizens who have been LPRs for 3 years immediately preceding the date of filing the naturalization application and who have lived in marital union with their citizen spouses for those 3 years.[9]

2. Spouses of Military Members who are or will be Stationed or Deployed Abroad (INA 319(b))

The law permits expedited naturalization in the United States for eligible spouses of U.S. citizen service members who are or will be stationed or deployed abroad.[10] This provision does not require any prior period of residence or specified period of physical presence within the United States for any LPR spouse of a U.S. citizen who is an employee of the United States Government (including a member of the U.S. armed forces) or recognized nonprofit organization who is stationed abroad in such employment for at least one year.[11]
In general, the applicant is required to be in the United States for his or her naturalization examination or interview and for taking the Oath of Allegiance for naturalization.\footnote{12}

Spouses of service members already accompanying and residing abroad with their military spouse may also qualify for naturalization through the general provision\footnote{13} or on the basis of their marriage to a U.S. citizen for 3 years.\footnote{14} Such spouses may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.\footnote{15}

3. Continuous Residence and Physical Presence while Residing Abroad (INA 319(e))

Certain eligible spouses of service members may count qualifying residence abroad as residence and physical presence in the United States for purposes of naturalization.\footnote{16} This provision does not provide an independent basis for naturalization. The benefits of this provision only apply to an LPR who is eligible for naturalization through the general provision\footnote{17} or on the basis of his or her marriage to a U.S. citizen for 3 years.\footnote{18}

The spouse must meet all of the following conditions during such time abroad:

- The LPR is the spouse of a member of the U.S. armed forces;
- The LPR is authorized to accompany and reside abroad with the service member pursuant to the service member’s official orders;\footnote{19} and
- The LPR is accompanying and residing abroad with the service member in marital union.\footnote{20}

The spouse is not required to be abroad at the time the officer makes such determination. For example, an applicant who is currently residing in the United States, but had previously resided abroad during the statutory residency or physical presence period, may count the time abroad as continuous residence and physical presence, if he or she meets the eligibility criteria.

The spouse of a service member who has been an LPR for 5 years and is applying for naturalization through the general provision does not need to establish that the service member is a U.S. citizen.\footnote{21} An applicant who is no longer married to a service member at the time of filing may still meet the residence and physical presence requirements if the LPR was married to the service member and met all the conditions above during the period of time in question.

The spouse of a service member who has been an LPR for 3 years and who is applying on the basis of his or her marriage for 3 years must establish that the service member has been a U.S. citizen for the required period.\footnote{22}

4. Overseas Naturalization for Spouses of Service Members

In addition to allowing certain time abroad to count towards the residence and physical presence requirements, INA 319(e) permits eligible spouses of service members to naturalize abroad without traveling to the United States for any part of the naturalization process.

In general, to be eligible to naturalize abroad, the LPR spouse of a service member must:

- Be authorized to accompany the service member abroad per the service member's official orders;
• Be residing abroad with the service member in marital union; and

• Meet the requirements of either INA 316(a) or INA 319(a) at the time of filing the naturalization application, except for the residence and physical presence requirements.

Prior to the enactment of the overseas provisions in 2008, with some exceptions, a service member’s LPR spouse residing abroad with the service member had to apply for naturalization through expedited naturalization provisions. This applied to a spouse who was eligible through the general provision or through 3 years of marriage to a U.S. citizen but whose time abroad rendered him or her unable to meet the respective continuous residence or physical presence requirements.

An LPR filing as the spouse of a service member residing abroad was exempt from the continuous residence and physical presence requirements, but he or she was still required to return to the United States for his or her interview, naturalization, and any other related procedure. The overseas naturalization provisions allows such an LPR spouse to apply for naturalization from abroad and complete any procedure relating to his or her application for naturalization while residing abroad.

5. Application and Filing

*Form N-400, Application for Naturalization*

Eligible spouses of members of the U.S. armed forces who live abroad and want to naturalize abroad should submit an Application for Naturalization (Form N-400) in accordance with the instructions on the form and with appropriate fee.

Spouses should indicate that they seek to naturalize through the general provision or on the basis of their marriage to a U.S. citizen for 3 years and to rely on INA 319(e) to meet the applicable continuous residence and physical presence requirements. Spouses should also write in: “319(e) Overseas Naturalization,” if so desired. Only those eligible spouses who prefer naturalization abroad should apply for that option. Spouses who prefer to apply for naturalization in the United States may still elect to do so.

*Form DD-1278, Certificate of Overseas Assignment to Support Application to File Petition for Naturalization*

Spouses should include Form DD-1278 along with their naturalization application. Form DD-1278 must be completed and signed by the military official certifying the applicant has “concurrent travel orders” and is authorized to join their spouse military service member abroad.

*Fingerprint Cards (FD258)*

The spouse should submit two completed fingerprint cards (FD-258). Spouses applying overseas must have their fingerprints taken at a U.S. military base, an overseas USCIS field office, or an American Embassy/Consulate. Spouses applying in the United States must have their fingerprints taken at a USCIS Application Support Center.

*Filing Location*

The spouse should review and submit his or her application in accordance with the form instructions. USCIS will permit spouses who are residing abroad and eligible for the provisions under INA 319(e) to file their naturalization applications with the USCIS overseas office having jurisdiction over the spouse’s overseas residence.
C. Children of Military Members[32]

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for children of service members. The paragraphs that follow the table provide further guidance on each provision.

Residence, Lawful Admission, and Citizenship and Naturalization for Children of Members of the U.S. Armed Forces Outside the United States

<table>
<thead>
<tr>
<th>INA Section[33]</th>
<th>Place of Residence</th>
<th>Lawful Admission</th>
<th>Treatment of Time Residing Outside the United States</th>
<th>Automatic Citizenship or Naturalization Outside the United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>320</td>
<td>United States (or certain children residing outside the United States with a parent who is a member of the U.S. armed forces or spouse of a member of the U.S. armed forces[34])</td>
<td>Must be LPR</td>
<td>Must reside with U.S. citizen parent in the United States</td>
<td>May acquire automatic citizenship (must take oath and be issued the Certificate of Citizenship in the United States)</td>
</tr>
<tr>
<td>322</td>
<td>Outside the United States</td>
<td>No lawful admission required if child meets INA 322(d) requirements</td>
<td>Must reside with U.S. citizen parent stationed outside of the United States</td>
<td>Children who have not already acquired citizenship under INA 320, must apply, but may complete entire naturalization process from outside the United States (must take oath before 18th birthday)</td>
</tr>
</tbody>
</table>

1. Children of Service Members Residing in the United States (INA 320)

Children of members of the U.S. armed forces residing in the United States may automatically acquire citizenship.[35] The child must be under 18 years of age and must be an LPR in order to qualify. In order to obtain a Certificate of Citizenship, a child who has automatically acquired citizenship must follow the instructions on the Application for Certificate of Citizenship (Form N-600).[36]

2. Children of Service Members Residing Abroad (INA 322)

In general, INA 322 provides that a parent who is a U.S. citizen (or, if the citizen parent has died during the
preceding 5 years, a citizen grandparent or citizen legal guardian) may apply for naturalization on behalf of a child born and residing outside of the United States who has not acquired citizenship automatically under INA 320. The child must naturalize before he or she reaches 18 years of age.

The general criteria to qualify under INA 322 include that the child must be temporarily present in the United States pursuant to a lawful admission in order to complete the naturalization. The child’s qualifying U.S. citizen parent must also have been physically present in the United States or its outlying possessions for at least 5 years (2 of which after the age of 14).[37]

On January 28, 2008, INA 322 was amended to permit certain eligible children of members of the armed forces to become naturalized U.S. citizens without having to travel to the United States for any part of the naturalization process.[38]

The amendments benefit children of U.S. citizen members of the military who are accompanying their parent abroad on official orders.[39] Specifically, INA 322(d) provides that:

- Such children are not required to have a lawful admission or be present in the United States; and
- The U.S. citizen service member who is the child’s parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.

These benefits are available only to biological, legitimated, or adopted children of U.S. citizen members of the U.S. armed forces and do not apply to step-children of the U.S. citizen parent. This is because the definition of “child” applicable to citizenship and naturalization provisions does not include step-children. The biological or legitimated child of a U.S. citizen parent (and member of the U.S. armed forces) must meet the requirements in INA 101(c)(1). An adopted child must meet the requirements for adopted children.[40]

USCIS will ensure that the child of a member of the U.S. armed forces is not already a U.S. citizen (has not acquired automatic citizenship[41]) prior to making a determination that he or she qualifies for naturalization through INA 322.

3. Lawful Admission and Maintenance Status Not Required (INA 322(d))

The child of a service member who is residing abroad with the service member per official orders is exempt from the temporary physical presence, lawful admission, and maintenance of lawful status requirements.[42]

4. Treatment of Physical Presence of U.S. Citizen Parent Residing Abroad

Any period of time the U.S. citizen service member who is the child’s parent is residing or has resided abroad will be treated as physical presence in the United States if:

- The child is authorized to accompany and reside abroad with the service member per official orders;
- The child is accompanying and residing abroad with the service member; and
- The service member is residing or has resided abroad per official orders.

The first two conditions above are the triggering events that allow any period of time abroad to count as physical presence in the United States for the U.S. citizen parent.[43]

If the child is residing abroad with his or her U.S. citizen parent per official orders at the time of filing
the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K), then any previous time the parent has resided abroad on official orders will be treated as physical presence in the United States regardless of whether the child resided with the parent.

5. Overseas Naturalization for Children Eligible under INA 322

The child of a service member who is on official orders authorizing the child to accompany and reside with that parent is not required to be an LPR or to have any other kind of lawful admission in the United States. The child may complete his or her entire naturalization process, to include filing and oath, while residing abroad. [44]

6. Application and Filing

*Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322*

To apply for citizenship for eligible children who live abroad and meet the requirements under INA 322, applicants must submit an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) in accordance with the instructions on the form and with appropriate fee. [45]

*Evidence of Residence Abroad*

The applicant may show that the child resides abroad on official orders with the U.S. citizen-parent service member by submitting a copy of the PCS orders that include the child’s name.

If the PCS orders do not specifically name the applicant beyond reference to “child” or “dependent,” then also include a copy of the service member’s Form DD1172 (DEERS Enrollment), naming the child.

*Filing Location*

Applicants must submit Form N-600K in accordance with the instructions on the form. USCIS will permit such applications to be filed with the USCIS overseas office having jurisdiction over the applicant’s overseas residence. [46]

D. Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d))

The spouse, child, or parent of a deceased U.S. citizen member of the U.S. armed forces who died during a period of his or her honorable service may be eligible for naturalization as the surviving relative of the service member. This includes surviving relatives of service members who were granted posthumous citizenship. [47]

The surviving spouse must have been living in marital union with the U.S. citizen service member spouse and must not have been legally separated at the time of his or her death. The spouse, however, remains eligible for naturalization if the spouse has remarried since the service member’s death. [48]

The surviving spouse, child, or parent must meet the general naturalization requirements, except for the residence or physical presence requirements in the United States.

Footnotes


[^5] See INA 319(e) and INA 322(d).


