



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 foreign nationals 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

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

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

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

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

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.

[redaction] The Office of Equal Opportunity and Inclusion (OEOI) also provides assistance whenever an office preliminarily believes that an alternative accommodation should be suggested or that an accommodation may not be required. The OEOI Disability Accommodation Manager must concur on any alternative accommodation offered or any accommodation denial before the office communicates either action to the requestor. The OEOI Disability Accommodation Manager's contact information can be found on the OEOI intranet page. For more information, see the OEOI's intranet page on [Reasonable Accommodations](#). [/redaction]

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. [redaction] If USCIS has a delay in determining the availability of the accommodation, the office explains the delay in the case notes section of the SRMT and completes its processing as soon as possible after the reason for the delay concludes. [/redaction]

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.

[redaction] The USCIS employee in the office responsible for handling disability accommodations should coordinate the resolution of any reconsideration requests as necessary. The OEOI Disability Accommodation Manager must concur on any alternative accommodation offered or any accommodation denial before the office communicates either action to the requestor. [/redaction]

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

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](#).

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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).

<i>Individual Participation</i>	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.
<i>Purpose Specification</i>	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.
<i>Data Minimization</i>	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.
<i>Use Limitation</i>	Any sharing of information outside of the agency must be consistent with the use or purpose originally specified.
<i>Data Quality and Integrity</i>	DHS should, to the extent practical, ensure that PII is accurate, relevant, timely, and complete.
<i>Security</i>	DHS uses appropriate security safeguards against risks such as loss, unauthorized access or use, destruction, modification or unintended or inappropriate disclosure.
<i>Accountability and Auditing</i>	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.

[redaction] [OLIA Standard Operating Procedures \(PDF\)](#) describe the process for managing these inquiries. All inquiries are entered into a national web-based tracking system called the Legislative Electronic Tracking System (LETS), which tracks congressional correspondence in order to prevent the unnecessary forwarding of individual emails and other documents. Centralizing congressional correspondences allows for the coordination of responses and also helps USCIS collect accurate and useful data. Questions concerning the use of LETS should be addressed to the LETS Support Team at USCISLETS@uscis.gov.
[/redaction]

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.

[redaction] Applicants protected by 8 U.S.C. § 1367 have a warning banner in the USCIS Central Index System (CIS). Per existing guidance, employees must treat individuals with a 1367 warning banner in CIS as protected by 8 U.S.C. § 1367. Employees should refer to Appendix – PM 602-0136, [Identification and Disclosure of Section 1367 Information \(PDF\)](#). If an employee believes that the banner should no longer be applied to an individual, the employee must send a message to the 1367Confidentiality@uscis.dhs.gov mailbox asking for the banner to be removed. The request should include any related A-numbers, receipt numbers, and specific details regarding why the employee feels the protections no longer apply. [/redaction]

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 foreign national 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.

[redaction] If the case has been transferred to a USCIS field office, the VSC transfers the change of address request to the appropriate office. A change of address in VAWA, T, U, or other victim-based cases that has been transferred to a field office can only be made by a supervisor. [/redaction]

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 (Form 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 foreign national 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 a foreign national 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

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. [redaction] See Records Policy Manual, Part I, General Records Management, Section 14, [Requests from Outside Agencies to Review USCIS Records \(PDF\)](#). [/redaction]
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

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

[redaction] USCIS employees and contractors must report any USCIS employee or contractor misconduct immediately to OI using either the Online Form to Report Employee Misconduct, available on the [Report Known or Suspected Misconduct](#) web page, or by mailing the printed form from the same website to the Office of Investigations Office location shown below.
[/redaction]

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

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

In addition, immigration fraud can be reported to:

- [Immigration and Customs Enforcement](#);
- [Department of Labor's Wage and Hour Division](#);

- [The Federal Trade Commission](#); and
- [State authorities](#).

The USCIS website also contains information on [common scams](#) and [how to avoid scams](#).

Footnotes

1. ^[^] This section specifically addresses complaints that do not involve egregious or criminal misconduct. For information on the Office of Security and Integrity's policy on reporting criminal and egregious misconduct, see Section C, Reporting Allegations of Misconduct [[1 USCIS-PM A.9\(C\)](#)].
2. ^[^] See [Appendix: Dissatisfaction with USCIS: Terms and Definitions](#) for information on where to send complaints.
3. ^[^] See [Appendix: Dissatisfaction with USCIS: Terms and Definitions](#) for information on how to contact the OIG.
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

Part C - Biometrics Collection and Security Checks

Part D - Attorneys and Representatives

Part E - Adjudications

Part F - Motions and Appeals

Part G - Notice to Appear

Volume 2 - Nonimmigrants

Part A - Nonimmigrant Policies and Procedures

Part B - Diplomatic and International Organization Personnel (A, G)

Part C - Visitors for Business or Tourism (B)

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Part F - Students (F, M)

Part G - Treaty Traders and Treaty Investors (E-1, E-2)

Part H - Specialty Occupation Workers (H-1B, E-3)

Part I - Temporary Agricultural and Non-Agricultural Workers (H-2)

Part J - Trainees (H-3)

Chapter 1 - Purpose and Background

A. Purpose

The H-3 nonimmigrant visa category allows foreign nationals 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 a foreign national 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 foreign nationals 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

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 foreign nationals 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 foreign national'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 foreign national 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

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 foreign national 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:

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.

Trainee (H-3) Petition Forms and Documentation

A summary of the beneficiary's prior relevant training and experience, such as diplomas and letters from past employers.

If the beneficiary is a nonimmigrant student, evidence that the proposed training was not designed to extend the total allowable period of practical training.

Petitioners seeking H-3 status for a nurse must also provide proof:

- That the beneficiary has a full and unrestricted nursing license to work in the country where his or her nursing education was obtained, or
- That the education took place in the United States or Canada.

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 foreign national 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

Special Education Exchange Visitor H-3 Petition Forms and Documentation

Evidence that participant has nearly completed a baccalaureate or higher degree in special education, already has a baccalaureate degree or higher degree in special education, or has extensive prior training and experience in teaching children with disabilities

If Requesting Premium Processing:

Request for Premium Processing Service ([Form I-907](#)) (see [USCIS' website](#) for current fees)

Footnotes

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 foreign nationals 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 foreign national 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

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).

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, a foreign national who was previously granted H-4 dependent status and subsequently is granted H-3 classification, or a foreign national 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

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

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

Chapter 2 - Eligibility

A foreign media representative is a foreign national 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]

Foreign nationals who meet the above definition may be eligible for classification as a foreign information media representative. Foreign information media representative nonimmigrants are admitted for the duration of their employment with the same foreign media organization in the same information medium. Foreign information media representatives must obtain authorization from USCIS to change employers or work in a different medium. ^[2]

Independent Production Companies ^[3]

Employees of independent production companies may also be eligible for foreign information media representative nonimmigrant status if, in addition to the above:

- The employee holds a credential issued by a professional journalistic association;
- The film or video footage produced will be used by a foreign-based television station or other media to disseminate information or news to a foreign audience; and
- The film or video footage will not be used primarily for a commercial entertainment or advertising purpose.

Footnotes

1. ^[^] See 9 FAM 402.11, Information Media Representatives - I Visas. See [Department of State's website](#), indicating that "[a]ctivities in the United States must be informational in nature and generally associated with the news gathering process and reporting on current events." See Chapter 3, Distinction between News and Entertainment [2 USCIS-PM K.3].
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, a foreign national 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

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

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

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 foreign nationals 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 established a threshold investment amount of \$1,000,000 U.S. dollars per investor. 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 is currently set at \$500,000 U.S. dollars per investor. ^[3]

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 (LPR) of the United States without conditions.

B. Background

1. EB-5 Category Beginnings

In 1990, Congress created the EB-5 immigrant visa category. ^[4] The legislation envisioned LPR status, initially for a 2-year conditional period, for foreign nationals who established, ^[5] invested (or were actively in the process of investing) in, and engaged in the management of job-creating or job-preserving for-profit enterprises. ^[6] Congress placed no restriction on the type of the business if the foreign national 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). ^[7] Congress designed this program to determine the viability of pooling investments in designated regional centers. ^[8] 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. ^[9]

Evolution of EB-5 Program

Act	Statutory Provisions
Sections 121(a)-(b) of the Immigration Act of 1990 ^[10]	• 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 foreign nationals 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 ^[11]	• 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 foreign nationals (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. ^[12]

Act	Statutory Provisions
Sections 11035-37 of the 21st Century Department of Justice Appropriations Authorization Act ^[13]	- 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) ^[14]	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 ^[15]

Footnotes

- ^[^] See INA 203(b)(5).
- ^[^] See Section 610(a) of the Judiciary Appropriations Act of 1993, Pub. L. 102-395, 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, 116 Stat. 1758, 1847 (November 2, 2002).
- ^[^] See INA 203(b)(5)(B)-(C). See 8 CFR 204.6(e)-(f).
- ^[^] See Section 121(a) of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649, 104 Stat. 4978, 4987 (November 29, 1990).
- ^[^] 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, 116 Stat. 1758, 1846 (November 2, 2002).

6. ^[^] See Sections 121(a)-(b)(1) of IMMACT90, [Pub. L. 101-649](#), 104 Stat. 4978, 4987 (November 29, 1990).
7. ^[^] See Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, [Pub. L. 102-395](#), 106 Stat. 1828, 1874 (October 6, 1992).
8. ^[^] See S. Rep. 102-331 at 118 (July 23, 1992).
9. ^[^] For information on the current expiration date, see the [USCIS website](#).
10. ^[^] See [Pub. L. 101-649](#), 104 Stat. 4978, 4987 (November 29, 1990).
11. ^[^] See [Pub. L. 102-395](#), 106 Stat. 1828, 1874 (October 6, 1992).
12. ^[^] For a discussion on indirect jobs, see Chapter 2, Eligibility Requirements, Section D, Creation of Jobs [[6 USCIS-PM G.2\(D\)](#)].
13. ^[^] See [Pub. L. 107-273](#), 116 Stat. 1758, 1846 (November 2, 2002).
14. ^[^] See 126 Stat. 1325, 1325 (September 28, 2012).
15. ^[^] See [Pub. L. 102-395](#), 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 Entrepreneur 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.
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 Entrepreneur ([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 Entrepreneur ([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 \$1,000,000 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 \$500,000 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. [\[37\]](#)

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, [\[38\]](#) 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, 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. ^[39] 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. ^[40] Any assets acquired directly or indirectly by unlawful means, such as criminal activity, are not considered capital. ^[41] 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. ^[42]

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. ^[43]

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, ^[44] 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. ^[45] A rural area is any area not within either a metropolitan statistical area or the outer boundary of a city or town having a population of 20,000 or more. ^[46] A high unemployment area is an area that has experienced unemployment of at least 150 percent of the national average rate. ^[47]

Congress provided for a reduced investment amount in a targeted employment area 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 targeted employment area.

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. ^[48]

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 targeted employment area for the lower capital investment amount to apply. ^[49]

The immigrant investor may seek to have an area designated as a targeted employment area. To do so, the immigrant investor must demonstrate that the targeted employment area meets the statutory and regulatory criteria by submitting:

- Evidence that the area is outside of a metropolitan statistical area and outside of a city or town having a population of 20,000 or more;
- Unemployment data for the relevant metropolitan statistical area or county; or
- 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. ^[50]

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, prior to the filing of the Immigrant Petition by Alien Entrepreneur (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 Entrepreneur 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

A state government may designate a geographic or political subdivision within its boundaries as a targeted employment area based on high unemployment. Before the state may make such a designation, an official of the state must notify USCIS of the

agency, board, or other appropriate state governmental body that will be delegated the authority to certify that the geographic or political subdivision is a high unemployment area. ^[51] The state may then send a letter from the authorized body of the state certifying that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. ^[52]

Consistent with the regulations, USCIS defers to state determinations of the appropriate boundaries of a geographic or political subdivision that constitutes the targeted employment area. However, for all TEA designations, USCIS must still ensure compliance with the statutory requirement that the proposed area designated by the state has an unemployment rate of at least 150 percent above the national average. To do this, USCIS reviews state determinations of the unemployment rate and assess the method or methods by which the state authority obtained the unemployment statistics.

Acceptable data sources for calculating unemployment include 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 is no 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. ^[53]

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. ^[54]

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. ^[55]

C. New Commercial Enterprise

A new commercial enterprise is any commercial enterprise established after November 29, 1990. ^[56] 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. ^[57] 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. ^[58]

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. ^[59]

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. ^[60] Cosmetic changes to the décor, a new marketing strategy, or a simple change in ownership do not qualify as restructuring. ^[61]

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. ^[62]

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. ^[63]

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. ^[64]

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. ^[65]

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. ^[66]

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. ^[67]

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. It is not enough that the immigrant investor maintain a purely passive role concerning his or her investment. ^[68]

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;
- Evidence that the immigrant investor is a corporate officer or a member of the corporate board of directors; or
- 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. ^[69]

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 ^[70] 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. ^[71]

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. ^[72]

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. ^[73]

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. ^[74] 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. ^[75]

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 a foreign national 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. ^[76]

Full-Time Employment

For the purpose of the job creation requirement, the position must be a full-time employment position. ^[77] 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. ^[78] 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. ^[79]

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. ^[80] 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 Entrepreneur ([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. ^[81]

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. ^[82]

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. ^[83]

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. ^[84] 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. ^[85]

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. ^[86] 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. ^[87]

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. ^[88]

The 2-year period ^[89] 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. ^[90]

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. ^[91] 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 Entrepreneurs ([Form I-526](#)), Petitions by Entrepreneurs 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. ^[92]

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. ^[93] 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^[94] and thus are no longer considered reasonable methodologies or valid forecasting tools under the regulations.^[95]

E. Burden of Proof

The petitioner or applicant must establish each element by a preponderance of the evidence.^[96] 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.

Footnotes

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&N Dec. 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 Entrepreneur 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 Entrepreneur 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. [^] 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).
39. [^] See [8 CFR 204.6\(e\)](#).
40. [^] See [8 CFR 204.6\(j\)\(3\)](#). See [Matter of Ho \(PDF\)](#), 22 I&N Dec. 206, 210-11 (Assoc. Comm. 1998).
41. [^] See [8 CFR 204.6\(e\)](#).
42. [^] See [8 CFR 204.6\(e\)](#) and [8 CFR 204.6\(j\)\(3\)](#).
43. [^] See [8 CFR 204.6\(j\)\(3\)](#).
44. [^] As required under [8 CFR 204.6\(j\)\(3\)\(ii\)](#).
45. [^] See [INA 203\(b\)\(5\)\(B\)\(ii\)](#).
46. [^] See [INA 203\(b\)\(5\)\(B\)\(iii\)](#). See [8 CFR 204.6\(e\)](#).
47. [^] See [INA 203\(b\)\(5\)\(B\)\(ii\)](#). See [8 CFR 204.6\(e\)](#).
48. [^] See [Matter of Izummi \(PDF\)](#), 22 I&N Dec. 169, 174 (Assoc. Comm. 1998).
49. [^] See [8 CFR 204.6\(j\)\(6\)](#). See [Matter of Izummi \(PDF\)](#), 22 I&N Dec. 169, 171-73 (Assoc. Comm. 1998).
50. [^] See [8 CFR 204.6\(j\)\(6\)](#).
51. [^] See [8 CFR 204.6\(i\)](#).
52. [^] See [8 CFR 204.6\(j\)\(6\)\(ii\)\(B\)](#).
53. [^] See [Matter of Ho \(PDF\)](#), 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).
54. [^] See [Matter of Ho \(PDF\)](#), 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).
55. [^] See [Matter of Ho \(PDF\)](#), 22 I&N Dec. 206, 213 (Assoc. Comm. 1998).
56. [^] See [8 CFR 204.6\(e\)](#).
57. [^] See [8 CFR 204.6\(e\)](#).
58. [^] See [8 CFR 204.6\(e\)](#).
59. [^] See [8 CFR 204.6\(e\)](#).
60. [^] See [8 CFR 204.6\(h\)\(2\)](#).

61. [^] See *Matter of Soffici (PDF)*, 22 I&N Dec. 158 (Assoc. Comm. 1998).
62. [^] See 8 CFR 204.6(h)(3).
63. [^] See 8 CFR 204.6(h)(3).
64. [^] See 8 CFR 204.6(h)(3).
65. [^] See 8 CFR 204.6(g).
66. [^] See 8 CFR 204.6(j)-(j)(1).
67. [^] See 8 CFR 204.6(j)(2)(i)-(v).
68. [^] See 8 CFR 204.6(j)(5).
69. [^] See 8 CFR 204.6(j)(5)(i)-(iii).
70. [^] Job maintenance is also permitted under certain circumstances. See Subsection 4, Measuring Job Creation [6 USCIS-PM G.2(D)(4)].
71. [^] See 8 CFR 204.6(j)(4)(i).
72. [^] See 8 CFR 204.6(j) (It is the new commercial enterprise that will create the 10 jobs).
73. [^] See *Matter of Izummi (PDF)*, 22 I&N Dec. 169, 179 (Assoc. Comm. 1998).
74. [^] See 8 CFR 204.6(j).
75. [^] See 8 CFR 204.6(e).
76. [^] See 8 CFR 204.6(e).
77. [^] See INA 203(b)(5)(A)(ii).
78. [^] See INA 203(b)(5)(D). See 8 CFR 204.6(e).
79. [^] See 8 CFR 204.6(e).
80. [^] See 8 CFR 204.6(j)(4)(ii).
81. [^] See 8 CFR 204.6(j)(4)(ii).
82. [^] See 8 CFR 204.6(e).
83. [^] See 8 CFR 204.6(e).
84. [^] See 8 CFR 204.6(j)(4)(iii).
85. [^] See 8 CFR 204.6(m)(1). See 8 CFR 204.6(m)(7).
86. [^] See 8 CFR 204.6(g)(2).
87. [^] 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).
88. [^] See 8 CFR 204.6(j)(4)(i).
89. [^] The 2-year period is described in 8 CFR 204.6(j)(4)(i)(B).

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

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

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

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

94. [^] See, for example, *Matter of Izummi* (PDF), 22 I&N Dec. 169, 179 (Assoc. Comm'r 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).

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

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

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 Entrepreneur ([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

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, 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](#), 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](#), 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](#), 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 Entrepreneur (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 Entrepreneur ([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]

Footnotes

1. ^[^] See 8 CFR 204.6(a). See 8 CFR 103.2(b).
2. ^[^] See INA 216A(a). For information regarding removal of the conditional basis of the investor's permanent resident status, see Chapter 5, Removal of Conditions ^[6 USCIS-PM G.5].
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).

Chapter 5 - Removal of Conditions

To seek removal of the conditions on permanent resident status, the immigrant investor must file a Petition by Entrepreneur 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 Entrepreneur ([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.

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. ^[11]

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. ^[12] 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. ^[13] 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. ^[14] 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

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

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

Children in a variety of different circumstances may be eligible for SIJ classification, including but not limited to:

- Children who have been abused 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; ^[2] 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 ^[3]	• Established an SIJ classification for children declared dependent upon 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

Acts and Amendments	Key Changes
Miscellaneous and Technical Immigration and Nationality Amendments of 1991 ^[4]	• Provided that children with SIJ classification were considered paroled for the purpose of adjustment of status to lawful permanent residence • Provided that foreign national 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 ^[5]	• 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 ^[6]	• 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 status • 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 ^[7]	• 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) ^[8]	- 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 ^{\[9\]}](#) – 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

1. ^[^] 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.

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

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

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

5. ^[^] See [Pub. L. 103-416](#) (October 25, 1994).
6. ^[^] See [Pub. L. 105-119 \(PDF\)](#) (November 26, 1997).
7. ^[^] See [Pub. L. 109-162](#) (January 5, 2006).
8. ^[^] See [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008).
9. ^[^] Certain portions of the regulations have been superseded. This part provides up-to-date guidance.

Chapter 2 - Eligibility Requirements

A. Determining Eligibility

The 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 findings, 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 (or orders), 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 abuse, neglect, or abandonment.

B. 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 (or orders) 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

C. Age-out Protections

In general, a “child” is an unmarried person under 21 years of age for purposes of SIJ classification. ^[2] USCIS considers the petitioner’s age at the time the SIJ petition is filed when determining whether the petitioner has met the age requirement. ^[3]

If a petitioner was under 21 years of age on the date of the proper filing of [Form I-360](#), USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.

D. Juvenile Court Order

To be eligible for SIJ classification, a juvenile court in the United States must have issued order (or orders) with the following findings:

- 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; ^[4]
- Parental Reunification – Declares, under the state child welfare law, that the petitioner cannot reunify with one or both of the petitioner’s parents prior to aging out of the juvenile court’s jurisdiction due to abuse, neglect, abandonment, or a similar basis under state law; and
- Best Interests – Finds that it would not be in the petitioner’s best interest to be returned (to a placement) in the petitioner’s, or his or her parent’s, country of nationality or last habitual residence.

1. Dependency ^[5] 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. Placing the petitioner “under the custody of” a person requires physical custody. 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, or abandonment of the petitioner.

Court-ordered dependency or custodial placements that are intended to be temporary generally do not qualify for the purpose of establishing eligibility for SIJ classification. ^[6] 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, ^[7] is not considered a custodian for purposes of establishing SIJ eligibility. ^[8]

2. Parental Reunification ^[9]

The juvenile court must find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state child welfare laws. Lack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent (or parents) remains in effect until the child ages out of the juvenile court’s jurisdiction. ^[10] The temporary unavailability of a child’s parent does not meet the eligibility requirement that family reunification is not viable. However, actual termination of parental rights is not required.

The findings must be based upon the person (or persons) who is the petitioner’s parent (or parents) ^[11] under state law. If the juvenile court order establishes that the person (or persons) is the petitioner’s parent (or parents), USCIS generally considers this requirement met. However, if the record does not establish that the person (or persons) is the petitioner’s parent (or parents), USCIS may request additional evidence. For example, if the findings are based on a father not listed on the petitioner’s birth certificate, a determination that the claimed father is the father under state law should be established in the juvenile court order.

3. Best Interests

Juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country. However, it must be determined by the juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or his or her parents. Accordingly, this requires a determination by the juvenile court that a placement in the child's, or his or her parents', country of nationality or last habitual residence is not in the child's best interest.

While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child. ^[12] The court's finding that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that a placement in the petitioner's country of nationality would not be in the child's best interest. ^[13] 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.

4. Validity of Order

Issued under State Law

The juvenile court order must have been properly issued under state law to be valid for the purposes of establishing eligibility for SIJ classification. This includes the need for the juvenile court to follow their state laws on jurisdiction. ^[14] For example, a juvenile court may not be able to take jurisdiction and issue a dependency or custody order for a juvenile who is 18 years of age or older even though the juvenile may file his or her petition with USCIS until the age of 21. 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 findings that made the petitioner eligible because of subsequent evidence or information that invalidated the findings; 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). ^[15]

A petitioner with a juvenile court order who moves to the jurisdiction of a different juvenile court may need to either submit evidence that the petitioner is still under the jurisdiction of the court that issued the order or submit a new court order.

A juvenile court order does not necessarily terminate because of a petitioner's move to another court's jurisdiction. In general, a court maintains jurisdiction when it orders the child placed in a different state or makes a custody determination and the legal

custodian relocates to a new jurisdiction. ^[16] If, however, a child relocates to a new jurisdiction and is not living in a court ordered placement or with the court ordered custodian, 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. ^[17]

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.

5. USCIS Consent

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPR 2008) ^[18] simplified but did not remove the Department of Homeland Security (DHS) consent requirement. In order to consent, USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit. ^[19] 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 findings 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 findings necessary for classification as a SIJ. The evidence needed does not have to be overly detailed, but must confirm that the juvenile court made an informed decision in order to be considered “reasonable.” USCIS generally consents to the grant of SIJ classification when the order includes or is supplemented by a reasonable factual basis for all of the required findings.

USCIS recognizes that there may be some immigration motive for seeking the juvenile court order. For example, the court may make findings in separate hearings and the petitioner may request an order that compiles the findings of several orders into one order to establish eligibility for SIJ classification. A special order issued to help clarify the findings 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 ^[20] 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 petitioner’s current placement.

F. Inadmissibility and Waivers

Grounds of inadmissibility do not apply to the adjudication of the SIJ petition. ^[21] 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. ^[22] This prohibition also applies to a non-abusive, custodial parent, if applicable.

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 Juveniles [[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 (TVPR 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. ^[^] Section 235(d)(6) of the TVPR 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008), provides age-out protection to SIJ petitioners.
4. ^[^] For information on which state courts USCIS considers a juvenile court, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Orders and Administrative Documents, Subsection 1, Qualifying Juvenile Court Proceedings [[6 USCIS-PM J.3\(A\)\(1\)](#)].
5. ^[^] This requires that the petitioner has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while he or she is in the United States and under the jurisdiction of the court. See [8 CFR 204.11\(c\)\(3\)](#). For an example of state law governing declarations of dependency, see California Welfare and Institutions Code Section 300.
6. ^[^] USCIS generally requires that the court order be valid at the time of filing and must determine that the court intends that the child will not reunify with at least one parent until the child reaches the age of majority. See [8 CFR 204.11\(c\)\(5\)](#). See Subsection 2, Parental Reunification [[6 USCIS-PM J.2\(D\)\(2\)](#)].
7. ^[^] See Black's Law Dictionary (10th ed. 2014) (defining “in loco parentis”).
8. ^[^] A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 462 of the Homeland Security Act of 2002 ([6 U.S.C. 279](#)). See Section 235(d)(5) of the TVPR 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008).
9. ^[^] The TVPR 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 TVPR 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 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 TVPR 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5079 (December 23, 2008).

10. [^] 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").
11. [^] 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.
12. [^] See [U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child](#).
13. [^] See [58 FR 42843-01 \(PDF\)](#), 42848 (August 12, 1993).
14. [^] 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 care and custody of juveniles. See [8 CFR 204.11\(a\)](#). See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005) at paragraph 8.
15. [^] See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).
16. [^] 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.
17. [^] See [8 CFR 204.11\(c\)\(5\)](#).
18. [^] See [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008).
19. [^] See [INA 101\(a\)\(27\)\(J\)\(iii\)](#) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).
20. [^] See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).
21. [^] 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].
22. [^] 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 (or orders) and administrative document (or orders), as applicable, that establish eligibility and evidence of the factual basis for the juvenile court's findings; 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 Orders and Administrative Documents

1. Qualifying Juvenile Court Proceedings

A juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations about the custody and care of children. ^[4] The title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.

The juvenile court may make the required determination that it is not in the petitioner's best interest to be returned (to a placement) in the petitioner's or his or her parent's country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a finding from that process may satisfy this requirement.

2. Findings ^[5]

The juvenile court order (or orders) must provide the required findings regarding dependency or custody, parental reunification, and best interests. These findings may be made in a single juvenile court order or in separate juvenile court orders. The order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law. The order (or orders) should not just mirror or cite to immigration law and regulations. The juvenile court order may use different legal terms than those found in the INA as long as the findings have the same meaning as the requirements for SIJ classification. ^[6]

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.

The language of the order may vary based on individual state child welfare law. If a juvenile court order makes the findings based upon a state law similar to abuse, neglect, or abandonment, ^[7] 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. Petitioners are encouraged to submit the juvenile court's findings of how the basis is similar to abuse, neglect, or abandonment and copies of the relevant laws.

3. Factual Basis and USCIS Consent

Template orders that simply recite the immigration statute or regulatory language are generally not sufficient. Orders that have the necessary findings or rulings and include, or are supplemented by, the factual basis for the court's findings (for example, the judicial findings of fact) are usually sufficient to establish eligibility. If a petitioner cannot obtain a court order that includes facts that establish a factual basis for all of the required findings, USCIS may request evidence of the factual basis for the court's findings.

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 findings. 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;
- Affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and

- Affidavits or records that are consistent with the findings made by the court.

4. Supporting Evidence

The order or supporting evidence should specifically indicate:

- With whom the child is placed (for example, the name of the person, or entity, or agency if the child is adjudicated dependent) 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 (or parents) and the factual basis for the court's findings 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 (a placement in) 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. ^[8]

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 exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the findings 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 findings, 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. ^[9]

Footnotes

1. ^[^] See Instructions for [Form I-360](#). There is no fee to file [Form I-360](#) to seek SIJ classification.
2. ^[^] For more information on evidence that can be used to provide proof of age see [8 CFR 204.11\(d\)\(1\)](#).
3. ^[^] For information on SIJ-based adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [\[7 USCIS-PM F.7\]](#).
4. ^[^] See [8 CFR 204.11\(a\)](#).
5. ^[^] The term "findings" refers to the conclusions of law.
6. ^[^] See [101\(a\)\(27\)\(J\)](#).

7. [^] 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).

8. [^] USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.

9. [^] See Violence Against Women Act of 2005, Pub. L. 109-162 (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

USCIS generally adjudicates SIJ petitions 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 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 will generally 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 approve 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 findings;
- 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 findings;
- 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. Decision

1. Approval

The Secretary of Homeland Security must consent to the grant of SIJ classification. The Department 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. ^[7]

2. Denial

If the petitioner does not provide necessary evidence or does not meet the eligibility requirements, USCIS may deny the [Form I-360](#) petition. If USCIS denies the SIJ petition, USCIS provides the petitioner with a written denial which includes a detailed basis for the denial. ^[8] An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision. ^[9] 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: ^[10]

- Marriage of the petitioner;
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order, ^[11] 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; ^[12] 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) in the petitioner's, or his or her parent's, country of nationality or last habitual residence.

USCIS issues a notice to the petitioner of such revocation of the SIJ petition. ^[13]

Revocation on Notice

In addition, USCIS, with notice, may revoke an approved petition for SIJ classification for good and sufficient cause such as fraud. ^[14] 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. ^[15]

[redaction]

F. 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). ^[16]

[/redaction]

Footnotes

1. ^[^] See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).
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 (TVPRA 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. ^[^] See [8 CFR 103.2\(b\)\(19\)](#).
8. ^[^] See [8 CFR 103.3\(a\)](#).
9. ^[^] See [8 CFR 103.3](#). See [8 CFR 103.5](#).
10. ^[^] See [8 CFR 205.1\(a\)\(3\)\(iv\)](#).

11. [^] 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.

12. [^] 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. 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 will be revoked 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).

13. [^] See [8 CFR 205.1\(b\)](#).

14. [^] See [INA 205](#) and [8 CFR 205.2](#).

15. [^] See [8 CFR 205.2\(b\)](#).

[redaction] 16. [^] 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\(b\)\(10\)](#). [/redaction]

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

A. General

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 a service center); or
- A motion to reopen a USCIS decision (made by the AAO, a field office, or a service 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]

B. Requirements for Perez-Olano Litigation Class Members ^[5]

Perez-Olano v. Holder is a class-action lawsuit filed on behalf of certain foreign national 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 ^[6] or SIJ-based application for adjustment of status ^[7] was denied or revoked on or after May 13, 2005, may be eligible to file a motion to reopen the denied or revoked 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 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. ^[8]

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.

Footnotes

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\(a\)\(1\)\(i\)](#).
5. ^[^] See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).
6. ^[^] See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).
7. ^[^] See Application to Register Permanent Residence or Adjust Status ([Form I-485](#)).
8. ^[^] See [Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement \(PDF\)](#), issued June 25, 2015.

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 includes the filing and adjudication of SIJ petitions under the Settlement Agreement, as well as the filing and adjudication of regularly 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.

Footnotes

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. Foreign nationals living abroad apply for an immigrant visa at a consular office of the Department of State (DOS). Once issued a visa, a foreign national may enter the United States and become an LPR upon entry. Foreign nationals 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 a foreign national 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 a foreign national 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 qualitative restrictions, which barred certain undesirable immigrants such as criminals and those with infectious diseases from entering the country.

During the 1920s, Congress established annual quotas that imposed the first numerical restrictions on immigration. This was known as the National Origins Quota System. The system limited immigration from each country to a designated percentage of foreign-born persons of that nationality who resided in the United States according to the 1910 census. These quotas did not apply to spouses and children (unmarried and under 21 years old) of U.S. citizens. ^[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 a foreign national 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 a foreign national 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 foreign national'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 INA established a revised version of the controversial National Origins Quota System, limiting immigration from the eastern hemisphere while leaving immigration from the western hemisphere unrestricted.

The INA also introduced a system of numerically limited immigrant preference categories, some based on desirable job skills and others based on family reunification. Spouses and children (unmarried and under 21 years old) of U.S. citizens remained exempt from any quota restrictions.

In addition, the INA established a formal system of temporary (or nonimmigrant) categories under which foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals. 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 foreign nationals 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

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 foreign nationals to adjust status to lawful permanent residence. Foreign nationals 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

Foreign nationals 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;
- Foreign national worker under an employment-based preference category; ^[4]
- Foreign national 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

Foreign nationals 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 a foreign national entered the United States or if a foreign national committed a particular act or violation of immigration law, he or she may be barred from adjusting status. With certain exceptions, some foreign nationals ineligible for adjustment of status under INA 245 include: ^[8]

- A foreign national who last entered the United States without being admitted or paroled after inspection by an immigration officer; ^[9]
- A foreign national who last entered the United States as a nonimmigrant crewman; ^[10]
- A foreign national who is now employed or has ever been employed in the United States without authorization; ^[11]
- Any foreign national who is not in lawful immigration status on the date of filing his or her application; ^[12]

- Any foreign national who 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]
- Any foreign national who was last admitted to the United States in transit without a visa; ^[14]
- A foreign national who was last admitted to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor under the Guam or CNMI Visa Waiver Program and who is not a Canadian citizen; ^[15]
- Any foreign national who was last admitted to the United States as a nonimmigrant visitor without a visa under the Visa Waiver Program; ^[16]
- A foreign national who is deportable due to involvement in a terrorist activity or group; ^[17]
- Any foreign national who is seeking employment-based adjustment of status and who is not maintaining a lawful nonimmigrant status on the date of filing this application; ^[18]
- Any foreign national who has ever violated the terms of his or her nonimmigrant status; ^[19]
- Any foreign national who is a conditional permanent resident; ^[20] and
- Any foreign national who was admitted as a nonimmigrant fiancé(e), but did not marry the U.S. citizen who filed the petition or any foreign national 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 visitors may be eligible for a waiver of the requirement through an Application for Waiver of the Foreign Residence Requirement ([Form I-612](#)). ^[28]

Officers should first adjudicate the waiver request, as denial of the waiver necessarily renders the applicant ineligible for adjustment of status. Officers should not hold adjustment cases while waiting for either the applicant to submit a waiver application or the Department of State to make a recommendation on a waiver application and instead should deny the adjustment application for ineligibility based on the evidence of record.

Footnotes

1. ^[^] For more information, see Chapter 6, Adjudicative Review [[7 USCIS-PM A.6](#)]. See Part B, 245(a) Adjustment [[7 USCIS-PM B](#)].
2. ^[^] Spouses, unmarried children under 21 years of age, and parents (if the U.S. citizen is 21 years of age or older). See [INA 201\(b\)\(2\)](#).
3. ^[^] This category includes the following family-based preference immigrant classifications: unmarried sons and daughters, 21 years of age and older, of U.S. citizens; spouses and unmarried children, under 21 years of age, of lawful permanent residents; unmarried sons and daughters, 21 years of age and older, of lawful permanent residents; married sons and daughters of U.S. citizens; and brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age or older). See [INA 203\(a\)](#).
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 certain special 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 foreign national 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 foreign national's country that it does not object to waiving the two-year foreign residence requirement.

Chapter 3 - Filing Instructions

A. Form Instructions

A foreign national 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](https://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, foreign nationals 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 foreign nationals 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 foreign national from the United States or the foreign national 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

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)

Foreign nationals 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.

[redaction] When there is an indication that a document may be fraudulent, a Fraud Detection and National Security (FDNS) immigration officer can further inquire into the validity of documents and the relationship, if needed. When a document issued by a foreign government cannot be readily validated, the FDNS officer may refer the case and document for Overseas Verification. An officer should use this procedure judiciously, and should follow local office procedures for case referral to FDNS. [/redaction]

Footnotes

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 VTPA, [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 petitioner due to illness or incapacitation. In all such instances, an officer must obtain supervisory approval to waive the interview.

B. Relocating Cases for Adjustment of Status Interviews

Unless USCIS determines that an interview is unnecessary, the case should be relocated to the field office with jurisdiction over the applicant's place of residence once the case is ready for interview.

The reasons for requiring an interview may include:

- Need to confirm the identity of the applicant;
- Need to validate the applicant's immigration status;
- The applicant entered the United States without inspection, or there are other unresolved issues regarding the applicant's manner of entry;
- There are known criminal inadmissibility or national security concerns that cannot be resolved at a service center;
- There are fraud concerns and the service center recommends an interview;
- The applicant's fingerprints have been rejected twice;
- The applicant has a Class A medical condition that the service center cannot resolve through a Request for Evidence (RFE);

- The applicant answered “Yes” to any eligibility question on the adjustment application, and the service center cannot determine eligibility through an RFE; or
- The service center has not been able to obtain an applicant’s A-File, T-File, or receipt file (when the applicant has multiple files).

C. Interpreters

An applicant may not be fluent in English and may require use of an interpreter for the adjustment interview. At the adjustment interview, the interpreter should:

- Present his or her valid government-issued identity document and complete an interpreter’s oath and privacy release statement; and
- Translate what the officer and the applicant say word-for-word to the best of his or her ability without adding the interpreter’s own opinion, commentary, or answer.

In general, a disinterested party should be used as the interpreter. An officer may exercise discretion, however, to allow a friend or relative of the applicant to act as interpreter. If the officer is fluent in the applicant’s preferred language, the officer may conduct the examination in that language without use of an interpreter.

USCIS reserves the right to disqualify an interpreter provided by the applicant if the officer believes the integrity of the examination is compromised by the interpreter’s participation or the officer determines the interpreter is not competent to translate.

Footnotes

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 refugee process 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

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 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 officers 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 may occur when the same petitioner in a family-based category has filed more than one petition on behalf of a foreign national for the same classification. ^[27] This may also occur when a beneficiary of multiple employment-based petitions in the 1st, 2nd, or 3rd preference category seeks to use the priority date from an earlier approved petition.

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] 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

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 clear error;
- 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; ^[29] or
- The beneficiary has already used the petition to immigrate.

For employment-based 1st, 2nd, and 3rd preference cases in which a priority date is being retained from an earlier approved petition to support a subsequent petition, the priority date can be lost upon revocation of the original petition only if the revocation was because the petition was approved in error, DOL invalidated the labor certification associated with the petition, or the petition was revoked based on fraud or misrepresentation.

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. ^[30]

DOS, in coordination with USCIS, revises the Visa Bulletin each month to estimate immigrant visa availability for prospective immigrants. ^[31]

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 <i>(Dates for Filing Family-Sponsored Visa Applications OR Application Final Action Dates for Family-Sponsored Preference Cases chart)</i>	<i>Application Final Action Dates for Family-Sponsored Preference Cases</i> 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 <i>(Dates for Filing Employment-Based Visa Applications OR Application Final Action Dates for Employment-Based Preference Cases chart)</i>	<i>Application Final Action Dates for Employment-Based Preference Cases</i> 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 ^[32] 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. [redaction] Officers should complete the [Pre-Adjudication Worksheet for Visa Retrogressed Cases \(PDF\)](#). [/redaction]

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. ^[33] 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. ^[34] In contrast, there is no specific time period during which a derivative must follow to join the principal. ^[35]

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); ^[36]
- 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. ^[37]

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) ^[38] or otherwise under the provisions of the CSPA, if applicable; ^[39] and
- The principal remains in LPR status at the time the derivative adjusts status. ^[40]

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. ^[41] 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. ^[42]

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. ^[43]

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. ^[44]

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. ^[45]

Derivative children may cross-charge to either parent's country as necessary. ^[46] 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. ^[47]

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. ^[48] 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 officers 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.

[redaction] If the cases are approvable and visas are available through cross-chargeability, the officer should follow the regular approval process and order both visas in DOS's Immigrant Visa Allocation Management System (IVAMS) to the appropriate country of chargeability. If the cases are otherwise approvable, but both visa cut-off dates have retrogressed, field offices should properly annotate each case for cross-chargeability and ship to either TSC or the NBC as appropriate to complete IVAMS processing and final adjudication of the case. The TSC or NBC should order the visas in IVAMS from each applicant's more advantageous country of chargeability. [/redaction]

D. Determine Admissibility

Immigration laws specify acts, conditions, and conduct that can make foreign nationals 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. ^[49]

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. ^[50] 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. ^[51]

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. ^[52]

2. Affidavit of Support Under Section 213A of the Act (Form I-864) ^[53]

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; ^[54]
- 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); ^[55]

- 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 ^[56] or if they qualify:

- Diversity Visa immigrants; ^[57]
- Special immigrant juveniles; ^[58]
- Refugees and asylees at time of adjustment of status; ^[59]
- 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](#)); ^[60]
- Foreign nationals granted T nonimmigrant status (human trafficking victims);
- Foreign nationals granted U nonimmigrant status (crime victim); ^[61] and
- Certain qualified aliens as described under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). ^[62]

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. ^[63]

An officer must consider activities, foreign nationals, and organizations described in statute, to determine if a national security concern exists. ^[64] These include but are not limited to:

- Espionage activity; ^[65]
- Illegal transfer of goods, technology, or sensitive information; ^[66]
- Activity intended to oppose, control, or overthrow the U.S. Government by force, violence, or other unlawful means; ^[67]
- Terrorist activity; ^[68] and
- Association with terrorist organizations. ^[69]

The officer should consider the totality of the circumstances to determine whether an articulable link exists between the foreign national (or organization) and prior, current, or planned involvement in, or association with an activity, any foreign national (or organization) described in any of these sections.

Applications with national security concerns require specific handling in accordance with USCIS policy and procedures.

Footnotes

1. ^[^] The approval of a visa petition provides no rights to the beneficiary of the petition, as approval of a visa petition is a preliminary step in the adjustment of status process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa and adjustment of his or her status. See *Matter of Ho* (PDF), 19 I&N Dec. 582 (BIA 1988).
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 Entrepreneur ([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 [INA 203\(g\)](#). See [8 CFR 205.1\(a\)\(1\)](#).

30. [^] 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\(B\)\(4\)](#)].

31. [^] USCIS also provides information about the current Visa Bulletin on the [USCIS website](#).

32. [^] See [8 CFR 245.1\(g\)\(1\)](#).

33. [^] See [INA 203\(d\)](#).

34. [^] See [22 CFR 40.1\(a\)\(1\)](#).

35. [^] 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.

36. [^] See [22 CFR 42.53\(c\)](#). See [9 FAM 503.3-2\(D\)](#), Priority Date for Derivative Spouse/Child.

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

38. [^] See [INA 201\(b\)](#).

39. [^] 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](#)].

40. [^] 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.
41. [^] See [22 CFR 42.53\(c\)](#).
42. [^] See [9 FAM 502.1-1\(C\)\(2\)](#), Derivative Applicants/Beneficiaries.
43. [^] See *Matter of Y- K- W- (PDF)*, 9 I&N Dec. 176 (A.G. 1961).
44. [^] 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.
45. [^] See [INA 202\(b\)\(2\)](#).
46. [^] See [INA 202\(b\)\(1\)](#).
47. [^] See [9 FAM 503.2-4\(A\)](#), Derivative Chargeability.
48. [^] See [9 FAM 503.2-4\(A\)](#), Derivative Chargeability.
49. [^] For more information, see Volume 8, Admissibility [[8 USCIS-PM](#)] and Volume 9, Waivers [[9 USCIS-PM](#)].
50. [^] 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](#)].
51. [^] 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\(C\)](#)].
52. [^] For more information, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)].
53. [^] See [8 CFR 213a](#).
54. [^] 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](#)).
55. [^] See [INA 320](#).
56. [^] 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](#) (September 30, 1996).
57. [^] 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.
58. [^] See [INA 245\(h\)](#).
59. [^] See [INA 209\(c\)](#).
60. [^] See [INA 212\(a\)\(4\)](#).
61. [^] 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).
62. [^] 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](#).

63. ^[^] 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\(a\)\(4\)\(B\)](#).

64. ^[^] 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\(A\)\(4\)\(B\)](#).

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

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

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

68. ^[^] See [INA 212\(a\)\(3\)\(B\)](#) and [INA 237\(a\)\(4\)\(B\)](#).

69. ^[^] 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 foreign nationals 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 a foreign national's age for immigrant visa purposes. The resulting age is known as the foreign national's "CSPA age."

CSPA does not change the requirement that the foreign national must be unmarried in order to remain eligible for classification as a child for immigration purposes.

B. Child Status Protection Act Applicability

Foreign Nationals Covered by Child Status Protection Act

CSPA applies only to those foreign nationals 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 foreign nationals abroad who are applying for an immigrant visa through the Department of State (DOS) and foreign nationals 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 foreign nationals 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.

[redaction] Officers may use the [CSPA calculator \(XLS\)](#) as a resource to aid in determining CSPA eligibility but should first read the guidance in this chapter. [/redaction]

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.

[redaction] Officers may use the [CSPA calculator \(XLS\)](#) as a resource to aid in determining CSPA eligibility but should first read the guidance in this chapter. [/redaction]

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]

[redaction] Officers may use the [CSPA calculator \(XLS\)](#) as a resource to aid in determining CSPA eligibility but should first read the guidance in this chapter. [/redaction]

2. Determining Child Status Protection Act Age

For derivative refugees, an adjustment applicant's CSPA age is his or her age on the date the principal applicant's Form I-590 is filed. The date a Form I-590 is considered filed is the date of the principal refugee parent's interview with a USCIS officer. The applicant's age is frozen on the date of the refugee parent's interview. So long as the child was under 21 on the date of the interview, he or she will not age out of eligibility for derivative refugee status or adjustment of status.

Generally, in order to qualify, the derivative refugee must be listed as a child on the principal applicant's Form I-590 prior to a final decision. However, the derivative refugee may overcome this by providing evidence establishing the parent-child relationship, including evidence of the child's age, and a reasonable explanation as to why the derivative was not included on the principal's Form I-590. ^[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]

[redaction] Officers may use the [CSPA calculator \(XLS\)](#) as a resource to aid in determining CSPA eligibility but should first read the guidance in this chapter. [/redaction]

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 the immigrant visa becomes available to him or her (age at time of visa availability). ^[21] The formula for calculating CSPA age is as follows:

$$\text{Age at time of visa availability} - \text{Pending Time} = \text{CSPA Age}$$

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:

$$21 \text{ years and 4 months} - 6 \text{ months} = 20 \text{ years and 10 months}$$

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:

$$\text{Approval Date} - \text{Filing Date} = \text{Pending Time}$$

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.

$$\text{August 1, 2016} - \text{February 1, 2016} = 6 \text{ months (or 182 days)}$$

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 foreign nationals 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](https://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
May 16, 2010	An applicant has a family-based petition approved based on marriage to a lawful permanent resident.

Date	Event
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 applicant must file a new adjustment application for the new petition.

Adjustment Application Supported by Petition or Basis At All Times

The replacement petition must be properly filed and designated as the new basis for the pending adjustment application before the initial petition supporting the adjustment application is withdrawn, denied, or revoked. Additionally, if the new basis requires that the underlying petition first be approved prior to filing an adjustment application, a transfer request will be denied unless the replacement petition was approved prior to the request. ^[2]

If the petition upon which the pending adjustment application was initially based has been revoked ^[3] before the applicant makes a proper request for a transfer, then the applicant cannot meet the continuing eligibility requirement. In some cases, revocation of a petition is automatic and takes effect as soon as a triggering event occurs. ^[4]

In other cases, USCIS must follow a formal revocation process before the revocation takes effect. ^[5] Continuing eligibility ends upon revocation. If the new basis of eligibility is not sought (in other words, the transfer request has not been received and approved by USCIS) before the revocation takes effect, the adjustment application cannot be transferred.

Fraud

If the original adjustment application was based on a petition determined to have been filed fraudulently or with willful misrepresentation, the principal adjustment applicant or the beneficiary of that petition is considered to have never been eligible for adjustment of status and therefore cannot meet the continuing eligibility requirement.

Likewise, anyone whose adjustment application is dependent upon that principal adjustment applicant's eligibility is also ineligible. If a principal's adjustment application is denied based on a determination of fraud, any accompanying derivative's application must also be denied.

2. Continuing Pendency of the Adjustment Application

An adjustment application cannot be transferred from one basis to another if there are any breaks in the continuity of the application, including if the applicant chooses to withdraw the application or the application is denied because the applicant failed to appear for a scheduled interview without sufficient justification.

A transfer cannot be granted once a final decision has been made on an adjustment application, whether granted, denied, or withdrawn, even if USCIS reopens or reconsiders the final decision.

3. Eligibility for Substituted Category

The applicant must provide evidence of eligibility for the new immigrant category in support of the request to transfer to a new eligibility basis. Evidence required can be found on the adjustment application's filing instructions. The transfer request should be treated as if it were a new filing and the applicant should provide the necessary documentation to establish eligibility for the new adjustment category.

The burden of proof for establishing eligibility under the new immigrant category is on the applicant. An officer does not need to make a full eligibility determination or pre-adjudicate the adjustment application prior to making a decision on the request, even though establishing eligibility may positively impact the decision as to whether to grant the request.

Inadmissibility and INA 245(c) Bars to Adjustment

The officer should consider that an applicant seeking to transfer the basis of a pending adjustment application may become subject to inadmissibility grounds or adjustment bars under that new basis. This could arise when the applicant is transferring from a basis that is exempt from certain inadmissibility grounds or adjustment bars to a basis that is not exempt from the same inadmissibility grounds or bars to adjustment. As a matter of discretion, the officer may deny a transfer request in these circumstances.

Example: Transfer Subjecting Applicant to Inadmissibility Grounds or Adjustment Bars

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 foreign nationals 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](#));
- A foreign national 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

A foreign national's deceased relative must meet the definition of qualifying relative in order for the foreign national 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 foreign nationals 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 foreign national 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 a foreign national'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 foreign national inadmissible is itself an adverse factor. [\[24\]](#) For example, if the foreign national 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.

A foreign national 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

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-Morales \(PDF\)](#), 21 I&N Dec. 296 (BIA 1996).
23. [^] See [Matter of Mendez-Morales \(PDF\)](#), 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 <u>is not required</u> 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. [redaction] Immediately prior to approval, an officer should re-run the TECS checks to confirm that no criminal issues have arisen since the last check and that the applicant remains eligible for adjustment. [/redaction]

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. [redaction] For preference category cases, a visa number must be requested via the Department of State’s Immigrant Visa Allocation Management System (IVAMS) before final approval. [/redaction]

Written notice of approval is mailed to the applicant and attorney or authorized representative, as applicable. Upon approval, the officer must confirm that the information is up-to-date and accurate in the relevant systems to ensure accurate statistical reporting and card production. In cases where an officer approved both the underlying petition and adjustment

application, the officer should verify that the underlying petition shows as being approved in the system before approving the adjustment application.

If the officer determines that the case is approvable during the interview and the applicant anticipates immediate emergency travel, the officer may place a stamp as proof of temporary permanent resident status in the applicant's passport, per local office guidelines. The stamp must have a dry seal affixed to be valid for travel.

B. Notices of Intent to Deny

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

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 foreign nationals 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”). A foreign national 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 a foreign national 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 foreign national’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 foreign nationals 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 foreign nationals 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

A foreign national 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.

INA 245(a) Adjustment of Status Eligibility Requirements

An immigrant visa must be immediately available when the applicant files the adjustment of status application ^[1] and at the time of final adjudication. ^[2]

The applicant must be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion. ^[3]

A. “Inspected and Admitted” or “Inspected and Paroled”

In 1960, Congress amended [INA 245\(a\)](#) and made adjustment of status available to any otherwise eligible applicant who has been “inspected and admitted or paroled” into the United States. ^[4] Since 1960, the courts, legacy Immigration and Naturalization Service, and USCIS have read the statutory language “inspected and admitted or paroled” as:

- Inspected and admitted into the United States; or
- Inspected and paroled into the United States.

This requirement must be satisfied before the foreign national 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 foreign nationals 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 a foreign national may lawfully enter the United States. Immigration laws as early as 1875 specified that inspection must occur prior to a foreign national’s landing in or entering the United States and that prohibited foreign nationals 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, a foreign national 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] A foreign national 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 foreign national is admissible and may enter the United States under all the applicable provisions of immigration laws.

As part of the inspection, the foreign national 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 foreign national'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 foreign national presents himself or herself for questioning in person, the inspection requirement is met. ^[15] Nonetheless, if the foreign national enters the United States by falsely claiming U.S. citizenship, the foreign national 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:

- The officer admits the foreign national;
- The officer paroles the foreign national;
- The officer allows the foreign national to withdraw his or her application for admission and depart immediately from the United States; ^[17]
- The officer denies the foreign national 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]

A foreign national is admitted if the following conditions are met: ^[20]

- The foreign national applied for admission as an "alien" (foreign national) at a port of entry; and
- An immigration officer inspected the foreign national as an "alien" and authorized him or her to enter the United States in accordance with the procedures for admission. ^[21]

A foreign national who meets these two requirements is admitted, even if the foreign national obtained the admission by fraud. ^[22] Likewise, the foreign national is admitted, even if the CBP officer performed a cursory inspection.

As long as the foreign national meets the procedural requirements for admission, the foreign national 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 foreign national makes a false claim to U.S. citizenship or to U.S. nationality at the port of entry and an immigration officer permits the foreign national to enter the United States, the foreign national has not been admitted. ^[24] A U.S. citizen arriving at a port of entry is not subject to inspection; therefore, a foreign national who makes a false claim to U.S. citizenship is considered to have entered without inspection. ^[25]

Similarly, a foreign national 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 a foreign national'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

A foreign national is paroled if the following conditions are met:

- The foreign national is seeking admission to the United States at a port of entry; and
- An immigration officer inspected the foreign national as an “alien” and permitted the foreign national to enter the United States without determining whether the foreign national 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 foreign nationals found inadmissible during a preliminary inspection at a port of entry. Deferred inspection is generally granted only after CBP:

- Verifies the foreign national’s identity and nationality;
- Determines that the foreign national would likely be able to overcome the identified inadmissibility by obtaining a waiver or additional evidence; and
- Determines that the foreign national 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 foreign national into the United States and defers completion of the inspection to a later time. A foreign national 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 foreign national 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 a foreign national 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 Foreign Nationals Present Without Admission or Parole

A foreign national 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 a foreign national into the United States. ^[46] In general, USCIS grants parole in place only sparingly.

