U.S. Citizenship and Immigration Services

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

U.S. Citizenship and Immigration Services (USCIS) makes decisions on benefit and service requests that not only affect aliens and their future, but also the well-being of U.S. citizens, families, organizations, businesses, industries, localities, states, the nation, and international communities. Accordingly, USCIS strives to secure America's promise as a nation of immigrants by providing accurate and useful information, promoting awareness and understanding of citizenship rights and responsibilities, and making adjudication decisions in a consistent and accurate manner that furthers the goals and integrity of our nation's immigration system. Our policies drive our benefit and services decisions and ensure that our guidance to USCIS officers who make those decisions reflects our agency's mission, and strategic vision. These policies also greatly affect our interaction with USCIS' diverse stakeholder community.

USCIS has undertaken a comprehensive review of our immigration policies to improve quality, transparency, and efficiency. As a result of this extensive and ongoing review, USCIS has created the USCIS Policy Manual, which 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. The manual is structured to house several volumes pertaining to different areas of immigration benefits administered by the agency such as citizenship and naturalization, adjustment of status, admissibility, protection and parole, nonimmigrants, refugees, asylees, immigrants, waivers, and travel and employment.

The USCIS Policy Manual is organized into different volumes, parts, and chapters that present policies in a logical and sequential manner. The USCIS Policy Manual provides several user-friendly features and enhancements. These features include up-to-the-minute comprehensive policy updates, an expanded table of contents, and links to related Immigration and Nationality Act (INA) sections, Code of Federal Regulations (CFR), and public use forms. The manual is also equipped with a keyword search function, which will make locating policy and related information faster, easier, and less time consuming. Citations of statutes, regulations, case law, authoritative sources, and other explanatory references appear in footnotes rather than the body of the text. Tables and charts supplement and simplify policy information to facilitate understanding of complex topics and instructions.

The USCIS Policy Manual provides transparency, including outlining policies that are easy to understand, while also furthering consistency, quality, and efficiency. The USCIS Policy Manual contains the official policies of USCIS and must be followed by all USCIS officers in the performance of their duties. 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.

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Volume 1 - General Policies and Procedures

Part A - Public Services

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

- Homeland Security Act of 2002, Pub. L. 107–296 (PDF) [4] – Dismantled the INS and created USCIS to enhance the security and efficiency of national immigration services by focusing exclusively on the 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

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1. [^] See Homeland Security Act of 2002, Pub. L. 107–296 (PDF), 116 Stat. 2135 (November 25, 2002).

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

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

4. [^] See Pub. L. 107–296 (PDF), 116 Stat. 2135 (November 25, 2002).

5. [^] See Pub. L. 93-579 (PDF), 88 Stat. 1896 (December 31, 1974).

6. [^] See Section 504 of Pub. L. 93-112 (PDF), 87 Stat. 355, 394 (September 26, 1973).

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 and for E-Verify) – 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]

Footnotes

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1. [^] See the Contact Us page on USCIS' website.

2. [^] The USCIS Policy Manual will ultimately replace the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other policy repositories.

3. [^] See the USCIS website for information on Social Media Policy.

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. [2] 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. [3] 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. [4] 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

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

2. [^] See the USCIS website for more information on Premium Processing Service. See Request for Premium Processing Service (Form I-907).

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]

B. Responding to Service Requests

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.

2. Prioritized Requests

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

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]

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.

Reasonable Accommodation [6]

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

Military Referral

Military referrals have implied urgency based upon the uncertainty of reassignments and deployments.

Footnotes

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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)].

2. [^] See Chapter 6, Disability Accommodation Requests [1 USCIS-PM A.6].

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

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

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].

6. [^] See Chapter 6, Disability Accommodation Requests [1 USCIS-PM A.6].

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.

For more information on how to make an expedite request, see the How to Make an Expedite Request web page.

Footnotes

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

2. [^] The need to obtain employment authorization, standing alone, without evidence of other compelling factors, does not warrant expedited treatment.

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

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1. [^] See Pub. L. 93-112 (PDF) (September 26, 1973).

2. [^] See Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (PDF), 87 Stat. 355, 394 (September 26, 1973), codified at 29 U.S.C. 794(a). See 6 CFR 15.3 for applicable definitions relating to enforcement of nondiscrimination on the basis of disability in Department of Homeland Security (DHS) federal programs or activities, which includes those conducted by USCIS.

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). [2] 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.

Fair Information Practice Principles

DHS Framework for Privacy Policy

Principle	Description
Transparency	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).
Individual Participation	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.
Purpose Specification	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.
Data Minimization	DHS collects only information relevant and necessary to accomplish the purposes specified and special emphasis is placed on reducing the use of sensitive personal information, where practical.
Use Limitation	Any sharing of information outside of the agency must be consistent with the use or purpose originally specified.
Data Quality and Integrity	DHS should, to the extent practical, ensure that PII is accurate, relevant, timely, and complete.
Security	DHS uses appropriate security safeguards against risks such as loss, unauthorized access or use, destruction, modification or unintended or inappropriate disclosure.
Accountability and Auditing	DHS has a number of accountability mechanisms, including reviews of its operations, training for employees, and investigations when appropriate.

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. [6] 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. [7] Change of address requests associated with cases subject to confidentiality provisions must follow separate procedures. [8]

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 web page 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.

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

1. Confidentiality Provisions

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

1. Confidentiality Provisions

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. [24] 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. [25] 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. [26] Information disclosed under the requirements of the TPS confidentiality regulation may be used for immigration enforcement or in any criminal proceeding.

H. Legalization

1. Confidentiality Provisions

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. [27] 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

1. Confidentiality Provisions

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

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1. [^] See Privacy Act of 1974, Pub. L. 93-579 (PDF), 88 Stat. 1896 (December 31, 1974) (codified at 5 U.S.C. 552a (PDF)).

2. [^] See DHS Privacy Policy Guidance Memorandum (PDF), issued April 25, 2017.

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)].

9. [^] See The DHS Policy for Internal Information Exchange and Sharing.

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.

11. [^] See Pub. L. 103-322 (PDF) (September 13, 1994).

12. [^] See Pub. L. 106-386 (PDF) (October 28, 2000).

13. [^] See 8 U.S.C. 1367.

14. [^] See Pub. L. 104-208, 110 Stat. 3009-546, 3009-652 (September 30, 1996).

15. [^] See 13 U.S.C. 8.

16. [^] See 8 U.S.C. 1641(c).

17. [^] This applies to application for relief under 8 U.S.C. 1367(a)(2).

18. [^] See INA 101(i)(1).

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

20. [^] See 8 CFR 208.6.

21. [^] See 8 CFR 208.6.

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.

24. [^] See 8 CFR 244.16 for exceptions.

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).

29. [^] See INA 245A(c)(5)(E).

30. [^] See 13 U.S.C. 8.

31. [^] See INA 210 . This pertains to the 1987-1988 SAW program.

32. [^] See INA 210(b)(6)(D).

33. [^] See INA 210(b)(7).

34. [^] See 8 CFR 274a.12(c)(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.

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:

- 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.

Footnotes

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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]

DHS Office	Phone and Fax	Mail
USCIS OI	202-233-2453 (Fax)	Office of Investigations Attn: Intake Mail Stop: 2275 U.S. Citizenship and Immigration Services 633 Third Street NW, 3rd Floor, Suite 350 Washington, DC 20529-2275

DHS OIG	Toll-free hotline: 800-323-8603 202-254-4297 (Fax)	DHS Office of Inspector General, Mail Stop: 0305 Attn: Office of Investigations - Hotline 245 Murray Lane, SW Washington, DC 20528-0305

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]

DHS Office for Civil Rights and Civil Liberties

Contact Information

Email	Fax	Mail
CRCLCompliance@hq.dhs.gov	202-401-4708	U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties 245 Murray Lane, SW, Building 410 Mail Stop: 0190 Washington, DC 20528

D. Reporting Fraud, Abuse, and Scams

AILA Doc. No. 19060633. (Posted 12/18/19)

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

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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.

4. [^] See Chapter 3, Forms of Assistance, Section C, Telephone [1 USCIS-PM A.3(C)].

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.

11. [^] See How to File a Complaint with the Department of Homeland Security (PDF), issued October 3, 2012.

Part B - Submission of Benefit Requests

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.

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

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1. [^] See 8 CFR 103.2(a)(1).

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.

3. [^] See Pub. L. 55-551 (March 3, 1891).

4. [^] See the USCIS History and Genealogy website for additional information. See Overview of Legacy Immigration and Naturalization Service (INS) History (PDF, 285 KB).

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

Chapter 2 - Signatures [Reserved]

Chapter 3 - Fees

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. That edition has been removed from the USCIS forms website. USCIS has reverted to requiring the 03/13/18 edition of

Form I-912 until further notice. We will also accept prior editions or a written request. As there may be applicants who have prepared the 10/24/19 edition of the fee waiver request, USCIS will accept and process the 10/24/19 edition of the Form I-912 and adjudicate it based on prior fee waiver policy outlined in AFM 10.9 and 10.10.

Requestors must include any required fees with the submission of a benefit request to USCIS.[1] This payment must be in U.S. currency.

The fee amount for each benefit request is controlled by regulation and identified in the corresponding form instructions.[2] The total fee amount for each form is not determined solely by the fee required for the associated form.[3] Additional fees may be required, such as the biometric services fee or the fraud detection and prevention fee.[4] The additional services needed in a given situation dictate which additional fees are added to the total amount. The form instructions for the particular form generally indicate when the parties filing a request must pay an additional fee and the amount of that fee.

USCIS may waive the fee for certain immigration benefit requests when the person requesting the benefit is unable to pay the fee.[5] Certain forms or categories of requestors may also be exempt from fees. The USCIS Fee Schedule (Form G-1055 (PDF, 364 KB)) provides a list of forms and associated fees or exemptions.

A. Fee Submission

Once USCIS receives the proper fee, USCIS accepts the submission of the benefit request and sends the benefit requestor a receipt notice. USCIS rejects submissions that do not contain valid payment of the correct fee amount.[6] If the payment is not collectable and USCIS has approved the benefit request, USCIS may revoke the approval with notice.[7]

If a check is returned for insufficient funds (NSF), USCIS attempts to collect payment from the remitter institution a second time. If the instrument used to pay a fee is returned as unpayable a second time, USCIS rejects the filing and imposes a $30 charge.[8] If the check is returned by the remitter institution for any reasons other than NSF, such as stop payment, fraud, or closed account, the check cannot be submitted a second time. In all applicable cases, USCIS sends a notice regarding any returned checks or unfunded accounts.

B. Paying USCIS Fees [Reserved]

C. Refunds

In general, fees submitted to USCIS are non-refundable, regardless of the ultimate decision on the benefit request. There are a few exceptions to this rule, such as when USCIS made an error that resulted in the unnecessary filing of a form, or the filing of the wrong fee. For example, USCIS refunds the fee if it advises an applicant to file a waiver application on a ground of inadmissibility that is inapplicable to that applicant.

If a benefit requestor believes that he or she is entitled to a refund of a fee, the requestor should contact the USCIS Contact Center, or submit a written request for a refund to the office with jurisdiction over the benefit request.

USCIS reviews the request for a refund and either approves or denies the request based on the available information. If the officer finds USCIS made an error, he or she should complete a Request for Refund of Fee (Form G-266). USCIS then notifies the requestor of its decision on the request.

Failure to Submit Required Initial Evidence

Form instructions provide the initial evidence that a benefit requestor must submit when filing a form. If USCIS denies a benefit request because the requestor failed to submit the required initial evidence, USCIS will also deny a request for a refund of the fee.[9]

Footnotes

1. [^] See 8 CFR 103.7(a)(1).

2. [^] See 8 CFR 103.7(b)(1). See the USCIS website for a complete list of all forms and form instructions.

3. [^] See 8 CFR 103.2(a)(9).

4. [^] See 8 CFR 103.7(b)(1). See 8 CFR 103.7(b)(1)(i)(HHH).

5. [^] See 8 CFR 103.7(c). See also INA 286(m) (authorizing USCIS fees to recover the costs of services provided without charge).

6. [^] See 8 CFR 103.7(a)(2).

7. [^] See 8 CFR 103.7(a)(2).

8. [^] See 8 CFR 103.7(a)(2).

9. [^] See 8 CFR 103.2(b)(8)(ii). A petitioner or applicant may need to provide additional evidence to establish eligibility for the benefit sought at the time of an interview or after USCIS issues a Request for Evidence (RFE).

Chapter 4 - Fee Waivers

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. That edition has been removed from the USCIS forms website. USCIS has reverted to requiring the 03/13/18 edition of Form I-912 until further notice. We will also accept prior editions or a written request. As there may be applicants who have prepared the 10/24/19 edition of the fee waiver request, USCIS will accept and process the 10/24/19 edition of the Form I-912 and adjudicate it based on prior fee waiver policy outlined in AFM 10.9 and 10.10.

Currently, USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee.[1] Applicants, petitioners, and requestors who pay a fee cover the cost of processing requests that are fee-exempt, fee-waived, or fee-reduced.

A. General

1. Eligibility

A benefit requestor may request a fee waiver from USCIS if:

- The benefit requestor is unable to pay the requisite fee, and

- The form is eligible for a fee waiver.

There is no fee required for filing a fee waiver request.

If a benefit request includes both the appropriate filing fee and a fee waiver request, USCIS does not adjudicate the fee waiver request since the person will not be able to establish an inability to pay. In such a case, USCIS deposits the fee and processes the immigration benefit request, if it is otherwise acceptable.

2. Inability to Pay Criteria and Burden of Proof

The burden of proof is on the requestor to establish an inability to pay under USCIS policy. USCIS reviews two criteria to determine an applicant's inability to pay:

- Household income at or below 150 percent of the Federal Poverty Guidelines (FPG); or
- Financial hardship.

For USCIS to find an inability to pay, the officer must reasonably determine that the applicant or petitioner is unlikely to pay the fee based on the evidence.

3. Filing of Fee Waiver Request

To request a fee waiver, a benefit requestor must submit a:

- Request for Fee Waiver (Form I-912); and
- Documentation establishing eligibility based on an inability to pay through one of the two criteria.

The HHS Poverty Guidelines for Fee Waiver Request (Form I-912P) provide the income thresholds per year.

The person requesting the fee waiver must sign the request. A parent or legal guardian may sign for children under 14 years old or for an incapacitated adult for whom he or she is the legal guardian. The person submitting the benefit request on behalf of a child or incapacitated adult must provide evidence of the claimed relationship and authority to sign.

Failure to Meet Other Filing Requirements

USCIS does not review fee waiver requests submitted for benefit requests rejected for reasons unrelated to the fee. For example, USCIS does not review fee waiver requests in cases involving an immigration benefit application that is defective due to a missing signature.

B. Forms Eligible for Fee Waivers

A benefit requestor may only submit a request for a fee waiver for certain forms.[2] There are three general categories of fee waivers allowed for forms:

- General waivers;
- Conditional waivers; and
- Humanitarian waivers.

1. General Waivers

The following table provides a list of forms for which USCIS may waive the fees based on a requestor's inability to pay.

General Fee Waivers
Biometrics services fee (except for the biometric services fee required for an Application for Provisional Unlawful Presence Waiver (Form I-601A) filed under 8 CFR 212.7(e))
Application to Replace Permanent Resident Card (Form I-90)
Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA) (Form I-191)[3]
Petition to Remove Conditions on Residence (Form I-751)
Application for Employment Authorization (Form I-765) (unless filing under category (c)(33), Deferred Action for Childhood Arrivals)
Application for Family Unity Benefits (Form I-817)
Application for Temporary Protected Status (Form I-821)[4]
Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I-881)[5]
Application to File Declaration of Intention (Form N-300)
Request for a Hearing on a Decision in Naturalization Proceedings (Form N-336)[6]
Application for Naturalization (Form N-400)
Application to Preserve Residence for Naturalization Purposes (Form N-470)
Application for Replacement of Naturalization/Citizenship Document (Form N-565)
Application for Certificate of Citizenship (Form N-600)
Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)

2. Conditional Waivers

Certain fee waivers depend on specific conditions. The following tables provide a list of forms for which USCIS may waive fees based on the requestor's inability to pay and meet the specified conditions.

Conditional Fee Waivers
Petition for a Nonimmigrant Worker (Form I-129) for an applicant for E-2 CNMI investor nonimmigrant status under 8 CFR 214.2(e)(23)
Application for Travel Document (Form I-131) for those applying for humanitarian parole
Application for Advance Permission to Enter as Nonimmigrant (Form I-192) for an applicant who is exempt from the public charge grounds of inadmissibility[7]
Application for Waiver of Passport and/or Visa (Form I-193) for an applicant who is exempt from the public charge grounds of inadmissibility[8]
Notice of Appeal or Motion (Form I-290B) if the underlying benefit request was fee exempt, the fee was waived, or it was eligible for a fee waiver

Conditional Fee Waivers
Application to Register Permanent Residence or Adjust Status (Form I-485) for an applicant who is exempt from the public charge grounds of inadmissibility[9]
Application to Extend/Change Nonimmigrant Status (Form I-539) for an applicant with any benefit request as specified by INA 245(l)(7) or an applicant for E-2 Commonwealth of the Northern Mariana Islands (CNMI) investor nonimmigrant status under 8 CFR 214.2(e)(23)
Application for Waiver of Grounds of Inadmissibility (Form I-601) for an applicant who is exempt from the public charge grounds of inadmissibility[10]
Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act (Form I-694) if the underlying application or petition was fee exempt, the filing fee was waived, or was eligible for a fee waiver

As noted in the table above, USCIS may waive fees for a Form I-485 applicant who is exempt from the public charge grounds of inadmissibility.[11] The table below provides a general list of adjustment of status applicants who are exempt from public charge and therefore may qualify for a fee waiver.

Form I-485 Conditional Fee Waivers – Exemption from Public Charge
Asylees[12]
Special immigrant juveniles
Applications under the Cuban Adjustment Act (CAA)[13]
Applications under the Haitian Refugee Immigration Fairness Act (HRIFA)[14]
Applications under the Nicaraguan Adjustment and Central American Relief Act (NACARA)[15] or similar provisions
Lautenberg Parolees

3. Humanitarian Fee Waivers

USCIS may also waive fees for any benefit request or associated form, including the adjustment of status application, for humanitarian purposes as authorized by statute. This includes petitions not otherwise eligible for a fee waiver or eligible only for conditional fee waivers.[16] Some of these categories are also exempt from the public charge inadmissibility determination and therefore would also be eligible for a fee waiver on that basis.[17]

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)[18] requires DHS to permit certain benefit requestors to apply for fee waivers for "any fees associated with filing an application for relief through final adjudication of the adjustment of status."[19] DHS interprets this provision[20] to mean that, in addition to the primary benefit request, an applicant who files any form that may be filed with the primary benefit request or the adjustment of status application must be provided the opportunity to request a fee waiver.[21] The table below lists, by immigration category, the primary benefit requests and associated form(s) for which DHS must provide an opportunity to request a fee waiver.[22]

Humanitarian Fee Waiver Categories: Forms Eligible for Fee Waiver

Category	Primary Benefit Request	Associated USCIS Forms

Category	Primary Benefit Request	Associated USCIS Forms
Violence Against Women Act (VAWA)[23] self-petitioners[24]	• Application to Register Permanent Residence or Adjust Status (Form I-485) • Petition to Remove Conditions on Residence (Form I-751)	• Application for Travel Document (Form I-131)[25] • Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) • Notice of Appeal or Motion (Form I-290B) • Application for Waiver of Grounds of Inadmissibility (Form I-601) • Application for Employment Authorization (Form I-765)
Victims of severe form of trafficking (T nonimmigrant status)[26]	• Application to Register Permanent Residence or Adjust Status (Form I-485)[27]	• Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) • Application for Waiver of Passport and/or Visa (Form I-193) • Application for Travel Document (Form I-131) • Notice of Appeal or Motion (Form I-290B) • Application to Change/Extend Nonimmigrant Status (Form I-539) • Application for Waiver of Grounds of Inadmissibility (Form I-601) • Application for Employment Authorization (Form I-765)

Category	Primary Benefit Request	Associated USCIS Forms
Victims of criminal activity (U nonimmigrant status) [28]	• Petition for Qualifying Family Member of a U Nonimmigrant (Form I-929) • Application to Register Permanent Residence or Adjust Status (Form I-485)	• Application for Travel Document (Form I-131) • Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) • Application for Waiver of Passport and/or Visa (Form I-193) • Notice of Appeal or Motion (Form I-290B) • Application to Change/Extend Nonimmigrant Status (Form I-539) • Application for Employment Authorization (Form I-765)
Battered spouse or child of a lawful permanent resident or U.S. citizen[29]	• Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (EOIR-42B (PDF)) (DOJ form and immigration judge determines fee waiver)	• Waiver of Grounds of Inadmissibility (Form I-601)
Temporary Protected Status[30]	• Application for Temporary Protected Status (Form I-821)	• Application for Employment Authorization (Form I-765) • Application for Waiver of Grounds of Inadmissibility (Form I-601) • Application for Travel Document (Form I-131)

Applications related to Deferred Action for Childhood Arrivals (DACA) filings,[31] including a stand-alone Form I-765 filed, are not eligible for a fee waiver.

4. Third-Party Fee Waiver Request

An immigration judge may grant fee waiver requests in an immigration court proceeding.[32] In addition, an immigration judge may request USCIS to consider a fee waiver request. The requestor must submit a Request for Fee Waiver (Form I-912) and evidence of eligibility under one of the two criteria.

C. Income At or Below 150 Percent of Federal Poverty Guidelines

The applicant must clearly demonstrate an inability to pay the fees in order to qualify for a fee waiver.[33] Inability to pay the fee is based on the applicant's household income.

The applicant must demonstrate that his or her total household income at the time of filing is at or below 150 percent of the current Federal Poverty Guidelines (FPG) based on household size. USCIS does not review the person's past or future income or financial situation when determining household income. The Secretary of the Department of Health and Human Services (HHS) establishes the FPG annually.[34]

1. Household

For fee waiver review purposes, a household[35] may include:

- The applicant;
- The head of household (if not the applicant);
- The applicant's spouse, if living with the applicant (if the applicant and spouse are separated or not living together, then the spouse is not included as part of the household);[36] or
- Any family members living in the applicant's household who are dependent on the applicant's income, the spouse's income, or the head of household's income.

Family members living in the applicant's household include the:

- Applicant's children or legal wards who are unmarried and under 21 years of age;
- Applicant's children or legal wards who are unmarried, are over 21 years of age but under 24 years of age, and are full-time students;
- Applicant's children or legal wards who are unmarried and for whom the applicant is the legal guardian because the child or legal ward is physically or developmentally disabled, or mentally impaired to the extent that the child or legal ward cannot adequately care for him or herself, and cannot establish, maintain, or re-establish his or her own household;
- Applicant's parents; and
- Any other dependents listed on the applicant's federal income tax return, or the spouse's or head of household's federal income tax return.[37]

Head of Household

In general, the head of the household is the person who files the most recent federal tax return with the Internal Revenue Service (IRS) for the household, or the person who earns the majority of the income for the household. Persons applying under the special immigrant juvenile (SIJ) classification are considered part of their own household without including any foster or group home household members.

People who are cohabitating with the applicant, but not financially supported by the applicant, such as roommates or nannies, are not included in the household for the purpose of a fee waiver request.

2. Documentation

To demonstrate the household income, the applicant must provide:

- A copy of each household member's most recent federal tax return transcript; or if a tax transcript is not available a recent Form W-2 and a Form SSA-1099 (if applicable); and
- Documentation of additional financial assistance.

If the applicant's income has changed since the tax return filing, because of unemployment, the applicant must provide evidence of unemployment such as a termination letter or unemployment insurance receipt. If the applicant's income has changed since the tax return filing due to a change in employment, the applicant must provide information on the current employment and income, such as recent pay statements or W-2 forms.

If the applicant resides and filed tax returns in a U.S. territory, he or she must submit the tax return transcript from the territory instead of a federal tax return transcript if no federal tax return was required.

Tax Returns

If the request is filed between January 1 and April 15, and the person has not yet filed the previous year's return, the requestor must submit the tax returns transcript for the most recently filed year.[38] The person is not required to have the IRS certify the transcript.

USCIS uses the adjusted gross income (AGI) from IRS Form 1040 to calculate annual income. If the person is submitting a W-2 or pay statements, USCIS uses the gross pay (pay before taxes and any other withholdings), including any overtime and irregular hours as listed to calculate the annual income.

In determining total household income, USCIS adds any Social Security income (as reflected on the SSA-1099) to the AGI in the tax return.

Earned Income Tax Credit (EITC) statements, Miscellaneous Income (Form 1099-MISC), and Certain Government Payments (Form 1099-G) are not acceptable as proof of income without the tax return transcripts, W-2s, or Social Security statements.

The applicant may provide additional documentation to establish marital status and household size. If the person's current situation is different from the documentation provided, he or she must provide an explanation regarding the inconsistency in the documentation. For example, a tax return transcript that indicates the person is married but the person is currently separated or states in the fee waiver request that he or she is single, must provide an additional explanation for the inconsistency and the documentation for income.

An applicant may use IRS Form 4506-T (PDF) to request income tax transcripts, a copy of Form W-2, or Form 1099-G, from the IRS or to establish that no IRS transcript is available.

If the applicant has provided tax returns as part of another immigration application or petition, such as an affidavit of support, the applicant does not need to submit additional tax return transcripts. USCIS will review the affidavit of support for any inconsistencies with the fee waiver request.