[^18] See INA 319(a).


[^22] See INA 319(a).

[^23] See INA 319(b).

[\(^25\)] See INA 319(a).

[\(^26\)] See INA 319(b).

[\(^27\)] See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad, Section F, In the United States for Examination and Oath of Allegiance [12 USCIS-PM G.4(F)].


[\(^29\)] See 8 CFR 103.7.

[\(^30\)] See INA 316(a).

[\(^31\)] See INA 319(a).

[\(^32\)] This section describes certain benefits on residence, lawful admission, and overseas naturalization for children of service members. See Part H, Children of U.S. Citizens [12 USCIS-PM H], for guidance on the general naturalization, residence, and acquisition of citizenship provisions.

[\(^33\)] See 8 CFR 320.2 and 8 CFR 322.2.

[\(^34\)] See INA 320(c).

[\(^35\)] See INA 320.

[\(^36\)] See Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

[\(^37\)] See Part H, Children of U.S. Citizens, Chapter 5, Child Residing Outside of the United States (INA 322), Section C, Physical Presence of the U.S. Citizen Parent or Grandparent [12 USCIS-PM H.5(C)].


[\(^41\)] See INA 320.

[\(^42\)] See INA 322(d). See INA 322(a)(5) for the physical presence, lawful admission, and maintenance of lawful status requirements.

[\(^43\)] See INA 322(a)(2)(A).

[\(^44\)] See INA 322(d).

[\(^45\)] See 8 CFR 103.7.


[\(^47\)] See INA 319(d).
Part J - Oath of Allegiance

Chapter 1 - Purpose and Background

A. Purpose

Before becoming a U.S. citizen, an eligible naturalization applicant must take an oath of renunciation and allegiance (Oath of Allegiance) in a public ceremony. The applicant must establish that it is his or her intention, in good faith, to assume and discharge the obligations of the Oath of Allegiance. The applicant must also establish that his or her attitude toward the Constitution and laws of the United States makes the applicant capable of fulfilling the obligations of the oath.

B. Background

During the naturalization interview, the applicant signs the naturalization application to acknowledge his or her willingness and ability to take the Oath of Allegiance and to accept certain obligations of United States citizenship. Under certain circumstances, an applicant may qualify for a modification or waiver of the oath. In such cases, an officer draws a line through the designated modified portions of the oath and the applicant is not required to recite the deleted portions.

Applicants must generally recite the Oath of Allegiance orally during a public ceremony. Merely signing the naturalization application and a copy of the oath does not make the applicant a U.S. citizen.

C. Legal Authorities

- INA 310; 8 CFR 310.1 – Naturalization authority
- INA 337; 8 CFR 337 – Oath of Renunciation and Allegiance

Footnotes


Chapter 2 - The Oath of Allegiance

A. Oath of Allegiance

In general, naturalization applicants take the following oath in order to complete the naturalization process:

“I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.” [1]

The Oath of Allegiance is administered in the English language, regardless of whether the applicant was eligible for a language waiver. However, an applicant may have a translator to translate the oath during the ceremony. In addition, an applicant may request a modification to the oath because of a religious objection or an inability or unwillingness to take an oath or recite the words “under God.” [2] An applicant or a designated representative may request an oath waiver when the applicant is unable to understand the meaning of the oath.

B. Authority to Administer the Oath

The Secretary of Homeland Security has the authority to administer the Oath and may delegate the authority to other officials within DHS and to other employees of the United States. [3]

The Secretary of Homeland Security has, through the Director of USCIS, delegated the authority to administer the Oath during an administrative naturalization ceremony to certain USCIS officials who can successively re-delegate the authority within their chains of command. [4] For example, the Director delegated this authority to the Deputy Director, District Directors, and Field Office Directors. Field Office Directors may re-delegate the authority by way of a delegation memorandum to other employees within their chains of command, such as supervisory immigration services officers.

In addition, immigration judges may also administer the Oath in administrative ceremonies. During judicial naturalization ceremonies, the judge in the district of proper jurisdiction has exclusive authority to administer the Oath.

C. Renunciation of Title or Order of Nobility

Any applicant who has any titles of heredity or positions of nobility in any foreign state must renounce the title or the position. The applicant must expressly renounce the title in a public ceremony and USCIS must record the renunciation as part of the proceedings. [5] Failure to renounce the title of position shows a lack of attachment to the Constitution.

In order to renounce a title or position, the applicant must add one of the following phrases to the Oath of Allegiance:
• I further renounce the title of (give title or titles) which I have heretofore held; or

• I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged. [6]

An applicant whose country of former nationality or origin abolished the title by law, or who no longer possesses a title, is not required to drop that portion of his or her name that originally designated such title as a part of his or her naturalization. [7]

**Footnotes**


[^3] See INA 103(a)(1)(6). Potential exercise of Oath authority by any of the following needs to be raised through chains of command to USCIS leadership and counsel for consideration: Any elected official, including the President, Vice President, or Members of Congress; military officers; judges (other than immigration judges or judges presiding over judicial ceremonies); or any person outside of USCIS, other than cases clearly involving the Secretary of Homeland Security’s direct use of Oath authority.


**Chapter 3 - Oath of Allegiance Modifications and Waivers**

The table below serves as a quick reference guide on general requirements for oath modifications and oath waiver. The sections and paragraphs that follow the table provide further guidance on each modification and oath waiver.

<table>
<thead>
<tr>
<th>Request</th>
<th>Permitted Modifications to Oath</th>
<th>Testimony or Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Modified Oath for Religious or Conscientious Objections</strong></td>
<td>Deletion of either or both of the following clauses:</td>
<td>Must show opposition to clause (or clauses) based on religious training and belief or deeply held moral or ethical code. Applicant may provide an attestation or witness statement.</td>
</tr>
<tr>
<td></td>
<td>Bearing arms on behalf of the United States if required by law [INA 337(a)(5)(A)]; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Performing noncombatant service</td>
<td></td>
</tr>
</tbody>
</table>
Request | Permitted Modifications to Oath | Testimony or Evidence
---|---|---
Request Permitted Modifications to Oath Testimony or Evidence in the U.S. armed forces when required by law | 
Affirmation of Allegiance in Lieu of Oath | Substitution of the words “solemnly affirm” for the words “on oath” and no recitation of the words “so help me God” | Not Required
Waiver of the Oath | Requirement to take the Oath of Allegiance may be waived | Evaluation by medical professional stating inability to understand (or communicate) the meaning of the oath due to a medical condition

A. Modified Oath for Religious or Conscientious Objections

1. General Modifications to the Oath

An applicant may request a modified oath that does not contain one or both of the following clauses:

- To bear arms on behalf of the United States when required by the law; and
- To perform noncombatant service in the U.S. armed forces when required by the law.

In order to modify the oath, the applicant must demonstrate, by clear and convincing evidence, that he or she is unwilling or unable to affirm to these sections of the oath based on his or her religious training and belief, which may include a deeply held moral or ethical code.

There is no exemption from the clause “to perform work of national importance under civilian direction when required by the law.”

2. Qualifying for Modification to the Oath

Three-part Test

In order for an applicant to qualify for a modification based on his or her “religious training and belief,” the applicant must satisfy a three-part test. An applicant must establish that:

- He or she is opposed to bearing arms in the armed forces or opposed to any type of Service in the armed forces
- The objection is grounded in his or her religious principles, to include other belief systems similar to traditional religion or a deeply held moral or ethical code; and
- His or her beliefs are sincere, meaningful, and deeply held.
The applicant is not eligible for a modified oath when he or she is opposed to a specific war. Religious training or belief does not include essentially political, sociological, or philosophical views. An applicant whose objection to war is based upon opinions or beliefs about public policy and the practicality or desirability of combat, or whose beliefs are not deeply held, does not qualify for the modification of the oath.

Applicant is Not Required to Belong to a Church or Religion

In addition, qualification for the exemption is not dependent upon membership in a particular religious group, nor does membership in a specific religious group provide an automatic modification to the oath. The applicant is not required to:

- Belong to a specific church or religious denomination;
- Follow a particular theology or belief; or
- Have religious training.

However, the applicant must have a sincere and meaningful belief that has a place in the applicant’s life that is equivalent to that of a religious belief.[5] Because of this belief, for example, the applicant’s conscience may not rest or be at peace if allowed to become an instrument of war.[6]

Evidence Establishing Eligibility

An applicant may provide, but is not required to provide, an attestation from a religious organization (or similar organization), witness statement, or any other evidence to establish eligibility. An applicant’s oral testimony or written statement may be sufficient to qualify for the modification. An officer may ask an applicant questions regarding the applicant’s beliefs in order to determine whether the applicant is eligible for the modification of the oath, to include, a review of the following factors:

- General pattern of pertinent conduct and experiences;
- Nature of applicant’s objection and principles on which objection is based;
- Training in the home or a religious organization;
- Participation in religious or other similar activities; and
- Whether the applicant gained his or her ethical or moral beliefs through training, study, self-contemplation, or other activities comparable to formulating traditional religious beliefs in the home or through a religious organization.

An officer must not question the validity of what an applicant believes or the existence or truth of the concepts in which the applicant believes.[7]

Results

Depending on the specific modified oath, USCIS deletes the relevant clauses and the applicant recites the modified form of the oath at the regularly scheduled public naturalization ceremony.[8] An applicant is required to take the full oath if the applicant does not qualify for the modification. Otherwise, the applicant is not eligible for naturalization.

B. Affirmation of Allegiance in Lieu of Oath
An applicant may request an affirmation in lieu of an oath. The applicant may request this affirmation in lieu of an oath for any reason. In these cases:

- The applicant substitutes the words “solemnly affirm” for the words “on oath”; and
- The applicant does not recite the words “so help me God.”

USCIS grants this modification solely upon the applicant’s request. The applicant is not required to establish that the request is based solely on his or her religious training and belief. Applicants are not required to provide any documentary evidence or testimony to support a request to substitute the words “on oath” or “so help me God.”

USCIS must not require the applicant to recite the deleted portions of the Oath of Allegiance at the ceremony. The officer informs the applicant that he or she is not required to recite the deleted portions and that the applicant may take the oath in the modified form.

**C. Waiver of the Oath**

1. **Oath of Allegiance Waiver**

   **Oath Waiver Based on a Medical Disability**

   USCIS may waive the Oath of Allegiance for an applicant who is unable to understand or to communicate an understanding of its meaning because of a physical or developmental disability or mental impairment.

   An applicant for whom USCIS granted an oath waiver is considered to have met the requirement of attachment to the principles of the Constitution of the United States, and be well disposed to the good order and happiness of the United States for the required period.

   In order for USCIS to adjudicate a request for an oath waiver because of a medical disability, an applicant with the assistance of a legal guardian, surrogate, or designated representative must provide a written request and a written evaluation by an authorized medical professional. An applicant is not required to submit a specific form to request an oath waiver. USCIS accepts an oath waiver request at any point of the naturalization process.