The fact that a foreign national 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 a foreign national.

If DHS grants parole before the foreign national files an adjustment application, the foreign national 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 foreign national 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, a foreign national 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 the foreign national’s advance parole document; ^[51]
- A parole stamp in the foreign national’s 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 foreign nationals 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 foreign nationals 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]

A foreign national 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 foreign national, but only for the stipulated time period and so long as the foreign national complies with all TPS requirements. Recipients of TPS must still meet the threshold requirement that a foreign national 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 a foreign national's entry without inspection or constitute an inspection and admission of the foreign national. ^[58]

If a foreign national under TPS departs the United States and is admitted or paroled upon return to a port of entry, the foreign national 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 foreign national is inspected at a port of entry and permitted to enter to the United States, the foreign national 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, a foreign national 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, a foreign national may claim that he or she arrived at a port of entry and presented himself or herself for inspection as a foreign national, but the inspector waved (allowed to pass) him or her through the port of entry without asking any questions.

Where a foreign national physically presents himself or herself for questioning and makes no knowing false claim to U.S. citizenship, the foreign national is considered to have been inspected even though he or she volunteers no information and is asked no questions by the immigration authorities. Such a foreign national satisfies the inspected and admitted requirement of [INA 245\(a\)](#) as long as the foreign national 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 a foreign national 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 a foreign national. ^[66]

B. Properly Filing an Adjustment Application

To adjust status, a foreign national 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

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 Entrepreneur (Form I-526)	• Entrepreneurs
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

Immigrant Category	Petition	Who May Qualify
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 foreign national 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 a foreign national can apply for adjustment of status. ^[73] An immigrant visa is always available to foreign nationals 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 foreign nationals 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 foreign nationals ineligible to apply for adjustment of status, unless otherwise exempt. ^[79]

Foreign Nationals Barred from Adjustment of Status

Foreign National	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
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]

Foreign National	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
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 foreign national is subject to any and all applicable grounds of inadmissibility even if the foreign national 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, a foreign national 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

- ^[^] 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\(C\)](#)].
- ^[^] 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 a foreign national 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 foreign national’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 a foreign national 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, a foreign national 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) (a foreign national 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. A foreign national 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 foreign national 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 foreign national 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) (a foreign national 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). A foreign national who makes a false claim to U.S. citizenship is inadmissible for making the claim ([INA 212\(a\)\(6\)\(C\)\(ii\)](#)). The foreign national 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 foreign nationals 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 foreign national 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\(a\)\(6\)\(C\)\(ii\)](#)). The foreign national 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 a foreign national'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, a foreign national 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 a foreign national was admitted to the United States by CBP at an airport or seaport after April 30, 2012, the foreign national 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 a foreign national 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 foreign nationals

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 foreign nationals 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 foreign national was actually permitted to land under the D-1 or D-2 visa category. The bar also applies if the foreign national 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 a foreign national 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 a foreign national 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 a foreign national 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)

A foreign national is barred from adjustment of status if the foreign national 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 foreign 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]

Foreign nationals 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]
- Foreign nationals in temporary protected status (TPS); and
- Foreign nationals 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 a foreign national in a lawful immigration status. ^[12] In general, once an immigrant benefit application is approved, a foreign national is in lawful immigration status as of the date of the filing of the application.

B. Unlawful Immigration Status

A foreign national is in unlawful immigration status if he or she is in the United States without lawful immigration status either because the foreign national never had lawful status or because the foreign national's lawful status has ended.

Foreign nationals in unlawful immigration status generally include:

- Foreign nationals who entered the United States without inspection and admission or parole; ^[13] and
- Foreign nationals 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 foreign national's unlawful status generally begins:

- On the day the foreign national enters the United States without inspection;

- On the day the foreign national violates the terms or conditions of his or her nonimmigrant status; [\[15\]](#) or
- On the day after the foreign national'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 foreign national obtains lawful immigration status, or
- The foreign national 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 a foreign national's accrual of unlawful presence for inadmissibility purposes. [\[17\]](#) Although a foreign national 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 a foreign national 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 a foreign national. In addition, a pending application or petition does not automatically afford protection against removal if the foreign national's status expires after submission of the application. The foreign national 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

A foreign national may file an adjustment application after expiration of his or her nonimmigrant status while the foreign national'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 foreign national 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 foreign national is generally considered to be in unlawful immigration status as of the expiration of the foreign national'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 a foreign national 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

Date	Event
September 28, 2007	A foreign national 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 foreign national 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 foreign national.
February 8, 2009	USCIS denies the foreign national'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 foreign national but denies the accompanying application to change status from B-2 nonimmigrant visitor to L-1 because the foreign national was out of status at the time the petition was filed.

This example highlights that a foreign national 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 foreign national 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 foreign national any period of authorized stay. In addition, the applications and petitions filed did not grant any lawful status to the foreign national or create a "bridge" of continuing lawful status stemming from the first timely filed petition.

2. Adjustment

A pending adjustment application does not put a foreign national 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 a foreign national. An immigrant petition merely classifies a foreign national in a particular immigrant visa category, which forms the basis for the foreign national's adjustment application.

Footnotes

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 foreign nationals 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, a foreign national who was admitted as a nonimmigrant is in an unlawful status if the foreign national 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 foreign national's status also becomes unlawful if the foreign national remains in the United States after DHS terminates the foreign national'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, a foreign national whose adjustment of status application is pending is in a period of stay authorized and does not accrue unlawful presence. However, although a foreign national is in a period of stay authorized, it may be that the foreign national 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	A foreign national 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 foreign national departs the United States.
January 1, 2014	The foreign national 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 a foreign national'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 foreign national'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 foreign national 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	A foreign national is admitted as a 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 foreign national'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 a foreign national 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	A foreign national 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 foreign national to have continuously maintained lawful status for purposes of adjusting status. In contrast, if USCIS denied the extension application, the foreign national 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	A foreign national 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 foreign national when determining if the foreign national maintained status. In this case, USCIS considers the foreign national 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 foreign national 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	A foreign national 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 foreign national to have continuously maintained lawful status for purposes of adjusting status. In contrast, if USCIS denied the EOS application, the foreign national 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, a foreign national 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. **[redaction]** An officer may find it useful to prepare a chronological listing of all arrivals and departures to aid in determining how much time an applicant may have spent out of status or in violation of status. **[/redaction]**

Footnotes

- ^[1] The language "...other than through no fault of his own or for technical reasons..." listed in [INA 245\(c\)\(2\)](#) also applies to [INA 245\(c\)\(8\)](#) and is defined in [8 CFR 245.1\(d\)\(2\)](#).
- ^[2] See [INA 245\(c\)\(2\)](#). See [8 CFR 245.1\(b\)\(6\)](#). This chapter only addresses one of the three immigration violations described in the [INA 245\(c\)\(2\)](#) bar. For more information on the other two immigration violations, see Chapter 3, Unlawful Immigration Status at Time of Filing – [INA 245\(c\)\(2\)](#) [[7 USCIS-PM B.3](#)] and Chapter 6, Unauthorized Employment – [INA 245\(c\)\(2\)](#) and [INA 245\(c\)\(8\)](#) [[7 USCIS-PM B.6](#)].
- ^[3] See [INA 245\(c\)\(8\)](#). An example of violating the terms of a nonimmigrant status would be if a B-2 visitor were to enroll in college and attend classes. This chapter only addresses one of the two immigration violations described in the [INA 245\(c\)\(8\)](#) bar. For more information on the other immigration violation, see Chapter 6, Unauthorized Employment – [INA 245\(c\)\(2\)](#) and [INA 245\(c\)\(8\)](#) [[7 USCIS-PM B.6](#)].
- ^[4] See [INA 201\(b\)](#). Immediate relatives of a U.S. citizen include the U.S. citizen's spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and foreign nationals 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 foreign national 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 foreign nationals' motion should be supported by an affidavit attesting to the relevant facts. The foreign national'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 respond. Lastly, per prior counsel's handling of the case involved a violation of ethical or legal responsibilities, the foreign national's motion should reflect whether a complaint has been filed with the appropriate disciplinary authorities. If not, the foreign national 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, a foreign national 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 foreign national.

39. [^] See [8 CFR 214.1\(c\)\(4\)](#) and [8 CFR 248.1\(b\)](#).

40. [^] Except in the case of a foreign national 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 a foreign national 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 foreign national is considered to be in unlawful status after the expiration of the nonimmigrant status. Consequently, if the same foreign national 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 foreign nationals are not seeking adjustment as employment-based applicants. ^[4]

For purposes of this bar to adjustment, the term “lawful nonimmigrant status” refers to:

- A foreign national in a lawful status classified under the nonimmigrant statutory provisions; ^[5] and
- A foreign national in temporary protected status. ^[6]

Lawful nonimmigrant status does not include parolees, asylees, or certain other foreign nationals 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 foreign nationals 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	A foreign national is admitted as a B-2 nonimmigrant visitor and departs the United States on August 5, 2009.
September 2, 2009	The foreign national is paroled into the United States on public interest grounds until September 1, 2010.
December 20, 2009	The foreign national is approved as the beneficiary of a second-preference employment-based immigrant visa petition on December 20, 2009.
January 7, 2010	The foreign national files an adjustment of status application on January 7, 2010.

In this case, even though the foreign national had previously been a B-2 nonimmigrant, the foreign national was a parolee at the time of filing for adjustment of status. Therefore, [INA 245\(c\)\(7\)](#) bars the foreign national 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	A foreign national 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 foreign national concurrently with the filing of an adjustment of status application.

In this case, the foreign national 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 foreign national from adjusting status under an employment basis. The foreign national, 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	A foreign national is admitted as an H-2B nonimmigrant.
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.

Date	Event
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\(f\)\(2\)\(iv\)-\(v\)](#).
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, a foreign national 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 a foreign national who is not authorized by the INA or USCIS to accept employment or who exceeds the scope or period of the foreign national's employment authorization. ^[11]

Example: Unauthorized Employment Resulting in Adjustment Bar

Date	Event
January 2, 2005	A foreign national is admitted as an H-1B nonimmigrant to work for an employer.
April 1, 2006	The foreign national takes a position with another employer who fails to file a nonimmigrant visa petition for the foreign national prior to employment.
August 15, 2007	The new employer files an employment-based immigrant visa petition for the foreign national that is approved. The foreign national concurrently files an adjustment application.
September 15, 2007	USCIS approves an Employment Authorization Document (EAD) for the foreign national 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 foreign national left his authorized H-1B employer in April 2006. The foreign national was not granted any H-1B status, EAD, or other USCIS employment authorization allowing him to work elsewhere until September 15, 2007. Therefore, the foreign national's employment with the second employer was unauthorized from April 1, 2006, until September

15, 2007. The foreign national 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 this bar. Otherwise, an applicant who engaged in unauthorized employment could simply depart the United States, reenter immediately, and become eligible to file for adjustment of status. ^[18]

The [INA 245\(c\)\(8\)](#) bar applies to any time engaged in unauthorized employment while physically present in the United States regardless of whether it occurred before or after submission of the adjustment application. USCIS places no time restrictions on when unauthorized employment must have occurred, because the INA does not state that the unauthorized employment must have occurred during any particular period of time. ^[19]

An officer, therefore, should review an applicant's entire employment history in the United States to determine whether the applicant has engaged in unauthorized employment. In addition to an applicant's most recent entry and admission, an officer should examine all of the applicant's previous entries and admissions into the United States. An officer should disregard how much time has passed since each entry and whether the applicant subsequently left the United States and returned lawfully.

C. Evidence to Consider

An officer may request, review, and consider the following documentation to determine whether the applicant may be barred from adjustment based on unauthorized employment under [INA 245\(c\)\(2\)](#) or [INA 245\(c\)\(8\)](#):

- Arrival/Departure Record (Form I-94);
- Notice of Action (Form I-797);
- Pay stubs;
- W-2 statements;
- Income tax records;
- Employment contracts; and
- Any additional documents, evidence, or testimony regarding the nature and scope of the applicant’s employment history in the United States.

Footnotes

1. ^[^] See [INA 245\(c\)\(2\)](#).
2. ^[^] See [INA 245\(c\)\(8\)](#).
3. ^[^] See Section B, Periods of Time to Consider and Effect of Departure [[7 USCIS-PM B.6\(B\)](#)].
4. ^[^] Both [INA 245\(c\)\(2\)](#) and [INA 245\(c\)\(8\)](#) bar applicants from adjusting if they have engaged in unauthorized employment. However, the language of [INA 245\(c\)\(2\)](#) includes a specific exclusion for immediate relatives and certain special immigrants that is missing from the language of [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 foreign nationals 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 foreign nationals 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 a foreign national removable for engagement in terrorist activity.

When reviewing whether the bar for foreign nationals 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 a foreign national serving as a crewman who is permitted to land as a D-1 or D-2 nonimmigrant, as shown on the foreign national'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 a foreign national who was admitted as a C-1 nonimmigrant to join a crew. ^[2]

In addition, the foreign national's service as a crewman is controlling regardless of the foreign national's actual nonimmigrant status, if any. For example, a foreign national admitted in B-2 nonimmigrant visitor status while serving as a crewman is barred from adjustment. ^[3] The bar applies even if the foreign national 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. Foreign National Admitted in Transit Without Visa

Any foreign national admitted to the United States in transit without a visa (TWOV) is barred from adjusting status. ^[5] This bar does not apply to a foreign national 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] Foreign nationals 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 a foreign national (other than crewmen) admitted as a C-1 or C-2 or C-3 nonimmigrant if the foreign national 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 a foreign national 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

A foreign national admitted as a nonimmigrant without a visa under a Visa Waiver Program is barred from adjustment of status. ^[8] Similarly, a foreign national 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. Foreign National Admitted as Witness or Informant

A foreign national 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 foreign national'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] Foreign nationals 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. Foreign National Removable for Engagement in Terrorist Activity

A foreign national 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 a foreign national files the adjustment application, bars the foreign national from adjusting status. Finally, in addition to the adjustment bar, the foreign national 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

A foreign national 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, a foreign national granted permanent residence on a conditional basis ^[20] is ineligible to adjust status under the provisions of [INA 245\(a\)](#). ^[21] Instead, conditional permanent residents must comply with the requirements for removal of the conditions on their status to obtain permanent residence unconditionally. ^[22]

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 foreign national 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. [^] Under [INA 216](#) or [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 Entrepreneur to Remove Conditions ([Form I-829](#)).

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 do 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 a foreign national 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 foreign national'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

Following Most Recent	Following Previous Admissions or Entries	Eligible for Exemption?
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:

- Foreign nationals of extraordinary ability, outstanding professors and researchers, and certain multinational managers and executives (first preference, EB-1);
- Foreign nationals who are members of the professions holding advanced degrees or foreign nationals 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 Totalling 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\(c\)\(8\)](#) a foreign national commits, if he or she leaves and is readmitted lawfully (and is an eligible employment-based adjustment applicant), the foreign national may qualify for an the exemption if the foreign national'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
January 1, 2015	A foreign national is admitted as an F-1 nonimmigrant student authorized to attend a university full-time.
March 1, 2015	The foreign national stops attending the university.
December 1, 2015	The foreign national departs the United States.
January 1, 2016	The foreign national is admitted for one year as a B-2 nonimmigrant visitor.
June 1, 2016	The foreign national files an adjustment application with an employer's immigrant petition seeking EB-2 classification for the foreign national.

In this example, the foreign national violated her nonimmigrant status when she stopped attending the university. This violation resulted in the foreign national's failure to maintain lawful status from March 1 through November 30, a total of 275 days of immigration violations. When the foreign national applies for adjustment on June 1, 2016, however, she has committed no immigration violations since her most recent lawful admission.

Because the foreign national 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 foreign national qualifies for the exemption. Therefore, the foreign national 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 foreign national 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, a foreign national 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 foreign national'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 foreign national 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 foreign national's immigration status expired;
- The day the foreign national's immigration status was revoked or rescinded; or
- The day the foreign national violated his or her immigration status.

The counting of days out of status usually stops on the earliest of the following:

- The day the foreign national properly files an adjustment application;
- The day the foreign national obtains lawful immigration status; or
- The day the foreign national departs the United States.

For example, if a foreign national enters the United States as a nonimmigrant and continues to stay in the United States after such nonimmigrant status expires, the foreign national has failed to continuously maintain a lawful status at the point the status expires. If the foreign national later acquires a new lawful status, for instance, temporary protected status, then the foreign national 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 foreign national 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	A foreign national 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.

Date	Event
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 foreign national's work results in three separate immigration violations: The foreign national 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 foreign national 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 foreign national 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 foreign national's petition for EB-3 immigrant visa classification, he is eligible for the [INA 245\(k\)](#) exemption. The foreign national's immigration violations total 92 days and therefore do not exceed the 180-day limit. The foreign national 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	A foreign national is admitted to the United States as a B-2 nonimmigrant.
June 1, 2008	The foreign national's B-2 nonimmigrant status expires, as evidenced by the Arrival/Departure Record.
September 10, 2008	The foreign national leaves the United States.
January 1, 2009	An employer files an H-1B petition for the foreign national.
February 1, 2009	The foreign national is admitted as an H-1B nonimmigrant for three years.

Date	Event
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 foreign national.
July 15, 2012	Both the petition and the application are approved and the foreign national is adjusted to a permanent resident.

In this example, the foreign national'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 foreign national filed for adjustment three months after H-1B status terminated.

The time spent out of status during the foreign national'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 foreign national is an employment-based adjustment applicant and his three-month violation following his last lawful admission did not exceed 180 days, the foreign national is exempted from the [INA 245\(c\)\(2\)](#) bar.

5. Evidence to Consider

A foreign national 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 foreign national's eligibility for the exemption:

- Copies of all Arrival/Departure Records (Forms I-94) showing authorized admission into the United States;
- Copies of the biographic pages of any passports containing nonimmigrant visas along with the passport pages containing the visas;
- Copies of any passport pages showing recorded travel into or out of the United States, such as admission stamps;
- Copies of any documentation showing all places of residence dating back at least five years from the date of filing for adjustment and showing all periods of employment; and
- Receipt or Approval Notices (Forms I-797) for any immigration benefit, including nonimmigrant status, changes of nonimmigrant status or extensions of stay, and employment authorization.

If the evidence of record is insufficient to determine the applicant's eligibility for the exemption, an officer should first attempt to obtain any missing information using authorized USCIS-approved databases. An officer also may issue a Request for Evidence or Notice of Intent to Deny.

6. Effect of Exemption

An applicant who qualifies under [INA 245\(k\)](#) is exempt from the [INA 245\(c\)\(2\)](#), [INA 245\(c\)\(7\)](#), and [INA 245\(c\)\(8\)](#) adjustment bars. This does not, however, exempt an applicant from any other bar, eligibility requirement, or ground of inadmissibility. ^[17] Therefore, once an officer determines that the applicant qualifies for the exemption, the officer must next determine whether the applicant is otherwise eligible for adjustment.

Footnotes

1. ^[^] See [INA 245\(c\)](#). See Chapter 2, Eligibility Requirements, Section F, Bars to Adjustment of Status [[7 USCIS-PM B.2\(F\)](#)].
2. ^[^] See [INA 201\(b\)\(2\)\(A\)](#). Immediate relatives of a U.S. citizen include the U.S. citizen's spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and foreign nationals 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 a foreign national 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 foreign national is exempt. [INA 222\(g\)](#) also provides that a foreign national's nonimmigrant visa is automatically void if the foreign national 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 foreign nationals, such as religious workers, special immigrant juveniles, and employees and former employees of the U.S. government or others who have benefited the U.S. government abroad. ^[2] Most special immigrants apply for adjustment under the employment-based fourth preference (EB-4) immigrant category. ^[3]

Special immigrants are subject to many of the same eligibility requirements as applicants seeking adjustment based on a family or employment-based preference category. For example, special immigrants are subject to immigrant visa availability. That means that an immigrant visa must be immediately available when the applicant files the adjustment of status application and at the time of final adjudication. ^[4] There are, however, some differences.

While some special immigrants are allowed to file their Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) concurrently with the underlying immigrant petition, most special immigrants must first receive approval of the underlying special immigrant petition before filing an adjustment application. ^[5] Furthermore, some categories require the adjustment application to be filed before a specified deadline. ^[6]

Footnotes

1. ^[^] See [INA 245\(a\)](#).
2. ^[^] See [INA 101\(a\)\(27\)](#). Congress also created additional special immigrant classifications through public laws not incorporated in the INA. These unique special immigrant classifications are also discussed in this Part.
3. ^[^] See [INA 203\(b\)\(4\)](#). Technically, LPRs returning from a temporary visit abroad and immigrants applying for re-acquisition of U.S. citizenship are included in the definition of special immigrant. See [INA 101\(a\)\(27\)\(A\)-\(B\)](#). However, these special immigrants are outside the scope of the EB-4 immigrant category per [INA 203\(b\)\(4\)](#). In addition, certain Afghanistan and Iraq nationals may also seek adjustment as special immigrants, however, they do not fall under the EB-4 immigrant category since they are not included in [INA 101\(a\)\(27\)](#). Instead, the authority lies in separate public laws, which also provides for separately allocated visa numbers.
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\(C\)](#)]. Foreign nationals 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]
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.

A foreign national 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 foreign national as a special immigrant religious worker may file [Form I-360](#) with USCIS on behalf of the foreign national. Alternatively, the foreign national 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	

Ground of Inadmissibility	Applies	Exempt or Not Applicable
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) – Foreign Nationals 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

Applicant	Code of Admission
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

- ^[^] 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.”
- ^[^] See [INA 101\(a\)\(27\)\(C\)](#).
- ^[^] See [Pub. L. 101-649 \(PDF\)](#) (November 29, 1990).
- ^[^] 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.
- ^[^] 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](#).
- ^[^] See [INA 203\(b\)\(4\)](#).
- ^[^] See [INA 245\(a\) and \(c\)](#). See [8 CFR 245](#). See Instructions to [Form I-485](#).
- ^[^] 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.
- ^[^] 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 a foreign national performs in the United States must have occurred while the foreign national 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 a foreign national under the special immigrant religious worker requirements, regardless of whether the foreign national 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. [^] Foreign nationals 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 foreign nationals 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 foreign nationals 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.
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.

Adjustment of Status Eligibility Requirements for

Special Immigrant International Employees

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	
INA 212(a)(9) – Foreign Nationals Previously Removed	X	

Ground of Inadmissibility	Applies	Exempt or Not Applicable
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

Applicant	Code of Admission
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. [^] Foreign nationals 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 foreign nationals 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. [redaction] While officers are unlikely to encounter any of these cases due to the passage of time, there may still be outstanding cases. [/redaction]

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**

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

Foreign nationals 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 or Not	Exempt 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) – Foreign Nationals 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

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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. [^] Foreign nationals 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 foreign nationals 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.
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. [redaction] While officers are unlikely to encounter any of these cases due to the passage of time, there may still be outstanding cases. [/redaction]

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) – Foreign Nationals 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. ^[^] Foreign nationals 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 foreign nationals 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.
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) – Foreign Nationals 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. [^] Foreign nationals 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 foreign nationals may visit the [CBP Web site](#) to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.
33. [^] Such as evidence that the [INA 245\(c\)\(2\)](#) adjustment bar does not apply because the applicant’s failure to maintain status was through no fault of his or her own or for technical reasons. See [8 CFR 245.1\(d\)\(2\)](#). See Part B, 245(a) Adjustment, Chapter 4, Status and Nonimmigrant Visa Violations – [INA 245\(c\)\(2\)](#) and [INA 245\(c\)\(8\)](#), Section E, Exceptions [[7 USCIS-PM B.4\(E\)](#)]. Since the adjustment bars at [INA 245\(c\)\(2\)](#) and [INA 245\(c\)\(8\)](#) do not apply to special immigrant G-4 employees and family members as a matter of law, applicants applying for adjustment under this category do not need to submit any additional evidence regarding these bars. See [INA 245\(c\)\(2\)](#) and [8 CFR 245.1\(b\)](#).
34. [^] The applicant may submit [Form I-693](#) together with [Form I-485](#) or later at USCIS’ request. See the [USCIS website](#) for more information. For more information on when to submit Form I-693, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [[8 USCIS-PM B.4](#)].
35. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [[7 USCIS-PM A.6](#)].

36. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].
37. [^] The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].
38. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 5, Interview Guidelines [7 USCIS-PM A.5].
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 Foreign Nationals Previously Removed
INA 212(a)(9) (C)	Foreign Nationals Unlawfully Present After Previous Immigration Violations

Inadmissibility Grounds that Apply to Special Immigrant Juveniles

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 foreign national 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](#)).

[redaction]

Fraud

USCIS officers should refer a case with articulated fraud concerns to the USCIS Fraud Detection and National Security (FDNS) program. ^[52] If an officer or the local FDNS office determines that the applicant has committed fraud, USCIS explains the findings of fraud in the revocation or denial notice.

[/redaction]

Footnotes

1. ^[^] For more information on the legislative history of the SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles [[6 USCIS-PM J](#)].
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 foreign national 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 foreign national 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. [^] Foreign nationals 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 foreign nationals 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).

[redaction] 52. [^] If the fraud concerns are related to the underlying petition, USCIS may revoke the underlying petition. For more information on revocation of SIJ petitions, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 4, Adjudication [6 USCIS-PM J.4]. [/redaction]

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 foreign nationals residing outside of the United States were allowed to enlist in the U.S. military. During times of specific hostilities, these foreign nationals 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 foreign nationals 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 foreign national 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

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.

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 foreign national 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 foreign national 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 foreign national 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 foreign national 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 foreign nationals 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	
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) – Foreign Nationals 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. [^] Foreign nationals 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 foreign nationals 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]

Foreign nationals 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 foreign national 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) – Foreign Nationals 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. [^] Foreign nationals 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 foreign nationals 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 foreign nationals 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	
INA 212(a)(9) – Foreign Nationals Previously Removed	X	

Ground of Inadmissibility	Applies	Exempt or Not Applicable
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

- ^[^] 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.
- ^[^] No more than 50 visas are allotted each year. The allotment was temporarily increased to 500 for fiscal years (FY) 2007 and 2008.
- ^[^] 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. ^[^] Foreign nationals 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 foreign nationals 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 2 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

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. Foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 a foreign national 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 foreign nationals 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 foreign nationals 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 foreign nationals 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 foreign national 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 foreign national 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 foreign national’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](#), 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\(a\)\(8\)](#)
- Foreign Nationals 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 foreign national 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 the adjustment application. If the evidence lends reasonable doubt as to the time periods the applicant has spent in the United States, the officer may request additional information verifying physical presence.

- Two (2) passport-style photos, taken no earlier than 30 days prior to filing
- Report of Medical Examination and Vaccination Record ([Form I-693](#))

Typically a complete medical examination record is not needed by refugees. A refugee who already received a medical examination prior to admission does not need to repeat the entire medical examination unless the original examination revealed a Class A medical condition. However, the refugee must establish compliance with the vaccination requirements at the time of adjustment of status. The refugee must submit the vaccination record portion completed by a designated civil surgeon. State and local health departments may qualify for a blanket designation as civil surgeons for the purpose of completing the vaccination record for refugees applying for adjustment of status. ^[1]

- Certified copies of arrest/court records (if applicable)

An applicant must submit an original official statement by the arresting agency or a certified court order for all arrests, detentions or convictions, regardless of whether the arrest, detention or conviction occurred in the United States or elsewhere in the world.

- Application by Refugee for Waiver of Grounds of Excludability ([Form I-602](#)) (if applicable)

B. Supplemental Documentation

Supplemental documentation is often submitted by the applicant but is not required. This may include the following:

- Arrival/Departure Document (Form I-94), with appropriate endorsement
- Birth certificate, when obtainable

See the Department of State Reciprocity Tables for information on the availability of identity documents in particular countries and during specific time periods. There may be other instances in which a birth certificate is unobtainable because of country conditions or personal circumstances.

In these instances, affidavits may be submitted to establish the applicant's identity. An officer may also review the A-file to check for a birth certificate that the applicant may have submitted with the refugee application or for other evidence submitted at the time of the interview to establish the applicant's identity.

- Copy of passport(s), when obtainable

In most instances a refugee will be unable to produce a copy of his or her passport. There may be other instances in which a passport is unobtainable due to country conditions, personal circumstances, or the fact that the applicant may have never possessed a passport. In these cases, a copy of a passport is not required and an officer may use evidence in the A-file to verify the applicant's identity.

An officer should review any supplemental documentation submitted to ensure it is consistent with the documentation contained in the A-file. Since identity is already established during the adjudication of the refugee application, a birth certificate or passport is not required at the time of adjustment.

Nevertheless, if the applicant submits any of these documents, the officer must address and resolve any discrepancies at the time of adjudication. In all cases, an officer should give considerable weight to the documentation contained in the refugee application or with the relative petition, as this information was previously vetted at the time of the refugee status interview or relative petition approval.

C. Documentation Already Contained in the A-File

The refugee application, (generally referred to as the "refugee travel packet"), should already be included in the applicant's A-file, including all of the forms, evidence, and officer notes that were part of the original application for refugee status. The most important document for an officer to review is either the refugee application or the relative petition, which provides proof of status and establishes identity (with attached photo) as well as citizenship, since most refugees will not have a birth certificate or a passport.

Another important document in the refugee travel packet is the Medical Examination of Applicants for United States Visas ([Form DS-2053 \(PDF\)](#), formerly numbered OF-157). An officer does not need to be aware of the overseas medical examination requirements, but should realize that the overseas medical examination requirements are not the same as the requirements for medical examinations performed in the United States. Refugees are generally not required to complete a new medical exam in the United States if a medical exam was performed overseas and there were no Class A conditions.

D. Unavailable or Missing Documentation

When a refugee flees the country of persecution, he or she may not be able to obtain any documentation issued by a civil authority as proof of identity or of a familial relationship. At the time of the refugee status interview, an officer reviews many documents and affidavits and solicits testimony when seeking to establish a refugee's personal and family identity. Any available documents submitted at the time of the refugee status interview should be contained within the A-file.

An officer may rely on the documents contained in the original refugee travel packet to verify identity at the time of adjustment. While it is not necessary to request the applicant's birth certificate or passport as proof of identity, an officer should review any documentation establishing identity submitted with the adjustment application.

Additionally, an officer should compare photos submitted with the application to the photos in the refugee packet. If an officer is unable to establish an applicant's identity due to discrepancies between the documentation the applicant submitted and information contained in the original refugee packet, then the officer should forward the file to the field office with jurisdiction over the case for interview and resolution.

Footnotes

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 foreign national "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 a foreign national admitted to the United States as a refugee is if the officer determines that the foreign national was not a refugee within the meaning of the Immigration and Nationality Act (INA) at the time of his or her admission to the United States. In order to make this determination, an officer must be familiar with how the term "refugee" is defined. ^[1]

This determination standard applies solely to principal refugees and never to derivative refugees. Derivative refugees are not required to prove past persecution or a well-founded fear of future persecution. However, an officer may terminate a derivative refugee's status if the principal's status is terminated.

The statute and regulations do not require the formal termination of refugee status prior to removal proceedings where the refugee has been inspected and examined for adjustment of status, has been found inadmissible, and has not been granted a waiver of inadmissibility. Prior to being placed in removal proceedings, the applicant may first be given an opportunity to apply for a discretionary waiver of inadmissibility grounds.

If USCIS denies the adjustment application and/or waiver application, the applicant may also renew his or her application for adjustment or waiver of inadmissibility before an Immigration Judge (IJ). The applicant may also apply for asylum or any other relief from removal before an IJ.

The officer should prepare a Notice To Appear (NTA) if the refugee is inadmissible. Upon written notice of the adjustment application's denial, the applicant is no longer considered an admitted alien and should be charged with inadmissibility grounds under [INA 212\(a\)](#). However, if the officer is denying the adjustment application on other grounds (e.g., abandonment), the officer should not issue a NTA, since the applicant has not been found inadmissible.

Alternatively, USCIS may place a person who was admitted as a refugee directly in removal proceedings, without termination of refugee status, on the basis of any applicable charges under [INA 237](#) without the adjudication of an adjustment application.

B. Procedures

USCIS conducts terminations of refugee status. ^[2] If an officer concludes after reviewing a refugee's A-file that the facts merit termination of the principal refugee's status, the officer will follow the procedures below, depending on where the case is located:

1. Cases Located at Service Centers

All evidence relevant to a possible termination of refugee status should be reviewed by a supervisor and then scanned and forwarded to the Refugee Affairs Division (RAD) within the Refugee, Asylum, and International Operations Directorate (RAIO) for review. RAD will review the information and send a response back with a recommendation on how to proceed. If RAD recommends relocation of the case for possible termination, the principal's file and all derivative files, along with a copy of RAD's recommendation, should be relocated to the district or field office to interview the refugee for possible termination of status.

2. Cases Located at Field Offices

All evidence relevant to a possible termination of refugee status should be reviewed by a supervisor and then scanned and forwarded along with an explanation detailing why the officer believes termination may be appropriate to the Field Operations Directorate at headquarters through appropriate channels. This evidence will be forwarded for review to the Refugee Affairs Division (RAD). RAD will review the information and send a response back with a recommendation on how to proceed.

If RAD recommends possible termination, all family members' files should be requested. Once all family files have been received, the field office should interview the refugee for possible termination of status. If RAD does not recommend termination, no interview is needed for Notice of Intent to Terminate purposes and the officer should resume adjudication of the adjustment application.

Footnotes

1. [^] See [INA 207\(c\)\(4\)](#) and [8 CFR 207.9](#).

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 foreign nationals 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 a foreign national 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

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 foreign national'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 foreign national 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](#)) process 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

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\(a\)\(8\)](#)
- Foreign Nationals 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

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 consider this as potential evidence of resettlement in a country other than the United States by the applicant. However, an applicant is only considered firmly resettled in another country if they have been offered resident status, citizenship, or some other type of permanent resettlement in another country.

- Proof of asylum status

An officer must review the contents of the A-file for proof of asylum status. The A-file should contain an approved Application for Asylum and for Withholding of Removal ([Form I-589](#)) or an approved Refugee/Asylee Relative Petition ([Form I-730](#)). Although an applicant may submit an Arrival/Departure Record (Form I-94) or an approval notice of the relative petition with their application, these documents must always be cross-checked with evidence in the A-file and in USCIS' systems to confirm the applicant's asylum status.

- Evidence of 1-year physical presence in the United States

An officer can verify physical presence for a principal asylee by reviewing the date the asylum application was approved, as indicated either on the approval letter from the asylum office or on the order from the immigration judge, the Board of Immigration Appeals, or a federal court. Officers may also check the information available in the Refugees, Asylum, and Parole System (RAPS).

An officer can generally verify physical presence for a derivative asylee by reviewing:

- The “Date of Last Arrival” and “Place of Last Arrival into the United States” fields on the adjustment application;
- The principal’s and derivative’s “Address History” listed on each Form I-485; and
- The admissions information contained in USCIS’ systems.

Officers should also review the date of admission as an asylee found on an Arrival/Departure Record (Form I-94) against the filing date of the adjustment application.

An officer should review any requests for travel documents or advance parole prior to the filing of the adjustment application. If there is doubt as to the applicant’s time periods in the United States, the officer may request additional information verifying physical presence. This may include pay stubs or employment records, school or medical records, rental and utility receipts, or any other documentation that supports proof of residence.

- Two (2) passport-style photos taken no earlier than 30 days prior to filing
- Report of Medical Examination and Vaccination Record ([Form I-693](#))

A principal asylee is required to submit a complete medical examination and vaccination record. The examination must be completed by a USCIS designated civil surgeon, meet the standards of the medical examination, and include all required vaccinations as of the date of the examination. A complete medical examination is not required of all derivative asylees at time of adjustment.

Derivative asylees that had a medical examination conducted overseas will not be required to undergo a new medical examination at the time of applying for adjustment of status if:

- The results of the overseas medical examination are contained in the A-file and no Class A condition was reported;
- The asylee has applied for adjustment of status within 1 year of filing eligibility (for example, within 2 years of the date of admission as an asylee derivative); and
- There is no evidence in the A-file or testimony given at an interview to suggest that the asylee has acquired a Class A condition subsequent to his or her entry into the United States.

Even if a complete new medical examination is not required, the applicant must still establish compliance with the vaccination requirements and submit the vaccination record portion of the medical examination record with the adjustment application. Unlike refugees, derivative asylees may not have their vaccination records completed by a health department with a blanket waiver as a civil surgeon. Blanket waivers for civil surgeons only extend to refugee vaccination certifications. ^[1]

- Certified Copies of Arrest/Court Records (if applicable)

An applicant must submit an original official statement by the arresting agency or certified court order for all arrests, detentions or convictions.

- Application by Refugee for Waiver of Grounds of Excludability ([Form I-602](#)) (if applicable)

B. Supplemental Documentation and Evidence

Applicants often submit supplemental documentation although not required to do so. This may include:

- Arrival/Departure Document (Form I-94), with appropriate endorsement
- Birth certificate, when obtainable

See the [Department of State Reciprocity Tables](#) for identity documents that cannot be obtained in particular countries and during specific time periods. There may be other instances in which a birth certificate is unobtainable because of country conditions or personal circumstances. In these instances, an applicant may submit affidavits to establish his or her identity. The officer may also review the A-file to check for a birth certificate that the applicant submitted with the asylum application or other evidence the applicant submitted at the time of the interview to establish his or her identity.

- Copy of passport(s), when obtainable

In many instances, an asylee will be unable to produce a copy of his or her passport. There may be other instances in which a passport is unobtainable due to country conditions, personal circumstances or the simple fact that the applicant never possessed a passport. In these cases, a copy of a passport is not required and the officer may use evidence in the applicant's A-file to verify his or her identity. The asylee's date of birth and nationality are established during the asylum application or relative petition process.

The officer should review any supplemental documentation submitted by the applicant to ensure it is consistent with the documentation contained in the A-file. Since identity is already established during the asylum proceedings, a birth certificate or passport is not required at the time of adjustment. Nevertheless, if the applicant submits any of these documents, the officer must address and resolve any discrepancies at the time of adjudication. In all cases, considerable weight is given to the documentation contained in the asylum packet or with the relative petition.

C. Documentation Already Contained in the A-File

The original asylum application should already be in a principal applicant's A-file. A copy of the asylum application should also be found in the A-file of each derivative asylee who was in the United States at the time of asylum adjudication and was included on the asylum application. The relative petition should be in a derivative asylee's A-file if the derivative asylee followed to join the principal and was not included on the original asylum application.

Each case file will contain all of the forms, evidence, and officer notes that were part of the application for asylum. The most important document for an officer to review is either the asylum application ([Form I-589](#)) or the relative petition ([Form I-730](#)). Both provide proof of status and establish identity (with attached photo) as well as citizenship, since many asylees will not have a birth certificate or passport.

D. Unavailable or Missing Documentation

When an asylee flees the country of persecution, they may have been unable to obtain any documentation issued by a civil authority as proof of identity or of a familial relationship. At the time of the asylum interview, the asylum officer reviews a myriad of documents and affidavits and solicits testimony when seeking to establish an asylum-seeker's personal and family identity. Any available documents submitted at the time of the asylum interview should be contained within the A-file.

An officer may rely on the documents contained in the A-file to verify the applicant's identity at the time of adjustment. While it is not necessary to request the applicant's birth certificate or passport as proof of identity, officers should review any documentation the applicant submits to establish identity. Additionally, photos the applicant submits should be compared to

the photos in the A-file. If an officer is unable to establish an applicant's identity due to discrepancies between the documentation the applicant submitted and the information contained in the A-file, then the file should be forwarded to the field office having jurisdiction over the case for interview and resolution.

Footnotes

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 derivative 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 counted toward physical presence for naturalization purposes.

Code of Admission

An applicant who has been granted asylum status as a principal asylee is adjusted using the code "AS-6." The AS-6 code is reserved for the principal asylee to ensure there is no confusion regarding the eligibility to file a relative petition. The AS-6 code also applies to asylees who were granted asylum through the nunc pro tunc process. An applicant who adjusts status as a spouse of an asylee (AS-2 classification) is given the code "AS-7." An applicant who adjusts status as a child of a principal asylee (AS-3 classification) is given the code "AS-8."

Classes of Applicants & Corresponding Codes of Admission

Applicant	Code of Admission
Asylee (Principal)	AS6
Spouse of a Principal Asylee (AS6)	AS7

Applicant	Code of Admission
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

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

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 foreign nationals 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 foreign nationals 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 foreign nationals were unable to prove their entry, admission, or immigration status in the United States based on records or other evidence. Various provisions grandfathered these foreign nationals 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

A foreign national 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 a foreign national 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 a foreign national 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	Regulation	Evidence of Admission Required?
Entered prior to June 30, 1906.	8 CFR 101.1(a)	No
Citizen of Canada 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
Foreign national 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
Foreign national 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

Eligible Class	Regulation	Evidence of Admission Required?
Foreign national 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 nationals with record of admission prior to July 1, 1924 under laws and regulations formerly applicable to Chinese nationals.	8 CFR 101.1(e)(1)	Yes
Certain Chinese or Japanese nationals who were admitted or readmitted on or after July 1, 1924, including certain nationals 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
Certain foreign nationals who, when admitted, expressed an intention to remain temporarily or pass in transit through the United States, but who remained in the United States, including certain foreign nationals 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	Regulation	Evidence of Admission Required?
Foreign national 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
Certain foreign nationals who were 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
Certain foreign nationals 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

A foreign national 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 & 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 number of days a foreign national must physically be present in the United States during the period of time required. See Volume 12, Citizenship & 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) (foreign nationals 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) (foreign national 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) (foreign national 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, Foreign Nationals 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 foreign national'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 foreign national 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 foreign national should file an Application for Replacement/Initial Nonimmigrant Arrival-Departure Document ([Form I-102](#)) for correction.

Footnotes

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 - Foreign Nationals 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 nationals 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 foreign national 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: Foreign Nationals 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.

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 foreign nationals 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 if a foreign national is eligible 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

A foreign national 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 foreign nationals born in the United States in diplomatic status does not involve any consideration of admissibility or discretion. If the foreign national 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 & Corresponding Codes of Admission

Applicant	Code of Admission
Foreign National 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 nationals 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 foreign national 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 - Foreign Nationals 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 foreign nationals 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 foreign nationals 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 foreign nationals 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, foreign nationals 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 foreign nationals 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 foreign nationals 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) – Foreign Nationals 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

A foreign national 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 a foreign national avoided conscripted military service by requesting and being granted exemption or discharge from training or service in the U.S. military due to alienage, that person 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, a foreign national 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 & 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).

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 foreign nationals 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\(a\)\(4\)\(B\)](#) (foreign nationals 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 & 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 & 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 a foreign national (“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

The medical grounds of inadmissibility, the medical examination of foreign nationals, and the vaccinations administered to foreign nationals are designed to protect the health of the United States population. The immigration medical examination, the resulting medical examination report, and the vaccination record provide the information USCIS uses to determine if a foreign national meets the health-related standards for admissibility.

Four basic medical conditions may make an applicant inadmissible on health-related grounds:

- Communicable disease of public health significance,
- An immigrant's failure to show proof of required vaccinations,
- Physical or mental disorder with associated harmful behavior, and
- Drug abuse or addiction.

B. Background

Public health concerns have been reflected in U.S. immigration law since the Immigration Act of 1882. ^[1] Among others, "persons suffering from a loathsome or a dangerous contagious disease" were not allowed to enter the United States. ^[2] In 1990, Congress revised and consolidated all of the grounds of inadmissibility. It narrowed health-related grounds of inadmissibility to include only applicants with communicable diseases, physical or mental disorders with associated harmful behavior, or those with drug abuse or addiction problems. ^[3]

As of 1996, Congress requires all immigrant visa and adjustment of status applicants to establish that they have been vaccinated against certain vaccine-preventable diseases. ^[4]

C. Role of the Department of Health and Human Services (HHS)

Because medical knowledge and public health concerns can and do change over time, Congress gave the Department of Health and Human Services (HHS) the authority to designate by regulations which conditions make a person inadmissible on health-related grounds.

The HHS component charged with defining these medical conditions is the Centers for Disease Control and Prevention (CDC). CDC's responsibilities include:

- Publishing regulations addressing health-related conditions that render an applicant inadmissible;
- Establishing the medical examination requirements in its Technical Instructions for Medical Examination of Aliens (Technical Instructions) that are binding on civil surgeons in the United States, panel physicians overseas, USCIS officers, and State Department consular officers; ^[5]
- Responding to medical questions that officers, civil surgeons, and panel physicians may have based on the Technical Instructions; ^[6] and
- Advising USCIS on the adjudication of medical waivers.

D. Role of the Department of Homeland Security (DHS)

Congress authorizes the Department of Homeland Security (DHS) to determine a foreign national's admissibility to the United States, which includes determinations based on health reasons. ^[7] DHS must follow HHS regulations and instructions when determining whether an applicant is inadmissible on health-related grounds. ^[8]

Congress also empowers DHS to designate qualified physicians as civil surgeons who conduct medical examinations of foreign nationals physically present in the United States. ^[9]

E. Making a Medical Inadmissibility Determination

To make a medical inadmissibility determination, the officer should follow the steps outlined below:

Overview of Process of Making a Medical Inadmissibility Determination

Step of Adjudication	Where can I find information on this step?
Step 1: Is the applicant subject to health-related grounds of inadmissibility or is there another reason that requires the applicant to undergo a medical examination?	Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3]
Step 2: If required, has the applicant been medically examined by the appropriate physician and is the appropriate medical documentation in the file?	Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3]
Step 3: Did the civil surgeon properly complete the then-current version of the Form I-693 and is the Form I-693 valid at the time of adjudication?	Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4] through Chapter 10, Other Medical Conditions [8 USCIS-PM B.10]
Step 4: Is the applicant inadmissible based on health-related grounds?	Chapter 11, Inadmissibility Determination [8 USCIS-PM B.11]
Step 5: Is the applicant inadmissible based on grounds other than health-related grounds, as evidenced by the medical documentation?	Chapter 11, Inadmissibility Determination, Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)]

F. Legal Authorities

- [INA 212\(a\)\(1\)](#) – Health-related grounds
- [INA 221\(d\)](#) – Physical examination
- [INA 232](#); [8 CFR 232](#) – Detention of aliens for physical and mental examination
- [42 U.S.C. 252](#) – Medical examination of aliens
- [42 CFR 34](#) – Medical examination of aliens
- Technical Instructions for Civil Surgeons (Technical Instructions), and updates ^[10]

Footnotes

1. ^[^] See the Immigration Act of 1882, 22 Stat. 214 (August 3, 1882).
2. ^[^] See the Immigration Act of 1891, 26 Stat. 1084 (March 3, 1891).
3. ^[^] See the Immigration Act of 1990 (IMMACT 90), [Pub. L. 101-649](#) (November 29, 1990).
4. ^[^] See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Division C of [Pub. L. 104-208](#) (September 30, 1996). See [INA 212\(a\)\(1\)\(A\)\(ii\)](#).
5. ^[^] Officers and designated physicians must obtain the Technical Instructions from CDC's website at cdc.gov/immigrantrefugeehealth/exams/ti/index.html. Updates to the Technical Instructions must also be followed.
6. ^[^] CDC can be reached at cdcqap@cdc.gov. Officers should identify themselves as an immigration officer in the e-mail. This e-mail address is not for inquiries from the public. It is only for inquiries from immigration officers and civil surgeons. Inquiries from the public should be submitted to CDC INFO at cdc.gov/dcs/ContactUs/Form.
7. ^[^] See [INA 212\(a\)](#).
8. ^[^] See [INA 212\(a\)\(1\)\(A\)](#).
9. ^[^] See [INA 232](#).
10. ^[^] Available online at cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

Chapter 2 - Medical Examination and Vaccination Record

A. Purpose of the Medical Examination and Vaccination Report

The results of the medical examination and vaccination record determine whether an applicant is inadmissible on health-related grounds. The medical examination documentation indicates whether the applicant has either a Class A or Class B medical condition and the vaccination record shows whether the applicant has complied with all vaccination requirements.

B. Class A and B Conditions and Their Impact on Admissibility

Class A and B conditions are defined in Department of Health and Human Services (HHS) regulations. ^[1]

Class A conditions are medical conditions that render a person inadmissible and ineligible for a visa or adjustment of status. ^[2] A Class A medical condition is a:

- Communicable disease of public health significance per HHS regulation;
- A failure to present documentation of having received vaccinations against vaccine-preventable diseases; ^[3]
- Present or past physical or mental disorder with associated harmful behavior or harmful behavior that is likely to recur; and
- Drug abuse or addiction.

Class B conditions are defined as physical or mental health conditions, diseases, or disability serious in degree or permanent in nature. ^[4] This may be a medical condition that, although not rendering an applicant inadmissible, represents a departure from normal health or well-being that may be significant enough to:

- Interfere with the applicant's ability to care for himself or herself, to attend school, or to work; or
- Require extensive medical treatment or institutionalization in the future.

C. Completion of a Medical Examination

When a medical examination is required to determine the applicant's admissibility, the person must be examined by a physician who is designated to perform this examination.

By statute, any medical officer in the U.S. Public Health Service may conduct the examination. However, this rarely occurs. Most medical examinations are conducted by a physician designated as a civil surgeon by USCIS ^[5] or designated as a panel physician abroad by the U.S. Department of State (DOS). Civil surgeons complete medical examinations for applicants in the United States, while panel physicians complete medical examinations for immigrant visa and refugee applicants seeking immigration benefits from outside the United States.

Footnotes

1. ^[^] See [42 CFR 34.2](#).
2. ^[^] Class A conditions are medical conditions mentioned in [INA 212\(a\)\(1\)\(A\)](#). See [42 CFR 34.2\(d\)](#).
3. ^[^] This Class A medical condition only applies to foreign nationals who seek admission as immigrants, or who seek adjustment of status to one lawfully admitted for permanent residence. Additionally, a child who is adopted and under the age of 10 years or younger is not deemed to have a Class A condition if the following conditions apply: Prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement, and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations required for immigration purposes. See [42 CFR 34.2\(d\)\(2\)](#).
4. ^[^] See [42 CFR 34.2\(e\)](#).
5. ^[^] See [INA 232](#) and [8 CFR 232](#).

Chapter 3 - Applicability of Medical Examination and Vaccination Requirement

A. Requirements by Benefit Type

Medical examination and vaccination requirements vary depending on the immigration benefit the person is seeking.

Most applicants subject to medical grounds of inadmissibility must undergo a medical examination to determine their admissibility. Some applicants, however, do not need to undergo a medical examination unless there is a specific concern. Nonimmigrants, for example, are in this category.

Even if the applicant is not subject to health-related grounds of inadmissibility, the officer may still order a medical examination as a matter of discretion if the evidence indicates that there may be a public health concern. ^[1] This could apply, for example, when an officer adjudicates a request for parole. ^[2]

In general, an immigration officer may order a medical examination of an applicant at any time, if the officer is concerned that the applicant may be medically inadmissible. ^[3] This rule applies regardless of the type of immigration benefit sought, or

whether the applicant is applying for a visa, seeking entry at a U.S. port-of-entry, or already in the United States.

A civil surgeon in the United States can only perform a medical examination for purposes of a benefits application processed within the United States. Similarly, a panel physician abroad can generally only perform a medical examination for purposes of a visa application processed outside the United States. There are limited exceptions where an applicant seeking a benefit application inside the United States does not have to repeat a medical examination performed by a panel physician. The following chart highlights the benefits that require a medical examination and vaccinations, and whether a civil surgeon or panel physician should conduct the medical examination. ^[4]

Medical Examination and Vaccination Requirements by Benefit Type

Benefit Type	Medical Examination (Yes or No)	Vaccination (Yes or No)	Panel Physician or Civil Surgeon
Immigrant visa applicants, applying with U.S. Department of State (DOS)	Yes	Yes	Panel physician
Adjustment applicants	Yes	Yes	Civil surgeon
Nonimmigrant visa applicants, applying with DOS; and nonimmigrants seeking change/extension of status while in the United States ^[5]	No (with some exceptions) ^[6]	No	N/A
Temporary Protected Status (TPS) applicants ^[7]	No (with some exceptions) ^[8]	No	N/A
K or V visa applicants, applying with DOS ^[9]	Yes	No	Panel physician
Nonimmigrant seeking change of status to V status ^[10]	Yes	No	Civil surgeon
K or V nonimmigrants applying for adjustment of status in the United States ^[11]	May be required ^[12]	Yes	Panel physician and/or civil surgeon
Refugee applicants, including principal and derivative applicants overseas ^[13]	Yes	No	Panel physician
Applicants seeking derivative refugee or derivative asylee status while in the United States ^[14]	No	No	N/A
Principal asylum applicants in the United States ^[15]	No	No	N/A

Benefit Type	Medical Examination (Yes or No)	Vaccination (Yes or No)	Panel Physician or Civil Surgeon
Applicants seeking derivative asylee status with DOS ^[16]	Yes	No	Panel physician
Refugee-based adjustment applicants ^[17]	May be required ^[18]	Yes	Civil surgeon ^[19]
Asylees applying for adjustment of status ^[20]	May be required ^[21]	Yes	Civil surgeon
Kurdish asylees paroled under Operation Pacific Haven applying for adjustment of status	Yes	Yes	Panel physician or civil surgeon
Registry applicants	No	No	N/A
North American Indians entering the United States ^[22]	No	No	N/A
Children of returning residents entering the United States ^[23] or children of U.S. nationals	No	No	N/A
Internationally adopted orphans ^[24]	Yes	Yes (exception available)	Panel physician

B. Special Considerations

1. Nonimmigrants and TPS Applicants

In general, nonimmigrant visa applicants, nonimmigrants seeking change or extension of status, and Temporary Protected Status (TPS) applicants are only medically examined if the consular officer or immigration officer has concerns as to the applicant's inadmissibility on health-related grounds. Customs and Border Protection (CBP) officers at ports-of-entry may also require a nonimmigrant arriving with or without a visa to submit to a medical examination to determine whether a medical ground of inadmissibility applies.

2. K or V Visa Applicants Applying with DOS ^[25]

While the consular officer may encourage compliance, the consular officer cannot deny a K or V visa for lack of compliance with the vaccination requirements.

Some panel physicians may perform the vaccination assessment in anticipation of the applicant's later adjustment of status application.

3. Nonimmigrants Applying for Change of Status to V Status

For nonimmigrants applying for change of status to V status, the civil surgeon may perform the vaccination assessment in anticipation of the applicant's later adjustment of status application.