VAWA, T, and U-Based Applicants

Applicants seeking a fee waiver for any immigration benefits (such as for adjustment of status) based on VAWA or T or U nonimmigrant status do not need to provide the income of any household member, including a spouse, who is or was their abuser or human trafficker. Persons listed as a dependent on an income tax return and applying for any immigration benefits based on a pending or approved petition or application for VAWA benefits or T or U nonimmigrant status also do not need to provide the income of any household member, including a spouse, if that member is or was their abuser or human trafficker.

USCIS considers whether a person is unable to obtain proof of income (or proof of household members' income) due to victimization such as trafficking or abuse. The person must describe the situation in sufficient detail on the form to substantiate his or her inability to pay, as well as his or her inability to obtain the required documentation. In addition, the person must

provide any available documentation of his or her income, such as pay stubs or affidavits from religious institutions, non-profits, or other community-based organizations, verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation.

Special Immigrant Juveniles

An SIJ who files a fee waiver request[39] for any form is not required to provide proof of income. However, the fee waiver request must include one of the following forms of evidence:

- A final state or juvenile court order establishing dependency or custodial placement of the SIJ;
- A letter from a foster care home or similar agency overseeing the SIJ's custodial placement that describes the SIJ's inability to pay; or
- An approval notice on a Notice of Action (Form I-797) for a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), filed for the SIJ.

SIJs are considered part of their own household, without including any foster or group home household members.

An officer may verify in the available systems whether the requestor has applied for, or received, SIJ classification.

Children in Foster Care

A child in foster care[40] must submit a valid fee waiver request using Form I-912. As evidence of lack of income, USCIS may accept a letter from a foster care home or similar agency overseeing the foster child's custodial placement that describes the child's inability to pay. The income of a child in foster care does not include any income from foster or group home household members.

3. Additional Financial Assistance

The table below includes the types of financial assistance that are included as part of the total household income and must be included as income in the fee waiver request. The applicant must also provide documentation of each type of additional financial assistance.

Additional Financial Assistance	
Parental support	Alimony
Child support	Educational stipends
Pensions	Social Security
Royalties	Veteran's benefits
Unemployment benefits	Consistent or regular financial support from adult children, parents, dependents, or other people living in the applicant's household

Additional Financial Assistance	
A court order of any child support or documentation from an agency providing other income or financial assistance	

D. Financial Hardship

The alien may demonstrate that he or she is under financial hardship due to extraordinary expenses or other circumstances affecting his or her financial situation to the degree that he or she is unable to pay the fee. If the applicant is under financial hardship, the applicant should demonstrate that he or she has suffered a substantial negative financial impact as a result of this hardship in a reasonably recent period preceding the filing of the fee waiver request so as to render the applicant's income during that period insufficient to pay the fee. For example, an alien may face financial hardship due to medical expenses of family members, unemployment, eviction, victimization, and homelessness.

Documentation

The applicant may submit documentation as follows to demonstrate that he or she is under financial hardship that renders him or her unable to pay the fee:

- Documentation of income;
- Documentation of all assets owned, possessed, or controlled by the applicant and dependents; and
- Documentation concerning liabilities and expenses owed by the alien and dependents, and any other expenses for which the alien is responsible.

The table below provides a list of assets and liabilities that may be part of the fee waiver request.

Examples of Documentation of Financial Hardship

Assets	Liabilities

Assets	Liabilities
• Real estate property; • Cash; • Checking and savings accounts; and • Stocks, bonds, and annuities (except for pension plans and Individual Retirement Accounts (IRAs)).	• Rent or mortgage; • Average monthly cost of food; • Utilities; • Child care and elder care; • Insurance; • Loans and credit cards; • Car payment; • Commuting costs; • Medical expenses; and • School expenses.

If the applicant cannot provide evidence of income, he or she should provide information and documentation as provided below.

1. Applicants Without Income

If the applicant has no income due to unemployment, homelessness, or other factors, he or she must provide:

- A detailed description of his or her financial situation that demonstrates eligibility for the fee waiver;
- Request for Transcript of Tax Return (IRS Form 4506-T) or Wage and Tax Statement (IRS Form W-2) or a statement that no tax returns or W-2s are available from the IRS;
- If the person is receiving support services, an affidavit from a religious institution, non-profit, or community-based organization verifying the person is currently receiving some benefit or support from that entity and attesting to the applicant's financial situation; and
- Evidence of unemployment, such as a termination letter or unemployment insurance receipt.

VAWA, T, and U-Based Applicants

USCIS considers whether an applicant is unable to obtain proof of income due to alleged victimization such as trafficking or abuse. The applicant must describe the situation in sufficient detail on the form to substantiate his or her inability to pay, as well as his or her inability to obtain the required documentation.

In addition, the applicant must provide any available documentation of his or her income, such as a W-2, pay stubs, or affidavits from religious institutions, non-profits, or other community-based organizations, verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation.

2. Special Situations

Sometimes natural disasters and other extreme situations can occur that are beyond an applicant's control and may affect a person's ability to pay the fees. USCIS may designate certain time periods or events in which a person may file a fee waiver request for certain petitions and applications based on an inability to pay through the financial hardship eligibility criteria.[41] The applicant must still establish an inability to pay and file the request for the fee waiver.

E. Adjudication

Each fee waiver request is unique and is considered on its own merits. USCIS may grant a fee waiver request when USCIS determines that the applicant is unable to pay the fee based on established eligibility under one of the two criteria. USCIS adjudicates the fee waiver request based upon the request itself and any additional documentation submitted in support of the fee waiver request at the time of filing and does not issue any Requests for Evidence (RFE).

When adjudicating a fee waiver request, an officer reviews the application and:

- Validates the household size;
- Identifies all valid sources of income applicable to the household;
- Reviews the total annual income of the household;
- Determines the level at which the applicant may qualify based on the household size;[42] and
- Verifies that the applicant submitted the proper documentation and established eligibility.

1. Approval

USCIS may approve the fee waiver request only if the applicant establishes that the household income is at or below 150 percent of the FPG at the time of filing or has established financial hardship.

2. Rejection

If USCIS determines that the applicant did not substantiate an inability to pay based on at least one of the two criteria, then USCIS rejects the fee waiver request. The rejection notice must provide the requestor detailed reasons for the rejection. The table below provides a list of reasons for rejection and considerations involved.

Fee Waiver Rejection Criteria

Rejection Criteria	Consideration
Lack of proper filing	• Applicant did not submit a Request for Fee Waiver (Form I-912)
Income is above 150 percent of the FPG and applicant has not provided sufficient evidence of financial hardship	• Income listed on the form or in the documentation is above the 150 percent FPG threshold • Applicant has not met the burden of proving financial hardship due to the lack of documentation

Rejection Criteria	Consideration
Unable to determine household income	• Identification of household members[43] on the form and no statements or documentation of the household member's income • Identification of a spouse[44] on the form, but no statements of income or additional support or documentation of such income or additional support • If the requestor's filing status in the tax return (for example, married filing jointly, single, head of household) is inconsistent with the marital status declared on the fee waiver request, the immigration benefit forms, or support documents, and the requestor does not provide an explanation or evidence regarding the inconsistency • If the requestor has indicated on the tax form that he or she may be claimed by another person, but the income information for the tax filer is not provided
Lack of income documentation[45]	• Lack of documentation of income and additional income or financial support for the applicant and each household member identified in the fee waiver request or of the person providing additional income, as appropriate • Lack of tax return transcripts or W-2s • Providing pay stubs without a statement from the IRS indicating that no transcripts or W-2s are available • Providing a statement from a religious institution, non-profit, or other community-based organization indicating the person does not have income and the entity is providing services, but does not provide a statement from the IRS indicating that no tax transcripts or W-2s are available
Unable to determine financial hardship	• Insufficient information of the applicant's reason for requesting a financial hardship waiver for the fees • Lack of documentation of household income • Lack of documentation of assets and liabilities

There is no appeal of a rejection of a fee waiver request. An applicant may refile the benefit request with the proper fees for USCIS to process the request. The applicant may also file another fee waiver request with the required documentation to establish eligibility based on one of the two criteria.

Footnotes

1. [^] See 8 CFR 103.7(c).

2. [^] See 8 CFR 103.7(c).

3. [^] Also known as the Application for Advance Permission to Return to Unrelinquished Domicile.

4. [^] See INA 244(a)(3).

5. [^] See Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160, 2196 (November 19, 1997).

6. [^] See INA 336.

7. [^] See INA 212(a)(4).

8. [^] See INA 212(a)(4).

9. [^] See INA 212(a)(4).

10. [^] See INA 212(a)(4).

11. [^] See INA 212(a)(4).

12. [^] See INA 209(b). Refugees seeking adjustment under INA 209(a) are automatically exempt from paying the Form I-485 filing fee and biometric services fee, and are not required to demonstrate an inability to pay.

13. [^] See Pub. L. 89-732 (PDF) (November 2, 1966).

14. [^] See Title IX of Pub. L. 105-277 (PDF) (October 21, 1998).

15. [^] See Title II of Pub. L. 105-100 (PDF) (November 19, 1997).

16. [^] For example, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), Application to Register Permanent Residence or Adjust Status (Form I-485), Application To Extend/Change Nonimmigrant Status (Form I-539), and Application for Waiver of Grounds of Inadmissibility (Form I-601).

17. [^] See Section 201(d)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

18. [^] See Section 201(d)(3) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

19. [^] See Section 201(d)(3) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

20. [^] See Section 201(d)(3) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

21. [^] Certain USCIS forms are not listed in 8 CFR 103.7(b) and therefore have no fee.

22. [^] For example, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), Application to Register Permanent Residence or Adjust Status (Form I-485), Application To Extend/Change Nonimmigrant Status (Form I-539), and Application for Waiver of Grounds of Inadmissibility (Form I-601).

23. [^] VAWA self-petitioner as defined under INA 101(a)(51) includes abused spouses and children of U.S. citizens and lawful permanent residents; abused parents of U.S. citizens; abused spouses and children filing a waiver of the joint filing requirement under INA 216(c)(4)(C); abused children or spouses under CAA; and abused family members under HRIFA and NACARA.

24. [^] See INA 101(a)(51). See INA 245(l)(7). See TVPRA 2008, Pub. L. 110–457 (PDF), 122 Stat. 5044 (December 23, 2008); 22 U.S.C. 7101 et seq. For requestors in this category, there is no fee for filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) and no fee for filing an Application for Employment Authorization (Form I-765). Form I-360 allows a principal self-petitioner to request an employment authorization document (EAD) incident to case approval without submitting a separate Form I-765. Form I-765 is required for employment authorization requests by derivative beneficiaries and employment authorization requests on a different basis. There is no fee for VAWA self-petitioners using Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). For battered spouses of A, G, E-3, or H nonimmigrants under INA 106, there is no fee for filing an Application for Employment Authorization for Abused Nonimmigrant Spouse (Form I-765V).

25. [^] Currently, fees for Form I-131 are exempt if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007. See 8 CFR 103.7(b)(1)(i)(M)(4).

26. [^] See INA 101(a)(15)(T) (T nonimmigrant status for victims of severe form of trafficking). For this category, there is no fee for filing Application for T Nonimmigrant Status (Form I-914) or for filing Application for Employment Authorization (Form I-765). Form I-914 allows a principal applicant to request an EAD incident to case approval without submitting a separate Form I-765. Form I-765 is required for employment authorization requests by derivative relatives.

27. [^] There is no fee for filing the following forms: Application for T Nonimmigrant Status (Form I-914), Application for Family Member of T-1 Recipient (Form I-914, Supplement A), and Declaration of Law Enforcement Officer for Victims of Trafficking in Persons (Form I-914, Supplement B).

28. [^] See INA 101(a)(15)(U) (U nonimmigrant status for victims of criminal activity). For this category, there is no fee for filing Petition for U Nonimmigrant Status (Form I-918), Petition for Qualifying Family Member of U-1 Recipient (Form I-918, Supplement A), or Application for Employment Authorization (Form I-765). Form I-918 allows a principal petitioner to request an EAD incident to case approval without submitting a separate Form I-765. Form I-765 is required for employment authorization requests for principal petitioners who seek an EAD after waiting list placement, as well as by qualifying family members.

29. [^] See INA 240A(b)(2). See INA 245(l)(7).

30. [^] See INA 244. See INA 245(l)(7).

31. [^] Including Consideration of Deferred Action for Childhood Arrivals (Form I-821D).

32. [^] See 8 CFR 1103.7.

33. [^] See 8 CFR 103.7(c).

34. [^] See HHS Poverty Guidelines for Fee Waiver Request (Form I-912P).

35. ^] If the requestor submits any joint-filed federal tax returns, USCIS reviews the household size to determine household members or spouses.

36. [^] However, any additional income or financial support provided by the spouses must be included in the request. See Subsection 3, Additional Financial Assistance [1 USCIS-PM B.4(C)(3)].

37. [^] USCIS reviews the Internal Revenue Service (IRS) federal income tax return transcripts to examine whether any dependents are listed.

38. [^] For information on obtaining federal income tax transcripts without a fee, see irs.gov/individuals/get-transcript.

39. [^] An SIJ may request a fee waiver for an adjustment of status application, and associated Forms I-601, Form I-765, or Form I-290B for Form I-360, or other associated forms.

40. [^] Foster care (also known as out-of-home care) is a temporary service provided by States for children who cannot live with their families. Children in foster care may live with relatives or with unrelated foster parents. Foster care can also refer to placement settings such as group homes, residential care facilities, emergency shelters, and supervised independent living. See 45 CFR 1355.20. See childwelfare.gov/topics/outofhome/foster-care.

41. [^] See Special Situations web page. For example, USCIS allowed for consideration of fee waivers for those affected by South Carolina floods in 2015.

42. [^] Review the HHS Poverty Guidelines for Fee Waiver Request (Form I-912P).

43. [^] Applicants for any immigration benefits based on VAWA or T or U nonimmigrant status do not need to provide the income of any household member who is or was their abuser or human trafficker. Fee waiver requests that detail these grounds of victimization should not be rejected if the applicant has described that a member of his or her household is or was his or her abuser or trafficker in sufficient detail. For more information, see Section C, Income At or Below 150 Percent of Federal Poverty Guidelines, Subsection 2, Documentation [1 USCIS-PM B.4(C)(2)].

44. [^] Applicants for any immigration benefits (such as for adjustment of status) based on VAWA or T or U nonimmigrant status do not need to provide their spouse's income.

45. [^] Generally, applicants for any immigration benefits (such as for adjustment of status) based on VAWA or T or U nonimmigrant status are not rejected for a lack of documentation if the applicant has described his or her inability to provide the required documentation in sufficient detail and provided any other available documentation.

Part C - Biometrics Collection and Security Checks

Part D - Attorneys and Representatives

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Volume 2 - Nonimmigrants

Part A - Nonimmigrant Policies and Procedures

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Part J - Trainees (H-3)

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 [6] 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

- INA 101(a)(15)(H)(iii) – H-3 definition
- 8 CFR 214.2(h)(1)(ii)(E) – H-3 definition
- 8 CFR 214.2(h)(7) – H-3 regulations
- 8 CFR 214.2(h)(8)(i)(D) – H-3 numerical limitations on special education exchange visitors
- 8 CFR 214.2(h)(9)(iii)(C) and 8 CFR 214.2(h)(9)(iv) – Validity of approved H-3 petitions and H-4 spouse and dependent(s)
- 8 CFR 214.2(h)(10) – Denial of petitions
- 8 CFR 214.2(h)(11) – Revocation of an approved H petition

- 8 CFR 214.2(h)(12) – Appeal of a denial or a revocation of a petition
- 8 CFR 214.2(h)(13) – Admission of H beneficiaries
- 8 CFR 214.2(h)(14) – Extension of H visa petition validity
- 8 CFR 214.2(h)(15)(ii)(D) – Extension of H-3 stay
- 8 CFR 214.2(h)(16)(ii) – Effect of approval of a permanent labor certification or filing of a preference petition on H classification
- 8 CFR 214.2(h)(17) – Effect of a strike

Footnotes

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1. [^] See INA 101(a)(15)(H)(iii). See 8 CFR 214.2(h)(7)(i).

2. [^] See 8 CFR 214.2(h)(7)(iv).

3. [^] See Section 101(a)(15)(H)(iii) of the INA, Pub. L. 82-414, 66 Stat. 163, 168 (June 27, 1952).

4. [^] See INA of April 7, 1970, Pub. L. 91-225, 84 Stat. 116, amending INA 101(a)(15)(H)(iii).

5. [^] See Section 601(b)(3) of the Health Professions Educational Assistance Act of 1976, Pub. L. 94-484 (PDF), 90 Stat. 2243, 2301 (October 12, 1976).

6. [^] See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 4978 (November 29, 1990).

7. [^] See IMMACT 90, Pub. L. 101-649, 104 Stat. 5022 (November 29, 1990).

8. [^] See IMMACT 90, Pub. L. 101-649, 104 Stat. 5028 (November 29, 1990).

9. [^] See 56 FR 31553, 31554 (PDF) (Jul. 11, 1991) (proposed rule). See 56 FR 61111, 61119-61120 (PDF) (Dec. 2, 1991) (final rule).

10. [^] See INA 101(a)(15)(H)(iii).

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 [2]

1. Externs [3]

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 [4]

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: [5]

- 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 [6] or that such education was obtained in the United States or Canada; [7] and
- 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

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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).

3. [^] See 8 CFR 214.2(h)(7)(i)(A).

4. [^] See 8 CFR 214.2(h)(7)(i)(B).

5. [^] See 8 CFR 214.2(h)(7)(i)(B)(1).

6. [^] See 8 CFR 214.2(h)(7)(i)(B)(1).

7. [^] See 8 CFR 214.2(h)(7)(i)(B)(1).

8. [^] See 8 CFR 214.2(h)(7)(i)(B)(2).

9. [^] See 8 CFR 214.2(h)(7)(iv).

10. [^] See Section 223 of the Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 4978, 5028 (November 29, 1990). See 8 CFR 214.2(h)(7)(iv) and 8 CFR 214.2(h)(8)(D). See 55 FR 2606, 2628 (PDF) (Jan. 26, 1990).

Chapter 3 - Trainee Program Requirements

A. Training Program Conditions

An H-3 petitioner is required to submit evidence demonstrating that: [1]

- The proposed training is not available in the trainee's own country;
- The trainee will not be placed in a position that is in the normal operation of the business and in which 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.

Trainee (H-3) Petition Forms and Documentation
Petition for a Nonimmigrant Worker (Form I-129), Including H supplement
If the beneficiary is outside the United States, a copy of his or her passport
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)
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.

Trainee (H-3) Petition Forms and Documentation

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.

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

1. [^] See 8 CFR 214.2(h)(7)(ii)(A).

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).

3. [^] See 8 CFR 214.2(h)(7)(ii)(B). See 55 FR 2628-29 (PDF) (Jan. 26, 1990).

4. [^] See 8 CFR 214.2(h)(7)(ii)(B).

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)(i)(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 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 company-specific 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)].

8. [^] See 8 CFR 214.2(h)(2)(ii).

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 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989)).

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
- 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.

Special Education Exchange Visitor H-3 Petition Forms and Documentation
Petition for a Nonimmigrant Worker (Form I-129), Including H supplement
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 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
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

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1. [^] Requirements for trainee petitions are not applicable to petitions for special education exchange visitors. See 8 CFR 214.2(h)(7)(ii) and 8 CFR 214.2(h)(7)(iii). See 8 CFR 214.2(h)(7)(iv)(A)(3).

2. [^] See 8 CFR 214.2(h)(8)(i)(D).

3. [^] See 8 CFR 214.2(h)(13)(iv).

4. [^] See 8 CFR 214.2(h)(7)(iv)(A)(2).

5. [^] See 8 CFR 214.2(h)(7)(iv)(B)(1).

6. [^] See 8 CFR 214.2(h)(7)(iv)(B)(2).

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]

Footnotes

1. [^] See 8 CFR 214.2(h)(9)(iv).

Chapter 6 - Adjudication

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. [1] The burden of proving eligibility for the benefit sought rests entirely with the petitioner. [2]

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. [3] 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. [4] As always, the totality of the evidence is evaluated for each case and all other requirements must be met. [5]

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. [6]

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. [7]

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. [8]

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. [9] 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. [10] 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. [11]

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. [12] 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. [13]

5. Placement into Normal Operation of Business [14]

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. [15]

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. [16] 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. [17]

7. Productive Employment

The proportion of time that will be devoted to productive employment must be specified. [18] 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). [26] Consular officers and Customs and Border Protection officers have access to the CCD to verify and review documents.

Footnotes

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1. [^] See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989)).

2. [^] See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

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.

6. [^] See 8 CFR 214.2(h)(7)(ii)(A)(1).

7. [^] See 8 CFR 214.2(h)(1)(ii)(E)(1).

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).

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9. [^] See 8 CFR 214.2(h)(7)(ii)(B)(1). See *Matter of Miyazaki Travel Agency, Inc.*, 10 I&N Dec. 644 (Reg. Comm. 1964) (denying petition for a trainee where the training program was deemed "unrealistic"). See *Matter of Masauyama*, 11 I&N Dec. 157 (Reg. Comm. 1965) (noting that the statute contemplates the training of an person rather than giving him further experience by day-to-day application of his skills).

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).

12. [^] 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").

13. [^] 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).

14. [^] See 8 CFR 214.2(h)(7)(ii)(A)(3) and 8 CFR 214.2(h)(7)(iii)(F).

15. [^] See *Matter of Glencoe Press*, 11 I&N Dec. 764, 766 (Reg. Comm. 1966).

16. [^] See 8 CFR 214.2(h)(7)(ii)(B)(1) and 8 CFR 214.2(h)(7)(ii)(B)(2).

17. [^] See 8 CFR 214.2(h)(7)(ii)(A)(3) and 8 CFR 214.2(h)(7)(iii)(E).

18. [^] 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).

19. [^] See 8 CFR 214.2(h)(7)(ii)(B)(2) and 8 CFR 214.2(h)(7)(iii)(E).

20. [^] 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").

21. [^] 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").

22. [^] See 8 CFR 214.2(h)(7)(iii)(G).

23. [^] 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."

24. [^] 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).

25. [^] See 8 CFR 214.2(h)(9)(iii)(C) and 8 CFR 214.2(h)(13)(v).

26. [^] See 9 FAM 402.10-9(A), Evidence Forming Basis for H Visa Issuance.

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

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1. [^] See 8 CFR 214.2(h)(9)(iii)(C)(1).

2. [^] See 8 CFR 214.2(h)(13)(iv).

3. [^] See 8 CFR 214.2(h)(13)(v).

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.

5. [^] See 8 CFR 214.2(h)(15)(ii)(D).

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

Footnotes

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1. [^] See Pub. L. 82-414 (PDF), 66 Stat. 163, 168-169 (June 27, 1952).

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

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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].

2. [^] See 8 CFR 214.2(i).

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. [1]

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.

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

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1. [^] See INA 101(a)(15)(O) for visa classification based on extraordinary ability or achievement (O visa category). See INA 101(a)(15)(P) for visa classification based on being an entertainer (P visa category).

2. [^] See 8 CFR 214.2(o)(5). See 8 CFR 214.2(p)(7).

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.

Footnotes

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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.

Classes of Applicants and Corresponding Codes of Admission

Applicant	Code of Admission
Foreign Information Media Representative (Principal)	I-1
Spouse of a Principal Foreign Information Media Representative	I-1
Child of a Principal Foreign Information Media Representative	I-1

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

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1. [^] See INA 248(a). See 8 CFR 214.1(a)(3)(i). See Volume 8, Admissibility [8 USCIS-PM].

2. [^] See 8 CFR 214.2(i). See 8 CFR 214.1(c)(4) and 8 CFR 248.1(b).

3. [^] See 8 CFR 214.1(c)(5). See 8 CFR 248.3(g).

4. [^] See 8 CFR 103.4.

Part L - Intracompany Transferees (L)

Part M - Individuals of Extraordinary Ability or Achievement (O)

Part N - Athletes and Entertainers (P)

Part O - Religious Workers (R)

Part P - NAFTA Professionals (TN)

Part Q - Nonimmigrants Intending to Adjust Status (K, V)

Volume 3 - Protection and Parole

Part A - Protection and Parole Policies and Procedures

Part B - Victims of Trafficking

Part C - Victims of Crimes

Part D - Temporary Protected Status and Deferred Enforced Departure

Part E - Parolees

Part F - Deferred Action

Part G - Humanitarian Emergencies

Volume 4 - Refugees

Volume 5 - Asylees

Volume 6 - Immigrants

Part A - Immigrant Policies and Procedures

Part B - Family-Based Immigrants

Part C - International Orphans and Adoptees

Part D - Immigrants Filing Under Violence Against Women Act

Part E - Employment-Based Immigration

Part F - Employment-Based Classifications

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. [1] 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. [2]

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.[3] 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.[4] 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.[5] 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.[6]

The minimum investment amounts by filing date and investment location are:

Petition Filing Date	Minimum Investment Amount[7]	TEA Investment Amount[8]	High Employment Area Investment Amount[9]
Before November 21, 2019	$1,000,000	$500,000	$1,000,000
On or After November 21, 2019[10]	$1,800,000	$900,000	$1,800,000

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

Act	Statutory Provisions
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]

Act	Statutory Provisions
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.
Section 1 of Pub. L. 112-176 (PDF) [21]	• Eliminates the word pilot from the name of the Regional Center Program.

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

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1. [^] See INA 203(b)(5).