   **Oath Waiver for Children under 14 Years of Age**

   The INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath. Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age, at the time of naturalization. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. **Legal Guardian, Surrogate, or Designated Representative**

   When an applicant is unable to undergo any part of the naturalization examination because of a physical or developmental disability or mental impairment, a legal guardian, surrogate, or an eligible designated representative completes the naturalization process for the applicant. USCIS waives the Oath of Allegiance and the legal guardian, surrogate, or designated representative attests to the applicant’s eligibility for naturalization. In addition to oath waiver, this process may require accommodations including off-site...
examinations.

For USCIS to adjudicate a request for an oath waiver, an applicant with the assistance of a legal guardian, surrogate, or designated representative, must provide a written request and a written evaluation by an authorized medical professional. USCIS accepts a request for the waiver at any point in the naturalization process until the time of the oath ceremony. As an accommodation, field offices should work with the legal guardian, surrogate, or designated representative before the initial examination to obtain all the necessary documentation.

When an oath waiver is provided, a legal guardian, surrogate, or designated representative signs on behalf of an applicant who is unable to understand or communicate an understanding of the Oath of Allegiance because of a physical or developmental disability or mental impairment. The legal guardian, surrogate, or representative acts on behalf of an applicant with a disability at every stage of the naturalization examination. The legal guardian, surrogate, or representative files the application on behalf of the applicant and must have knowledge of the facts supporting the applicant’s eligibility for naturalization.

The guardian, surrogate, or representative addresses every requirement for naturalization and bears the burden of establishing the applicant’s eligibility for naturalization.

Persons eligible to act on behalf of the applicant include:

- A person who a proper court has designated as the applicant’s legal guardian or surrogate and who is authorized to exercise legal authority over the applicant’s affairs; or
- In the absence of a legal guardian or surrogate, a U.S. citizen spouse, parent, adult son or daughter, or adult brother or sister, who is the primary custodial caregiver and who takes responsibility for the applicant.

USCIS will only recognize one designated representative in the following order of priority:

- Legal guardian or surrogate (highest priority)
- U.S. citizen spouse
- U.S. citizen parent
- U.S. citizen adult son or daughter
- U.S. citizen adult brother or sister (lowest priority)

The person acting on behalf of the applicant must provide proof of legal guardianship, or documentation to establish the familial relationship, such as a birth certificate, marriage certificate, or adoption decree. In addition, the person must provide documentation to establish that he or she has the primary custodial care and responsibility for the applicant (for example, income tax returns, Social Security Administration documents, and affidavits from other relatives). A spouse, parent, adult son or daughter, or adult brother or sister who is not the legal guardian or surrogate must provide evidence of U.S. citizenship.

USCIS continues an application where the family member acting as a designated representative is not a U.S. citizen. USCIS explains to the family member why he or she is not qualified to act as a designated representative and offers the applicant an opportunity to bring another person who may qualify.

3. Written Evaluation
In general, USCIS requires a written evaluation to establish the applicant’s inability to take the Oath of Allegiance. An applicant or designated representative requesting an oath waiver submits a written evaluation completed by a medical professional licensed to practice in the United States.

The written evaluation must:

- Be completed by the medical professional who has had the longest relationship with the applicant or is most familiar with the applicant’s medical history;
- Express the applicant’s medical condition and disability in terms that an officer and the designated representative can understand (except for medical definitions or terms to describe the disability);
- State why and how the applicant is unable to understand or communicate an understanding of the meaning of the Oath of Allegiance because of the disability;
- Indicate the likelihood of the applicant being able to communicate or demonstrate an understanding of the meaning of the Oath of Allegiance in the near future; and
- Be signed by the medical professional completing the written evaluation and contain his or her state license number authorizing the medical professional to practice in the United States.

USCIS will not require medical professionals to provide an explanation of how they reached their diagnosis, a listing of clinical or laboratory techniques used to reach the diagnosis, or supporting documentation to establish the claimed disability. USCIS, however, will require the medical professional to provide a thorough explanation of how the applicant’s disability impairs his or her functioning so severely that the applicant is unable to demonstrate an understanding of the oath requirements or communicate an understanding of its meaning.

USCIS reserves the right to request documentation if there is a question upon examination about the applicant’s disability and ability to understand the oath requirement. If USCIS approves the oath waiver, USCIS does not require the applicant to appear in a public ceremony.

Footnotes

[^1] See INA 337(a)(5)(A) and INA 337(a)(5)(B).

[^2] The Supreme Court has addressed the meaning of “religious training and belief” in the context of exemptions from military service under section 6(j) of the Universal Military Training and Service Act.” See Welsh v. United States, 398 U.S. 333 (1970) (holding that Welsh, who characterized his beliefs as nonreligious and expressed doubt in the existence of a Supreme Being, was entitled to a conscientious objector exemption to military service because his beliefs occupied a parallel place in his life to that of religious convictions); United States. v. Seeger, 380 U.S. 163 (1965) (stating that the applicable test for determining whether someone’s belief was based on religious training and belief was whether the belief was sincere and meaningful and “occup[ied] in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption”). See INA 337(a) which contains virtually the same language regarding religious training and belief as was addressed by the Supreme Court in Welsh and Seeger.


[^7] See United States v. Seeger, 380 U.S. 163 (1965): "The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's 'Supreme Being' or the truth of his concepts. But these are inquiries foreclosed to Government."

[^8] See Chapter 1, Purpose and Background, Section A, Purpose [12 USCIS-PM J.1(A)]. See INA 337. See 8 CFR 337.1(b).

[^9] The INA indicates that the affirmation is requested "by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience." See INA 337(a).


[^12] For information on who is an authorized medical professional, see Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648), Section C, Authorized Medical Professionals [12 USCIS-PM E.3(C)].

[^13] The oath waiver requirements are distinct from the requirements for the medical exception to the English and civics requirements for naturalization under INA 312(b), which requires an applicant to submit a medical exception form. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648) [12 USCIS-PM E.3].


[^16] See Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

[^17] For the definition of an authorized medical professional, see Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648), Section C, Authorized Medical Professionals [12 USCIS-PM E.3(C)].


[^19] A legal guardian or surrogate may act on behalf of an applicant regardless of the legal guardian or surrogate’s immigration status or whether he or she is a family member.

[^20] If there is a conflict in priority between two or more persons seeking to represent the applicant, and the individuals share the same degree of familial relationship, USCIS gives priority to the person who is older.

Chapter 4 - General Considerations for All Oath Ceremonies

A. USCIS Administrative Ceremony

USCIS field offices conduct administrative ceremonies at regular intervals as frequently as is necessary. USCIS must conduct ceremonies in such a manner as to preserve the dignity and significance of the occasion.
In some instances, USCIS offices may conduct daily ceremonies where the examination, adjudication, and the oath take place on the same day. District Directors and Field Office Directors must ensure that administrative ceremonies conducted by USCIS in their districts comply with the USCIS “Model Plan for Naturalization Ceremonies.”[^1]

An applicant must appear in person at a public ceremony unless USCIS excuses the appearance. USCIS designates the time and place for the ceremony and conducts the ceremony within the proper jurisdiction. USCIS presumes an applicant to have abandoned his or her naturalization application when the applicant fails to appear for more than one oath ceremony.[^2] In such cases, USCIS executes and issues a motion to reopen and may deny the application if the applicant has not responded within 15 days.[^3]

**B. Derogatory Information Received before Oath or Failure to Appear**

An officer must execute a motion to reopen a previously approved naturalization application if:

- USCIS receives or identifies disqualifying derogatory information about the applicant after approval of his or her application prior to the administration of the Oath of Allegiance;[^4] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause.[^5]

USCIS notifies the applicant in writing about the receipt of derogatory information or multiple failures to appear through the motion to reopen. The applicant has 15 days to respond to the motion to reopen and overcome the derogatory information or provide good cause for failing to appear at the Oath ceremony.[^6]

USCIS must not schedule an applicant for the administration of the Oath of Allegiance if USCIS receives or identifies disqualifying derogatory information. USCIS must not administer the Oath of Allegiance to the applicant until the matter is resolved favorably.

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer approves the application and schedules the applicant for the Oath of Allegiance. If the applicant is unable to overcome the derogatory information, the officer grants the motion to reopen and denies the application on its merits.[^7]

An applicant who fails to appear for at least two ceremonies to administer the Oath of Allegiance, without good cause, abandons his or her intent to be naturalized. USCIS considers multiple failures to appear to be equivalent to receipt of derogatory information after the approval of a naturalization application.[^8]

**Footnotes**

[^1]: See Chapter 5, Administrative Naturalization Ceremonies [12 USCIS-PM J.5].

[^2]: See 8 CFR 337.10.

[^3]: See Part B, Naturalization Examination, Chapter 5, Motion to Reopen [12 USCIS-PM B.5]. See 8 CFR 335.3(a) and 8 CFR 337.
Chapter 5 - Administrative Naturalization Ceremonies

USCIS is committed to elevating the importance of the naturalization ceremony as a venue to recognize the rights, responsibilities, and importance of citizenship and provide access to services for new citizens. The naturalization ceremony is the culmination of the naturalization process. USCIS aims to make administrative naturalization ceremonies positive and memorable moments in the lives of the participants. USCIS honors the Oath of Allegiance with policies and practices that reflect the importance of the occasion.

The following information provides USCIS officials with guidance for conducting administrative naturalization ceremonies in a meaningful and consistent manner. [1]

A. Materials Distributed

USCIS may distribute materials at administrative naturalization ceremonies, including:

- U.S. Citizenship Welcome Packet (including the President’s Congratulatory Letter);
- American flag;
- Citizen’s Almanac (Form M-76 (PDF)); and

1. Contents of U.S. Citizenship Welcome Packet

USCIS distributes the U.S. Citizenship Welcome Packet (Form M-771) to every naturalization candidate participating in an administrative ceremony in the United States. [2]

The U.S. Citizenship Welcome Packet consists of the following:

- President’s, Secretary’s, or Director of USCIS’ Congratulatory Letter and Envelope;
- Application for U.S. Passport (Form DS-11 (PDF));
- Important Information for New Citizens (Form M-767);
- Oath of Allegiance/The Star Spangled Banner/Pledge of Allegiance Flier (Form M-789);
- Certificate Holder; and
The official congratulatory letters from the President of the United States, Secretary of Homeland Security, or Director of USCIS are the only congratulatory letters USCIS distributes at naturalization ceremonies. Guests, elected officials, other U.S. government entities, and non-governmental organizations may not provide candidates with congratulatory letters within the venue.

2. Distribution of U.S. Citizenship Welcome Packet

USCIS may distribute the U.S. Citizenship Welcome Packet during the check-in process before the naturalization candidate has been administered the Oath of Allegiance but only after a USCIS officer has determined that the applicant is eligible to take the Oath of Allegiance on the day of the ceremony.[3]

The U.S. Citizenship Welcome Packet contains information for naturalized citizens. Before distributing the packet, officers must:

- Make a statement that an applicant does not become a U.S. citizen until he or she takes the Oath of Allegiance, regardless of the contents of the packet;
- Make a general statement about the contents of the packet; and
- Answer the candidates’ naturalization-related questions.

3. The American Flag

Officers distribute the American flag to naturalization candidates. Only USCIS-issued flags made in the United States may be distributed to naturalization candidates.