4. K or V Nonimmigrants Applying for Adjustment ^[26]

K and V nonimmigrants applying for adjustment of status are not required to repeat the medical examination if the application was filed within one year of the date of the original medical examination, and:

- The medical examination did not reveal a Class A medical condition; or
- The applicant received a conditional waiver in conjunction with the K or V nonimmigrant visa or the change of status to V and the applicant submits evidence of compliance with the waiver terms and conditions. ^[27]

If a new medical examination is required and reveals a Class A medical condition, a new waiver application will also be required. In such cases, the officer should determine whether the applicant complied with the terms and conditions of the first waiver, if applicable. Such determination should be given considerable weight in the adjudication of a subsequent waiver application. ^[28]

Even if a new medical examination is not required, applicants must still comply with the vaccination requirements if the vaccination record was not included as part of the original medical examination report. If the vaccination report was properly completed at the time of the overseas examination, the officer may accept the vaccination assessment completed by the panel physician.

An applicant's overseas medical examination report completed by a panel physician should already be in the applicant's A-file. If it is not in the A-file, the officer should request the medical examination report through a Request for Evidence (RFE).

If the applicant was granted a change of status to V in the United States, ^[29] the medical examination report completed by the civil surgeon should be in the A-file created at the time that the change of status was initially granted.

5. Refugees Applying for Adjustment ^[30]

By regulation, refugees applying for adjustment of status generally do not need to repeat the entire medical examination if the applicant was already examined by a panel physician for purposes of admission to the United States. ^[31] Refugees must undergo an additional medical examination only if the original examination by the panel physician revealed a Class A medical condition.

Family members granted refugee status in the United States must submit to a medical examination at the time they seek to adjust their status.

All refugees must comply with the vaccination requirements at the time of adjustment of status by submitting the relevant parts of the Report of Medical Examination and Vaccination Record (Form I-693) completed by a designated civil surgeon. A prior vaccination assessment performed by the panel physician cannot be used for purposes of the adjustment of status application. ^[32]

USCIS granted a blanket civil surgeon designation to state and local health department physicians for the limited purpose of completing the vaccination record for refugees applying for adjustment of status.

6. Asylees Applying for Adjustment

All asylees are required to undergo an immigration medical exam, including vaccination assessment, at time of adjustment. ^[33]

However, according to USCIS policy developed in consultation with the Centers for Disease Control and Prevention, an asylee dependent who had a medical examination conducted overseas is not required to undergo a new medical exam when applying for adjustment of status if:

- The results of the overseas medical examination are contained in the A-file and no Class A condition was reported;
- The asylee has applied for adjustment of status within one year of eligibility to file; and
- No evidence in the A-file or testimony given at the interview suggests that the asylee has acquired a Class A condition after his or her entry into the United States.

Even if an asylee dependent may use the result of the previous examination, he or she must still establish compliance with the vaccination requirements and submit the vaccination assessment with his or her adjustment of status application. This requirement applies even if the applicant had a vaccination assessment completed overseas by a panel physician. To comply with the requirement, the applicant must have the relevant parts of [Form I-693](#) completed by the civil surgeon.

7. Children of Returning Residents Entering the United States ^[34]

For children of returning residents entering the United States, as long as the parent's visa is valid or the parent is a U.S. resident or U.S. national, there are no medical examination or vaccination requirements.

Children of returning residents entering the United States are:

- Children born abroad after the parent has been issued an immigrant visa and while the parent is applying for admission to the United States.
- Children born abroad during the temporary visit abroad of a mother who is a national or permanent resident of the United States.

8. Internationally Adopted Orphans ^[35]

Children 10 years of age or younger who are classified as orphans and who are applying for IR-3 and IR-4 (orphans) and IH-3 and IH-4 (Hague Convention adoptees) visas are not required to comply with the vaccination requirements before admission to the United States. ^[36]

Footnotes

1. ^[^] Based on the conditions listed in [INA 212\(a\)\(1\)](#).

2. ^[^] See [INA 212\(d\)\(5\)\(A\)](#).

3. ^[^] See [Matter of Arthur \(PDF\)](#), 16 I&N Dec. 558 (BIA 1978) (The applicant has the burden of proof to establish his or her admissibility to the United States according to [INA 291](#); the burden never shifts to the government).

4. ^[^] Special considerations that apply to certain benefit types are noted in Section B, Special Considerations [[8 USCIS-PM B.3\(B\)](#)].

5. [^] See [INA 248](#). See [8 CFR 214.1](#) and [8 CFR 248](#).
6. [^] See Section B, Special Considerations [[8 USCIS-PM B.3\(B\)](#)].
7. [^] See [INA 244](#).
8. [^] See Section B, Special Considerations [[8 USCIS-PM B.3\(B\)](#)].
9. [^] See [INA 214](#). See [8 CFR 214.2\(k\)](#) and [8 CFR 214.15](#).
10. [^] See [INA 214\(q\)](#) and [8 CFR 214.15](#).
11. [^] See [INA 245](#) and [8 CFR 245](#).
12. [^] See Section B, Special Considerations [[8 USCIS-PM B.3\(B\)](#)].
13. [^] See [INA 207](#) and [8 CFR 207.7](#). See [INA 208](#) and [8 CFR 208.21](#).
14. [^] See [INA 207](#) and [8 CFR 207](#).
15. [^] See [INA 208](#) and [8 CFR 208](#).
16. [^] See [INA 208](#) and [8 CFR 208.21](#).
17. [^] See [INA 209](#) and [8 CFR 209.1](#).
18. [^] See Section B, Special Considerations [[8 USCIS-PM B.3\(B\)](#)].
19. [^] Including state or local health department physicians, who are blanket designated by USCIS as civil surgeons for purposes of completing the vaccination record for refugees adjusting status only.
20. [^] See [INA 209](#) and [8 CFR 209.2](#).
21. [^] See Section B, Special Considerations [[8 USCIS-PM B.3\(B\)](#)].
22. [^] See [8 CFR 289.1](#) and [8 CFR 289.2](#). American Indians born in Canada who meet the regulatory requirements may be regarded as having been admitted for lawful permanent residence. Because neither an immigrant visa nor an adjustment of status application is required, the applicant is not required to comply with the medical examination and vaccination requirements.
23. [^] See [INA 101\(a\)\(27\)\(A\)](#) and [22 CFR 42.22](#).
24. [^] See [INA 101\(b\)\(1\)\(F\)](#), including Hague Convention adoptees.
25. [^] See [INA 214](#). See [8 CFR 214.2\(k\)](#) and [8 CFR 214.15](#). See [9 FAM 302.2-3\(A\)](#), Medical Examinations – Medical Examination for Fiancé(e)s.
26. [^] See [INA 245](#) and [8 CFR 245](#).
27. [^] See [8 CFR 245.5](#).
28. [^] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [[9 USCIS-PM C](#)] for more information on medical waivers.
29. [^] Under [INA 214\(q\)](#).
30. [^] See [INA 209](#) and [8 CFR 209.1](#).
31. [^] See [8 CFR 209.1\(c\)](#).

32. [^] See [8 CFR 209.1\(c\)](#).

33. [^] See [8 CFR 209.2\(d\)](#).

34. [^] See [INA 101\(a\)\(27\)\(A\)](#) and [22 CFR 42.22](#).

35. [^] See [INA 101\(b\)\(1\)\(F\)](#). See Chapter 9, Vaccination Requirement, Section G, Exception for Certain Adopted Children [[8 USCIS-PM B.9\(G\)](#)] for more on this exception.

36. [^] See [INA 212\(a\)\(1\)\(C\)](#), as amended by Section 2 of the International Adoption Simplification Act, [Pub. L. 111-287 \(PDF\)](#), 124 Stat. 3058, 3058 (November 30, 2010).

Chapter 4 - Review of Medical Examination Documentation

A. Results of the Medical Examination

The physician must annotate the results of the examination on the following forms:

Panel Physicians

Panel physicians must annotate the results of the medical examination on the Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets. ^[1]

Civil Surgeons

Civil surgeons must annotate the medical examination results on the Report of Medical Examination and Vaccination Record ([Form I-693](#)).

B. Documentation Completed by Panel Physician

Since a State Department consular officer reviews the medical documentation completed by a panel physician as part of the overseas visa process, a USCIS officer may assume that the medical documentation is properly completed. ^[2]

If the USCIS officer notices a significant irregularity such as an omission of a particular section, the officer may issue a Request for Evidence (RFE) to have a civil surgeon in the United States complete the missing part(s) of the medical examination. A civil surgeon should address any deficiency by completing the respective parts of a [Form I-693](#) according to the Technical Instructions for Civil Surgeons issued by the Centers for Disease Control and Prevention (CDC). ^[3] This should only happen in rare instances.

Applicants who have already been examined abroad and are not required to repeat the medical examination in the United States may still have to show proof of the vaccination requirement. ^[4]

C. Documentation Completed by Civil Surgeon

1. Civil Surgeon Designation

Except for physicians who are Public Health Service officers, only physicians designated by USCIS to act as civil surgeons may conduct an immigration medical examination in the United States and complete [Form I-693](#). ^[5] Only doctors of medicine (M.D.) and doctors of osteopathy (D.O.) who are currently licensed to practice as physicians may be designated. ^[6] The physician must be designated as a civil surgeon at the time of the completion of the medical examination.

To determine whether the physician is designated as a civil surgeon, the officer should consult the designated civil surgeon list at uscis.gov/tools (via the Find a Doctor tool).

[redaction] Additionally, officers may also determine whether the physician is designated as a civil surgeon, or obtain the location, or other information about a civil surgeon needed for adjudication purposes through the Civil Surgeon module of the National Processing Workflow Repository (NPWR). This database also contains other information such as licensing information, and signature verification. This information is not available to the public. If an officer requires access to NPWR, the officer may request access by going to NPWR and submitting a request for access to the civil surgeon application. [/redaction]

2. Complete Form

The following requirements must always be met regarding any [Form I-693](#) submitted to USCIS:

- The form must be completed legibly;
- All required parts of the form must be completed; ^[7]
- The form must be signed and dated by the designated civil surgeon who conducted the medical examination; ^[8]
- The form must be signed and dated by the applicant who was examined; ^[9]
- If applicable, the form must be signed and dated by the physician(s) completing referral evaluations; ^[10]
- The form must still be valid; ^[11] and
- The form must be in a sealed envelope as detailed in the form's instructions.

If the above requirements are not met, or if there is evidence that the envelope has been tampered with, the officer must return the original [Form I-693](#) to the applicant for corrective action. Whenever an original is returned to the applicant, the officer should retain a copy.

A response to an RFE is acceptable if it is completed by a civil surgeon in one of the following ways:

- The civil surgeon annotates the original medical examination in the deficient part(s), and both the applicant and the civil surgeon re-sign and re-date their respective certifications.
- The civil surgeon re-completes an entirely new [Form I-693](#), and corrects for the original deficiency.
- The civil surgeon completes the following sections of a new form: The part containing the applicant's information, ^[12] the part(s) that were deficient in the original examination, and the part containing the civil surgeon's information and certification. The civil surgeon must include the original medical examination documentation with the newly completed parts.

The applicant may return to the original civil surgeon who performed the immigration medical exam or a new civil surgeon to correct the form.

The civil surgeon must place the corrected form ^[13] in a sealed envelope. The applicant must then return the sealed envelope to USCIS.

3. Signatures

The applicant, the civil surgeon, and any other health care provider who evaluated the applicant as part of the immigration medical examination should sign the form, to verify that the content of their representations is truthful.

Signature of the Civil Surgeon

The civil surgeon's signature must be an original signature. Stamps of the physician's signature or other substitutes, or copies of the civil surgeon's original signature, are not acceptable (except for blanket-designated health departments or military physicians as described below).

As outlined in CDC's Technical Instructions, the civil surgeon is only permitted to sign the [Form I-693](#) after he or she has completed the entire medical examination. An examination is not completed until any prescribed treatment for a Class A condition has been administered.

There may be circumstances when an applicant refuses to undergo one part of the examination, but the civil surgeon certifies the form with a notation that part of the exam is not complete. In these cases, the officer should issue an RFE to the applicant for corrective action.

The civil surgeon might also diagnose a Class A condition for which the applicant refuses treatment. The civil surgeon might then annotate the Class A condition but still certify and sign the form. In this case, the officer should not return the form for corrective action. The officer should determine that the applicant is inadmissible and ask the applicant to request a waiver, if available. ^[14]

Signature of the Health Department

In agreement with CDC, USCIS granted blanket civil surgeon designation to local and state health departments in the United States. This blanket designation allows health departments to complete the vaccination portion of [Form I-693](#) for refugees seeking adjustment if they have a physician who meets the professional qualifications for a civil surgeon. If a refugee only requires the vaccination assessment, the only parts of the form that need to be completed are the applicant's information, the vaccination assessment, and the certifications. The other parts are irrelevant and do not have to be submitted.

If the health department physician is completing only a vaccination assessment for refugees seeking adjustment, the physician's signature may be either an original (handwritten) or a stamped signature, as long as it is the signature of the health department physician. The attending nurse may, but does not have to, co-sign with the physician. The signature of the physician must be accompanied by the health department's stamp or raised seal, whichever is customarily used.

If the health department does not properly sign, the officer should return the medical documentation to the applicant for corrective action. ^[15]

Signature of a Military Physician designated as a Civil Surgeon for Members and Veterans of the Armed Forces

To ease the difficulties encountered by physicians and applicants in the military, USCIS issued a blanket civil surgeon designation to qualifying military physicians to permit them to perform the immigration medical examination and complete the [Form I-693](#) for eligible members and veterans of the U.S. armed forces and their dependents. ^[16]

Pursuant to the understanding reached between USCIS and the CDC, military physicians who qualify under this blanket civil surgeon designation may perform the entire immigration medical examination as long as the exam is conducted in the United States on the premises of a Military Treatment Facility (MTF) and conducted for a U.S. armed forces member, veteran, or dependent who is eligible to receive medical care at the MTF.

If operating under the blanket civil surgeon designation for military physicians, a physician's signature may be either an original (handwritten) or stamped signature, as long as it is the signature of a qualifying military physician. Nurses and other health care professionals may, but are not required to, co-sign the form. The signature of the physician must be accompanied by the official stamp or raised seal of the MTF, whichever is customarily used.

If the military physician does not properly sign, the officer should return the medical documentation to the applicant for corrective action.

Signature of the Applicant

The applicant or the civil surgeon may complete the section about the applicant's information. The civil surgeon must always verify the applicant's identity by requiring a government-issued ID, as stated in CDC's Technical Instructions.

The applicant must sign the certification only when instructed by the civil surgeon. By signing the form, the applicant attests that he or she consented to the medical examination and that any information provided in relation to the medical examination is truthful.

Whenever the civil surgeon orders a test that he or she does not perform personally, the civil surgeon must ensure that the physician or staff to whom the applicant is referred checks the identity of the applicant by requesting a government-issued ID. ^[17]

An officer should follow the chart below to determine whether the applicant or a legal guardian must sign the form. ^[18]

Signature of the Applicant

Age of Applicant	Signature Requirement
Age 14 or Older	The applicant must sign Form I-693 . However, a legal guardian may sign for a mentally incompetent person.
Under Age 14	Either the applicant, a parent, or legal guardian may sign the Form I-693 . The officer should not reject the form as improperly completed if only the applicant, parent, or guardian signs.

Signature of Physicians Receiving Referrals for Evaluation

If the civil surgeon is unable to perform a particular medical assessment, he or she is required to refer the applicant to another physician. The physician receiving the referral is required to complete the appropriate section on [Form I-693](#) after he or she has completed the evaluation of the applicant's condition. The civil surgeon may not sign the civil surgeon's certification on the form until the civil surgeon has received and reviewed the report of the physician who received the referral. If the referring physician ordered treatment, the civil surgeon may not sign the certification until the treatment has been completed.

Contracted services used by the civil surgeon to complete a step in the medical examination are not considered referrals. Therefore, the referral section can be blank in such cases. ^[19] For example, if the civil surgeon uses a contractor to draw blood, the referral section does not have to be completed. However, if the Technical Instructions require a referral to the Health Department because the applicant has TB, the officer must make sure that the referral section is completed.

4. Validity Period of Form I-693 (Including Use of Prior Versions)*Evidentiary Value*

A person seeking an immigration benefit and who is subject to the health-related grounds of inadmissibility must establish that he or she is not inadmissible on health-related grounds. ^[20] In general, those applying for immigration benefits while in the United States must use [Form I-693](#) to show they are free from any conditions that would render them inadmissible under the health-related grounds.

An officer may determine that the applicant has met the burden of proof required to establish that he or she is free from a medical condition that would render the applicant inadmissible on health-related grounds if all of the following criteria are met:

- A USCIS-designated civil surgeon performed the immigration medical examination in accordance with HHS regulations;
- The civil surgeon and the applicant properly completed the current version of Form I-693; ^[21]
- The Form I-693 that the applicant submitted is signed by a civil surgeon no more than 60 days before the date the applicant filed an application for the underlying immigration benefit; ^[22]
- The Form I-693 establishes that the applicant does not have a Class A medical condition and has complied with the vaccination requirements or is granted a waiver; ^[23] and
- USCIS issues a decision on the underlying immigration benefit application no more than 2 years after the date the civil surgeon signed Form I-693. ^[24]

In general, if any one of the above criteria is not met, the applicant has not met the burden of proof required to establish that he or she is free of a medical condition that would render the applicant inadmissible to the United States on health-related grounds. In this case, the officer should follow standard operating procedures regarding issuance of a denial or an RFE or Notice of Intent to Deny (NOID) to address the deficiency.

Additionally, even if all of the above criteria are met, but the officer has reason to believe that the applicant's medical condition has changed since submission of the Form I-693 such that the applicant's admissibility could be affected, the officer, in his or her discretion, may request that the applicant submit a new Form I-693.

Special rules may apply to certain foreign nationals who were examined overseas, including certain nonimmigrant fiancé(e)s or spouses of U.S. citizens (K visa), spouses of lawful permanent residents (V visa), refugees, and asylee dependents. Such foreign nationals usually do not need to repeat the full immigration medical exam in the United States for purposes of adjustment of status. ^[25]

Generally, the only acceptable version of [Form I-693](#) is the version in use at the time of the medical examination. ^[26] Prior versions of [Form I-693](#) are generally not acceptable because they may lack necessary information. ^[27]

Form I-693 Submitted to USCIS Before November 1, 2018

In 2018, USCIS revised its policy regarding the extent to which a Form I-693 retains its evidentiary value. This policy is effective November 1, 2018. Before November 1, 2018, the validity period policy provided Form I-693 retained its evidentiary value as long as it was submitted to USCIS within 1 year of the civil surgeon's signature and USCIS issued a final decision on the underlying immigration benefit application within a year of the Form I-693's submission to USCIS. This policy contained a maximum 2-year period during which Form I-693 retained its evidentiary value.

Due to increasing caseloads and more complex adjudications, USCIS observed an increasing number of cases where benefit applications could not be decided within 1 year from the date the Form I-693 was submitted. In these cases, USCIS would have to request a new Form I-693, further delaying the processing of the underlying application and inconveniencing the applicant.

The new policy, effective November 1, 2018, addresses these issues by realigning the existing 2-year period (during which Form I-693 retains its evidentiary value) to require applicants to complete their immigration medical examination closer in time to the filing of the underlying benefit application. This revised policy is intended to reduce the need for USCIS to request an updated Form I-693, thereby streamlining case processing and minimizing inconveniences to applicants.

Certain Form I-693 submitted to USCIS before November 1, 2018 may be subject to the previous validity period policy as noted in the section below.

A completed Form I-693 submitted to USCIS before November 1, 2018 retains its evidentiary value to support a finding that an applicant is not inadmissible based on health-related grounds if it meets any of the following scenarios:

- The civil surgeon signs Form I-693 more than 60 days before the applicant files the underlying benefit application with USCIS, but the applicant submits Form I-693 to USCIS no more than 1 year after the civil surgeon signed Form I-693; and USCIS issues a decision on the underlying benefit application no more than 1 year after the date the applicant submitted Form I-693 to USCIS.
- The civil surgeon signs Form I-693 no more than 60 days before the applicant files the underlying benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon's signature.
- The civil surgeon signs Form I-693, and the applicant submits Form I-693, after the applicant files the benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon's signature.

In all cases, a Form I-693 submitted to USCIS more than 1 year after the date of the civil surgeon's signature is insufficient for evidentiary purposes as of the time of its submission to USCIS. The table below illustrates these scenarios.

Form I-693 Submitted to USCIS Before November 1, 2018

When did civil surgeon sign?	When was underlying benefit application filed with USCIS?	I-693 retains evidentiary value through
No more than 1 year before I-693 submitted to USCIS	More than 60 days after civil surgeon signed the I-693	1 year from date applicant submitted I-693 to USCIS
No more than 60 days before underlying benefit application filed with USCIS	No more than 60 days after civil surgeon signed the I-693	2 years from date civil surgeon signed I-693
After the benefit application was filed with USCIS	Before the civil surgeon signed the I-693	2 years from date civil surgeon signed I-693
More than 1 year before I-693 submitted to USCIS	N/A – I-693 not valid at time applicant submits I-693 to USCIS	

Form I-693 Submitted to USCIS On or After November 1, 2018

A completed Form I-693 submitted to USCIS on or after November 1, 2018 retains its evidentiary value to support a finding that an applicant is not inadmissible based on health-related grounds if it meets any of the following scenarios:

- The civil surgeon signs Form I-693 no more than 60 days before the applicant files the underlying benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon's signature.
- The civil surgeon signs the Form I-693, and the applicant submits Form I-693, after the applicant files the benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon's signature.

In all cases, a Form I-693 signed by a civil surgeon more than 60 days before the applicant files the underlying benefit application is insufficient for evidentiary purposes as of the time of its submission to USCIS. The table below illustrates these scenarios.

Form I-693 Submitted to USCIS On or After November 1, 2018

When did civil surgeon sign?	I-693 retains evidentiary value through
No more than 60 days before applicant filed underlying benefit application with USCIS	2 years from date civil surgeon signed I-693
After applicant filed benefit application with USCIS	2 years from date civil surgeon signed I-693
More than 60 days before applicant filed benefit application with USCIS	N/A – I-693 not valid at time applicant submits I-693 to USCIS

Timing of the Submission of the Medical Examination Report

Applicants may submit the Form I-693 medical examination report to USCIS:

- Concurrently with the immigration benefit application; or
- At any time after filing the immigration benefit application but before USCIS finalizes adjudication of that application. If not submitted simultaneously with the immigration benefit application, applicants may bring the medical examination report to an interview or wait until USCIS issues an RFE requesting the medical examination report.

Place of Submission of the Medical Examination Report

The medical examination report should be submitted to the appropriate location. ^[28]

Footnotes

1. ^[^] As of October 1, 2013, panel physicians only use DS-2054. The DS-2053 is no longer used after that date.
2. ^[^] The Technical Instructions for Panel Physicians may differ from the Technical Instructions for Civil Surgeons. As long as the DS form is properly completed, the officer should accept the finding of the consular officer as correct.
3. ^[^] In this case, because the DS form was completed by a panel physician, the officer should retain the original document. The RFE must specify which sections of [Form I-693](#) have to be completed by a civil surgeon.
4. ^[^] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [\[8 USCIS-PM B.3\]](#) for specific information on who is required to be examined and to what extent.
5. ^[^] [Form I-693](#) can only be used for immigration benefits that are granted in the United States.
6. ^[^] See [INA 232](#) and [8 CFR 232](#).

7. [^] Some parts of the form may not be required. For example, if an applicant is not required to undergo a chest X-ray in the TB section of the medical examination report, the chest X-ray section would not have to be completed.
8. [^] See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].
9. [^] See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].
10. [^] See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].
11. [^] See Subsection 4, Validity Period of Form I-693 (Including Use of Prior Versions) [8 USCIS-PM B.4(C)(4)].
12. [^] As part of completing the [Form I-693](#), the civil surgeon must ensure that the applicant has signed the applicant's certification.
13. [^] Along with the original [Form I-693](#), if separate from the corrected form.
14. [^] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more on waivers.
15. [^] See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon designation for health departments.
16. [^] See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon designation for military physicians.
17. [^] By signing the form, the civil surgeon certifies that he or she has examined the applicant according to the procedures and requirements outlined in the Technical Instructions, [Form I-693](#), and form instructions. Officers do not need to verify whether the civil surgeon instructed the referring physician to check the applicant's identity.
18. [^] See [8 CFR 103.2\(a\)\(2\)](#).
19. [^] Civil surgeons are, however, still responsible for ensuring that the contractor properly checks the applicant's ID.
20. [^] See [INA 212\(a\)\(1\)](#).
21. [^] See Section C, Documentation Completed by Civil Surgeon [8 USCIS-PM B.4(C)].
22. [^] For example, Form I-485. Certain Form I-693 submitted to USCIS before November 1, 2018 may be subject to the previous policy in effect. See below for more information.
23. [^] For more information on determining inadmissibility based on medical grounds, see Chapter 5, Review of Overall Findings [8 USCIS-PM B.5] through Chapter 11, Inadmissibility Determination [8 USCIS-PM B.11].
24. [^] USCIS considers the date the civil surgeon signed the [Form I-693](#) as the date the civil surgeon completed the examination. Certain Form I-693s submitted to USCIS before November 1, 2018 may be subject to the previous policy in effect. See below for more information.
25. [^] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for more information on these special considerations.
26. [^] In other words, the Form I-693 must be a valid form version as of the date the civil surgeon signed the form.
27. [^] See [uscis.gov/i-693](#) for the current and accepted version(s) of the form.
28. [^] See [uscis.gov/i-693](#) for location information.

Chapter 5 - Review of Overall Findings

A. Overall Finding of Admissibility

The civil surgeon should properly complete the part addressing when the medical examinations and any follow-up examinations took place. The civil surgeon should also mark the appropriate boxes in the “Summary of Overall Findings” section.

If the summary indicates a Class A condition, the officer should ensure that the findings in the other form sections correspond. If they do correspond, the applicant is inadmissible. If there is conflicting information, the officer should return the form to the applicant for corrective action.

If the civil surgeon omits the summary finding entirely, the officer should check the findings in the other form sections to determine whether the applicant has a Class A condition. If all sections are properly completed, and no Class A condition has been indicated by the civil surgeon, the officer should not issue a Request for Evidence (RFE) and instead proceed with the adjudication.

If the officer is unable to determine whether the applicant has a Class A condition based on the other form sections, the officer should return the form to the applicant for corrective action. The RFE should be sent to the applicant directing him or her to return to the civil surgeon to correct the form.

B. Changes to the Summary Findings

The Technical Instructions direct civil surgeons to treat Class A communicable diseases of public health significance or refer the applicant for treatment. Generally, the civil surgeon can only sign off upon completion of the treatment. This is why the officer may encounter a summary finding that has been reclassified from a “Class A condition” to a “Class B” or “No Class A or Class B” condition.

The officer should not reject the form because of the reclassification as long as the information is consistent with the information otherwise provided in the medical examination documentation. In such cases, the applicant is not inadmissible on health-related grounds.

For example, a civil surgeon may initially annotate the summary section with a Class A condition but, following treatment, change the annotation to a Class B condition. In this instance, the summary section may indicate an earlier Class A condition, followed by a later Class B determination. Since the civil surgeon indicated on the [Form I-693](#) that a former Class A condition is now a Class B condition, the applicant is not inadmissible on health-related grounds.

Chapter 6 - Communicable Diseases of Public Health Significance

A. Communicable Diseases

Applicants who have communicable diseases of public health significance are inadmissible. ^[1] The Department of Health and Human Services (HHS) has designated the following conditions as communicable diseases of public health significance that apply to immigration medical examinations conducted in the United States: ^[2]

- Gonorrhea;
- Leprosy, infectious;
- Syphilis, infectious stage; and

- Tuberculosis (TB), Active—Only a Class A TB diagnosis renders an applicant inadmissible to the United States. Under current Centers for Disease Control and Prevention (CDC) guidelines, Class A TB means TB that is clinically active and communicable.

What qualifies as a communicable disease of public health significance is determined by HHS, not by USCIS. Any regulatory updates HHS makes to its list of communicable diseases of public health significance are controlling over the list provided in this Part B.

1. Additional Communicable Diseases for Applicants Abroad

HHS regulations also list two additional general categories of communicable diseases of public health significance. ^[3] Currently, these provisions only apply to applicants outside the United States who have to be examined by panel physicians: ^[4]

- Communicable diseases that may make a person subject to quarantine, as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act. ^[5]
- Communicable diseases that may pose a public health emergency of international concern if they meet one or more of the factors listed in 42 CFR 34.3(d) and for which the Director of the CDC has determined that (A) a threat exists for importation into the United States, and (B) such disease may potentially affect the health of the American public. The determination will be made consistent with criteria established in Annex 2 of the revised International Health Regulations. HHS/CDC's determinations will be announced by notice in the Federal Register.

2. Human Immunodeficiency Virus (HIV)

As of January 4, 2010, human immunodeficiency virus (HIV) infection is no longer defined as a communicable disease of public health significance according to HHS regulations. ^[6] Therefore, HIV infection does not make the applicant inadmissible on health-related grounds for any immigration benefit adjudicated on or after January 4, 2010, even if the applicant filed the immigration benefit application before January 4, 2010.

The officer should disregard a diagnosis of HIV infection when determining whether an applicant is inadmissible on health-related grounds. The officer should administratively close any HIV waiver application filed before January 4, 2010.

B. Parts of Form I-693 Addressing Communicable Diseases

1. Tuberculosis

An initial screening test, either a Tuberculin Skin Test (TST) or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, ^[7] is required for all applicants 2 years of age or older. According to the Technical Instructions, applicants under 2 years of age are required to undergo an initial screening test if there is evidence of contact with an applicant known to have TB or there is another reason to suspect TB. For more information, please see the TB Component of the Technical Instructions.

The “testing age” is the applicant’s age on the date the civil surgeon completed the medical examination by signing the form, not the age at the time of the adjudication. An officer should not send a Request for Evidence (RFE) for testing if the applicant was properly exempt from the testing requirement due to age at the time of the medical examination. The officer, however, may always require testing if evidence indicates the applicant may have been exposed to TB since the examination.

The initial screening test results must be recorded. If the initial screening test was not administered, the exceptions should be clearly annotated in the remarks portion after the “not administered” box in the testing section. The officer should be aware

that anyone who previously received the Bacille Calmette-Guérin vaccine ^[8] must still undergo an initial TB screening test. These applicants are not exempt from the initial screening test.

The civil surgeon must also annotate the “Initial Screening Test Result and Chest X-Ray Determination” section. If the section indicates that the applicant is medically cleared relating to TB, then no further TB tests are required. In this case, the X-ray section should be left blank.

If a chest X-ray is required, the chest X-ray section must be completed. If the chest X-ray is suggestive of active TB disease, the applicant must be referred to the health department for further assessment and possible treatment. ^[9] The civil surgeon cannot sign off on the [Form I-693](#) until any required steps relating to TB have been completed.

Under the Technical Instructions, a pregnant applicant can defer the chest X-ray until after pregnancy but the civil surgeon may not submit the form until the chest X-ray has been performed, interpreted, and the appropriate follow-up, if required under the Technical Instructions, is completed. If the officer receives an incomplete medical examination for a pregnant applicant, the officer should return the original form to the applicant for corrective action according to established local procedures.

Class A TB requires a referral to the TB Control Program of the Health Department for evaluation and the completion of TB treatment before the civil surgeon can sign off on the form. In this case, the referral evaluation section must be completed and evidence of treatment must accompany the form. If not, the officer should RFE for corrective action.

All Class B TB (other than Class B, latent TB) requires a referral to the Health Department for follow-up assessment before the civil surgeon can sign off on the form. In this case, the referral evaluation section must be completed. If not, the officer should RFE for corrective action.

For applicants identified with Class B, latent TB, a referral to the Health Department is only recommended under the Technical Instructions. A referral is not required and that section does not have to be completed in this case. Therefore, the officer may accept [Form I-693](#) without the referral evaluation section being completed and should not RFE.

Determining whether a referral is required is detailed in the TB Technical Instructions. ^[10]

2. Syphilis and Other Communicable Diseases

Serological testing for syphilis is required for applicants 15 years of age or older. Applicants under 15 years may be tested by the civil surgeon if illness is suspected. The testing age is the age on the date the civil surgeon completed the medical examination and signed the form, not the age at the time of the adjudication of the adjustment application.

The civil surgeon must complete all “Findings” boxes for all categories. The civil surgeon may add explanatory remarks; however, the officer should not RFE simply because there are no remarks. Note that versions of [Form I-693](#) prior to the October 14, 2009 version may not have had boxes for “No Class A or B Condition” for some of these entries. In this case, the adjudicator should accept the finding reflected in the Summary Findings section of the form for the admissibility determination.

Footnotes

1. ^[^] See [INA 212\(a\)\(1\)\(A\)\(i\)](#).

2. ^[^] See [42 CFR 34.2\(b\)](#).

3. ^[^] See [42 CFR 34.2\(b\)\(2\)](#) and [42 CFR 34.2\(b\)\(3\)](#).

4. ^[^] An officer will not encounter such annotations on [Form I-693](#), but may on the DS-2053/DS-2054.

5. ^[^] See Pub. L. 78-410, 58 Stat. 682, 703 (July 1, 1944), as amended, codified at [42 U.S.C. Chapter 6A](#). The current revised list of quarantinable communicable diseases is available at [cdc.gov](#) and [archives.gov/federal-register](#).
6. ^[^] See the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, [Pub. L. 110-293 \(PDF\)](#) (July 30, 2008). See [42 CFR 34.2\(b\)](#) as amended by [74 FR 56547 \(PDF\)](#) (Nov. 2, 2009).
7. ^[^] See the Technical Instructions for acceptable tests.
8. ^[^] Often referred to as the “BCG” vaccine. BCG vaccine is a tuberculosis vaccination that is administered in many countries outside of the United States, especially those with a high TB rate. For more information, please see CDC’s website at [cdc.gov](#).
9. ^[^] Under the new Technical Instructions, among other assessments, sputum cultures are required for applicants with chest X-ray findings suggestive of active TB diseases. Drug susceptibility testing is required for positive cultures results. These tests can take months to complete. Also, a referral to the health department and the TB treatment can take months. Officers, applicants, and their representatives should be aware that it can take a long time, and that the civil surgeon is not permitted to sign the [Form I-693](#) until after follow-up assessments and treatment have been completed.
10. ^[^] Available online at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/tuberculosis-civil-technical-instructions.html](#).

Chapter 7 - Physical or Mental Disorder with Associated Harmful Behavior

A. Physical or Mental Disorders with Associated Harmful Behavior ^[1]

Applicants who have physical or mental disorders and harmful behavior associated with those disorders are inadmissible. ^[2] The inadmissibility ground is divided into two subcategories:

- Current physical or mental disorders, with associated harmful behavior.
- Past physical or mental disorders, with associated harmful behavior that is likely to recur or lead to other harmful behavior.

There must be both a physical or mental disorder and harmful behavior to make an applicant inadmissible based on this ground. Neither harmful behavior nor a physical or mental disorder alone renders an applicant inadmissible on this ground. Harmful behavior is defined as behavior that may pose, or has posed, a threat to the property, safety, or welfare of the applicant or others.

A physical disorder is a currently accepted medical diagnosis as defined by the current edition of the Manual of International Classification of Diseases, Injuries, and Causes of Death published by the World Health Organization or by another authoritative source as determined by the Director. ^[3] Officers should consult the Technical Instructions for additional information, if needed.

A mental disorder is a currently accepted psychiatric diagnosis, as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or by another authoritative source as determined by the Director. ^[4] Officers should consult the Technical Instructions for additional information, if needed.

Under the Technical Instructions, a diagnosis of substance abuse/addiction for a substance that is not listed in Section 202 of the Controlled Substances Act (with current associated harmful behavior or a history of associated harmful behavior judged likely to recur) is classified as a mental disorder. ^[5]

Under prior Technical Instructions and the July 20, 2010 or older versions of the form, these conditions were summarized under the drug abuse/addiction part of the form. An officer, however, should not find an applicant inadmissible for “drug abuse/addiction” if a non-controlled substance is involved.

B. Relevance of Alcohol-Related Driving Arrests or Convictions

1. Alcohol Use and Driving

Alcohol is not listed in Section 202 of the Controlled Substances Act. ^[6] Therefore, alcohol use disorders are treated as a physical or mental disorder for purposes of determining inadmissibility. As a result, an applicant with an alcohol use disorder will not be deemed inadmissible unless there is current associated harmful behavior or past associated harmful behavior likely to recur. The harmful behavior must be such that it poses, has posed, or is likely to pose a threat to the property, safety, or welfare of the applicant or others.

In the course of adjudicating benefit applications, officers frequently encounter criminal histories that include arrests and/or convictions for alcohol-related driving incidents, such as DUI (driving under the influence) and DWI (driving while intoxicated). These histories may or may not rise to the level of a criminal ground of inadmissibility. ^[7] A record of criminal arrests and/or convictions for alcohol-related driving incidents may constitute evidence of a health-related inadmissibility as a physical or mental disorder with associated harmful behavior.

Operating a motor vehicle under the influence of alcohol is clearly an associated harmful behavior that poses a threat to the property, safety, or welfare of the applicant or others. Where a civil surgeon's mental status evaluation diagnoses the presence of an alcohol use disorder (abuse or dependence), and where there is evidence of harmful behavior associated with the disorder, a Class A medical condition should be certified on [Form I-693](#).

2. Re-Examinations

Requesting Re-Examinations

Some applicants may fail to report, or may underreport, alcohol-related driving incidents in response to the civil surgeon's queries. Where these incidents resulted in an arrest, they may be subsequently revealed in the criminal history record resulting from a routine fingerprint check. Consequently, a criminal record printout revealing a significant history of alcohol-related driving arrests may conflict with the medical examination report that indicates no alcohol-related driving incidents were reported to or evaluated by the civil surgeon.

In such an instance, an officer may require the applicant to be re-examined. The re-examination would be limited to a mental status evaluation specifically considering the record of alcohol-related driving incidents. On the Request for Evidence (RFE), officers should use the following language: "Please return to the civil surgeon for purposes of conducting a mental status evaluation specifically considering the record of alcohol-related driving incidents."

Upon re-examination, the civil surgeon may refer the applicant for further evaluation to a psychiatrist or to a specialist in substance-abuse disorders as provided for under the Technical Instructions. After such referral, the civil surgeon will determine whether a Class A medical condition exists and amend the [Form I-693](#) accordingly. The determination of a Class A condition is wholly dependent on the medical diagnosis of a designated civil surgeon.

Re-Examination for Significant Criminal Record of Alcohol-Related Driving Incidents

Only applicants with a significant criminal record of alcohol-related driving incidents that were not considered by the civil surgeon during the original medical examination should be referred for re-examination.

The actual criminal charges for alcohol-related driving incidents vary among the different states. A significant criminal record of alcohol-related driving incidents includes:

- One or more arrests/convictions for alcohol-related driving incidents (DUI/DWI) while the driver's license was suspended, revoked, or restricted at the time of the arrest due to a previous alcohol-related driving incident(s).

- One or more arrests/convictions for alcohol-related driving incidents where personal injury or death resulted from the incident(s).
- One or more convictions for alcohol-related driving incidents where the conviction was a felony in the jurisdiction in which it occurred or where a sentence of incarceration was actually imposed.
- One arrest/conviction for alcohol-related driving incidents within the preceding 5 years. ^[8]
- Two or more arrests/convictions for alcohol-related driving incidents within the preceding 10 years. ^[9]

If the officer finds that the criminal record appears to contradict the civil surgeon's finding in the medical examination report, then the officer should request a re-examination.

Example: An applicant's criminal record shows that she was convicted for DWI-related vehicular manslaughter. However, the medical examination report reflects that no Class A or B physical or mental disorder was found. In this case, the officer should request a re-examination because the medical examination report finding should have reflected that the applicant has a history relating to an alcohol-related driving incident that could indicate a physical or mental disorder with associated harmful behavior.

3. Determination Based on Re-Examination

Upon completion of the re-examination, the officer should determine whether the applicant is inadmissible. If the civil surgeon annotated a Class A condition, the applicant is inadmissible. If no Class A condition is certified by the civil surgeon, the officer may not determine that the applicant is inadmissible. In exceptional cases, the officer may seek review of the civil surgeon's determination from CDC.

If the applicant is inadmissible, he or she may file an application for waiver of inadmissibility. ^[10]

C. Relevance of Other Evidence

The guidance relating to alcohol-related driving arrests or convictions described above applies to any similar scenario where the record of proceeding contains evidence that may indicate inadmissibility due to a mental or physical disorder with associated harmful behavior that was not considered by the civil surgeon in the original medical examination. Such evidence includes, but is not limited to:

- A prior finding of inadmissibility due to a mental disorder.
- A history of institutionalization for a mental disorder.
- A criminal history other than drunk driving arrests/convictions, such as assaults and domestic violence, in which alcohol or a psychoactive substance was a contributing factor.
- Any other evidence that suggests an alcohol problem.
- Other criminal arrests where there is a reasonable possibility of a mental disorder as a contributing factor.

Accordingly, where the record of proceeding available to the officer contains evidence suggestive of a mental disorder, and the [Form I-693](#) medical report does not reflect that the evidence was considered by the civil surgeon, the applicant must be required to undergo a mental status re-examination by a civil surgeon specifically addressing the adverse evidence that may not have initially been revealed to the civil surgeon.

D. Parts of Form I-693 Addressing Physical or Mental Disorders

The civil surgeon must check the appropriate findings box on the medical examination report. The civil surgeon should also either annotate the findings in the remarks section or attach a report, if the space provided is not sufficient. However, the officer should not RFE simply because the civil surgeon has omitted the remarks or failed to attach a report.

Footnotes

1. ^[^] See [42 CFR 34.2\(n\)](#) (mental disorder). See [42 CFR 34.2\(p\)](#) (physical disorder).
2. ^[^] See [INA 212\(a\)\(2\)\(A\)\(iii\)](#).
3. ^[^] HHS regulations define Director as the director of CDC or a designee as approved by the Director or Secretary of HHS. See [42 CFR 34.2\(g\)](#).
4. ^[^] HHS regulations define Director as the director of CDC or a designee as approved by the Director or Secretary of HHS. See [42 CFR 34.2\(g\)](#).
5. ^[^] See Title II of [Pub. L. 91-513 \(PDF\)](#), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at [21 U.S.C. 801](#) et. seq.
6. ^[^] See Title II of [Pub. L. 91-513 \(PDF\)](#), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at [21 U.S.C. 801](#) et. seq.
7. ^[^] See [INA 212\(a\)\(2\)](#).
8. ^[^] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html).
9. ^[^] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html).
10. ^[^] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [[9 USCIS-PM C](#)] for more on waivers.

Chapter 8 - Drug Abuse or Drug Addiction

A. Drug Abuse or Drug Addiction

Applicants who are found to be drug abusers or addicts are inadmissible. ^[1] Drug abuse and drug addiction are current substance-use disorders or substance-induced disorders of a controlled substance listed in Section 202 of the Controlled Substances Act, as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association or by another authoritative source as determined by the Director. ^[2]

In 2010, the Centers for Disease Control and Prevention (CDC) changed the Technical Instructions on how a civil surgeon determines whether an applicant is a drug abuser or drug addict. ^[3] The civil surgeon must now make this determination according to the DSM as specified in the Technical Instructions. ^[4]

If the applicant is classified as a drug abuser or addict, the applicant can apply again for an immigration benefit if his or her drug abuse or addiction is in remission. Remission is now defined by DSM criteria, and no longer by a set timeframe as it was under previous Technical Instructions. ^[5] In order for an applicant's drug abuse or addiction to be classified as in remission, the applicant must return to a civil surgeon for a new assessment.

If the officer has reason to question the completeness or accuracy of the medical examination report, the officer should ask CDC to review the medical report before sending a Request for Evidence (RFE).

Most applicants who are found to be drug abusers or addicts are ineligible for a waiver; the availability depends, however, on the immigration benefit the applicant seeks. ^[6]

B. Part of Form I-693 Addressing Drug Abuse or Drug Addiction

The civil surgeon must check the appropriate findings box on the medical examination report. The civil surgeon should also either annotate the findings in the remarks section or attach a report, if the space provided is not sufficient. However, the officer should not RFE simply because the civil surgeon has omitted the remarks or failed to attach a report.

C. Request for CDC Advisory Opinion

If an officer has a case where there is a question concerning the diagnosis and/or classification made by the civil surgeon or panel physician, the officer may forward the pertinent documents to CDC and request an advisory opinion.

The request should include a cover letter indicating the request and reason(s) for the request.

The request should include the following documents:

- A copy of the medical examination documentation ([Form I-693](#) or Form DS-2053/DS-2054, and its related worksheets);
- A copy of the provided medical report(s) detailing the medical condition for which the advisory opinion is being requested; and
- Copies of all other relevant medical reports, laboratory results, and evaluations connected to the medical condition.

The documents should be mailed to the following address:

Centers for Disease Control and Prevention
Division of Global Migration and Quarantine
1600 Clifton Road, Mailstop E 03
Atlanta, GA 30333

Attention: Quality Assessment Program (QAP)/Advisory Opinion

If the officer determines that a waiver case warrants expeditious review by CDC, the case may be faxed to (404) 639-4441 or emailed to cdcqap@cdc.gov, Attention: Quality Assessment Program (QAP)/Advisory Opinion, Urgent. If sent via email, the documents should be sent in password protected file(s). If sent via fax, the fax cover sheet should request that the case be reviewed expeditiously and that CDC's response be sent via fax. The officer should also email CDC a cdcqap@cdc.gov, advising that an expedited request was sent via fax.

Once the documents are received by CDC, the documents are reviewed and CDC will forward a response letter with results of the review to the requesting USCIS office. Only CDC's response is provided to the requesting USCIS office.

CDC's usual processing time for review and response back to the requesting USCIS office is approximately 4 weeks.

Upon receipt, the officer should review CDC's response letter to determine next steps.

Footnotes

1. ^[^] See [INA 212\(a\)\(1\)\(A\)\(iv\)](#).

2. ^[^] See Title II of [Pub. L. 91-513 \(PDF\)](#), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at 21 U.S.C. 801 et. seq. See [42 CFR 34.2\(h\)](#) (drug abuse). See [42 CFR 34.2\(i\)](#) (drug addiction). HHS regulations define Director as the Director of CDC or a designee as approved by the Director or Secretary of HHS. See [42 CFR 34.2\(g\)](#).
3. ^[^] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html).
4. ^[^] The DSM is a publication of the American Psychiatric Association. Considerations that were relevant under previous Technical Instructions, such as a pattern of abuse or a history of experimental use of drugs, no longer play a direct role in the admissibility determination; they are now only considered as one of the elements under the DSM assessment. The assessment under the DSM is complicated. For more information, please see the Technical Instructions.
5. ^[^] Under the pre-2010 Technical Instructions, an applicant's substance abuse or addiction was in remission if the applicant had not engaged in non-medical use of a controlled substance within the past 3 years, or non-medical use of a non-controlled substance within the past 2 years.
6. ^[^] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [[9 USCIS-PM C](#)] for more on waivers.

Chapter 9 - Vaccination Requirement

A. Vaccination Requirements for Immigrants

Some vaccines are expressly required by statute. Others are required because the Centers for Disease Control and Prevention (CDC) have determined they are in the interest of public health.^[1]

The Immigration and Nationality Act (INA)^[2] specifies the following vaccinations:

- Mumps, measles, rubella;
- Polio;
- Tetanus and diphtheria toxoids;^[3]
- Pertussis;
- Haemophilus influenza type B; and
- Hepatitis B.

CDC requires the following additional vaccines for immigration purposes:

- Varicella;
- Influenza;
- Pneumococcal pneumonia;
- Rotavirus;
- Hepatitis A; and
- Meningococcal.

If the applicant has not received any of the listed vaccinations and the vaccinations are age appropriate and medically appropriate, the applicant has a Class A condition and is inadmissible. Generally, all age appropriate vaccine rows of the

vaccination assessment must have at least one entry before the assessment can be considered to have been properly completed.

B. Blanket Waiver if Vaccine is “Not Medically Appropriate”

1. Definition of “Not Medically Appropriate”

The term “not medically appropriate” applies to:

- Vaccinations that are not required based on the applicant’s age at the time of the medical exam (“not age appropriate”); ^[4]
- Vaccinations that cannot be administered on account of a medical contraindication (“contraindication”);
 - A contraindication is a condition in a recipient which is likely to result in a life-threatening problem if the vaccine is given.
 - Examples of contraindications include a severe allergic reaction to a vaccination that was previously given, or pregnancy.
- Vaccinations that are administered as a series in intervals, but there is insufficient time to complete the entire vaccination series at the time of the medical examination (“insufficient time interval”); ^[5] or
- The influenza vaccine if it is not the flu season, or if the vaccine for the specific flu strain missing is no longer available (“not flu season”).

If receiving the vaccine is not medically appropriate, the civil surgeon should indicate this medical finding on the [Form I-693](#) in the appropriate boxes. USCIS will then waive that vaccine(s). ^[6] A separate waiver application is not required for an officer to grant a waiver of the vaccination requirement as “not medically appropriate.”

The officer should generally accept a finding by the civil surgeon that a vaccine is not medically appropriate unless that finding is clearly wrong. For example, if a vaccine was age appropriate at the time of the medical exam based on the vaccination chart, ^[7] but the civil surgeon marked that the vaccine is not medically appropriate because it is not age appropriate, then it is clear that the civil surgeon’s mark is incorrect. The same is true for a finding that a vaccine is not medically appropriate because it is not flu season; the officer should be able to clearly see whether the finding is correct based on the date of the medical examination.

An officer, however, should usually defer to a civil surgeon’s finding that a vaccine is not medically appropriate because of a contraindication. This is because such a finding involves medical judgment.

As indicated in the previous section, generally all age appropriate vaccine rows of the vaccination assessment must have at least one entry before the assessment can be considered to have been properly completed. However, if the officer can see from the record that the age appropriate vaccine was not required because, for instance, “it is not the flu season” but the civil surgeon failed to mark this on the vaccination assessment, then the officer may grant a blanket waiver despite the omission. In such cases, the officer should annotate in the “For USCIS Use Only” Remarks box in the vaccination record that a blanket waiver was granted.

2. Pregnancy or an Immuno-Compromised Condition ^[8]

Some vaccines are, in general, not medically appropriate during pregnancy. These vaccines will likely be marked as contraindicated on [Form I-693](#) if the applicant was pregnant at the time of the medical examination. ^[9]

The civil surgeon may annotate in the remarks section that the applicant did not receive one or more vaccines because of a contraindication that is based on pregnancy or a condition other than pregnancy. The reason for the contraindication may be annotated by the civil surgeon on the [Form I-693](#); however, if it is omitted, the officer does not need to issue a Request for Evidence (RFE) solely for that omission as long as the contraindication is marked in the vaccine chart.

An officer should also never issue an RFE for additional vaccines if the applicant is no longer pregnant at the time of the adjudication of the adjustment of status. As long as the vaccination assessment was properly completed by the civil surgeon at the time of the examination, the vaccination assessment can be accepted. In other words, if a woman did not receive certain required vaccines because she was pregnant at the time of the medical examination, and the contraindication box is marked by the civil surgeon, the applicant is not required to get those vaccines later at the time of the adjudication.

Likewise, some vaccines are not medically appropriate for applicants who have an immuno-compromised condition (such as HIV/AIDS or a weakened immune system because of taking certain medications) and may be marked by the civil surgeon as contraindicated. ^[10]

In the case of an immuno-compromised person, the officer should never issue an RFE for additional vaccines even if, at the time of the adjudication of adjustment of status, the applicant is no longer immuno-compromised. As long as the vaccination assessment was properly completed at the time of the examination by the civil surgeon, the vaccination assessment can be accepted. The applicant should not be required to get the missing vaccines later at the time of the adjudication.

3. Blanket Waiver due to Nationwide Vaccination Shortage

USCIS will grant a blanket waiver only in the case of a vaccination shortage if CDC recommends that USCIS should do so based on CDC's assessment that there is a nationwide shortage.

An officer may only grant a blanket waiver for a vaccine based on a vaccination shortage if the following circumstances are met:

- CDC declares that there is a nationwide vaccination shortage, and issues the appropriate statement on its website for civil surgeons;
- USCIS issues the appropriate statement on [uscis.gov](#); and
- The civil surgeon annotates the medical examination form in compliance with any additional requirements specified by CDC or USCIS.

The grant of this blanket waiver does not differ from the grant of other blanket waivers.

4. Vaccines Not Routinely Available Abroad

"National vaccination shortage" principles do not apply overseas. In the context of overseas vaccinations, the term panel physicians use to indicate the unavailability of a vaccine is "not routinely available." Therefore, if the adjustment applicant is permitted to use the vaccination assessment completed overseas, ^[11] then officers should not find the applicant inadmissible solely based on the lack of the vaccine(s) that is "not routinely available." Officers should also not issue an RFE for corrective action. USCIS will grant a blanket waiver in these cases.

C. Adjudication Steps

Vaccination Requirement: Adjudication Steps

Vaccination Requirement: Adjudication Steps

Step 1	Determine which vaccination(s) were age appropriate for the applicant to receive based on the applicant's age on the date the medical exam was completed. [12]
Step 2	Verify that any vaccine that was required (age appropriate) [13] as of the date of the medical exam is marked as: - Received by the applicant; or "Not medically appropriate" because of contraindication, inappropriate time interval, or not flu season.
Step 3	If the required (age appropriate) vaccinations were not received or not marked as "not medically appropriate" as of the date the medical exam was completed, determine whether the missing vaccinations would still be required as of the date of adjudication. Vaccinations missing at the time of the medical exam may no longer be required as of the date of adjudication if, for example, the applicant has aged out, or it is not the flu season, or a vaccine is no longer required by law.
Step 4	If the missing vaccinations are no longer required as of the date of the adjudication, the vaccination requirements have been met.
Step 5	If the missing vaccinations would still be required, the officer should send an RFE for an updated Form I-693 showing the applicant has received those vaccinations.

D. Vaccination Chart

CDC's most updated vaccination table for civil surgeons can be located through the following link: [Vaccination Chart in Technical Instructions](#).

USCIS officers should rely on the following chart to determine inadmissibility based on failure to meet the vaccination requirements. This chart is specifically made for USCIS and is updated as of January 28, 2014.