2. [^] See Section 610(a) of the Judiciary Appropriations Act of 1993, Pub. L. 102-395 (PDF, 234 KB), 106 Stat. 1828, 1874 (October 6, 1992) as amended by Section 11037 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273 (PDF), 116 Stat. 1758, 1847 (November 2, 2002).

3. [^] See 84 FR 35750 (PDF) (July 24, 2019),

4. [^] See 84 FR 35750 (PDF), 35766-67 (July 24, 2019). See 8 CFR 204.6(f)(1).

5. [^] See INA 203(b)(5)(B)-(C). See 8 CFR 204.6(e)-(f)(2).

6. [^] See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(f)(2)).

7. [^] See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(f)(1)).

8. [^] See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(f)(2)).

9. [^] See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(f)(3)).

10. [^] These amounts automatically adjust on October 1, 2024. USCIS will update this Part accordingly.

11. [^] See Section 121(a) of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649 (PDF), 104 Stat. 4978, 4987 (November 29, 1990).

12. [^] In 2002, Congress eliminated the requirement that an immigrant investor establish the new commercial enterprise. See Section 11036 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273 (PDF), 116 Stat. 1758, 1846 (November 2, 2002).

13. [^] See Sections 121(a)-(b)(1) of IMMACT90, Pub. L. 101-649 (PDF), 104 Stat. 4978, 4987 (November 29, 1990).

14. [^] See Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. 102-395 (PDF), 106 Stat. 1828, 1874 (October 6, 1992).

15. [^] See S. Rep. 102-331 at 118 (July 23, 1992).

16. [^] For information on the current expiration date, see the USCIS website.

17. [^] See Pub. L. 101-649 (PDF), 104 Stat. 4978, 4987 (November 29, 1990).

18. [^] See Pub. L. 102-395 (PDF), 106 Stat. 1828, 1874 (October 6, 1992).

19. [^] For a discussion on indirect jobs, see Chapter 2, Eligibility Requirements, Section D, Creation of Jobs [6 USCIS-PM G.2(D)].

20. [^] See Pub. L. 107-273 (PDF), 116 Stat. 1758, 1846 (November 2, 2002).

21. [^] See 126 Stat. 1325, 1325 (September 28, 2012).

22. [^] See Pub. L. 102-395 (PDF, 234 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended.

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. [1]

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. [2] 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 [3] 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. [4] 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. [5]

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 [6] to the extent provided for by the jurisdiction in which the asset is located. [7] 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. [8]

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.[9]

Using Loan Proceeds as Capital

Proceeds from a loan may qualify as investment capital provided the requirements placed on indebtedness are satisfied. [10]

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." [16]

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. [17] Funds contributed in exchange for a debt arrangement do not constitute a qualifying contribution of capital. [18] 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. [19]

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. [20] 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. [21]

The following table describes certain characteristics that might be present in agreements and explains whether their inclusion creates an impermissible debt arrangement.

Characteristics of Redemption Provisions

Type of Provision	Description	Impermissible Agreement?
Mandatory redemptions	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).	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).
Options exercisable by the investor	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 (whether fixed or subject to a specified formula).	USCIS considers this an impermissible debt arrangement.

Type of Provision	Description	Impermissible Agreement?
Option exercisable by the new commercial enterprise	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.	USCIS generally does not consider these arrangements to be impermissible debt arrangements.[22] 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.

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. [23] Without some evidence of business activity, no assurance exists that the funds will be used to carry out the business of the commercial enterprise. [24]

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. [25] 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. [26]

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. [27] 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.

At-Risk Requirement Before the Job Creation Requirement is Satisfied

The full amount of capital must be used to undertake business activity that results in the creation of jobs. [32] Before the job creation requirement is met, the following at-risk requirements apply:

- 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; and
- 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. [33]

At-Risk Requirement After the Job Creation Requirement is Satisfied

Once the job creation requirement has been met, the capital is properly at risk if it is used in a manner related to engagement in commerce (in other words, the exchange of goods or services) consistent with the scope of the new commercial enterprise's ongoing business. [34] After the job creation requirement is met, the following at-risk requirements apply:

- 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; and
- Business activity must actually be undertaken. [35]

For example, if the scope of a new commercial enterprise was to loan pooled investments to a job-creating entity for the construction of a residential building, the new commercial enterprise, upon repayment of a loan that resulted in the required job creation, may further deploy the repaid capital into one or more similar loans to other entities. Similarly, the new commercial enterprise may also further deploy the repaid capital into certain new issue municipal bonds, such as for infrastructure spending, as long as investments into such bonds are within the scope of the new commercial enterprise in existence at the time the petitioner filed the Immigrant Petition by Alien Investor (Form I-526).

Officers must determine whether further deployment has taken place, or will take place, within a commercially reasonable time and within the scope of the new commercial enterprise's ongoing business. [36]

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.[37] 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.[38]

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,[39] 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.[40] 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. [41] Any assets acquired directly or indirectly by unlawful means, such as criminal activity, are not considered capital. [42] 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. [43]

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. [44]

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, [45] 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.[46] 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.[47] A high unemployment area is an area that has experienced unemployment of at least 150 percent of the national average rate.[48]

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.[49]

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.[50]

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;[51]
- 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;[52] or
  - Unemployment data for the relevant MSA or county;[53] 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;[54] or
  - A description of the boundaries and unemployment statistics that allows USCIS to make a case-specific designation as an area of high unemployment.[55] 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).[56] 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.[57]

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:

Targeted Employment Area (TEA) Analysis

If the Investment of Capital...	Then...
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).	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.
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.	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.

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.[58] 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.[59]

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. [60]

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. [61]

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. [62]

C. New Commercial Enterprise

A new commercial enterprise is any commercial enterprise established after November 29, 1990. [63] 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. [64] 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. [65]

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. [66]

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. [67] Cosmetic changes to the décor, a new marketing strategy, or a simple change in ownership do not qualify as restructuring. [68]

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. [69]

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. [70]

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. [71]

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.[72]

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. [73]

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. [74]

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.[75]

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;[76]
- Evidence that the immigrant investor is a corporate officer or a member of the corporate board of directors;[77]
- 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;[78] 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.[79]

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 [80] 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. [81]

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. [82]

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. [83]

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. [84] 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. [85]

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. [86]

Full-Time Employment

For the purpose of the job creation requirement, the position must be a full-time employment position. [87] 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. [88] 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. [89]

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. [90] 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. [91]

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.[92]

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. [93]

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. [94] 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.[95]

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. [96] 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. [97]

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. [98]

The 2-year period [99] 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. [100]

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. [101] 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. [102]

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. [103] 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.

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 [104] and thus are no longer considered reasonable methodologies or valid forecasting tools under the regulations. [105]

E. Burden of Proof

The petitioner or applicant must establish each element by a preponderance of the evidence. [106] 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.[107]

Footnotes

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1. [^] See 8 CFR 204.6(e).

2. [^] See 8 CFR 204.6(e).

3. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206 (Assoc. Comm. 1998).

4. [^] See INA 203(b)(5). 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.

7. [^] See *Matter of Hsiung (PDF)*, 22 I&N Dec. 201, 202 (Assoc. Comm. 1998).

8. [^] See *Matter of Hsiung (PDF)*, 22 I&N Dec. 201, 202-03 (Assoc. Comm. 1998).

9. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 193-94 (Assoc. Comm. 1998).

10. [^] See 8 CFR 204.6(e).

11. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 195 (Assoc. Comm. 1998).

12. [^] See 8 CFR 204.6(e).

13. [^] See 8 CFR 204.6(j)(2).

14. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 180-188 (Assoc. Comm. 1998).

15. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 184 (Assoc. Comm. 1998).

16. [^] The full definition of invest is provided at 8 CFR 204.6(e).

17. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 183-188 (Assoc. Comm. 1998).

18. [^] 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.

19. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 186-187 (Assoc. Comm. 1998).

20. [^] 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).

21. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169 (185-86) (Assoc. Comm. 1998).

22. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 188 (Assoc. Comm. 1998). See *Chang v. USCIS*, 289 F.Supp.3d 177 (D.D.C. Feb. 7, 2018).

23. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 209-210 (Assoc. Comm. 1998).

24. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 210 (Assoc. Comm. 1998).

25. [^] See *Matter of Izummi (PDF)*, 22 I&N 169, 179, 189 (Assoc. Comm. 1998).

26. [^] 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&NDec. 169, 179 (Assoc. Comm. 1998). In some circumstances, the new commercial enterprise may also be the job-creating entity.

27. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 178-79 (Assoc. Comm. 1998).

28. [^] See 8 CFR 204.6(j)(2).

29. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 210 (Assoc. Comm. 1998).

30. [^] 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.

31. [^] See Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829).

32. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 209-210 (Assoc. Comm. 1998). See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179, 189 (Assoc. Comm. 1998).

33. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 209-210 (Assoc. Comm. 1998). See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179, 189 (Assoc. Comm. 1998).

34. [^] See 8 CFR 204.6(e) for the definition of commercial enterprise.

35. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 209-210 (Assoc. Comm. 1998). See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179, 189 (Assoc. Comm. 1998).

36. [^] See 8 CFR 103.2(b)(1) (A petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication).

37. [^] See INA 203(b)(5)(C). See 8 CFR 204.6(e)-(f).

38. [^] See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(f)).

39. [^] 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).

40. [^] See 8 CFR 204.6(e).

41. [^] See 8 CFR 204.6(j)(3). See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998).

42. [^] See 8 CFR 204.6(e).

43. [^] See 8 CFR 204.6(e) and 8 CFR 204.6(j)(3).

44. [^] See 8 CFR 204.6(j)(3).

45. [^] As required under 8 CFR 204.6(j)(3)(ii).

46. [^] See INA 203(b)(5)(B)(ii).

47. [^] See INA 203(b)(5)(B)(iii). See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(e)).

48. [^] See INA 203(b)(5)(B)(ii). See 8 CFR 204.6(e).

49. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 174 (Assoc. Comm. 1998).

50. [^] See 8 CFR 204.6(j)(6). See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 171-73 (Assoc. Comm. 1998).

51. [^] See 8 CFR 204.6(j)(6)(i).

52. [^] See 8 CFR 204.6(j)(6)(ii)(B) (PDF) (in effect before November 21, 2019).

53. [^] See 8 CFR 204.6(j)(6)(ii)(A) (PDF) (in effect before November 21, 2019).

54. [^] See 84 FR 35750, 35809 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(j)(6)(ii)(A)).

55. [^] 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) (to be codified at 8 CFR 204.6(j)(6)(ii)(A)).

56. [^] See 84 FR 35750, 35809 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(i)). See 84 FR 35750, 35809 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(j)(6(ii)(B)).

57. [^] See 84 FR 35750, 35809 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(i)).

58. [^] See 8 CFR 204.6(i) (PDF) (in effect before November 21, 2019).

59. [^] See 8 CFR 204.6(j)(6)(ii)(B) (PDF) (in effect before November 21, 2019).

60. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).

61. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).

62. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).

63. [^] See 8 CFR 204.6(e).

64. [^] See 8 CFR 204.6(e).

65. [^] See 8 CFR 204.6(e).

66. [^] See 8 CFR 204.6(e).

67. [^] See 8 CFR 204.6(h)(2).

68. [^] See *Matter of Soffici (PDF)*, 22 I&N Dec. 158 (Assoc. Comm. 1998).

69. [^] See 8 CFR 204.6(h)(3).

70. [^] See 8 CFR 204.6(h)(3).

71. [^] See 8 CFR 204.6(h)(3).

72. [^] See 8 CFR 204.6(g).

73. [^] See 8 CFR 204.6(j)-(j)(1).

74. [^] See 8 CFR 204.6(j)(2)(i)-(v).

75. [^] See 84 FR 35750, 35809 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(j)(5)).

76. [^] See 8 CFR 204.6(j)(5)(i).

77. [^] See 8 CFR 204.6(j)(5)(i).

78. [^] 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.

79. [^] See 84 FR 35750, 35809 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(j)(5)(iii)).

80. [^] Job maintenance is also permitted under certain circumstances. See Subsection 4, Measuring Job Creation [6 USCIS-PM G.2(D)(4)].

81. [^] See 8 CFR 204.6(j)(4)(i).

82. [^] See 8 CFR 204.6(j) (It is the new commercial enterprise that will create the 10 jobs).

83. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179 (Assoc. Comm. 1998).

84. [^] See 8 CFR 204.6(j).

85. [^] See 8 CFR 204.6(e).

86. [^] See 8 CFR 204.6(e).

87. [^] See INA 203(b)(5)(A)(ii).

88. [^] See INA 203(b)(5)(D). See 8 CFR 204.6(e).

89. [^] See 8 CFR 204.6(e).

90. [^] See 8 CFR 204.6(j)(4)(ii).

91. [^] See 8 CFR 204.6(j)(4)(ii).

92. [^] See 8 CFR 204.6(e).

93. [^] See 8 CFR 204.6(e).

94. [^] See 8 CFR 204.6(j)(4)(iii).

95. [^] See 8 CFR 204.6(m)(1). See 8 CFR 204.6(m)(7).

96. [^] See 8 CFR 204.6(g)(2).

97. [^] USCIS recognizes any reasonable agreement made among immigrant investors in regard to the identification and allocation of qualifying positions. See 8 CFR 204.6(g)(2).

98. [^] See 8 CFR 204.6(j)(4)(i).

99. [^] The 2-year period is described in 8 CFR 204.6(j)(4)(i)(B).

100. [^] See 8 CFR 204.6(j)(4)(ii).

101. [^] See 8 CFR 204.6(j)(4)(iii).

102. [^] See Chapter 6, Deference [6 USCIS-PM G.6].

103. [^] See Operational Guidance for EB-5 Cases Involving Tenant-Occupancy, GM-602-0001, issued December 20, 2012.

104. [^] See, for example, *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179 (Assoc. Comm. 1998) (holding that the full amount of the money must be made available to the business(es) most closely responsible for creating the employment on which the petition is based).

105. [^] See 8 CFR 204.6(j)(4)(iii) and (m)(3).

106. [^] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 375-376 (AAO 2010).

107. [^] See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(d)). 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)]. For general information on limited visa availability, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 2, Numerically Limited Visa Availability [7 USCIS-PM A.6(C)(2)].

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. [1] 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. [6] 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. [7] 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. [8] 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. [9] 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. [10]

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, [11] 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.

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. [12] 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. [13]

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. [14]

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

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

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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)].

2. [^] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Pub. L. 102-395 (PDF, 234 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended.

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.

4. [^] See 8 CFR 204.6(m)(3).

5. [^] For more information about the types of regional center projects, see Section B, Types of Regional Center Projects [6 USCIS-PM G.3(B)].

6. [^] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (PDF, 234 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended. See 8 CFR 204.6(m)(3)(i) (requiring a clear description of how the regional center focuses on a geographical region of the United States and how it will promote economic growth).

7. [^] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (PDF, 234 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended.

8. [^] See Section 610(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. L. 102-395 (PDF, 234 KB), 106 Stat. 1828, 1874 (October 6, 1992), as amended. See 8 CFR 204.6(m)(3)(i).

9. [^] See 8 CFR 204.6(m)(3).

10. [^] See Chapter 2, Eligibility Requirements, Section B, Comprehensive Business Plan [6 USCIS-PM G.2(B)].

11. [^] Legal deficiency includes objective mistakes of law or fact made as part of the USCIS adjudication.

12. [^] See 8 CFR 204.6(m)(6).

13. [^] See Form I-924A instructions.

14. [^] See Form I-924 instructions.

15. [^] For a discussion of an officer's review of a regional center's proposed geographic area, see Section A, Regional Center Application Proposals [6 USCIS-PM G.3(A)].

16. [^] See EB-5 Adjudication Policy Memo (PDF), PM-602-0083, issued May 30, 2013.

17. [^] See 8 CFR 204.6(m)(6).

18. [^] See 8 CFR 103.3. See 8 CFR 204.6(m)(6).

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. [1] The immigrant investor will be a conditional permanent resident upon adjustment of status or admission to the United States. [2]

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 $500,000 investment, instead of $1,000,000, 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 residence, 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 new commercial enterprise undertakes the commercial activities presented in the initially filed business plan and creates the required number of jobs, the new commercial enterprise may further deploy the capital into another activity. The activity must be within the scope of the new commercial enterprise and further deployment must be within a commercially reasonable period of time. Further deployment of this nature will not cause the petition to be denied or revoked under certain circumstances.

In all cases where further deployment is envisioned, officers review the evidence submitted with the petition to determine whether the petitioner has presented sufficient evidence to demonstrate continuing eligibility with the capital at risk requirement. The investor must show that the capital is, and will remain, at risk of loss and gain and is and will be used in a manner related to engagement in commerce within the scope of the new commercial enterprise's business. Further deployment of capital that occurs before the immigrant investor becomes a conditional permanent resident must be adequately described in the Form I-526 record.

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, 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, must 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

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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].

3. [^] See 8 CFR 204.6(j)(2). See *Matter of Ho (PDF)*, 22 I&N Dec. 206 (Assoc. Comm. 1998).

4. [^] See 8 CFR 204.6(j)(4). See 8 CFR 204.6(m)(7).

5. [^] See EB-5 Adjudication Policy Memo (PDF), PM-602-0083, issued May 30, 2013.

6. [^] Legally deficient includes objective mistakes of law or fact made as part of the USCIS adjudication.

7. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). See 8 CFR 103.2(b)(1).

8. [^] See *Kungys v. United States*, 485 U.S. 759, 770-72 (1988).

9. [^] See 8 CFR 204.6(j). See 8 CFR 204.6(m)(7).

10. [^] See INA 203(b)(5).

11. [^] See 84 FR 35750, 35809 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(n)).

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. [1] 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. [2]

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. [3]

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. [4] 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. [5]

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. [6]

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. [7] 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. [8] 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, [9] 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 [10] 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.[11]

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.[12]

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. [13] 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

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

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1. [^] See 8 CFR 216.6(a)(4)(ii)-(iv).

2. [^] See 8 CFR 216.6(a)(4)(iv).

3. [^] See 8 CFR 216.6(a)(4)(ii).

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.

5. [^] See 8 CFR 216.6(a)(4)(iii).

6. [^] See *Matter of Ho (PDF)*, 22 I&N Dec. 206, 212-13 (Assoc. Comm. 1998).

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).

8. [^] See 8 CFR 216.6(a)(4)(iv).

9. [^] See 8 CFR 204.6(j)(4)(i)(B).

10. [^] For example, *force majeure*.

11. [1] See Chapter 4, Immigrant Petition by Alien Investor (Form I-526) [6 USCIS-PM G.4].

12. [^] See INA 216A(b)(1)(A).

13. [^] See INA 216A(d)(1). See 8 CFR 216.6(a)(4).

14. [^] See 8 CFR 216.6(a)(1).

15. [^] See INA 216A(c)(3)(D). See 8 CFR 216.6(d)(2).

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.

Footnotes

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1. [^] See *Kungys v. United States*, 485 U.S. 759, 770-72 (1988).

Part H - Designated and Special Immigrants

Part I - Family-Based Conditional Permanent Residents

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[1] that reunification with one or both parents is not viable is still required for SIJ classification.[2]

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;[3] or
- 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.

Special Immigrant Juvenile Classification: Acts and Amendments

Acts and Amendments	Key Changes
The Immigration Act of 1990[4]	• 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
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
The Immigration and Nationality Technical Corrections Act of 1994[6]	• 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
The 1998 Appropriations Act[7]	• 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[8]	• 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

Acts and Amendments	Key Changes
The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008)[9]	• 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[10] – 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 205.1(a)(3)(iv) – Reasons for automatic revocation
- 8 CFR 205.2 – Revocation on notice

Footnotes

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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.

3. [^] See Section 462 of the Homeland Security Act of 2002, Pub. L. 107-296 (PDF), 116 Stat. 2135, 2202 (November 25, 2002).

4. [^] See Pub. L. 101-649 (PDF) (November 29, 1990).

5. [^] See Pub. L. 102-232 (PDF) (December 12, 1991).

6. [^] See Pub. L. 103-416 (PDF) (October 25, 1994).

7. [^] See Pub. L. 105-119 (PDF) (November 26, 1997).

8. [^] See Pub. L. 109-162 (PDF) (January 5, 2006).

9. [^] See Pub. L. 110-457 (PDF) (December 23, 2008).

10. [^] Certain portions of the regulations have been superseded. Up-to-date guidance is provided in this Part.

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:

General Eligibility Requirements for SIJ Classification
Physically present in the United States
Unmarried
Under the age of 21 on the date of filing the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)
Juvenile court order(s) issued in the United States that meets the specified requirements
U.S. Department of Homeland Security consent
U.S. Department of Health and Human Services (HHS) consent, if applicable

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 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.[11] 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.[12] 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.[13]

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.[14] 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[15]

The juvenile court must determine that reunification with one or both parents[16] is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state child welfare laws.[17] 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.[18] 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.[19]

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.[20]

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).[21] 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.[22] 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.[23]

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[24] to have jurisdiction under state law to make the required judicial determinations about the custody and care and/or dependency of the juvenile.[25] 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).[26]

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.[27] 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.[28]

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.[29] 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.[30] 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.[31] 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.

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. HHS 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[32] 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.[33] 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 qualifying 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.[34] 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 [7 USCIS-PM F.7].

2. [^] USCIS interprets the use of the term "child" in Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008), to refer to the definition of child in INA 101(b)(1), which states that a child is an unmarried person under 21 years of age.

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, 309 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.").

4. [^] Section 235(d)(6) of the TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008), provides age-out protection to SIJ petitioners.

5. [^] See 8 CFR 204.11(a). Consistent with the district court's decision in *R.F.M., et al. v. Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and INA 101(a)(27)(J)(i), USCIS interprets the definition of juvenile court at 8 CFR 204.11(a) to mean a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency or custody and care of juveniles (or both).

6. [^] See INA 101(a)(27)(J)(i). See *Matter of A-O-C (PDF, 309 KB)*, Adopted Decision 2019-03 (AAO Oct. 11, 2019).

7. [^] See 8 CFR 204.11(d)(2)(i).

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)].

10. [^] See 8 CFR 204.11(c)(3).

11. [^] See 8 CFR 204.11(c)(3). See *Matter of E-A-L-O- (PDF, 304 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").

13. [^] USCIS draws on guidance from family law treatises, national clearinghouses on juvenile court practice, and state laws on the definition of dependency. See, for example, Ann M. Haralambie, Handling Child Custody, Abuse and Adoption Cases, Section 12.1 (Thompson Reuters 3rd ed. 2018); and National Council of Juvenile and Family Court Judges, Resource Guidelines Improving Court Practice in Child Abuse & Neglect Cases (PDF) (1995).

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 child reaches the age of majority. See 8 CFR 204.11(a). See Section 235(d)(1)(A) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5079 (December 23, 2008).

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, 306 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).

19. [^] USCIS does not require that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification. See R.F.M. v Nielsen, 365 F.Supp.3d 350, 382 (SDNY Mar. 15, 2019). See *J.L., et al v. Cissna*, 341 F.Supp.3d 1048 (N.D.C.A. 2018), *Moreno-Galvez v. Cissna*, No. 19-321 (W.D.W.A. July 17, 2019). See *W.A.O. v. Cissna*, No. 19-11696 (D.N.J. July 3, 2019).

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.

21. [^] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child. See *Matter of A-O-C- (PDF, 309 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.).

22. [^] See 58 FR 42843-01, 42848 (Aug. 13, 1993).

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, 309 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.

26. [^] See *Perez-Olano v. Holder (PDF, 5.34 MB)*, Case No. CV 05-3604 (C.D. Cal. 2010).

27. [^] 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.

28. [^] 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).

29. [^] See Pub. L. 110-457 (PDF) (December 23, 2008). See *Matter of D-Y-S-C- (PDF, 306 KB)*, Adopted Decision 2019-02 (AAO Oct. 11, 2019).

30. [^] See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).

31. [^] Id.; see also *Matter of D-Y-S-C- (PDF, 306 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).

32. [^] See *Perez-Olano v. Holder (PDF, 5.34 MB)*, Case No. CV 05-3604 (C.D. Cal. 2010).

33. [^] 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].

34. [^] See INA 101(a)(27)(J)(iii)(II).

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.[4] 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).[5] 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.[6]

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

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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, 306 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).

9. [^] See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).

10. [^] See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997); see also *Matter of D-Y-S-C- (PDF, 306 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 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. [^2] USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.

13. [^] See Violence Against Women Act of 2005, Pub. L. 109-162 (PDF) (January 5, 2006) (codified at INA 287(h).

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.[6] 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).[7]

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.[8]

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.[9] An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision.[10] 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:[11]

- Marriage of the petitioner;
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order,[12] 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;[13] or
- 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.[14]

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.[15] 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.[16]

Footnotes

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1. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). See *Matter of E-A-L-O- (PDF, 304 KB)*, Adopted Decision 2019-04 (AAO, Oct. 11, 2019) (citing Sections 471(a), 451(b), 462(c) of the Homeland Security Act of 2002, Pub. L. 107-296 (PDF), 116 Stat. 2135, 2205 (November 25, 2002)).

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].

3. [^] See Section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act of 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008).

4. [^] See 8 CFR 103.2(b)(10).

5. [^] See 8 CFR 103.2(b)(9).

6. [^] See 8 CFR 103.2(b)(8).

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).

8. [^] See 8 CFR 103.2(b)(19).

9. [^] See 8 CFR 103.3(a).

10. [^] See 8 CFR 103.3. See 8 CFR 103.5.

11. [^] See 8 CFR 205.1(a)(3)(iv).

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).

14. [^] See 8 CFR 205.1(b).