The Citizen’s Almanac (Form M-76 (PDF) (PDF, 8.53 MB)) and the Pocket-size Declaration of Independence and Constitution of the United States (Form M-654) must be made available to all interested naturalization candidates or newly naturalized citizens at the:

- Check-in process;
- Conclusion of the oath ceremony program; or
- Conclusion of the naturalization examination.

Officers are not required to distribute these publications to each naturalization candidate, but must make the publications available. The items may be placed on a table in an area accessible to the naturalization candidates. USCIS may also inform candidates that both publications are available for download at uscis.gov/citizenship.

5. Other Materials

USCIS field office leadership must consult with the USCIS Office of the Chief Counsel’s Ethics Division to determine whether materials and publications other than the American flag and the contents of the U.S. Citizenship Welcome Packet are appropriate for distribution. Federal workers, including officers, and other invited participants, whether governmental or non-governmental, must never distribute the following within the venue where the USCIS naturalization ceremony is taking place, or anywhere within a federal facility or

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on federal property:

- Partisan publications;
- Publications referencing a specific political group;
- Commercial materials or publications;
- Religious materials or publications; or
- Any promotional or solicitation materials or publications.

Authorized non-U.S. governmental organizations invited by USCIS to distribute materials or publications, such as voter registration organizations, may provide USCIS-authorized materials at the conclusion of the naturalization ceremony.

Similarly, other authorized U.S. government participants, such as the Department of State’s Passport Services Division, the Corporation for National and Community Service, and the Social Security Administration may distribute USCIS-authorized materials within the venue after the USCIS official has concluded the naturalization ceremony. Only USCIS-approved materials and publications may be distributed within the venue once the presiding USCIS official has concluded the naturalization ceremony.

**B. Ceremony Check-In Process**

USCIS officers perform the ceremony check-in process before the start of the ceremony. An officer reviews the responses on each naturalization candidate’s Notice of Naturalization Oath Ceremony (Form N-445) and updates responses as necessary. Once the officer verifies each candidate’s eligibility for naturalization, the officer then collects all USCIS-issued travel documents and lawful permanent resident cards from each candidate.

**C. Ceremony Program**

To standardize the naturalization ceremony experience, unless exempted, USCIS offices follow these steps in all administrative ceremonies:

- Play “Faces of America;”
- Play the national anthem, The Star Spangled Banner, instrumental or vocal version;
- Deliver opening (welcoming) remarks by Master of Ceremonies;
- Announce the “call of countries;”
- Administer the Oath of Allegiance to the naturalization candidates;
- Deliver keynote remarks (USCIS leadership or guest speaker);
- Play Presidential, Secretary’s, or Director of USCIS’ congratulatory remarks;
- Recite the Pledge of Allegiance;
• Deliver concluding remarks (Master of Ceremonies or USCIS field leadership); [9] and

• Present the Certificate of Naturalization (Form N-550) by USCIS leadership or officers. [10]

The Naturalization Ceremony Presentation [11] includes all required video and musical elements the office plays at various points in the naturalization ceremony program.

Field offices may also enhance the ceremony program with additional appropriate elements, such as approved musical selections included in the Naturalization Ceremony Presentation. When USCIS plays musical selections during ceremonies, naturalization applicants are not required to stand or sing.

D. Guest Speakers

USCIS welcomes distinguished community members who are U.S. citizens by birth or naturalization to participate as guest speakers in administrative naturalization ceremonies. A guest speaker may be a:

• Civic leader;

• Government leader;

• Military leader;

• Member of Congress;

• Judge;

• Department of Homeland Security (DHS) official; or

• A person whom USCIS deems appropriate for the occasion.

Local USCIS field leadership must carefully review and select guest speakers based on their relevance to the occasion, with particular focus on their outstanding achievements, contributions to the nation or their community, personal experience, or notable activities as a citizen of the United States.

USCIS field leadership must review the qualifications of any potential guest speaker who is not a DHS employee, and approve his or her role in the program before he or she speaks at an administrative naturalization ceremony. [12] If USCIS headquarters selects a guest speaker for a USCIS field office’s administrative naturalization ceremony, headquarters will review the person’s qualifications before making the recommendation.

It is the responsibility of field leadership of the USCIS office conducting the administrative naturalization ceremony to preserve the importance, dignity, and solemnity of the occasion. After selecting and scheduling a guest speaker, the local field leadership must send the speaker a written notice, which describes USCIS’s expectations regarding the appropriate length and content of remarks. USCIS must advise speakers that appropriate remarks focus on:

• Importance of U.S citizenship;

• New privileges (such as the ability to travel with a U.S. passport, apply for a position in the federal government, and vote in federal elections);

• Responsibilities of U.S. citizenship (such as voting and serving on a jury when requested);
• Civic principles within the U.S. government;
• Civic participation in the local community;
• Importance of swearing allegiance to the United States; or
• Theme of the ceremony.

Inappropriate remarks, including political (partisan or otherwise), religious, or commercial statements, are not permitted. Out of respect for the candidates and other attendees, guest speakers serving in the keynote role should deliver remarks between 5 and 10 minutes in length. If a scheduled guest speaker is unable to participate, USCIS must approve any replacement speaker.

USCIS respects the privacy of applicants and may not release the names or personal information of applicants for naturalization unless the applicant provides consent or disclosure required by law.

E. Participation by Elected Officials and Members of Congress

1. Elected Officials

USCIS must uphold the integrity of each administrative naturalization ceremony and ensure that it is a politically neutral event. The presence of candidates for public office at a naturalization ceremony may create a perception that is inconsistent with USCIS’s obligation of neutrality. Accordingly, candidates for public office, including incumbents, generally may not speak at or participate in an administrative naturalization ceremony starting from 3 months immediately preceding a primary or general election for office.

For example, if the state primary elections are on February 4, 2014, and the state general election is November 3, 2014, a candidate for public office in those primary elections may not be a guest speaker or have another formal participatory role from November 4, 2013 (3 months before the primary election) until after February 4, 2014. A candidate for the general election may not have a participatory role from August 3, 2014 ( months before the general election) until after November 3, 2014.

The 3-month rule does not apply to the President or Vice President of the United States. However, the 3-month rule does apply to Members of Congress. In exceptional circumstances, the USCIS Office of the Chief Counsel’s Ethics Division may authorize exceptions to the 3-month rule if the candidate’s participation, subject to any appropriate conditions, would not unduly compromise the ceremony’s political neutrality and would serve the best interest of USCIS and enhance the ceremony. For any exceptions or issues relating to the 3-month rule, field leadership should contact the Office of Chief Counsel’s Ethics Division.

2. Members of Congress

USCIS congressional liaisons coordinate with USCIS district or field office leadership regarding invitations to and requests from Members of Congress to participate in administrative naturalization ceremonies.

Congressional liaisons and the Field Operations Directorate must provide ample notice when issuing invitations to or responding to requests from Members of Congress to serve as guest speakers in naturalization ceremonies. In the event a Member of Congress is unable to serve as a guest speaker after accepting an invitation to do so, only USCIS may select an appropriate substitute.

When a congressional liaison issues an invitation to a Member’s office, the invitation must include USCIS guidelines for administrative naturalization ceremonies. Members of Congress scheduled to speak at
administrative naturalization ceremonies must follow USCIS’ guidance for guest speakers. [16] Members of Congress may not distribute any materials at a USCIS naturalization ceremony or inside the ceremony venue. [17]

Some members of Congress may ask USCIS to schedule naturalization ceremonies to mark particular dates or events of significance to the United States or the U.S. state being represented. USCIS district office or field office leadership may, at their discretion, honor these requests, subject to restrictions for guest speakers. [18]

District office or field office leadership must decline the request if there is any possibility of the event being seen as a platform for any political, controversial, religious, or commercial message. District office or field office leadership may also decline the request if supporting such a ceremony would negatively impact other activities or otherwise present operational hardships.

When a member of Congress asks USCIS to schedule a naturalization ceremony, USCIS responds in writing. If the request is to be honored, the response will provide expectations and restrictions regarding speech for guest speakers. [19] If the request is to be declined, USCIS will provide a reason and a copy of the ceremony guidance.

Members of Congress and their staff are always welcome to attend a naturalization ceremony as members of the public.

F. Voter Registration After Naturalization Ceremonies

1. Distribution of Voter Registration Applications [20]

The ability to vote in federal elections is both a right and a responsibility that comes with U.S. citizenship. [21] All newly naturalized citizens must be given the opportunity to register at the end of the administrative naturalization ceremony when the new citizen is then eligible to register to vote. [22]

The options for distribution of voter registration applications are (in preferential order):

- State or local government election offices distribute and collect voter registration applications for an election official to review and officially register the person to vote;
- Non-governmental organizations distribute and collect voter registration applications for an election official to review and officially register the person to vote; [23] or
- In the absence of the above options, USCIS provides voter registration applications to all new citizens. USCIS is not responsible for the collection of applications or any other activities related to voter registration.

2. Voter Registration Services

The term “voter registration services” includes one or more of the following activities:

- Distribution of voter registration application forms;
- Assisting interested applicants in completing voter registration application forms;
• Reviewing submitted forms to ensure that each form is complete;
• Collecting completed forms for submission to the local election official; or
• Providing non-partisan educational information on the voting process. [24]

The mechanism for registration may vary by ceremony location, but in every case must take place only after the conclusion of the ceremony, when the candidates are officially U.S. citizens.

If no space is available for governmental or non-governmental entities to provide on-site voter registration services, the USCIS field office distribute voter registration applications to each newly naturalized citizen. [25] USCIS bases a “no space available” determination on the location of the ceremony, the size of the facility, and the number of applicants naturalizing, as well as the layout of the space. “No space available” determinations are made on a case-by-case basis by USCIS field leadership conducting the ceremony.

3. Registration by Non-governmental Organizations

In-person voter registration services by the state or local election office is optimal. If state or local election officials are unable to participate, all interested non-governmental groups may seek the privilege of offering voter registration services at administrative naturalization ceremonies. To qualify, non-governmental organizations must be:

• Non-profit;
• Non-partisan; and
• Approved by USCIS field leadership.

All interested non-governmental organizations seeking to offer voter registration services must submit a written request to the local USCIS Field Office Director at least 60 days prior to the ceremony, including a statement that those participating in the registration process have received proper training on how to register voters. The written request must address all of the criteria indicated below. Field leadership provides a written response to each request after consultation with the USCIS Office of the Chief Counsel’s Ethics Division, at least 30 days prior to the date of the ceremony. [26]

Field leadership must consider requests from all interested non-governmental organizations seeking to participate in the ceremony and must offer equal, non-preferential opportunities to all qualified and approved non-governmental organizations. If multiple organizations seek to provide voter registration services at USCIS administrative naturalization ceremonies, USCIS field leadership may establish a rotating participation schedule.

When USCIS determines that an organization is qualified and is approved to participate in voter registration services at an administrative naturalization ceremony, field leadership sends the organization a letter, listing specific requirements for participation. Field leadership then contacts the organization to determine its availability to participate in scheduled administrative ceremonies.