The chart is not intended to be used by civil surgeons.

Vaccination Chart

Age of Applicant	Age Appropriate Vaccinations (Required for Immigration Purposes)
Birth through 5 weeks	Hepatitis B
6 weeks through 7 weeks	- Hepatitis B - Rotavirus

Age of Applicant	Age Appropriate Vaccinations (Required for Immigration Purposes)
2 months through 5 months	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • Hib • Hepatitis B • Pneumococcal (for PCV) • Rotavirus
6 months through 7 months	• DT, DTP, or DTaP • PV or OPV (Note: OPV not administered in U.S.) • Hib • Hepatitis B • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31) • Rotavirus
8 months through 11 months	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • Hib • Hepatitis B • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31)
12 months through 23 months	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hib • Hepatitis B • Varicella • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31) • Hepatitis A
2 years through 4 years	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hib • Hepatitis B • Varicella • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31)

Age of Applicant	Age Appropriate Vaccinations (Required for Immigration Purposes)
5 years through 6 years	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hepatitis B • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
7 years through 10 years	• Td or Tdap • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hepatitis B • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
11 years through 17 years	• Td or Tdap • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hepatitis B • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31) • Meningococcal
18 years	• Td or Tdap • MMR • Hepatitis B • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31) • Meningococcal
19 years through 49 years	• Td or Tdap • MMR • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
50 years through 59 years	• Td or Tdap • MMR (if born in 1957 or later) • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)

Age of Applicant	Age Appropriate Vaccinations (Required for Immigration Purposes)
60 years through 64 years	• Td or Tdap • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
65 years and older	• Td • Varicella • Pneumococcal (for PPV) • Influenza (during flu season only; Oct. 1 thru Mar. 31)

E. Special Vaccination Considerations

Additionally, officers should pay special attention to the following developments.

1. Human Papillomavirus (HPV) Vaccination

From August 1, 2008 through December 13, 2009, human papillomavirus (HPV) vaccination was required for female applicants ages 11 years through 26 years. The requirement was eliminated on December 14, 2009, and affects any admissibility determination under [INA 212\(a\)\(1\)\(A\)\(ii\)](#) on that date or thereafter. Therefore, for adjudications taking place on or after December 14, 2009, officers should disregard any annotation of the HPV vaccine, or the lack thereof, on [Form I-693](#) or U.S. Department of State's Vaccination Documentation Worksheet (Form DS-3025), when determining whether the vaccination requirements are met.

2. Zoster Vaccination

From August 1, 2008 through December 13, 2009, the zoster vaccination was required for applicants ages 60 years or older unless the applicant had received the varicella vaccine.

The zoster vaccine, however, was not available in the United States due to a nationwide shortage from the time it became mandatory. Therefore, even though the vaccine was missing, the [Form I-693](#) could be accepted if the physician was unable to obtain the vaccine.

On December 14, 2009, the zoster vaccine was removed from the list of required vaccines for immigration purposes, and the change affects any admissibility determination made on or after that date. Therefore, officers should disregard any annotation of the zoster vaccine, or the lack thereof, on any [Form I-693](#) or U.S. Department of State's Vaccination Documentation Worksheet (Form DS-3025), when determining whether the vaccination requirements are met.

3. Influenza Vaccination

The flu vaccination is only available during the flu season. For purposes of [Form I-693](#), the flu season commences annually on October 1 and runs through March 31.

Over time, CDC has changed the age category of applicants required to obtain the flu vaccine for immigration purposes. As of November 16, 2010, CDC's Technical Instructions require that all applicants 6 months of age or older receive the flu vaccine

during the flu season.

If an applicant was required to obtain the flu vaccine at the time of the medical examination (the date of the civil surgeon’s certification governs) but a flu vaccine annotation is missing, the officer should only issue an RFE if it is still the same flu season and if it is reasonable to expect that the applicant will be able to obtain the flu vaccine within the time frame of the RFE.

This accounts for the fact that the flu vaccine is strain-specific and only available for a limited time each year. The officer should not issue an RFE if the applicant will not be able to obtain the strain-specific flu vaccine that had been required at the time of the medical examination because:

- It is no longer the same flu season; or
- It is not the flu season at all.

4. Vaccination Requirements Prior to August 1, 2008

The following vaccines were NOT required prior to August 1, 2008: Hepatitis A, meningococcal, rotavirus, human papillomavirus (HPV), and zoster. ^[14]

F. Completion of the Results Section by the Civil Surgeon

According to the Vaccination Component of the Technical Instructions, the civil surgeon should mark the appropriate results box at the bottom of the vaccination assessment chart. The Technical Instructions direct the civil surgeon to only check one appropriate box.

The officer should be aware that civil surgeons may improperly mark the boxes because they may misunderstand the meaning of these boxes. Therefore, the officer should determine, from the vaccination assessment completed by the civil surgeon, whether the applicant received all vaccines, which blanket waivers should be granted, and whether the applicant requires any other waivers. The officer should exercise discretion in reviewing the vaccination chart and when evaluating the results boxes at the bottom of the vaccination assessment chart.

If the civil surgeon did not check any result boxes, the officer should only return the form for corrective action if he or she is unable to ascertain whether the applicant is admissible. The officer should never alter or complete sections on the medical examination report that are the responsibility of the civil surgeon, such as the results boxes.

The results boxes and their meanings are described below (according to the Vaccination Component of the Technical Instructions).

Vaccination Record: Explanation of Results	
Applicant may be eligible for blanket waiver(s) as indicated above	This box will usually be checked because some vaccines may not be age appropriate for the applicant, a vaccination series could not be completed, there was a contraindication, or because of any other condition noted in the “Not Medically Appropriate” heading.

Vaccination Record: Explanation of Results

Applicant will request an individual waiver based on religious or moral convictions	If an applicant objects to one of the vaccines based on religious or moral convictions, the "Applicant will request an individual waiver based on religious or moral convictions" box must be checked. This is not a blanket waiver, and the applicant will have to submit a waiver request on Form I-601. Even if the applicant otherwise requires a blanket waiver(s), the civil surgeon must check this box, and not the box titled "Applicants may be eligible for blanket waivers." It may be, however, that the civil surgeon checks both boxes, in which case, the officer should just request the waiver documentation that establishes the religious or moral conviction.
Vaccine history complete for each vaccine, all requirements met	If the applicant has met the vaccination requirements, i.e., completed the series for all required vaccines, the "Vaccine history complete for each vaccine, all requirements met" box must be checked.
Applicant does not meet immunization requirements	If an applicant's vaccine history is incomplete and the applicant refuses administration of a single dose of any required vaccine that is medically appropriate for the applicant, the "Applicant does not meet immunization requirements" box must be checked. If this box is checked, the applicant may be inadmissible. Depending on the case, the officer should ask for the reason through an RFE, Notice of Intent to Deny (NOID), or an interview. If the applicant refused to be vaccinated on account of a religious or moral conviction, the officer should direct the applicant to file a waiver. If the applicant had no religious or moral reason for refusal, the applicant is inadmissible. The officer should not return the assessment to the civil surgeon if he or she has enough information to determine health-related inadmissibility.

G. Exception for Certain Adopted Children

Some children are not subject to the vaccination requirement ^[15] if all of the following conditions are met:

- The child is 10 years of age or younger;
- The child is classified as an orphan (IR3 or IR4) or a Hague Convention adoptee (IH3 or IH4); ^[16] and
- The child is seeking an immigrant visa as an immediate relative. ^[17]

For the child to benefit from this exception, the adopting parent(s) must sign an affidavit prior to the immigrant visa issuance, affirming that the child will receive the required vaccination within 30 days of admission to the United States or at the earliest time that is medically appropriate. However, noncompliance with the vaccination requirements following the child's admission to the United States is not a ground for removal.

The Department of State has developed a standard affidavit form, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child (Form DS-1981), to ensure that adopting parents are aware of the possibility of an exception from the vaccination requirements and of their obligation to ensure that the child is vaccinated following admission. ^[18] The completed form must be submitted to the consulate as part of the immigrant visa application.

Only orphans or Convention adoptees whose adoptive or prospective adoptive parents have signed an affidavit will be exempt from the vaccination requirement. If the adopting parent(s) prefers that the child meet the vaccination requirement as part of the visa application process, the child may benefit from the waiver(s) for those vaccinations which the panel physician determines are medically inappropriate. ^[19]

When the adoptive or prospective adoptive parent cannot sign the affidavit in good faith because of religious or moral objections to vaccinations, the child will require a waiver. ^[20]

Footnotes

1. ^[^] Effective December 14, 2009, CDC changed its methods on how to assess which vaccines should be required for immigration purposes. This led to changes in the list of required vaccines; some that were required prior to 2009 are no longer required since December 14, 2009.
2. ^[^] See [INA 212\(a\)\(1\)\(A\)\(ii\)](#).
3. ^[^] Applicants who have completed the initial DTP/DTaP/DT or Td/Tdap series should receive a Td/Tdap booster shot every 10 years. If the last dose was received more than 10 years ago, the applicant is required to have the booster shot, otherwise the applicant is inadmissible under [INA 212\(a\)\(1\)\(A\)\(ii\)](#).
4. ^[^] See Section D, Vaccination Chart [[8 USCIS-PM B.9\(D\)](#)] for more information.
5. ^[^] In these cases, the civil surgeon will administer the dose due at the time of the medical examination and mark on the form that there is not sufficient time to complete the entire vaccination series (insufficient time interval).
6. ^[^] See [INA 212\(g\)\(2\)\(B\)](#).
7. ^[^] See Section D, Vaccination Chart. [[8 USCIS-PM B.9\(D\)](#)].
8. ^[^] Immuno-compromised condition refers to a medical state that does not allow the body to fight off infection.
9. ^[^] See CDC's Vaccination Technical Instructions for a list of the specific vaccines not medically appropriate during pregnancy, available at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html).
10. ^[^] See CDC's Vaccination Technical Instructions for a list of the specific vaccines not medically appropriate for immuno-compromised persons, available at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html).
11. ^[^] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [[8 USCIS-PM B.3](#)] for more information on applicants who may use the vaccination assessment completed overseas for adjustment purposes.
12. ^[^] See Section D, Vaccination Chart [[8 USCIS-PM B.9\(D\)](#)] for a chart of vaccine requirements by age.
13. ^[^] Since the applicant was not required to receive non-age appropriate vaccines at the time of the medical exam, the officer does not need to review these vaccine rows at the time of adjudication.

14. [^] Please see information immediately above for the zoster and the HPV vaccine, since these vaccines have not been required since December 2009.
15. [^] Under [INA 212\(a\)\(1\)\(C\)](#), as amended by Section 2 of the International Adoption Simplification Act, [Pub. L. 111-287 \(PDF\)](#), 124 Stat. 3058, 3058 (November 30, 2010).
16. [^] See [INA 101\(b\)\(1\)\(F\)](#) and [INA 101\(b\)\(1\)\(G\)](#), respectively.
17. [^] Under [INA 201\(b\)](#); a child can either obtain an IR-3 or IR-4 immigrant visa as an immediate relative if the child is an “orphan” or an IH-3 or IH-4 immigrant visa if the child is a Hague Convention adoptee.
18. [^] The affidavit is made under oath or affirmation in the presence of either the consular officer or a notary public.
19. [^] See [INA 212\(g\)\(2\)\(B\)](#). This waiver authority has been delegated to the Department of State and a consular officer can grant the waiver. Neither a form nor a fee is required.
20. [^] When the waiver application is for a child, the child’s parent must satisfy the waiver requirements under [INA 212\(g\)\(2\)\(C\)](#). The waiver is filed by submitting an Application for Waiver of Grounds of Inadmissibility ([Form I-601](#)) along with the required fee. See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility, Chapter 3, Waiver of Immigrant Vaccination Requirement [[9 USCIS-PM C.3](#)] for more information on the requirements for vaccination waivers based on religious beliefs or moral objections.

Chapter 10 - Other Medical Conditions

The civil surgeon should annotate any other medical condition the applicant may have, as directed by the Technical Instructions. A condition annotated in this section does not render the applicant inadmissible on health-related grounds of inadmissibility. However, it may impact other inadmissibility determinations.

Chapter 11 - Inadmissibility Determination

A. Civil Surgeon or Panel Physician Documentation

If a “Class A condition” is noted on the medical form, it is conclusive evidence that the applicant is inadmissible. The Class A annotation may also indicate that an applicant could be inadmissible on other grounds of inadmissibility. For example, “harmful behavior” associated with a physical or mental disorder, or illegal drug use, may have resulted in criminal convictions that make an applicant inadmissible under [INA 212\(a\)\(2\)](#). However, a criminal conviction should be supported by conviction records or similar evidence, and not just the medical examination report. ^[1]

If a civil surgeon or panel physician only annotates a “Class B condition” (per HHS regulations), the applicant is never inadmissible on health-related grounds. The officer should remember that if the civil surgeon or panel physician indicates on the [Form I-693](#) that a former Class A condition is now a Class B condition, the applicant is no longer inadmissible. However, a Class B condition may indicate that the applicant could be inadmissible on other grounds because of the condition, such as public charge. ^[2]

The officer may encounter medical documentation that is not fully completed. In this case, the officer should issue a Request for Evidence (RFE). If the physician fails to properly complete the form in response to the RFE, the applicant has not established that he or she is clearly admissible to the United States. ^[3]

B. Applicant’s Declaration

If the applicant indicates that he or she may be inadmissible based on a medical reason, the officer must order a medical examination of the applicant. Based on the results of that medical exam, the officer should ascertain whether the applicant actually has a Class A, Class B, or no condition at all that is relevant to the applicant's admissibility. The applicant should not be found inadmissible unless the medical examination confirms the presence of a Class A medical condition.

C. Other Information

Even if the civil surgeon or panel physician did not annotate a Class A or B condition in the medical documentation, or if the applicant was not required to undergo a medical examination, the officer may order or reorder an immigration medical examination at any time if he or she has concerns as to an applicant's inadmissibility on health-related grounds.

The concern should be based on information in the A-file, information that is revealed by the applicant or another applicant during an interview, or information revealed during a background investigation.

D. Other Grounds of Inadmissibility

1. General Considerations

Where relevant, the information contained in the medical examination can be used to determine whether other grounds of inadmissibility may apply. For instance, health is one factor to consider when determining if someone is inadmissible on public charge grounds. This factor must, however, be considered in light of all other factors specified by law^[4] and in standard public charge guidance.^[5]

2. Criminal Grounds

An applicant may be inadmissible on criminal grounds if he or she has admitted to committing certain controlled substance violations.^[6] An applicant may acknowledge to a civil surgeon or a panel physician that he or she has used a controlled substance, which the physician then may annotate on the medical documentation.

USCIS does not consider this acknowledgement, in and of itself, a valid admission that would make an applicant inadmissible on criminal grounds.^[7] However such an acknowledgment of drug use may open a line of questioning to determine criminal inadmissibility. USCIS officers should find that an applicant has made a valid "admission" of a crime only when the admission is made in accordance with the requirements outlined by the Board of Immigration Appeals.^[8]

E. Privacy Concerns

An officer should take great care to regard the privacy of the applicant. The officer should generally not discuss the applicant's medical issues with applicants other than the applicant, his or her counsel, immigration officers, or other government officials^[9] who clearly have a need to know the information.

The officer should not directly contact a civil surgeon to discuss an applicant's inadmissibility or medical issues. If the officer has any concerns that cannot be resolved by reviewing the evidence in the record, the officer should issue an RFE.

Footnotes

1. ^[^] See Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)] for more information.

2. [^] See Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)] for more information.
3. [^] See INA 291.
4. [^] See INA 212(a)(4)(B).
5. [^] Whether the person is likely to become a public charge is determined according to standard public charge guidance: Is it likely that the person will become primarily dependent on the Government for subsistence, as shown by (a) receipt of public cash assistance for income maintained or (b) long-term institutionalization at public expense? See 64 FR 28689 (PDF) (Mar. 26, 1999).
6. [^] See INA 212(a)(2)(A).
7. [^] A valid admission (absent a conviction) for purposes of criminal inadmissibility grounds “requires that the [foreign national] be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms.” See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957).
8. [^] See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957). Even in the Ninth Circuit, USCIS officers should continue to follow *Matter of K-*, rather than *Pazcoquin v. Radcliffe*, 292 F.3d 1209 (9th Cir. 2002). Following *Matter of K-* will ensure that any admission the person may make is a fully informed one.
9. [^] Such as the Centers for Disease Control and Prevention.

Chapter 12 - Waiver Authority

USCIS may provide waivers for some medical grounds of inadmissibility under INA 212(g) and other provisions governing the specific immigration benefit the applicant is seeking. In certain cases, applicants must file a waiver application ^[1] either along with their Application to Register Permanent Residence or Adjust Status (Form I-485) and Report of Medical Examination and Vaccination Record (Form I-693) or in response to a Request for Evidence. ^[2]

Footnotes

1. [^] See Application for Waiver of Grounds of Inadmissibility (Form I-601), Application By Refugee for Waiver of Grounds of Excludability (Form I-602), or Application for Waiver of Grounds of Inadmissibility Under Section 245A or 210 of the Immigration and Nationality Act (Form I-690).
2. [^] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more information on waivers of medical grounds of inadmissibility.

Part C - Civil Surgeon Designation and Revocation

Chapter 1 - Purpose and Background

A. Purpose

USCIS designates eligible physicians as civil surgeons to perform medical examinations for immigration benefits applicants in the United States. ^[1] Civil surgeons assess whether applicants have any health conditions that could result in exclusion from the United States.

Based on the results of the civil surgeon's assessment, USCIS determines whether the applicant is admissible to the United States or whether the applicant is inadmissible based on health-related grounds of inadmissibility. The health-related grounds of inadmissibility^[2] and the medical examination of applicants are designed to protect the health of the United States population.

B. Background

The Immigration Act of 1882^[3] first granted the Secretary of the Treasury the authority to examine foreign nationals arriving in the United States to prohibit the entry of any "person unable to take care of himself or herself without becoming a public charge." The Act provided that the examination be delegated to state commissions, boards, or officers.

The term "civil surgeon" was first introduced in the Immigration Act of 1891 as an alternative to surgeons of the Marine Hospital Service if such surgeons were not available to perform the medical examination on arriving aliens.^[4]

The Immigration and Nationality Act (INA) of 1952, as amended by the Homeland Security Act of 2002,^[5] authorizes the Secretary of Homeland Security to designate civil surgeons if medical officers of the U.S. Public Health Service (USPHS) are not available. USCIS exercises the authority to designate civil surgeons on the Secretary's behalf, and may designate as many or as few civil surgeons as needed.^[6] Since USPHS medical officers are rarely available today, civil surgeons generally provide all immigration medical examinations required of foreign nationals in the United States.

The civil surgeon's primary role is to perform immigration medical examinations to assess whether foreign nationals have any of the following medical conditions that could result in their inadmissibility:

- Communicable disease of public health significance;
- Failure to show proof of required vaccinations (for immigrant visa applicants and adjustment of status applicants only);
- Physical or mental disorder with associated harmful behavior; and
- Drug abuse or addiction.^[7]

Civil surgeons must perform such examinations according to the Technical Instructions for the Medical Examination of Aliens in the United States, issued by the Centers for Disease Control and Prevention (CDC), an agency of the Department of Health and Human Services (HHS).

The civil surgeon must also record the results of the immigration medical examination on the Report of Medical Examination and Vaccination Record ([Form I-693](#)) according to the form instructions. A foreign national submits the form to USCIS as part of his or her immigration benefits application, if required. USCIS reviews the form to determine whether the applicant is inadmissible based on health-related grounds.

C. Professional Qualifications

Only licensed physicians with at least four years of professional experience may be designated as civil surgeons.^[8] USCIS interprets "not less than four years' professional experience" to require four years of professional practice after completion of training. Based on consultations with CDC, USCIS has determined that internships and residences do not count toward the four-year professional experience because they are both part of a physician's training.^[9] Even if one is already licensed as a physician, the four-year period of professional practice only begins when the post-graduate training ends.

Therefore, to be eligible for civil surgeon designation, the physician must meet all of the following requirements:

- Be either a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.);

- Be licensed to practice medicine without restrictions in the state in which he or she seeks to perform immigration medical examinations; and
- Have the requisite four years of professional experience.

Registered nurses, nurse practitioners, medical technicians, physical therapists, physician assistants, chiropractors, podiatrists, and other healthcare workers who are not licensed as physicians (M.D. or D.O.) may not be designated or function as civil surgeons.

D. Responsibilities of Designated Civil Surgeons

Civil surgeon designation comes with a number of responsibilities. Physicians who fail to meet their responsibilities as a civil surgeon may have their designation revoked by USCIS. ^[10]

Civil surgeons' responsibilities include: ^[11]

- Completing medical examinations according to HHS regulations and CDC requirements, such as the Technical Instructions for the Medical Examination of Aliens in the United States (Technical Instructions) and any updates posted on CDC's website; ^[12]
- Making referrals for treatment and filing case reports, as required by the Technical Instructions;
- Reporting the results of the immigration medical examination on [Form I-693](#) accurately;
- Informing USCIS of any changes in contact information within 15 days of the change; ^[13] and
- Refraining from any activity related to the civil surgeon designation and medical examination of immigrants if USCIS revokes the physician's civil surgeon designation. This includes the physician informing his or her patients seeking immigration medical examinations that the physician may no longer complete medical examinations.

E. Legal Authorities

- [INA 212\(a\)\(1\)](#) – Health-related grounds
- [INA 232](#); [8 CFR 232](#) – Detention of aliens for physical and mental examination
- [42 U.S.C. 252](#) – Medical examination of aliens
- [42 CFR 34](#) – Medical examination of aliens
- Technical Instructions for Civil Surgeons (Technical Instructions), and updates ^[14]

Footnotes

1. ^[^] If a physician wishes to be designated, he or she submits an application to USCIS for designation. Civil Surgeons should be distinguished from panel physicians. Panel physicians are designated by the Department of State and provide immigration medical examinations required as part of an applicant's visa processing at a U.S. Embassy or consulate abroad. See [42 CFR 34.2\(o\)](#) and [22 CFR 42.66](#). See [9 FAM 302.2-3\(E\)](#), Panel Physicians.

2. ^[^] See [INA 212\(a\)\(1\)](#).

3. ^[^] See 22 Stat. 214 (August 3, 1882).
4. ^[^] See Section 8 of the Immigration Act of 1891, 26 Stat. 1084, 1085 (March 3, 1891).
5. ^[^] See [Pub. L. 107-296 \(PDF\)](#), 116 Stat. 2135 (November 25, 2002).
6. ^[^] See [8 CFR 232.2\(b\)](#).
7. ^[^] See [INA 212\(a\)\(1\)](#).
8. ^[^] See [INA 232\(b\)](#) and [8 CFR 232.2\(b\)](#).
9. ^[^] A fellowship, however, would generally count toward professional experience since fellowships are not typically required as part of a physician's training.
10. ^[^] See Chapter 4, Termination and Revocation [[8 USCIS-PM C.4](#)] for more information on revocation.
11. ^[^] See the Instructions to the Report of Medical Examination and Vaccination Record ([Form I-693](#)) and Application for Civil Surgeon Designation ([Form I-910](#)) for more information on these responsibilities.
12. ^[^] Available online at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html).
13. ^[^] See uscis.gov/i-910 for more information on how to update contact information.
14. ^[^] Available online at [cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html).

Chapter 2 - Application for Civil Surgeon Designation

A. Background

Historically, civil surgeon designation was an informal process handled by USCIS District Directors. By regulation, USCIS District Directors are authorized to designate civil surgeons in their respective jurisdictions. ^[1] Physicians submitted informal written requests for civil surgeon designation to the district or field office with jurisdiction, along with documentary evidence showing they meet the professional qualifications to be a civil surgeon.

As of March 11, 2014, USCIS replaced the informal, decentralized civil surgeon application process with a formal, centralized process by (a) requiring centralized filing of the Application for Civil Surgeon Designation ([Form I-910](#)), at a Lockbox facility, and (b) delegating the District Directors' authority to grant, deny, and revoke civil surgeon designation to the Director of the National Benefits Center (NBC). ^[2] These changes were made to improve the application intake process, enhance case management, promote consistency and uniformity in decision-making, and improve the overall efficiency and integrity of the program.

B. Application

A physician generally must apply for civil surgeon designation with USCIS. However, physicians who qualify under a blanket designation are exempt from the filing and fee requirements. ^[3]

USCIS will only accept ^[4] and consider complete applications for civil surgeon designation; applications must be submitted in accordance with the form instructions. ^[5]

A complete application consists of the following:

1. Application for Civil Surgeon Designation ([Form I-910](#))

A physician seeking designation as a civil surgeon must complete all required parts of the Application for Civil Surgeon Designation. ^[6]

2. Filing Fee

The physician must include the required filing fee ^[7] with the completed Application for Civil Surgeon Designation. Applications for civil surgeon designation that do not include the correct filing fee will be rejected.

3. Evidence

The physician must include evidence that shows that he or she meets the eligibility requirements to be designated a civil surgeon. At a minimum, the civil surgeon applicant must submit all of the following evidence with the completed Application for Civil Surgeon Designation (Form I-910): ^[8]

- Proof of U.S. citizenship, legal status, or authorization to work in the United States;
- A copy of the physician's current medical license in the state in which he or she seeks to perform immigration medical examinations;
- A copy of the physician's medical degree verifying he or she is an M.D. or D.O.; and
- Evidence to verify the requisite professional experience, such as letters of employment verification.

4. Signature

The physician must sign the application. ^[9] The signature must be submitted to USCIS on Application for Civil Surgeon Designation (Form I-910). Applications for civil surgeon designation that do not include a signature may be rejected or returned to the physician.

C. Adjudication of Civil Surgeon Applications

1. Adjudication

To determine whether to approve or deny the application for civil surgeon designation, the officer should follow these steps:

Adjudication of Civil Surgeon Applications

Step 1: Determine whether the physician meets all of the eligibility requirements to be designated a civil surgeon:

Step 1: Determine whether the physician meets all of the eligibility requirements to be designated a civil surgeon:

- Is the physician authorized to work in the United States? ^[10]
- Is the physician an M.D. or a D.O?
- Is the physician licensed without restriction in the state in which he or she seeks to perform immigration medical examinations?
- Does the physician have at least four years of professional experience, not including residency or internships or other experience related to training?

If there is insufficient information in the application and evidence submitted with the application to make this determination, the officer may issue a Request for Evidence (RFE) for additional information such as documentary evidence establishing any of the eligibility requirements.

If the physician does not meet all of the eligibility requirements, the officer should **deny** the application. Otherwise, go to Step 2.

Step 2: Determine whether the application warrants a favorable exercise of discretion. ^[11]

In general, a favorable exercise of discretion is warranted unless there are adverse factors that prevent it.

An unfavorable exercise of discretion may, for instance, be applied to any applications submitted by physicians who had a prior civil surgeon designation revoked by USCIS, and where the concerns underlying that revocation have not been resolved.

If there is insufficient evidence in the application to make this determination, the officer may request additional information through the issuance of a Request for Evidence (RFE).

Examples

Example: The physician had a prior civil surgeon designation revoked due to the physician's confirmed participation in an immigration fraud scheme. The officer should deny the civil surgeon application as a matter of discretion. The fee will not be refunded since USCIS performed an adjudication of the application.

Example: The physician had a prior civil surgeon designation revoked due to suspension of her medical license. However, the officer determines that the underlying reason for the suspension has been resolved, is unlikely to recur, and the physician now has a current, unrestricted medical license. In this case, the officer may approve the civil surgeon application if the physician otherwise meets the eligibility requirements.

2. Approval

If the application for civil surgeon designation is approved, the officer should do the following:

Notification

Notify the physician in writing of the approval.

Files

Either create a new file for the physician who was granted civil surgeon designation; or, if a file for the physician already exists, update the file to reflect the grant of designation.

The files should be maintained in such a way as to facilitate retrieval or review of information relating to the specific civil surgeon. The file should be retained according to the established records retention schedule.

Updating Civil Surgeon List

The NBC should coordinate with External Affairs Directorate (EXA) to ensure the civil surgeon list is updated in a timely manner to reflect all newly designated civil surgeons. At a minimum, the newly designated civil surgeon's full name, name of medical practice, address, and telephone number should be added to the list. Particular care should be taken when entering the civil surgeon's zip code and telephone number since these are the primary ways that applicants search for civil surgeons.

3. Denial

If the application for civil surgeon designation is denied, the officer should do the following:

Notification

Notify the physician in writing of the denial. There is no appeal from a decision denying designation as a civil surgeon. However, the physician may file a motion to reopen or reconsider.^[12] In the decision denying designation as a civil surgeon, the officer must notify the physician of the possibility to file a timely motion to reopen or reconsider.

A physician who is denied designation is not precluded from reapplying for civil surgeon designation. In the decision denying designation as a civil surgeon, the officer should also notify the physician that he or she may reapply if the physician believes that he or she has overcome the reason(s) for denial.^[13]

Files

Create a new file for each physician who was denied designation; or, if a file for the physician already exists, the officer should update the file to reflect the denial of the designation.

4. File Maintenance

The files should be maintained in such a way as to facilitate retrieval or review of information relating to the specific civil surgeon. The file should be retained according to the established records retention schedule.

Footnotes

1. ^[^] See 8 CFR 232.2. In some circumstances, District Directors had delegated the designation authority to Field Office Directors in their districts.

2. ^[^] USCIS field offices continued to accept applications for civil surgeon designation until March 11, 2014. Federal regulations provide the authority for this transfer of authority: *Director or district director* prior to March 1, 2003, means the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. The terms also mean such other official, including an official in an acting capacity, within U.S. Citizenship and Immigration Services, U.S. Customs and Border

Protection, U.S. Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above for a particular geographic district, region, or area. See [8 CFR 1.2](#).

3. ^[^] See Chapter 3, Blanket Civil Surgeon Designation [[8 USCIS-PM C.3](#)] for more information.
4. ^[^] USCIS also has the authority to select as many (or as few) civil surgeons necessary to serve the needs of the jurisdiction. See [8 CFR 232.2\(b\)](#). Therefore, USCIS may also reject complete applications if it determines the jurisdiction's needs are met. In this case, USCIS would return the entire application package to the physician, including the fee associated with the application.
5. ^[^] Filing instructions can be found at uscis.gov/I-910.
6. ^[^] The current version of the form and instructions can be accessed online at uscis.gov/i-910.
7. ^[^] See [8 CFR 103.7\(b\)\(1\)\(i\)](#). The current filing fee can also be found at uscis.gov/i-910.
8. ^[^] If not all of the required initial evidence has been submitted or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer may request additional evidence.
9. ^[^] See [8 CFR 103.2\(a\)\(2\)](#).
10. ^[^] If an officer grants civil surgeon designation to a physician who is only authorized to work in the United States for a limited period of time, the designation should be limited to the duration of the physician's work authorization.
11. ^[^] USCIS has the discretion to designate as many (or as few) civil surgeons as needed. See [8 CFR 232.2\(b\)](#).
12. ^[^] See [8 CFR 103.5](#). To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion ([Form I-290B](#)), with fee. Forms and fee information can be found at uscis.gov.
13. ^[^] If the physician would like to reapply for civil surgeon designation because he or she has overcome the reason(s) for denial, the physician must file a new Application for Civil Surgeon Designation ([Form I-910](#)) with the required evidence and filing fee.

Chapter 3 - Blanket Civil Surgeon Designation

A. Blanket Designation of State and Local Health Departments ^[1]

1. Overview

USCIS has the authority to designate either individual physicians or members of a specified class of physicians as civil surgeons, provided they meet the legal requirements. ^[2] Through policy and in agreement with the Centers for Disease Control and Prevention (CDC), USCIS designated all state and local health departments as civil surgeons. Health departments may only use this blanket civil surgeon designation to complete the vaccination assessments for refugees seeking adjustment of status. ^[3]

This blanket designation eases the difficulties encountered by refugee adjustment applicants in complying with the vaccination requirement. It also relieves USCIS of the need to maintain lists of health departments and the names of individual physicians at these health departments.

2. Eligible Physicians

Participation in this blanket civil surgeon designation is entirely voluntary and at the discretion of each health department. Health departments may only participate under this blanket designation if they have physicians authorized to provide medical services who meet the professional qualifications of a civil surgeon ^[4] since only these qualifying physicians may certify the

vaccination assessment for refugees seeking adjustment of status. This includes volunteer physicians at state and local health departments.

Eligible physicians at health departments may, but are not required to, personally perform the vaccination assessment. Nurses or other medical professionals may perform the vaccination assessment and complete the vaccination record in the Report of Medical Examination and Vaccination Record ([Form I-693](#)) as long as the health department physician reviews and certifies the [Form I-693](#).

Neither health departments nor eligible physicians at health departments need to obtain approval from USCIS prior to performing the vaccination component of immigration medical examinations as specified in the next section. Blanket designated civil surgeons are exempt from both application and fee requirements for civil surgeon designation.

However, health departments and eligible physicians must review and be familiar with the Technical Instructions for the vaccination requirements before they can begin performing vaccination assessments. ^[5]

3. Scope

Pursuant to the understanding reached between USCIS and CDC, health departments may only use this blanket civil surgeon designation to complete the vaccination assessments for refugees seeking adjustment of status. ^[6] Therefore, health departments operating under this blanket designation should examine government-issued documents presented by the applicant to verify that he or she is a refugee. ^[7] This blanket designation does not cover asylees seeking adjustment of status. ^[8]

Accordingly, health departments operating under this blanket designation are authorized *only* to perform the vaccination component of the immigration medical examination for refugees seeking adjustment of status. If a health department physician would like to perform parts of the immigration medical examination other than the vaccination assessment, the physician must obtain designation as a civil surgeon through the standard application process. ^[9]

Refugees who require the entire medical exam, ^[10] will likewise need to visit a physician designated as a civil surgeon through the standard application process. ^[11]

4. Recording and Certification Requirements

Health departments operating under the blanket civil surgeon designation must record the vaccination assessment on the Report of Medical Examination and Vaccination Record ([Form I-693](#)) as follows:

- Ensure the applicant's information and certification are completed;
- Complete the vaccination record; and
- Complete the civil surgeon's information and certification.

In accordance with the agreements reached with CDC, health departments operating under the blanket civil surgeon designation are required to certify [Form I-693](#) by providing the attending physician's signature and a seal or stamp of the health department:

Physician Signature

The attending physician must sign [Form I-693](#). A signature stamp may be used. Health department nurses or other health care professionals may, but are not required to, co-sign the form. However, a form that has been signed only by a registered nurse, physician's assistant, or other medical professional who is not a licensed physician is not sufficient.

If a form for a refugee adjusting status has been signed only by a medical professional employed by the health department (without an accompanying signature by a medical doctor), a Request for Evidence (RFE) should be sent to the applicant for corrective action.

Health Department Stamp or Seal

The health department is also required to affix either the official stamp or raised seal (whichever is customarily used) of that health department on the space designated on the form.

As with all immigration medical examinations, the signed [Form I-693](#) must be placed in a sealed envelope, according to the form's instructions.

B. Blanket Designation of Military Physicians as Civil Surgeons

1. Overview

Through policy, USCIS extended a blanket civil surgeon designation to military physicians for the completion of all parts of a required immigration medical examination for members and veterans of the U.S. armed forces and certain eligible dependents if the military physician meets certain conditions.

This blanket designation eases the difficulties encountered by U.S. armed forces members, veterans, and certain eligible dependents when obtaining immigration medical examinations. It also eases the civil surgeon designation process for military physicians, since many military physicians are not licensed in the states in which they provide medical services for the military. Furthermore, this policy relieves USCIS of the need to maintain lists of individual military physicians designated as civil surgeons.

2. Eligible Physicians

Participation in this blanket civil surgeon designation is entirely voluntary and at the discretion of each medical facility. This blanket designation only applies to military physicians who:

- Meet the professional qualifications of a civil surgeon ^[12] except that the physician may be licensed in any state in the United States, and is not required to be licensed in the state in which the physician is performing the immigration medical examination;
- Are employed by the Department of Defense (DOD) or provides medical services to U.S. armed forces members, veterans, and their dependents as military contract providers or civilian physicians; and
- Are authorized to provide medical services at a military treatment facility (MTF) within the United States.

Neither the medical facility nor the physician who qualifies and wishes to participate in the blanket designation needs to obtain approval from USCIS prior to performing immigration medical examinations as specified in the next section. Blanket designated civil surgeons are exempt from both USCIS application and fee requirements for civil surgeon designation.

However, military physicians must review and be familiar with CDC's Technical Instructions for the Medical Examination of Aliens in the United States before they can begin performing immigration medical examinations. ^[13]

3. Scope

Pursuant to the understanding reached between USCIS and CDC, military physicians who qualify under this blanket civil surgeon designation may perform the entire immigration medical examination as long as the exam is conducted in the United

States on the premises of an MTF, and for a U.S. armed forces member, veteran, or dependent who is eligible to receive medical care at that MTF.

Military physicians must apply for civil surgeon designation under the standard designation process ^[14] if they wish to complete immigration medical examinations:

- In a U.S. location other than on the premises of an MTF; or
- For applicants other than those U.S. armed forces members, veterans, or dependents to whom they are authorized to provide medical services at an MTF.

U.S. armed forces members, veterans, or dependents will need to visit a physician designated as civil surgeon through the standard application process if they:

- Prefer to have the immigration medical examination performed by a physician who does not qualify under this blanket designation for military physicians;
- Prefer to have the immigration medical examination performed in a U.S. location other than at the MTF at which they are authorized to receive medical services; or
- Do not have access to a military physician who is performing immigration medical examinations under this blanket designation.

4. Recording and Certification Requirements

Military physicians operating under the blanket civil surgeon designation must record the results of the immigration medical examination on the Report of Medical Examination and Vaccination Record ([Form I-693](#)), according to the standard procedures all civil surgeons are required to follow.

In accordance with the agreements reached with CDC, a military physician operating under the blanket civil surgeon designation is required to certify [Form I-693](#) by providing both of the following on the form:

Physician Signature

The blanket designated civil surgeon must sign [Form I-693](#). A signature stamp may be used. Nurses or other health care professionals may, but are not required to, co-sign the form. However, a form that has been signed only by a registered nurse, physician's assistant, or other medical professional who is not a licensed physician is not sufficient. If a form for a U.S. armed forces member, veteran, or eligible dependent has been signed only by a medical professional employed by the military facility (without an accompanying signature by a medical doctor), an RFE should be sent to the applicant for corrective action.

MTF Stamp or Seal

The MTF is also required to affix either the official stamp or raised seal of that facility on the space designated on the form.

The signed [Form I-693](#) must be placed in a sealed envelope, according to the form's instructions.

Footnotes

1. ^[^] See [INA 209](#).

2. ^[^] As specified under [INA 232\(b\)](#), [8 CFR 232.2\(b\)](#), and [42 CFR 34.2\(b\)](#).

3. [^] See [INA 209](#).
4. [^] As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [[8 USCIS-PM C.1\(C\)](#)].
5. [^] The Technical Instructions are available online at: [cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html).
6. [^] See [INA 209](#).
7. [^] Refugees may present their Arrival-Departure Record (Form I-94), Refugee Travel Document (Form I-571), or Employment Authorization Document (Form I-766) as evidence of refugee status. However, health departments completing the vaccination assessment will not know whether a refugee seeks adjustment under [INA 209](#) or under another provision. Therefore, when reviewing a vaccination assessment completed by a blanket designated civil surgeon for a refugee seeking adjustment, the officer should confirm that the refugee is adjusting under [INA 209](#) before accepting the vaccination assessment performed by a blanket designated health department.
8. [^] See [INA 209](#).
9. [^] As outlined in Chapter 2, Application for Civil Surgeon Designation [[8 USCIS-PM C.2](#)].
10. [^] See [8 CFR 209.1\(b\)](#).
11. [^] However, blanket-designated health departments may still perform the *vaccination component* of the medical exam for refugees who require the entire medical exam.
12. [^] As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [[8 USCIS-PM C.1\(C\)](#)].
13. [^] The Technical Instructions are available online at: [cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html](https://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html).
14. [^] As outlined in Chapter 2, Application for Civil Surgeon Designation [[8 USCIS-PM C.2](#)].

Chapter 4 - Termination and Revocation

A. Voluntary Termination

A civil surgeon who no longer wishes to be designated as a civil surgeon should request, in writing, that USCIS terminate the designation. ^[1]

A physician who voluntarily terminates his or her civil surgeon designation must re-apply with USCIS if he or she wishes to be designated as a civil surgeon again.

B. Revocation

Current regulations do not contain specific revocation provisions; however, the law does not preclude revocation, especially when the physician no longer qualifies for civil surgeon designation.

1. Grounds for Revocation

USCIS may revoke a physician's civil surgeon designation if he or she:

- Fails to comply with the Technical Instructions, [Form I-693](#) Instructions, or fails to fulfill other responsibilities of a civil surgeon consistently or intentionally;
- Falsifies or conceals any material fact in the application for civil surgeon designation, or provides any false documents or information to obtain the designation;
- Knowingly falsifies or conceals any material fact on [Form I-693](#), or includes any false documents or information to support any findings in the record;
- Fails to maintain a currently valid and unrestricted license to practice as a physician in any state in which the physician conducts immigration medical examinations, unless otherwise excepted or exempted from this requirement;
- Is subject to any court or disciplinary action that revokes, suspends, or otherwise restricts the physician's authority to practice as a physician in any state in which the physician conducts immigration medical examinations; or
- Has failed to meet any of the professional qualifications for a civil surgeon at any time during the period of a physician's designation as a civil surgeon, unless USCIS finds both that the physician has corrected any gap in eligibility and that the physician refrained from conducting immigration medical examinations during any period in which the physician was not eligible for designation as a civil surgeon.

2. Initiating Revocation

The file should be well-documented before USCIS takes any steps to revoke a physician's civil surgeon designation. When the proposed revocation is based on allegations of misconduct reported by an adjustment of status applicant, the officer should take a sworn statement to support the allegations. The officer should also retain any other available evidence of the alleged misconduct.

The National Benefits Center (NBC) may request the assistance of other USCIS offices to collect evidence if such evidence is not otherwise available to the NBC and if resources allow. For instance, if the NBC is unable to reach or communicate with a particular civil surgeon, the NBC may request assistance from the local office to contact the civil surgeon.

In instances where the civil surgeon may be involved in fraud, USCIS Fraud Detection and National Security Directorate (FDNS) should be notified per the standard fraud referral operating procedures and the civil surgeon's record should be annotated to reflect that suspected fraud played a factor in initiating revocation. Depending on the nature and severity of the allegations, it may also be necessary to consult with the Centers for Disease Control and Prevention (CDC) to obtain expert medical advice.

An officer may refer a proposed revocation of civil surgeon designation to USCIS counsel for review. When referring a case to USCIS counsel, the officer should include the reasons for the intended revocation and a copy of the supporting evidence.

Once the decision has been made to initiate the revocation, the officer must serve the physician with a notice of intent to revoke by Certified Mail/Return Receipt Requested or other method that provides proof of delivery. The notice must clearly state the exact grounds for the intended revocation and include copies of any relevant evidence. ^[2] The officer must give the physician 30 days from the date of the notice to respond with countervailing evidence. The physician may be represented by private counsel at his or her own expense. ^[3]

3. Allegations of Malpractice, Breaches of Medical Ethics, and Other Improper Conduct

The authority to designate civil surgeons does not give USCIS authority to regulate the practice of medicine. For this reason, the process for revoking designation as a civil surgeon is not the proper forum for adjudicating complaints against a physician concerning malpractice, breach of medical ethics, or other improper conduct. If USCIS receives a complaint of this kind, USCIS

should advise the complainant to make the complaint with the proper medical licensing authority for the State or territory in which the physician practices.

4. Decision

Once the period for the physician's response to the notice of intent to revoke has expired, USCIS will review the record and decide whether to revoke the physician's designation as a civil surgeon. Any response from the physician will be included in the record of proceeding. USCIS must notify the physician in writing of the decision.

There is no administrative appeal from a decision to revoke a physician's designation as a civil surgeon. The physician may, however, file a motion to reopen or reconsider. ^[4] A decision revoking a physician's designation as a civil surgeon must notify the physician of the right to file a timely motion to reopen or reconsider.

Similarly, USCIS may reopen and reconsider a decision on its own motion. A physician whose civil surgeon designation is revoked is not precluded from reapplying for civil surgeon designation, but the ground(s) upon which revocation is based should be considered as part of the adjudication of a subsequent application for civil surgeon designation. A physician, however, whose prior civil surgeon designation was revoked based on confirmed involvement in an immigration benefits fraud scheme will be denied civil surgeon designation upon reapplication.

If USCIS revokes a physician's designation as a civil surgeon, the public civil surgeon list should be updated immediately to remove the civil surgeon's information. ^[5]

If an officer reviewing [Form I-693](#) has a concern about the sufficiency of an immigration medical examination performed by a physician who was designated at the time of the medical exam but subsequently had his or her designation revoked, the officer may reorder the medical exam to be performed by a civil surgeon to address the concern. ^[6]

Footnotes

1. ^[^] For more information on where to send a request to terminate one's designation, visit the [USCIS website](#).
2. ^[^] USCIS may redact certain sensitive or identifying information.
3. ^[^] Notice of Entry of Appearance as Attorney or Accredited Representative ([Form G-28](#)) must also be filed in this case.
4. ^[^] As permitted in [8 CFR 103.5](#). To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion ([Form I-290B](#)), with fee. Forms and fee information can be found at [uscis.gov](#).
5. ^[^] As specified in Chapter 5, Civil Surgeon List [[8 USCIS-PM C.5](#)].
6. ^[^] In general, an officer may order or reorder an immigration medical examination, in part or in whole, at any time if he or she has concerns regarding an applicant's inadmissibility on health-related grounds. See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)].

Chapter 5 - Civil Surgeon List

A. Overview

USCIS maintains a nationwide list of civil surgeons available to the public. Applicants may search the list for civil surgeons designated in their area at [USCIS.gov](#) (via the Civil Surgeon Locator) or through the USCIS Contact Center's toll-free number at

1-800-375-5283.

Physicians on the civil surgeon list are generally current in their designation as civil surgeons. Since the list is updated weekly, it is advisable for the applicants to check that a physician is still on the civil surgeon list as close as possible to the date of the immigration medical exam appointment. If uncertain, applicants should also confirm with their doctors regarding their civil surgeon status prior to the immigration medical examination.

B. Requests to Update the Civil Surgeon Information

A civil surgeon should inform USCIS of any change that is relevant to the civil surgeon designation within 15 days of the change. ^[1]

If an officer at a USCIS field or district office receives a request to update the civil surgeon list, he or she should forward the request to the National Benefits Center (NBC) for review.

C. Maintaining the Civil Surgeon List

USCIS will review all requests from civil surgeons to update contact information or to terminate the civil surgeon designation. USCIS will also update the civil surgeon list accordingly, as well as remove civil surgeons whose designations have been suspended or revoked.

1. Request to Update Contact Information

If a civil surgeon's request to update contact information involves a move to a new state, then evidence of medical licensure in the new state ^[2] must accompany the request before the officer may approve it. If this evidence is missing, the officer may request this information through the issuance of a Request for Evidence (RFE).

2. Termination, Suspension, or Revocation

If a civil surgeon requests to be removed from the civil surgeon list or if USCIS determines designation should be suspended or revoked, the officer should annotate the date and reason for removal. Records of former civil surgeons should be retained internally; the information may be relevant, for instance, to the adjudication of a medical examination the civil surgeon completed before he or she was removed from the civil surgeon list or if the physician re-applies for civil surgeon designation in the future.

3. Updates and Review of Civil Surgeon List

USCIS will ensure the civil surgeon list is updated in a timely manner to reflect any changes in a civil surgeon's contact information or designation status. In addition, USCIS will perform a review of the civil surgeon list on a bi-annual basis, at a minimum, to ensure that all publicly available civil surgeon information is current and accurate.

If during this review USCIS learns that a civil surgeon is no longer performing immigration medical examinations in the location specified as part of the designation, or is no longer practicing medicine at all, USCIS may terminate the civil surgeon designation and remove the physician from the list. USCIS should follow regular revocation procedures.

Footnotes

1. ^[^] See uscis.gov/i-910 for more information on how to update contact information.
2. ^[^] The physician must show that he or she continues to meet the professional qualifications to be a civil surgeon in the new state.

Part D - Criminal and Related Grounds of Inadmissibility

Part E - Terrorism

Part F - National Security

Part G - Public Charge

Part H - Labor Certification and Select Immigrant Qualifications

Part I - Illegal Entrants and Other Immigration Violators

Part J - Fraud and Willful Misrepresentation

Chapter 1 - Purpose and Background

A. Purpose

To properly control movement across its borders, a government must be able to scrutinize and assess a person's identity as part of determining eligibility to enter. If a foreign national willfully provides incorrect information about identity and intentions for entering the country, the person has deprived the government of its right to examine the request for admission. ^[1]

In recognition of these principles, Congress provided a specific ground of inadmissibility to address the use of fraud or willful misrepresentation when obtaining a benefit under the Immigration and Nationality Act (INA).

There are exceptions and waivers to inadmissibility due to fraud or willful misrepresentation available to a person under certain circumstances depending on the particular immigration benefit the person is seeking. ^[2]

B. Background

The 1924 Immigration Act ^[3] made obtaining a visa under a false name or submitting false evidence in support of a visa application a federal crime. The Board of Immigration Appeals (BIA) and the courts used this principle to find that a visa obtained by fraud was no visa at all, making the person's admission with a fraudulent visa unlawful. ^[4]

Congress codified the BIA's and the courts' approach in the Immigration and Nationality Act of 1952. With former INA 212(a)(19), it created a new bar to admission for any applicant who used fraud or willful misrepresentation to gain entry into the United States or obtain a visa or other documentation. ^[5]

In 1986, Congress amended the bar so that a person could be found inadmissible for using fraud or willful misrepresentation when seeking any benefit under the INA, not just entry, visas, or other documents. ^[6] Congress re-designated former INA 212(a)

(19) as [INA 212\(a\)\(6\)\(C\)](#) in 1990 but did not alter the bar to admission itself. ^[7] Substantive changes to the inadmissibility ground did not come until 1996, when Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). ^[8]

With the passage of IIRIRA, Congress created two separate inadmissibility grounds that remain unchanged to this day: ^[9]

- Fraud or willful misrepresentation made in connection with obtaining an immigration benefit; ^[10] and
- False claim to U.S. citizenship made on or after September 30, 1996. ^[11]

These two grounds differ significantly. This Part J only addresses the inadmissibility determination for fraud or willful misrepresentation made in connection with obtaining an immigration benefit. This includes, however, false claims to U.S. citizenship made prior to September 30, 1996.

Foreign nationals who made a false claim to U.S. citizenship prior to September 30, 1996, cannot be found inadmissible under the false claim to U.S. citizenship ground of inadmissibility. ^[12] IIRIRA made this ground applicable only to false claims made on or after September 30, 1996. ^[13]

Therefore, for false claims to U.S. citizenship made before September 30, 1996, the officer must analyze the person's inadmissibility according to the general fraud and willful misrepresentation ground of inadmissibility, as outlined in this Part J. ^[14]

C. Scope

This guidance addresses inadmissibility for fraud and willful misrepresentation ^[15] in relation to obtaining a benefit under the INA, including inadmissibility for falsely claiming U.S. citizenship before September 30, 1996.

D. Legal Authorities

- [INA 212\(a\)\(6\)\(C\)\(i\)](#) – Illegal entrants and immigration violators - misrepresentation

Footnotes

1. ^[^] See *Matter of B- and P-*, 2 I&N Dec. 638, 645-46 (A.G. 1947).

2. ^[^] For more on the waiver of fraud or willful misrepresentation under [INA 212\(i\)](#), see Volume 9, Waivers, Part G, Waivers for Fraud and Willful Misrepresentation [[9 USCIS-PM G](#)].

3. ^[^] See Sections 22(b) and 22(c) of the Immigration Act of 1924, Pub. L. 68-139 (May 26, 1924).

4. ^[^] See *Matter of B- and P-*, 2 I&N Dec. 638, 640-41 (A.G. 1947), citing *McCandless v. Murphy*, 47 F.2d 1072 (3rd Cir. 1931). See *United States ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263 (7th Cir. 1938). See *United States ex rel. Fink v. Reimer*, 96 F.2d 217 (2nd Cir. 1938).

5. ^[^] Former [INA 212\(a\)\(19\)](#) made inadmissible any applicant who “seeks to procure, or has sought to procure or has procured a visa or other documentation, or seeks to enter the United States by fraud, or by willfully misrepresenting a material fact.” See the Immigration and Nationality Act of 1952, [Pub. L. 82-414 \(PDF\)](#) (June 27, 1952).

6. ^[^] Congress expanded former [INA 212\(a\)\(19\)](#) to make one inadmissible for using fraud or willful misrepresentation in relation to “a visa, other documentation, or entry into the United States or other benefit provided under this Act.” See Section 6(a) of the Immigration Marriage Fraud Amendments of 1986, [Pub. L. 99-639 \(PDF\)](#), 100 Stat. 3537, 3543 (November 10, 1986).

7. [^] See Section 601(a) of the Immigration Act of 1990, [Pub. L. 101-649](#), 104 Stat. 4978, 5067 (November 29, 1990).
8. [^] See Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Division C of [Pub. L. 104-208](#) (September 30, 1996).
9. [^] See Section 344(a) of IIRIRA, Division C of [Pub. L. 104-208](#), 110 Stat. 3009, 3009-637 (September 30, 1996).
10. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
11. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
12. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
13. [^] See Section 344(a) of IIRIRA, Division C of [Pub. L. 104-208 \(PDF\)](#) (September 30, 1996).
14. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
15. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#). Inadmissibility for falsely claiming U.S. citizenship on or after September 30, 1996 is a separate inadmissibility ground. See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).

Chapter 2 - Overview of Fraud and Willful Misrepresentation

A. General

An applicant may be found inadmissible if he or she obtains a benefit under the Immigration and Nationality Act (INA) either through:

- Fraud; or
- Willful misrepresentation.

Although fraud and willful misrepresentation are distinct actions for inadmissibility purposes, they share common elements. All of the elements necessary for a finding of inadmissibility based on willful misrepresentation are also needed for a finding of inadmissibility based on fraud. However, a fraud finding requires two additional elements.