15. [^] See INA 205 and 8 CFR 205.2.

16. [^] See 8 CFR 205.2(b).

Chapter 5 - Appeals, Motions to Reopen, and Motions to Reconsider

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

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1. [^] See 8 CFR 103.3. See 8 CFR 103.5.

2. [^] See 8 CFR 103.3(a)(2)(i). See 8 CFR 103.5(a)(1)(i). See 8 CFR 103.8(b).

3. [^] See 8 CFR 205.2(d) (revocation appeals) and 8 CFR 103.8(b) (effect of service by mail).

4. [^] See 8 CFR 103.5(a)(1)(i).

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

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1. [^] See the USCIS website for Data Set: Form I-360 Petition for Special Immigrant Juveniles.

Volume 7 - Adjustment of Status

Part A - Adjustment of Status Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

There are two general paths to lawful permanent resident (LPR) status. Aliens living abroad apply for an immigrant visa at a consular office of the Department of State (DOS). Once issued a visa, an alien may enter the United States and become an LPR upon entry. Aliens who qualify for LPR status who are living in the United States may file an application with USCIS to adjust their status to LPR status, or they may apply for an immigrant visa abroad.

Congress created the adjustment of status provisions to enable an alien physically present in the United States to become an LPR without incurring the expense and inconvenience of traveling abroad to obtain an immigrant visa. Congress has further modified the adjustment of status provisions to:

- Promote family unity;
- Advance economic growth and a robust immigrant labor force;
- Accommodate humanitarian resettlement; and
- Ensure national security and public safety.

B. Background

Adjustment of status to lawful permanent residence describes the process by which an alien obtains U.S. lawful permanent resident 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 qualitativerestrictions, 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. [1]

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 lawful permanent residents. [2] 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. [3] 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. [4]

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. [5] 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. [6] The INA retained a modified system of both qualitative and numerical restrictions on permanent immigration. The INAestablished 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. [7] 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. [8]

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. [9]

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. [10] 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. [11] IMFA's key provision stipulated that aliens who obtain immigrant status based on a marriage existing for less than two years be granted lawful permanent residence initially on a conditional basis. This conditional status may be converted to full permanent resident status after two 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). [12] 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 [13] and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), [14] 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. Special Adjustment of Status Provisions

Over the years, Congress has created several special adjustment programs 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 [15]

- 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

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1. [^] See 1921 Emergency Quota Law, Pub. L. 67-5 (May 19, 1921). See Immigration Act of 1924, also known as the National Origins Act or the Johnson–Reed Act, Pub. L. 68-139 (May 26, 1924).

2. [^] This process is known as “consular processing.”

3. [^] See 2 C. Gordon & H. Rosenfield, Immigration Law and Procedure, Section 7.3a. See *Jain v. INS*, 612 F.2d 683 (2nd Cir. 1979).

4. [^] See Abraham D. Sofaer, The Change of Status Adjudication: A Case Study of the Informal Agency Process, 1 J. Legal Studies 349, 351 (1971).

5. [^] Also known as the Smith Act, Pub. L. 76-670 (June 28, 1940).

6. [^] This Act is also referred to as the McCarran-Walter Act, Pub. L. 82-414 (PDF) (June 27, 1952).

7. [^] See Pub. L. 89-236 (PDF) (October 3, 1965).

8. [^] See Pub. L. 95-412 (PDF) (October 5, 1978).

9. [^] See Pub. L. 96-212 (PDF) (March 17, 1980).

10. [^] See Pub. L. 99-603 (PDF) (November 5, 1986).

11. [^] See Pub. L. 99-639 (PDF) (November 10, 1986).

12. [^] See Pub. L. 101-649 (November 29, 1990).

13. [^] See Pub. L. 104-132 (PDF) (April 24, 1996).

14. [^] See Pub. L. 104-208 (PDF) (September 30, 1996).

15. [^] 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 toadjust 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 entrepreneur;
- 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] Section 202);
- 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: [8]

- 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 avisitor 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 (Form I-508, or a Form I-508F in the case of French nationals).

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, I-508F, and I-566 may all 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 two-year foreign residence requirement. [27] These exchange visitors generally must return to the country of their last residence or the country of their nationality for a continuous two-year period after the end of their exchange program before they can apply for permanent residence. If such exchange visitors do not return to the country of their last residence or to their home country for at least two years after the end of their exchange program, they may be ineligible for adjustment of status. However, certain exchange visitorsmay 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

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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).

4. [^] 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).

5. [^] 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).

6. [^] Some special adjustment programs include the Cuban Adjustment Act, Pub. L. 89-732 (PDF) (November 2, 1966); the Cuban Adjustment Act for Battered Spouses and Children, Section 1509 of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386 (PDF), 114 Stat. 1464, 1530 (October 28, 2000) and Sections 811, 814, and 823 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (PDF), 119 Stat. 2960, 3057-58 and 3063 (January 5, 2006); dependent status under the Haitian Refugee Immigrant Fairness Act (HRIFA), Division A, Section 902 of Pub. L. 105-277 (PDF), 112 Stat. 2681, 2681-538 (October 21, 1998); dependent status under HRIFA for Battered Spouses and Children, Section 1511 of VTVPA, Pub. L. 106-386 (PDF), 114 Stat. 1464, 1532 (October 28, 2000), Section 1505 of the LIFE Act Amendments, Pub. L. 106-554 (PDF), 114 Stat. 2763, 2753A-326 (December 21, 2000), Sections 811, 814, and 824 of VAWA 2005, Pub. L. 109-162 (PDF), 119 Stat. 2960, 3057-58 and 3063 (January 5, 2005), and 8 CFR 245.15; former Soviet Union, Indochinese or Iranian parolees (Lautenberg Parolees), Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167 (PDF), 103 Stat. 1195, 1263 (November 21, 1989), as amended; and

diplomats or high-ranking officials unable to return home, Section 13 of the Act of September 11, 1957, Pub. L. 85-316 (PDF), as amended, 8 CFR 245.3, INA 101(a)(15)(A)(i)-(ii) and INA 101(a)(15)(G)(i)-(ii).

7. [^] See Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160, 2193 (November 19, 1997).

8. [^] 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, VAWA-based applicants, certain special immigrants, or employment-based immigrants.

9. [^] See 8 CFR 245.1(b)(3).

10. [^] See INA 245(c)(1) and 8 CFR 245.1(b)(2).

11. [^] 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 certainspecial immigrants are exempt from these bars.

12. [^] See INA 245(c)(2) and 8 CFR 245.1(b)(5). Immediate relatives, as defined in INA 201(b), and certain special immigrants are exempt from this bar.

13. [^] See INA 245(c)(2) and 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).

14. [^] See 8 CFR 245.1(b)(1).

15. [^] See INA 245(c)(4) and 8 CFR 245.1(b)(7). Immediate relatives, as defined in INA 201(b), are exempt from this bar.

16. [^] See INA 245(c)(4) and 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).

18. [^] See INA 245(c)(7) and 8 CFR 245.1(b)(9).

19. [^] 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 this bar.

20. [^]See 8 CFR 245.1(c)(5).

21. [^] See INA 245(d) and 8 CFR 245.1(c)(6).

22. [^] See INA 212. See Volume 8, Admissibility [8 USCIS-PM].

23. [^] See Volume 9, Waivers [9 USCIS-PM].

24. [^] See INA 101(a)(15)(E).

25. [^] See INA 212(e) and 8 CFR 245.1(c)(2).

26. [^] See INA 101(a)(15)(J).

27. [^] See INA 212(e). Even when the J-1 nonimmigrant visa is obtained through fraud, the alien may still be subject to the foreign residency requirement. See *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.

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 two-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:

- 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 the USCIS public website prior to filing. USCIS may relocate an application filed at the wrong location in 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.

Signature Requirements

Acceptable Signatures	Unacceptable Signatures
• Original signature in ink • Handwritten "X" in ink • Parent or legal guardian of a child under 14 years of age • Legal guardian of a mentally incompetent person	• Any signature in pencil • Typed name on signature line • Attorney or representative signing for the applicant or the applicant's child

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. [10]

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. [11] 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. [12] 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 [13]

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. [14] Generally, the IJ 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.” [15] 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. [16] A removal order is considered executed once immigration authorities remove the alien from the United States or the alien departs from the United States.[17]

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. [18]

Footnotes

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1. [^] See 8 CFR 103.2(a)(1).

2. [^] See 8 CFR 103.2(a)(1) (for location), 8 CFR 103.2(a)(7)(i) (for filing fee and signature), and 8 CFR 245.2(a)(2)(i) (for available visa).

3. [^] See INA 245(a)(3) and 8 CFR 245.2(a)(2).

4. [^] See 8 CFR 103.2(a)(7).

5. [^] See 8 CFR 103.7.

6. [^] See 8 CFR 103.7(b)(1)(i)(U)(3).

7. [^] See 8 CFR 103.7(c). Biometrics fees may also be waived.

8. [^] For more information, see the USCIS website.

9. [^] See 8 CFR 103.7(b)(1)(i)(U)(3).

10. [^] For more information, see Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

11. [^] USCIS rejects adjustment applications filed before a visa number is available. See 8 CFR 245.2(a)(2).

12. [^] 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.

13. [^] See 8 CFR 245.2(a)(2)(i)(B) and 8 CFR 245.2(a)(2)(i)(C).

14. [^] See 8 CFR 245.2(a)(1) and 8 CFR 1245.2(a)(1).

15. [^] See 8 CFR 1.2 for definition of an “arriving alien.”

16. [^] See *Matter of Yauri (PDF)*, 25 I&N Dec. 103 (BIA 2009).

17. [^] See INA 101(g).

18. [^] See 8 CFR 245.2(a)(4)(ii). In certain circumstances, a departure does not cause abandonment of the adjustment application. See 8 CFR 245.2(a)(4)(ii)(B)-(D).

Chapter 4 - Documentation

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 (Form I-864, I-864A, I-864EZ and I-864W)

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 special 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.

Requests for Evidence (RFE)

Scenario	Officer Action
Any required initial evidence is incomplete, missing, or raises eligibility concerns	• Prepare and issue an RFE to provide the applicant an opportunity to establish his or her eligibility; or • Deny the application. [17]
All required initial evidence is submitted, but the evidence submitted does not establish eligibility	• Prepare and issue an RFE for additional information; • 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 • Deny the application for ineligibility. [18]
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. [19] 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

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1. [^] See Instructions to Form I-485. See examples at the U.S. Department of State website.

2. [^] See 8 CFR 103.2(b)(2).

3. [^] See 8 CFR 103.2(b)(3).

4. [^] See INA 245(a).

5. [^] See *Matter of Quilantan (PDF)*, 25 I&N Dec. 285 (BIA 2010). For more information, see Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, “Inspected and Admitted” or “Inspected and Paroled”, Subsection 7, Waived Through at Port-of-Entry [7 USCIS-PM B.2(A)(7)].

6. [^] See 8 CFR 103.2(b).

7. [^] See INA 213A. 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)].

11. [^] Some special adjustment programs include the Cuban Adjustment Act, Pub. L. 89-732 (PDF) (November 2, 1966); the Cuban Adjustment Act for Battered Spouses and Children, Section 1509 of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386 (PDF), 114 Stat. 1464, 1530 (October 28, 2000) and Sections 811, 814, and 823 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (PDF), 119 Stat. 2960, 3057-58 and 3063 (January 5, 2006); dependent status under the Haitian Refugee Immigrant Fairness Act (HRIFA), Division A, Section 902 of Pub. L. 105-277 (PDF), 112 Stat. 2681, 2681-538 (October 21, 1998); dependent status under HRIFA for Battered Spouses and Children, Section 1511 of VTVPA, Pub. L. 106-386 (PDF), 114 Stat. 1464, 1532 (October 28, 2000), Section 1505 of the

LIFE Act Amendments, Pub. L. 106-554 (PDF), 114 Stat. 2763, 2753A-326 (December 21, 2000), Sections 811, 814, and 824 of VAWA 2005, Pub. L. 109-162 (PDF), 119 Stat. 2960, 3057-58 and 3063 (January 5, 2005), and 8 CFR 245.15; former Soviet Union, Indochinese or Iranian parolees (Lautenberg Parolees), Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167 (PDF), 103 Stat. 1195, 1263 (November 21, 1989), as amended; and diplomats or high-ranking officials unable to return home, Section 13 of the Act of September 11, 1957, Pub. L. 85-316 (PDF), as amended, 8 CFR 245.3, INA 101(a)(15)(A)(i)-(ii), and INA 101(a)(15)(G)(i)-(ii).

12. [^] See 8 CFR 101.3 and 8 CFR 264.2.

13. [^] See 8 CFR 103.2(b)(2).

14. [^] See 8 CFR 103.2(b)(2)(ii).

15. [^] See 8 CFR 103.2(b)(2)(i).

16. [^] See 8 CFR 103.2(b)(2) for more information on submitting secondary evidence and affidavits.

17. [^] See 8 CFR 103.2(b)(8)(ii).

18. [^] See 8 CFR 103.2(b)(8)(iii).

19. [^] See 8 CFR 103.2(b)(5).

Chapter 5 - Interview Guidelines

All adjustment of status applicants must be interviewed by an officer unless the interview is waived by USCIS. [1] 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. 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;
- Asylees and refugees who were previously interviewed by a USCIS officer; [5] 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.

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 petitionerdue 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 interpreter is not competent to translate.

Footnotes

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1. [^] See 8 CFR 245.6.

2. [^] See 8 CFR 103.2(b)(7).

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. [^] An asylee or refugee derivative seeking adjustment of status who was not previously interviewed by a USCIS officer during the asylum or refugeeprocess must be interviewed as part of the adjustment of status adjudication. Such applicants are not eligible for an interview waiver.

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:

General Guidelines for Adjudication of Adjustment of Status Application

AILA Doc. No. 19060633. (Posted 12/18/19)

General Guidelines for Adjudication of Adjustment of Status Application
• Verify underlying basis
• Determine ongoing eligibility
• Verify visa availability (if applicable)
• Determine admissibility
• Determine if favorable discretion is warranted (if applicable)

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) [6] 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 special 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

Numerically Limited Visa Preference Category	Relevant Visa Bulletin Chart at Time of Filing	Relevant Visa Bulletin Chart at Time of Final Adjudication
Family-Based Preference Categories	See Visa Bulletin in effect at the time the adjustment application was filed to determine which chart controls *(Dates for Filing Family-Sponsored Visa Applications OR Application Final Action Dates for Family-Sponsored Preference Cases chart)*	***Application Final Action Dates for Family-Sponsored Preference Cases*** chart that is current at the time the application is approved
Employment-Based Preference Categories (including Special Immigrant-Based Categories)	See Visa Bulletin in effect at the time the adjustment application was filed to determine which chart controls *(Dates for Filing Employment-Based Visa Applications OR Application Final Action Dates for Employment-Based Preference Cases chart)*	***Application Final Action Dates for Employment-Based Preference Cases*** chart that is current at the time the application is approved

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. [38] In contrast, there is no specific time period during which a derivative must follow to join the principal. [39]

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); [40]
- 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. [41]

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) [42] or otherwise under the provisions of the CSPA, if applicable; [43] and
- The principal remains in LPR status at the time the derivative adjusts status. [44]

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. [45] 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. [46]

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. [47]

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. [48]

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:

Examples of Eligibility for Cross-Chargeability

If a Visa is …	And a Visa is …	Then Charge the …
Available for principal applicant	Not available for derivative spouse	Derivative spouse's visa to the principal applicant's country of chargeability
Not available for principal applicant	Available for derivative spouse	Principal applicant's visa to the derivative spouse's country of chargeability
Available for principal applicant and derivative spouse	Not available for derivative child	Derivative child's visa to either parent's more favorable country of chargeability

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 Act (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.

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.

If any of these situations apply, the applicant should submit an Intending Immigrant's Affidavit of Support Exemption (Form I-864W) instead of the Form I-864 with his or her adjustment application.

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); [65] and
- Certain qualified aliens as described under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). [66]

Applicants in these categories need not file either Form I-864 or Form I-864W.

If the officer determines that required documentation is missing or that the petitioner fails to meet sponsorship requirements, the officer should issue an RFE requesting the missing evidence, including the need for the applicant to obtain a joint sponsor or to submit Form I-864W as appropriate.

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. [67]

An officer must consider activities, aliens, and organizations described in statute, to determine if a national security concern exists. [68] These include but are not limited to:

- Espionage activity; [69]
- Illegal transfer of goods, technology, or sensitive information; [70]

- Activity intended to oppose, control, or overthrow the U.S. Government by force, violence, or other unlawful means; [71]
- Terrorist activity; [72] and
- Association with terrorist organizations. [73]

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

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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).

2. [^] See INA 212(a)(3)(A), INA 212(a)(3)(B), or INA 212(a)(3)(F). See INA 237(a)(4)(A) or INA 237(a)(4)(B).

3. [^] See INA 245(a). See 8 CFR 245.1(a). See 8 CFR 103.2(b)(1), 8 CFR 103.2(b)(2), and 8 CFR 103.2(b)(12).

4. [^] See INA 245(c)(2).

5. [^] See INA 204(l) for exceptions due to death of the petitioner or principal beneficiary.

6. [^] See Pub. L. 107-208 (PDF) (August 6, 2002). See Chapter 7, Child Status Protection Act [7 USCIS-PM A.7].

7. [^] See INA 101(b)(1).

8. [^] For more information, see Section C, Verify Visa Availability, Subsection 6, Derivatives [7 USCIS-PM A.6(C)(6)].

9. [^] See INA 203(d) and *Matter of Naulu (PDF)*, 19 I&N Dec. 351 (BIA 1986).

10. [^] See 22 CFR 40.1(a)(2). See INA 245(m) and 8 CFR 245.24. See Part L, Refugee Adjustment [7 USCIS-PM L] and Part M, Asylee Adjustment [7 USCIS-PM M] for more information on the exception for asylee and refugee derivatives adjusting status.

11. [^] See INA 204(j).

12. [^] See INA 201(b)(2)(A)(i).

13. [^] See INA 201(b) for a complete listing.

14. [^] See INA 209.

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.

17. [^] Some special adjustment programs include the Cuban Adjustment Act, Pub. L. 89-732 (PDF) (November 2, 1966); the Cuban Adjustment Act for Battered Spouses and Children, Section 1509 of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386 (PDF), 114 Stat. 1464, 1530 (October 28, 2000) and Sections 811, 814, and 823 of the Violence

Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162 (PDF), 119 Stat. 2960, 3057-58 and 3063 (January 5, 2006); dependent status under the Haitian Refugee Immigrant Fairness Act (HRIFA), Division A, Section 902 of Pub. L. 105-277 (PDF), 112 Stat. 2681, 2681-538 (October 21, 1998); dependent status under HRIFA for Battered Spouses and Children, Section 1511 of VTVPA, Pub. L. 106-386 (PDF), 114 Stat. 1464, 1532 (October 28, 2000), Section 1505 of the LIFE Act Amendments, Pub. L. 106-554 (PDF), 114 Stat. 2763, 2753A-326 (December 21, 2000), Sections 811, 814, and 824 of VAWA 2005, Pub. L. 109-162 (PDF), 119 Stat. 2960, 3057-58 and 3063 (January 5, 2005), and 8 CFR 245.15; former Soviet Union, Indochinese or Iranian parolees (Lautenberg Parolees), Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167 (PDF), 103 Stat. 1195, 1263 (November 21, 1989), as amended; and diplomats or high-ranking officials unable to return home, Section 13 of the Act of September 11, 1957, Pub. L. 85-316 (PDF), as amended, 8 CFR 245.3, INA 101(a)(15)(A)(i)-(ii) and INA 101(a)(15)(G)(i)-(ii). Although a visa is 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) (to be codified at 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 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(d)).

31. [^] See INA 203(g). See 8 CFR 205.1(a)(1).

32. [^] See 8 CFR 204.5(e)(2).

33. [^] See 84 FR 35750, 35808 (PDF) (July 24, 2019) (to be codified at 8 CFR 204.6(d)).

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.

41. [^] See 9 FAM 502.1-1(C)(2), Derivative Applicants/Beneficiaries.

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).

46. [^] See 9 FAM 502.1-1(C)(2), Derivative Applicants/Beneficiaries.

47. [^] See *Matter of Y- K- W- (PDF)*, 9 I&N Dec. 176 (A.G. 1961).

48. [^] See 22 CFR 40.1(a)(2). See INA 245(m) and 8 CFR 245.24. See Part L, Refugee Adjustment [7 USCIS-PM L] and Part M, Asylee Adjustment [7 USCIS-PM M] for more information on the exception for asylee and refugee derivatives adjusting status.

49. [^] See INA 202(b)(2).

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 [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].

57. [^] See 8 CFR 213a.

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.

60. [^] See 8 CFR 213a.2(a)(2)(i) and 8 CFR 213a.2(a)(2)(ii)(B). See Illegal Immigration Reform and Immigrant Responsibility Act, Division C of Pub. L. 104-208 (PDF) (September 30, 1996).

61. [^] A winner of the Diversity Visa Program lottery has no petition or petitioner. Consequently, a Diversity Visa Program adjustment applicant does not need to file an Affidavit of Support. However, the applicant is still subject to the public charge ground of inadmissibility.

62. [^] See INA 245(h).

63. [^] See INA 209(c).

64. [^] See INA 212(a)(4).

65. [^] See INA 101(a)(15)(U) and INA 212(a)(4)(E)(ii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (PDF), 127 Stat. 54, 111 (March 7, 2013).

66. [^] See INA 212(a)(4)(E)(iii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (PDF), 127 Stat. 54, 111 (March 7, 2013). See Section 431(b) of PRWORA, Pub. L. 104-193 (PDF), 110 Stat. 2105, 2274 (August 22, 1996) as amended by Title V, Subtitle A, Section 501 of the Omnibus Consolidated Appropriates Act of 1997, Pub. L. 104-208 (PDF), 110 Stat. 3009, 3009-670 (September 30, 1996) and codified at 8 U.S.C. 1641.

67. [^] See INA 212(a)(3)(A), INA 212(a)(3)(B), and INA 212(a)(3)(F). See INA 237(a)(4)(A) or INA 237(a)(4)(B).

68. [^] See INA 212(a)(3)(A), INA 212(a)(3)(B), and INA 212(a)(3)(F). See INA 237(a)(4)(A) and INA 237(A)(4)(B).

69. [^] See INA 212(a)(3)(A)(i)(I) and INA 237(a)(4)(A).

70. [^] See INA 212(a)(3)(A)(i)(II) and INA 237(a)(4)(A).

71. [^] See INA 212(a)(3)(A)(iii) and INA 237(a)(4)(A).

72. [^] See INA 212(a)(3)(B) and INA 237(a)(4)(B).

73. [^] See INA 212(a)(3)(F) and INA 237(a)(4)(B).

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 asa 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 a qualifying Petition for Alien Relative (Form I-130), Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), or adjustment application pending on or after the CSPA effective date;
- 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.

2. Determining Child Status Protection Act Age

For IRs and IR self-petitioners or derivatives under VAWA, a child's age is frozen as of the date the Form I-130 or Form I-360 is filed.If the adjustment applicant was under the age of 21 at the time the petition was filed, 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 a qualifying Refugee/Asylee Relative Petition (Form I-730), principal applicant's Application for Asylum and for Withholding of Removal (Form I-589), or adjustment application pending on or after the CSPA effective date;
- 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. [12]

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. [13]

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. [14]

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. [15]

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. Theapplicant'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 finaldecision. 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. [16]

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. [17]

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 [18] 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. [19]

2. Child Status Protection Act Age Calculation

For family (including VAWA) [20] and employment-based preference and DV categories, an adjustment applicant's CSPA age is calculated by subtracting the number of days the petition was pending (pending time) from the applicant's age on the date theimmigrant visa becomes available to him or her (age at time of visa availability). [21] 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. [22]

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.

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) [23] 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. [24] 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 in the Final Action Dates chart. [25]

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. [26]

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. [27]

In September 2015, DOS and USCIS announced a revision to the Visa Bulletin, which created two charts of dates. [28] 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. [29] 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. [30]

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. [31] 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 and employment-based preference and DV adjustment applicants to benefit from CSPA, they must seek to acquire lawful permanent residence status within 1 year of visa availability. [32] This requirement does not apply to refugee derivatives, asylee derivatives, and IRs. [33]

1. Satisfying the Sought to Acquire Requirement

An adjustment applicant may satisfy the sought to acquire requirement by:

- Properly filing an Application to Register Permanent Residence or Adjust Status (Form I-485); [34]
- Submitting a completed Immigrant Visa Electronic Application (Form DS-260), Part I to the Department of State; [35] or
- Having a properly filed Application for Action on an Approved Application or Petition (Form I-824) filed on the applicant's behalf. [36]

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." [37]

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.[38] 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. [39]

While the Final Action Dates chart determines the date of visa availability for CSPA purposes and starts the 1-year clock, 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, USCIS considers the applicant to have met the sought to acquire requirement. However, the applicant's CSPA age calculation is dependent on visa availability

according to the Final Action Dates chart. [40] 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 Clock

When visa availability retrogresses before a continuous 1-year period has elapsed, the 1-year clock "resets" upon any subsequent visa availability. If the visa retrogresses before the applicant has had 1 full year in which to seek to acquire, the 1-year clock starts again when the visa once again becomes available. The adjustment applicant then has 1 full 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. Any retrogression and subsequent visa availability does not reset the clock because the applicant has already had a continuous 1-year period of time in which to seek to acquire.