While participating, non-governmental organizations and their representatives must not:

• Attempt to influence or interfere with a person’s right to register to vote, or to vote; [27]
• Participate in any political activity, partisan or otherwise, regardless of whether the ceremonies take place on federal or non-federal property. [28]
Engage in religious or commercial solicitation or promotion of any kind;

- Discriminate on the basis of race, color, gender, religion, age, sexual orientation, national or ethnic origin, disability, marital status, or veteran status.

- Collect, retain, or share the personal information of those registered to vote at naturalization ceremonies, even if this information is requested on a voluntary basis;

- Use the information provided on voter registration applications for any purpose other than voter registration;

- Alter completed voter registration materials in any manner.

While participating, non-governmental organizations and their representatives must:

- Safeguard all personal information new citizens provide for voter registration;

- Follow scheduling and logistical requirements set forth by USCIS field leadership;

- Have received recent proper training on how to register voters;

- Receive an on-site briefing from field leadership regarding rules for that particular facility;

- Wear professional attire and represent themselves and their organization professionally; and

- Wear nametags that include the name of the organization while registering voters (no other identification of the organization may be worn or displayed).

4. Revocation of Participation Privilege

If a non-governmental organization fails to comply with the above requirements for participation, field leadership, in consultation with the USCIS Office of the Chief Counsel’s Ethics Division, may revoke the privilege to participate and exclude the organization from participating in future administrative naturalization ceremonies.

In addition, if a USCIS official receives a complaint from a newly naturalized citizen, guest of a newly naturalized citizen, or the state or local election office regarding an organization’s inappropriate behavior or lack of ability to properly provide voter registration services, field leadership, in consultation with the USCIS Office of Chief Counsel’s Ethics Division, may revoke the privilege to participate upon appropriate inquiry and review of the circumstances.

5. Points-of-Contact for Voting and Voter Registration

If naturalized citizens have questions regarding voting and voter registration, USCIS refers them to:

- The governmental or non-governmental organization offering voter registration services on-site;

- Other information resources within the local area; or

- The official USA.gov Register to Vote government web site.

G. Services Provided by Other Government Entities

AILA Doc. No. 19060633. (Posted 3/26/21)
Federal entities, such as the Department of State’s Passport Services Division, the Corporation for National and Community Service, and the Social Security Administration, as well as state and local governments, may be authorized to provide information and make services available to newly naturalized citizens and their guests at the conclusion of the administrative naturalization ceremony.[32] Governmental entities that desire representation at administrative naturalization ceremonies must seek advance approval from field leadership of the USCIS office conducting the ceremony.

H. Participation of Volunteers and Civic Organizations

Field leadership may permit volunteers from the community, community-based organizations, and civic organizations to participate in various roles during the administrative naturalization ceremony. For example, Field leadership may have the U.S. armed forces color guard perform the presentation of colors and the national anthem or have volunteers lead the Pledge of Allegiance.

Field leadership will determine the appropriate level of participation for the occasion. However, under no circumstances will any non-USCIS employee perform any USCIS function.[33]

Field leadership must review the qualifications, designate the level of participation, and oversee the participation of all volunteers and organizations during the administrative naturalization ceremony. In addition, non-USCIS participants must not engage in political, religious, or commercial activity of any kind.

I. Offers to Donate Use of Facilities

USCIS must use neutral facilities that are not specific to any religion, commercial enterprise, or political affiliation. In addition, administrative naturalization ceremonies should not be held as a part of, or in conjunction with, conventions or conferences.

USCIS must maintain the importance, dignity, and solemnity of naturalization ceremonies. Administrative naturalization ceremonies should always be the focus and main event, and should always be the held at facilities that are neutral and appropriate. USCIS may not use:

- Religious facilities (for example, space in or connected to a place of worship);
- Facilities of an organization that practices immigration law;
- Facilities of an organization that is active in immigration legislation or political advocacy;
- Facilities of an organization that represents petitioners and applicants before DHS;
- Facilities where USCIS personnel cannot protect secure documents; or
- Facilities that may compromise the importance, dignity, and solemnity of the occasion.

USCIS employees must not solicit a gift (including use of facilities to hold an administrative naturalization ceremony) from any non-federal entity. However, USCIS may accept an unsolicited gift with the concurrence of the USCIS Field Operations Associate Director, the USCIS Office of Chief Counsel’s Ethics Division, and approval of the USCIS Director.

In addition, USCIS must not use a donated facility from a prohibited source to include:

- Persons or organizations seeking official action by USCIS.[35]
• Persons or organizations doing business or seeking to do business with USCIS;

• Persons or organizations regulated by USCIS or DHS; or

• Persons or organizations with interests that may substantially affect the performance or nonperformance of the official duties of USCIS or USCIS employees.

1. Submission of Offer

The donor must submit all required documents to the Field Operations Directorate at least 4 weeks in advance of the ceremony date to guarantee timely processing. The donor must include the following documents in the gift offer request:

• An invitation letter (preferably on the organization’s letterhead);

• A completed Offer of Gift from Non-Governmental Sources (Form G-1194). [36]

In addition to the donor’s submission, an officer must submit the following documents for approval:

• Gift offer memorandum (memo to the USCIS Director from the Field Operations Associate Director, and including the requesting USCIS Region, District, and Field Office); and

• Gift Offer Donation Request (Form G-1477). [37]

2. Review of Offer

After receipt, an authorized official reviews the documents for accuracy and consistency. The following officials then review and consider for approval the gift offer (in order of review):

• USCIS Field Operations, Associate Director;

• USCIS Office of Chief Counsel’s Ethics Division; and

• USCIS Director (final approval).

Field leadership may accept a gift offer or donated facility for ceremony use from a federal, state, or local governmental agency without the approval of the USCIS Director. However, before accepting such an offer, field leadership must consider if acceptance would create a conflict of interest. Field leadership should confer with the Field Operations Directorate at headquarters and the USCIS Office of the Chief Counsel’s Ethics Division before accepting gifts or a donated facility.

3. Rejection of Offer

USCIS may reject an offer of use of facilities if:

• The gift offer would not aid or facilitate the mission of USCIS and DHS;

• The acceptance of the gift would create or appear to create a conflict of interest or appearance of a conflict of interest;

• The donor seeks to obtain or conduct business with USCIS or DHS;
• The donor conducts operations or activities that are regulated by USCIS or DHS;

• The acceptance of the gift or use of the donated facility would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out USCIS and DHS responsibilities or official duties in a fair and objective manner;

• The acceptance of the gift or use of the donated facility would compromise the integrity or the appearance of the integrity of USCIS or DHS programs or any official involved in those programs;

• The acceptance of the gift or use of the donated facility would violate, or create the appearance of a violation of the Hatch Act;[38]

• The acceptance of the gift or use of the donated facility might reasonably create the appearance of preferential treatment or official endorsement of an outside entity; or

• The acceptance of the gift or use of the donated facility would be inconsistent with USCIS’ interest in upholding the importance, dignity, and solemnity of the occasion.

The authorized agency officials may consider various factors, including the following, in their determination:

• The identity of the donor;

• The purpose of the gift as described in any written statement or oral proposal by the donor;

• The monetary or estimated market value or the cost to the donor;

• The identity of any other expected recipients of the gift on the same occasion, if any;

• The timing of the gift;

• The number of times the donor has offered gifts to USCIS;

• The nature and sensitivity of any matter pending before the agency that may affect the interest of the donor;

• The importance or consequence of an individual employee's role in any matter affecting the donor (for example, if benefits of the gift will accrue to the employee); and

• The nature of the offered gift.

At the end of the gift offer process, USCIS provides notification of the acceptance or rejection of the gift offer to the appropriate person or organization.

J. Coordination with External Organizations

When USCIS hosts an administrative naturalization ceremony[39] in which an external organization (such as another federal agency or a local community-based organization) plays a role,[40] USCIS is ultimately responsible for ensuring that the event is important, dignified, and solemn. While USCIS welcomes participation from external organizations, USCIS does not formally co-host ceremonies with external organizations. The naturalization ceremony must always be the focus of any program.
1. USCIS Responsibilities

In conducting administrative ceremonies, USCIS is responsible for the following:

- Approving the ceremony facility – USCIS follows internal policies and procedures regarding the use of space, including donations of space. Prior to selecting the facility, USCIS reserves the right to conduct a site visit of the proposed space.

- Planning the ceremony – USCIS determines the ceremony program, including the order of events, the order of speakers, and the seating arrangements of the speakers on stage.

- Ensuring the ceremony remains the focus of the event.

- Ensuring proper use and placement of the DHS seal and signature according to approved guidelines. When coordinating with an external entity, USCIS must avoid perceived endorsement.

- Selecting, inviting, and approving guest speakers – USCIS must approve all guest speakers. While the collaborating organization may recommend guest speakers to USCIS, the selection is at the discretion of USCIS. USCIS may request to review guest speaker remarks in advance of the ceremony for content and length. Inappropriate remarks, including political (partisan or otherwise), commercial, or religious statements, are not permitted.

- Determining which naturalization candidates will participate in the ceremony – Organizations may not request that specific lawful permanent residents (LPRs) be naturalized at any ceremony (for example, only LPRs from a particular country). USCIS does not consider such requests, which may create a conflict of interest or the appearance of preferential treatment to specific LPRs.

- Ensuring that voter registration applications are offered to new citizens at the end of the ceremony.

- Selecting and approving organizations requesting to distribute voter registration applications, and the methods by which such efforts are to be conducted.

- Preserving the importance, dignity, and solemnity of naturalization ceremonies.

USCIS may brief all ceremony participants on expected behavior.

2. External Organizations

The external organization is responsible for:

- Following all USCIS policies and procedures, including guidance from field leadership.

- Coordinating with USCIS on media coverage of the naturalization ceremony.

- Seeking approval from USCIS prior to distributing any materials at the ceremony. If the external organization wishes to distribute American flags to ceremony guests, those flags should be made in the United States. USCIS provides flags for all naturalization candidates.

3. Conferences and Conventions

USCIS may not schedule a ceremony as part of, or in conjunction with, another organization’s event, including conferences or conventions. USCIS may determine it is operationally feasible to hold a
naturalization ceremony in which conference or convention participants are invited to attend, but the ceremony must remain a separate event.

**Footnotes**

[^1] This guidance applies only to administrative naturalization ceremonies involving an Application for Naturalization (Form N-400) where a USCIS-designated official or an immigration judge administers the Oath of Allegiance. The guidance does not apply to administrative ceremonies involving children obtaining evidence of citizenship -- Application for Citizenship (Form N-600) or Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) – or judicial naturalization ceremonies where a federal, state, or local court administers the Oath of Allegiance.

[^2] To the extent practicable, U.S. Citizenship Welcome Packet (Form M-771) will also be distributed to candidates participating in naturalization ceremonies overseas, subject to circumstances such as the location of the ceremony and the capacity of the military member to carry the materials.


[^4] USCIS offices are exempt from implementing the ceremony program when conducting a home visit, or an expedited administrative naturalization ceremony. See Chapter 6, Judicial and Expedited Oath Ceremonies [12 USCIS-PM J.6].