This is why a person who is inadmissible for fraud is always also inadmissible for willful misrepresentation. However, the opposite is not necessarily true: a person inadmissible for willful misrepresentation is not necessarily inadmissible for fraud. ^[1]

Additionally, misrepresentation of a material fact may lead to other adverse immigration consequences. For example, if the beneficiary commits marriage fraud, it may have adverse immigration consequences for both the petitioner and the beneficiary.

B. Willful Misrepresentation

Inadmissibility based on willful misrepresentation requires a finding that a person willfully misrepresented a material fact. ^[2] For a person to be inadmissible, the officer must find all of the following elements:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material; and

- The false representation was made to a U.S. government official, generally an immigration or consular officer. ^[3]

If all of the above elements are present, then the person is inadmissible for willful misrepresentation.

If the person succeeded in obtaining the benefit under the INA, he or she would be inadmissible for having procured the benefit by willful misrepresentation. If the attempt was not successful, ^[4] the person would still be inadmissible for having “sought to procure” the immigration benefit by willful misrepresentation. In each case, evidence of intent to deceive is not required. ^[5]

C. Fraud

Inadmissibility based on fraud requires a finding that a person knowingly made a false representation of a material fact with the intent to deceive the other party. ^[6]

For a person to be inadmissible for having procured entry, a visa, other documentation, or any other benefit under the INA by fraud, the officer must find all of the following elements:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material;
- The false representation was made to a U.S. government official, generally an immigration or consular officer; ^[7]
- The false representation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); ^[8] and
- The U.S. government official believed and acted upon the false representation by granting the benefit. ^[9]

If all of the above elements are present, then the person is inadmissible for having procured an immigration benefit by fraud. Since the elements required for fraud also include the elements for willful misrepresentation, the person is also inadmissible for willful misrepresentation.

If the person was unsuccessful in obtaining the benefit, ^[10] he or she may still be inadmissible for having “sought to procure” the immigration benefit by fraud. In this case, the fraud element requiring the U.S. government official to believe and act upon the false representation is not applicable; however, intent to deceive is still a required element.

In cases of attempted fraud, it may be difficult to establish the person’s intent to deceive because the fraud has not actually succeeded. However, establishing intent to deceive may be unnecessary; if evidence supports a finding of willful misrepresentation, which does not require intent to deceive, ^[11] then the person is already considered inadmissible without any further determination of fraud.

D. Comparing Fraud and Willful Misrepresentation

In practice, the distinction between fraud and willful misrepresentation is not greatly significant because either fraud or a willful misrepresentation alone is sufficient to establish inadmissibility.

The following table shows a comparison of the elements required for each ground:

Comparing Fraud and Willful Misrepresentation

	<i>Elements Required for a Finding of ...</i>	
Scenario	Willful Misrepresentation	Fraud
The person procured, or sought to procure, a benefit under U.S. immigration laws.	x	x
The person made a false representation.	x	x
The false representation was willfully made.	x	x
The false representation was material.	x	x
The false representation was made to a U.S. government official.	x	x
When making the false representation, the person intended to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer).	<i>Not Applicable</i>	x
The U.S. government official believed and acted upon the false representation.	<i>Not Applicable</i>	x <i>(Not applicable if fraud finding based on “seeking to procure” benefit)</i>

As the table illustrates, a fraud finding encompasses a willful misrepresentation finding. Therefore, if all the elements are present to make a finding of fraud, then the elements for making a finding of willful misrepresentation must also necessarily be present.

Example:

The officer finds that a person obtained an immigration benefit by fraud. The person is then inadmissible for both fraud ^[12] and willful misrepresentation.

Example:

The officer finds that there was no intent to deceive, but the other elements of fraud are present. The person is not inadmissible based on fraud but is still inadmissible for willful misrepresentation. ^[13]

E. Overview of Admissibility Determination

A finding of willful misrepresentation or fraud requires certain determinations. If the evidence indicates that the person may be inadmissible due to fraud or willful misrepresentation, the officer should follow the steps in the table below to determine inadmissibility:

Overview of Admissibility Determination

Step	For More Information
Step 1 Determine whether the person procured, or sought to procure, a benefit under U.S. immigration laws.	Chapter 3, Adjudicating Inadmissibility, Section B, Procuring a Benefit under the INA [8 USCIS-PM J.3(B)]
Step 2 Determine whether the person made a false representation.	Chapter 3, Adjudicating Inadmissibility, Section C, False Representation [8 USCIS-PM J.3(C)]
Step 3 Determine whether the false representation was willfully made.	Chapter 3, Adjudicating Inadmissibility, Section D, Willfulness [8 USCIS-PM J.3(D)]
Step 4 Determine whether the false representation was material.	Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [8 USCIS-PM J.3(E)]
Step 5 Determine whether the false representation was made to a U.S. government official.	Chapter 3, Adjudicating Inadmissibility, Section F, Fraud or Willful Misrepresentation Must Be Made to a U.S. Government Official [8 USCIS-PM J.3(F)]
Step 6 Determine whether, when making the false representation, the person intended to deceive a U.S. government official authorized to act upon request (generally an immigration or consular officer).	Chapter 3, Adjudicating Inadmissibility, Section G, Elements Only Applicable to Fraud [8 USCIS-PM J.3(G)]
Step 7 Determine whether the U.S. government official believed and acted upon the false representation.	Chapter 3, Adjudicating Inadmissibility, Section G, Elements Only Applicable to Fraud [8 USCIS-PM J.3(G)]
Step 8 Determine whether a waiver of inadmissibility is available.	Volume 9, Waivers ^[14]

When making the inadmissibility determination, the officer should keep in mind the severe nature of the penalty for fraud or willful misrepresentation. The person will be barred from admission for the rest of his or her life unless the person qualifies for and is granted a waiver. The officer should examine all facts and circumstances when evaluating inadmissibility for fraud or willful misrepresentation.

Footnotes

1. ^[^] For more on the interplay between findings of fraud and willful misrepresentation, see Section D, Comparing Fraud and Willful Misrepresentation [[8 USCIS-PM J.2\(D\)](#)].
2. ^[^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#). For a definition of materiality, see Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [[8 USCIS-PM J.3\(E\)](#)].
3. ^[^] See *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).
4. ^[^] For example, the misrepresentation was detected and the benefit was denied.
5. ^[^] See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).
6. ^[^] See *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998).
7. ^[^] See *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).
8. ^[^] See *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998).
9. ^[^] See *Matter of G- G-*, 7 I&N Dec. 161 (BIA 1956).
10. ^[^] For example, the fraud was detected and the benefit was denied.
11. ^[^] See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).
12. ^[^] See *Matter of B- and P-*, 2 I&N Dec. 638, 651 (A.G. 1947).
13. ^[^] See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 290 (“We interpret the Attorney General's decision in *Matter of S- and B-C-* as one which modified *Matter of G-G-* so that the intent to deceive is no longer required before the willful misrepresentation charge comes into play.”).
14. ^[^] For guidance on the waiver of the fraud and willful misrepresentation inadmissibility ground under [INA 212\(i\)](#), see Volume 9, Waivers, Part G, Waivers for Fraud and Willful Misrepresentation [[9 USCIS-PM G](#)].

Chapter 3 - Adjudicating Inadmissibility

A. Evidence and Burden of Proof

1. Evidence

To find a person inadmissible for fraud or willful misrepresentation, ^[1] there must be at least some evidence that would permit a reasonable person to find that the person used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit. ^[2]

In addition, the evidence must show that the person made the misrepresentation to an authorized official of the U.S. government, whether in person, in writing, or through other means. ^[3] Examples of evidence an officer may consider include oral or written testimony, or any other documentation containing false information.

2. Burden of Proof

The burden of proof to establish admissibility during the immigration benefit-seeking process is always on the applicant. During the adjudication of the benefit, the burden never shifts to the government. ^[4]

If there is no evidence the applicant obtained or sought to obtain a benefit under the Immigration and Nationality Act (INA) by fraud or willful misrepresentation, USCIS should find that the applicant has met the burden of proving that he or she is not inadmissible under this ground. ^[5]

If there is evidence that would permit a reasonable person to conclude that the applicant may be inadmissible for fraud or willful misrepresentation, then the applicant has not successfully met the burden of proof. In these cases, USCIS considers the applicant inadmissible for fraud or willful misrepresentation, unless the applicant is able to successfully rebut the officer's inadmissibility finding.

Special issues may arise if evidence indicates that an applicant is violating, or has violated, his or her nonimmigrant status or is otherwise engaging, or has engaged, in conduct in the United States that is inconsistent with representations the applicant made to a consular or DHS officer when applying for admission, a visa, or another immigration benefit. Although conduct inconsistent with one's nonimmigrant status and prior representations does not automatically mean there is a misrepresentation, such evidence permits a reasonable person to conclude that the applicant may be inadmissible for fraud or willful misrepresentation, especially if the violation or conduct occurred shortly after the U.S. Department of State (DOS) visa interview or after admission. The officer should carefully assess the circumstances of the applicant's case. ^[6]

If the officer's finding of inadmissibility is based on evidence that the applicant obtained or sought to obtain a benefit under the INA through willful misrepresentation, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The misrepresentation was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
- The false representation was not willful;
- The false representation was not material; or
- The false representation was not made to a U.S. government official.

If the officer's finding of inadmissibility is based on evidence that the applicant obtained a benefit under the INA by fraud, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The fraud was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
- The false representation was not willful;
- The false representation was not material;
- The false representation was not made to a U.S. government official;
- The person did not intend to deceive; or
- The U.S. government official did not believe or did not act upon the false representation.

If the officer's finding of inadmissibility is based on evidence that the applicant sought to obtain a benefit under the INA by fraud, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The fraud was not made to procure a visa, admission, or some other benefit under the INA;

- There was no false representation;
- The false representation was not willful;
- The false representation was not material;
- The false representation was not made to a U.S. government official; or
- The person did not intend to deceive.

If the officer determines, after assessing all of the evidence, that the applicant has established at least one of the above facts, then the applicant has successfully rebutted the inadmissibility finding. The applicant has therefore met the burden of proving that he or she is not inadmissible on account of fraud or willful misrepresentation.

If the officer determines, after assessing all of the evidence, that the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding. The applicant is therefore inadmissible because he or she has not satisfied the burden of proof.^[7]

Finally, if the officer finds that the evidence for and against a finding of fraud or willful misrepresentation is of equal weight, then the applicant is inadmissible due to failure to meet the burden of proof. As long as there is a reasonable evidentiary basis to conclude that a person is inadmissible for fraud or willful misrepresentation, and the applicant has not overcome that reasonable basis with evidence, the officer should find the applicant inadmissible.

3. The U.S. Department of State's 90-Day Rule ^[8]

DOS developed a 90-day "rule" to assist consular officers in evaluating willful misrepresentation in cases involving an applicant who violated his or her nonimmigrant status or whose conduct is inconsistent with representations made to either the consular officer at the time of the visa application or to the immigration officer at the port of entry. The DOS 90-day rule creates a presumption of willful misrepresentation if an applicant engages in such conduct within 90 days of admission to the United States.

Although referred to by DOS as a "rule" in its Foreign Affairs Manual (FAM), the 90-day rule is not a regulation. It is DOS guidance to its officers, and as such, the 90-day rule is not binding on USCIS officers. However, USCIS officers must examine all of the factors in an applicant's case. After such review, USCIS officers may find that an applicant made a willful misrepresentation, especially if the violation or inconsistent conduct occurred shortly after the consular interview or admission to the United States. ^[9] Officers should carefully assess each situation and continue to evaluate cases for potential fraud indicators. When appropriate, officers should also refer cases to Fraud Detection and National Security, according to existing procedures.

B. Procuring a Benefit under the INA

1. General

In order to be found inadmissible for fraud or willful misrepresentation, a person must seek to procure, have sought to procure, or have procured one of the following:

- An immigrant or nonimmigrant visa;
- Other documentation;
- Admission into the United States; or
- Other benefit provided under the INA.

The fraud or willful misrepresentation must have been made to an official of the U.S. government, generally an immigration or consular officer. ^[10]

2. Other Documentation

“Other documentation” refers to documents required when a person applies for admission to the United States. This includes, but is not limited to:

- Re-entry permits;
- Refugee travel documents;
- Border crossing cards; and
- U.S. passports.

Documents evidencing extension of stay are not considered entry documents. ^[11] Similarly, documents such as petitions and labor certification forms are documents that are presented in support of a visa application or applications for status changes. They are not, by themselves, entry documents and therefore, they are also not considered “other documentation.”

However, if such documents are used in support of obtaining another benefit provided under the INA, they may be relevant to a finding of willful misrepresentation or fraud.

3. Other Benefits Provided under the INA

Any “other benefit” refers to an immigration benefit or entitlement provided for by the INA. This includes, but is not limited to:

- Requests for extension of nonimmigrant stay; ^[12]
- Change of nonimmigrant status; ^[13]
- Permission to re-enter the United States;
- Waiver of the 2-year foreign residency requirement; ^[14]
- Employment authorization; ^[15]
- Parole; ^[16]
- Voluntary departure; ^[17]
- Adjustment of status; ^[18] and
- Requests for stay of deportation. ^[19]

C. False Representation

1. General

False representation, or usually called “misrepresentation,” is an assertion or manifestation that is not in accordance with the true facts. A person may make a false representation in oral interviews, or written applications, or by submitting evidence containing false information. ^[20]

2. False Representation Must be Connected to Benefit

A person is only inadmissible if he or she makes a misrepresentation in connection with his or her own immigration benefit. If a person misrepresents a material fact in connection with another's immigration benefit, then the person is not inadmissible for fraud or willful misrepresentation. ^[21] However, fraud or willful misrepresentation made in connection with another's immigration benefit may make the person inadmissible for alien smuggling. ^[22]

There may be situations in which a representative or a parent makes a misrepresentation on behalf of the applicant. The question then becomes whether the applicant himself or herself willfully allowed such an action.

D. Willfulness

The person is only inadmissible for fraud or willful misrepresentation if the false representation was willfully made.

1. Definition of Willfulness

The term "willfully" should be interpreted as "knowingly" as distinguished from accidentally, inadvertently, or in a good faith belief that the factual claims are true. ^[23] To find the element of willfulness, the officer must determine that the person had knowledge of the falsity of the misrepresentation, and therefore knowingly, intentionally, and deliberately presented false material facts. ^[24]

When determining the "willfulness" of a person's false representation, the officer should consider the circumstances that existed at the time the benefit was issued. ^[25]

USCIS petitions and applications are signed "under penalty of perjury." The person may also be interviewed under oath. By signing or by making statements under oath, the person therefore asserts his or her claims are truthful. If the evidence in the record subsequently shows that the claims are factually unsupported, that may indicate the applicant willfully misrepresented his or her claim(s).

2. Silence or Failure to Volunteer Information

A person's silence or failure to volunteer information does not, in and of itself, constitute fraud or willful misrepresentation because silence itself does not establish a conscious concealment. ^[26] Silence or omission can, however, lead to a finding of fraud or willful misrepresentation if it is clear from the evidence that the person consciously concealed information.

If the evidence shows that the person was reasonably aware of the nature of the information sought and knowingly, intentionally, and deliberately concealed information from the officer, then the officer should find that the applicant consciously concealed and willfully misrepresented a material fact.

Example:

An applicant is legally married but has lived apart from his spouse for 20 years. During that time apart, the applicant lived with another person for 10 years as domestic partners until the other person died. A few years later, having been in touch with his legal spouse by letter, the applicant states in his application for admission to the United States that he is coming to join his wife.

Although the applicant did not reveal the complications in his marital status during the past 20 years, the applicant was not specifically asked any questions relating to these facts. As a matter of law, the applicant is still married to the spouse, and there is no evidence that he married the spouse to obtain an immigration benefit. Since the applicant gave reasonably accurate and correct answers, his failure to disclose his complicated marital situation did not constitute conscious concealment of facts.

Example:

During World War II, a person was captured by Germans while serving in the Russian Army and forced to serve as an armed guard at a Nazi concentration camp. The person later applies for a visa and is questioned about his present and past memberships and affiliations, including any military service. The person discloses that he had served in the Russian army but does not mention his time as a guard at the concentration camp. When pressed for more on his military service, the person continues to present only information on service in the Russian army.

Since the person provided an unreasonably narrow response to a general question, it is likely that the person was fully aware that his time at the concentration camp was pertinent to the response and information sought by the officer. When the person provided only a partial response, he concealed information knowingly, intentionally, and deliberately. The person's conscious concealment of facts, therefore, constitutes willful misrepresentation. ^[27]

3. Refusal to Respond to Questions

A person's refusal to answer a question does not necessarily mean that he or she willfully made a false representation. However, refusal to answer a question during an admissibility determination could result in the officer finding that the applicant failed to establish admissibility. ^[28]

4. Misrepresentation Made by a Person's Agent

If the false representation is made by an applicant's attorney or agent, the applicant will be held responsible if it is established that the applicant was aware of the action taken by the representative in furtherance of his or her application. This includes oral misrepresentations made at the border by someone assisting a person to enter illegally. Furthermore, a person cannot deny responsibility for any misrepresentation made on the advice of another unless it is established that the person lacked the capacity to exercise judgment. ^[29]

5. Misrepresentations by Minors (Under 18) or those who are Mentally Incompetent

The INA does not exempt a person from inadmissibility for fraud or willful misrepresentation solely based on age or mental incapacity. The BIA has not yet addressed in any precedent decision whether a minor is shielded from this inadmissibility on account of being a minor.

Both fraud and willful misrepresentation must be intentional acts. There may be cases in which the officer finds that a person, because of mental incompetence or young age, was incapable of independently forming an intent to defraud or misrepresent. In these cases, a person's inability to commit intentional acts precludes a finding of inadmissibility for fraud or willful misrepresentation since the person could not have acted "willfully."

The officer should consider all relevant factors when evaluating fraud or willful misrepresentation including the applicant's:

- Age;
- Level of education;
- Background;
- Mental capacity;
- Level of understanding;
- Ability to appreciate the difference between true and false; and

- Other relevant circumstances.

The fact that a misrepresentation occurred while the person was under 18 years of age, in particular, is not determinative. There is no categorical rule that someone under 18 cannot, as a matter of law, make a willful misrepresentation. A person may be able to claim, however, that, on the basis of the facts of his or her own case, he or she lacked the capacity necessary to form a willful intent to misrepresent a material fact.

If admissibility is an issue in a case, USCIS does not bear the burden of proving that the person is inadmissible. As long as there is at least some evidence that would permit a reasonable person to find an applicant inadmissible, the applicant must establish that the inadmissibility ground does not apply. For this reason, someone who appears to have made a willful misrepresentation of a material fact while under the age of 18 would have to prove his or her lack of capacity.

This burden of proof would also apply to someone who claimed a lack of capacity based on a reason other than age, such as cognitive or other disabilities.

If the evidence, clearly and beyond doubt, shows that the person did not have the capacity to form an intent to deceive, then the misrepresentation could not have been fraudulent. Similarly, if the evidence, clearly and beyond doubt, shows that the person did not have the capacity to know that the information was false, then the misrepresentation could not have been willful.

In these cases, the officer should not find the applicant inadmissible for fraud or willful misrepresentation.

6. Timely Retraction

As a defense to inadmissibility for fraud or willful misrepresentation, a person may show that he or she timely retracted or recanted the false statement. The effect of a timely retraction is that the misrepresentation is eliminated as if it had never happened. ^[30] If a person timely retracts the statement, the person is not inadmissible for fraud or willful misrepresentation.

For the retraction to be effective, it has to be voluntary and timely. ^[31] The applicant must correct his or her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. A retraction can be voluntary and timely if made in response to an officer's question during which the officer gives the applicant a chance to explain or correct a potential misrepresentation.

Admitting to the false representation after USCIS has challenged the veracity of the claim is not a timely retraction. ^[32] For example, an applicant's recantation of the false testimony is neither voluntary nor timely if made a year later and only after it becomes apparent that the disclosure of the falsity of the statements is imminent. ^[33] A retraction or recantation is only timely if it is made in the same proceeding in which the person gives the false testimony or misrepresentation. ^[34]

E. Materiality

1. Definition of Materiality

A false representation only renders a person inadmissible if it is material. A "material" misrepresentation is a false representation concerning a fact that is relevant to the person's eligibility for an immigration benefit. ^[35]

2. Test to Determine Materiality

The U.S. Supreme Court has developed a test to determine whether a misrepresentation is material: A concealment or a misrepresentation is material if it has a natural tendency to influence or was capable of influencing the decisions of the

decision-making body. ^[36] The misrepresentation is only material if it led to the person gaining some advantage or benefit to which he or she may not have been entitled under the true facts.

A misrepresentation has a natural tendency to influence the officer's decision to grant the immigration benefit if:

- The person would be inadmissible on the true facts; ^[37] or
- The misrepresentation tends to cut off a line of inquiry, which is relevant to the applicant's eligibility and which might have resulted in a proper determination that he or she is inadmissible. ^[38]

The table below provides step-by-step guidelines to assist officers to determine whether a misrepresentation is material.

Guidelines for Determining whether Misrepresentation is Material

Step	If Yes, then...	If No, then...
Step 1: Consider whether the evidence in the record supports a finding that the applicant is (or was) inadmissible on the true facts.	Misrepresentation is Material	<i>Proceed to Step 2</i>
Step 2: Consider whether misrepresentation tended to shut off a line of inquiry, which was relevant to the applicant's eligibility.	<i>Proceed to Step 3</i>	Misrepresentation is NOT Material
Step 3: If a relevant line of inquiry had been cut off, ask whether that inquiry might have resulted in a determination of ineligibility. (The applicant has the burden to show that it would not have resulted in ineligibility.)	Misrepresentation is Material	Misrepresentation is NOT Material

3. Harmless Misrepresentation

A misrepresentation that is not material because it is not relevant to an applicant's eligibility for the benefit is considered a harmless misrepresentation. ^[39] An applicant is not inadmissible for making a harmless misrepresentation even though the applicant misrepresented a fact. However, a harmless misrepresentation may still be taken into account when considering whether a benefit is warranted as a matter of discretion.

4. Misrepresenting Identity

A misrepresentation concerning a person's identity almost always shuts off a line of inquiry because, at the outset, it prevents the adjudicating from scrutinizing a person's eligibility for a benefit. ^[40] However, if the line of inquiry that is shut off would not have resulted in the denial of the benefit, then the misrepresentation is harmless. ^[41] The applicant bears the burden of proof to demonstrate that the relevant line of inquiry that was shut off by the misrepresentation of his or her identity was irrelevant to the original eligibility determination. ^[42]

F. Fraud or Willful Misrepresentation Must Be Made to a U.S. Government Official

In addition to the other elements outlined above, the person must have made the fraud or willful misrepresentation to a U.S. government official in order for such act to rise to the level of an inadmissible offense. ^[43] Fraud or willful misrepresentation made to a private person or entity would not make one inadmissible under this ground. ^[44]

G. Elements Only Applicable to Fraud

Fraud differs from willful misrepresentation in that there are generally two extra elements, in addition to the willful misrepresentation elements listed in Chapter 2(B), ^[45] necessary for a fraud finding:

- The willful misrepresentation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); and
- The U.S. government official believed and acted upon the willful misrepresentation by granting the immigration benefit. ^[46]

Depending on whether the person successfully procured the immigration benefit, one or both elements are needed to establish inadmissibility based on fraud.

If the person successfully obtained the immigration benefit, the officer needs to establish both elements. If the person was unsuccessful in obtaining the immigration benefit, he or she may still be inadmissible for “seeking to procure” the benefit by fraud. In this case, the officer only needs to establish that the person intended to deceive a U.S. government official for the purpose of obtaining an immigration benefit to which the person was not entitled. ^[47]

As stated previously, the distinction between fraud and willful misrepresentation is not of great practical importance since either fraud or a willful misrepresentation alone is sufficient to establish inadmissibility.

All of the elements necessary for a finding of willful misrepresentation are also needed for a finding of fraud. However, the opposite is not necessarily true: a person inadmissible for willful misrepresentation is not necessarily also inadmissible for fraud.

Therefore, once an officer determines that all the elements of willful misrepresentation are present, the person is inadmissible without any further determination of fraud.

Footnotes

1. ^[^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).

2. ^[^] The “reasonable person” standard is drawn from *INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (agency fact-finding must be accepted unless a reasonable fact-finder would necessarily conclude otherwise).

3. ^[^] See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994). See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). See *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961).

4. ^[^] See [INA 291](#). See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

5. ^[^] See *Matter of D- L- and A- M-*, 20 I&N Dec. 409 (BIA 1991).

6. ^[^] For more information on willfulness, see Section D, Willfulness [[8 USCIS-PM J.3\(D\)](#)].

7. ^[^] See *Matter of Rivero-Diaz*, 12 I&N Dec. 475 (BIA 1967). See *Matter of M-*, 3 I&N Dec. 777 (BIA 1949).

8. ^[^] For more information, see [9 FAM 302.9-4](#), Misrepresentation – [INA 212\(a\)\(6\)\(C\)](#).

9. ^[^] For more information on how to assess an applicant’s conduct in the United States that is inconsistent with prior representations made, see Subsection 2, Burden of Proof [[8 USCIS-PM J.3\(A\)\(2\)](#)].

10. [^] See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994). See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). See *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961).
11. [^] See *Matter of M-y R-*, 6 I&N Dec. 315 (BIA 1954). See 9 FAM 302.9-4(B)(7), Interpretation of the Terms “Other Documentation” or “Other Benefit.”
12. [^] See 8 CFR 214.1.
13. [^] See INA 248. See 8 CFR 248.
14. [^] See INA 212(e).
15. [^] See INA 274A. See 8 CFR 274a.12.
16. [^] See INA 212(d)(5). See 8 CFR 212.5.
17. [^] See INA 240B. See 8 CFR 240.25 and 8 CFR 1240.26.
18. [^] See INA 245.
19. [^] See 9 FAM 302.9-4(B)(7), Interpretation of the Terms “Other Documentation” or “Other Benefit.”
20. [^] See legacy Immigration and Naturalization Service General Counsel Opinion 91-39. See 9 FAM 302.9-4(B)(3), Interpretation of the Term Misrepresentation.
21. [^] See *Matter of M-R-*, 6 I&N Dec. 259 (BIA 1954) (the procurement of documentation for the applicant's two children to facilitate their entry into the United States did not render the applicant himself inadmissible under former INA 212(a)(19)).
22. [^] See INA 212(a)(6)(E).
23. [^] See *Matter of Healy and Goodchild*, 17 I&N Dec. 22 (BIA 1979).
24. [^] See *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956), *superseded in part by Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). See *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) (Rosenberg, J., concurring and dissenting).
25. [^] See *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979) (finding that the applicant had not willfully misrepresented since he could have reasonably believed his actions were correct under the law at the time).
26. [^] See *Matter of G-*, 6 I&N Dec. 9 (BIA 1953), superseded on other grounds by *Matter of F-M-*, 7 I&N Dec. 420 (BIA 1957). See 9 FAM 302.9-4(B)(3), Interpretation of the Term Misrepresentation, Differentiation Between Misrepresentation and Failure to Volunteer Information.
27. [^] See *Fedorenko v. United States*, 449 U.S. 490 (1981).
28. [^] It is the applicant’s burden to establish that he or she is not inadmissible. See INA 291. See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).
29. [^] See 9 FAM 302.9-4(B)(4), Interpretation of Term Willfully. For more information on factors the officer should consider when determining whether a person is capable of exercising judgment and committing intentional acts, see Subsection 5, Misrepresentations by Minors (Under 18) or those who are Mentally Incompetent [8 USCIS-PM J.3(D)(5)].
30. [^] See *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949). See *Matter of M-*, 9 I&N Dec. 118 (BIA 1960) (also cited by *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999)).
31. [^] “If the witness withdraws the false testimony of his own volition and without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an intention to deceive cannot rightly be

drawn.” See *Llanos-Senarrilos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949). See *Matter of R-R*, 3 I&N Dec. 823 (BIA 1949). See *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973), referring to *Matter of M-*, 9 I&N Dec. 118 (BIA 1960) and *Llanos-Senarrilos v. United States*, 177 F.2d 164 (9th Cir. 1949).

32. [^] See *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973).

33. [^] See *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973).

34. [^] See *Llanos-Senarrilos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949).

35. [^] Officers may consult with field office leadership and Office of Chief Counsel for further assistance as needed to determine whether an applicant’s misrepresentation is material.

36. [^] See *Kungys v. United States*, 485 U.S. 759, 770 (1988) (proceeding to revoke a person’s naturalization).

37. [^] See *Fedorenko v. United States*, 449 U.S. 490 (1981) (visa applicant who failed to disclose that he had been an armed guard at a concentration camp made a false statement that was material and is therefore inadmissible because disclosure of true facts would have made applicant ineligible for a visa).

38. [^] See *Matter of S- and B-C-*, 9 I&N Dec. 436, 447-49 (A.G. 1961), accord. *Matter of Bosuego*, 17 I&N Dec. 125 (BIA 1980). See *Matter of Ng*, 17 I&N Dec. 536 (BIA 1980). See *Said v. Gonzales*, 488 F.3d 668 (5th Cir. 2007) (though the court never reaches the issue, it is discussed).

39. [^] See *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1964) (submission of a forged job offer in the United States was not material when the applicant was not otherwise inadmissible as a person likely to become a public charge). See *Matter of Mazar*, 10 I&N Dec. 79 (BIA 1962) (no materiality in the nondisclosure of membership in the Communist Party since the membership was involuntary and would not have resulted in a determination of inadmissibility).

40. [^] See *Matter of S- and B-C-*, 9 I&N Dec. 436, 448 (A.G. 1961).

41. [^] See *Matter of S- and B-C-*, 9 I&N Dec. 436, 449 (A.G. 1961). As noted above, a harmless misrepresentation may still be taken into account when considering whether a benefit is warranted as a matter of discretion.

42. [^] See *Matter of S- and B-C-*, 9 I&N Dec. 436 (A.G. 1961).

43. [^] See *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).

44. [^] See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994). See *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961).

45. [^] See [8 USCIS-PM J.2\(B\)](#).

46. [^] See *Matter of G-G*, 7 I&N Dec. 161 (BIA 1956). See *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

47. [^] For a comparison of the elements required for a finding of fraud and a finding of willful misrepresentation, see Chapter 2, Overview of Fraud and Willful Misrepresentation, Section D, Comparing Fraud and Willful Misrepresentation [[8 USCIS-PM J.2\(D\)](#)].

Part K - False Claim to U.S. Citizenship

Chapter 1 - Purpose and Background

A. Purpose

U.S. citizenship confers important rights and responsibilities, including the right to vote and to hold public office. U.S. citizens also have an unqualified right to live in the United States. In recognition of these principles, Congress provided a specific ground of inadmissibility to address when a foreign national falsely claims to be a U.S. citizen for any purpose or benefit under the Immigration and Nationality Act (INA) or any other federal or state law. Indeed, the immigration consequences for falsely claiming U.S. citizenship are severe. ^[1] The foreign national is permanently barred from admission. ^[2]

There are exceptions and waivers to this ground of inadmissibility. The Department of Homeland Security has the authority to waive inadmissibility for purposes of a nonimmigrant admission. A waiver is not available, however, to most foreign nationals seeking lawful permanent resident (LPR) status.

B. Background

Congress added the ground of inadmissibility for falsely claiming U.S. citizenship with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). ^[3] Prior to the passage of IIRIRA, a foreign national who falsely claimed U.S. citizenship for purposes of immigration benefits was inadmissible because of fraud and willful misrepresentation. ^[4] Concerned about non-citizens’ increased use of fraud to access various federal benefits, ^[5] Congress divided the provision into two separate inadmissibility grounds including: ^[6]

- Fraud or willful misrepresentation made in connection with obtaining an immigration benefit; ^[7] and
- False claim to U.S. citizenship made on or after September 30, 1996 in connection with obtaining any benefit or for any purpose under federal or state law, including immigration law. ^[8]

These two grounds differ significantly. This part only addresses the inadmissibility determination for false claims to U.S. citizenship made on or after September 30, 1996, the date that the new inadmissibility ground for falsely claiming U.S. citizenship became effective.

The officer cannot make a finding of inadmissibility under the false claim to U.S. citizenship ground of inadmissibility for foreign nationals who made a false claim to U.S. citizenship prior to September 30, 1996. ^[9] In those cases, the officer must analyze the foreign national’s inadmissibility according to the fraud and willful misrepresentation ground of inadmissibility. ^[10]

This distinction is important, because foreign nationals who made a false claim to U.S. citizenship before September 30, 1996, may apply for a waiver of the ground of inadmissibility for fraud and misrepresentation. ^[11] Foreign nationals who made a false claim to U.S. citizenship on or after September 30, 1996, generally are not eligible for waivers if they seek permanent resident status. ^[12]

The chart below outlines the distinctions between the inadmissibility grounds of fraud or willful misrepresentation ^[13] and falsely claiming U.S. citizenship. ^[14]

Comparing Fraud or Willful Misrepresentation and False Claim to U.S. Citizenship

Inadmissibility Ground	Offense	Description	Made To	Waiver

Inadmissibility Ground	Offense	Description	Made To	Waiver
Fraud or Willful Misrepresentation INA 212(a)(6)(C)(i)	Fraud or willful misrepresentation anytime or false claim to U.S. citizenship made before September 30, 1996	Misrepresentation material for any purpose or benefit under INA (immigration benefit)	Government official exercising authority under the immigration and nationality laws ^[15]	Waiver available for most applicants
False Claim to U.S. Citizenship INA 212(a)(6)(C)(ii)	False claim to U.S. citizenship made on or after September 30, 1996	Misrepresentation of U.S. citizenship for any purpose or benefit under INA or any other federal or state law	Any government or non-government official ^[16]	Waiver not available for most applicants

C. Scope

This guidance addresses inadmissibility for falsely claiming U.S. citizenship ^[17] for any purpose or benefit under the INA or any other federal or state law, made on or after September 30, 1996.

D. Legal Authorities

- [INA 212\(a\)\(6\)\(C\)\(ii\)](#) – Illegal entrants and immigration violators – falsely claiming citizenship

Footnotes

- ^[1] Falsely claiming U.S. citizenship is also a criminal offense under [18 U.S.C. 911](#). This Part K does not address the criminal consequences of falsely claiming U.S. citizenship but addresses when a criminal conviction is evidence for purposes of the inadmissibility determination.
- ^[2] See [INA 212\(d\)\(3\)](#). If the foreign national needs a nonimmigrant visa, then the Department of State (DOS) must concur in the waiver.
- ^[3] See [Pub. L. 104-208](#) (September 30, 1996).
- ^[4] See [INA 212\(a\)\(6\)\(C\)](#). For more information on fraud and willful misrepresentation, see Part J, Fraud and Willful Misrepresentation [[8 USCIS-PM J](#)].
- ^[5] See H.R. Rep. 104-861, p. 50 (Sept. 28, 1996). See 142 Cong. Rec. S11503 (daily ed. September 27, 1996) (statement of Sen. Hatch). See H.R. Rep. 104-828, p. 199 (Sept. 24, 1996) (Conf. Rep.) (Joint Explanatory Statement). See [Matter of Richmond](#), 26 I&N Dec. 779 (BIA 2016).
- ^[6] See Section 344(a) of IIRIRA, Division C of [Pub. L. 104-208](#), 110 Stat. 3009, 3009-637 (September 30, 1996).

7. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
8. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#). See *Matter of Richmond*, 26 I&N Dec. 779 (BIA 2016).
9. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#). See Section 344(c) of IIRIRA, [Pub. L. 104-208](#), 110 Stat. 3009-546, 3009-637 (September 30, 1996).
10. [^] For more information, see Part J, Fraud and Willful Misrepresentation [[8 USCIS-PM J](#)].
11. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#) and [INA 212\(i\)](#).
12. [^] Depending on the immigration benefit the applicant is seeking, the applicant may have a waiver available; however, foreign nationals seeking to immigrate as immediate relatives, under a preference category, or based on the diversity visa lottery do not have a waiver available.
13. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
14. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
15. [^] For example, a Customs and Border Protection, Immigration and Customs Enforcement, or USCIS officer, a consular officer, or an immigration judge.
16. [^] For example, a private employer, lender, school, or other entity.
17. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#). Inadmissibility for fraud or willful misrepresentation or falsely claiming U.S. citizenship before September 30, 1996, is a separate inadmissibility ground. See [INA 212\(a\)\(6\)\(C\)\(i\)](#).

Chapter 2 - Determining False Claim to U.S. Citizenship

For a foreign national to be inadmissible based on false claim to U.S. citizenship, an officer must find all of the following elements:

- The foreign national made a representation of U.S. citizenship;
- The representation was false;
- The foreign national made the false representation knowingly; and
- The foreign national made the false representation for any purpose or benefit under the Immigration and Nationality Act (INA) or any other federal or state law.

A. Overview of Admissibility Determination

The officer should examine all facts and circumstances when evaluating inadmissibility for falsely claiming U.S. citizenship. The officer should follow the steps in the table below to determine inadmissibility.

Overview of Admissibility Determination

Step		For More Information
Step 1	Determine whether foreign national claimed to be a U.S. citizen.	Section B, Claim to U.S. Citizenship [8 USCIS-PM K.2(B)]

Step		For More Information
Step 2	Determine whether foreign national made the representation on or after September 30, 1996.	Section C, Claim Made On or After September 30, 1996 [8 USCIS-PM K.2(C)]
Step 3	Determine whether the representation was false.	Section D, Knowledge that Claim Was False [8 USCIS-PM K.2(D)]
Step 4	Determine whether foreign national knew the claim to U.S. citizenship was false. ^[1]	Section D, Knowledge that Claim Was False [8 USCIS-PM K.2(D)]
Step 5	Determine whether foreign national's false claim to U.S. citizenship was for the purpose of obtaining a benefit under the INA or under any other federal or state law.	Section E, Purpose or Benefit under INA or Any State or Federal Law [8 USCIS-PM K.2(E)]
Step 6	Determine whether foreign national timely retracted the false claim to U.S. citizenship.	Section F, Timely Retraction [8 USCIS-PM K.2(F)]
Step 7	Determine whether foreign national is exempt from inadmissibility because a statutory exception applies. ^[2]	Chapter 4, Exceptions and Waivers, Section A, Applicability [8 USCIS-PM K.4(A)] and Section B, Exception [8 USCIS-PM K.4(B)]
Step 8	Determine whether a waiver of inadmissibility is available.	Chapter 4, Exceptions and Waivers, Section C, Waiver [8 USCIS-PM K.4(C)]

B. Claim to U.S. Citizenship

An officer should first determine whether a foreign national claimed to be a U.S. citizen.

1. Form of Claim

A foreign national may claim to be a U.S. citizen in oral interviews, written applications, or by submitting evidence. It is irrelevant whether or not the foreign national made the claim under oath.

2. Representation Before Government Official Not Necessary

Unlike inadmissibility for fraud and misrepresentation, ^[3] a foreign national does not have to make the claim of U.S. citizenship to a U.S. government official exercising authority under the immigration and nationality laws. The foreign national can make the claim to any other federal, state, or local official, or even to a private person, such as an employer. ^[4]

3. Distinction between a U.S. Citizen and a U.S. National

U.S. citizen status is related to, but is not the same as, U.S. national status. A U.S. national is any person owing permanent allegiance to the United States and may include a U.S. citizen or a non-citizen U.S. national. ^[5] A non-citizen U.S. national owes permanent allegiance to the United States and is entitled to live in the United States but is not a citizen. ^[6] A U.S. citizen is any person born in the United States or who otherwise acquires U.S. citizenship at or after birth. ^[7]

4. Claiming to be a U.S. National

A foreign national who falsely claims to be a U.S. national but not a U.S. citizen is not inadmissible for false claim to U.S. citizenship. ^[8] The foreign national, however, may be inadmissible for fraud or willful misrepresentation if all other elements for that ground are met. ^[9]

The Employment Eligibility Verification form (Form I-9) used prior to April 3, 2009, asked the person completing it whether the person is a “citizen or national” of the United States and required checking a box corresponding to the answer. The fact that a foreign national marked “Yes” on an earlier edition of the Employment Eligibility Verification does not necessarily subject the foreign national to inadmissibility for falsely claiming U.S. citizenship, because the earlier edition of the form did not distinguish a claim of “nationality” from a claim of “citizenship.” ^[10]

An affirmative answer to this question does not, by itself, provide sufficient evidence that would permit a reasonable person to find the foreign national falsely represented U.S. citizenship because of the question’s ambiguity. ^[11]

In these cases, the applicant must demonstrate to an officer that he or she understands the distinction between a U.S. citizen and non-U.S. citizen national. ^[12] The applicant has the burden of showing that he or she was claiming to be a non-U.S. citizen national as opposed to a U.S. citizen. The applicant’s inadmissibility for a false claim to U.S. citizenship depends on whether the applicant meets the burden of showing that he or she intended to claim to be a U.S. national when completing the Form I-9.

This inquiry is not necessary if the applicant used the April 3, 2009, edition or any later edition of the Form I-9, because these editions clearly differentiate between “Citizen of the United States” and “Non-citizen National of the United States.”

C. Claim Made On or After September 30, 1996 ^[13]

An officer should determine whether the claim to U.S. citizenship occurred on or after September 30, 1996. ^[14] If an applicant claimed U.S. citizenship before September 30, 1996, the applicant may be inadmissible for fraud or willful misrepresentation ^[15] but not for falsely claiming U.S. citizenship. ^[16]

D. Knowledge that Claim Was False

If an applicant claimed to be a U.S. citizen on or after September 30, 1996, then an officer should determine whether the claim was false and whether the applicant knew the claim was false.

1. False Representation

A false representation or misrepresentation is an assertion or manifestation that is not in accordance with the true facts.

2. Knowledge of False Claim

For USCIS to consider the claim to U.S. citizenship to be false, the applicant must knowingly misrepresent the fact that the applicant is a citizen of the United States. The applicant must have known that he or she was not a U.S. citizen at the time he or

she made the claim. ^[17]

Knowledge that the claim was false, however, is not an element that the government must prove. As long as there is some evidence in the record that reasonably calls the foreign national's admissibility into question, the foreign national has the burden to prove the foreign national is not inadmissible.

The foreign national's assertion that he or she did not know the claim to citizenship was false is therefore a defense. The foreign national must establish clearly and beyond a doubt that he or she did not know the claim was false. The foreign national's lack of knowledge about the claim being false is an individualized inquiry and depends on the unique circumstances of each particular case.

3. Refusal to Respond to Questions ^[18]

A foreign national's refusal to answer a question does not necessarily mean that the foreign national knowingly made a false representation. A foreign national's refusal to answer an officer's question during an admissibility determination, however, could result in the officer finding that the applicant failed to establish admissibility. ^[19]

4. Lack of Capacity

Factors to Consider

Inherent in the knowledge requirement is that the foreign national has the capacity for such knowledge. An officer cannot make a finding of inadmissibility for false claim to U.S. citizenship if the foreign national lacks the capacity to knowingly make a false claim to U.S. citizenship.

An officer should not find that a foreign national lacks capacity simply because the foreign national does not know that a false claim to U.S. citizenship makes him or her inadmissible. An officer should find a lack of capacity only if the evidence shows that the foreign national was incapable of understanding the nature and consequences of the false claim at the time of the alleged false claim.

The officer should consider all relevant factors when evaluating whether the foreign national has the capacity to make a knowingly false claim to U.S. citizenship, including the foreign national's:

- Age;
- Level of education;
- Background;
- Mental capacity;
- Level of understanding;
- Ability to appreciate the difference between true and false; and
- Other relevant circumstances.

False Claim Made while Under Age 18

A lack of capacity claim may arise most often in the case of a foreign national who made a false claim to U.S. citizenship while under the age of 18. The fact that the foreign national was not yet 18 years of age is insufficient by itself to establish a lack of capacity.

A capacity assessment, in this instance, relies on determining whether the foreign national who made the false claim while under age 18 had the maturity and the judgment to understand and appreciate the nature and consequences of his or her actions at the time the false claim was made.

Sufficient capacity for knowledge at the time of the claim is not an element that the government must prove. As long as there is some evidence in the record that reasonably calls the foreign national's admissibility into question, the foreign national has the burden to prove that he or she is not inadmissible.

The foreign national may establish that he or she did not have the capacity to judge the nature and consequences of a false citizenship claim due to age or cognitive impairment. The foreign national must establish the lack of capacity clearly and beyond doubt. The foreign national's capacity for knowledge is an individualized inquiry, and it depends on the unique circumstances of each particular case.

E. Purpose or Benefit under INA or Any State or Federal Law

1. Any Purpose or Benefit

The law only makes a foreign national inadmissible for falsely claiming U.S. citizenship if the foreign national falsely represents him or herself to be a citizen of the United States "for any purpose or benefit" under the INA, including [INA 274A](#), or any other federal or state law. ^[20]

The provision for inadmissibility based on false claim to U.S. citizenship ^[21] uses "or" rather than "and" as the conjunction between "purpose" and "benefit." There may be cases in which the facts show that the foreign national intended to achieve both a purpose and obtain a benefit. However, a foreign national can also be inadmissible based on a false claim made with the specific intent to achieve an improper purpose, even if it did not involve an application for any specific benefit.

Furthermore, U.S. citizenship must affect or matter to the purpose or benefit sought. That is, U.S. citizenship must be material to the purpose or benefit sought. ^[22]

In sum, even though a foreign national may have falsely claimed U.S. citizenship, he or she is only inadmissible if:

- The foreign national made the false claim with the subjective intent of obtaining a benefit or achieving a purpose under the INA or any other federal or state law, as shown by direct or circumstantial evidence; and
- U.S. citizenship affects or matters to the purpose or benefit sought, that is, it must be material to obtaining the benefit or achieving the purpose.

2. Intent to Obtain a Benefit ^[23]

Whether a foreign national made the false claim with the specific intent of obtaining a benefit is a question of fact and dependent on the circumstances of each case. The foreign national has the burden to show, either with direct or circumstantial evidence, that he or she did not have the subjective intent of obtaining the benefit. ^[24]

Whether U.S. citizenship actually affects or matters to the benefit sought is determined objectively. If the benefit requires U.S. citizenship as part of eligibility, then the foreign national's false claim is material. ^[25] If the claim to citizenship has a natural tendency to influence the official decision to grant or deny the benefit sought, the claim is material. ^[26] It is the foreign national's burden to show that U.S. citizenship is not relevant to obtaining the benefit.

If U.S. citizenship is irrelevant to the benefit at issue, the foreign national's false claim to U.S. citizenship does not make him or her inadmissible unless the evidence provides a basis for finding that the foreign national made the false claim to achieve a purpose under federal or state law.

For purposes of a false claim to U.S. citizenship, ^[27] a benefit must be identifiable and enumerated in the INA or any other federal or state law.

A benefit includes but is not limited to:

- A U.S. passport; ^[28]
- Entry into the United States; ^[29] and
- Obtaining employment, loans, or any other benefit under federal or state law, if citizenship is a requirement for eligibility. ^[30]

3. Intent to Achieve a Purpose

Whether a foreign national made the false claim with the specific intent of achieving a purpose is a question of fact and dependent on the circumstances of each case. The foreign national has the burden to show, either with direct or circumstantial evidence, that he or she did not have the subjective intent of achieving the purpose. ^[31]

Whether U.S. citizenship actually affects or matters to the purpose is determined objectively. U.S. citizenship affects or matters to the purpose, and is material, if it has a natural tendency to influence the applicant's ability to achieve the purpose. ^[32] It is the foreign national's burden to show that U.S. citizenship is not relevant to achieving the purpose.

If U.S. citizenship is irrelevant to achieving the purpose at issue, the foreign national's false claim to U.S. citizenship does not make him or her inadmissible unless the evidence provides a basis for finding that the foreign national made the false claim to obtain a benefit under federal or state law.

The term "purpose" includes avoiding negative legal consequences. Negative legal consequences that a foreign national might seek to avoid by falsely claiming U.S. citizenship include but are not limited to:

- Removal proceedings; ^[33]
- Inspection by immigration officials; ^[34] and
- Prohibition on unauthorized employment. ^[35]

Purpose, however, is not limited to avoiding negative legal consequences. The purpose may also be something more positive. For example, a false claim would be for an improper purpose if a benefit under federal or state law is not restricted to U.S. citizens, but a foreign national falsely claims to be a U.S. citizen when seeking the benefit to avoid an eligibility or evidentiary requirement that does not apply to citizens seeking the benefit.

Example

In the course of an arrest for disorderly conduct, a foreign national falsely claimed that he was born in Puerto Rico. However, the facts of the case did not support that he had falsely claimed U.S. citizenship with the subjective intent of achieving the purpose of avoiding DHS immigration proceedings. Furthermore, the police could not have conferred such a result, and the foreign national's status as a U.S. citizen was immaterial to the arrest proceedings because the police treated U.S. citizens and foreign nationals the same. ^[36]

Example

A foreign national stated twice during DHS interrogation that he was a U.S. citizen. He failed to show he had not made this claim to U.S. citizenship with the subjective intent of achieving the purpose of avoiding removal proceedings. He also failed to show that citizenship did not affect removal proceedings. Therefore, the foreign national was inadmissible for falsely claiming U.S. citizenship. ^[37]

Example

An employer made a job offer to a foreign national who did not have employment authorization. In completing the USCIS [Form I-9](#), the foreign national marked the box claiming U.S. citizenship with the intent to avoid the need to obtain and present a valid and unexpired employment authorization document. The foreign national is inadmissible since the foreign national made the false claim for the purpose of avoiding additional requirements under the immigration laws. [\[38\]](#)

Example

A foreign national applied for a license under state law. The eligibility is not restricted to U.S. citizens but a foreign national must submit additional evidence that a U.S. citizen is not required to submit. Specifically, a foreign national must present evidence of lawful status or at least authorization to accept employment. The foreign national falsely claimed citizenship in order to avoid the additional evidentiary requirements. The foreign national is inadmissible since the foreign national made the false claim for the purpose of avoiding additional requirements under state law. [\[39\]](#)

4. Representation Must Be for Own Benefit

A foreign national is only inadmissible if the foreign national makes a misrepresentation for the foreign national's own benefit. If a foreign national misrepresents another foreign national's citizenship, the foreign national that made the misrepresentation is not inadmissible for falsely claiming U.S. citizenship. [\[40\]](#)

5. For Purpose of Coming into the United States

A foreign national who makes a successful false claim to U.S. citizenship or nationality at the port-of-entry and who is allowed into the United States has not been admitted. In order for a foreign national to be admitted, CBP must have authorized the foreign national to enter the United States after the foreign national came to the port-of-entry and sought admission as a foreign national. [\[41\]](#)

However, the law and precedents relating to what qualifies as the admission of a foreign national do not apply to U.S. citizens and nationals. U.S. citizens and nationals are not subject to the same inspection process as foreign nationals. If CBP believes the person is a U.S. citizen or national, CBP cannot prevent the person's return to the United States. It is well-settled that someone who is allowed to come into the United States as a U.S. citizen or national has not been admitted. [\[42\]](#)

Therefore, a foreign national who comes into the United States under a false claim to U.S. citizenship is not only inadmissible for falsely claiming U.S. citizenship, but may also be inadmissible as a foreign national who is in the United States without inspection and admission or parole. [\[43\]](#)

A foreign national who comes into the United States based on a false claim to U.S. *nationality* is not inadmissible under the provision relating to false claims to citizenship. [\[44\]](#) However, the person may be inadmissible as a foreign national who is in the United States without inspection and admission or parole.

6. False Claim Made by an Agent or Representative

If an applicant's attorney or agent makes the false representation, the applicant is held responsible if it is established that the applicant was aware of the action taken by the representative in furtherance of the applicant's benefit application. This includes oral misrepresentations made at the border by a person assisting a foreign national to enter illegally. Furthermore, a foreign national cannot deny responsibility for any misrepresentation made on the advice of another person unless the foreign national establishes that he or she lacked the capacity to exercise judgment. [\[45\]](#)

F. Timely Retraction

Case law relating to the inadmissibility ground for fraud or willful misrepresentation has long recognized that a foreign national is not inadmissible if he or she made a timely retraction of the fraud or misrepresentation. ^[46] If a foreign national timely retracts the statement, it acts as a defense to the inadmissibility ground. A USCIS officer would then decide the case as if the fraud or misrepresentation had never happened.

In principle, a foreign national might also timely retract a false claim to U.S. citizenship. If the foreign national does so, he or she would not be inadmissible for this inadmissibility ground. The retraction has to be voluntary and timely in order to be effective. ^[47] The applicant must correct the representation before an officer or U.S. government official challenges the applicant's truthfulness and before the conclusion of the proceeding during which the applicant gave false testimony. A retraction can be voluntary and timely if made in response to an officer's question during which the officer gives the applicant a chance to explain or correct a potential misrepresentation.

Admitting to the false representation after USCIS has challenged the veracity of the claim is not a timely retraction. ^[48] For example, an applicant's recantation of the false testimony is neither voluntary nor timely if made a year later and only after it becomes apparent that the disclosure of the falsity of the statements is imminent. ^[49] A retraction or recantation can only be timely if the foreign national makes it in the same proceeding in which the foreign national gives the false testimony or misrepresentation. ^[50]

Further, a retraction or recantation of a false claim to U.S. citizenship is only timely if the foreign national makes it in the same proceeding in which he or she made the false claim. For example, disclosing in an adjustment application that one falsely claimed to be a citizen in completing a [Form I-9](#), registering to vote, or seeking any other benefit would not be a timely retraction. The false claim was complete when the foreign national submitted the [Form I-9](#), registered to vote, or sought the other benefit. The disclosure of the false claim on the adjustment of status application, therefore, would be part of a different proceeding.

Footnotes

1. ^[^] Falsely represented includes whether the applicant misrepresented the fact that the applicant is a citizen of the United States with the knowledge that the representation is not true.
2. ^[^] See [INA 212\(a\)\(6\)\(C\)\(ii\)\(II\)](#).
3. ^[^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
4. ^[^] For example, the foreign national could make a false claim to U.S. citizenship to comply with the employment verification requirements under [INA 274A](#).
5. ^[^] See [INA 101\(a\)\(22\)](#).
6. ^[^] See [INA 308](#). As of 2014, American Samoa (including Swains Island) is the only outlying possession of the United States, as defined under [INA 101\(a\)\(29\)](#). See Volume 12, Citizenship and Naturalization [[12 USCIS-PM](#)].
7. ^[^] See [U.S. Constitution, amend. XIV](#). See [INA 301](#). See [INA 309](#). See Volume 12, Citizenship and Naturalization [[12 USCIS-PM](#)].
8. ^[^] See [INA 212\(a\)\(6\)\(C\)\(ii\)\(I\)](#).
9. ^[^] For example, if the false claim to U.S. nationality was made to a U.S. government official in seeking an immigration benefit. See [INA 212\(a\)\(6\)\(C\)](#). See Part J, Fraud and Willful Misrepresentation [[8 USCIS-PM J](#)].