For purposes of CSPA, only retrogression in the Final Action Dates chart is relevant. The 1-year clock begins when a visa becomes available according to the Final Action Dates chart. If the Final Action Dates chart retrogresses before 1 year elapses, the clock resets when a visa becomes available again according to the same chart. Any retrogression in the Dates for Filing chart is not considered retrogression for CSPA purposes and does not reset the 1-year clock.

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 1-year clock resets on May 1, 2017, giving the applicant a fresh 1- year period in which to seek to acquire.

Example 2

A visa initially becomes available to the applicant according to the Final Action Dates chart on March 1, 2016. Twelve and a half months later, on March 15, 2017, visa availability according to the Final Action Dates chart retrogresses. Just a few short months later, on June 1, 2017, the visa becomes available again according to the Final Action Dates chart. Under these facts, the 1-year period does not reset for the applicant 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. [41]

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* [42] 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

Immigrant Category	CSPA Age Determination	Sought to Acquire Requirement	Legal Authorities and Additional Guidance
Derivative Refugees	CSPA age is frozen on the date the principal refugee parent's Form I-590 is filed (the date of the parent's interview)	Not Applicable	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)].
Derivative Asylees	CSPA age is frozen on the date the principal asylee parent's Form I-589 is filed.	Not Applicable	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)].
Immediate Relatives (including VAWA) [43]	CSPA age is frozen on the date the Form I-130 or Form I-360 is filed.	Not Applicable	See INA 201(f). See AFM 21.2(e), The Child Status Protection Act of 2002.

Family-Sponsored Preference Principals and Derivatives (including VAWA) [44]	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.	Applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h). See AFM 21.2(e), The Child Status Protection Act of 2002.
Employment-Based Preference Derivatives	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.	Applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h).
Diversity Immigrant Visa Derivatives	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.	Applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h).

Footnotes

1. [^] See Pub. L. 107-208 (PDF) (August 6, 2002).

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."

3. [^] See INA 101(b)(1).

4. [^] 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 (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, 105 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.

8. [^] For information about the impact of CSPA on applicants for an immigrant visa, see 9 FAM 502.1-1(D), Child Status Protection Act.

9. [^] Pending time may also include administrative review, such as motions and appeals, but does not include consular returns.

10. [^] See *Matter of Avila-Perez (PDF)*, 24 I&N Dec. 78 (BIA 2007).

11. [^] See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. 107-56 (PDF), 115 Stat. 272, 362 (October 26, 2001).

12. [^] 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)].

13. [^] See INA 209(a)(1).

14. [^] The date a Form I-590 is considered filed is the date of the principal refugee parent's interview with a USCIS officer.

15. [^] See INA 209(a)(1).

16. [^] 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)].

17. [^] See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)] for detailed information.

18. [^] 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.

19. [^] See INA 203(h) and INA 204(k).

20. [^] 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 (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, 105 KB), issued August 17, 2004.

21. [^] 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).

22. [^] See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)] for detailed information.

23. [^] 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.

24. [^] For DVs, the qualifying petition is the DV Program electronic entry form. See 9 FAM 502.6-4, Diversity Visa Processing.

25. [^] 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.

26. [^] The rank number is the number following the two-letter region code and should correspond with cut-off numbers available in the Visa Bulletin.

27. [^] 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.

28. [^] See USCIS.gov.

29. [^] USCIS typically designates one of the two charts within 1 week of the publication of the Visa Bulletin.

30. [^] 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).

31. [^] 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)].

32. [^] See INA 203(h)(1)(A). Seek or sought to acquire is used as shorthand in this chapter to refer to this requirement.

33. [^] VAWA preference cases are subject to the sought to acquire requirement, but VAWA IRs are not.

34. [^] See Chapter 3, Filing Instructions, Section B, Definition of Properly File [7 USCIS-PM A.3(B)].

35. [^] Submitting a Form DS-260 that covers only the principal applicant does not meet the sought to acquire requirement for a derivative child.

36. [^] 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.

37. [^] For more information, see Subsection 3, Extraordinary Circumstances [7 USCIS-PM A.7(G)(3)].

38. [^] 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.

39. [^] 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).

40. [^] 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)].

41. [^] 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).

42. [^] 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).

43. [^] 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, 105 KB), issued August 17, 2004.

44. [^] 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, 105 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

Date	Event

Date	Event
May 16, 2010	An applicant has a family-based petition approved based on marriage to a lawful permanent resident.
June 16, 2010	The applicant applies for adjustment of status based on the approved petition.
August 4, 2010	The applicant divorces his permanent resident spouse.
September 23, 2010	The applicant marries a U.S. citizen.
October 1, 2010	The applicant's new spouse files a petition for the applicant based on the new marriage.
November 10, 2010	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.

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 applicantmust 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

Date	Event
May 18, 2011	An applicant applies for adjustment of status as the spouse of a U.S. citizen after recently getting married.
July 23, 2011	An employer petitions for the applicant.
September 3, 2011	The employer's employment-based petition is approved.
October 21, 2011	The applicant requests a transfer to adjust status based on the employment-based petition instead of as the spouse of a U.S. citizen.

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. 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 [8] 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 [9]

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. [10]

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 an adjustment applicant with an approved employment-based petition in the EB 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.

If such an employment-based applicant requests to transfer the adjustment application to a different employment-based category, the applicant may not utilize the portability provisions, if applicable, until 180 days or more after making the transfer request. In essence, transferring the basis of the adjustment application resets the adjudication clock for purposes of portability eligibility. [12]

National Interest Waiver Physicians

Physicians with an approved immigrant petition based on a national interest waiver (NIW) are subject to the two-year home residence requirement of INA 212(e) and may seek to qualify for waiver of that requirement by providing their medical services for three or five years in a medically underserved area or Department of Veterans Affairs (VA) facility. [13] NIW physicians are permitted to file an adjustment application before they complete their required medical service. In these cases, USCIS holds adjudication of the adjustment application in abeyance until the applicant has fulfilled and documented the medical service requirement.

After filing the adjustment application but before final adjudication, an NIW physician may sometimes file a self-petition based on establishing his or her own medical practice or he or she may become the beneficiary of a separate employment-based second preference immigrant petition for a prospective employer. If the second petition is approved and the new employment takes place in a medically underserved area or VA facility, the applicant may request transfer of the adjustment application to the second petition. In this scenario, the priority date of the initial NIW petition is retained. [14]

If an NIW physician seeks to transfer his or her adjustment application to a new basis that does not involve employment in a medically underserved area or VA facility, USCIS may grant the transfer only if the applicant has already fulfilled the required medical service for the INA 212(e) waiver 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

1. [^] See INA 216.

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)].

3. [^] See INA 205.

4. [^] See 8 CFR 205.1.

5. [^] See 8 CFR 205.2.

6. [^] See 8 CFR 204.2(h)(2) and 8 CFR 204.5(e) for exceptions.

7. [^] See 8 CFR 204.5(e).

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).

9. [^] 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.

10. [^] See Section A, Eligibility Requirements [7 USCIS-PM A.8(A)] and Section B, Filing Requirements [7 USCIS-PM A.8(B)].

11. [^] See Pub. L. 106-313 (PDF) (October 17, 2000).

12. [^] 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.

13. [^] See 65 FR 53889 (PDF) (Sept. 6, 2000).

14. [^] See 8 CFR 204.12(f)(1) or 8 CFR 204.12(f)(2).

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. [1] In 2009, Congress addressed this scenario with a new statutory provision, INA 204(l). [2] 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, [3] 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 Relative

An alien's deceased relative must meet the definition of qualifying relative in order for the alien to be eligible 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 aliens who may 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 in an immediate relative immigrant visa petition;
- The petitioner in a family-based immigrant visa petition;
- The principal beneficiary in a widow(er)'s immediate relative immigrant visa petition;
- The principal beneficiary in a widow(er)'s family-based immigrant visa petition;
- The principal beneficiary in an employment-based immigrant visa petition;
- The petitioner in a Refugee/Asylee Relative Petition (Form I-730);
- The principal alien admitted as a T or U nonimmigrant; 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. [6]

INA 204(l) defines an applicant's residence as his or her "principal, actual dwelling place in fact, without regard to intent." [7] 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, [8] 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. [9] 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; [10]
- The underlying petition is approved under INA 204(l), or the pre-death approval of the underlying petition is reinstated; [11] and
- The applicant meets all other adjustment requirements.

INA 204(l) does not limit or waive any eligibility requirements or adjustment bars that apply, other than the lack of a qualifying relative due to death. Therefore, the applicant must have been eligible to apply for adjustment at the time the application was filed and at final adjudication, including visa availability and admissibility. [12] In addition, the applicant must not be barred from adjusting status. [13]

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. [14]

Therefore, if at the time the qualifying relative died, the beneficiary had not yet filed for adjustment, the beneficiary may only apply once the underlying petition is approved or reinstated. However, if at the time the qualifying relative died, there was a properly filed adjustment application pending and the beneficiary was eligible to adjust, approval or reinstatement of an approved underlying petition preserves any eligibility for adjustment that existed immediately before the qualifying relative died.

INA 204(l) may benefit applicants who seek adjustment based on a derivative asylum grant, as a derivative T nonimmigrant, or as a derivative U nonimmigrant. [15] Any one of these aliens may still be eligible for adjustment in light of INA 204(l), despite the death of the qualifying relative. However, the applicant must still establish eligibility for adjustment, apart from the qualifying relative's death.

1. Admissibility and Waivers

INA 204(l) does not automatically waive any ground of inadmissibility that may apply to an adjustment applicant. [16] 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 [17]

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. [18] 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. [19]

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 a Form I-864.

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. [20]

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 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. [21]

A finding of extreme hardship permits, but does not compel, a favorable exercise of discretion. [22] 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. [23] The conduct that made the alien inadmissible is itself an adverse factor. [24] 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. [25] 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. [26]

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. [27] This exercise of discretion is unreviewable. [28]

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. [29]

Footnotes

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1. [^] See *Matter of Sano (PDF)*, 19 I&N Dec. 299 (BIA 1985). See *Matter of Varela (PDF)*, 13 I&N Dec. 453 (BIA 1970).

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.

4. [^] See INA 208(b)(3).

5. [^] See INA 204(l).

6. [^] See INA 204(l).

7. [^] See INA 101(a)(33).

8. [^] See INA 203(d). See INA 207(c)(2)(A). See INA 208(b)(3)(A).

9. [^] The surviving derivative beneficiaries may retain the classification and priority date from the underlying petition and adjust status despite the principal beneficiary's death.

10. [^] See INA 204(l). See Section A, General, Subsection 2, Residency Requirement [7 USCIS-PM A.9(A)(2)].

11. [^] 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).

12. [^] See INA 245(a). See 8 CFR 103.2(b)(1).

13. [^] See INA 245(c).

14. [^] Unless the applicant qualifies under INA 245(i) adjustment.

15. [^] See INA 209. See INA 245(l) and INA 245(m).

16. [^] See Section 568(d)(2) of Pub. L. 111-83 (PDF), 123 Stat. 2142, 2187 (October 28, 2009).

17. [^] For more information, see the USCIS website.

18. [^] See INA 212(a)(4)(C). See INA 213A. See 8 CFR 213a.2.

19. [^] See INA 212(a)(4).

20. [^] See INA 204(l). See Section A, General, Subsection 2, Residency Requirement [7 USCIS-PM A.9(A)(2)].

21. [^] 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.

22. [^] See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296 (BIA 1996).

23. [^] See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296 (BIA 1996).

24. [^] See *INS v. Yang (PDF)*, 519 U.S. 26 (1996).

25. [^] See 8 CFR 216.4(a)(1). See 8 CFR 216.5.

26. [^] 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.

27. [^] See INA 204(l)(1).

28. [^] See INA 204(l)(1).

29. [^] See Section B, Effect on Adjustment Application, Subsection 1, Admissibility and Waivers [7 USCIS-PM A.9(B)(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 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.

In adjustment of status, the standard of proof is generally preponderance of the evidence, proving a claimed fact is more likely than not to be true. [3] If the applicant is unable to prove his or her eligibility for the immigration benefit by a preponderance of the evidence, the officer must request additional evidence or deny the application. [4]

B. Discretion

Most adjustment applicants may only be granted permanent resident status in the discretion of USCIS. [5]

The following table highlights the adjustment case types that involve discretion.

Adjustment Applications Involving Discretion
INA 245(a) Adjustment (including family and employment based as well as the Diversity Visa Program)
Human Trafficking Victim Adjustment
Crime Victim Adjustment
Asylum Adjustment
Cuban Adjustment Act
Former Soviet Union, Indochinese, or Iranian Parolees (Lautenberg Parolees)
Diplomats or High Ranking Officials Unable to Return Home (Section 13 of the Act of September 11, 1957)

The following table highlights the adjustment cases that do not involve discretion. Therefore, provided the applicant meets all eligibility requirements, USCIS must approve the application.

Adjustment Applications Not Involving Discretion
NACARA (Nicaraguan Adjustment and Central American Relief Act of 1997) [6]
Refugee Adjustment
HRIFA (Haitian Refugee Immigration Fairness Act of 1998) [7]
Persons Born Under Diplomatic Status
Presumption of Lawful Admission
American Indian Creation of Record

For adjustment case types that involve discretion, the exercise of favorable discretion and the approval of an adjustment application is a matter of administrative grace – meaning the application is worthy of favorable consideration. [8] For adjustment case types that involve discretion, discretion can only extend up to the substantive and jurisdictional limits of the applicable law. Discretion cannot be used to justify an action that is not authorized by law.

1. Determining Whether Favorable Exercise of Discretion is Warranted

For adjustment case types that involve discretion, an applicant who meets the eligibility requirements contained in the law is eligible for adjustment of status but is not entitled to adjustment. The applicant has the burden of proving that discretion should be exercised in his or her favor. [9] An applicant must supply information within his or her knowledge that is relevant and material to a determination of whether adjustment is warranted. [10]

An officer must first determine whether the applicant otherwise meets the legal eligibility requirements. For example, in adjudicating an application for adjustment 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 is immediately available.

If the officer finds that the applicant meets the eligibility requirements, the officer then determines whether the application should be granted as a matter of discretion.

2. Issues and Factors to Consider

Absent compelling negative factors, an officer should exercise favorable discretion and approve the application. [11] If the officer finds negative factors, the officer must weigh all of the positive and negative factors. The list of issues and factors may include, but is not limited to:

- Eligibility;
- Immigration status and history;
- Family unity;

- Length of residence in the United States;
- Business and employment; and
- Community standing and moral character.

In cases 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 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 EOIR, then the local USCIS field office adjudicates the case as appropriate. If the removal order is not withdrawn or rescinded, then the removal order should be considered a significant adverse factor and any denial of adjustment may include the grounds cited in the removal order.

3. Proper Use of Discretion

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent on 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 adjustment application 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 suggest quantifying the exercise of favorable or unfavorable discretion; and
- Assessing whether on balance a favorable exercise of discretion is warranted in light of all the facts and the positive and negative factors.

Precedent case law provides guidance on how to consider evidence and weigh the favorable and adverse 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.

Discretionary decisions that involve complex or unusual facts, whether the outcome is favorable or unfavorable to the applicant, may require supervisory review. Further, officers may consult the Office of Chief Counsel through appropriate supervisory channels.

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.

Summary of Adjudication Involving Discretion

Has Applicant Otherwise Met Eligibility Requirements?	Does Applicant Warrant a Favorable Exercise of Discretion?	Decision
Yes	Yes, the positive factors outweigh the negative factors	**Approve** the application. Eligibility requirements are met and a favorable exercise of discretion is warranted.
Yes	No, the negative factors outweigh the positive factors	**Deny** the application. Eligibility requirements are 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.
No	No, even if the positive factors outweigh the negative factors	**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 statutory requirements.
No	No, the negative factors outweigh the positive factors	**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, but an officer is not required to discuss the discretionary grounds where the statutory ones are clear. If the determination on eligibility requirements might be overturned (e.g., where there is an unsettled area of law), an officer should explain the discretionary basis for denying the 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.

Footnotes

1. [^] See INA 291. See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). See *Matter of Rivero-Diaz*, 12 I&N Dec. 475 (BIA 1967).

2. [^] The person who bears the burden of proof must submit evidence to satisfy the applicable standard of proof.

3. [^] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 375 (AAO 2010).

4. [^] The law occasionally requires a higher standard of proof. For example, the higher standard of "clear and convincing evidence" is required to rebut the presumption of a prior fraudulent marriage. See INA 245(e)(3).

5. [^] See INA 245(a).

6. [^] See Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160, 2193 (November 19, 1997).

7. [^] See Division A, Section 902 of Pub. L. 105-277 (PDF), 112 Stat. 2681, 2681-538 (October 21, 1998).

8. [^] See *Von Pervieux v. INS*, 572 F.2d 114, 118 (3rd Cir. 1978). See *Ameeriar v. INS*, 438 F.2d 1028, 1030 (3rd Cir. 1971). See *Matter of Marques (PDF)*, 16 I&N Dec. 314 (BIA 1977).

9. [^] See *Matter of Arai (PDF)*, 13 I&N Dec. 494 (BIA 1970). See *Matter of Ortiz-Prieto (PDF)*, 11 I&N Dec. 317 (BIA 1965).

10. [^] See *Matter of Marques (PDF)*, 16 I&N Dec. 314 (BIA 1977). See *Matter of Mariani (PDF)*, 11 I&N Dec. 210 (BIA 1965). See *Matter of De Lucia (PDF)*, 11 I&N Dec. 565 (BIA 1966). See *Matter of Francois (PDF)*, 10 I&N Dec. 168 (BIA 1963). See *Matter of Pires Da Silva (PDF)*, 10 I&N Dec. 191 (BIA 1963).

11. [^]See *Matter of Arai (PDF)*, 13 I&N Dec. 494 (BIA 1970). See *Matter of Lam (PDF)*, 16 I&N Dec. 432 (BIA 1978).

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 officershould 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

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

Basis of Denial	Denial Notice Should ...
Ineligibility	Explain what eligibility requirements are not met and why they are not met
Discretionary Reasons (if applicable)	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

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

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1. [^] For example, investigative reports, information from informants, school records, or employment records not provided by the applicant.

2. [^] See 8 CFR 103.2(b)(16)(iv).

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.

4. [^] See 8 CFR 103.4(a)(4) and 8 CFR 103.4(a)(5). Certification to the AAO may be appropriate when a case involves complex legal issues or unique facts. An officer may consult through appropriate supervisory channels with the Office of Chief Counsel for guidance on certifying a decision to the AAO.

5. [^] See INA 240A.

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 [1] (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. [2] 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. [3]

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. [4] Congress indicated that adjustment should be used for purposes of family unity or otherwise be in the public interest. [5]

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). [6] Certain aliens may be eligible to adjust under other provisions of law, as detailed in other parts of this volume.

D. Legal Authorities

- INA 245(a); 8 CFR 245 – Adjustment of status to that of person admitted for permanent residence
- INA 245(c) – Bars to adjustment of status
- INA 245(k) – Inapplicability of certain provisions for certain employment-based immigrants

Footnotes

1. [^] See Section 13 of the Immigration Act of 1924, Pub. L. 68-139 (May 26, 1924).

2. [^] See 2 C. Gordon & H. Rosenfield, Immigration Law and Procedure, Section 7.3a. See *Jain v. Immigration and Naturalization Service*, 612 F.2d 683 (2nd Cir. 1979).

3. [^] See Sofaer, The Change of Status Adjudication: A Case Study of the Informal Agency Process, 1 J. Legal Studies 349, 351 (1971).

4. [^] See Section 245 of the Immigration and Nationality Act of 1952, Pub. L. 82-414 (PDF) (June 27, 1952).

5. [^] See H.R. Rep. 82-1365 (Feb. 14, 1952).

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).

INA 245(a) Adjustment of Status Eligibility Requirements
The applicant must have been: • Inspected and admitted into the United States; or • Inspected and paroled into the United States.
The applicant must properly file an adjustment of status application.
The applicant must be physically present in the United States.
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.

INA 245(a) Adjustment of Status Eligibility Requirements

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 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 Department of Homeland Security (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 [55]

An alien who enters the United States without inspection and subsequently is granted temporary protected status (TPS) does not meet the inspected and admitted or inspected and paroled requirement. [56] There is no legislative provision or history to suggest that Congress intended that recipients of TPS be eligible for adjustment. [57]

USCIS' approval of TPS confers lawful immigration status on the alien, but only for the stipulated time period and so long as the alien complies with all TPS requirements. Recipients of TPS must still meet the threshold requirement that an alien has been inspected and admitted or inspected and paroled in order to be eligible for adjustment of status. A grant of TPS does not cure an alien's entry without inspection or constitute an inspection and admission of the alien. [58]

If an alien under TPS departs the United States and is admitted or paroled upon return to a port of entry, the alien meets the inspected and admitted or inspected and paroled requirement provided the inspection and parole occurred before he or she filed an adjustment application. The applicant, however, must still meet all other requirements to be eligible for adjustment.

DHS has authority to admit rather than parole TPS beneficiaries who travel and return with TPS-related advance parole documents. [59] For purposes of adjustment eligibility, it does not matter whether the TPS beneficiary was admitted or paroled. In either situation, once the alien is inspected at a port of entry and permitted to enter to the United States, the alien meets the inspected and admitted or inspected and paroled requirement.

6. Asylum [60]

An asylee whose adjustment application is based on his or her asylee status adjusts under INA 209(b). [61] 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. [62] 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. [63]

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. [64]

The burden of proof is on the applicant to establish eligibility for adjustment of status. [65] 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. [66]

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. [67] 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. [68]

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.

Eligibility To Receive an Immigrant Visa

Immigrant Category	Petition	Who May Qualify
Family-Based	Petition for Alien Relative (Form I-130)	• Immediate relatives of U.S. citizens [69] • Unmarried sons and daughters of U.S. citizens (21 years of age and older) • Spouses and unmarried children (under age 21) of LPRs • Unmarried sons and daughters of LPRs • Married sons and daughters of U.S. citizens • Brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age or older)
Family-Based	Petition for Alien Fiancé(e) (Form I-129F)	• Fiancé(e) of a U.S. citizen
Family-Based	Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)	• Widow or widower of a U.S. citizen • Violence Against Women Act (VAWA) self-petitioners
Employment-Based	Immigrant Petition for Alien Worker (Form I-140)	• Priority workers • Members of the professions holding an advanced degree or persons of exceptional ability; or • Skilled workers, professionals, and other workers
Employment-Based	Immigrant Petition by Alien Investor (Form I-526)	• Entrepreneurs

Immigrant Category	Petition	Who May Qualify
Special Immigrants	Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)	• Religious workers • Certain international employees • Panama Canal Zone employees • Certain physicians • International organization officers and employees • Special immigrant juveniles • Certain U.S. armed forces members • Certain broadcasters • Certain Afghanistan and Iraq nationals
Diversity Immigrant Visa [70]	Not applicable (Diversity visas do not require a USCIS-filed petition)	• Diversity immigrants

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. [71]

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.[72]

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. [73] 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. [74]

E. Admissible to the United States

An adjustment of status applicant must be admissible to the United States. [75] 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. [76]

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. [77] 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. [78] The table below refers to aliens ineligible to apply for adjustment of status, unless otherwise exempt. [79]

Aliens Barred from Adjustment of Status

Alien	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
Crewman [80]	245(c)(1)	Only most recent permission to land, or admission prior to filing for adjustment	VAWA-based applicants
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** [81] OR **Who Continues in, or accepts, Unauthorized Employment Prior to Filing for Adjustment**	245(c)(2) [82]	All entries and time periods spent in the United States (departure and return does not remove the ineligibility) [83]	VAWA-based applicants Immediate relatives [84] Certain special immigrants [85] 245(k) eligible [86]
Admitted in Transit Without a Visa (TWOV)	245(c)(3)	Only most recent admission prior to filing for adjustment	VAWA-based applicants
Admitted as a Nonimmigrant Without a Visa under a Visa Waiver Program [87]	245(c)(4)	Only most recent admission prior to filing for adjustment	VAWA-based applicants Immediate relatives

Alien	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
Admitted as Witness or Informant [88]	245(c)(5)	Only most recent admission prior to filing for adjustment	VAWA-based applicants
Who is Deportable Due to Involvement in Terrorist Activity or Group [89]	245(c)(6)	All entries and time periods spent in the United States	VAWA-based applicant [90]
Seeking Adjustment in an Employment-based Immigrant Category and Not in a Lawful Nonimmigrant Status	245(c)(7)	Only most recent admission prior to filing for adjustment	VAWA-based applicants Immediate relatives and other family based applicants Special immigrant juveniles[91] 245(k) eligible [92]
Who Has Otherwise Violated the Terms of a Nonimmigrant Visa [93] OR **Who has Ever Engaged in Unauthorized Employment** [94]	245(c)(8) [95]	All entries and time periods spent in the United States (departure and return does not remove the ineligibility) [96]	VAWA-based applicants Immediate relatives [97] Certain special immigrants 245(k) eligible [98]

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. [99] 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 [100]

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 [101]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. [102]

Footnotes

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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)].

2. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

3. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

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.

5. [^] See 8 CFR 245.1(b)(3).

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)).

7. [^] See INA 245(a).

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).

10. [^] See Delegation of Authority to the Commissioner of U.S. Customs and Border Protection, Department of Homeland Security (DHS) Delegation No. 7010.3.

11. [^] See Section 5 of the Act of March 3, 1875, 18 Stat. 477. See Sections 6, 8, 10, and 11 of the Act of March 3, 1891, 26 Stat. 1084. See Sections 8, 12, 16, and 18 of the Act of February 20, 1907, 34 Stat. 898. See Sections 10, 15, and 16 of the Immigration Act of 1917, Pub. L. 301 (February 5, 1917).