[^5] USCIS offices may incorporate a live performance as an alternative to the version on the video. If any proprietary versions of the national anthem, or any other songs, are being used, the user must ensure that the intellectual property rights of the holder(s) are respected, and the necessary legal permissions are acquired.

[^6] Opening (welcoming) remarks include, but are not limited to, an introduction of ceremony principals and an overview of the ceremony program.

[^7] The designated official reads aloud a list of countries represented by the naturalization candidates’ former nationalities.


[^9] Concluding remarks may include, but are not limited to, expressing appreciation to those family and friends in attendance, acknowledging the achievement of the naturalized citizens, announcing the services of those governmental and non-governmental entities in attendance, and explaining the distribution method for the certificates of naturalization.

[^10] Only USCIS leadership and officers may present the Certificates of Naturalization to the naturalized U.S. citizens.

[^11] The presentation is provided to all field offices in an electronic format and includes a PowerPoint and video materials.

[^12] Certain prominent guest speakers, which may include elected officials and cabinet members, should receive their invitation to speak from USCIS leadership at headquarters. Therefore, local field leadership should coordinate with headquarters as early as possible and list ceremony details in the National Ceremony Scheduler.
If a guest speaker makes inappropriate remarks during an administrative naturalization ceremony, field leadership should inform the speaker and notify the appropriate USCIS supervisor or manager. If the guest speaker does not indicate a willingness to modify his or her remarks in the future, field leadership should not accept requests from the person to speak at future administrative naturalization ceremonies.


See Chapter 5, Administrative Naturalization Ceremonies [12 USCIS-PM J.5].

See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

See Section A, Materials Distributed, Subsection 5, Other Materials [12 USCIS-PM J.5(A)(5)].

See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

See the U.S. Election Assistance Commission.


Non-governmental organizations must be qualified and approved according to the criteria in Subsection 3, Registration by Non-governmental Organizations [12 USCIS-PM J.5(F)(3)].

See 52 U.S.C. 20506.

If a field office is unable to distribute voter registration forms in any of the above three manners, field leadership must notify their chain of command within the Field Operations Directorate.

USCIS may approve the request on a one-time or standing basis, but USCIS may remove the organization at any time if the organization does not meet the participation requirements.


Political activity includes activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. For this purpose, political activity also includes advocacy for particular referenda or other political propositions. For example, a non-governmental group participating in voter registration activities at an administrative naturalization ceremony may not provide information for or against a state immigration law or proposition. The organization’s activities while participating must also comply with the Hatch Act, 5 U.S.C. 7321-26. See 52 U.S.C. 20506(a)(5)(B).


Strict civil or criminal penalties may be imposed for the unauthorized purchase and use of voter registration information.

See 52 U.S.C. 20702 (regarding the theft, destruction, concealment, mutilation, or alteration of voter records).

The conclusion of the ceremony is after the Master of Ceremonies (USCIS official) has dismissed the new citizens.
For example, volunteers must not perform any of the USCIS employee’s duties within the ceremony check-in process.

This includes any type of indoor or outdoor facility.

Such as by representing applicants or petitioners before USCIS or by contracting with USCIS.

USCIS provides Form G-1194 to the donor.

See Form G-1477. USCIS Office of Chief Counsel’s Ethics Division and the USCIS Director must both sign the form.

See 5 U.S.C. 7321-7326.

See Chapter 6, Judicial and Expedited Oath Ceremonies [12 USCIS-PM J.6] for information on non-administrative ceremonies.

External organizations may support USCIS naturalization ceremonies in one or more of the following ways: participating in the event agenda as determined by USCIS; promoting the event within the community; and offering to donate a neutral space in which to hold the naturalization ceremony. See Section I, Offers to Donate Use of Facilities [12 USCIS-PM J.5(I)].

See Section I, Offers to Donate Use of Facilities [12 USCIS-PM J.5(I)].

See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

See Section F, Voter Registration Services [12 USCIS-PM J.5(F)].

Chapter 6 - Judicial and Expedited Oath Ceremonies

A. Judicial Oath Ceremony

An applicant may elect to have his or her Oath of Allegiance administered by the court or the court may have exclusive authority to administer the oath. In these instances, USCIS must notify the clerk of court, in writing, that the Secretary of Homeland Security has determined that the applicant is eligible to naturalize.

After administering the Oath of Allegiance, the clerk of court must issue each person who appeared for the ceremony a document indicating the court administered the oath. In addition, the clerk must issue a document indicating that the court changed the applicant’s name (if applicable).

B. Expedited Oath Ceremony

An applicant may request, with sufficient cause, that either USCIS or the court grant an expedited oath ceremony. In determining whether to grant an expedited oath ceremony, the court or the USCIS District Director may consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to: 
A serious illness of the applicant or a member of the applicant's family;

A permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;

The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony improper; or

An urgent or compelling circumstances relating to travel or employment determined by the court or USCIS to be sufficiently meritorious to warrant special consideration.

USCIS may seek verification of the validity of the information provided in the request. If the applicant is waiting for a court ceremony, USCIS must promptly provide the court with a copy of the request without reaching a decision on whether to grant or deny the request.

Courts exercising exclusive authority may either hold an expedited oath ceremony or, if an expedited judicial oath ceremony is impractical, refer the applicant to USCIS. In addition, the court must inform the District Director, in writing, of the court’s decision to grant the applicant an expedited oath ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

Footnotes

[^1] See INA 310(b).


Part K - Certificates of Citizenship and Naturalization

Chapter 1 - Purpose and Background

A. Purpose

All applicants who meet the eligibility requirements to derive or acquire citizenship or to become naturalized United States citizens are eligible to receive a certificate from USCIS documenting their U.S. citizenship. The burden of proof is on the applicant to establish that he or she has met all of the pertinent eligibility requirements for issuance of a certificate.

- The Certificate of Citizenship is an official record that the applicant has acquired citizenship at the time of birth or derived citizenship after birth.
- The Certificate of Naturalization is the official record that the applicant is a naturalized U.S. citizen.

USCIS strictly guards the physical security of the certificates to minimize the unlawful distribution and fraudulent use of certificates.
B. Background

In general, in order to obtain either a Certificate of Citizenship or a Certificate of Naturalization from USCIS, a person must:

- File the appropriate form and supporting evidence;
- Appear for an interview before an officer, if required;
- Meet the pertinent eligibility requirements, as evidenced by USCIS approval of the form; and
- Take the Oath of Allegiance, if required.

USCIS District Directors, Field Office Directors, and other USCIS officers acting on their behalf, have delegated authority to administer the Oath of Allegiance in USCIS administrative oath ceremonies and to issue certificates. [5]

C. Legal Authorities

- **INA 310(b)(4); 8 CFR 310** – Naturalization authority and issuance of certificates
- **INA 332(e); 8 CFR 332** – Issuance of Certificates of Citizenship and Naturalization
- **INA 338; 8 CFR 338** – Contents and issuance of Certificate of Naturalization
- **INA 340(f); 8 CFR 340** – Cancellation of certificate after revocation of naturalization
- **INA 341; 8 CFR 341** – Certificates of Citizenship
- **INA 342; 8 CFR 342** – Administrative cancellation of certificates, documents, or records

Footnotes

[^1] The *Immigration and Nationality Act* (INA) defines naturalization as the “conferring of nationality of a state upon a person after birth, by any means whatsoever.” See INA 101(a)(23). Accordingly, any person who obtains citizenship after birth, even if that citizenship is obtained by automatic operation of law, such as under INA 320, is a “naturalized” citizen under the law. For ease of reference, this volume uses the term naturalized citizen to refer to those persons who do not acquire automatically but instead file an Application for Naturalization (Form N-400) and proceed through the naturalization process in their own right.

[^2] A person who automatically acquires citizenship may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.


[^4] See the relevant Volume 12 [12 USCIS-PM] part for the specific eligibility requirements pertaining to the particular naturalization provision, to include Part D, General Naturalization Requirements [12 USCIS-PM D]; Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; and Part I, Military Members and their Families [12 USCIS-PM I].
Chapter 2 - Certificate of Citizenship

A. Eligibility for Certificate of Citizenship

In order to obtain a Certificate of Citizenship, an applicant submits to USCIS:

- An Application for Certificate of Citizenship (Form N-600), if the applicant automatically acquired or derived citizenship at birth or after birth;\(^ {2} \) or
- An Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) for a child of a United States citizen residing outside of the United States.

The application must be submitted in accordance with the form instructions and with the appropriate fee.\(^ {3} \) In addition, applications must include any supporting evidence. An Application for Citizenship and Issuance of Certificate Under Section 322 may only be filed if the child is under 18 years of age. An Application for Certificate of Citizenship may be filed either before or after the child turns 18 years of age.

If the person claiming citizenship is 18 years of age or older, the person must establish that he or she has met the eligibility requirements for U.S. citizenship and issuance of the certificate. If the application is for a child under 18 years of age, the person applying on behalf of the child must establish that the child has met the pertinent eligibility requirements.\(^ {3} \)

B. Contents of Certificate of Citizenship

1. Information about the Applicant

The Certificate of Citizenship contains information identifying the person and confirming his or her U.S. citizenship. Specifically, the Certificate of Citizenship contains:

- USCIS registration number (A-number);
- Complete name;
- Marital status;
- Place of residence;
- Country of birth;\(^ {4} \)
- Photograph;
- Signature of applicant; and
- Other descriptors: sex, date of birth, and height.

2. Additional Information on Certificates of Citizenship
Certificate number;

Statement by the USCIS Director indicating that the applicant has complied with all the eligibility requirements for citizenship under the laws of the United States;

Date on which the person became a U.S. citizen;

Date of issuance; and

DHS seal and Director’s signature as the authority under which the certificate is issued.

3. Changes to Names or Dates of Birth per Court Order

Change to Date of Birth on Certificate of Citizenship

USCIS recognizes that the dates of birth of children born abroad are not always accurately recorded in the countries in which they were born. For example, an adopted child whose date of birth (DOB) was unknown may have been assigned an estimated DOB, or the DOB may have been incorrectly recorded or translated from a non-Gregorian calendar. In these cases, the incorrect or estimated DOB is reported on the child’s foreign record of birth and becomes part of the USCIS record. Once in the United States, parents may obtain medical evidence indicating that the DOB on the foreign record of birth and the USCIS record is incorrect and they may choose to obtain evidence of a corrected DOB from the state of residence.

USCIS issues a Certificate of Citizenship with the corrected DOB in cases where the applicant (or if the applicant is under age 18, the parent or legal guardian) has obtained a state-issued document from the child’s state of residence with a corrected DOB. A state-issued document includes a:

- Court order;
- Birth certificate;
- Certificate recognizing the foreign birth;
- Certificate of birth abroad; or
- Other similar state vital record issued by the child’s state of residence.

In cases where USCIS has already issued the Certificate of Citizenship, the applicant may request a replacement Certificate of Citizenship with a corrected DOB by filing an Application for Replacement Naturalization/Citizenship Document (Form N-565) with the appropriate fee.