10. [^] In *Ateka v. Ashcroft*, 384 F.3d 954 (8th Cir. 2004) and in *Rodriguez v. Mukasey*, 519 F.3d 773 (8th Cir. 2008), the applicants specifically testified that they claimed to be citizens when checking the particular box on [Form I-9](#). Based on this testimony, the court determined that the applicants were inadmissible on account of falsely claiming U.S. citizenship. The Board of Immigration Appeals (BIA) non-precedent decisions seem to draw on this distinction. See *Matter of Oduor*, 2005 WL 1104203 (BIA 2005). See *Matter of Soriano-Salas*, 2007 WL 2074526 (BIA 2007).
11. [^] See *U.S. v. Karaouni*, 379 F.3d 139 (9th Cir. 2004).
12. [^] In *Ateka v. Ashcroft*, 384 F.3d 954 (8th Cir. 2004), *Matter of Oduor*, 2005 WL 1104203 (BIA 2005), and *Matter of Soriano-Salas*, 2007 WL 2074526 (BIA, June 5, 2007), for example, the evidence showed that the applicant had no idea what it meant to be a non-citizen national and that the applicant intended to claim that the applicant was a citizen.
13. [^] [INA 212\(a\)\(6\)\(C\)\(ii\)\(I\)](#) makes a foreign national subject to removal as inadmissible. [INA 237\(a\)\(3\)\(D\)\(i\)](#) is identical but applies to a foreign national who has been admitted but has become removable on account of the false representation. Also, if a foreign national falsely claims citizenship by voting, that foreign national would also be inadmissible under [INA 212\(a\)\(10\)\(D\)](#), which declares a foreign national inadmissible who votes in violation of any federal, state, or local law.
14. [^] The date this inadmissibility ground became effective. See Section 344(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), [Pub. L. 104-208](#) (September 30, 1996).
15. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#). For more information on inadmissibility based on fraud and willful misrepresentation, see Part J, Fraud and Willful Misrepresentation [[8 USCIS-PM J](#)].
16. [^] See Chapter 1, Purpose and Background, Section B, Background [[8 USCIS-PM K.1\(B\)](#)].
17. [^] See [9 FAM 302.9-5](#), Falsely Claiming Citizenship - [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
18. [^] For more information, see Part J, Fraud and Willful Misrepresentation, Chapter 3, Adjudicating Inadmissibility, Section D, Willfulness [[8 USCIS-PM J.3\(D\)](#)].
19. [^] It is the applicant's burden to establish that he or she is not inadmissible. See [INA 291](#). See *Matter of Arthur* ([PDF](#)), 16 I&N Dec. 558 (BIA 1978).
20. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
21. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
22. [^] For more information on materiality, see Part J, Fraud and Willful Misrepresentation, Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [[8 USCIS-PM J.3\(E\)](#)].
23. [^] See *Matter of Richmond*, 26 I&N Dec. 779, 787-88 (BIA 2016).
24. [^] See *Matter of Richmond*, 26 I&N Dec. 779, 786-787 (BIA 2016). See *Crocock v. Holder*, 670 F.3d 400 (2nd Cir. 2012).
25. [^] See *Kungys v. United States*, 485 U.S. 759, 770 (1988).
26. [^] See *Kungys v. United States*, 485 U.S. 759, 770 (1988). A false claim has a natural tendency to influence the official decision to grant or deny the benefit if the person would not obtain the benefit on the true facts, or if the false claim tends to cut off a line of inquiry, which is relevant to the eligibility and which might have resulted in a proper determination that the foreign national is not eligible for the benefit.
27. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
28. [^] See *Matter of Barcenas-Barrera* ([PDF](#)), 25 I&N Dec. 40 (BIA 2009). See *Matter of Villanueva* ([PDF](#)), 19 I&N Dec. 101, 103 (BIA 1984).

29. [^] See [Matter of Barcenas-Barrera \(PDF\)](#), 25 I&N Dec. 40 (BIA 2009). See *Jamieson v. Gonzales*, 424 F.3d 765 (8th Cir. 2005). See *Reid v. INS*, 420 U.S. 619 (1975).
30. [^] See *Dakura v. Holder*, 772 F.3d 994 (4th Cir. 2014). See *Crocock v. Holder*, 670 F.3d 400, 403 (2nd Cir. 2012). See *Castro v. Att'y Gen. of U.S.*, 671 F.3d 356, 368 (3rd Cir. 2012). See *Rodriguez v. Mukasey*, 519 F.3d 773 (8th Cir. 2008). See *Kechkar v. Gonzales*, 500 F.3d 1080 (10th Cir. 2007). See *Theodros v. Gonzales*, 490 F.3d 396 (5th Cir. 2007). See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437 (BIA 2014).
31. [^] See [Matter of Richmond](#), 26 I&N Dec. 779, 786-787 (BIA 2016). See *Crocock v. Holder*, 670 F.3d 400 (2nd Cir. 2012).
32. [^] See *Kungys v. United States*, 485 U.S. 759, 770 (1988). A false claim has a natural tendency to influence the official decision to grant or deny the benefit if the person would not obtain the benefit on the true facts, or if the false claim tends to cut off a line of inquiry, which is relevant to the eligibility and which might have resulted in a proper determination that the foreign national is not eligible for the benefit.
33. [^] See [Matter of Richmond](#), 26 I&N Dec. 779 (BIA 2016).
34. [^] See [Matter of Pinzon \(PDF\)](#), 26 I&N Dec. 189 (BIA 2013). See [Matter of F- \(PDF\)](#), 9 I&N Dec. 54 (BIA 1960).
35. [^] See *Kechkar v. Gonzales*, 500 F.3d 1080 (10th Cir. 2007).
36. [^] See *Castro v. Attorney Gen. of U.S.*, 671 F.3d 356, 368 (3rd Cir. 2012). According to the court, the Immigration Judge's (IJ) and the BIA conclusion that Castro made a false claim of U.S. citizenship for the purpose of evading detection by immigration authorities seemed to have been built solely on the assumption that this was a reasonable purpose to ascribe to Castro because he was undocumented. Therefore, the court decided that the BIA and the IJ erred in coming to this conclusion. The purpose imputed by the BIA to Castro would have applied to virtually any false claim to citizenship made by a foreign national unlawfully present in the country because the absence of legal status always provides a reason to wish to avoid the attention of DHS. Therefore, the construction threatened to read the limiting language—the requirement that the “purpose or benefit” be “under” the INA or any other federal or state law—out of INA 212(a)(6)(C)(ii) entirely.
37. [^] See [Matter of Richmond](#), 26 I&N Dec. 779 (BIA 2016).
38. [^] See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437 (BIA 2014).
39. [^] This conclusion is consistent with the rationale of [Matter of Richmond](#), 26 I&N Dec. 779 (BIA 2016).
40. [^] See Department of State Cable (no. 97-State-174342) (September 17, 1997). However, falsely claiming citizenship on behalf of another foreign national may make the foreign national inadmissible for alien smuggling. See *Matter of M-R*, 6 I&N Dec. 259, 260 (BIA 1954).
41. [^] See [Matter of Quilantan \(PDF\)](#), 25 I&N Dec. 285 (BIA 2010). See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, “Inspected and Admitted” or “Inspected and Paroled” [7 USCIS-PM B.2(A)(2)].
42. [^] See *Reid v. INS*, 420 U.S. 619 (1975). See [Matter of Pinzon \(PDF\)](#), 26 I&N Dec. 189 (BIA 2013). See *Matter of S-*, 9 I&N Dec. 599 (PDF) (BIA 1962).
43. [^] Similarly, a lawful permanent resident (LPR) returning from a temporary trip abroad is not considered to be seeking admission or readmission to the United States unless one of the factors in INA 101(a)(13)(C) is present. See [Matter of Collado-Munoz \(PDF\)](#), 21 I&N Dec. 1061 (BIA 1998). Because the returning LPR is not an arriving alien who is an applicant for admission unless one of the factors in INA 101(a)(13)(C) is present, the foreign national is not inspected as an arriving alien. If the foreign national makes a false claim to LPR status at a port-of-entry and if the foreign national is permitted to enter, then the foreign national has not been admitted for purposes of INA 101(a)(13)(A).

44. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)\(I\)](#).

45. [^] For more information, see Section D, Knowledge that Claim Was False, Subsection 4, Lack of Capacity [[8 USCIS-PM K.2\(D\)\(4\)](#)].

46. [^] See *Matter of R-R*, 3 I&N Dec. 823 (BIA 1949). See *Matter of M-*, [9 I&N Dec. 118 \(PDF\)](#) (BIA 1960) (also cited by *Matter of R-S-J-* ([PDF](#)), 22 I&N Dec. 863 (BIA 1999)). See [9 FAM 302.9-4\(B\)\(3\)\(f\)](#), Timely Retraction.

47. [^] “If the witness withdraws the false testimony of his own volition and without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an intention to deceive cannot rightly be drawn.” See *Llanos-Senarrilos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949). See *Matter of R-R*, 3 I&N Dec. 823 (BIA 1949). See *Matter of Namio* ([PDF](#)), 14 I&N Dec. 412 (BIA 1973), referring to *Matter of M-*, [9 I&N Dec. 118 \(PDF\)](#) (BIA 1960) and *Llanos-Senarrilos v. United States*, 177 F.2d 164 (9th Cir. 1949).

48. [^] See *Matter of Namio* ([PDF](#)), 14 I&N Dec. 412 (BIA 1973).

49. [^] See *Matter of Namio* ([PDF](#)), 14 I&N Dec. 412 (BIA 1973).

50. [^] See *Llanos-Senarrilos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949).

Chapter 3 - Adjudication

A. Evidence

For an officer to find a foreign national inadmissible for falsely claiming U.S. citizenship, ^[1] the evidence must demonstrate:

- The foreign national made the misrepresentation in-person, in writing, or through other means to a person or entity; and
- The foreign national made the misrepresentation for any purpose or benefit under the Immigration and Nationality Act (INA), other federal law, or state law. ^[2]

There must be sufficient evidence that would lead a reasonable person to find that the foreign national falsely represented him or herself to be a U.S. citizen. ^[3] Examples of evidence include oral testimony, written testimony, or any other documentation containing information about the applicant’s false claim to U.S. citizenship. ^[4]

B. Burden of Proof

The burden of proof to establish admissibility during the process of seeking an immigration benefit is on the applicant. ^[5] The burden never shifts to the government at any time during the adjudication process. ^[6]

1. No Evidence of False Misrepresentation

If there is no evidence that the applicant made a false representation of U.S. citizenship for any purpose or benefit under the INA or any other federal or state law, the officer should find that the applicant has met the burden of proof and is not inadmissible under this ground.

2. Evidence of False Misrepresentation

If there is evidence that would permit a reasonable person to conclude that the applicant is inadmissible under this ground, the officer should find that the applicant has not successfully met the burden of proof. ^[7] An applicant who fails to meet the burden

of proof is inadmissible for falsely claiming U.S. citizenship unless the applicant is able to successfully rebut the officer's inadmissibility finding.

3. Applicant's Rebuttal Must be Clear and Beyond Doubt

If the officer determines that the applicant is inadmissible based on a false claim to U.S. citizenship, the applicant has the burden of establishing at least one of the following facts clearly and beyond doubt ^[8] to rebut the finding:

- The representation was not false;
- The false representation was not a representation of U.S. citizenship;
- The false representation was made prior to September 30, 1996;
- The false representation was not made for purposes or benefit under the INA or any other federal or state law; ^[9] or
- The applicant did not know the claim was false, lacks the legal capacity to appreciate the nature of the claim, or qualifies for the statutory exception.

4. Rebutting Inadmissibility Finding

If the officer determines that the applicant has established at least one of the above facts, then the applicant has successfully rebutted the inadmissibility finding and has met the burden of proving that he or she is not inadmissible.

If the officer determines that the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding and is inadmissible. ^[10]

If the officer finds that the evidence for and against a finding of false claim to U.S. citizenship is of equal weight, then the applicant is inadmissible. As long as there is a reasonable evidentiary basis to conclude that an applicant is inadmissible for falsely claiming U.S. citizenship, and the applicant has not overcome that reasonable basis with evidence, then the officer should find the applicant inadmissible.

C. Civil Penalty or Criminal Conviction

Falsely claiming to be a U.S. citizen could result in a civil penalty ^[11] or in a criminal conviction for falsely and willfully representing to be a U.S. citizen. ^[12]

Inadmissibility for falsely claiming to be a U.S. citizen can be sustained simply by proving that the applicant knowingly made the false claim for any purpose or any benefit under the INA or any other federal or state law. For purposes of determining whether the applicant is inadmissible for falsely claiming U.S. citizenship, it is not necessary to establish that the applicant is the subject of a civil penalty or that the applicant has a criminal conviction for falsely and willfully representing to be a U.S. citizen.

If the officer finds that the foreign national has a conviction for falsely and willfully representing to be a U.S. citizen, ^[13] the conviction record is sufficient to establish that the applicant is inadmissible for falsely claiming U.S. citizenship.

Similarly, an order of civil penalty based on a false representation of U.S. citizenship is sufficient to establish that the applicant is inadmissible for falsely claiming to be a U.S. citizen. Fraudulent conduct other than a false claim to U.S. citizenship, however, may be the basis for a civil penalty. If the applicant was liable for a civil penalty for document fraud that does not relate to a false claim to U.S. citizenship, ^[14] then the civil penalty order is not an indication that the applicant is inadmissible for falsely claiming U.S. citizenship.

The civil penalty must be specifically based on a finding that the foreign national made a false claim to U.S. citizenship for the civil penalty order to be sufficient to establish inadmissibility for falsely claiming U.S. citizenship.

Footnotes

1. ^[^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#).
2. ^[^] See [Matter of Y-G- \(PDF\)](#), 20 I&N Dec. 794 (BIA 1994). See [Matter of D-L- & A-M- \(PDF\)](#), 20 I&N Dec. 409 (BIA 1991). See [Matter of L-L- \(PDF\)](#), 9 I&N Dec. 324 (BIA 1961).
3. ^[^] The “reasonable person” standard is drawn from *INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (agency fact-finding must be accepted unless a reasonable fact-finder would necessarily conclude otherwise).
4. ^[^] The Board of Immigration Appeals (BIA) recently held that [Form I-9](#), Employment Eligibility Verification, is admissible in removal proceedings as support of a charge of inadmissibility. See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437, 441-442 (BIA 2014).
5. ^[^] See [INA 291](#). See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437 (BIA 2014).
6. ^[^] See [INA 291](#). See [Matter of Arthur \(PDF\)](#), 16 I&N Dec. 558 (BIA 1978).
7. ^[^] See *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).
8. ^[^] See [Matter of Bett \(PDF\)](#), 26 I&N Dec. 437, 440 (BIA 2014). See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008).
9. ^[^] For example, a foreign national falsely claiming to be a U.S. citizen during a police arrest would not meet the “purpose or benefit” requirement. See *Castro v. Attorney General*, 671 F.3d 356 (3rd Cir. 2012).
10. ^[^] See [Matter of Rivero-Diaz \(PDF\)](#), 12 I&N Dec. 475 (BIA 1967). See *Matter of M-*, 3 I&N Dec. 777 (BIA 1949).
11. ^[^] See [INA 274C](#). Whenever “civil penalty” is used in this section, it refers to a civil penalty under INA 274C.
12. ^[^] See [18 U.S.C. 911](#). Whenever such “criminal conviction” is used in this section, it refers to a conviction under 18 U.S.C. 911.
13. ^[^] See *Pichardo v. INS*, 216 F. 3d 1198 (9th Cir. 2000).
14. ^[^] For example, the applicant is held liable for a civil penalty based on the use of a fraudulent visa.

Chapter 4 - Exceptions and Waivers

A. Applicability

Inadmissibility on account of false claim to U.S. citizenship does not apply to:

- Special immigrant juveniles seeking adjustment of status; ^[1] and
- Applicants for registry. ^[2]

B. Exception ^[3]

In 2000, Congress added a statutory exception to inadmissibility for false claim to U.S. citizenship. ^[4] Congress made the exception apply retroactively.

The exception applies to false claims to U.S. citizenship made on or after September 30, 1996, if the applicant satisfies the following requirements:

- Each parent of the applicant (or each adoptive parent in case of an adopted child) is or was a U.S. citizen, whether by birth or naturalization;
- The applicant permanently resided in the United States prior to attaining the age of 16; and
- The applicant reasonably believed at the time of the representation that he or she was a U.S. citizen.

Each of the applicant's parents had to be a U.S. citizen at the time of the false claim to U.S. citizenship to meet the first requirement of this exception. ^[5]

This exception does not limit the foreign national's ability to prove on other grounds that he or she did not know the claim was false. Rather, it is one situation in which it would be reasonable to find that the foreign national did not know the claim to U.S. citizenship was false.

C. Waiver ^[6]

The availability of a waiver to an inadmissibility ground depends on the immigration benefit. In general, there is no waiver for inadmissibility based on a false claim to U.S. citizenship ^[7] for foreign nationals seeking lawful permanent resident status:

- As an immediate relative;
- Under an immigrant preference category (other than special immigrant juveniles);
- As a diversity immigrant;
- Under the Cuban Adjustment Act of 1966; ^[8] or
- Under any other statute that does not provide authority to waive the ground.

An officer may grant a waiver to a foreign national seeking adjustment of status as a refugee or an asylee, as a legalization applicant, or under any other basis that specifically permits a waiver of this ground of inadmissibility. ^[9]

Inadmissibility based on a false claim to U.S. citizenship does not necessarily bar adjustment of status based on residence in the United States since before January 1, 1972. ^[10] It could, however, support a finding that the applicant is not a person of good moral character.

Nonimmigrants may seek permission to enter despite the inadmissibility. ^[11]

[redaction]

Appendix: Step-By-Step Determination of Inadmissibility

If the evidence indicates that the foreign national may be inadmissible due to a false claim to U.S. citizenship, the officer should go through the steps in the table below to determine inadmissibility.

Step-By-Step Determination of Inadmissibility

Step Inquiry		If Yes, then ...	If No, then ...	For More Information
1	Did applicant represent himself or herself to be a U.S. citizen?	<i>Go to Step 2</i>	Applicant is not inadmissible for falsely claiming U.S. citizenship.	Chapter 2, Determining False Claim to U.S. Citizenship, Section B, Claim to U.S. Citizenship [8 USCIS-PM K.2(B)]
2	Was representation to U.S. citizenship made on or after September 30, 1996?	<i>Go to Step 3</i>	Applicant is not inadmissible for falsely claiming U.S. citizenship. ^[12]	Chapter 2, Determining False Claim to U.S. Citizenship, Section C, Claim Made On or After September 30, 1996 [8 USCIS-PM K.2(C)]
3	Was representation to U.S. citizenship false?	<i>Go to Step 4</i>	Applicant is not inadmissible for falsely claiming U.S. citizenship.	Chapter 2, Determining False Claim to U.S. Citizenship, Section D, Knowledge that Claim Was False [8 USCIS-PM K.2(D)]
4	Did applicant make the false representation with the knowledge that it was not true?	<i>Go to Step 5</i>	Applicant is not inadmissible for falsely claiming U.S. citizenship.	Chapter 2, Determining False Claim to U.S. Citizenship, Section D, Knowledge that Claim Was False [8 USCIS-PM K.2(D)]
5	Did applicant make the false representation for any purpose or any benefit under the INA, or federal or state law?	<i>Go to Step 6</i>	Applicant is not inadmissible for falsely claiming U.S. citizenship.	Chapter 2, Determining False Claim to U.S. Citizenship, Section E, Purpose or Benefit under INA or Any State or Federal Law [8 USCIS-PM K.2(E)]
6	Did applicant timely retract the false claim?	Applicant is not inadmissible for falsely claiming U.S. citizenship.	<i>Go to Step 7</i>	Chapter 2, Determining False Claim to U.S. Citizenship, Section F, Timely Retraction [8 USCIS-PM K.2(F)]
7	Did applicant satisfy the elements of the statutory exception or is this inadmissibility ground not applicable?	Applicant is not inadmissible for false claim to U.S. citizenship.	Applicant is inadmissible under this ground. <i>Go to Step 8</i>	Chapter 4, Exceptions and Waivers, Section A, Applicability [8 USCIS-PM K.4(A)] and Section B, Exception [8 USCIS-PM K.4(B)]

Step	Inquiry	If Yes, then ...	If No, then ...	For More Information
8	Is a waiver of inadmissibility available?	Officer should direct the applicant to file the appropriate waiver.	Applicant is inadmissible under this ground.	Chapter 4, Exceptions and Waivers, Section C, Waiver [8 USCIS-PM 4(C)] and Volume 9, Waivers [9 USCIS-PM]

[/redaction]

Footnotes

- [^] See INA 245(h)(2)(A).
- [^] Registry is a section of immigration law that enables certain foreign nationals who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.
- [^] See INA 212(a)(6)(C)(ii)(II).
- [^] See Section 201(b) of the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631, 1633(October 30, 2000).
- [^] See INA 212(a)(6)(C)(ii)(II).
- [^] For more information, see Volume 9, Waivers [9 USCIS-PM].
- [^] See INA 212(a)(6)(C)(ii).
- [^] See Pub. L. 89-732 (PDF) (November 2, 1966).
- [^] See INA 209(c). See INA 245A(d)(2)(B)(i).
- [^] See INA 249.
- [^] Under INA 212(d)(3)(A).
- [^] The applicant, however, may be inadmissible for fraud or willful misrepresentation. See Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

Part L - Documentation Requirements

Part M - Citizenship Ineligibility

Part N - Aliens Previously Removed

Part O - Aliens Unlawfully Present

Part P - Alien Present After Previous Immigration Violation

Part Q - Practicing Polygamists, International Child Abductors, Unlawful Voters, and Tax Evaders

Volume 9 - Waivers

Part A - Waiver Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

Certain foreign nationals may not be allowed to enter or obtain status in the United States because they are inadmissible. These foreign nationals may overcome the inadmissibility if they are eligible to apply for and receive a waiver.

USCIS, in its administration of waiver laws and policies, seeks to:

- Promote family unity and provide humanitarian results;
- Provide relief to refugees, asylees, victims of human trafficking ^[1] and certain criminal acts, ^[2] and other humanitarian and public interest applicants who seek protection or permanent residency in the United States;
- Advance the national interest by allowing foreign nationals to be admitted to the United States if such admission could benefit the welfare of the country;
- Ensure public health and safety concerns are met by requiring that applicants satisfy all medical requirements prior to admission or, if admitted, seek any necessary treatment; and
- Weigh public safety and national security concerns against the social and humanitarian benefits of granting admission to a foreign national.

Considerations of family unity, humanitarian concerns, public and national interest, and national security may differ depending on the specific waiver an applicant is seeking.

B. Background

With the enactment of the Immigration and Nationality Act of 1952 (INA), ^[3] Congress established a variety of inadmissibility grounds to protect the interests of the United States. Congress considered waivers as a special remedy to the grounds of inadmissibility. ^[4]

Congress later amended the INA in 1957, easing many stricter provisions of the earlier legislation. ^[5] For example, it allowed certain foreign national relatives of U.S. citizens or lawful permanent residents (LPR) to apply for and obtain a waiver of certain grounds of exclusion or deportation (now inadmissibility or removal). ^[6]

When passing the 1957 amendments, Congress created exceptions to many strict provisions from the 1952 Act to promote family unity. For Congress, in many circumstances, it was more important to keep families together than to stringently enforce inadmissibility grounds. ^[7]

Congress tightened waiver requirements and availability once again with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).^[8] For example, IIRIRA made waivers of criminal inadmissibility^[9] unavailable to LPRs who were convicted of an aggravated felony or who had not continuously resided in the United States for at least 7 years before initiation of removal proceedings.

IIRIRA also created new inadmissibility grounds, such as the ground of inadmissibility on account of unlawful presence, and corresponding waivers.

C. Legal Authorities

- [INA 207](#), [8 CFR 207](#) - Annual admission of refugees and admission of emergency situation refugees
- [INA 209](#), [8 CFR 209](#) - Adjustment of status of refugees
- [INA 210](#), [8 CFR 210](#) - Special agricultural workers
- [INA 211](#), [8 CFR 211](#) - Admission of immigrants into the United States
- [INA 212](#), [8 CFR 212](#) - Excludable aliens
- [INA 214](#), [8 CFR 214](#) - Admission of nonimmigrants
- [INA 244](#), [8 CFR 244](#) - Temporary protected status
- [INA 245](#), [8 CFR 245](#) - Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- [INA 245A](#), [8 CFR 245a](#) - Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence

Footnotes

1. ^[^] See [INA 101\(a\)\(15\)\(T\)](#).
2. ^[^] See [INA 101\(a\)\(15\)\(U\)](#).
3. ^[^] See [Pub. L. 82-414](#) (June 27, 1952).
4. ^[^] See *INS v. Errico*, 385 U.S. 214, 218 (1966), citing H.R. 1365, 82nd Cong. 128 (1952).
5. ^[^] See Act of September 11, 1957, [Pub. L. 85-316](#) (September 11, 1957).
6. ^[^] The INA gives the Attorney General and the Secretary of Homeland Security statutory authority to grant waivers. Some sections of the INA, however, still refer exclusively to the “Attorney General.” Under the Homeland Security Act of 2002, [Pub. L. 107-296 \(PDF\)](#) (November 25, 2002), the authority to grant waivers was also given to the Secretary of Homeland Security.
7. ^[^] See *INS v. Errico*, 385 U.S. 214, 219-20 (1966), citing H.R. 1199, 85th Cong. 7 (1957).
8. ^[^] See [Pub. L. 104-208 \(PDF\)](#) (September 30, 1996).
9. ^[^] See [INA 212\(h\)](#).

Chapter 2 - Forms of Relief

A. Waivers

In general, applicants for immigration benefits must establish that they are admissible to the United States. If an applicant for an immigration benefit is inadmissible to the United States, USCIS may only grant the benefit if the applicant receives a waiver of inadmissibility or another form of relief provided in the Immigration and Nationality Act (INA). ^[1] In general, if the INA uses the term waiver, the applicant must apply for the waiver by filing the correct application.

USCIS may only grant a waiver if the applicant meets all statutory and regulatory requirements.

There are instances in which an officer may adjudicate a waiver without asking the applicant to file a form. For example, an officer may adjudicate certain waivers of inadmissibility for a refugee or an asylee seeking adjustment of status without the applicant filing a waiver application. In these circumstances, the officer must still clearly document the waiver determination in the record.

B. Exceptions or Exemptions

A statute may provide for an exception or exemption from a ground of inadmissibility. ^[2] If the foreign national's action or circumstance meets the requirements of an exception or exemption, then the ground of inadmissibility does not apply and the foreign national is not inadmissible on that ground. Unlike a waiver, an exemption or exception generally does not require that a foreign national file an application.

C. Consent to Reapply

Permission to reapply for admission into the United States after deportation or removal, also known as "consent to reapply," is not a waiver. ^[3] Consent to reapply is a distinct remedy that permits a foreign national to seek admission. If the statute specifies that the foreign national must obtain consent to reapply to overcome the inadmissibility, a waiver of inadmissibility is not a substitute for consent to reapply. ^[4]

Footnotes

1. ^[^] See [Pub. L. 82-414](#) (June 27, 1952).

2. ^[^] Exception and exemption both mean that the specific inadmissibility ground does not apply if the applicant establishes that the terms of the exception or exemption apply.

3. ^[^] See Application for Permission to Reapply for Admission into the United States After Deportation or Removal ([Form I-212](#)) (used to seek consent to reapply). See the form instructions for more information.

4. ^[^] See [INA 212\(a\)\(9\)\(A\)](#). See [INA 212\(a\)\(9\)\(C\)](#).

Chapter 3 - Review of Inadmissibility Grounds

A. Verification of Inadmissibility

Before adjudicating a waiver, the officer must verify that the applicant is inadmissible. ^[1] The officer must identify all inadmissibility grounds that apply, even if an immigration judge, a consular officer, Customs and Border Protection (CBP) officer, or a different USCIS officer made a prior inadmissibility determination. ^[2]

An applicant's file should reflect evidence of inadmissibility. Examples of evidence that may indicate an applicant is inadmissible may include but is not limited to:

- A visa refusal worksheet;
- Background check results;
- A criminal disposition;
- A sworn statement; and
- A Record of Arrests and Prosecutions sheet (police arrest record).

If the officer identifies that the applicant is inadmissible, the officer should then determine whether a waiver or other type of relief is available and whether the applicant meets the eligibility requirements for the relief. ^[3]

B. Grounds Included in Waiver Application

The officer must review all inadmissibility grounds that the applicant lists in the waiver application. If the applicant states that he or she is inadmissible but there is no evidence of inadmissibility in the record, then the officer should issue a Request for Evidence (RFE). The officer should request that the applicant provide a written statement explaining why the applicant thinks he or she is inadmissible. The officer should proceed with the waiver adjudication if the officer determines that the applicant is inadmissible.

An applicant may file a waiver application after another government agency, such as the Department of State or CBP, has found the applicant inadmissible. In general, USCIS accepts another government agency's finding of inadmissibility. The officer should only question another government agency's inadmissibility determination if:

- The government agency's finding was clearly erroneous; or
- The applicant has shown that he or she is clearly not inadmissible.

The officer should work with the other government agency to resolve the issue through appropriate procedures.

C. Grounds Not Included in Waiver Application

If the officer identifies additional inadmissibility grounds based on events that are not included in the waiver application, the officer should notify the applicant and the applicant's representative, if applicable. The officer should follow current USCIS guidance on the issuance of RFEs, Notices of Intent to Deny (NOID), and Denials.

Footnotes

1. ^[^] For more on admissibility determinations, see Volume 8, Admissibility [8 USCIS-PM].

2. ^[^] When verifying the inadmissibility, the officer may determine that the applicant is admissible and does not require a waiver. For more on admissibility determinations, see Volume 8, Admissibility [8 USCIS-PM].

3. ^[^] For specific scenarios that the officer may encounter during the adjudication of a waiver, see Chapter 4, Waiver Eligibility and Evidence, Section C, Evidence [9 USCIS-PM A.4(C)].

Chapter 4 - Waiver Eligibility and Evidence

A. Eligibility Requirements

Waiver eligibility depends on whether:

- A waiver is available for the inadmissibility ground;
- The applicant meets all other statutory and regulatory provisions for the waiver; and
- A favorable exercise of discretion is warranted. ^[1]

An applicant must meet all statutory and regulatory requirements, including the requirements specified in the waiver application's instructions, before USCIS can approve the waiver application. ^[2] When the officer receives the application, the officer should ensure that it meets all of the applicable filing requirements. ^[3]

B. Waiver Availability

1. Waiver is Available

If an applicant is inadmissible, the officer must determine whether USCIS may waive the ground of inadmissibility and whether the applicant meets all eligibility requirements of the waiver. If the applicant is inadmissible on grounds that can be waived, the officer should determine whether the applicant meets the requirements for the waiver. ^[4]

2. Waiver and Consent to Reapply

An applicant who files a waiver application may also be inadmissible because of a prior removal or unlawful reentry after a previous immigration violation. ^[5] In these cases, the applicant is required to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal ([Form I-212](#)), which is also called consent to reapply.

If the officer determines that the waiver is approvable, the officer should give the applicant an opportunity to file a consent to reapply application, if required. The officer should consult the consent to reapply form instructions to determine when USCIS may accept the waiver application and consent to reapply application together.

If the waiver is not approvable and the applicant did not request consent to reapply (although required), the officer should deny the waiver and not request the application for consent to reapply. If an applicant files a consent to reapply application and the officer denies the waiver application, then the officer should deny the consent to reapply application as a matter of discretion. ^[6]

3. No Waiver is Available

An applicant may be inadmissible for both a ground that USCIS may waive and a ground for which no waiver or other form of relief is available. In this instance, the applicant is still inadmissible on grounds that cannot be waived and approving the waiver application serves no purpose. The officer, therefore, should deny the application as a matter of discretion because the applicant is inadmissible on grounds that cannot be waived. ^[7] The officer should provide the standard language regarding the availability of motions to reopen, motions to reconsider, and appeals (if applicable) in the denial notice.

C. Evidence

There is no specific type or amount of evidence necessary to establish eligibility for a waiver. Typically, the evidence should support all eligibility requirements, be specific, and come from a credible source. It should also substantiate the applicant's claims. If evidence is unavailable, the applicant should provide a reasonable explanation for its absence. ^[8]

1. Medical and Other Issues Requiring Specialized Knowledge

Professionals should address issues that require specialized knowledge. Physicians and other medical professionals, for example, should provide medical statements. The professional's attestation should explain how the condition or issue affects that applicant. An officer may still consider a nonprofessional's statement, but the officer should give less weight to a nonprofessional's opinion. An officer may consider medical evidence from the internet and published sources, but these sources generally cannot replace a physician's statement.

2. Family Relationships

Some waivers require that the applicant establish a qualifying familial relationship. Unless the adjudicating officer finds the underlying evidence unpersuasive, the evidence submitted as part of a previously approved petition or application based on that familial relationship is sufficient to establish the qualifying relationship for the waiver. If there is no evidence in the record establishing the qualifying relationship, then the officer must request evidence that establishes the qualifying relationship, such as marriage, birth, or adoption certificates, or other evidence as permitted by law.

Footnotes

1. ^[^] See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296 (BIA 1996).
2. ^[^] See 8 CFR 103.2. See 8 CFR 103.7. General filing requirements include proper signature; proper fee or fee waiver; translation of any foreign language evidence; proper filing location; and the initial evidence specified in the relevant regulations and instructions with the application. Forms and form instructions are available on USCIS' website at uscis.gov/forms.
3. ^[^] See 8 CFR 103.2. Typically, a waiver does not require the applicant to submit biometrics. USCIS usually collects this information as part of the underlying benefit application, such as an adjustment of status application. However, if the required biometrics are outdated, then the officer must update the biometrics prior to the adjudication of a waiver.
4. ^[^] See Chapter 4, Waiver Eligibility and Evidence [9 USCIS-PM A.4].
5. ^[^] Inadmissible under INA 212(a)(9)(A) or INA 212(a)(9)(C).
6. ^[^] See *Matter of J-F-D- (PDF)*, 10 I&N Dec. 694 (Reg. Comm. 1963). See *Matter of Martinez-Torres (PDF)*, 10 I&N Dec. 776 (Reg. Comm. 1964).
7. ^[^] See *Matter of J-F-D- (PDF)*, 10 I&N Dec. 694 (Reg. Comm. 1963). See *Matter of Martinez-Torres (PDF)*, 10 I&N Dec. 776 (Reg. Comm. 1964).
8. ^[^] See 8 CFR 103.2(b).

Chapter 5 - Discretion

If the applicant meets all other statutory and regulatory requirements of the waiver, the officer must determine whether to approve the waiver as a matter of discretion. ^[1] Meeting the other statutory and regulatory requirements alone does not entitle

the applicant to relief. ^[2]

The discretionary determination is the final step in the adjudication of a waiver application. The applicant bears the burden of proving that he or she merits a favorable exercise of discretion. ^[3]

A. Discretionary Factors

The officer must weigh the social and humanitarian considerations against the adverse factors present in the applicant's case. ^[4] The approval of a waiver as a matter of discretion depends on whether the favorable factors in the applicant's case outweigh the unfavorable ones. ^[5]

The following table provides some of the factors relevant to the waiver adjudication.

Non-Exhaustive List of Factors that May Be Relevant in the Discretionary Analysis

Category	Favorable Factors	Unfavorable Factors
Waiver Eligibility	- Meeting certain other statutory requirements of the waiver, including a finding of extreme hardship to a qualifying family member, if applicable. ^[6] - Eligibility for waiver of other inadmissibility grounds.	Not applicable – Not meeting the statutory requirements of the waiver results in a waiver denial. A discretionary analysis is not necessary.
Family and Community Ties	- Family ties to the United States and the closeness of the underlying relationships. - Hardship to the applicant or to non-qualifying lawful permanent residents (LPRs) or U.S. citizen relatives or employers. - Length of lawful residence in the United States and status held during that residence, particularly where the applicant began residency at a young age. - Significant health concerns that affect the qualifying relative. - Difficulties the qualifying relative would be likely to face if the qualifying relative moves abroad with the applicant due to country conditions, inability to adapt, restrictions on residence, or other factors that may be claimed. - Honorable service in the U.S. armed forces or other evidence of value and service to the community. - Property or business ties in the United States.	Absence of community ties.

Category	Favorable Factors	Unfavorable Factors
Criminal History, Moral Character (or both)	• Respect for law and order, and good moral character, which may be evidenced by affidavits from family, friends, and responsible community representatives. • Reformation of character and rehabilitation. • Community service beyond any imposed by the courts. • Considerable passage of time since deportation or removal.	• Moral depravity or criminal tendencies reflected by an ongoing or continuing criminal record, particularly the nature, scope, seriousness, and recent occurrence of criminal activity. • Repeated or serious violations of immigration laws, which evidence a disregard for U.S. law. • Lack of reformation of character or rehabilitation. • Previous instances of fraud or false testimony in dealings with USCIS or any government agency. • Marriage to a U.S. citizen or LPR for the primary purpose of circumventing immigration laws. • Nature and underlying circumstances of the inadmissibility ground at issue, and the seriousness of the violation. • Public safety or national security concerns
Other	• Absence of significant undesirable or negative factors.	• Other indicators of an applicant's bad character and undesirability as a permanent resident of this country.

B. Discretionary Determination

When making a discretionary determination, the officer should review the entire record and give the appropriate weight to each adverse and favorable factor. Once the officer has weighed each factor, the officer should consider all of the factors cumulatively to determine whether the favorable factors outweigh the unfavorable ones. If the officer determines that the positive factors outweigh the negative factors, then the applicant merits a favorable exercise of discretion.

Example

A lengthy and stable marriage is generally a favorable factor in the discretionary analysis. On the other hand, the weight given to any possible hardship to the spouse that may occur upon separation may be diminished if the parties married after the

commencement of removal proceedings with knowledge of an impending removal. ^[7]

Example

In general, when reviewing an applicant's employment history, an officer may consider the type, length, and stability of the employment. ^[8]

Example

In general, when reviewing an applicant's history of physical presence in the United States, the officer may favorably consider residence of long duration in this country, as well as residence in the United States while the applicant was of young age. ^[9]

Example

When looking at the applicant's presence in the United States, the officer should evaluate the nature of the presence. For example, a period of residency during which the applicant was imprisoned may diminish the significance of that period of residency. ^[10]

C. Cases Involving Violent or Dangerous Crimes

If a foreign national is inadmissible on criminal grounds involving a violent or dangerous crime, an officer may not exercise favorable discretion unless the applicant has established, in addition to the other statutory and regulatory requirements of the waiver that:

- The case involves extraordinary circumstances; or
- The denial would result in exceptional and extremely unusual hardship. ^[11]

Extraordinary circumstances involve considerations such as national security or foreign policy interests. Exceptional and extremely unusual hardship is substantially beyond the ordinary hardship that would be expected as a result of denial of admission, but it does not need to be so severe as to be considered unconscionable. ^[12] Depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances may still be insufficient to warrant a favorable exercise of discretion. ^[13]

Footnotes

1. ^[^] If the applicant does not meet another statutory requirement of the waiver, USCIS denies the waiver and a discretionary analysis is not necessary. However, an officer may still include a discretionary analysis if the applicant's conduct is so egregious that a discretionary denial would be warranted even if the applicant had met the other statutory and regulatory requirements. Adding a discretionary analysis to a denial is also useful if an appellate body on review disagrees with the officer's conclusion that the applicant failed to meet the statutory requisites for the waiver.

2. ^[^] See *Reyes-Cornejo v. Holder*, 734 F.3d 636 (7th Cir. 2013). See *Matter of Cervantes-Gonzalez (PDF)*, 22 I&N Dec. 560 (BIA 1999). See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296 (BIA 1996).

3. ^[^] See *Matter of De Lucia (PDF)*, 11 I&N Dec. 565 (BIA 1966). See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

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

5. ^[^] See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296 (BIA 1996) (relating to a criminal waiver under [INA 212\(h\)\(1\)\(B\)](#)). See *Matter of Marin (PDF)*, 16 I&N Dec. 581 (BIA 1978) (relating to an [INA 212\(c\)](#) waiver). See *Matter of Tijam*, 22 I&N Dec. 408 (BIA

1998) (relating to a fraud or misrepresentation finding ([INA 212\(a\)\(6\)\(C\)\(i\)](#)) and the discretionary waiver under former INA 241(a)(1)(H) [renumbered as [INA 237\(a\)\(1\)\(H\)](#) by IIRIRA]).

6. ^[^] In particular, if a finding of extreme hardship is a statutory eligibility requirement, the finding of extreme hardship permits, but does not require, a favorable exercise of discretion. Once extreme hardship is found, extreme hardship becomes a factor that weighs in favor of granting relief as a matter of discretion.

7. ^[^] See [Matter of Mendez-Moralez \(PDF\)](#), 21 I&N Dec. 296 (BIA 1996). See *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992).

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

9. ^[^] See *Diaz-Resendez v. INS*, 960 F.2d 493 (5th Cir. 1992).

10. ^[^] See *Douglas v. INS*, 28 F.3d 241 (2nd Cir. 1994).

11. ^[^] See [INA 212\(h\)](#). See [8 CFR 212.7\(d\)](#). See [Matter of Jean \(PDF\)](#), 23 I&N Dec. 373 (A.G. 2002) (relating to a waiver of inadmissibility granted in connection with [INA 209\(c\)](#), refugee or asylee adjustment of status).

12. ^[^] See *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001).

13. ^[^] See [8 CFR 212.7\(d\)](#).

Chapter 6 - Validity of an Approved Waiver

A. Extent of Waiver Validity

In general, an approved waiver is only valid for the grounds of inadmissibility specified in the application. Furthermore, a waiver is only valid for those crimes, events, incidents, or conditions specified in the waiver application. If a foreign national is later found inadmissible for a separate crime, event, incident or condition not already included in the approved waiver application, the foreign national is required to file another waiver application.

B. Length of Waiver Validity

A waiver's validity depends on the underlying immigration benefit connected to the approved waiver.

1. Certain Nonimmigrants ^[1]

An inadmissible applicant seeking to enter the United States as a nonimmigrant generally needs to obtain advance permission to enter the United States as a nonimmigrant. ^[2] Advance permission to enter as a nonimmigrant ^[3] despite inadmissibility is referred to as a nonimmigrant waiver. Customs and Border Protection (CBP) generally adjudicates this waiver, which is temporary if approved. ^[4] This temporary permission does not ordinarily carry over to other benefit categories, such as other nonimmigrant categories, immigrant categories, visas, or adjustment of status.

2. Temporary Protected Status Holders ^[5]

An applicant seeking temporary protected status (TPS) status in the United States may be inadmissible. In most cases, a waiver is available to a TPS applicant in connection with his or her TPS application. If USCIS approves a TPS applicant's waiver, the waiver is temporary and lasts for the duration of TPS only. ^[6]

3. Refugees

An inadmissible refugee must apply for a waiver before seeking admission to the United States. ^[7] A waiver granted to a refugee for admission to the United States is valid for purposes of seeking adjustment of status as a refugee. ^[8] In this case, the applicant does not have to file another waiver for the specific inadmissibility ground previously waived. ^[9]

There is an exception, however, for medical waivers. If USCIS grants the refugee a waiver for purposes of admission to the United States because of a Class A condition, then the refugee is required to submit to another medical examination. If the second examination reveals a Class A condition, the refugee must file another waiver when seeking adjustment of status. ^[10]

4. Lawful Permanent Residents

An inadmissible applicant seeking lawful permanent resident (LPR) status requires a waiver. As previously explained, the availability of a waiver depends on the specific category under which an applicant seeks LPR status.

A waiver granted in connection with any application for LPR status ^[11] permanently waives the ground of inadmissibility for purposes of any future immigration benefits application, including immigrant and nonimmigrant benefits. The waiver remains valid even if the LPR later abandons or otherwise loses LPR status. ^[12]

This rule, however, does not apply to conditional residents or conditional grants issued to K-1 and K-2 nonimmigrants. ^[13]

5. Conditional Permanent Residents ^[14]

For most conditional permanent residents, ^[15] the waiver becomes valid indefinitely when the conditions are removed from the permanent resident status. This is the case even if the LPR later abandons or otherwise loses LPR status.

For certain criminal waivers ^[16] and a waiver of fraud or willful misrepresentation, ^[17] the validity of a waiver automatically ends if USCIS terminates conditional residency. There is no need for a separate termination notice and the applicant cannot appeal this waiver termination. If the immigration judge determines during removal proceedings that USCIS incorrectly terminated the conditional residence, the waiver becomes effective again. ^[18]

6. K-1 and K-2 Nonimmigrants

If the applicant seeks a waiver to obtain a fiancé(e) visa (K-1 or K-2), the waiver's approval is conditioned upon the K-1 nonimmigrant marrying the U.S. citizen who filed the fiancé(e) petition. ^[19] If the K-1 nonimmigrant marries the petitioner, the approved waiver becomes valid indefinitely for any future immigration benefits application, whether immigrant or nonimmigrant.

The waiver remains valid even if the K nonimmigrant does not ultimately adjust status to an LPR or if the K nonimmigrant later abandons or otherwise loses LPR status. ^[20]

If the K-1 nonimmigrant does not marry the petitioner, the K-1 and K-2 (if applicable) remain inadmissible for any application or any benefit other than the proposed marriage between the K-1 and the K nonimmigrant visa petitioner. ^[21]

7. Inter-country Convention Adoptees

An approved waiver in conjunction with the provisional approval of a Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800) is conditioned upon the issuance of an immigrant or nonimmigrant visa for the child's admission to the United States and final approval of that Form I-800. If Form I-800 or the immigrant or nonimmigrant visa application is ultimately denied, the waiver is void. ^[22]

Footnotes

1. ^[^] Except for K, T, U, and V nonimmigrants.
2. ^[^] The application is filed on Application for Advance Permission to Enter as Nonimmigrant ([Form I-192](#)).
3. ^[^] See [INA 212\(d\)\(3\)\(A\)](#).
4. ^[^] For more information on when an applicant should file this waiver with CBP and when with USCIS, see Application for Advance Permission to Enter as a Nonimmigrant ([Form I-192](#)).
5. ^[^] See [INA 244\(c\)](#).
6. ^[^] See [INA 244\(a\)](#) and [INA 244\(c\)](#). See [8 CFR 244.3](#) and [8 CFR 244.13](#). See Instructions for Application for Waiver of Grounds of Inadmissibility ([Form I-601](#)). If the applicant obtains a waiver in connection with an Application for Temporary Protected Status ([Form I-821](#)), the waiver is only valid for the TPS application. If granted, the waiver applies to subsequent TPS re-registration applications, but not to any other immigration benefit requests.
7. ^[^] See [INA 207\(c\)\(3\)](#).
8. ^[^] See [INA 209](#).
9. ^[^] If the refugee is seeking adjustment of status on a basis other than [INA 209](#), the refugee must apply for a new waiver as required by that particular benefit.
10. ^[^] Refugees seek adjustment of status under [INA 209](#). For more information on Class A conditions, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)].
11. ^[^] This includes applications for an immigrant visa, fiancé(e) visa, legalization, and adjustment of status.
12. ^[^] See [8 CFR 212.7\(a\)\(4\)\(ii\)](#).
13. ^[^] See [8 CFR 212.7\(a\)\(4\)\(ii\)](#). For K-1 and K-2 nonimmigrants granted a waiver, see Subsection 6, K-1 and K-2 Nonimmigrants [[9 USCIS-PM A.6\(B\)\(6\)](#)].
14. ^[^] See [INA 216](#). See [8 CFR 212.7\(a\)\(4\)\(iv\)](#).
15. ^[^] Foreign nationals lawfully admitted for permanent residence on a conditional basis. See [INA 216](#).
16. ^[^] See [INA 212\(h\)](#).
17. ^[^] See [INA 212\(i\)](#).
18. ^[^] See [8 CFR 212.7\(a\)\(4\)\(iv\)](#).
19. ^[^] See [8 CFR 212.7\(a\)\(4\)\(iii\)](#).
20. ^[^] See [8 CFR 212.7\(a\)\(4\)\(ii\)](#).
21. ^[^] See [8 CFR 212.7\(a\)\(4\)\(iii\)](#).
22. ^[^] See [8 CFR 204.313\(g\)](#).

Chapter 7 - Denials, Appeals, and Motions

An officer must specify the reason(s) for denying any waiver in the denial notice. ^[1] If an officer denies the waiver based on discretion, the officer should explain how the negative factors outweigh the positive factors.

If USCIS denies a waiver application, the governing regulation may provide that the applicant may appeal the denial. ^[2] The officer must specify in the decision letter if the applicant may:

- File an appeal. If the decision is appealable, the officer must give the applicant proper notice of the possibility to appeal; or
- File a motion to reopen or reconsider. If USCIS approves the motion, then the officer reviews the waiver application again as if it had never been adjudicated. Therefore, USCIS issues a new decision on the waiver application following a successful motion.

USCIS may also reconsider a waiver approval or denial on its own motion at any time. ^[3]

Footnotes

1. ^[^] See 8 CFR 103.3(a)(1)(i).

2. ^[^] See 8 CFR 103.3.

3. ^[^] See 8 CFR 103.5(a) and 8 CFR 212.7(a)(4)(v).

Part B - Extreme Hardship

Chapter 1 - Purpose and Background

A. Purpose

This part offers guidance concerning the adjudication of applications for those discretionary waivers of inadmissibility that require applicants to establish that refusal of their admission would result in “extreme hardship” to certain U.S. citizen or lawful permanent resident (LPR) family members.

B. Background

Under the Immigration and Nationality Act (INA), ^[1] admissibility is generally a requirement for admission to the United States, adjustment of status, and other immigration benefits. ^[2] The grounds that make foreign nationals inadmissible to the United States are generally described in section 212 of the INA.

Several statutory provisions authorize the Secretary of Homeland Security ^[3] to grant discretionary waivers of particular grounds of inadmissibility for those who demonstrate that a denial of admission would result in “extreme hardship” to specified U.S. citizen or LPR family members. These specified family members are known as “qualifying relatives.” ^[4]

Each of these statutory provisions conditions a waiver on both a finding of extreme hardship to one or more qualifying relatives and the favorable exercise of discretion. These waiver applications are adjudicated by USCIS (and in some cases by the Department of Justice’s Executive Office for Immigration Review). ^[5]

The various statutory waiver provisions specify different categories of qualifying relatives and permit waivers of different inadmissibility grounds. The provisions include:

- [INA 212\(a\)\(9\)\(B\)\(v\)](#) – Provides for waiver of the 3- and 10-year inadmissibility bars for unlawful presence. ^[6] Qualifying relatives are limited to applicants’ U.S. citizen and LPR spouses and parents. ^[7]
- [INA 212\(h\)\(1\)\(B\)](#) ^[8] – Provides for waiver of inadmissibility based on crimes involving moral turpitude, multiple criminal convictions, prostitution and commercialized vice, and certain serious criminal offenses for which the foreign national received immunity from prosecution. ^[9] Also provides a waiver of inadmissibility for a controlled substance violation insofar as the violation relates to a single offense of simple possession of 30 grams or less of marijuana. ^[10] Qualifying relatives are limited to applicants’ U.S. citizen and LPR spouses, parents, sons, and daughters. ^[11]
- [INA 212\(i\)\(1\)](#) – Provides for waiver of inadmissibility for certain types of immigration fraud or willful misrepresentations of material fact. ^[12] For purposes of this waiver:
 - Qualifying relatives are generally limited to applicants’ U.S. citizen and LPR spouses and parents.
 - But if the applicant is a Violence Against Women Act (VAWA) self-petitioner, USCIS also must consider extreme hardship to the applicant himself or herself, or to a parent or child ^[13] who is a U.S. citizen, LPR, or otherwise a qualified alien.

The factors discussed in this guidance apply to any waiver application in which a foreign national must establish extreme hardship to a qualifying relative. ^[14] Because the classes of individuals who may serve as qualifying relatives varies among the different waiver provisions, officers should carefully determine which individuals can serve as qualifying relatives under the relevant extreme hardship analysis.

Footnotes

1. ^[^] See Immigration and Nationality Act, [Pub. L. 82-414](#), 66 Stat. 163 (June 27, 1952), as amended.
2. ^[^] See [INA 212\(a\)](#) and [INA 245\(a\)](#).
3. ^[^] See [6 U.S.C. 271\(b\)](#). See Delegation No. 0150.1, “Delegation to the Bureau of Citizenship and Immigration Services” II, Z (June 5, 2003).
4. ^[^] The classes of individuals who may serve as “qualifying relatives” depends on the specific text of the waiver provision involved. A U.S. citizen or LPR spouse or parent is a qualifying relative for most extreme hardship waivers. For certain other extreme hardship waivers, a U.S. citizen or LPR child, as well as an adult son or daughter, can be the qualifying relative. In the case of a K visa applicant, a U.S. citizen fiancé(e) is considered a U.S. citizen “spouse” qualifying relative. See [8 CFR 212.7\(a\)](#) and [22 CFR 41.81\(d\)](#) (K nonimmigrants). Finally, under some provisions, discretionary relief may be available upon a showing of extreme hardship to the applicants themselves. These include waivers of inadmissibility under [INA 212\(i\)\(1\)](#) (waiver of fraud-related inadmissibility for Violence Against Women Act (VAWA) self-petitioners), waivers of requirements for removing conditions on LPR status under [INA 216\(c\)\(4\)\(A\)](#), cancellation of removal under [INA 240A\(b\)\(2\)\(A\)\(v\)](#) adjudicated by the Executive Office for Immigration Review, and suspension of removal and cancellation of removal under Section 203 of Nicaraguan Adjustment and Central America Relief Act (NACARA), [Pub. L. 105-100](#), 111 Stat. 2160, 2196 (November 19, 1997). See [8 CFR 240.64\(c\)](#) and [8 CFR 1240.64\(c\)](#). This guidance addresses USCIS’ adjudication of waiver applications that require a showing of extreme hardship to specified family members, not applications based on extreme hardship to applicants themselves.
5. ^[^] See [6 U.S.C. 271\(b\)](#). See Delegation No. 0150.1, “Delegation to the Bureau of Citizenship and Immigration Services” II, Z (June 5, 2003).
6. ^[^] See [INA 212\(a\)\(9\)\(B\)\(i\)](#).