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)).

13. [^] 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).

14. [^] See INA 235(d). See 8 CFR 235.1(f)(1).

15. [^] 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).

16. [^] 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).

17. [^] See INA 235(a)(4).

18. [^] 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)].

19. [^] See INA 101(a)(13)(A). 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.

20. [^] See INA 101(a)(13)(A) ("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."

21. [^] See 8 CFR 235.1(f)(1).

22. [^] See *Matter of Areguilin (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).

23. [^] See *Matter of Quilantan (PDF)*, 25 I&N Dec. 289, 290 (BIA 2010). See *Matter of Areguilin (PDF)*, 17 I&N Dec. 308 (BIA 1980). See INA 245(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].

24. [^] 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)).

25. [^] 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)).

26. [^] 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 Web site 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. [^] Form DSP-150 is issued by the Department of State.

32. [^] See 8 CFR 235.1(h)(1)(i)-(v).

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.

36. [^] See INA 212(d)(5)(A).

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.

45. [^] See INA 235(a).

46. [^] See legacy INS General Counsel Opinion 98-10, 1998 WL 1806685.

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].

50. [^] See INA 236(a)(2)(B). Neither the statute nor regulations deem a release on conditional parole equal to a parole under INA 212(d)(5)(A). Several circuits and the BIA have opined on this and rejected the argument that the two concepts are equivalent processes. See *Ortega-Cervantes v. Gonzales (PDF)*, 501 F.3d 1111 (9th Cir. 2007). See *Matter of Castillo-Padilla (PDF)*, 25 I&N Dec. 257 (BIA 2010). See *Delgado-Sobalvarro v. Atty. Gen. (PDF)*, 625 F.3d 782 (3rd Cir. 2010). See Cruz Miguel v. Holder, 650 F.3d 189 (2nd Cir. 2011).

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 Web site.

53. [^] See Consolidated Natural Resources Act of 2008, Pub. L. 110-229 (PDF) (May 8, 2008).

54. [^] See INA 235(a)(1).

55. [^] See INA 244. See 8 CFR 244.

56. [^] The 6th Circuit Court of Appeals has ruled that TPS status meets the inspected and admitted requirement for adjustment of status under INA 245 even if an alien granted TPS status entered the United States without inspection. See *Flores v. USCIS (PDF)*, 718 F.3d 548 (6th Cir. 2013). This decision is only binding on cases within the jurisdiction of the 6th Circuit: Kentucky, Michigan, Ohio, and Tennessee.

57. [^] Under INA 245(a) or any other adjustment program.

58. [^] See legacy INS General Counsel Opinion 91-27, 1991 WL 1185138. See legacy INS General Counsel Opinion 93-59, 1993 WL 1504006. See *Serrano v. U.S. Atty. Gen*., 655 F.3d 1260 (11th Cir. 2011).

59. [^] See Section 304(c) of the Miscellaneous and Technical Immigration and Naturalization Amendments Act of 1991, Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), amended in respects not relevant here by IIRIRA, Division C of Pub. L. 104-208 (PDF), 110 Stat. 3009, 3009-546 (September 30, 1996).

60. [^] See 8 CFR 209.2. For more information on asylee adjustment, see Part M, Asylee Adjustment [7 USCIS-PM M].

61. [^] 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).

62. [^] The grant of asylum is not an admission contemplated under INA 101(a)(13)(A). See *Matter of V-X-*, (PDF) 26 I&N Dec. 147 (BIA 2013). See legacy INS General Counsel Opinion, expressed by INS Central Office, Deputy Asst. Commissioner, Adjudications, R. Michael Miller, in letter dated September 4, 1986, reprinted in Interpreter Releases, Vol. 63, No. 40, October 10, 1986, pp. 891-892.

63. [^] See *Matter of Quilantan (PDF)*, 25 I&N Dec. 285, 291-92 (BIA 2010). See *Matter of Areguillin (PDF)*, 17 I&N Dec. 308 (BIA 1980). See 8 CFR 103.2(b).

64. [^] 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.

65. [^] See 8 CFR 103.2(b). See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

66. [^] For more information, see Subsection 2, Admission [7 USCIS-PM B.2(A)(2)].

67. [^] See 8 CFR 103.2(a) and 8 CFR 103.2(b). See 8 CFR 103.2(a)(2). See 8 CFR 103.7(b) and 8 CFR 103.7(c). The applicant may submit a fee waiver request. See Request for Fee Waiver (Form I-912).

68. [^] See 8 CFR 103.2(a)(7) and 8 CFR 245.2(a)(2)(i). 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 [7 USCIS-PM A.3].

69. [^] 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.

70. [^] Diversity visas do not rely on a USCIS-filed petition to obtain a visa. The diversity visa lottery is conducted by the Department of State.

71. [^] See 8 CFR 103.2(b)(1).

72. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section C, Concurrent Filings [7 USCIS-PM A.3(C)].

73. [^] 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 Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

74. [^] See INA 245(a)(3). See 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 [7 USCIS-PM A.6(C)].

75. [^] 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 [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

76. [^] See Volume 9, Waivers [9 USCIS-PM].

77. [^] See INA 245(c).

78. [^] 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.

79. [^] 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 [7 USCIS-PM A.10].

80. [^] 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.

81. [^] 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).

82. [^] The INA 245(c)(2) bar addresses three distinct types of immigration violations.

83. [^] See 8 CFR 245.1(d)(3).

84. [^] 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.

85. [^] See special immigrants described in INA 101(a)(27)(H)-(K).

86. [^] 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)].

87. [^] See INA 212(l) and INA 217.

88. [^] 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)).

89. [^] See INA 237(a)(4)(B).

90. [^] 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.

91. [^] 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).

92. [^] 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)].

93. [^] This is also referred to as an alien who has violated the terms of his or her nonimmigrant status.

94. [^] 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).

95. [^] The INA 245(c)(8) bar addresses two distinct types of immigration violations.

96. [^] See 8 CFR 245.1(d)(3).

97. [^] 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).

98. [^] 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)].

99. [^] See INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8).

100. [^] See Chapter 8, Inapplicability of Bars to Adjustment [7 USCIS-PM B.8].

101. [^] This applies to religious workers only.

102. [^] 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. [18] 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

Date	Event
September 28, 2007	An alien is admitted to the United States as a B-2 nonimmigrant visitor.
March 16, 2008	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.
March 28, 2008	The B-2 nonimmigrant visitor's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).
September 10, 2008	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.
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

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1. [^] See INA 245(c)(2). See 8 CFR 245.1(b)(5). 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 4, Status and Nonimmigrant Visa Violations - INA 245(c)(2) and INA 245(c)(8) [7 USCIS-PM B.4] and Chapter 6, Unauthorized Employment – INA 245(c)(2) and INA 245(c)(8) [7 USCIS-PM B.6].

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.

3. [^] See INA 101(a)(27)(H).

4. [^] See INA 101(a)(27)(I).

5. [^] See INA 101(a)(27)(J).

6. [^] See INA 101(a)(27)(K).

7. [^] See 8 CFR 245.1(d).

8. [^] See INA 101(a)(15).

9. [^] See INA 207.

10. [^] See INA 208.

11. [^] See INA 212(d)(5)(A).

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, [1] he or she has ever:

- Failed to continuously maintain a lawful status since entry into the United States; [2] or
- Violated the terms of his or her nonimmigrant status. [3]

The INA 245(c)(2) and INA 245(c)(8) bars to adjustment do not apply to:

- Immediate relatives; [4]
- 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 spouse and children. [8]

Employment-based applicants also may be eligible for exemption from this bar under INA 245(k). [9]

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. [10]

Example: Failure to Continuously Maintain Lawful Status

Date	Event
September 1, 2010	An alien is admitted to the United States as a nonimmigrant student at a university.
January 15, 2011	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.
September 1, 2011	The alien departs the United States.
January 1, 2014	The alien is admitted to the United States as a nonimmigrant intracompany transferee for a company.
January 1, 2015	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.

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

Date	Event

August 1, 2008	An alien is admitted as an nonimmigrant student authorized to attend a university full-time.
August 15, 2009	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.
October 1, 2010	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.

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 [33]

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

Date	Event
January 1, 2009	An alien is admitted to the United States as a B-2 nonimmigrant visitor.
June 30, 2009	The B-2 nonimmigrant's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).
June 1, 2009	The B-2 nonimmigrant timely files an application to extend visitor status.

August 1, 2009	The B-2 nonimmigrant files an adjustment application.
September 1, 2009	USCIS extends the B-2 nonimmigrant's visitor status valid from June 30, 2009 to December 31, 2009.

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 Timely Filed Change of Status Application

Date	Event
February 1, 2009	An alien is admitted as a B-1 nonimmigrant visitor.
July 1, 2009	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.
August 1, 2009	The B-1 nonimmigrant's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).
September 15, 2009	USCIS approves Form I-129 to change status and grants L-1 status as of September 15, 2009.

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

Date	Event
January 1, 2009	An alien is admitted to the United States as a B-2 nonimmigrant.
June 30, 2009	The B-2 nonimmigrant's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).
August 5, 2009	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.
September 1, 2009	USCIS excuses the untimely filing and approves the EOS application.

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. [41] 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. [42]

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. [43] 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. [44]

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. [45] 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. [46]

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

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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.

5. [^] See INA 101(a)(27)(H).

6. [^] See INA 101(a)(27)(I).

7. [^] See INA 101(a)(27)(J).

8. [^] See INA 101(a)(27)(K).

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)].

11. [^] See INA 245(k)(2)(A).

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)].

14. [^] See 8 CFR 214.

15. [^] See 8 CFR 214.1(a)(3) and 8 CFR 215.8.

16. [^] See 8 CFR 214.1(e).

17. [^] See 8 CFR 264.1(f). See 76 FR 23830 (PDF) (Apr. 28, 2011). See Section H, National Security Entry Exit Registration System and Violation of Visa – INA 245(c)(8) [7 USCIS-PM B.4(H)].

18. [^] See 8 CFR 214.1(f).

19. [^] See 8 CFR 214.1(f).

20. [^] See 8 CFR 214.1(g).

21. [^] See 8 CFR 245.1(b)(6) and 8 CFR 245.1(d)(3). See 52 FR 6320, 6320-21 (Mar. 3, 1987).

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)].

23. [^] See 62 FR 39417, 39421 (PDF) (Jul. 23, 1997).

24. [^] See 8 CFR 214.2(f)(16).

25. [^] See INA 245(c)(2). See INA 245(c)(8).

26. [^] See 8 CFR 245.1(d)(2). See 8 CFR 214.1(c)(4).

27. [^] A parent who does not act on behalf of a child is not an instance of a qualifying inaction.

28. [^] See Pub. L. 100-658 (PDF) (November 15, 1988).

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.

30. [^] See 8 CFR 214.2(f) and (j). See 245.1(d)(2)(i).

31. [^] See 52 FR 6320 (Mar. 3, 1987).

32. [^] 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.

33. [^] See 8 CFR 245.1(d)(2)(ii).

34. [^] See 52 FR 6320 (PDF) (Mar. 3, 1987).

35. [^] See 8 CFR 245.1(d)(2)(iii).

36. [^] For the terms of reinstatement, see Immigration Amendments of 1988, Pub. L. 101-658 (PDF) (November 15, 1988).

37. [^] See Immigration Amendments of 1988, Pub. L. 100-658 (PDF) (November 15, 1988).

38. [^] See 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.

39. [^] See 8 CFR 214.1(c)(4) and 8 CFR 248.1(b).

40. [^] Except in the case of an alien applying to obtain V nonimmigrant status. See INA 101(a)(15)(V). See 8 CFR 214.15(f).

41. [^] See 8 CFR 244.10(f)(2)(iv).

42. [^] See 8 CFR 244.10(f)(2)(v).

43. [^] Even so, a properly filed adjustment of status application does not, in and of itself, accord lawful status or cure any violation of a nonimmigrant visa. For example, if an alien applied for adjustment of status three days prior to the expiration of his or her nonimmigrant status and USCIS eventually denies the adjustment application, the alien is considered to be in unlawful status after the expiration of the nonimmigrant status. Consequently, if the same alien later files a second adjustment application, the period of time after the nonimmigrant status expired and during which the first adjustment application was

pending counts against the 180-day period when considering eligibility for relief under INA 245(k) in adjudication of the second adjustment application. See Dhuka v. Holder, 716 F. 3d 149 (5th Cir. 2013).

44. [^] See 62 FR 39417, 39421 (PDF) (Jul. 23, 1997).

45. [^] See 76 FR 23830 (PDF) (Apr. 28, 2011).

46. [^] See INA 237(a)(1)(C)(i), INA 245(c)(8), and 8 CFR 214.1(f).

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

Date	Event
April 26, 2009	An alien is admitted as a B-2 nonimmigrant visitor and departs the United States on August 5, 2009.

Date	Event
September 2, 2009	The alien is paroled into the United States on public interest grounds until September 1, 2010.
December 20, 2009	The alien is approved as the beneficiary of a second-preference employment-based immigrant visa petition on December 20, 2009.
January 7, 2010	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

Date	Event
January 2, 2008	An alien is admitted as an H-2B nonimmigrant.
January 1, 2009	The H-2B nonimmigrant's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).
April 1, 2009	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

Date	Event
January 2, 2008	An alien is admitted as an H-2B nonimmigrant.

Date	Event
March 2, 2008	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.
April 1, 2008	The H-2B nonimmigrant has a family emergency and needs to travel back to her home country.
May 1, 2008	USCIS grants the H-2B nonimmigrant's advance parole application.
June 1, 2008	The H-2B nonimmigrant returns to the United States using her advance parole document.
August 1, 2008	USCIS approves the H-2B nonimmigrant's adjustment application.
January 1, 2009	The H-2B nonimmigrant's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).

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

1. [^] See 8 CFR 245.1(b)(9).

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)].

4. [^] See 8 CFR 245.1(b)(9).

5. [^] See INA 101(a)(15).

6. [^] See INA 244(f)(4). See 8 CFR 244.10(f)(2)(iv)-(v).

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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: [4]

- 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

Date	Event
January 2, 2005	An alien is admitted as an H-1B nonimmigrant to work for an employer.

Date	Event
April 1, 2006	The alien takes a position with another employer who fails to file a nonimmigrant visa petition for the alien prior to employment.
August 15, 2007	The new employer files an employment-based immigrant visa petition for the alien that is approved. The alien concurrently files an adjustment application.
September 15, 2007	USCIS approves an Employment Authorization Document (EAD) for the alien based on the pending adjustment application.
January 1, 2008	The H-1B nonimmigrant's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).

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

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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 INA 245(c)(8). Applying traditional concepts of statutory construction, USCIS interprets the exemptions in INA 245(c)(2) to apply to INA 245(c)(8) as well. See 62 FR 39417 (PDF), 39422 (Jul. 23, 1997). See 8 CFR 245.1(b)(10).

5. [^] See INA 101(a)(27)(H).

6. [^] See INA 101(a)(27)(I). This group is exempt from INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8).

7. [^] See INA 101(a)(27)(J).

8. [^] See INA 101(a)(27)(K).

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 274A, 8 CFR 274a, and 62 FR 39417 (PDF) (Jul. 23, 1997).

11. [^] See 8 CFR 274a.12(a)-(c) for examples of authorized employment.

12. [^] While there is an exemption under 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. INA 245(k) only applies to certain applicants whose immigration violations, if any, do not exceed the 180-day limit.

13. [^] See 8 CFR 274a.12, which indicates classes of aliens that must apply for work authorization.

14. [^] See 62 FR 39417, 39421 (PDF) (Jul. 23, 1997).

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 8 CFR 274a.12(c)(9).

17. [^] See 8 CFR 274a.14(b).

18. [^] See 52 FR 6320, 6320-21 (PDF) (Mar. 3, 1987). See Chapter 8, Inapplicability of Bars to Adjustment [7 USCIS-PM B.8].

19. [^] See 8 CFR 245.1(b)(10). See 62 FR 39417, 39421 (PDF) (Jul. 23, 1997).

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. [1] 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. [2]

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. [3] The bar applies even if the alien was not employed as a crewman in the sense of serving as a crewman for pay. [4] 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. [5] 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. [6] Aliens who transit through the United States after that date are required to obtain a C nonimmigrant visa. [7] 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. [8]Similarly, an alien admitted as a nonimmigrant without a visa to Guam or to the CNMI is barred from adjustment of status. [9] 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. [10] 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. [11] 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 officers should follow current agency guidance on issuing a Notice to Appear after denying the application.[34]

Footnotes

1. [^] See INA 245(c)(1).

2. [^] See *Matter of Tzimas (PDF)*, 10 I&N Dec. 101 (BIA 1962).

3. [^] See *Matter of Campton (PDF)*, 13 I&N Dec. 535, 538 (BIA 1970). See *Matter of G-D-M- (PDF)*, 25 I&N Dec. 82 (BIA 2009) (service as crewman, not nonimmigrant status, is controlling for determining eligibility for non-lawful permanent resident cancellation).

4. [^] See *Matter of Campton (PDF)*, 13 I&N Dec. 535, 538 (BIA 1970).

5. [^] See INA 245(c)(3).

6. [^] See 68 FR 46926 (PDF) (Aug. 7, 2003).

7. [^] See INA 101(a)(15)(C). See 68 FR 46926, 46926-28 (PDF) (Aug. 7, 2003). See 68 FR 46948, 46948-49 (PDF) (Aug. 7, 2003).

8. [^] See INA 217. See INA 245(c)(4).

9. [^] See INA 212(l). See INA 245(c)(4).

10. [^] See INA 245(c)(5).

11. [^] See INA 245(j). See 8 CFR 245.11.

12. [^] See INA 245(c)(6). See INA 237(a)(4)(B). See INA 212(a)(3)(B) and INA 212(a)(3)(F). See INA 212(a)(3)(B) in general for definitions related to terrorist activities and exceptions.

13. [^] See INA 212(a)(3).

14. [^] See INA 101(a)(15)(K). See INA 245(d).

15. [^] See INA 245(d).

16. [^] See INA 214(d). See INA 101(a)(15)(K).

17. [^] See INA 245(d) and INA 216. See *Matter of Sesay (PDF)*, 25 I&N Dec. 431 (2011).

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).

23. [^] See *Matter of Stockwell (PDF)*, 20 I&N Dec. 309 (BIA 1991).

24. [^] See 8 CFR 245.1(c)(5) (previously 8 CFR 254.1(b)(12), which *Matter of Stockwell* cites to).

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.

28. [^] For general information on eligibility for adjustment, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A].

29. [^] 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)].

30. [^] 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).

31. [^] 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)].

32. [^] For more information, see Volume 12, Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3].

33. [^] 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)].

34. [^] 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, 140 KB) (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. [1]

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 State; or
- 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.

3. Afghanistan and Iraq Nationals [6]

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. [7] 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

Following Most Recent	Following Previous Admissions or Entries	Eligible for Exemption?
Commits status, employment, or nonimmigrant visa violations not exceeding 180 days	Does not commit any status, employment, or nonimmigrant visa violations OR Commits status, employment, or nonimmigrant visa violations, regardless of whether exceeds 180 days	Yes
Commits status, employment, or nonimmigrant visa violations exceeding 180 days	Does not commit any status, employment, or nonimmigrant visa violations OR Commits status, employment, or nonimmigrant visa violations, regardless of whether exceeds 180 days	No
Does not commit any status, employment, or nonimmigrant visa violations	Commits status, employment, or nonimmigrant visa violations, regardless of whether exceeds 180 days	Yes

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

Date	Event

Date	Event
January 1, 2015	An alien is admitted as an F-1 nonimmigrant student authorized to attend a university full-time.
March 1, 2015	The alien stops attending the university.
December 1, 2015	The alien departs the United States.
January 1, 2016	The alien is admitted for one year as a B-2 nonimmigrant visitor.
June 1, 2016	The alien files an adjustment application with an employer's immigrant petition seeking EB-2 classification for the alien.

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.

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

Date	Event
January 1, 2010	An alien is admitted as a B-2 nonimmigrant visitor for pleasure.
June 1, 2010	The B-2 nonimmigrant begins work for an employer on a one-month contract, without first obtaining work authorization.
July 1, 2010	The B-2 nonimmigrant's contract with the employer ends.
September 1, 2010	The B-2 nonimmigrant submits an adjustment application with the employer's immigrant petition seeking EB-3 classification for the B-2 nonimmigrant.
February 28, 2011	The B-2 nonimmigrant's authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).

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

Date	Event
December 1, 2007	An alien is admitted to the United States as a B-2 nonimmigrant.
June 1, 2008	The alien's B-2 nonimmigrant status expires, as evidenced by the Arrival/Departure Record.
September 10, 2008	The alien leaves the United States.
January 1, 2009	An employer files an H-1B petition for the alien.
February 1, 2009	The alien is admitted as an H-1B nonimmigrant for three years.
January 31, 2012	The H-1B's nonimmigrant authorized stay expires, as indicated on the Arrival/Departure Record (Form I-94).
May 1, 2012	An employment-based petition and adjustment application are concurrently filed for the alien.
July 15, 2012	Both the petition and the application are approved and the alien is adjusted to a permanent resident.

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

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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)].

4. [^] See INA 101(a)(27)(J) and INA 245(c).

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).

6. [^] For information about Afghan and Iraq translators, see Section 1059 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163 (PDF), 119 Stat. 3136, 3443 (January 6, 2006), as amended by Pub. L. 110-36 (PDF) (June 15, 2007). For information about Iraq nationals employed by or on behalf of the U.S. Government, see Section 1244 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181 (PDF), 122 Stat. 3, 396 (January 28, 2008), as amended by Pub. L. 110-242 (PDF) (June 3, 2008) and Section 602(b)(9) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8 (PDF), 123 Stat. 524, 809 (March 11, 2009). For information about Afghan nationals employed by, or on behalf of, the U.S. Government, 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).

7. [^] See INA 245(c)(2) and INA 245(c)(8). See 8 CFR 245.1(b).

8. [^] Described in INA 101(a)(27)(C). Other than religious workers, employment-based fourth preference (EB-4) applicants are not eligible for the INA 245(k) exemption.

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.

10. [^] See INA 101(a)(13)(B) and INA 212(d)(5)(A).

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.

14. [^] See 8 CFR 245.1(d)(2).

15. [^] See 8 CFR 214.2(f) and 8 CFR 214.2(j).

16. [^] See 8 CFR 214.2(f). See 22 CFR 62.45.

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

Part D - Family-Based Adjustment

Part E - Employment-Based Adjustment

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

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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.

4. [^] See INA 245(a)(3). 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)]. 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. [^] 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. [1] In 1990, Congress created a new special immigrant category that includes both ministers and other religious workers in the Immigration and Nationality Act (INA). [2]

While the statutory provision for minister is permanent, the Immigration Act of 1990 (IMMACT 90) [3] specified that other religious workers must adjust status or immigrate before October 1, 1994. [4] Congress has extended this sunset date several times. [5] 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. [6]

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. [7]

Religious Worker Adjustment of Status Eligibility Requirements
The applicant has been inspected and admitted 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 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]

Religious Worker Adjustment of Status Eligibility Requirements
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) 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 with USCIS on behalf of the alien. Alternatively, the alien may file the Form I-360 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.

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.

Applicability of Grounds of Inadmissibility: Religious Workers

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	
INA 212(a)(2) – Crime-Related	X	
INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge	X	
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	
INA 212(a)(9) – Aliens Previously Removed	X	
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	X	

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. [25] 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. [26] 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; [27]
- Employment letter from the applicant's Form I-360 employer-petitioner; [28]
- 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. [35] 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 [36] (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application; [37] and
- The visa availability requirements are met. [38]

These applicants may not file an adjustment application concurrently with Form I-360. [39]

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. [40]

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). [41] If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication.[42]

If approved, USCIS assigns the codes of admission to applicants adjusting under this category as shown in the table below.

Classes of Applicants and Codes of Admission

Applicant	Code of Admission
Minister of religion	SD6
Spouse of minister (SD6)	SD7
Child of minister (SD6)	SD8
Other religious worker	SR6
Spouse of other religious worker (SR6)	SR7
Child of other religious worker (SR6)	SR8

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.”

2. [^] See INA 101(a)(27)(C).

3. [^] See Pub. L. 101-649 (PDF) (November 29, 1990).

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.

6. [^] See INA 203(b)(4).

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)].

10. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

11. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

12. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

13. [^] 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].

14. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

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)].

23. [^] See INA 212(a) for the specific grounds of inadmissibility.

24. [^] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [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).

25. [^] See the USCIS website for the current sunset date.

26. [^] See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

27. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

28. [^] 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.

29. [^] 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.

30. [^] 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)].

31. [^] 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].

32. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

33. [^] 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).

34. [^] See 8 CFR 204.5(m)(12). See Religious Worker Benefit Fraud Assessment Summary (PDF, 122 KB) (July 2006) by the USCIS Office of Fraud Detection and National Security.

35. [^] 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).

36. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

37. [^] 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)].

38. [^] 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)].

39. [^] See Ruiz-Diaz v. United States, 618 F.3d 1055 (9th Cir. 2010) (affirming USCIS rule prohibiting religious workers from concurrently filing as a permissible construction of the statute). See 8 CFR 245.2(a)(2)(i)(B).

40. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

41. [^] 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].

42. [^] 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)].

43. [^] 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.