Change of Legal Name on Certificate of Citizenship

In general, a Certificate of Citizenship includes an applicant’s full legal name as the name appears on the applicant’s foreign record of birth. USCIS will issue a Certificate of Citizenship with a name other than that on the applicant’s foreign record of birth in cases where the applicant, or if the applicant is under age 18, the parent or legal guardian, has obtained a U.S. state court order evidencing a legal name change.

If USCIS has already issued the Certificate of Citizenship, the applicant may request a replacement Certificate of Citizenship by filing an Application for Replacement Naturalization/Citizenship Document
(Form N-565) with the appropriate fee.[10]

USCIS does not assist with the processing of name change petitions through the courts for applicants filing an Application for Certificate of Citizenship (Form N-600). An applicant, parent, or legal guardian must file a name change petition with the court having jurisdiction over the matter.

C. Issuance of Certificate of Citizenship

In general, USCIS issues a Certificate of Citizenship after an officer approves the person’s application and the person has taken the Oath of Allegiance, if applicable, before a designated USCIS officer. USCIS will not issue a Certificate of Citizenship to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person’s lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card.[11]

If USCIS waives the oath requirement for a person, USCIS issues the certificate after approval of his or her application for the certificate. In such cases, USCIS issues the certificate in person or by certified mail to the parent or guardian in cases involving children under 18 years of age, or to the person (or guardian if applicable) in cases involving persons 18 years of age or older.[12]

Footnotes

1. [^1] This volume uses the terms “acquired” or “derived” citizenship in cases where citizenship automatically attaches to a person regardless of any affirmative action by that person to document his or her citizenship. See Part H, Children of U.S. Citizens [12 USCIS-PM H].


4. [^4] An applicant who was born in Taiwan may indicate Taiwan as the country of birth on their Form N-400 if he or she shows supporting evidence. Such applicants’ Certificates of Citizenship are issued showing Taiwan as country of birth. USCIS does not issue certificates showing “Taiwan, PRC,” “Taiwan, China,” “Taiwan, Republic of China,” or “Taiwan, ROC.” People’s Republic of China (PRC) is the country name used for applicants born in the PRC.

5. [^5] Most western countries follow the Gregorian calendar. Other countries follow different calendars including the Hebrew (lunisolar calendar); Islamic (lunar calendar); and Julian (solar calendar). The calendars differ on days, months, and years.

6. [^6] See INA 320(d) (relating to cases where persons automatically acquire citizenship under INA 320 based on an adoption or re-adoption in the United States). The Accuracy for Adoptees Act, Pub. L. 113-74 (PDF) (January 16, 2014), added Subsection (d) to INA 320. Cases where the requested DOB would result in the applicant being ineligible for citizenship because the applicant would have aged out should be raised through appropriate channels for consultation with the Office of Chief Counsel (OCC). Additionally, any cases involving particular concerns based on the corrected DOB should also be raised through appropriate channels for consultation with OCC.

8. [^8] A full legal name includes the person’s first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See 6 CFR 37.3; Real ID Act of 2005, Pub. L. 109-13, 49 U.S.C. 30301.


11. [^11] See 8 CFR 341.4. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 322.


Chapter 3 - Certificate of Naturalization

A. Eligibility for Certificate of Naturalization

An applicant submits to USCIS an Application for Naturalization (Form N-400) along with supporting evidence to establish eligibility for naturalization. The application must be submitted in accordance with the form instructions and with appropriate fee.[1] The applicant must establish that he or she has met all of the pertinent naturalization eligibility requirements for issuance of a Certificate of Naturalization.[2]

B. Contents of Certificate of Naturalization

1. Information about the Applicant

The Certificate of Naturalization contains certain required information identifying the person and confirming his or her U.S. citizenship through naturalization. Specifically, the Certificate of Naturalization contains:

- USCIS registration number (A-number);
- Complete name;
- Marital status;
- Place of residence;
- Country of former nationality;[3]
- Photograph;
- Signature of applicant; and
- Other descriptors: sex, date of birth, and height

2. Additional Information on Certificates of Naturalization

- Certificate number;
3. Changes to Names per Court Order

**Change of Legal Name on Certificate of Naturalization**

In general, a Certificate of Naturalization includes an applicant’s full legal name as the name appears on the applicant’s Form N-400. Before naturalization, the applicant may present a valid court order or other proof that the applicant has legally changed his or her name in the manner authorized by the law of the applicant’s place of residence. If the applicant submits such evidence, then USCIS will issue the Certificate of Naturalization in the new name.

If a naturalized individual changes his or her legal name after naturalizing, the individual may file an Application for Replacement Naturalization/Citizenship Document (Form N-565), together with the required fees and proof of the legal change of name. However, USCIS is prohibited from making any changes to an applicant’s name on a Certificate of Naturalization if the applicant now claims that the name sworn to during the naturalization process was not his or her correct name, unless the applicant obtains a legal name change as described above.

**C. Issuance of Certificate of Naturalization**

In general, USCIS issues a Certificate of Naturalization after an officer approves the Application for Naturalization and the applicant has taken the Oath of Allegiance. USCIS will not issue a Certificate of Naturalization to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person’s lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card.

An applicant is not required to take the Oath of Allegiance or appear at the oath ceremony if USCIS waives the oath requirement due to the applicant’s medical disability. In these cases, USCIS issues the certificate in person or by certified mail to the person or his or her legal guardian, surrogate, or designated representative.

**Footnotes**


[^2] See the relevant Volume 12 part for the specific eligibility requirements pertaining to the particular citizenship or naturalization provision, to include Part D, General Naturalization Requirements; Part G, Spouses of U.S. Citizens; and Part I, Military Members and their Families.

[^3] Applicants with Taiwan passports may indicate Taiwan as country of nationality on their Form N-400 (Taiwan passports show “Republic of China”). Such applicants’ Certificates of Naturalization are issued showing Taiwan as country of former nationality. USCIS does not issue certificates showing “Taiwan, PRC,”
“Taiwan, China,” “Taiwan, Republic of China,” or “Taiwan, ROC.” People’s Republic of China (PRC) is the country name used for applicants with PRC passports.


[^5] A full legal name includes the person’s first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See 6 CFR 37.3; Real ID Act of 2005, Pub. L. 109-13, 49 U.S.C. 30301.


[^8] See 8 CFR 338.3. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 329 who qualify for naturalization without being permanent residents.


**Chapter 4 - Replacement of Certificate of Citizenship or Naturalization**

The table below serves as a quick reference guide for requests to replace certificates of citizenship or naturalization. The sections and paragraphs that follow the table provide further guidance.

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<tr>
<th>Basis for Requests of Replacement Certificate of Citizenship or Naturalization</th>
<th>Form N-565</th>
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<td>Certificate</td>
<td>Correct USCIS Clerical Error</td>
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<tr>
<td>Certificate of Citizenship</td>
<td>Permitted; no fee required</td>
</tr>
<tr>
<td>Certificate of Naturalization</td>
<td>Permitted; no fee required</td>
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**A. General Requests to Replace Certificate of Citizenship or Naturalization**

In general, an applicant submits to USCIS an Application for Replacement Naturalization/Citizenship Document (Form N-565) to request a replacement Certificate of Citizenship or Certificate of Naturalization.
The application must be submitted with the appropriate fee and in accordance with the form instructions.[1]

A person may request a replacement certificate to replace a lost or mutilated certificate. A person may also request a replacement certificate, without fee, in cases where:

- USCIS issued a certificate that does not conform to the supportable facts shown on the applicant’s citizenship or naturalization application; or

- USCIS committed a clerical error in preparing the certificate.[2]

An applicant may submit a request to update his or her name on a Certificate of Naturalization based on a name change ordered by a state court with jurisdiction or due to marriage or divorce.[3] In addition, an applicant who has legally changed his or her gender may apply for a replacement certificate reflecting the new gender.[4]

Unless there is a USCIS clerical error, regulations prohibit USCIS from making any changes to a date of birth on a Certificate of Naturalization if the applicant has completed the naturalization process and sworn to the facts of the application, including the DOB.[5]

**B. Replacement of Certificate of Citizenship**

An applicant may submit an Application for Replacement Naturalization/Citizenship Document (**Form N-565**) to request issuance of a replacement Certificate of Citizenship to correct the DOB or name if the applicant has obtained a state-issued document with a corrected DOB or name. Along with his or her application and the appropriate fee, the applicant must submit the court order or other state vital record.[6]

An applicant may submit an Application for Replacement Naturalization/Citizenship Document (**Form N-565**) to request issuance of a replacement Certificate of Naturalization to correct the date of birth (DOB) if the correction is justified due to USCIS error.[7] No filing fee is required when an application is filed based on a USCIS error.

**Footnotes**


[^4] A request to change the gender on a certificate may also affect the marital status already listed on the certificate. See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 5, Verification of Identifying Information [1 USCIS-PM E.5]. If the gender change results in the individual now being in a valid same-sex marriage, then the certificate must reflect his or her marital status as “married.”

[^5] See 8 CFR 338.5(e). The regulation at 8 CFR 338.5(e) specifically provides that USCIS will not deem a request to change a DOB justified if the naturalization certificate contains the DOB provided by the applicant at the time of naturalization.

3, Changes to Names or Dates of Birth per Court Order [12 USCIS-PM K.2(B)(3)].

[^7] See 8 CFR 338.5(a), 8 CFR 338.5(c), and 8 CFR 338.5(e). For pre-1991 judicial naturalization cases, the regulations provide that USCIS can “authorize” the court to make a change on the certificate if it is the result of clerical error. However, USCIS plays a minimal role in these cases. See 8 CFR 338.5(b) and 8 CFR 338.5(e).

Chapter 5 - Cancellation of Certificate of Citizenship or Naturalization

A. Administrative Cancellation of Certificates[^1]

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate was:

- Illegally or fraudulently obtained; or
- Created through illegality or by fraud. [^2]

USCIS issues the person a written notice of the intention to cancel the certificate. The notice must include the reason or reasons for the intent to cancel the certificate. The person has 60 days from the date the notice was issued to respond with reasons as to why the certificate should not be cancelled or to request a hearing. [^3] A cancellation of certificate under this provision only cancels the certificate and does not affect the underlying citizenship status of the person, if any, in whose name the certificate was issued.

When considering whether to initiate cancellation proceedings, it is important to distinguish between Certificates of Citizenship and Certificates of Naturalization. In general, USCIS issues Certificates of Citizenship to persons who automatically acquire citizenship by operation of law. If it is determined that the person in whose name the Certificate of Citizenship was issued did not lawfully acquire citizenship, USCIS can initiate cancellation proceedings. [^4]

However, such a person may have an additional basis upon which to claim automatic acquisition of citizenship. Accordingly, if that person’s Certificate of Citizenship is cancelled by USCIS, but the person subsequently provides evidence that he or she automatically acquired citizenship through some other basis, the cancellation of the first Certificate of Citizenship does not affect the new citizenship claim.