7. [^] A U.S. citizen fiancé(e) is a qualifying relative in the case of a K nonimmigrant applicant. See [8 CFR 212.7\(a\)](#) and [22 CFR 41.81\(d\)](#) (K nonimmigrants).
8. [^] Other provisions of [INA 212\(h\)](#) authorize waivers of certain grounds of inadmissibility without an extreme hardship determination. See [INA 212\(h\)](#), [INA 212\(h\)\(1\)\(A\)](#), and [INA 212\(h\)\(1\)\(C\)](#).
9. [^] See [INA 212\(a\)\(2\)\(A\)\(i\)](#), [INA 212\(a\)\(2\)\(B\)](#), [INA 212\(a\)\(2\)\(D\)](#), and [INA 212\(a\)\(2\)\(E\)](#).
10. [^] See [INA 212\(a\)\(2\)\(A\)\(ii\)](#).
11. [^] The son or daughter must be related to the applicant in one of the ways specified in [INA 101\(b\)\(1\)](#), but he or she does not need to be a “child” (unmarried and under 21 years of age). Because the term “son or daughter” is not restricted with respect to age or marital status, it includes children as defined in [INA 101\(b\)\(1\)](#) as well as adult or married sons and daughters.
12. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
13. [^] The term “child” is limited to individuals who are unmarried, under 21 years of age, and related to the applicant in one of the ways specified in [INA 101\(b\)\(1\)](#).
14. [^] Certain types of waivers utilize standards of hardship other than “extreme hardship.” For example, the “exceptional hardship” waiver that applies to the foreign residence requirement for certain exchange visitors under [INA 212\(e\)](#) is a less demanding standard than “extreme hardship.” By contrast, the “exceptional and extremely unusual hardship” standard for non-LPR cancellation of removal is more stringent than the extreme hardship standard under [INA 240A\(b\)](#). See [Matter of Monreal-Aguinaga \(PDF\)](#), 23 I&N Dec. 56 (BIA 2001). This guidance specifically applies only to “extreme hardship” determinations.

Chapter 2 - Extreme Hardship Policy

A. Overview

Waivers of inadmissibility generally authorize U.S. immigration authorities to balance competing policy considerations when determining whether a foreign national should be admitted to the United States despite his or her inadmissibility.

On the one hand, the foreign national has engaged in conduct that Congress considers serious enough to render the individual inadmissible to the United States. On the other hand, Congress specifically authorized waivers of these grounds of inadmissibility for those cases in which the refusal of admission “would result in extreme hardship.” To meet this “extreme hardship” requirement, the applicant must show that refusal of admission would impose more than the usual level of hardship that commonly results from family separation or relocation. Congress clearly intended the waiver to be applied for purposes of family unity and with other humanitarian concerns in mind. ^[1]

B. What is Extreme Hardship

The term “extreme hardship” is not expressly defined in the Immigration and Nationality Act (INA), in Department of Homeland Security (DHS) regulations, or in case law (although DHS regulations and certain Board of Immigration Appeals (BIA) decisions have provided some relevant guidance with respect to what may constitute extreme hardship in certain contexts). As the U.S. Supreme Court recognized in *INS v. Jong Ha Wang*, “[t]hese words are not self-explanatory, and reasonable men could easily differ as to their construction. But the [INA] commits their definition in the first instance to the Attorney General [and the Secretary of Homeland Security] and [their] delegates.” ^[2]

Therefore, “[t]he Attorney General [and the Secretary of Homeland Security] and [their] delegates have the authority to construe ‘extreme hardship’ narrowly should they deem it wise to do so.” ^[3] Conversely, “[a] restrictive view of extreme hardship

is not mandated either by the Supreme Court or by [the BIA] case law.” ^[4]

USCIS recognizes that at least some degree of hardship to qualifying relatives exists in most, if not all, cases in which individuals with the requisite relationships are denied admission. Importantly, to be considered “extreme,” the hardship must exceed that which is usual or expected. ^[5] But extreme hardship need not be unique, ^[6] nor is the standard as demanding as the statutory “exceptional and extremely unusual hardship” standard that is generally applicable to non-lawful permanent resident cancellation of removal. ^[7]

Footnotes

1. ^[^] For example, see [Matter of Lopez-Monzon \(PDF\)](#), 17 I&N Dec. 280, 281 (BIA 1979) (“The intent of Congress in adding [the [INA 212\(i\)](#) waiver], which is evident from its language, was to provide for the unification of families, thereby avoiding the hardship of separation.”).
2. ^[^] See 450 U.S. 139, 144 (1981) (per curiam).
3. ^[^] See *INS v. Jong Ha Wang*, 450 U.S. 139, 145 (1981) (per curiam).
4. ^[^] See [Matter of Pilch \(PDF\)](#), 21 I&N Dec. 627, 630 (BIA 1996). See [Matter of L-O-G- \(PDF\)](#), 21 I&N Dec. 413, 418 (BIA 1996).
5. ^[^] See 8 CFR 1240.58(b) (hardship must go “beyond that typically associated with deportation”) (former suspension of deportation). The federal courts and the BIA have frequently relied on cases involving the former suspension of deportation statute when interpreting extreme hardship waiver statutes, as these statutes employed the same language. See *Hassan v. INS*, 927 F.2d 465, 467 (9th Cir. 1991). See [Matter of Cervantes-Gonzalez \(PDF\)](#), 22 I&N Dec. 560, 565 (BIA 1999), *aff’d*, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001).
6. ^[^] See [Matter of L-O-G- \(PDF\)](#), 21 I&N Dec. 413, 418 (BIA 1996).
7. ^[^] See [INA 240A\(b\)](#). See [Matter of Andazola-Rivas \(PDF\)](#), 23 I&N Dec. 319, 322, 324 (BIA 2002) (holding the “exceptional and extremely unusual hardship” standard to be “significantly more burdensome than the ‘extreme hardship’ standard” and intimating that the applicant “might well” have prevailed under the latter standard even though she failed under the former). See [Matter of Monreal-Aguinaga \(PDF\)](#), 23 I&N Dec. 56, 59-64 (BIA 2001) (same).

Chapter 3 - Adjudicating Extreme Hardship Claims

A. Overview

In adjudicating a waiver request, the officer must ensure that the applicant meets all of the statutory requirements for the waiver, including the extreme hardship showing. If the applicant is eligible, the officer must then determine whether the applicant warrants a favorable exercise of discretion. In each case, the officer should analyze each part separately.

First, the applicant has the burden of proof to demonstrate by a preponderance of the evidence that he or she satisfies the statutory requirements of the waiver, including extreme hardship. ^[1] The applicant meets the preponderance of the evidencstandard if the evidence shows that it is more likely than not that a denial of admission would result in extreme hardship to one or more qualifying relatives. ^[2]

The finding of extreme hardship permits, but does not require, a favorable exercise of discretion. ^[3] Once the officer finds extreme hardship, the officer must then determine whether the applicant has shown that he or she merits a favorable exercise of discretion. ^[4]

B. Adjudicative Steps

The officer should complete the following steps when adjudicating a waiver application that requires a showing of extreme hardship to a qualifying relative. ^[5]

Adjudication Steps for Waivers Requiring Extreme Hardship to a Qualifying Relative

Adjudication Step	For More Information
Step 1 Confirm that the waiver provision requires a showing of extreme hardship to a qualifying relative.	See Chapter 1, Purpose and Background [9 USCIS-PM B.1]
Step 2 Consistent with the applicable waiver authority, identify each person as to whom the applicant makes a claim of extreme hardship and confirm that the applicant has established the necessary family relationship for the person(s) to be qualifying relatives(s).	See Chapter 4, Qualifying Relative [9 USCIS-PM B.4]
Step 3 Evaluate the present and future hardships that each qualifying relative would experience to determine whether it is more likely than not that an applicant's refusal of admission would result in extreme hardship to the qualifying relative. This includes whether any of the particularly significant factors listed below are present. These particularly significant factors generally exceed the common consequences and often weigh heavily in support of a finding of extreme hardship.	See Chapter 5, Extreme Hardship Considerations and Factors [9 USCIS-PM B.5] See Chapter 6, Extreme Hardship Determinations [9 USCIS-PM B.6]
Step 4 If no single hardship rises to the level of "extreme," then determine whether it is more likely than not that the hardships to the qualifying relatives in the aggregate rise to the level of extreme hardship.	See Chapter 2, Extreme Hardship Policy [9 USCIS-PM B.2] See Chapter 5, Extreme Hardship Considerations and Factors [9 USCIS-PM B.5] See Chapter 6, Extreme Hardship Determinations [9 USCIS-PM B.6]

Adjudication Step	For More Information
Step 5 If extreme hardship is not found, deny the application. If extreme hardship is found, determine whether based on the totality of the circumstances of the individual case, the applicant merits a favorable exercise of discretion.	See Chapter 7, Discretion [9 USCIS-PM B.7]

Footnotes

- [^] See [INA 291](#) (providing that burden is on applicant for admission to prove he or she is “not inadmissible” and “entitled to the nonimmigrant [or] immigrant . . . status claimed”). See [Matter of Mendez-Morales \(PDF\)](#), 21 I&N Dec. 296, 299 (BIA 1996) (holding that applicant for [INA 212\(h\)\(1\)\(B\)](#) waiver has burden of showing that favorable exercise of discretion is warranted, “as is true for other discretionary forms of relief”). See [8 CFR 212.7\(e\)\(7\)](#) (provisional [INA 212\(a\)\(9\)\(B\)\(v\)](#) waivers). See [INA 240\(c\)\(4\)\(A\)](#) (in removal proceedings, the applicant for relief has the burden of proving that he or she is statutorily eligible and merits a favorable exercise of discretion).
- [^] See [Matter of Chawathe \(PDF\)](#), 25 I&N Dec. 369, 376 (AAO 2010).
- [^] See [Matter of Cervantes-Gonzalez \(PDF\)](#), 22 I&N Dec. 560, 566 (BIA 1999), aff’d, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001). See [Matter of Ngai \(PDF\)](#), 19 I&N Dec. 245 (BIA 1984). See [Matter of Shaughnessy \(PDF\)](#), 12 I&N Dec. 810 (BIA 1968).
- [^] See Chapter 7, Discretion [9 USCIS-PM B.7].
- [^] In most cases, there will already have been a finding of inadmissibility, either by the consular officer adjudicating a visa application, or a USCIS officer adjudicating a related application, such as an Application to Register Permanent Residence or Adjust Status ([Form I-485](#)). A formal finding of inadmissibility is not required in adjudicating an Application for Provisional Presence Waiver ([Form I-601A](#)). The officer should identify all inadmissibility grounds and confirm that the ground(s) may be waived. This chart assumes that the inadmissibility grounds have been identified and that a waiver is available.

Chapter 4 - Qualifying Relative

A. Establishing the Relationship to the Qualifying Relative

A USCIS officer must verify that the relationship to a qualifying relative exists. When the qualifying relative is the visa petitioner, an officer should use the approval of the Petition for Alien Relative ([Form I-130](#)) as proof that the qualifying relationship has been established. ^[1]

If the applicant’s relationship to the qualifying relative has not already been established through a prior approved petition, the USCIS officer must otherwise verify that the relationship to the qualifying relative exists. Along with the waiver application, applicants should include primary evidence that supports the relationship, such as marriage certificates, ^[2] birth certificates, adoption papers, paternity orders, orders of child support, or other court or official documents.

If such primary evidence does not exist or is otherwise unavailable, the applicant should explain the reason for the unavailability and submit secondary evidence of the relationship, such as school records or records of religious or other

community institutions. If secondary evidence is also not reasonably available, the applicant may submit written testimony from a witness or witnesses with personal knowledge of the relevant facts. ^[3] If evidence establishing the relationship is missing or insufficient, the officer should issue a Request for Evidence (RFE) in accordance with USCIS policy.

If the applicant claims that the qualifying relative would suffer extreme hardship in part due to the hardship that would be suffered by a non-qualifying relative, the applicant must submit evidence establishing the claimed relationships. ^[4] If such evidence is missing or insufficient, the officer should issue an RFE in accordance with USCIS policy.

B. Separation or Relocation

With respect to the requirement that the refusal of the applicant's admission "would result in" extreme hardship to a qualifying relative, there are 2 potential scenarios to consider. Either:

- The qualifying relative(s) may remain in the United States separated from the applicant who is denied admission(separation); or
- The qualifying relative(s) may relocate overseas with the applicant who is denied admission (relocation).

In either scenario, depending on all the facts of the particular case, the refusal of admission may result in extreme hardship to one or more qualifying relatives.

Separation may result in extreme hardship if refusal of the applicant's admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family separation. ^[5] When assessing extreme hardship claims based on separation, USCIS focuses on how denial of the applicant's admission would affect the qualifying relative's well-being in the United States given the separation of the qualifying relative from the applicant.

Relocation may result in extreme hardship if refusal of the applicant's admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family relocation. When assessing extreme hardship claims based on relocation, USCIS focuses on how denial of the applicant's admission would affect the qualifying relative's well-being given the qualifying relative's relocation outside the United States.

An applicant may show that extreme hardship to a qualifying relative would result from both separation and relocation. ^[6] However, an applicant is not required to show extreme hardship under both scenarios. An applicant may submit evidence demonstrating which of the 2 scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship. ^[7]

If the applicant seeks to demonstrate extreme hardship based on separation or relocation, the applicant's evidence must demonstrate that the designated outcome "would result" from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate or separate if the applicant is denied admission. The statement should be sufficiently detailed to adequately convey to USCIS the reasons why either separation or relocation would likely result from a denial of admission. The applicant may also submit documentation or other evidence, if available, in support of this statement.

Due to the subjective factors inherently involved in decisions involving separation or relocation, a credible statement from the qualifying relative may be the best available evidence for establishing whether he or she would separate or relocate if the applicant's admission is denied. Among other things, such decisions generally involve the weighing of many deeply personal and subjective factors that cannot be objectively assessed by others.

Qualifying relative spouses, for example, are faced with the choice of separating from their applicant spouses to remain in the United States or leaving the United States to relocate abroad with their applicant spouses. The former may involve, among other things, the significant decline in the emotional support and affection between spouses; the latter may involve leaving

behind important ties to the United States, including family and friends in the country, jobs and career opportunities, educational opportunities, availability of medical care, and safety and security. Decisions based on such complex human factors may be difficult to prove other than through credible statements.

However, if the USCIS officer determines that such a statement is not plausible or credible (including because it is inconsistent with the evidence of hardship presented), the officer may request additional evidence from the applicant to support the designation that the qualifying relative would separate or relocate. In such cases, the officer must consider the subjective nature of the inquiry and the difficulty involved in proving intent in this context through documentary or other supporting evidence.

Moreover, the officer must make determinations based on the evidence and arguments presented and not on the officer's personal moral view as to whether a particular qualifying relative "ought" to either relocate or separate in an individual case. Generally, in the absence of inconsistent evidence, a credible, sworn statement from the qualifying relative of his or her intent to relocate or separate would generally suffice to demonstrate what the qualifying relative plans to do.

Ultimately, the officer must be persuaded that it is more likely than not that a qualifying relative will suffer extreme hardship resulting from the denial of admission. In a case in which the applicant chooses to rely on evidence showing that extreme hardship would result from relocation, the officer must determine based on a preponderance of the evidence that relocation would occur. The same principle applies if the applicant chooses to rely on evidence showing that extreme hardship would result from separation. If the evidence presented fails to persuade the officer, the officer should provide an opportunity for the applicant to submit additional evidence—either to show that relocation or separation would occur, or to demonstrate that extreme hardship would result under both scenarios.

Finally, special considerations may arise in cases involving those limited statutory waivers for which a child may serve as a qualifying relative. ^[8] In such cases, a parent who asserts that he or she will separate from a child so that the child may remain in the United States bears the burden of overcoming the general presumption that the child will relocate with the parent. Among other factors, the parent should generally be expected to explain the arrangements for the child's care and support.

The failure to provide a credible plan for the care and support of the child would cast doubt on the parent's contention that he or she will actually leave the child behind in the United States. ^[9] Moreover, if the parent represents that the child will be left behind, USCIS may require the parent to state that understanding in a statement made under penalty of perjury. ^[10] Such a statement is not required, however, if the parent credibly represents that the child will be left behind in the care of the other parent ^[11] (which may itself give rise to extreme hardship depending on the totality of the circumstances).

C. Effect on Extreme Hardship if Qualifying Relative Dies

Generally, the applicant must show extreme hardship to a qualifying relative who is alive at the time the waiver application is both filed and adjudicated. ^[12] Unless a specific exception applies, an applicant cannot show extreme hardship if the qualifying relative has died.

INA 204(l) provides the only exception. In general, INA 204(l) allows USCIS to approve, or reinstate approval of, an immigrant visa petition and certain other benefits even though the petitioner or the principal beneficiary has died. INA 204(l) also provides that it applies generally to "any related applications," thereby including applications for waivers related to immigrant visa petitions.

Under this provision, a foreign national who establishes that the requirements of INA 204(l) have been met may apply for a waiver even though the qualifying relative for purposes of extreme hardship has died. Moreover, in cases in which the deceased individual is both the qualifying relative for purposes of INA 204(l) and the qualifying relative for purposes of the extreme hardship determination, the death of the qualifying relative is treated as the functional equivalent of a finding of extreme hardship. ^[13]

Section 204(l) also applies in the case of widows and widowers of U.S. citizens whose pending or approved petition was converted to a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360),^[14] including if the petition later reverts to a Form I-130 petition based on a subsequent remarriage.^[15]

D. Effect of Hardship Experienced by a Person who is not a Qualifying Relative

On its own, hardship to a non-qualifying relative^[16] cannot satisfy the extreme hardship requirement. In some cases, however, the hardship experienced by non-qualifying relatives can be considered as part of the extreme hardship determination, but only to the extent that such hardship affects one or more qualifying relatives.^[17]

1. Hardship to the Applicant

Except for certain applicants who are Violence Against Women Act (VAWA) self-petitioners, applicants for the waivers enumerated in Chapter 1 may not meet the relevant extreme hardship requirements by establishing hardship to themselves. In cases in which applicants who are not VAWA self-petitioners submit evidence of hardship to themselves, officers should consider the alleged hardships only as they affect the applicants' qualifying relatives.

For example, consider an applicant who indicates he suffers from a medical condition for which he would be unable to obtain necessary medical treatment in his home country. The applicant provides medical documentation about his condition and Department of State (DOS) information on country conditions that corroborate his statements. Because the applicant is not a qualifying relative, his claims alone cannot meet the extreme hardship requirement of the waiver.

However, the applicant's condition and prospective situation may show that denial of his admission would have a significant emotional or financial impact on one or more qualifying relatives in the United States. The USCIS officer may consider such impacts when determining whether the qualifying relative(s) would experience extreme hardship upon the applicant's denial of admission.

2. Hardship to Other Non-Qualifying Relatives

Similarly, if the applicant claims hardship to an individual who is not a qualifying relative for purposes of the relevant waiver, the officer should consider the alleged hardship only as it affects one or more qualifying relatives.

For example, consider an applicant who is married to a U.S. citizen with whom she has a 5-year-old child with a disability. Unless the relevant waiver allows for her child to serve as a qualifying relative, the USCIS officer may not consider the hardship to the child if the applicant is denied admission. The officer, however, may consider the child's disability when assessing whether the denial of admission will cause hardship for the qualifying-relative spouse. For example, denial of admission may impact the qualifying parent's financial and emotional ability to care for the disabled child.^[18] Moreover, even if such derivative hardship does not rise to the level of extreme hardship by itself, it is a factor that should be considered when determining whether the qualifying relative's hardship, considered in the aggregate, rises to the level of extreme.

E. Aggregating Hardships

To establish extreme hardship, it is not necessary to demonstrate that a single hardship, taken in isolation, rises to the level of "extreme." Rather, any relevant hardship factors "must be considered in the aggregate, not in isolation."^[19] Therefore, even if no one factor individually rises to the level of extreme hardship, the USCIS officer "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation" (or, in this case, the refusal of admission).^[20] Moreover, even "those

hardships ordinarily associated with deportation, . . . while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.” ^[21]

The applicant needs to show extreme hardship to only one qualifying relative. ^[22] But an applicant may have more than one qualifying relative. In such cases, if there is no single qualifying relative whose hardship alone is severe enough to be found “extreme,” the extreme hardship standard would be met if the combination of hardships to 2 or more qualifying relatives in the aggregate rises to the level of extreme hardship. ^[23]

Therefore, if the applicant demonstrates that the combined hardships that two or more qualifying relatives would suffer rise to the level of extreme hardship, the applicant has met the extreme hardship standard. If the applicant presents evidence of hardship to multiple qualifying relatives that does not rise to the level of extreme hardship to any one qualifying relative, the USCIS officers should aggregate all of their hardships to decide whether these hardships combined rise to the level of extreme hardship. ^[24]

Footnotes

1. ^[^] An officer who has concerns about the qualifying relationship in the approved [Form I-130](#) should consult with a supervisor.
2. ^[^] This includes marriages valid under the laws of the place of marriage.
3. ^[^] See [8 CFR 103.2\(b\)\(2\)\(i\)](#).
4. ^[^] See Section D, Effect of Hardship Experienced by a Person who is not a Qualifying Relative [[9 USCIS-PM B.4\(D\)](#)].
5. ^[^] For discussion of the common consequences of family separation and relocation, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [[9 USCIS-PM B.5\(B\)](#)].
6. ^[^] If an applicant who submits evidence related to both relocation and separation ultimately demonstrates extreme hardship with regard to only one scenario, the USCIS officer should determine, possibly through the issuance of an RFE, whether the qualifying relative has established which scenario is more likely to result from a denial of admission.
7. ^[^] See, for example, [Matter of Calderon-Hernandez \(PDF\)](#), 25 I&N Dec. 885 (BIA 2012) (remanding for determination of hardship based only on separation after immigration judge had rejected hardship based on relocation). See [Matter of Recinas \(PDF\)](#), 23 I&N Dec 467 (BIA 2002) (consideration of hardship based only on relocation). See *Cerrillo-Perez v. INS*, 809 F.2d 1419 (9th Cir. 1987) (ordering consideration of extreme hardship based on separation after Board of Immigration Appeals found no hardship based on relocation). See *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (same). See *Mendez v. Holder*, 566 F.3d 316 (2nd Cir. 2009) (ordering consideration of hardship only under relocation). See *Figueroa v. Mukasey*, 543 F.3d 487 (9th Cir. 2008) (remanding assessment of hardship only under relocation).
8. ^[^] This is authorized by statute in cases of waivers of criminal grounds under [INA 212\(h\)\(1\)\(B\)](#).
9. ^[^] See [Matter of Ige \(PDF\)](#), 20 I&N Dec. 880, 885 (BIA 1994) (holding that, for purposes of the former suspension of deportation, neither the parent’s “mere assertion” that the child will remain in the United States nor the mere “possibility” of the child remaining is entitled to “significant weight;” rather, the Board expects evidence that “reasonable provisions will be made for the child’s care and support”). See *Iturribarria v. INS*, 321 F.3d 889, 902-03 (9th Cir. 2003) (finding that in suspension of deportation case, the petitioner could not claim extreme hardship from family separation without evidence of the family’s intent to separate). See *Perez v. INS*, 96 F.3d 390, 393 (9th Cir. 1996) (holding that agency properly required, as means of reducing speculation in considering extreme hardship element in a suspension of deportation case, affidavits and other evidentiary material establishing that family members “will in fact separate”).

10. [^] See [Matter of Ige \(PDF\)](#), 20 I&N Dec. 885, 885 (BIA 1994) (requiring such an affidavit in suspension of deportation cases).
11. [^] See [Matter of Calderon-Hernandez \(PDF\)](#), 25 I&N Dec. 885 (BIA 2012) (concluding that when a child will stay behind with a parent in the United States, regardless of that parent's immigration status, the waiver applicant need not provide documentary evidence regarding the child's care).
12. [^] See [Matter of Federiso \(PDF\)](#), 24 I&N Dec. 661 (BIA 2008).
13. [^] See [AFM Chapter 10.21\(c\)\(5\), Waivers and Other Related Applications](#).
14. [^] See [8 CFR 204.2\(i\)\(1\)\(iv\)](#).
15. [^] For more detailed guidance on the approval of petitions and applications after the death of a qualifying relative under [INA 204\(l\)](#), see [Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204\(l\) of the Immigration and Nationality Act \(PDF, 102 KB\)](#), issued December 16, 2010, and [Approval of a Spousal Immediate Relative Visa Petition under Section 204\(l\) of the Immigration and Nationality Act after the Death of a U.S. Citizen Petitioner \(PDF, 104 KB\)](#), issued November 18, 2015. See *Williams v. DHS*, 741 F.3d 1228 (11th Cir. 2014) (noting congressional intent in not expressly including a "remarriage bar" in 204(l) and finding "[t]hat a spouse eventually remarries does nothing to impugn the validity of the original I-130 beneficiary-petition or the first marriage, and leaves the surviving spouse in the same position she would have been but for the untimely passing of her husband, an event beyond her control."). USCIS applies this ruling to all cases it adjudicates.
16. [^] For example, hardship to the applicant's child when the particular waiver provision lists only the applicant's spouse and parents as qualifying relatives.
17. [^] See [Matter of Gonzalez Recinas \(PDF\)](#), 23 I&N Dec. 467, 471 (BIA 2002) ("In addition to the hardship of the United States citizen children, factors that relate only to the respondent may also be considered to the extent that they affect the potential level of hardship to her qualifying relatives.").
18. [^] See *Zamora-Garcia v. INS*, 737 F.2d 488, 494 (5th Cir. 1984) (requiring, in suspension of deportation case, "consideration of the hardship to the [qualifying applicant] posed by the possibility of separation from the [non-qualifying third party children]").
19. [^] See *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 n.3 (7th Cir. 1982). See *Ramos v. INS*, 695 F.2d 181, 186 n.12 (5th Cir. 1983).
20. [^] See [Matter of O-J-O- \(PDF\)](#), 21 I&N Dec. 381, 383 (BIA 1996).
21. [^] See [Matter of O-J-O- \(PDF\)](#), 21 I&N Dec. 381, 383 (BIA 1996). See [Matter of Ige \(PDF\)](#), 20 I&N Dec. 880, 882 (BIA 1994) ("Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.").
22. [^] See, for example, [INA 212\(h\)](#), [INA 212\(i\)](#), and [INA 212\(a\)\(9\)\(B\)\(v\)](#).
23. [^] See *Watkins v. INS*, 63 F.3d 844, 850 (9th Cir. 1995) (reversing BIA decision on ground it had failed to aggregate the "professional and social changes" of the petitioner, who was a qualifying relative under the particular statute, with the hardship to the applicant's children, who were also qualifying relatives). See *Prapavat v. INS*, 638 F.2d 87, 89 (9th Cir. 1980) (holding that extreme hardship "may also be satisfied ... by showing that the aggregate hardship to two or more family members described in 8 U.S.C. 1254(a)(1) is extreme, even if the hardship suffered by any one of them would be insufficient by itself"), on rehearing, 662 F.2d 561, 562-63 (9th Cir. 1981) (per curiam) (again listing both hardships to the qualifying relative petitioners and hardships to their U.S. citizen child, holding that these hardships "must all be assessed in combination," and finding that the Board had erred in failing to do so). See *Jong Ha Wang v. INS*, 622 F.2d 1341, 1347 (9th Cir. 1980) ("[T]he Board should consider the aggregate effect of deportation on all such persons when the alien alleges hardship to more than one."), *rev'd on other grounds*, 450 U.S. 139 (1981) (per curiam). These decisions all interpreted the former suspension of deportation provision. The list of qualifying individuals (which included the petitioners themselves) whose extreme hardship sufficed under that

provision differed from the lists of qualifying relatives in the waiver provisions discussed here, but the statutory language was identical in all other relevant respects (“result in extreme hardship to ...”).

24. [^] Hardships that the BIA has held to be “common results” in themselves are insufficient for a finding of extreme hardship. See *Matter of Ngai*, (PDF) 19 I&N Dec. 245 (BIA 1984). A common consequence, however, when combined with other factors that alone would also have been insufficient, may meet the extreme hardship standard when considered in the aggregate. For a list of those common consequences, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [9 USCIS-PM B.5(B)].

Chapter 5 - Extreme Hardship Considerations and Factors

A. Totality of the Circumstances

The officer must make extreme hardship determinations based on the factors, arguments, and evidence submitted. [1] Therefore, the officer should consider any submission from the applicant bearing on the extreme hardship determination. The officer may also consider factors, arguments, and evidence relevant to the extreme hardship determination that the applicant has not specifically presented, such as those addressed in Department of State (DOS) information on country conditions [2] or other U.S. Government determinations regarding country conditions, including a country’s designation for Temporary Protected Status (TPS). Officers must base their decisions on the totality of the evidence and circumstances presented.

B. Common Consequences

The common consequences of denying admission, in and of themselves, do not warrant a finding of extreme hardship. [3] The Board of Immigration Appeals (BIA) has held that the common consequences of denying admission include, but are not limited to, the following:

- Family separation;
- Economic detriment;
- Difficulties of readjusting to life in the new country;
- The quality and availability of educational opportunities abroad;
- Inferior quality of medical services and facilities; and
- Ability to pursue a chosen employment abroad.

While extreme hardship must involve more than the common consequences of denying admission, the extreme hardship standard is not as high as the significantly more burdensome “exceptional and extremely unusual” hardship standard that applies to other forms of immigration adjudications, such as cancellation of removal. [4]

C. Factors Must Be Considered Cumulatively

The officer must consider all factors and consequences in their totality and cumulatively when assessing whether a qualifying relative will experience extreme hardship either in the United States or abroad. In some cases, common consequences that on their own do not constitute extreme hardship may result in extreme hardship when assessed cumulatively with other factors. [5]

For example, if a qualifying relative has a medical condition that alone does not rise to the level of extreme hardship, the combination of that hardship and the common consequences of inferior medical services, economic detriment, or readjusting to life in another country may cumulatively cause extreme emotional or financial hardship for the qualifying relative when considering the totality of the circumstances.

Ordinarily, for example, the fact that medical services are less comprehensive in another country is a common consequence of denying admission; but the inferior quality of medical services, considered along with the individual’s specific medical conditions, may create sufficient difficulties as to rise to the level of extreme hardship in combination with all the other consequences.

The officer must weigh all factors individually and cumulatively, as follows:

- First, the officer must consider whether any factor set forth individually rises to the level of extreme hardship under the totality of the circumstances.
- Second, if any factor alone does not rise to the level of extreme hardship, the officer must consider all factors together to determine whether they cumulatively rise to the level of extreme hardship. This includes hardships to multiple qualifying relatives.

When considering the factors, whether individually or cumulatively, all factors, including negative factors, must be evaluated in the totality of the circumstances.

D. Examples of Factors that May Support a Finding of Extreme Hardship

The chart below lists factors that an applicant might present and that would be relevant to determining whether an applicant has demonstrated extreme hardship to a qualifying relative. This list is not exhaustive; circumstances that are not on this list may also be relevant to finding extreme hardship.

The presence of one or more of the factors below in a particular case does not mean that extreme hardship would necessarily result from a denial of admission. But they are factors that may be encountered and should be considered in their totality and cumulatively in individual cases. All hardship factors presented by the applicant should be considered in the totality of the circumstances in making the extreme hardship determination.

Some of the factors listed below apply when the qualifying relative would remain in the United States without the applicant. Other factors apply when the qualifying relative would relocate abroad. Some of the factors might apply under either circumstance.

Factors and Considerations for Extreme Hardship

Factors	Considerations

Factors	Considerations
Family Ties and Impact	• Qualifying relative's ties to family members living in the United States, including age, status, and length of residence of any children. • Responsibility for the care of any family members in the United States, particularly children, elderly adults, and disabled adults. • The qualifying relative's ties, including family ties, to the country of relocation, if any. • Nature of relationship between the applicant and the qualifying relative, including any facts about the particular relationship that would either aggravate or lessen the hardship resulting from separation. • Qualifying relative's age. • Length of qualifying relative's residence in the United States. • Length of qualifying relative's prior residence in the country of relocation, if any. • Prior or current military service of qualifying relative. • Impact on the cognitive, social, or emotional well-being of a qualifying relative who is left to replace the applicant as caregiver for someone else, or impact on the qualifying relative (for example, child or parent) for whom such care is required.

Factors	Considerations
Social and Cultural Impact	• Loss of access to the U.S. courts and the criminal justice system, including the loss of opportunity to request or provide testimony in criminal investigations or prosecutions; to participate in proceedings to enforce labor, employment, or civil rights laws; to participate in family law proceedings, victim's compensation proceedings, or other civil proceedings; or to obtain court orders regarding protection, child support, maintenance, child custody, or visitation. • Fear of persecution or societal discrimination. • Prior grant of U nonimmigrant status. • Existence of laws and social practices in the country of relocation that would punish the qualifying relative because he or she has been in the United States or is perceived to have Western values. • Access or lack of access to social institutions and structures (official and unofficial) for support, guidance, or protection. • Social ostracism or stigma based on characteristics such as gender, gender identity, sexual orientation, religion, race, national origin, ethnicity, citizenship, age, political opinion, marital status, or disability. ^[6] • Qualifying relative's community ties in the United States and in the country of relocation. • Extent to which the qualifying relative has integrated into U.S. culture, including language, skills, and acculturation. • Extent to which the qualifying relative would have difficulty integrating into the country of relocation, including understanding and adopting social norms and established customs, including gender roles and ethical or moral codes. • Difficulty and expense of travel/communication to maintain ties between qualifying relative and applicant, if the qualifying relative does not relocate. • Qualifying relative's present inability to communicate in the language of the country of relocation, as well as the time and difficulty that learning that language would entail. • Availability and quality of educational opportunities for qualifying relative (and children, if any) in the country of relocation. • Availability and quality of job training, including technical or vocational opportunities, for qualifying relative (and children, if any) in the country of relocation.

Factors	Considerations
Economic Impact	• Economic impact of applicant's departure on the qualifying relative, including the applicant's or qualifying relative's ability to obtain employment in the country of relocation. • Economic impact resulting from the sale of a home, business, or other asset. • Economic impact resulting from the termination of a professional practice. • Decline in the standard of living, including due to significant unemployment, underemployment, or other lack of economic opportunity in the country of relocation. • Ability to recoup losses, or repay student loan debt. • Cost of extraordinary needs, such as special education or training for children. • Cost of care for family members, including children and elderly, sick, or disabled parents.
Health Conditions & Care	• Health conditions and the availability and quality of any required medical treatment in the country to which the applicant would be returned, including length and cost of treatment. • Psychological impact on the qualifying relative due to either separation from the applicant or departure from the United States, including separation from other family members living in the United States. • Psychological impact on the qualifying relative due to the suffering of the applicant. • Prior trauma suffered by the qualifying relative that may aggravate the psychological impact of separation or relocation, including trauma evidenced by prior grants of asylum, refugee status, or other forms of humanitarian protection.
Country Conditions ^[7]	• Conditions in the country of relocation, including civil unrest or generalized levels of violence, current U.S. military operations in the country, active U.S. economic sanctions against the country, ability of country to address significant crime, environmental catastrophes like flooding or earthquakes, and other socio-economic or political conditions that jeopardize safe repatriation or lead to reasonable fear of physical harm. • Temporary Protected Status (TPS) designation. ^[8] • Danger Pay for U.S. government workers stationed in the country of nationality. ^[9] • Withdrawal of Peace Corps from the country of nationality for security reasons. • DOS Travel Warnings or Alerts, whether or not they constitute a particularly significant factor, as set forth in Part E below.

E. Particularly Significant Factors

The preceding list identifies factors that may bear on whether a denial of admission would result in extreme hardship. Below are factors that USCIS has determined often weigh heavily in support of finding extreme hardship. An applicant who seeks to demonstrate the presence of one of the enumerated circumstances must submit sufficient reliable evidence to support the

existence of such circumstance(s) and show that the circumstance will cause extreme hardship to the qualifying relative. The mere presence of an enumerated circumstance does not create a presumption of extreme hardship. The ultimate determination of extreme hardship must be based on the totality of the circumstances present in the individual case.

It is important to emphasize that the enumerated circumstances listed below are specifically highlighted only because they are often likely to support findings of extreme hardship. Other hardships not enumerated may also rise to the level of extreme, even if they vary significantly than those listed below. ^[10]

Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. ^[11] However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

1. Qualifying Relative Previously Granted Iraqi or Afghan Special Immigrant Status, T Nonimmigrant Status, or Asylum or Refugee Status

If a qualifying relative was previously granted Iraqi or Afghan special immigrant status, ^[12] T nonimmigrant status, asylum status, or refugee status in the United States from the country of relocation and the qualifying relative's status has not been revoked, those factors would often weigh heavily in support of finding extreme hardship. ^[13] The existence of this circumstance normally results in hardship greater than the common consequences denying admission, whether in cases involving relocation or separation.

The prior decision to grant the qualifying relative status as an Iraqi or Afghan special immigrant, T nonimmigrant, refugee, or asylee indicates the significantly heightened risk that relocation to the country from which he or she received protection could result in retaliatory violence, persecution or other danger to the qualifying relative. This prior assessment by USCIS would often weigh heavily in support of finding extreme hardship in a case involving relocation.

The same is also true in cases involving separation. The prior assessment by USCIS with respect to the qualifying relative indicates that he or she would likely face increased difficulty returning to that country to visit the applicant, thus generally resulting in hardship that is greater than that normally present in cases involving family separation. The applicant might also show that, due to their relationship, the applicant may experience persecution or other dangers similar to those that gave rise to the qualifying relative's underlying status. The qualifying relative in such a case may suffer additional psychological trauma due to the potential for harm to the applicant in the country of relocation.

2. Qualifying Relative or Related Family Member's Disability

Cases involving disabled individuals often involve hardships that rise above the common consequences. If a government agency has made a formal disability determination ^[14] with regard to the qualifying relative, or with regard to a family member of the qualifying relative who is dependent on the qualifying relative for care, that factor would often weigh heavily in support of finding that either relocation or separation would result in extreme hardship under the totality of the circumstances.

In cases involving either (1) relocation of the qualifying relative with a disability or (2) relocation of both the qualifying relative and the relevant family member with a disability, the applicant will need to show that the services available to the disabled individual in the country of relocation are unavailable or significantly inferior to those available to him or her in the United States. In such cases, the disability determination would often weigh heavily in support of a finding of extreme hardship.

In cases involving separation, the applicant will need to show that the qualifying relative with a disability, or the relevant family member with a disability, generally requires the applicant's assistance for care due to the disability. Where replacement care is not realistically available and obtainable, the disability determination would often weigh heavily in support of a finding of extreme hardship.

Absent a formal disability determination, an applicant may provide other evidence that a qualifying relative or relevant individual suffers from a medical condition, whether mental or physical, that makes either travel to, or residence in, the country of relocation detrimental to the qualifying relative or family member's health or safety. Similarly, an applicant may provide other evidence that the condition of the qualifying relative requires the applicant's assistance for care.

3. Qualifying Relative's Military Service

Military service by a qualifying relative often results in hardships from denial of the applicant's admission that rise above the common consequences of denying admission. If a qualifying relative is an Active Duty member of any branch of the U.S. armed forces, ^[15] or is an individual in the Selected Reserve of the Ready Reserve, denial of an applicant's admission often causes psychological and emotional harm that significantly exacerbates the stresses, anxieties and other hardships inherent in military service by a qualifying relative.

This may result in an impairment of the qualifying relative's ability to serve the U.S. military, or to be quickly called into active duty in the case of reservists, which also affects military preparedness. This is often the case even if the qualifying relative's military service already separates, or will separate, him or her from the applicant. In such circumstances, the applicant's removal abroad may magnify the stress of military service to a level that would constitute extreme hardship.

4. DOS Travel Warnings

DOS issues travel warnings to notify travelers of the risks of traveling to certain foreign countries. ^[16] Reasons for issuing travel warnings include, but are not limited to, unstable government, civil war, ongoing intense crime or violence, or frequent terrorist attacks. A travel warning remains in place until changes in circumstances sufficiently mitigate the need for such a warning. With respect to some travel warnings, DOS advises of travel risks to a specific region or regions of the country at issue.

In some situations, DOS issues travel warnings that do more than notify travelers of the risks of traveling to a particular country or region(s) within a country. Rather, DOS affirmatively recommends against travel or affirmatively recommends that U.S. citizens depart. DOS may make such travel warnings country-wide. Such travel warnings may contain language in which:

- DOS urges avoiding all travel to the country or region because of safety and security concerns;
- DOS warns against all but essential travel to the country or region;
- DOS advises deferring all non-essential travel to the country or region; and/or
- DOS advises U.S. citizens currently in the country or region to depart.

In cases where a qualifying relative would relocate to a country or region that is the subject of such DOS recommendations against travel, the travel warning would often weigh heavily in support of a finding of extreme hardship. In assessing the dangers in the country of relocation, USCIS officers should give weight to DOS travel warnings, taking into account the nature and severity of such warnings.

Generally, the fact that the country of relocation is currently subject to a DOS country-wide travel warning against travel may indicate that a qualifying relative would face significantly increased danger if he or she were to relocate to that country with the applicant. This significantly increased danger would often support a finding of extreme hardship.

If the relevant travel warning covers only a part or region of the country of relocation, the USCIS officer must determine whether the qualifying relative would relocate to the part or region that is subject to the warning. If the officer finds that this part or region is one to which the qualifying relative plans to return despite the increased danger (for example, because of family relationships or employment opportunities), that may indicate that the qualifying relative would face significantly increased

danger if he or she were to relocate to that part or region. This significantly increased danger would often support a finding of extreme hardship.

Alternatively, if the officer finds that the qualifying relative would relocate to a part of the country that is not subject to the travel warning (because of the danger in the part or region covered by the travel warning or for any other reason), that indicates that the qualifying relative would generally not face significantly increased danger upon relocation.

If the officer finds that the qualifying relative would remain in the United States while the applicant returns to a country or region that is subject to a DOS warning against travel, the officer should evaluate whether the separation may result in extreme hardship to the qualifying relative. In such cases, the officer should consider the hardship to the qualifying relative resulting from the increased danger to the applicant in the relevant country or region.

5. Substantial Displacement of Care of Applicant's Children

USCIS recognizes the importance of family unity and the ability of parents and other caregivers to provide for the well-being of children. ^[17] Depending on the particular facts of a case, either the continuation of one's existing caregiving duties under new and difficult circumstances or the need to assume someone else's caregiving duties can be sufficiently burdensome to rise to the level of extreme hardship. The children do not need to be U.S. citizens or lawful permanent residents (LPRs) in such cases. ^[18]

In cases involving the separation of spouses in which the qualifying relative is the primary caretaker and the applicant is the primary income earner, the income earner's refusal of admission often causes economic loss to the caregiver. Although economic loss alone is generally a common consequence of a denial of admission, depending on the particular circumstances the economic loss associated with the denial of admission may create burdens on the caregiver that are severe enough to rise to the level of extreme hardship. That can occur, for example, when the qualifying relative must take on the additional burdens of primary income earner while remaining the primary caregiver. That dual responsibility may significantly disrupt the qualifying relative's ability to meet his or her own basic subsistence needs or those of the person(s) for whom the care is being provided. In such cases, the dual burden would often support a finding of extreme hardship. In addition, the qualifying relative may suffer significant emotional and psychological impacts from being the sole caregiver of the child(ren) that exceed the common consequences of being left as a sole parent.

In cases involving the separation of spouses in which the qualifying relative is the primary income earner and the applicant is the primary caretaker, the caretaker's refusal of admission can result in a substantial shift of caregiving responsibility from the applicant to the qualifying relative. Such a shift may significantly affect the qualifying relative's ability to earn income for the family; disrupt family, social, and cultural ties; or hinder the child(ren)'s psychological, cognitive, or emotional development.

The shift may also frustrate or complicate the qualifying relative's efforts to provide a healthy, stable, and caring environment for the child(ren). Such additional emotional, psychological and/or economic stress for the qualifying relative could exceed the levels of hardship that ordinarily result from family separation, and rise to the level of extreme hardship. ^[19]

Under either scenario discussed above, the significant shifting of caregiving or income-earning responsibilities would often weigh heavily in support a finding of extreme hardship to the qualifying relative, provided the applicant shows:

- The existence of a bona fide relationship between the applicant and the child(ren);
- The existence of a bona fide relationship between the qualifying relative and the child(ren); and
- The substantial shifting of caregiving or income-earning responsibilities under circumstances in which the ability to adequately care for the children would be significantly compromised.

To prove a bona fide relationship to the child(ren), the applicant and qualifying relative should have emotional and/or financial ties or a genuine concern and interest for the child(ren)'s support, instruction, and general welfare. ^[20] Evidence that can

establish such a relationship includes (but is not limited to):

- Income tax returns;
- Medical or insurance records;
- School records;
- Correspondence between the parties; or
- Affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

To prove the qualifying relative would take on the additional caregiving or income-earning responsibilities, the applicant needs to show that the qualifying relative either (1) is a parent of the child(ren) in question or (2) otherwise has the bona fide intent to assume those responsibilities. Evidence of such an intent could include (but is not limited to):

- Legal custody or guardianship of the child;
- Other legal obligation to take over parental responsibilities;
- Affidavit signed by qualifying relative to take over parental or other caregiving responsibilities; or
- Affidavits of friends, neighbors, school officials, or other associates knowledgeable about the qualifying relative's relationship with the children or intentions to assume parental or other caregiving responsibilities.

F. Hypothetical Case Examples

Below are hypothetical cases that can help officers determine when cases present factors that rise to the level of extreme hardship. These hypotheticals are not meant to be exhaustive or all-inclusive with respect to the facts or scenarios that may be presented for adjudication and that may give rise to extreme hardship. Although a USCIS officer presented with similar scenarios as those presented in the hypotheticals could reasonably reach the same conclusions described below, extreme hardship determinations are made on a case-by case basis in the totality of the circumstances. An extreme hardship determination will always depend on the facts of each individual case.

For purposes of the following hypotheticals, it is assumed that:

- The applicant is inadmissible under a ground that may be waived based on a showing of extreme hardship to a qualifying relative spouse or parent. ^[21]
- The facts asserted in the hypotheticals are supported by appropriate documentation.

Scenario 1

Tyler was admitted to the United States as a nonimmigrant 5 years ago. Three years after Tyler's entry, Tyler married Pat, a U.S. citizen spouse. Tyler seeks a waiver claiming that Pat would suffer extreme hardship if Tyler were denied admission to the United States.

Pat submits a credible, sworn statement indicating that if Tyler is refused admission, Pat would relocate to Tyler's native country. Tyler and Pat have been married for 2 years. Pat is a sales clerk. A similar job in the country of relocation would pay far less than Pat earns in the United States. In addition, although Pat has visited the country of relocation several times, Pat is not fluent in the country's language and lacks the ties that would facilitate employment opportunities and social and cultural integration.

Tyler is a skilled laborer who similarly would command a much lower salary in the country of relocation, but who was, prior to coming to the United States, gainfully employed. The couple is renting an apartment in the United States, does not own any real estate or other significant property, and has no children. Pat and Tyler do not have any other family, either in the United States or in the country of relocation.

Analysis of Scenario 1

These facts alone generally would not favor a finding of extreme hardship. The hardships to Pat, even when aggregated, include only common consequences of relocation—economic loss and the social and cultural difficulties arising mainly from Pat’s inability to speak the language fluently.

Scenario 2

The facts are the same as in Scenario 1 except that Pat (who is Tyler’s U.S. citizen spouse and would relocate) has a chronic medical condition requiring regular visits to the doctor, and Tyler is an unskilled worker who would command a much lower salary in the country of relocation. In addition, Pat has family that lives nearby and is a crucial part of Tyler’s support system. Pat and Tyler are also active members of their local community and have friends who often help out when Pat’s family is not available. Based on the care received from the doctor and the support received from family and friends, Pat is able to manage the chronic condition.

Pat submits a credible, sworn statement that Pat will relocate with Tyler despite Pat’s medical condition, and the evidence shows under the totality of the circumstances that Pat will relocate with Tyler. Pat’s doctor provides a statement that confirms that Pat will continue to progress and function well if Pat keeps receiving medical treatment and the support from family and other members of Pat’s existing social support network. While the doctor cannot fully attest to the availability of care in Tyler’s native country, the doctor is able to attest that moving to another country and disrupting Pat’s medical care and support network will cause Tyler significant difficulties. The doctor’s statement also states that Pat will likely not be able to work without the support system Pat has in the United States.

Analysis of Scenario 2

These facts would generally favor a finding of extreme hardship. The aggregate hardships to Pat now include not only the economic losses, diminution of employment opportunities, and social, cultural, and linguistic difficulties (which are generally common consequences of relocation) but also the additional medical hardship that Pat would experience if Pat relocates to Tyler’s native country. The attestation of Pat’s doctor expressing concerns about the disruption in medical care, the effect of losing support from Pat’s family and social environment, and the possibility of Pat not being able to accept employment, would generally favor a finding of extreme hardship.

Scenario 3

Assume the facts are the same as originally presented in Scenario 1 (without the additional facts from Scenario 2), but now with the added facts that Tyler also has LPR parents who live in the United States. Pat submits a credible, sworn statement indicating that Pat would relocate with Tyler and that Tyler’s LPR parents would remain in the United States. Again, when analyzing the additional evidence under the totality of the circumstances, the evidence shows Pat will still relocate with Tyler.

Tyler and Pat both have a close relationship with Tyler’s parents, who are elderly and non-native English speakers. Tyler regularly transports the parents to medical appointments, translates medical and other instructions, and offers them significant emotional support. As a result of the separation from Tyler and Tyler’s spouse, Tyler’s parents would suffer significant emotional hardship.

Analysis of Scenario 3

Based on the totality of the evidence presented, the addition of these facts would generally favor a finding of extreme hardship. There are now 3 qualifying relatives (Tyler's U.S. citizen spouse and Tyler's two LPR parents). Although the aggregated hardships to Tyler's spouse alone (under Scenario 1) include only common consequences of a refusal of admission, aggregating those hardships with the hardships to Tyler's elderly parents, which include the potential disruption of their medical care, loss of ability to navigate their surroundings in English, and their significant emotional hardship resulting from the loss of their child's support, would generally tip the balance in favor of a finding of extreme hardship.

Scenario 4

EF has lived continuously in the United States since entering without inspection 4 years ago. She has been married to GH, her U.S. citizen husband, for 2 years. EF seeks a waiver claiming that GH would suffer extreme hardship if EF were denied admission to the United States. GH has a moderate income, and EF works as a housecleaner for low wages. GH submits a credible, sworn statement that he would remain in the United States, and thus would separate from EF, if she is denied the waiver. Upon separating, the couple would lose the income EF earns. In addition to losing EF's income, GH is committed to sending remittances to EF once she leaves, in whatever amount GH can afford. EF and GH do not have children, and GH does not have family in the United States.

Analysis of Scenario 4

These facts alone generally would not rise to the level of extreme hardship, even if the hardships to the qualifying relative are aggregated. The hardships to GH do not rise above the common consequences of separation and economic loss.

Scenario 5

JK has lived continuously in the United States since entering without inspection 6 years ago. She married LM, her U.S. citizen husband, 2 years ago. JK seeks a waiver on the basis that LM would suffer extreme hardship if JK were denied admission to the United States. JK and LM live near LM's family and friends, and LM has spent little time traveling abroad. He does not speak the language of the country to which JK would return if she is denied admission, and LM's employment opportunities in that country would be less desirable than in the United States.

Additionally, DOS has issued a travel warning that strongly advises against travel to specific regions in the country to which JK would return, including the region where her family lives. The region-specific warning affirmatively recommends against non-essential travel to that region, citing the high rate of kidnapping and murder. LM submits a credible, sworn statement indicating that due to his recent marriage, the difficulties JK would face in her country, and his commitment to supporting her however possible, he would relocate to remain with JK if she is denied a waiver.

Analysis of Scenario 5

The totality of these circumstances generally would favor a finding of extreme hardship, significantly in light of the nature and severity of the DOS travel warning. Although the other hardships present in the case are common consequences of relocation, LM has also demonstrated that he will return to the region of a country that is the subject of the DOS travel warning, which advises against non-essential travel to that region. The travel warning recommending against travel to that particular region of that country to which LM would relocate is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. If the travel warning were less severe or only temporary, the warning would not qualify as a particularly significant factor but would be another factor to be considered in the totality of the circumstances by the officer.

Alternatively, in some circumstances where DOS has issued travel warnings with regard to a particular region of a country, the applicant and qualifying relative may relocate to a different region of the country that is not subject to a travel warning. In such a situation, the fact of the region-specific travel warning would not itself constitute a particularly significant factor; however, the

hardships arising from relocating to another region of the country remains a factor to be considered and may result in a finding of extreme hardship, based on the totality of the circumstances. ^[22]

Scenario 6

OP has lived continuously in the United States since entering without inspection 7 years ago. After dating and living together for 5 years, OP married her same-sex partner SQ, a U.S. citizen. OP seeks a waiver claiming that SQ would suffer extreme hardship if OP were denied admission to the United States. SQ submits a credible, sworn statement indicating that she would remain in the United States and separate from OP if the waiver is denied.

SQ owns a business in the United States, and OP has continuously supported the business, including by helping out as an office manager. SQ would not be able to keep the business running successfully without OP because of the expense of hiring an office manager. In addition, the DOS country report indicates that women in OP's country of relocation generally may not work outside the home except in an extremely limited set of professions (such as teaching) for which OP is not qualified.

The country report also indicates that same-sex marriages are not recognized in that country, that same-sex sexual conduct is illegal, and that official societal discrimination and harassment (in some circumstances even giving rise to physical threats or harm) based on sexual orientation or gender identity is prevalent in many areas of life.

Based on these factors, SQ fears OP would be discriminated against and potentially be at risk of physical harm based on her sexual orientation. SQ has been in therapy due to depression and anxiety after she learned that her wife may be denied admission to the United States and that her wife would have to remain in a country where she risks discrimination and physical harm. The couple does not provide other evidence of hardship.

Analysis of Scenario 6

These facts would generally favor a finding of extreme hardship. SQ would face serious economic detriment if OP is denied admission. In addition, the country reports show that SQ's marriage to OP would not be recognized in OP's native country, and that OP's marriage to a person of the same gender is a common cause for social ostracism, discrimination, and potential physical danger in OP's native country. The country reports further show that OP's access to education, employment and health care could be limited due to OP's sexual orientation and gender, thereby negatively affecting OP's subsistence.