44. [^] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

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. [1] 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. [2]

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). [3] 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
- 22 CFR 42.32(d)(2) – Certain U.S. government employees

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]

Adjustment of Status Eligibility Requirements for Special Immigrant International Employees
The applicant has been inspected and admitted 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 the adjustment application.

Adjustment of Status Eligibility Requirements for Special Immigrant International Employees
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.
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]
The applicant is not subject to any applicable bars to adjustment of status. [8]
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [9]
The applicant merits the favorable exercise of discretion. [10]

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 (PDF)) with DOS. [12] USCIS plays no role in the adjudication of this petition.

A Form DS-1884 (PDF) is valid for 6 months after it is approved. [13] Notwithstanding, if a visa is unavailable at the time of approval, the petition is valid for 6 months after a visa becomes available. [14] In addition, DOS can extend the validity of the petition if it determines that an extension is in the national interest. [15]

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.[16]

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. [17]

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. [18] If a ground of inadmissibility applies, an applicant must generally apply for a waiver or other form of relief to overcome that inadmissibility. [19] 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.

Applicability of Grounds of Inadmissibility: International Employees of the U.S. Government Abroad

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	
INA 212(a)(2) – Crime-Related	X	
INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge	X	
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(9) – Aliens Previously Removed	X	
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	X	

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.

Classes of Applicants and Codes of Admission

Applicant	Code of Admission
Special Immigrant Employee or Former Employee of the U.S. Government Abroad	SE6
Spouse of Employee (SE6)	SE7
Child of Employee (SE6)	SE8

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, 1952). See INA 101(a)(27)(D).

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.

4. [^] See 8 CFR 245.1.

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)).

6. [^] 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)].

7. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

8. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

9. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

10. [^] 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].

11. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

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.

13. [^] See 22 CFR 42.32(d)(2)(iv).

14. [^] See 9 Foreign Affairs Manual (FAM) 502.5-3(C)(2)(e)(4)(b), Effect of Numerical Limits.

15. [^] See 22 CFR 42.32(d)(2)(v).

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 [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. [^] 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 F.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. [2]

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. [3] 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. [4]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:

Adjustment of Status Eligibility Requirements for Special Immigrant Panama Canal Zone Employees
The applicant has been inspected and admitted 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 the 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 Panama Canal Zone employee.
The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application [5] and at the time of final adjudication. [6]
The applicant is not subject to any applicable bars to adjustment of status. [7]
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [8]
The applicant merits the favorable exercise of discretion. [9]

1. Eligibility to Receive an Immigrant Visa [10]

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.

Types of Special Immigrant Panama Canal Zone Employee

Citation	Employed by…	Employed at least…	Additional Requirements
INA 101(a)(27)(E)	Panama Canal Company or Canal Zone government	One year on or prior to October 1, 1979	Lived in Panama Canal Zone on April 1, 1979
INA 101(a)(27)(F)	U.S. Government in the Canal Zone	15 years prior to October 1, 1979	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

INA 101(a)(27)(G)	Panama Canal Company or Canal Zone government on April 1, 1979	Five years, as of date of the ratification of the Panama Canal Zone Treaty of 1977	Personal safety, or the safety of their spouse and children, is placed in danger because of the nature of the employment and the Panama Canal Treaty

Aliens who qualify as a current or former employee of the U.S. Government in the Canal Zone [11] might also qualify as a special immigrant employee or honorably retired employee of the U.S. Government. [12] 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 [13]

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. [14]

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. [15] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. [16] 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.

Applicability of Grounds of Inadmissibility: Panama Canal Zone Employees

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	
INA 212(a)(2) – Crime-Related	X	

INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge	X	
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	
INA 212(a)(9) – Aliens Previously Removed	X	
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	X	

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. [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. [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. [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. [28]

If approved, USCIS assigns the following codes of admission to applicants adjusting under this category:

Classes of Applicants and Codes of Admission

Applicant	Code of Admission
Former employees of the Panama Canal Company or Canal Zone government [29]	SF6
Spouse of former employee (SF6)	SF7
Child of former employee (SF6)	SF7
Former employees of the U.S. Government in the Panama Canal Zone [30]	SG6
Spouse of former employee (SG6)	SG7
Child of former employee (SG6)	SG7
Former employees of the Panama Canal Company or Canal Zone government employed on April 1, 1979 [31]	SH6
Spouse of former employee (SH6)	SH7
Child of former employee (SH6)	SH7

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

1. [^] See Pub. L. 96-70 (PDF), 93 Stat. 452 (September 27, 1979).

2. [^] See Section 3201 of Pub. L. 96-70 (PDF), 93 Stat. 452, 496 (September 27, 1979).

3. [^] See Section 212 of Pub. L. 103-416 (PDF), 108 Stat. 4305, 4314 (October 25, 1994) (striking Section 3201(c) of Pub. L. 96-70, 93 Stat. 452, 497 (September 27, 1979)).

4. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). See 9 Foreign Affairs Manual (FAM) 502.5-4, Fourth Preference Special Immigrants – Panama Canal Employees.

5. [^] 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)].

6. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

7. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

8. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

9. [^] 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].

10. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

11. [^] See INA 101(a)(27)(F).

12. [^] See INA 101(a)(27)(D). See Chapter 3, International Employees of the U.S. Government Abroad [7 USCIS-PM F.3].

13. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

14. [^] See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

15. [^] See INA 212(a) for the specific grounds of inadmissibility.

16. [^] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [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).

17. [^] Unmarried and under 21 years of age.

18. [^] See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

19. [^] 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. CBPdoes not charge a fee for this service.

20. [^] 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)].

21. [^] 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].

22. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

23. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

24. [^] 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)].

25. [^] 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)].

26. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

27. [^] 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].

28. [^] 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)].

29. [^] Under INA 101(a)(27)(E).

30. [^] Under INA 101(a)(27)(F).

31. [^] Under INA 101(a)(27)(G).

32. [^] 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.

33. [^] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

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.

Special Immigrant Physician Adjustment of Status **Eligibility Requirements**
The applicant has been inspected and admitted 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 physician.
The applicant had an immigrant visa immediately available when he or she filed the adjustment of status application [3] and at the time of final adjudication. [4]
The applicant is not subject to any applicable bars to adjustment of status. [5]
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [6]
The applicant merits the favorable exercise of discretion. [7]

1. Eligibility to Receive an Immigrant Visa [8]

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). [9]

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 [10]

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.

Applicability of Grounds of Inadmissibility: Special Immigrant Physicians

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	
INA 212(a)(2) – Crime-Related	X	
INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge	X	
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	
INA 212(a)(9) – Aliens Previously Removed	X	

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	X	

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. [15] 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

Applicant	Code of Admission
Special Immigrant Physician	SJ6
Spouse of Immigrant Physician (SJ6)	SJ7
Child of Immigrant Physician (SJ6)	SJ7

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.

2. [^] See Immigration and Nationality Act Amendments of 1981, Pub. L. 97-116 (PDF), 95 Stat. 1611 (December 29, 1981).

3. [^] 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. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

5. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

6. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

7. [^] 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].

8. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

9. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

10. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

11. [^] See INA 245(c)(2) and INA 245(c)(8).

12. [^] See INA 245(c). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

13. [^] See INA 212(a) for the specific grounds of inadmissibility.

14. [^] See Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [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).

15. [^] See INA 101(a)(27)(C) and INA 203(d). For the definition of child, see INA 101(b)(1).

16. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

17. [^] 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. CBPdoes not charge a fee for this service.

18. [^] 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].

19. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

20. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

21. [^] 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)].

22. [^] 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)].

23. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

24. [^] 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].

25. [^] 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)].

26. [^] 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.

27. [^] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

Chapter 6 - Certain G-4 or NATO-6 Employees and Their Family Members

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 [6] and at the time of final adjudication. [7]
The applicant is not subject to any applicable bars to adjustment of status. [8]
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [9]
The applicant merits the favorable exercise of discretion. [10]

1. Eligibility to Receive an Immigrant Visa [11]

An applicant must be eligible to receive an immigrant visa to adjust status. [12] 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

Type	Nonimmigrant Status	Physical Presence	Resided in the United States	When to Apply for Adjustment[14]
Retired officer or employee [15]	Must have maintained G-4, N, or NATO-6 status during requisite period of residence and physical presence in the United States [16]	½ of 7 years prior to application	15 years before date of retirement	No later than 6 months after retirement
Surviving spouse of a deceased officer or employee [17]	Must have maintained G-4, N, or NATO-6 status during requisite period of residence and physical presence in the United States	½ of 7 years prior to application	15 years before death of spouse	No later than 6 months after spouse's death
Unmarried son or daughter of a current or former officer or employee [18]	Must have maintained G-4, N, or NATO-6 status during requisite period of residence and physical presence in the United States	½ of 7 years prior to application	7 years between the ages of five and 21 [19](before 22nd birthday)	No later than applicant's 25th birthday
Spouse of a retired officer or employee (accompanying or following to join) [20]	Not applicable	Not applicable	Not applicable	Not applicable

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

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	
INA 212(a)(2) – Crime-Related	X	
INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge	X	
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	
INA 212(a)(9) – Aliens Previously Removed	X	
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	X	

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. [30] 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), 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);
- Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities
- (Form I-508) and Form I-508F if the applicant is a French national;
- 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); [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) 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:

Classes of Applicants and Codes of Admission

Applicant	Code of Admission
Retired G-4 Employee	SK6
Spouse of G-4 Employee (SK6)	SK7
Unmarried Son or Daughter of G-4 Employee (SK6)	SK8
Surviving Spouse of Deceased G-4 Employee (SK6)	SK9
Retired NATO-6 Employee	SN6
Spouse of NATO-6 Employee (SN6)	SN7
Unmarried Son or Daughter of NATO-6 Employee (SN6)	SN8
Surviving Spouse of Deceased NATO-6 Employee (SN6)	SN9

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.

3. [^] See INA 101(a)(27)(I). See Section 312(a) of the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (PDF), 100 Stat. 3359, 3434 (November 6, 1986), as amended by Section 2(o)(1) of the Immigration Technical Corrections Act of 1988, Pub. L. 100-525 (PDF), 102 Stat. 2609, 2613 (October 24, 1988).

4. [^] See INA 101(a)(27)(L). See Section 421 of the American Competitiveness and Workforce Improvement Act of 1998, Title IV of Pub. L. 105-277 (PDF), 112 Stat. 2681-641, 2681-657 (October 21, 1998).

5. [^] See INA 245(a) and (c). See 8 CFR 245. See Instructions to Form I-485.

6. [^] 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)].

7. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

8. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

9. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

10. [^] 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].

11. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

12. [^] See INA 245(a)(2).

13. [^] A retired employee must file Form I-360 petition no later than 6 months after retiring from the international organization. A surviving spouse of a deceased employee must file Form I-360 petition no later than 6 months after the employee's date of death. See INA 101(a)(27)(I)(ii) and INA 101(a)(27)(I)(iii).

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).

15. [^] See INA 101(a)(27)(I)(iii).

16. [^] See 8 CFR 101.5(d).

17. [^] See INA 101(a)(27)(I)(ii).

18. [^] See INA 101(a)(27)(I)(i).

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.

20. [^] See INA 101(a)(27)(I)(iv).

21. [^] See 8 CFR 101.5(d).

22. [^] See 8 CFR 101.5(a).

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(c). 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(c). 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 [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).

30. [^] See INA 101(a)(27)(I)(iv).

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. CBPdoes 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].

39. [^] 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].

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 (IMMACT 90) [3] – Special immigrant status for certain aliens declared dependent on a juvenile court
- Section 302 of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991 [4]
- Section 113 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1998 [5]

- Section 235(d) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) [6] – Permanent protection for certain at-risk children

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

Eligibility Requirement	Where can I find more information?
The applicant must have been: • Inspected and admitted into the United States; or • Inspected and paroled into the United States.	See Subsection 1, Inspected and Admitted or Inspected and Paroled [7 USCIS-PM F.7(C)(1)].
The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.	See Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A].
The applicant is eligible to receive an immigrant visa.	See Subsection 2, Eligibility to Receive an Immigrant Visa [7 USCIS-PM F.7(C)(2)].
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.	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)].
The applicant is not subject to any applicable bars to adjustment of status.	See Subsection 3, Bars to Adjustment [7 USCIS-PM F.7(C)(3)].
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.	See Subsection 4, Admissibility and Waiver Requirements [7 USCIS-PM F.7(C)(4)].
The applicant merits the favorable exercise of discretion.	See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10] and Part B, 245(a) Adjustment [7 USCIS-PM B].

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. [8] 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. [9]

2. Eligibility to Receive an Immigrant Visa [10]

An applicant must be eligible to receive an immigrant visa to adjust status. [11] 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). [12]

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 [13]

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 [14] for what it deems to be good and sufficient cause, [15] 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. [16]

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; [17]
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order, [18] 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]

Inadmissibility Grounds that Do Not Apply to Special Immigrant Juveniles	
INA 212(a)(4)	Public Charge
INA 212(a)(5)(A)	Labor Certification
INA 212(a)(6)(A)	Present without admission or parole
INA 212(a)(6)(C)	Misrepresentation
INA 212(a)(6)(D)	Stowaways
INA 212(a)(7)(A)	Documentation Requirements for Immigrants
INA 212(a)(9)(B)	Unlawful Presence

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.

Inadmissibility Grounds that Apply to Special Immigrant Juveniles	
INA 212(a)(1)	Health-Related
INA 212(a)(2)	Crime-Related
INA 212(a)(3)	Security-Related
INA 212(a)(6)(B)	Failure to Attend Removal Proceedings
INA 212(a)(6)(E)	Smugglers
INA 212(a)(6)(F)	Subject of Civil Penalty
INA 212(a)(6)(G)	Student Visa Abusers
INA 212(a)(8)	Ineligibility for Citizenship
INA 212(a)(9)(A)	Certain Aliens Previously Removed

Inadmissibility Grounds that Apply to Special Immigrant Juveniles	
INA 212(a)(9)(C)	Aliens Unlawfully Present After Previous Immigration Violations
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

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]

Inadmissibility Grounds that Cannot Be Waived [29]	
INA 212(a)(2)(A)	Conviction of Certain Crimes
INA 212(a)(2)(B)	Multiple Criminal Convictions
INA 212(a)(2)(C)	Controlled Substance Traffickers
INA 212(a)(3)(A)	Security and Related Grounds
INA 212(a)(3)(B)	Terrorist Activities
INA 212(a)(3)(C)	Foreign Policy Related
INA 212(a)(3)(E)	Participants in Nazi Persecution, Genocide, or the Commission of Any Act of Torture or Extrajudicial Killing

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. [32] 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. [33] This prohibition also applies to a non-abusive, custodial parent, if one exists.

6. Requirements for Perez-Olano Litigation Class Members [34]

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 [35] or SIJ-based application for adjustment of status [36] 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. [37]

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: [38]

- 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:

Class of Applicant and Code of Admission

Applicant	Code of Admission
Special Immigrant Juvenile	SL6

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. [51] 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

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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].

2. [^] See Pub. L. 101-649, 104 Stat. 4978 (November 29, 1990).

3. [^] See Pub. L. 101-649, 104 Stat. 4978, 5005 (November 29, 1990).

4. [^] See Pub. L. 102-232 (PDF), 105 Stat. 1733, 1744 (December 12, 1991).

5. [^] See Pub. L. 105-119 (PDF), 111 Stat. 2440, 2460 (November 26, 1997).

6. [^] See Pub. L. 110-457 (PDF), 122 Stat. 5044, 5079 (December 23, 2008).

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.

8. [^] See INA 245(a). See 8 CFR 245.1(e)(3). See Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, “Inspected and Admitted” or “Inspected and Paroled” [7 USCIS-PM B.2(A)].

9. [^] See INA 245(h)(1).

10. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

11. [^] See INA 245(a)(2).

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].

13. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

14. [^] See 8 CFR 205.2(a).

15. [^] See INA 205.

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.

19. [^] See 8 CFR 205.1(b).

20. [^] See 8 CFR 205.1(b).

21. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

22. [^] 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].

23. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

24. [^] See INA 212(a) for the specific grounds of inadmissibility.

25. [^] See Volume 9, Waivers [9 USCIS-PM].

26. [^] 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.

27. [^] See INA 245(h)(2)(B) and 8 CFR 245.1(e)(3).

28. [^] 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 [9 USCIS-PM].

29. [^] This table includes inadmissibility grounds that cannot be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest.

30. [^] For example, see INA 212(a)(2)(A) (inadmissibility based on conviction of or admission that the alien committed certain criminal acts).

31. [^] 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. [^] See INA 101(a)(27)(J).

33. [^] See INA 101(a)(27)(J)(iii)(II).

34. [^] See *Perez-Olano v. Holder*, Case No.CV 05-3604 (C.D. Cal. 2005).

35. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

36. [^] See Application to Register Permanent Residence or Adjust Status (Form I-485).

37. [^] See Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement (PDF, 284 KB), issued (June 25, 2015).

38. [^] 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)].

39. [^] 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).

40. [^] 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.

41. [^] 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].

42. [^] 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)].

43. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

44. [^] 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)].

45. [^] 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)].

46. [^] See 8 CFR 103.2(b)(9).

47. [^] 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)].

48. [^] 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].

49. [^] 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)].

50. [^] 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.

51. [^] 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
- Armed Forces Immigration Adjustment Act of 1991 [4]

C. Eligibility Requirements

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. [5]

Special Immigrant Armed Forces Members **Adjustment of Status Eligibility Requirements**
The applicant has been inspected and admitted 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.

Special Immigrant Armed Forces Members Adjustment of Status Eligibility Requirements
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]
The applicant is not subject to any applicable bars to adjustment of status. [8]
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [9]
The applicant merits the favorable exercise of discretion. [10]

1. Eligibility to Receive an Immigrant Visa [11]

An applicant must be eligible to receive an immigrant visa to adjust status. [12] 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:

- The applicant must have been lawfully enlisted 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 enlisted 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. [18] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. [19] 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

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(2) – Crime-Related	X	
INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge	X	
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	
INA 212(a)(9) – Aliens Previously Removed	X	
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	X	

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. [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 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); [21]
- Proof of honorable discharge from the U.S. armed forces, if no longer serving; [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]
- 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 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:

Classes of Applicants and Codes of Admission

Applicant	Code of Admission
Special Immigrant Armed Forces Member	SM9
Spouse of Armed Forces Member (SM9)	SM0
Child of Armed Forces Member (SM9)	SM0

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

1. [^] See Pub. L. 102-110 (PDF), 105 Stat. 555 (October 1, 1991).

2. [^] See INA 101(a)(27)(E), INA 101(a)(27)(F), INA 101(a)(27)(G), INA 101(a)(27)(I), and INA 101(a)(27)(L). See Chapter 4, Panama Canal Zone Employees [7 USCIS-PM F.4] and Chapter 6, Certain G-4 or NATO-6 Employees and Their Family Members [7 USCIS-PM F.6].

3. [^] See INA 329. See Volume 12, Citizenship and Naturalization, Part I, Military Members and their Families [12 USCIS-PM I].

4. [^] See Pub. L. 102-110 (PDF), 105 Stat. 555 (October 1, 1991).

5. [^] See INA 245(a) and (c). See 8 CFR 245. See Instructions to Form I-485.

6. [^] 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)].

7. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)]. For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

8. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

9. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

10. [^] 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].

11. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

12. [^] See INA 245(a)(2).

13. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

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 [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 USCIS-PM F.8(C)].

29. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

30. [^] See INA 329. See Volume 12, Citizenship & Naturalization, Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

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).

35. [^] See INA 237.

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. [5]

Special Immigrant Broadcaster Adjustment of Status Eligibility Requirements
The applicant has been inspected and admitted 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 broadcaster.
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]
The applicant is not subject to any applicable bars to adjustment of status. [8]
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief. [9]
The applicant merits the favorable exercise of discretion. [10]

1. Eligibility to Receive an Immigrant Visa [11]

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). [12]

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. [13]

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. [14] Special immigrant broadcasters may not file the adjustment application concurrently with the petition.

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility [15]

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. [17] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. [18] 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.

Applicability of Grounds of Inadmissibility: Special Immigrant Broadcasters

Ground of Inadmissibility	Applies	Exempt or Not Applicable

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	
INA 212(a)(2) – Crime-Related	X	
INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge	X	
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	
INA 212(a)(9) – Aliens Previously Removed	X	
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	X	

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; [28] and
- The visa availability requirements are met. [29]

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. [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 broadcaster. [31] If the adjustment application 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 under this category:

Classes of Applicants and Codes of Admission

Applicant	Code of Admission
Special immigrant international broadcaster	BC6
Spouse of special immigrant international broadcaster (BC6)	BC7
Child of special immigrant international broadcaster (BC6)	BC8

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 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 Pub. L. 106-536 (PDF), 114 Stat. 2560 (November 22, 2000).

2. [^] This annual visa limit applies only to principal special immigrant broadcasters and not to any spouses and children who apply as derivative applicants. See Section 1(b)(1) of Pub. L. 106-536 (PDF), 114 Stat. 2560, 2560 (November 22, 2000). See INA 203(b)(4). See 8 CFR 204.13(b)(2).

3. [^] BBG grantee means Radio Free Asia, Inc., Radio Free Europe/Radio Liberty, Inc., and Middle East Broadcasting Networks. See 8 CFR 204.13. See Emergency Wartime Supplemental Appropriations Act of 2003, Pub. L. 108-11 (PDF), 117 Stat. 559, 562 (April 16, 2003).

4. [^] See 8 CFR 204.13.

5. [^] See INA 245(a) and INA 245(c). See 8 CFR 245. See Instructions to Form I-485.

6. [^] 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)].

7. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

8. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

9. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

10. [^] 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].

11. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

12. [^] See Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).

13. [^] See 8 CFR 204.13(a).

14. [^] See 8 CFR 245.2(a)(2)(i)(B).

15. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

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 [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).

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)].

30. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].

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. [4]

B. Legal Authorities

- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- 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 [5]
- Section 1244 of the National Defense Authorization Act for Fiscal Year 2008, as amended – Special immigrant status for certain Iraqis [6]
- Section 602(b) of the Afghan Allies Protection Act of 2009, as amended – Special immigrant status for certain Afghans [7]

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: [8]

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 [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 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). [15]

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility [16]

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. [17] If these special immigrants fall under any other adjustment bar, however, they are not eligible to adjust status. [18]

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. [19] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome that inadmissibility. [20] 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. [21]

Applicability of Grounds of Inadmissibility: Special Immigrant Afghanistan and Iraq Nationals

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related	X	
INA 212(a)(2) – Crime-Related	X	
INA 212(a)(3) – Security-Related	X	
INA 212(a)(4) – Public Charge		X
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X
INA 212(a)(6) – Illegal Entrants and Immigration Violators	X	
INA 212(a)(7)(A) – Documentation Requirements for Immigrants	X	
INA 212(a)(8) – Ineligibility for Citizenship	X	

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(9) – Aliens Previously Removed	X	
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	X	

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 [31] (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:

Classes of Applicants and Codes of Admission

Applicant	Code of Admission
Special Immigrant Afghan or Iraqi Translator	SI6
Spouse of Translator (SI6)	SI7
Child of Translator (SI6)	SI8
Special Immigrant Afghanistan or Iraq U.S. Government Employee	SQ6
Spouse of Government Employee (SQ6)	SQ7
Child of Government Employee (SQ6)	SQ8

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.

4. [^] 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.

5. [^] See Pub. L. 109-163 (PDF), 119 Stat. 3136, 3443 (January 6, 2006).

6. [^] See Pub. L. 110-181 (PDF), 122 Stat. 3, 396 (January 28, 2008).

7. [^] See Title VI of Pub. L. 111-8 (PDF), 123 Stat. 807, 807 (March 11, 2009).

8. [^] See INA 245(a) and (c). See 8 CFR 245. See Instructions to 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)].

10. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)]. For information on Visa Availability and Priority Dates, see the DOS Visa Bulletin.

11. [^] See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

12. [^] For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

13. [^] 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].

14. [^] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-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)].

15. [^] 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. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

17. [^] 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 [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).

21. [^] See Section 1244(a)(3) of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181 (PDF), 122 Stat. 3, 396 (January 28, 2008), as amended by Pub. L. 110-242 (PDF) (June 3, 2008). See Section 602(b)(1)(C) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8 (PDF), 123 Stat. 807, 807 (March 11, 2009).

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)].

24. [^] 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).

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].

30. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

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)].

33. [^] 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)].

34. [^] 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].

35. [^] 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)].

36. [^] 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.

37. [^] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

38. [^] See 8 CFR 103.2(b)(19).

Part G - Diversity Visa Adjustment

Part H - Criminal or Terrorist Informant-Based Adjustment

Part I - VAWA-Based Adjustment

Part J - Trafficking Victim-Based Adjustment

Part K - Crime Victim-Based Adjustment

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

- INA 209(a); 8 CFR 209.1 – Adjustment of status of refugees
- Pub. L. 96-212 (PDF) – Refugee Act of 1980
- INA 101(a)(42) – Definition of "refugee"

Footnotes

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1. [^] See INA 209.

Chapter 2 - Eligibility Requirements

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 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.

2. Child Status Protection Act Provisions

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.

Footnotes

1. [^] See Part M, Asylee Adjustment [7 USCIS-PM M] for details on adjustment of status for asylees.

2. [^] See Pub. L. 101-167 (PDF), 103 Stat. 1195, 1263 (November 21, 1989).

3. [^] See Pub. L. 106-429 (PDF), 114 Stat. 1900, 1900A-57 (November 6, 2000).

4. [^] See Pub. L. 110-181, 122 Stat. 3, 396 (January 28, 2008).