By contrast, a Certificate of Naturalization cannot be cancelled if issued to a person who lawfully filed an Application for Naturalization and proceeded through the entire naturalization process to the Oath of Allegiance. In such cases, the person obtained citizenship though the entire naturalization process and his or her citizenship status must first be revoked before the Certificate of Naturalization can be cancelled. However, a Certificate of Naturalization illegally or fraudulently obtained by a person who did not lawfully file an Application for Naturalization or who did not proceed through the naturalization process may be cancelled. [^5]

B. Cancellation of Certificate after Revocation of Naturalization

If a court revokes a person’s U.S. citizenship obtained through naturalization, the court enters an order revoking the person’s naturalization and cancelling the person’s Certificate of Naturalization. In such cases, the person must surrender his or her Certificate of Naturalization. Once USCIS obtains the court’s order...
revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person’s revocation of naturalization. All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.

Footnotes

[^1] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3]. A Certificate of Naturalization issued to a person who lawfully filed an Application for Naturalization and proceeded through the naturalization process to the Oath of Allegiance cannot be canceled under INA 342. Officers should consult with local USCIS counsel in such cases.

[^2] See INA 342. Under the same conditions, USCIS may also cancel any copy of a declaration of intention, or other certificate, document, or record issued by USCIS or legacy INS.


Part L - Revocation of Naturalization

Chapter 1- Purpose and Background

A. Purpose

Revocation of naturalization is sometimes referred to as “denaturalization.” Unlike most other immigration proceedings that USCIS handles in an administrative setting, revocation of naturalization can only occur in federal court.

A person’s naturalization can be revoked either by civil proceeding or pursuant to a criminal conviction. For civil revocation of naturalization, the United States Attorney’s Office must file the revocation of naturalization actions in Federal District Court. [1] For criminal revocation of naturalization, the U.S. Attorney’s Office files criminal charges in Federal District Court. [2]

The government holds a high burden of proof when attempting to revoke a person’s naturalization. For civil revocation of naturalization, the burden of proof is clear, convincing, and unequivocal evidence which does not leave the issue in doubt. [3] For criminal revocation of naturalization the burden of proof is the same as for every other criminal case, proof beyond a reasonable doubt.

USCIS refers cases for civil revocation of naturalization when there is sufficient evidence to establish that the person is subject to one of the grounds of revocation.

The general grounds for civil revocation of naturalization are:
• Illegal procurement of naturalization; or
• Concealment of a material fact or willful misrepresentation.

Another ground for revocation of naturalization exists in cases where the person naturalized under the military provisions. In those cases, the person may also be subject to revocation of naturalization if he or she is discharged under other than honorable conditions before serving honorably for five years.

B. Background

On February 14, 2001, a district court issued a nationwide injunction based on a finding that USCIS has no statutory authority to administratively revoke naturalization.\[4\] A person’s naturalization can only be revoked after a final order in a judicial proceeding to revoke his or her naturalization.\[5\] During a revocation of naturalization proceeding, all related documentation from the A-file is subject to discovery.

C. Difference between Revocation and Cancellation of Certificate

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate itself was obtained or created illegally or fraudulently.\[6\] Cancellation of a certificate under this provision only cancels the certificate and does not affect the citizenship status of the person in whose name the certificate was issued.

If someone was unlawfully naturalized or misrepresented or concealed facts during the naturalization process, civil or criminal proceedings must be instituted to revoke the naturalization and the status of the person as a citizen. Once the naturalization is revoked, the court also cancels the person’s Certificate of Naturalization.

The main difference between cancellation and revocation proceedings is that cancellation only affects the document, not the person’s underlying status. For this reason, cancellation is only effective against persons who are not citizens, either because they have not complied with the entire naturalization process or because they did not acquire citizenship under law, but who nonetheless have evidence of citizenship which was fraudulently or illegally obtained.

Where USCIS has affirmatively granted naturalization to a person, that person is a citizen unless and until that person’s citizenship is revoked.\[7\] Revocation, therefore, is appropriate when:

• The person filed an Application for Naturalization (Form N-400);
• The person appeared at the naturalization interview;
• The naturalization application was approved; and
• The person took the Oath of Allegiance for naturalization.

By contrast, a person who illegally obtained a Certificate of Naturalization without going through the naturalization process, and was therefore never naturalized by USCIS, is not a citizen of the United States. While the person has a certificate as evidence of U.S. citizenship, the certificate in and of itself, does not confer the status of citizenship.

In such cases, USCIS can initiate proceedings to cancel the Certificate of Naturalization.\[8\] Because the person holding this certificate did not obtain citizenship based on a USCIS process, the person maintains
D. Legal Authorities

- **INA 340; 8 CFR 340** – Revocation of naturalization
- **INA 342; 8 CFR 342** – Administrative cancellation of certificates, documents, or records

Footnotes


[^7] The revocation must have been pursuant to INA 340(e) or 18 U.S.C. 1425.


Chapter 2 - Grounds for Revocation of Naturalization

In general, a person is subject to revocation of naturalization on the following grounds:

A. Person Procures Naturalization Illegally

A person is subject to revocation of naturalization if he or she procured naturalization illegally. Procuring naturalization illegally simply means that the person was not eligible for naturalization in the first place. Accordingly, any eligibility requirement for naturalization that was not met can form the basis for an action to revoke the naturalization of a person. This includes the requirements of residence, physical presence, lawful admission for permanent residence, good moral character, and attachment to the U.S. Constitution. [^1]

Discovery that a person failed to comply with any of the requirements for naturalization at the time the person became a U.S. citizen renders his or her naturalization illegally procured. This applies even if the person is innocent of any willful deception or misrepresentation. [^2]

B. Concealment of Material Fact or Willful Misrepresentation [^3]
1. Concealment of Material Fact or Willful Misrepresentation

A person is subject to revocation of naturalization if there is deliberate deceit on the part of the person in misrepresenting or failing to disclose a material fact or facts on his or her naturalization application and subsequent examination.

In general, a person is subject to revocation of naturalization on this basis if:

- The naturalized U.S. citizen misrepresented or concealed some fact;
- The misrepresentation or concealment was willful;
- The misrepresented or concealed fact or facts were material; and
- The naturalized U.S. citizen procured citizenship as a result of the misrepresentation or concealment. [4]

This ground of revocation includes omissions as well as affirmative misrepresentations. The misrepresentations can be oral testimony provided during the naturalization interview or can include information contained on the application submitted by the applicant. The courts determine whether the misrepresented or concealed fact or facts were material. The test for materiality is whether the misrepresentations or concealment had a tendency to affect the decision. It is not necessary that the information, if disclosed, would have precluded naturalization. [5]

2. Membership or Affiliation with Certain Organizations

A person is subject to revocation of naturalization if the person becomes a member of, or affiliated with, the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization. [6] In general, a person who is involved with such organizations cannot establish the naturalization requirements of having an attachment to the Constitution and of being well-disposed to the good order and happiness of the United States. [7]

The fact that a person becomes involved with such an organization within five years after the date of naturalization is prima facie evidence that he or she concealed or willfully misrepresented material evidence that would have prevented the person’s naturalization.

C. Other than Honorable Discharge before Five Years of Honorable Service after Naturalization

A person is subject to revocation of naturalization if:

- The person became a U.S. citizen through naturalization on the basis of honorable service in the U.S. armed forces; [8]
- The person subsequently separates from the U.S. armed forces under other than honorable conditions; and
- The other than honorable discharge occurs before the person has served honorably for a period or periods aggregating at least five years. [9]
Chapter 3 - Effects of Revocation of Naturalization

A. Effective Date of Revocation of Naturalization

The revocation of a person’s U.S. citizenship obtained through naturalization is effective as of the original date of naturalization. The person returns to his or her immigration status before becoming a U.S. citizen as of the date of naturalization shown on the person’s Certificate of Naturalization.

B. Cancellation of Certificate of Naturalization

If a court revokes a person’s U.S. citizenship obtained through naturalization, the court enters an order revoking the person’s naturalization and cancelling the person’s Certificate of Naturalization. In such cases, the person must surrender his or her Certificate of Naturalization. Once USCIS obtains the court’s order revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person’s revocation of naturalization. All cases relating to cancellation of certificates should be coordinated through the USCIS Office of Chief Counsel office with jurisdiction.

C. Effects of Revocation on Citizenship of Certain Spouses and Children

1. General Effects of Person’s Revocation on Citizenship of Spouse or Child
In general, certain spouses and children of persons who naturalize may become U.S. citizens through their spouses or parents’ citizenship. A spouse may become a U.S. citizen through the special spousal provisions for naturalization. A child residing in the United States or abroad may become a U.S. citizen through his or her parent’s naturalization. In general, the spouse or child of a person whose citizenship has been revoked cannot become a U.S. citizen on the basis that he or she is the spouse or child of that person.

In addition, the citizen spouse or citizen child of a person whose citizenship has been revoked may lose his or her citizenship upon the parent or spouse’s revocation of naturalization. This depends on the basis of the revocation, and in some cases, on whether the spouse or child resides in the United States at the time of the revocation.

For example, the citizenship of a spouse or child who became a U.S. citizen through the naturalization of his or her parent or spouse is not lost if the revocation was based on illegal procurement of naturalization. The spouse or child’s citizenship may be lost, however, if the revocation was based on other grounds (see below).

In cases where the spouse or child loses his or her citizenship, the spouse or child loses any right or privilege of U.S. citizenship which he or she has, may have, or may acquire through the parent or spouse’s naturalization. The spouse or child returns to the status that he or she had before becoming a U.S. citizen.

2. Citizenship of Spouse or Child is Lost if Revocation for Concealment or Misrepresentation

The spouse or child of a person whose U.S. citizenship is revoked loses his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a U.S. citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked; and
- The parent or spouse’s citizenship was revoked on the ground that his or her naturalization was procured by concealment of a material fact or by willful misrepresentation.

This provision applies regardless of whether the spouse or child is residing in the United States or abroad at the time of the revocation of naturalization.

3. Citizenship of Spouse or Child Residing Abroad is Lost if Revocation on Certain Grounds

The spouse or child of a person whose U.S. citizenship is revoked may lose his or her U.S. citizenship if the spouse or child is residing outside of the United States at the time of revocation. This applies if the revocation was based on becoming a member of certain organizations after naturalization or for separating from the military under less than honorable conditions before serving honorably for five years.

The spouse or child of a person whose U.S. citizenship is revoked under these sections may lose his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked;
- The spouse or child resided outside of the United States at the time of revocation; and
The parent or spouse’s citizenship was revoked on the basis that:

- The person became involved with the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization;[11] or

- The person naturalized on the basis of service in the U.S. armed forces but separated from the military under other than honorable conditions before serving honorably for a period or periods totaling at least five years.[12]

The spouse or child’s loss of citizenship under this provision does not apply if the spouse or child was residing in the United States at the time of revocation.[13]

Footnotes


[^3] USCIS counsel should be contacted in all cases involving possible loss of citizenship by spouses or children of persons whose naturalization has been revoked.


[^7] Officers should consult with local USCIS OCC counsel in any cases involving a spouse’s or child’s revocation of citizenship under this provision.

[^8] See INA 340(a) and INA 340(d).


[^12] See INA 328(f) and INA 329(c). See Part I, Military Members and their Families [12 USCIS-PM I].