5. [^] See INA 209(a).

6. [^] See *Matter of Khan (PDF)*, 14 I&N Dec. 122 (BIA 1972). This applies in general to any immigrant who was admitted under the wrong status or was ineligible for admission under that status.

7. [^] For more information, see Chapter 6, Termination of Status and Notice to Appear Considerations [7 USCIS-PM L.6].

8. [^] See 92 Stat. 907, 909 (October 5, 1978).

9. [^] See 8 CFR 209.1(a)(2).

10. [^] See *Matter of Khan (PDF)*, 14 I&N Dec. 122 (BIA 1972).

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 [3]

All grounds of inadmissibility listed at Section B, Applicable Inadmissibility Grounds [4] 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. [^]See Adjudicator's Field Manual (AFM) Chapter 41.6, Waivers of Inadmissibility for Refugees and Asylees for more information on waivers of inadmissibility for refugees under INA 209(c).

4. [^]See Section B, Applicable Inadmissibility Grounds [7 USCIS-PM L.3(B)].

5. [^]See Health Related Considerations in Section B, Applicable Inadmissibility Grounds [7 USCIS-PM L.3(B)].

6. [^]See INA 212(g)(2)(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 theadjustment 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 of 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.

Footnotes

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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 (ROP) Review and Underlying Basis

The officer should place all documents in the file according to the established Record of Proceedings 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 Applicant for Entry into the US (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 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 will be made on a case-by-case basis. [1] Interviews are generally required when an officer at a Service Center is unable to verify identity or eligibility or to determine admissibility based solely on the immigration records available to the officer. Although the decision to relocate a case to a field office for interview will be made on a case-by-case basis, an officer at the Service Center should generally relocate a case to the field office for interview if it meets one 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. [2]
- The applicant's 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.

C. Beneficiaries Applying for Adjustment without Prior Interview Overseas

Within two years of his or her admission, a refugee may petition for a spouse and child(ren) on a Refugee/Asylee Relative Petition (Form I-730). When proceeding from abroad, the derivative beneficiary is required to undergo an overseas interview and processing. When applying for adjustment of status, there is the possibility that some derivative family members may not have gone through the overseas process or may not have been admitted to the United States as refugees.

For example, beneficiaries of an approved relative petition sometimes enter the United States without inspection or on a nonimmigrant visa. The beneficiaries may never have received an interview confirming their identity and relationship to the principal, which is part of the USCIS process overseas. Under current regulations, refugee status is conferred on the beneficiary at the point he or she is present in the United States with an approved petition, although the beneficiary may never have provided biometrics or appeared in person before a USCIS or consular officer to verify his or her identity.

In addition, a derivative refugee must be admissible to the United States (i.e., if any of the grounds of inadmissibility apply to the derivative refugee, the grounds must be waived before the derivative refugee is fully qualified for such status). Since, in this particular situation, the applicant was not interviewed overseas and was not inspected and admitted as a refugee at a port of entry, it raises the possibility that a ground of inadmissibility may exist.

To address these concerns and to verify identity and the familial relationship, in the event a derivative family member of a refugee is applying for adjustment of status without having been previously interviewed either abroad or in the United States, the officer should refer him or her for an interview at a field office as part of the adjustment of status process.

During the interview process, the USCIS officer will verify the identity of the beneficiary and the requisite familial relationship to the principal as well as examine the beneficiary's eligibility for admission as an immigrant. The officer may conduct a background investigation to address any of these issues, provided that the investigation maintains the confidentiality of the principal's refugee application.

D. 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 will 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.

E. 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 the refugee.

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.

F. 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 Field Office (ERO) will promptly reach out to its corresponding USCIS Field Office Director or designated point-of-contact to begin the adjustment of status process.

The ERO field office will advise the refugee of the requirement by law to file for adjustment of status and will provide 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 will fill out Part 1 of both forms instead and sign them as completed by ICE. Originals are sent to the USCIS Field Office Director or designee for expedited processing. The field office should follow procedures to alert the Nebraska Service Center (NSC) by e-mail that they are sending a faxed copy of the adjustment application for expeditious handling.

If the NSC determines that the refugee has already submitted a refugee-based adjustment application or has a denied refugee-based adjustment application, they will contact the field office concerning the use of the previously-filed application. If a case is already pending at the NSC, the NSC Duty Attorney will determine whether the case should be completed at the NSC or relocated to the field office for final adjudication.

If the NSC does not locate a prior adjustment application, the NSC will assign a receipt number to the application and will update the necessary systems so that adjudication of the application at the field office may proceed.

G. 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 will be 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.

Classes of Applicants and Corresponding Codes of Admission

Applicant	Code of Admission
Refugee (Principal)	RE6
Spouse of a Principal Refugee (RE6)	RE7
Child of a Principal Refugee (RE6)	RE8

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 will receive a permanent resident card. After completion, A-files will be 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. [3]

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

1. [^]See 8 CFR 209.1(d).

2. [^]See Section C, Beneficiaries Applying for Adjustment without Prior Interview Overseas [7 USCIS-PM L.5(C)].

3. [^]See *Matter of D-K- (PDF)*, 25 I&N Dec. 761 (BIA 2012). The alien "must be charged in the notice to appear under section 237 of the [INA] rather than section 212 of the Act." See *Matter of D-K- (PDF)*, 25 I&N Dec. 761, 761 (BIA 2012).

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

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1. [^] See INA 207(c)(4) and 8 CFR 207.9.

2. [^] See 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
- Pub. L. 96-212 (PDF) – Refugee Act of 1980

Footnotes

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1. [^] See the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, Pub. L. 109-13 (May 11, 2005).

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, [2] 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. [3]

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. [4] 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. [5]

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. [6] 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 (RAIO) 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. [7]

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.

Footnotes

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1. [^]See 8 CFR 209.2(a)(2).

2. [^]See INA 101(a)(42).

3. [^]For more information, see Chapter 6, Termination of Status and Notice to Appear Considerations [7 USCIS-PM M.6].

4. [^]See INA 101(b)(1).

5. [^]See INA 204(l) and Adjudicator's Field Manual (AFM) Chapter 10.1, Receipting and Acceptance Processing for additional guidance.

6. [^]See INA 101(a)(42).

7. [^]See *Matter of Khan (PDF)*, 14 I&N Dec. 122 (BIA 1972).

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 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

All grounds of inadmissibility listed at Section B, Applicable Inadmissibility Grounds [5] 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

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1. [^]See INA 212(a)(9)(B).

2. [^]See INA 212(a)(9)(B)(iii)(II).

3. [^]See *Matter of Arrabally and Yerrabelly (PDF)*, 25 I&N Dec. 771 (BIA 2012).

4. [^]See Section B, Applicable Inadmissibility Grounds [7 USCIS-PM M.3(B)].

5. [^]See Section B, Applicable Inadmissibility Grounds [7 USCIS-PM M.3(B)].

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 considerthis 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 Acondition 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.

Footnotes

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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 (ROP) Review and Underlying Basis

The officer should place all documents in the file according to the established 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 will establish 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 will make the decision to interview an asylee applicant for adjustment of status on a case-by-case basis. [1] Interviews are generally required when an officer at a service center is unable to verify identity or eligibility or determine admissibility based solely on the available immigration records. Although officers may decide to relocate a case to a field office for interview on a case-by-case basis, the service center officer should generally relocate a case to the field for interview if it meets one 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 FBI fingerprint results indicate a record that may cause the applicant to be inadmissible, or the applicant has had 2 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.

These interview criteria may be modified in response to developing circumstances and concerns, which would dictate the need for further restrictions.

C. Beneficiaries Applying for Adjustment within the United States without a Prior Interview

A principal asylee may petition for immediate family members within two years of admission on a Refugee/Asylee Relative Petition (Form I-730). When proceeding from abroad, the derivative asylee is required to undergo various interviews and processing steps overseas. When applying for adjustment of status, there is the possibility that some derivative family members may not have undergone overseas processing and may have entered the United States prior to or after being granted derivative asylum status.

For example, beneficiaries of an approved Form I-730 sometimes enter the United States without inspection or with a nonimmigrant visa. The beneficiaries may never have received an interview confirming identity and relationship to the principal, which is part of the overseas process. Because asylum status is conferred on the beneficiary at the point they are present in the United States with an approved Form I-730 petition, the derivative asylee may have gained status without having to provide biometrics or appear in person before an officer to verify his or her identity.

In the event a derivative asylee (Form I-730 beneficiary) is applying for adjustment of status without having been previously interviewed either abroad or in the United States, he or she should be referred for an interview at a field office as part of the adjustment of status process and to verify identity and the familial relationship.

During the interview process, the officer will verify the identity of the derivative asylee and the requisite familial relationship to the principal as well as examine the derivative asylee's eligibility for admission as an immigrant. [2]

D. 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 will also indicate the approval of the waiver or the waiver application. .

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 labeled "Waiver of Grounds of Inadmissibility is Denied" and write "See Form I-291" [3] in the space labeled "Reasons."

The officer should be 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.

E. 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 will 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.

F. 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 will not be permitted to change the spelling of their names from that listed on their 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.

G. 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 shall be one year prior to 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 will appear on the applicant's permanent resident card and in USCIS systems. Additionally, the 1-year roll back is countedtoward 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."

Classes of Applicants & Corresponding Codes of Admission

Applicant	Code of Admission
Asylee (Principal)	AS6
Spouse of a Principal Asylee (AS6)	AS7
Child of a Principal Asylee (AS6)	AS8

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 will receive 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 will be 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 will still keep his or her asylum status. In certain instances, if officer denies the adjustment application because the applicant is inadmissible, the asylee may be placed into removal proceedings.

Footnotes

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1. [^] See 8 CFR 209.2(e).

2. [^] See INA 209(b).

3. [^] 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 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

If an officer determines that termination is appropriate, he or she should forward the case to the appropriate asylum office with jurisdiction. The asylum office may only terminate asylum status if an asylum officer or a District Director granted the status. Asylum status granted by an immigration judge may not be terminated by USCIS since jurisdiction rests with the immigration court. In such cases, asylum offices should coordinate with the Refugee and Asylum Law Division at the Office of Chief Counsel, USCIS Headquarters.

For those cases within USCIS jurisdiction, a Notice of Intent to Terminate (NOIT) must be served on the applicant by the asylum office at least 30 days prior to an interview with an asylum officer. The NOIT must contain prima facie evidence supporting the termination. The grounds of termination must be proven by a preponderance of the evidence. The applicant has an opportunity to present evidence that he or she is still eligible for asylum. The officer must provide the applicant with written notice if asylum and/or related employment authorization are terminated.

An immigration judge may terminate a grant of asylum made under the jurisdiction of USCIS at any time after the applicant has been provided a Notice of Intent to Terminate (NOIT). A termination hearing may take place in conjunction with removal proceedings.

If USCIS terminates the applicant's asylum status or the officer cannot approve the adjustment of status application due to the applicant's inadmissibility, the officer should deny the application issue the applicant a Notice to Appear (NTA). The applicant should be placed in removal proceedings. The denial order should set forth all the reasons for the denial in clear language which can be understood by the applicant. There is no appeal from the denial of the application, but the alien may renew the application for adjustment in his or her removal proceedings before the immigration court. [2]

Footnotes

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1. [^] See INA 208(c)(2).

2. [^] See 8 CFR 209.2(e) and 8 CFR 209.2(f).

Part N - Legalization

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

- 8 CFR 264.2 – Application for creation of record of permanent residence

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. [1] The applicant must also be physically present in the United States at the time he or she files the application.[2]

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. [3] 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.

Presumption of Lawful Admission

Eligible Class of Aliens	Regulation	Evidence of Admission Required?
Entered prior to June 30, 1906.	8 CFR 101.1(a)	No
Citizen of Canada or Newfoundland who entered the United States across the Canadian border prior to October 1, 1906.	8 CFR 101.1(b)	No
Citizen of Mexico who entered the United States across the Mexican border prior to July 1, 1908.	8 CFR 101.1(b)	No
Citizen of Mexico who entered the United States at the port of Presidio, TX, prior to October 21, 1918.	8 CFR 101.1(b)	No

Eligible Class of Aliens	Regulation	Evidence of Admission Required?
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.	8 CFR 101.1(b)	No
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.	8 CFR 101.1(c)	Yes
An alien who established that he or she is indigenous to and native of a country within the Asiatic zone [4] who is: • Exempted from exclusion; and • Entered the United States prior to July 1, 1924.	8 CFR 101.1(d)	Yes
Certain Chinese aliens with record of admission prior to July 1, 1924 under laws and regulations formerly applicable to Chinese aliens.	8 CFR 101.1(e)(1)	Yes
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. [Note: Most admissions under this provision took place between July 1, 1924 and December 23, 1952.]	8 CFR 101.1(e)(2)	Yes
Philippine citizen who entered the United States prior to May 1, 1934. [5]	8 CFR 101.1(f)(1)	Yes
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]	8 CFR 101.1(f)(2)	Yes
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]	8 CFR 101.1(g)	Yes
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.	8 CFR 101.1(h)	Yes

Eligible Class of Aliens	Regulation	Evidence of Admission Required?
Aliens admitted to Guam prior to December 24, 1952, as established by records, who was: • Not excludable under the Act of February 5, 1917; [8] • Continued to reside in Guam until December 24, 1952; and • Not admitted or readmitted into Guam as a nonimmigrant. [9]	8 CFR 101.1(i)	Yes
An alien erroneously admitted as a U.S. citizen or as a child of a U.S. citizen prior to September 11, 1957 who maintained a residence in the United States since date of admission. [10]	8 CFR 101.1(j)(1)	Yes
An alien erroneously admitted to the United States prior to July 1, 1948 in possession of a Section 4(a) 1924 Act [11] nonquota immigration visa.	8 CFR 101.1(j)(2)	Yes

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), 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;
- 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:

Classes of Applicants and Corresponding Codes of Admission

Applicant	Code of Admission
Presumption of Lawful Admission	XB3

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].

2. [^] See 8 CFR 264.2(a).

3. [^] See 8 CFR 103.2(b)(1).

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.

5. [^] 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.

6. [^] See Pub. L. 73-127, 48 Stat. 456, 462.

7. [^] See Pub. L. 67-5.

8. [^] See Pub. L. 64-301.

9. [^] See *Matter of C-Y-L- (PDF)*, 8 I&N Dec. 371 (BIA 1959) (aliens not classifiable as contract laborers under the Immigration Act of 1917 are eligible for presumption of lawful permanent residence). See *Matter of L- (PDF)*, 9 I&N Dec. 82 (BIA 1960) and *Matter of A- (PDF)*, 9 I&N Dec. 85 (BIA 1960) (admission prior to December 24, 1952 as a contract laborer cannot be cured by an

admission subsequent to that date as a higher level of employee). See *Matter of Antolin (PDF)*, 12 I&N Dec. 127 (BIA 1967) (8-year residence outside Guam after 1952 nullified eligibility for presumption of lawful permanent residence).

10. [^] See *Matter of M-Y-C- (PDF)*, 8 I&N Dec. 313 (BIA 1959) (an alien who was not in fact the child of a U.S. citizen at the time of his or her admission does not qualify). See *Matter of K-B-W- (PDF)*, 9 I&N Dec. 610 (BIA 1962) (alleged adoptive child of a U.S. citizen who is not within the definition at INA 101(b)(1)(E) does not qualify). See *Matter of Cruz-Gastelum (PDF)*, 12 I&N Dec. 704 (BIA 1968) (an alien does not qualify in the absence of a record of claimed admission).

11. [^] See Pub. L. 68-139, 43 Stat. 153, 155 (May 26, 1924).

12. [^] See 8 CFR 101.1. See 8 CFR 264.2.

13. [^] See Chapter 4, Aliens Who Entered the United States Prior to January 1, 1972 [7 USCIS-PM O.4].

14. [^] 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. [4] 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

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1. [^] See 8 CFR 101.2. See 8 CFR 264.2.

2. [^] See 8 CFR 101.2.

3. [^] See 8 CFR 101.2.

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:

Eligibility Requirements: Children Born in the United States to Accredited Diplomats
The applicant voluntarily seeks to register permanent residence.
The applicant was born in the United States.
The applicant maintained continuous residence in the United States since birth.
The applicant is physically present in the United States at the time he or she files the application.
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.

Eligibility Requirements: Children Born in the United States to Accredited Diplomats
The applicant lost or waived his or her diplomatic immunity.

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 [4]

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 [5] 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. [6]

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). [7] 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. [8]

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). French nationals who are receiving a salary from the Republic of France must submit the Form I-508F in addition to Form I-508.

However, if, at the time an applicant applies to register lawful permanent residence, the applicant has lost diplomatic immunity, then the applicant does not need to submit Form I-508 (or Form I-508F, if applicable) 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) and I-508F if the applicant is a French national;
- 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:

Classes of Applicants and Corresponding Codes of Admission

Applicant	Code of Admission
Born Under Diplomatic Status in the United States	DS1

The effective date of permanent residence is the applicant's date of birth. [11]

Footnotes

1. [^] See 8 CFR 101.3(a).

2. [^] See 8 CFR 101.3(a)(1).

3. [^] See *Matter of Huang (PDF)*, 11 I&N Dec. 190 (Reg. Comm. 1965) and *Matter of Chu (PDF)*, 14 I&N Dec. 241 (Reg. Comm. 1972).

4. [^] See 8 CFR 101.3(d).

5. [^] See INA 101(a)(15)(A) or INA 101(a)(15)(G).

6. [^] See *Nikoi v. Attorney General of the United States*, 939 F.2d 1065 (D.C. Cir. 1991).

7. [^] See 8 CFR 101.3(a)(2).

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.

9. [^] See 8 CFR 101.3. See 8 CFR 264.2.

10. [^] If it appears that the applicant is subject to removal, approval of registration does not bar issuance of a notice to appear.

11. [^] See 8 CFR 264.2(h)(2).

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, [1] 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:

Registry Program – Legislative Background

Legislation	Effect on Registry Provision
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

Legislation	Effect on Registry Provision
Immigration and Nationality Act Amendments of 1958 [4]	• Eliminated requirement that applicant not be deportable [5] • 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
Immigration Technical Corrections Act of 1988 [9]	• Added requirement that registry applicants must not be inadmissible as participants in Nazi persecution or genocide
Immigration Act of 1990(IMMACT 90) [10]	• Made registry unavailable for 5 years to applicants who, despite proper notice, failed to appear for deportation, asylum, or other immigration proceedings
Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [11]	• Lengthened IMMACT 90's 5-year bar to 10 years • Precluded aliens from registry if deportable for engaging in terrorist activities

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]

Eligibility Requirements: Registry
The applicant entered the United States prior to January 1, 1972.

Eligibility Requirements: Registry
The applicant maintained continuous residence in the United States since his or her entry.
The applicant is physically present in the United States at the time he or she files the application.
The applicant is a person of good moral character.
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.
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.

Applicability of Grounds of Inadmissibility: Registry Applicants

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(1) – Health-Related		X
INA 212(a)(2)(A) – Conviction (or Commission) of Certain Crimes	X	
INA 212(a)(2)(B) – Multiple Criminal Conviction	X	
INA 212(a)(2)(C) – Controlled Substance Traffickers	X	
INA 212(a)(2)(D) – Prostitution and Commercialized Vice	X	
INA 212(a)(2)(E) – Asserted Immunity from Prosecution		X
INA 212(a)(2)(G) – Foreign Government Officials who have Committed Severe Violations of Religious Freedom		X
INA 212(a)(2)(H) – Significant Traffickers in Persons		X
INA 212(a)(2)(I) – Money Laundering		X
INA 212(a)(3)(E) – Security-Related	X	
INA 212(a)(4) – Public Charge		X
INA 212(a)(5) – Labor Certification and Qualifications for Certain Immigrants		X

Ground of Inadmissibility	Applies	Exempt or Not Applicable
INA 212(a)(6)(A) – Present Without Admission or Parole		X
INA 212(a)(6)(B) – Failure to Attend Removal Proceedings		X
INA 212(a)(6)(C) – Misrepresentation		X
INA 212(a)(6)(D) – Stowaways		X
INA 212(a)(6)(E) – Smugglers	X	
INA 212(a)(6)(F) – Subject to Civil Penalty		X
INA 212(a)(6)(G) – Student Visa Abusers		X
INA 212(a)(7)(A) – Documentation Requirements for Immigrants		X
INA 212(a)(8) – Ineligibility for Citizenship	X	
INA 212(a)(9) – Aliens Previously Removed		X
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		X

Criminal acts may be waived if the applicant meets the criteria for a waiver of the ground. [23] 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. [24]

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. [25]

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. [26] 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.

Classes of Applicants and Corresponding Codes of Admission

Date of Established Entry	Effective Date of Permanent Residence	Code of Admission
Prior to July 1, 1924	Date of Entry into the United States	Z33
On or After July 1, 1924 and Prior to June 28, 1940	Date Application is Approved	Z03
On or After June 28, 1940 and Prior to January 1, 1972	Date Application is Approved	Z66

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

1. [^] See 45 Stat. 1512.

2. [^] See Pub. L. 76-853 (October 14, 1940).

3. [^] See Pub. L. 82-414 (PDF) (June 27, 1952).

AILA Doc. No. 19060633. (Posted 12/18/19)

4. [^] See Pub. L. 85-616 (PDF) (August 8, 1958). See Pub. L. 85-700 (PDF) (August 21, 1958).

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.

6. [^] See INA 249.

7. [^] See Pub. L. 89-236 (PDF) (October 3, 1965).

8. [^] See Pub. L. 99-603 (November 6, 1986).

9. [^] See Pub. L. 100-525 (PDF) (October 24, 1988).

10. [^] See Pub. L. 101-649 (November 29, 1990).

11. [^] See Pub. L. 104-208 (September 30, 1996).

12. [^] See INA 249.

13. [^] See INA 237(a)(4)(B) (aliens inadmissible under INA 212(a)(3)(B) and INA 212(a)(3)(F) are deportable).

14. [^] See INA 212(e).

15. [^] See INA 101(a)(33).

16. [^] See *Matter of Outin (PDF)*, 14 I&N Dec. 6 (BIA 1972), but see *Matter of Lettman (PDF)*, 11 I&N Dec. 878 (Reg. Comm. 1966). A departure as a result of exclusion or expulsion proceedings may break the continuity of residence regardless of the period of time outside the United States. See *Matter of P- (PDF)*, 8 I&N Dec. 167 (BIA 1958), but see *Matter of Young (PDF)*, 11 I&N Dec. 38 (BIA 1965) (voluntary departure does not break continuity of residence).

17. [^] See 8 CFR 103.2(b)(1).

18. [^] For a further discussion on the issue of continuity of residence, see *Matter of P- (PDF)*, 8 I&N Dec. 167 (Reg. Comm. 1958); *Matter of S-J-S- (PDF)*, 8 I&N Dec. 463 (Asst. Comm'r 1959); *Matter of Lee (PDF)*, 11 I&N Dec. 34 (BIA 1965); *Matter of Young (PDF)*, 11 I&N Dec. 38 (BIA 1965); *Matter of Ting (PDF)*, 11 I&N Dec. 849 (BIA 1966); *Matter of Lettman (PDF)*, 11 I&N Dec. 878 (Reg. Comm. 1966); *Matter of Benitez-Saenz (PDF)*, 12 I&N Dec. 593 (BIA 1967); *Matter of Contreras-Sotelo (PDF)*, 12 I&N Dec. 596 (BIA 1967); *Matter of Harrison (PDF)*, 13 I&N Dec. 540 (BIA 1970); and *Matter of Jalil (PDF)*, 19 I&N Dec. 679 (Comm. 1988).

19. [^] See 8 CFR 103.2(b)(2)(i). 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.

20. [^] See INA 101(f). See *Matter of P- (PDF)*, 8 I&N Dec. 167 (BIA 1958).

21. [^] For further discussion on good moral character, see Volume 12, Citizenship and Naturalization, Part F, Good Moral Character [12 USCIS-PM F]. See *Matter of Carbajal (PDF)*, 17 I&N Dec. 272 (Comm. 1978). See *Matter of Piroglu (PDF)*, 17 I&N Dec. 578 (BIA 1980). See *Matter of Sanchez-Linn (PDF)*, 20 I&N Dec. 362 (BIA 1991).

22. [^] 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].

23. [^] See INA 212(h).

24. [^] For more information on waivers, see Volume 9, Waivers [9 USCIS-PM].

25. [^] For more information on discretion, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10]. For a discussion of discretion in registry applications, see *Matter of L-F-Y- (PDF)*, 8 I&N Dec. 601 (Asst. Comm. 1960); *Matter of R-E- (PDF)*, 9 I&N Dec. 103 (Asst. Comm. 1960); and *Matter of De Lucia (PDF)*, 11 I&N Dec. 565 (BIA 1966).

26. [^] See 8 CFR 249.2(a).

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)].

28. [^] See INA 249. See INA 212(a)(2)(A)-(D) and INA 212(a)(6)(E). See Section D, Eligibility Requirements, Subsection 4, Admissibility and Waiver Requirements [7 USCIS-PM O.4(D)(4)].

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.

31. [^] See *Matter of Young (PDF)*, 11 I&N Dec. 38 (BIA 1965). See *Matter of Benitez-Saenz (PDF)*, 12 I&N Dec. 593 (BIA 1967). See *Matter of Contreras-Sotelo (PDF)*, 12 I&N Dec. 596 (BIA 1967).

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.

35. [^] See 8 CFR 249.2(b).

Part P - Special Adjustment Programs

Part Q - Rescission of Lawful Permanent Residence

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