SQ would face psychological trauma based on the fear that OP would be harassed or threatened because of her sexual orientation. SQ's trauma based on her fear that OP will be ostracized and persecuted in OP's native country based on her sexual orientation and gender are factors that in the totality of circumstances would ordinarily rise to the level of extreme hardship.

Scenario 7

TU married his U.S. citizen wife, VW, 3 years ago. TU seeks a waiver on the ground that VW would suffer extreme hardship if TU were denied admission to the United States. Before becoming a U.S. citizen, VW and some members of her family fled persecution from her native country, and they were granted asylum in the United States. TU is of the same nationality. VW submits a credible, sworn statement that she would remain in the United States and separate from TU if the waiver is denied. The evidence also supports the conclusion that the return of TU to that country would cause VW particular anxiety and psychological stress, due both to the limitations on VW's ability to visit her husband and to the harm TU may face in the country of return due to his relationship to VW.

Analysis of Scenario 7

These facts generally would favor a finding of extreme hardship. TU and VW are of the same nationality, and TU would return to the country from which VW fled. The fact that VW was previously granted asylum from the country of relocation is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. The fact that VW and

members of her family were previously granted asylum from the country of return shows that she is at risk of persecution if she were to return to that country to even visit her husband.

She has also submitted credible evidence indicating that she would suffer additional anxiety and psychological stress from the harm her husband may face due to his relationship with her and her family. The totality of these circumstances, including the particularly significant factor of VW's grant of asylum, would generally result in a finding of extreme hardship.

Scenario 8

XY married her U.S. citizen husband, ZA, 9 years ago. XY seeks a waiver on the basis that ZA would suffer extreme hardship if XY were denied admission to the United States. XY and ZA have a 3-year old son and a 2-year old daughter. XY submits credible evidence showing that she is the primary caretaker of the children and that ZA is the primary income earner. His wages are not sufficient to pay for childcare and the couple does not have family that can provide childcare for the children.

ZA submits a credible, sworn statement indicating that he will remain in the United States with their children separated from XY if the waiver is denied. The evidence also indicates that XY will have very limited employment opportunities in the country of return because of her limited education. Whatever income XY will be able to earn in the country of return will be spent on her subsistence and will be insufficient to allow her to contribute to childcare or other family needs in the United States. Due to the lack of childcare options available to ZA, he will be required to become the sole caregiver of the children, while simultaneously striving to maintain his role as the family's sole income earner.

If ZA is unable to retain his job due to the assumption of primary caregiving responsibilities, he will lose the income necessary to support his children. The dual burden of being both the primary income earner and sole caregiver will create significant psychological, emotional, and financial stresses for ZA. Additionally, the evidence shows that the displacement of childcare would impact the emotional state and development of the children, which would require further care and attention on the part of ZA.

Analysis of Scenario 8

These facts would generally favor a finding of extreme hardship. Although ZA's children are not qualifying relatives for purposes of demonstrating extreme hardship in this case, the hardship to ZA caused by becoming primarily responsible for the children's care, while maintaining his role as primary income earner, would implicate the particularly significant factor for substantial displacement of care of the applicant's children.

In this case, ZA and XY submitted credible evidence that XY cannot contribute to the family's needs, that ZA is unable to earn sufficient income for family needs if he must assume primary caregiving responsibilities, and that ZA otherwise lacks the resources or support network to replace either the primary caregiving responsibilities he would need to assume or the primary income-earning role that has been the source of the family's support.

The evidence also shows that the displacement of childcare would impact the children in a manner that would require additional care and attention by ZA and would thus further impact ZA's ability to care for his children. Absent other facts that diminish the impacts of the separation, this scenario would generally rise to the level of extreme hardship based on the totality of the circumstances.

Alternatively, this particularly significant factor may also be presented in a case where the applicant is the primary income earner and the qualifying relative is the primary caretaker of the children. If the applicant is refused admission, the qualifying relative could be required, depending on the circumstances, to take on the additional responsibilities of being the primary income earner in addition to continuing his or her role as primary caretaker.

In cases where this heightened responsibility would threaten the qualifying relative's ability to meet basic subsistence needs for the family, the significant emotional and psychological stress caused by the added burdens would often weigh heavily in support of a finding of extreme hardship. ^[23]

Footnotes

1. [^] See [Matter of Cervantes-Gonzalez \(PDF\)](#), 22 I&N Dec. 560 (BIA 1999), aff'd, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001). See [Matter of L-O-G \(PDF\)](#), 21 I&N Dec. 413 (BIA 1996). See [Matter of Anderson \(PDF\)](#), 16 I&N Dec. 596 (BIA 1978).
2. [^] See [DOS Country Reports on Human Rights Practices](#) and [DOS Travel Warnings](#).
3. [^] See [Matter of Ngai \(PDF\)](#), 19 I&N Dec. 245 (BIA 1984) ("Common results of the bar, such as separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts").
4. [^] See [INA 240A\(b\)\(1\)\(D\)](#).
5. [^] See [Matter of O-J-O- \(PDF\)](#), 21 I&N Dec. 381, 383 (BIA 1996).
6. [^] The characteristics for which a person is ostracized or stigmatized may be actual or perceived (that is, the person may actually have that characteristic, or someone may perceive the person as having that characteristic).
7. [^] The officer should consider any submitted government or nongovernmental reports on country conditions specified in the hardship claim. In the absence of any evidence submitted on country conditions, the officer may refer to DOS information on country conditions, such as [DOS Country Reports on Human Rights Practices](#) and the most recent [DOS Travel Warnings](#), to corroborate the claim.
8. [^] For more information on TPS, see the [USCIS website](#).
9. [^] See [5 U.S.C. 5928](#). See Department of State Danger Pay Regulations, available at [Standardized Regulations \(DSSR\)](#).
10. [^] See Section D, Examples of Factors that Might Support Finding of Extreme Hardship [[9 USCIS-PM B.5\(D\)](#)].
11. [^] See [8 CFR 103.2\(b\)\(1\)](#).
12. [^] See, for example, Division F, Title VI of the Omnibus Appropriations Act of 2009, [Pub. L. 111-8 \(PDF\)](#), 123 Stat. 524, 807 (March 11, 2009). 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). 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 \(PDF\)](#), 121 Stat. 227 (June 15, 2007).
13. [^] Although it is unlikely that a qualifying relative would have been granted withholding of removal under [INA 241\(b\)\(3\)](#) or withholding or deferral of removal under the Convention Against Torture (CAT), if a qualifying relative was previously granted such a form of relief, this would often weigh heavily in support of a finding of extreme hardship to that qualifying relative, similar to situations involving qualifying relatives described in this particularly significant factor.
14. [^] Federal agency programs focusing on individuals with disabilities generally rely on definitions found in their authorizing legislation. These definitions may be unique to an agency's program.
15. [^] See [10 U.S.C. 101](#). The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.
16. [^] See [DOS Travel Warnings](#).
17. [^] The term "child" includes those related to the applicant by birth, adoption, marriage, legal custody, or guardianship.
18. [^] In this scenario, the children are assumed to be under age 21. See [INA 101\(b\)\(1\)](#) and [INA 101\(c\)\(1\)](#).
19. [^] These scenarios are not exhaustive. For example, even when a qualifying relative is not the primary caretaker or breadwinner. Nonetheless, the loss of the applicant's contribution to caretaking or support may have consequences that rise to the level of extreme hardship to the qualifying relative based on the totality of the circumstances.

20. [^] USCIS applies a similar principle when assessing whether there is a bona fide relationship between a father and his child born out of wedlock. See [INA 101\(b\)\(1\)\(D\)](#) and [8 CFR 204.2\(d\)\(2\)\(iii\)](#).

21. [^] None of these examples involves a waiver authority where the child is a qualifying relative under the Immigration and Nationality Act (INA). For more on qualifying relatives, see Chapter 4, Qualifying Relative [\[9 USCIS-PM B.4\]](#).

22. [^] If the entire country is the subject of a travel warning that affirmatively recommends against travel or residence, the particularly significant factor will exist and would often weigh heavily in support of a finding of extreme hardship. For more on travel warnings, see Section E, Particularly Significant Factors, Subsection 4, DOS Travel Warnings [\[9 USCIS-PM B.5\(E\)\(4\)\]](#).

23. [^] For more on substantial displacement of care, see Section E, Particularly Significant Factors, Subsection 5, Substantial Displacement of Care of Applicant's Children [\[9 USCIS-PM B.5\(E\)\(5\)\]](#).

Chapter 6 - Extreme Hardship Determinations

A. Evidence

Most instructions to USCIS forms list the types of supporting evidence that applicants may submit with those forms. [\[1\]](#) The instructions to the relevant waiver forms describe some of the extreme hardship factors that may be considered, along with certain possible types of supporting evidence that may be submitted. USCIS accepts any type of probative evidence, including, but not limited to:

- Expert opinions;
- Medical or mental health documentation and evaluations by licensed professionals;
- Official documents, such as birth certificates, marriage certificates, adoption papers, paternity orders, orders of child support, and other court or official documents;
- Photographs;
- Evidence of employment or business ties, such as payroll records or tax statements;
- Bank records and other financial records;
- Membership records in community organizations, confirmation of volunteer activities, or records related to cultural affiliations;
- Newspaper articles and reports;
- Country reports from official and private organizations;
- Personal oral testimony; [\[2\]](#) and
- Affidavits, statements that are not notarized but are signed “under penalty of perjury” as permitted by 28 U.S.C. 1746, or letters from the applicant or any other person.

If the applicant indicates that certain relevant evidence is not available, the applicant must provide a reasonable explanation for the unavailability, along with available supporting documentation. [\[3\]](#) Depending on the country where the applicant is from, is being removed to, or resides, certain evidence may be unavailable. If the applicant alleges that documentary evidence such as a birth certificate is unavailable, the officer may consult the Department of State (DOS) Foreign Affairs Manual, [\[4\]](#) when appropriate, to verify whether these particular documents are ordinarily unavailable in the relevant country. [\[5\]](#)

B. Burden of Proof and Standard of Proof

The applicant bears the burden of proving that the qualifying relative would suffer extreme hardship. He or she must establish eligibility for a waiver by a preponderance of the evidence. ^[6] If the applicant submits relevant, probative, and credible evidence that leads the USCIS officer to believe that it is “more likely than not” that the assertion the applicant seeks to prove is true, then the applicant has satisfied the preponderance of the evidence standard of proof as to that assertion. ^[7]

The mere assertion of extreme hardship alone does not establish a credible claim. Individuals applying for a waiver of inadmissibility should provide sufficient evidence to support and substantiate assertions of extreme hardship to the qualifying relative(s). Each assertion should be accompanied by evidence that substantively supports the claim absent a convincing explanation why the evidence is unavailable and could not reasonably be obtained. The officer should closely examine the evidence to ensure that it supports the applicant’s claim of hardship to the qualifying relative.

To illustrate, an applicant who claims that the qualifying relative has severe, ongoing medical problems will not likely be able to establish the existence of these problems without providing medical records documenting the qualifying relative’s condition. Officers cannot substitute their medical opinion for a medical professional’s opinion; instead the officer must rely on the expertise of reputable medical professionals.

A credible, detailed statement from a doctor may be more meaningful in establishing a claim than dozens of test results that are difficult for the officer to decipher. However, nothing in such a case changes the requirement that all evidence submitted by applicants should be considered to evaluate the totality of the circumstances.

Similarly, if the applicant claims that the qualifying relative will experience severe financial difficulties, the applicant will not likely be able to establish these difficulties without submitting financial documentation. This could include, but is not limited to, bank account statements, employment and income records, tax records, mortgage statements, leases, and proof of any other financial liabilities or earnings.

If not all of the required initial evidence has been submitted, or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer should issue a Request for Evidence (RFE) in accordance with USCIS policy.

In considering whether the applicant’s evidence is sufficient to meet the applicant’s burden of proof, the officer will consider whether the applicant has complied with applicable requirements to submit information and supporting documentation and whether the evidence is credible, persuasive, and refers to specific facts sufficient to demonstrate that the burden of proof has been satisfied and that applicant warrants a favorable exercise of discretion. In considering whether the applicant’s evidence is credible, the officer will consider the totality of the circumstances and all relevant factors and should take into account the inherent plausibility and internal and external consistency of the evidence and any inaccuracies or falsehoods in the evidence.

If evidence in the record leads the officer to reasonably believe that undocumented assertions of the extreme hardship claim are true, the officer may accept the assertion as sufficient to support the extreme hardship claim. The preponderance of the evidence standard does not require any specific form of evidence; it requires the applicant to demonstrate only that it is more likely than not that the refusal of admission will result in extreme hardship to the qualifying relative(s). Any evidence that satisfies that test will suffice. ^[8]

If the officer finds that the applicant has met the above burden of showing extreme hardship to one or more qualifying relatives, the officer should proceed to the discretionary determination. ^[9] If the officer ultimately finds that the applicant has not met the above burden, the waiver application must be denied.

Footnotes

1. [^] A waiver that requires a showing of extreme hardship to a qualifying relative is currently submitted on an Application for Waiver of Grounds of Inadmissibility ([Form I-601](#)) or an Application for Provisional Unlawful Presence Waiver ([Form I-601A](#)).
2. [^] An officer who interviews an applicant or other witness in person must place the witness under oath or affirmation before beginning the interview and must note in the record that the person was placed under oath along with the date and place of the interview. The officer should also take notes or record the testimony.
3. [^] See [8 CFR 103.2\(b\)](#).
4. [^] See the [DOS website](#).
5. [^] See also [DOS Bureau of Consular Affairs website](#) for more information on birth certificates under reciprocity by country.
6. [^] See [Matter of Chawathe \(PDF\)](#), 25 I&N Dec. 369 (AAO 2010) (identifying preponderance of the evidence as the standard for immigration benefits generally, in that case naturalization).
7. [^] See [Matter of Chawathe \(PDF\)](#), 25 I&N Dec. 369, 376 (AAO 2010) (preponderance of the evidence means more likely than not).
8. [^] For more detailed guidance on how to interpret the requirement that the refusal of admission “would result in” extreme hardship to the qualifying relative, see Chapter 2, Extreme Hardship Policy, Section B, What is Extreme Hardship [[9 USCIS-PM B.2\(B\)](#)].
9. [^] See Chapter 7, Discretion [[9 USCIS-PM B.7](#)].

Chapter 7 - Discretion

A finding of extreme hardship permits but never compels a favorable exercise of discretion. If the officer finds the requisite extreme hardship, the officer must then determine whether USCIS should grant the waiver as a matter of discretion based on an assessment of the positive and negative factors relevant to the exercise of discretion. The family relationships to U.S. citizens or lawful permanent residents and a finding of extreme hardship to one or more of those family members are significant positive factors to consider. ^[1]

For purposes of exercising discretion, a finding of extreme hardship that is sufficient to warrant a favorable exercise of discretion to grant a waiver of the unlawful presence grounds of inadmissibility may not be sufficient to warrant a favorable exercise of discretion with respect to crime- or fraud-related grounds of inadmissibility. The conduct that triggered the applicant’s inadmissibility, such as a criminal conviction ^[2] or underlying fraud, ^[3] is an important negative factor to consider. The officer should weigh all positive factors against all negative factors. Ultimately, if the positive factors outweigh the negative factors, the officer should approve the waiver; otherwise, the waiver should be denied.

Footnotes

1. [^] See [Matter of Mendez-Moralez \(PDF\)](#), 21 I&N Dec. 296 (BIA 1996).
2. [^] In cases where applicants who have been convicted of violent or dangerous crimes apply for waivers under [INA 212\(h\)\(1\)\(B\)](#) [formerly [INA 212\(h\)\(2\)](#)], discretion generally will not be favorably exercised unless either there are “extraordinary circumstances” (for example those relating to national security or foreign policy) or the applicant demonstrates “exceptional and extremely unusual hardship.” Depending on the gravity of the offense, even a showing of extraordinary circumstances does not guarantee a favorable exercise of discretion. See [8 CFR 212.7\(d\)](#).

3. ^[^] See *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 30-32 (1996). See *Matter of Cervantes-Gonzalez (PDF)*, 22 I&N Dec. 560, 568-69 (BIA 1999), *aff'd*, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001).

Part C - Waivers for Health-Related Grounds of Inadmissibility

Chapter 1 - Purpose and Background

A. Purpose

USCIS balances public health interests against family unity and the needs of the applicant in adjudicating waivers of medical inadmissibility. For this reason, one of the terms and conditions imposed on all applicants with the grant of a waiver is to receive treatment so that the medical condition no longer poses a public health risk.

B. Background

A medical examination is generally required for all immigrant visa and some nonimmigrant visa applicants, as well as for refugees, and adjustment of status applicants. The purpose of the medical examination is to determine if an applicant has a medical condition(s) that renders him or her inadmissible to the United States.

Generally, applicants establish their admissibility on medical grounds by submitting a Report of Medical Examination and Vaccination Record ([Form I-693](#)), or Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets. ^[1]

Civil surgeons or panel physicians complete these documents after the medical examination of the applicant, ^[2] certifying the presence or absence of physical or mental conditions that may render the applicant inadmissible. Two types of certifications may indicate to USCIS that the applicant may be inadmissible: a “Class A” and a “Class B” condition.

A Class A condition is conclusive evidence that an applicant is inadmissible on health-related grounds. A Class B condition, unlike a Class A condition, does not make an applicant inadmissible on health-related grounds but may lead the officer to conclude that the applicant is inadmissible on other grounds (such as public charge). ^[3]

Before 1957, no waiver was available to applicants inadmissible on health-related grounds. The Immigration Act of 1957 created the first waiver provision for those afflicted with tuberculosis who had close relatives in the United States. ^[4] In addition, the 1965 amendments to the INA authorized the waiver of inadmissibility and admission of certain applicants in this category who had close relatives in the United States. ^[5]

The Immigration Act of 1990 ^[6] relaxed the requirements for a familial relationship before a medical waiver could be granted. In addition, over time, other provisions were added to the 1952 Immigration Act that allowed for other waivers of medical grounds depending on the immigration benefit sought.

C. Scope

If an applicant is inadmissible because of a medical condition, ^[7] he or she may have a waiver available. The availability of a waiver depends on the legal provisions governing the immigration benefit the applicant seeks.

This Part C only addresses the processes used for the medical waiver available to persons seeking an immigrant visa or adjustment of status based on a family or employment-based petition. ^[8] All medical grounds of inadmissibility have a corresponding waiver under this section except for inadmissibility based on drug abuse or addiction. ^[9]

Applicants for other immigration benefits categories, such as refugees and asylees seeking adjustment, ^[10] Legalization or SAW applicants, ^[11] or applicants under other special programs, may have additional or other means to waive grounds of medical inadmissibility, including inadmissibility for drug abuse or addiction. ^[12]

Many of the processes mentioned in this Part C are also applicable to other medical waivers, such as those obtained by asylees or refugees seeking adjustment of status.

D. Legal Authorities

- [INA 212\(a\)\(1\)](#) – Health-Related Grounds
- [INA 212\(g\)](#) – Bond and Conditions for Admission of Alien Excludable on Health-Related Grounds
- [8 CFR 212.7](#) – Waiver of Certain Grounds of Inadmissibility

E. Forms Used When Applying For a Medical Waiver

Applicants for the immigration benefits listed below may apply for a medical waiver by using the following USCIS forms: ^[13]

Applying for Waiver of Health-Related Ground of Inadmissibility

Immigration Benefits Category	Statutory Authority for Waiver	Relevant Form
Adjustment of status or immigrant visa	INA 212(g)	Application for Waiver of Grounds of Inadmissibility (Form I-601) (with the appropriate fee unless waived)
Admission as refugee under INA 207	INA 207(c)(3)	Application by Refugee for Waiver of Grounds of Excludability (Form I-602) (no fee associated)
Refugee or asylee applying for adjustment of status under INA 209	INA 209(c)	
Legalization under INA 245A	INA 245A(d)(2)(B)(i)	Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act (Form I-690) (with the appropriate fee unless waived)
Special Agricultural Workers (SAW) under INA 210	INA 210(c)(2)(B)(i)	

Immigration Benefits Category	Statutory Authority for Waiver	Relevant Form
T and U nonimmigrant visa	INA 212(d)(13) and INA 212(d)(14)	Application for Advance Permission to Enter as Nonimmigrant (Form I-192) (with the appropriate fee unless waived)
Other nonimmigrant visa	INA 212(d)(3)(A)	

F. Role of Centers for Disease Control and Prevention (CDC)

Any waiver application to overcome a medical ground of inadmissibility (other than lack of a required vaccination) must be sent to the U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) for review before USCIS can determine whether to grant or deny the waiver.

CDC's favorable response does not constitute a waiver approval. The purpose of CDC's review is to ensure that

- The civil surgeon or panel physician examined, diagnosed, and classified the applicant according to the Technical Instructions; and
- The applicant (or person assuming the responsibility on behalf of the applicant) has identified a suitable health care provider in the United States who will provide medical care and treatment for the medical condition if a waiver is granted.

CDC's response, however, carries significant weight in determining what terms, conditions, or controls should be placed on the waiver, and whether USCIS should approve the waiver.

Footnotes

1. ^[^] As of October 1, 2013, panel physicians only use DS-2054.
2. ^[^] See [INA 212](#) and [INA 232](#).
3. ^[^] See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)] for more information on Class A and B conditions.
4. ^[^] See [Pub. L. 85-316 \(PDF\)](#) (September 11, 1957).
5. ^[^] See [Pub. L. 89-236 \(PDF\)](#) (October 3, 1965).
6. ^[^] See [Pub. L. 101-649](#) (November 29, 1990).
7. ^[^] Under [INA 212\(a\)\(1\)\(A\)](#), four categories of medical conditions may render an applicant inadmissible: (1) Communicable disease of public health significance; (2) For immigrants, failure to show proof of required vaccinations; (3) Physical or mental disorder with associated harmful behavior; (4) Drug abuse or addiction. See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)] for more information.

8. ^[^] Under INA 212(g).

9. ^[^] See INA 212(g), which specifically waives INA 212(a)(1)(A)(i)-INA 212(a)(1)(A)(iii) but omits reference to INA 212(a)(1)(A)(iv).

10. ^[^] Under INA 209.

11. ^[^] Under INA 245A and INA 210.

12. ^[^] For example, an asylee or a refugee seeking adjustment of status who is found to be a drug abuser or addict may apply for a waiver of inadmissibility under INA 209(c). INA 209(c) waivers are not addressed in this Part.

13. ^[^] For further information on waivers other than the medical waiver described in this Part, please see the program-specific waiver chapters in this volume. While these other waivers may be briefly discussed in this chapter, more detailed discussion can be found in the program-specific waiver chapters in this volume.

Chapter 2 - Waiver of Communicable Disease of Public Health Significance

A. General

The INA authorizes USCIS to exercise discretion in deciding whether to waive inadmissibility based on a communicable disease of public health significance. ^[1] USCIS may grant this waiver in accordance with such terms, conditions, ^[2] and controls, if any, that USCIS considers appropriate after consultation with the Secretary of HHS. ^[3] This includes the grant of a waiver based on requiring payment of a bond.

Once the officer has verified that the applicant is inadmissible because of a communicable disease of public health significance and requires a waiver, ^[4] the officer must go through the following steps to adjudicate the waiver application:

- Determine whether the applicant meets the eligibility requirements of the waiver;
- Consult with CDC; and
- Determine whether the waiver is warranted as a matter of discretion.

B. Special Note on HIV

As of January 4, 2010, HIV infection is no longer defined as a communicable disease of public health significance according to HHS regulations. ^[5] Therefore, HIV infection does not make an applicant inadmissible if the immigration benefit is adjudicated on or after January 4, 2010, even if the applicant filed the immigration benefit application before January 4, 2010. Officers should administratively close any HIV waiver application that is filed before January 4, 2010 but adjudicated on or after January 4, 2010.

C. Waiver Eligibility and Adjudication

1. Qualifying Relationship

To be eligible for the waiver, the applicant must be one of the following:

- The spouse, parent, child, unmarried son or daughter, ^[6] or minor unmarried lawfully adopted child ^[7] of:
 - A U.S. citizen,

- A person lawfully admitted for permanent residence, or
- A person who has been issued an immigrant visa.
- Eligible for classification as a self-petitioning spouse or child. ^[8]
- The fiancé(e) of a U.S. citizen or the fiancé(e)'s child.

The officer should verify that the existence of the appropriate relationship is well supported in the applicant's file.

2. Documentation for CDC's Review

As stated above, USCIS can only grant this waiver after it has consulted with CDC. However, CDC's review of necessary documents does not constitute a waiver approval. CDC may recommend that USCIS should make the waiver subject to appropriate terms, conditions, or controls.

To obtain CDC's review of a waiver application, the officer should forward the following documents to CDC:

- A cover letter that identifies the USCIS office requesting the review;
- A copy of the waiver application (including the TB supplement, ^[9] if applicable) that contains all the required signatures, excluding the supporting documentation that is not medically relevant; ^[10]
- A copy of the medical examination documentation; ^[11]
- Copies of all other medical reports, laboratory results, and evaluations regardless of whether they are connected to the communicable disease of public health significance.

3. Sending Documents to CDC

Officers should email the documents to cdcqap@cdc.gov.

[redaction] Officers must send the documents in a [password-protected file\(s\) \(PDF\)](#) using Adobe Pro. CDC does not use WinZip.
[/redaction]

To request expedited review, officers should indicate in the subject line of the email to CDC that the request is "Urgent."

4. CDC Response

Once CDC receives and reviews the documents, CDC will forward a response letter with its recommendation to the requesting USCIS office.

CDC's usual processing time for review and response to the requesting USCIS office is approximately 4 weeks. If CDC's response appears delayed, the officer may contact CDC at cdcqap@cdc.gov to obtain a status update.

Upon receipt, the officer should review CDC's response letter to determine next steps.

If CDC's response letter indicates that CDC was satisfied with the initial documentation and that it does not require additional information, then the officer may proceed to the next step of the waiver adjudication. If CDC was not satisfied with the documentation, it may request additional information or recommend additional conditions to be met before the waiver may be granted. In such a case, the officer should issue a Request for Evidence (RFE) for the applicant to provide the additional information or to demonstrate that he or she made the arrangements required by CDC.

If CDC requests it, the officer will need to submit the information obtained through the RFE to CDC to determine whether the additional information is sufficient. CDC will provide a response letter to the requesting USCIS office advising if the additional information is sufficient. ^[12]

Once CDC indicates no additional information is needed, the officer may proceed with the next step of the waiver adjudication.

5. Discretion

As is generally the case for waivers, a waiver for communicable diseases of public health significance requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion. Hardship to a qualifying relative is not required for this waiver. ^[13]

CDC's response in support of granting the waiver should ordinarily be sufficient to warrant a favorable exercise of discretion for the grant of the waiver. However, if an applicant declares openly his or her unwillingness to commit to treatment, the waiver may be denied as a matter of discretion. ^[14] If CDC does not issue a favorable recommendation, the officer generally should not grant the waiver as a matter of discretion.

By statute, it is USCIS's decision whether to make the waiver subject to terms, conditions, or controls. A CDC recommendation concerning terms, conditions, or controls on the granting of the waiver ordinarily carries great persuasive weight.

Once a final decision (approval or denial) is made on the waiver, the officer should inform CDC of the decision. The officer should provide a brief statement indicating the final action and date of the action and forward it to CDC by emailing cdcqap@cdc.gov.

[redaction] Officers must send the final action notification in a [password-protected file\(s\) \(PDF\)](#) using Adobe Pro. CDC does not use WinZip. [/redaction]

D. Step-by-Step Checklist

Step-by-Step Checklist	
Step 1	Check for qualifying relationship to determine whether the applicant is eligible for the waiver.
Step 2	Gather the necessary documentation for CDC review.
Step 3	Send documentation to CDC.
Step 4	Review CDC response.
Step 5	Analyze whether the waiver should be granted as a matter of discretion.
Step 6	Inform CDC of waiver decision.

Footnotes

1. [^] See [INA 212\(g\)\(1\)](#) and [INA 212\(a\)\(1\)\(A\)\(i\)](#). [INA 212\(g\)\(1\)](#) was also amended to include a specific provision for battered immigrants. See Section 1505(d) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), [Pub. L. 106-386](#), 114 Stat. 1464, 1526 (October 28, 2000). For more information on the inadmissibility determination based on communicable disease of public health significance, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 6, Communicable Diseases of Public Health Significance [[8 USCIS-PM B.6](#)].
2. [^] A condition of granting a waiver for an applicant with a communicable disease of public health significance, such as tuberculosis, is that the applicant must agree to see a doctor immediately upon admission and make arrangements to receive private or public medical care for that disease. This requirement is reflected, for example, in the Application for Waiver of Grounds of Inadmissibility ([Form I-601](#)), TB Supplement.
3. [^] See [INA 212\(g\)\(1\)\(B\)](#).
4. [^] Note that an applicant who has been determined to have a Class A condition involving a communicable disease of public health significance may successfully complete treatment. If, after treatment, the civil surgeon or panel physician certifies that the applicant now has a Class B condition, the applicant is no longer inadmissible and does not need a waiver.
5. [^] See [42 CFR 34.2\(b\)](#) as amended by 74 FR 56547 (November 2, 2009).
6. [^] USCIS interprets the references to “unmarried son or daughter” as embracing both those sons and daughters who qualify as “children” because they are not yet 21 years old and sons and daughters who are over 21, so long as they are not married.
7. [^] USCIS interprets “minor unmarried lawfully adopted child” as a clarifying, not as a restricting, provision. Therefore, an applicant is eligible to apply for this waiver if he or she qualifies as the “child” of a citizen or permanent resident (or a person who has received an immigrant visa) under any provision of [INA 101\(b\)\(1\)](#). This includes, but is not limited to, both children adopted abroad to be admitted in class IR3 or IH3 and children whose adoption will be finalized in the United States to be admitted in class IR4 or IH4.
8. [^] Under [INA 204\(a\)\(1\)\(A\)\(iii\)](#) or [INA 204\(a\)\(1\)\(A\)\(iv\)](#) or [INA 204\(a\)\(1\)\(B\)\(ii\)](#) or [INA 204\(a\)\(1\)\(B\)\(iii\)](#), including derivative children of the person. This includes self-petitioning spouses and children eligible for classification under [INA 204\(a\)\(1\)\(A\)\(v\)](#) or [INA 204\(a\)\(1\)\(B\)\(iv\)](#).
9. [^] TB is currently the only communicable disease of public health significance that requires a supplement.
10. [^] For instance, evidence of the family relationship.
11. [^] Report of Medical Examination and Vaccination Record ([Form I-693](#)); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.
12. [^] For Class A TB waivers, CDC’s response letter will provide a specific recommendation whether CDC supports the granting of a waiver.
13. [^] See [INA 212\(g\)\(1\)](#).
14. [^] If CDC certifies that an applicant who obtained an [INA 212\(g\)](#) waiver has failed to comply with any terms, conditions, or controls on the waiver, the applicant is subject to removal per [INA 237\(a\)\(1\)\(C\)\(ii\)](#). The U.S. health care provider treating the particular condition should provide a summary of the applicant’s initial evaluation to CDC or notify CDC that the applicant has failed to report for care. Generally, no further follow-up is required by the officer.

Chapter 3 - Waiver of Immigrant Vaccination Requirement

A. General

An applicant seeking an immigrant visa at a U.S. consulate or an applicant seeking adjustment of status in the United States who is found inadmissible for not being vaccinated ^[1] may be eligible for the following waivers:

- The applicant has, by the date of the decision on the visa or adjustment application, received vaccination against the vaccine-preventable disease(s) for which he or she had previously failed to present documentation; ^[2]
- The civil surgeon or panel physician certifies that such vaccination would not be medically appropriate; ^[3] or
- The requirement of such a vaccination would be contrary to the applicant's religious beliefs or moral convictions. ^[4]

Each of these waivers has its own requirements. ^[5] Unlike some other waivers, no qualifying relative is required for the applicant to be eligible for a waiver of the immigrant vaccination requirement.

The first two waivers are often referred to as “blanket waivers.” USCIS grants blanket waivers if a health professional indicates that an applicant has received the required vaccinations or is unable to receive them for medical reasons. If USCIS grants blanket waivers, the applicant does not have to file a form or pay a fee.

The waiver on account of religious or moral objection must be filed on the appropriate form and accompanied by the correct fee.

B. Use of Panel Physician's or Civil Surgeon's Report

The determination whether an applicant is inadmissible for lack of having complied with the vaccination requirement is made by reviewing the panel physician's or civil surgeon's vaccination assessment in the medical examination report. ^[6]

C. Blanket Waiver for Missing Vaccination Documentation ^[7]

Applicants who received the vaccinations for which documents were missing when they initially applied for adjustment of status or for an immigrant visa may be given a blanket waiver.

A streamlined procedure applies for this waiver; no form is needed. If a required vaccine is lacking, the officer should issue a Request for Evidence (RFE). The RFE should instruct the applicant to return to the civil surgeon for corrective action that demonstrates the applicant has received the required vaccine(s).

If the RFE response demonstrates that the missing vaccine(s) was received, the officer will deem the waiver granted. No annotation is needed on either the medical exam form, or any related form or worksheet.

D. Blanket Waiver if Vaccine is Not Medically Appropriate ^[8]

1. Situations Specified in the Law ^[9]

If the civil surgeon or the panel physician certifies that a vaccine is not medically appropriate for one or more of the following reasons, the officer may grant a blanket waiver (without requesting a form and fee):

- The vaccine is not age appropriate;
- The vaccine is contraindicated;
- There is an insufficient time interval to complete the vaccination series; or

- It is not the flu season, or the vaccine for the specific flu strain is no longer available.

Once the civil surgeon or panel physician annotates that the vaccine(s) is not medically appropriate, no further annotation is needed and the officer may proceed with granting the waiver. The civil surgeon's or panel physician's annotation on the vaccination assessment sufficiently documents that the requirements for the waiver have been met; the officer does not need to make any further annotation on the vaccination report.

2. Nationwide Vaccination Shortage ^[10]

USCIS will grant a blanket waiver in the case of a vaccination shortage only if CDC recommends that USCIS should do so, and USCIS has published the appropriate guidance on its website. CDC will only make such a recommendation to USCIS after verifying that there is indeed a nationwide vaccination shortage and issuing the appropriate statement on its website for civil surgeons. In turn, USCIS will issue the appropriate statement on its website.

The term "nationwide vaccine shortage" does not apply to the medical examination conducted by a panel physician overseas. If a vaccine is not available in the applicant's country, the panel physician will annotate the vaccination assessment with the term "not routinely available." If an officer encounters this annotation, the officer may grant a blanket waiver based on this annotation alone.

E. Waiver due to Religious Belief or Moral Conviction ^[11]

1. General

USCIS may grant this waiver when the applicant establishes that compliance with the vaccination requirements would be contrary to his or her religious beliefs or moral convictions. Unlike other waivers of medical grounds of inadmissibility, there is no requirement that CDC review this waiver.

If, upon review of the medical documentation, the officer finds that the applicant is missing a vaccine and a blanket waiver is not available, the officer should ask the applicant why the vaccine is missing. The officer may request clarification during an interview or by sending an RFE.

If the applicant indicates that he or she does not oppose vaccinations based on religious beliefs or moral convictions, the applicant may be inadmissible if he or she refuses to obtain the missing vaccine(s). The officer should issue an RFE if the applicant is willing to obtain the vaccine.

If the applicant indicates that he or she opposes vaccinations, the officer should inform the applicant of the possibility of the waiver. The officer should explain the basic waiver requirements for a religious belief or moral conviction waiver, as outlined below. The officer should, at that time, issue an RFE ^[12] for the waiver application.

Upon receipt of the waiver documentation, the officer should proceed with the adjudication of the waiver.

2. Requirements

With the adjudication of this waiver, USCIS has always taken particular caution to avoid any perceived infringement on personal beliefs and First Amendment rights to free speech and religion. To best protect the public health, USCIS, in consultation with CDC, has established the following three requirements that an applicant (or, if the applicant is a child, the applicant's parents) has to demonstrate through documentary evidence:

The applicant must be opposed to all vaccinations in any form. ^[13]

The applicant has to demonstrate that he or she opposes vaccinations in all forms; the applicant cannot “pick and choose” between the vaccinations. The fact that the applicant has received certain vaccinations but not others is not automatic grounds for the denial of a waiver. Instead, the officer should consider the reasons provided for having received those vaccines.

For example, the applicant's religious beliefs or moral convictions may have changed substantially since the date the particular vaccinations were administered, or the applicant is a child who may have already received certain vaccinations under the routine practices of an orphanage. These examples do not limit the officer's authority to consider all credible circumstances and accompanying evidence.

The objection must be based on religious beliefs or moral convictions.

This second requirement should be handled with sensitivity. On one hand, the applicant's religious beliefs must be balanced against the benefit to society as a whole. On the other hand, the officer should be mindful that vaccinations offend certain persons' religious beliefs.

The religious belief or moral conviction must be sincere.

To protect only those beliefs that are held as a matter of conscience, the applicant must demonstrate that he or she holds the belief sincerely, and in subjective good faith of an adherent. Even if these beliefs accurately reflect the applicant's ultimate conclusions about vaccinations, they must stem from religious or moral convictions, and must not have been framed in terms of a particular belief so as to gain the legal remedy desired, such as this waiver.

While an applicant may attribute his or her opposition to a particular religious belief or moral conviction that is inherently opposed to vaccinations, the focus of the waiver adjudication should be on whether that claimed belief or moral conviction is truly held, that is, whether it is applied consistently in the applicant's life.

The applicant does not need to be a member of a recognized religion or attend a specific house of worship. Note that the plain language of the statute refers to religious beliefs or moral convictions, not religious or moral establishments.

It is necessary to distinguish between strong religious beliefs or moral convictions and mere preference. Religious beliefs or moral convictions are generally defined by their ability to cause an adherent to categorically disregard self-interest in favor of religious or moral tenets. The applicant has the burden of establishing a strong objection to vaccinations that is based on religious beliefs or moral convictions, as opposed to a mere preference against vaccinations.

3. Evidence

The applicant's objection to the vaccination requirement on account of religious belief or moral conviction may be established through the applicant's sworn statement. In this statement, the applicant should state the exact nature of those religious beliefs or moral convictions and establish how such beliefs would be violated or compromised by complying with the vaccination requirements.

Additional corroborating evidence supporting the background for the religious belief or moral conviction, if available and credible, should also be submitted by the applicant and considered by the officer. For example, regular participation in a congregation can be established by submitting affidavits from other members in the congregation, or evidence of regular volunteer work.

The officer should consider all evidence submitted by the applicant.

4. Discretion

As is generally the case for waivers, a waiver of the vaccination requirement requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion.

A favorable exercise of discretion is generally warranted if the applicant establishes that he or she objects to the vaccination requirement on account of religious beliefs or moral convictions.

F. Step-by-Step Checklist

A blanket waiver may be available to the applicant. The officer should check whether the applicant is eligible for a blanket waiver before proceeding to this checklist.

Adjudication Vaccination Requirement Waiver Based on Religious Beliefs or Moral Convictions

Step	If YES ...	If NO ...
Step 1: Review the evidence for any indication that the applicant opposes the vaccination requirement based on religious beliefs or moral convictions.	Explain (during the interview or through an RFE) the waiver requirements and request that the applicant file a waiver, if he or she has not already done so. Proceed to Step 3.	RFE or interview to ascertain reasons why vaccines were not given. Proceed to Step 2A.
Step 2A: Did the applicant oppose the vaccines?	Explain to the applicant (at interview or through RFE) the waiver requirements and request that the applicant file a waiver if not already done so. Proceed to Step 3.	Proceed to Step 2B.
Step 2B: Is the applicant willing to obtain the missing vaccine?	Issue an RFE for corrective action of the vaccination assessment. Upon receipt of response to RFE, determine whether the vaccine requirement has been met. If the applicant is still missing vaccines, and no blanket waiver is available, begin at Step 1 again.	Applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).
Step 3: Review the waiver application to determine whether the applicant opposes the vaccination requirement in any form .	Proceed to Step 4.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).

Step	If YES ...	If NO ...
Step 4: Review the waiver application to determine whether the applicant opposes the vaccination requirement on account of religious belief or moral conviction.	Proceed to Step 5.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).
Step 5: Analyze whether the waiver application reflects that the applicant's belief is sincere.	Proceed to Step 6.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).
Step 6: Analyze whether the waiver should be granted as a matter of discretion; ordinarily, the finding that the applicant holds sincere religious or moral objections should be sufficient for a grant of the waiver.	Grant the waiver.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).

Footnotes

- ^[^] See [INA 212\(a\)\(1\)\(A\)\(ii\)](#).
- ^[^] See [INA 212\(g\)\(2\)\(A\)](#).
- ^[^] See [INA 212\(g\)\(2\)\(B\)](#).
- ^[^] See [INA 212\(g\)\(2\)\(C\)](#).
- ^[^] These waivers are described in more detail in Section C, Blanket Waiver for Missing Vaccination Documentation [[9 USCIS-PM C.3\(C\)](#)]; Section D, Blanket Waiver if Vaccine is Not Medically Appropriate [[9 USCIS-PM C.3\(D\)](#)]; and Section E, Waiver due to Religious Belief or Moral Conviction [[9 USCIS-PM C.3\(E\)](#)].
- ^[^] See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)] for more information on the admissibility determination.
- ^[^] See [INA 212\(g\)\(2\)\(A\)](#).
- ^[^] See [INA 212\(g\)\(2\)\(B\)](#).
- ^[^] See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 9, Vaccination Requirement [[8 USCIS-PM B.9](#)].

10. [^] See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 9, Vaccination Requirement [8 USCIS-PM B.9] for more information on blanket waivers based on a nationwide vaccination shortage.

11. [^] See INA 212(g)(2)(C).

12. [^] An officer should only issue one RFE, requesting all the necessary information, including the request for the waiver application.

13. [^] The requirement that the religious or moral objection must apply to all vaccines has been in effect since 1997. The former INS created this policy in light of principles developed regarding conscientious objection to the military draft and challenges to State-mandated vaccinations for public school students.

Chapter 4 - Waiver of Physical or Mental Disorder Accompanied by Harmful Behavior

A. General

If the applicant has a physical or mental disorder and behavior associated with the disorder that poses, may pose, or has posed a threat to the property, safety, or welfare of the applicant or others, the applicant must file a waiver to overcome this ground of inadmissibility. [1]

The officer should remember that the physical or mental disorder alone (that is, without associated harmful behavior) or harmful behavior alone (without it being associated with a mental or physical disorder) is not sufficient to find the applicant inadmissible on health-related grounds.

USCIS may grant this discretionary waiver in accordance with such terms, conditions, and controls (if any) that USCIS imposes after consulting with the Secretary of Health and Human Services (HHS). [2] A condition could include the payment of a bond.

A common condition of granting a waiver for an applicant with a physical or mental disorder with associated harmful behavior is that the applicant must agree to see a U.S. health care provider immediately upon admission and make arrangements to receive care and treatment.

The officer must determine whether the applicant is eligible for the waiver, consult with CDC, and determine whether the waiver is warranted as a matter of discretion.

B. Waiver Eligibility and Adjudication

1. Qualifying Relationship

Unlike waivers for communicable diseases of public health significance, waivers for physical or mental disorders with associated harmful behaviors do not require a qualifying relationship.

2. Documentation for CDC's Review

As noted above, USCIS can only grant this waiver after it has consulted with CDC. However, CDC's review of the necessary documents does not constitute a waiver approval. CDC may recommend that USCIS should make the waiver subject to appropriate terms, conditions, or controls.

To obtain CDC's review of a waiver application, the officer should forward the following documents to CDC:

- A cover letter that identifies the USCIS office requesting the review;
- A copy of the waiver application that contains all the required signatures, excluding the supporting documentation that is not medically relevant; ^[3]
- A copy of the medical examination documentation; ^[4]
- A copy of the supporting medical report, if provided, detailing the physical or mental disorder that is associated with the harmful behavior and the physician's recommendation regarding the course and prospects of the treatment; ^[5] and
- Copies of all other medical reports, laboratory results, and evaluations regardless of whether they are connected to the mental or physical disorder with associated harmful behavior.

3. Sending Documents to CDC

Officers should email the documents to cdcqap@cdc.gov.

[redaction] Officers must send the documents in a [password-protected file\(s\) \(PDF\)](#) using Adobe Pro. CDC does not use WinZip. [/redaction]

To request expedited review, officers should indicate in the subject line of the email to CDC that the request is "Urgent."

4. CDC Response

Once the documents are received by CDC, the documents are reviewed by CDC's consultant psychiatrist and CDC will forward a response letter with its recommendation to the requesting USCIS office.

CDC's usual processing time for review and response to the requesting USCIS office is approximately 4 weeks. If CDC's response appears delayed, the officer may contact CDC at cdcqap@cdc.gov to obtain a status update.

Upon receipt, the officer should review CDC's response to determine next steps.

If CDC agrees in its response that the applicant has a Class A condition, CDC will send to the USCIS requesting office CDC 4.422-1 forms, Statements in Support of Application for Waiver of Inadmissibility Under Section 212(a)(1)(A)(iii)(I) or 212(a)(1)(A)(iii)(II) of the Immigration and Nationality Act. The officer must provide the CDC 4.422-1 forms ^[6] to the applicant (or the applicant's sponsor) for completion. Once the CDC forms are completed and returned to USCIS, the officer must return the completed forms to CDC for review and endorsement.

Once CDC receives the completed forms, it reviews them to determine whether the applicant has identified an appropriate U.S. health care provider and that the health care provider has completed the forms. If the appropriate U.S. health care provider has been identified, CDC will endorse the forms and return them to the requesting USCIS office.

If CDC's response indicates that the applicant is "Class B" or "no Class A or B," it is CDC's recommendation that the applicant does not require a waiver for the medical condition.

If CDC's response indicates that additional information is needed in order to complete the review, the officer should issue a Request for Evidence (RFE) for the applicant to provide additional information as specified by CDC. The officer should submit the information obtained through the RFE to CDC. CDC will provide a response to USCIS regarding the additional information. Once CDC indicates that no additional information is needed, the officer may proceed with the adjudication of the waiver.

5. Discretion

As is generally the case for waivers, a waiver for mental or physical conditions with associated harmful behavior requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion. ^[7]

CDC's review and endorsement of the identified U.S. health care provider should ordinarily be sufficient to warrant a favorable exercise of discretion for the grant of the waiver. However, if an applicant declares openly his or her unwillingness to commit to treatment, the waiver may be denied as a matter of discretion. ^[8] If CDC does not favorably endorse the identified U.S. health care provider, the officer should generally not grant the waiver as a matter of discretion.

By statute, it is USCIS's decision whether to make the waiver subject to terms, conditions or controls. A CDC recommendation concerning terms, conditions, or controls on the granting of the waiver ordinarily has great persuasive weight, but is not binding on USCIS.

USCIS should inform CDC of the decision (approval or denial) of the waiver. The officer does so by completing the CDC response letter, that CDC provided when it returned the endorsed CDC forms to the officer, and emailing cdcqap@cdc.gov.

[redaction] Officers must send the response letter and decision in a [password-protected file\(s\) \(PDF\)](#) using Adobe Pro. CDC does not use WinZip. [/redaction]

C. Step-by-Step Checklist

Step-by-Step Checklist	
Step 1	Gather the necessary documentation for CDC review.
Step 2	Send documentation to CDC.
Step 3	Review CDC response.
Step 4	If applicable, have CDC 4.422.1 forms completed by the applicant and return them for endorsement by CDC.
Step 5	Analyze whether the waiver should be granted as a matter of discretion.

Footnotes

- ^[^] See [INA 212\(a\)\(1\)\(A\)\(iii\)](#). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [\[8 USCIS-PM B\]](#) for more information on the inadmissibility determination based on physical or mental disorders with associated harmful behavior.
- ^[^] See [INA 212\(g\)\(3\)](#).
- ^[^] For instance, evidence of the family relationship.
- ^[^] Report of Medical Examination and Vaccination Record ([Form I-693](#)); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.

5. [^] The Instructions to [Form I-601](#) detail the contents that should be included in the doctor's report.
6. [^] The CDC 4.422-1 forms are used to identify an appropriate U.S. health care provider for the waiver applicant. The forms are generated for the specific waiver applicant by CDC. Part II must be completed by U.S. health care provider and Part III must be completed by the applicant and/or the applicant's sponsor.
7. [^] Neither a qualifying relationship nor a finding of hardship is required.
8. [^] If CDC certifies that a person who obtained an [INA 212\(g\)](#) waiver has failed to comply with any terms, conditions, or controls on the waiver, the person is subject to removal per [INA 237\(a\)\(1\)\(C\)\(ii\)](#). The U.S. health care provider treating the particular condition should provide a summary of the applicant's initial evaluation to CDC as provided on CDC 4.422-1 form. Generally, no further follow-up is required by the officer.

Chapter 5 - Waiver of Drug Abuse and Addiction

A. Adjustment of Status and Immigrant Visa Applicants

In general, no waiver is available for adjustment of status and immigrant visa applicants who are found inadmissible because of drug abuse or drug addiction. ^[1]

B. Remission

Although a waiver is unavailable for medical inadmissibility due to drug abuse or addiction, an applicant may still overcome this inadmissibility if his or her drug abuse or addiction is found to be in remission. After being found inadmissible due to drug abuse or drug addiction, an applicant may undergo a re-examination at a later date at his or her own cost. If, upon re-examination, the civil surgeon or panel physician certifies, per the applicable HHS regulations and CDC's Technical Instructions, that the applicant is in remission, the applicant is no longer inadmissible as a drug abuser or addict.

Footnotes

1. [^] There are specific statutory provisions that permit USCIS to waive this ground, such as those applying to asylees and refugees seeking adjustment, and Legalization and SAW applicants. These waivers are specific to those classes of immigrants and are outside the scope of this chapter, which focuses only on waivers available under [INA 212\(g\)](#). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [[8 USCIS-PM B](#)] for more information on inadmissibility on account of drug abuse or drug addiction.

Part D - Waivers for Criminal and Related Grounds of Inadmissibility

Part E - Aliens Subject to Civil Penalty

Part F - Alien Smuggling

Part G - Waivers for Fraud or Willful Misrepresentation

Chapter 1 - Purpose and Background

A. Purpose

An applicant who is inadmissible for fraud or willful misrepresentation may be eligible for a waiver. ^[1] A waiver of inadmissibility allows an applicant to enter the United States or obtain an immigration benefit despite having been found inadmissible.

The purpose of a waiver for inadmissibility due to fraud or willful misrepresentation ^[2] is to:

- Provide humanitarian relief and promote family unity;
- Ensure the applicant merits favorable discretion based on positive factors outweighing the applicant's fraud or willful misrepresentation and any other negative factors; and
- Allow the applicant to overcome the inadmissibility or removability ground.

B. Background

Prior to September 30, 1996, a waiver was available to applicants who could show either:

- More than 10 years had passed since the date of the fraud or willful misrepresentation; or
- The applicant's U.S. citizen or lawful permanent resident (LPR) parents, spouse, or children would suffer extreme hardship if the applicant was refused admission to the United States.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) ^[3] limited the availability of the waiver and eliminated the possibility of applying for a waiver if more than 10 years have passed. ^[4] A waiver is now available only to applicants who can demonstrate extreme hardship to:

- U.S. citizen parent or spouse;
- An LPR parent or spouse;
- A U.S. citizen fiancé(e); ^[5] or
- In the case of a Violence Against Women Act (VAWA) self-petitioner: the VAWA self-petitioner, or his or her U.S. citizen, LPR, or qualified alien parent or child.

IIRIRA made other changes that play a role in the waiver adjudication. IIRIRA modified the inadmissibility provision ^[6] by creating two inadmissibility grounds within the same provision:

- Inadmissibility for fraud or willful misrepresentation; ^[7] and
- Inadmissibility for falsely claiming U.S. citizenship on or after September 30, 1996. ^[8]

The waiver ^[9] discussed in this Part G only applies to applicants who are inadmissible for fraud or willful misrepresentation. ^[10]

Inadmissibility based on a false claim to U.S. citizenship made on or after September 30, 1996 ^[11] cannot be waived through a waiver for fraud or willful misrepresentation. ^[12] However, because IIRIRA's changes were not retroactive, applicants who falsely claimed U.S. citizenship before September 30, 1996, are considered inadmissible for fraud or willful misrepresentation and may still seek the fraud or willful misrepresentation waiver.

C. Scope

The availability of a waiver of inadmissibility based on fraud or willful misrepresentation depends on the immigration benefit the applicant is seeking. The guidance in this Policy Manual part only addresses the processes used for the fraud or willful misrepresentation waiver ^[13] available to applicants listed in the table below.

Classes of Applicants Eligible to Apply for Waiver under INA 212(i)	
Applicants seeking:	
- An immigrant visa or adjustment of status based on a family-based petition or as a VAWA self-petitioner - An immigrant visa or adjustment of status based on an employment-based petition - A nonimmigrant K visa (fiancé(e)s of U.S. citizens and their accompanying minor children, foreign spouses, and step-children of U.S. citizens) - A nonimmigrant V visa (spouses and unmarried children under age 21, or step-children of lawful permanent residents)	

Applicants seeking other immigration benefits may have different means to waive inadmissibility for fraud or willful misrepresentation.

D. Legal Authorities

- INA 212(a)(6)(C)(i) – Illegal Entrants and Immigration Violators - Misrepresentation ^[14]
- INA 212(i) – Admission of Immigrant Excludable for Fraud or Willful Misrepresentation of Material Fact

E. Applicants Who May Have a Waiver Available

The chart below details who may apply for a waiver of inadmissibility based on fraud or willful misrepresentation and the relevant form. This chart includes waivers under INA 212(i) as well as waivers of inadmissibility for fraud or willful misrepresentation under other provisions of the INA.

Available Waiver of Inadmissibility Based on Fraud or Willful Misrepresentation

Applicant Category		Relevant Form
Applicants for adjustment of status, immigrant visas, and K and V nonimmigrant visas seeking waiver under INA 212(i)	Form I-601	Application for Waiver of Grounds of Inadmissibility
Temporary Protected Status (TPS) applicants seeking waiver under INA 244(c)	Form I-601	Application for Waiver of Grounds of Inadmissibility

Applicant Category		Relevant Form
Applicants for admission as refugees under INA 207	Form I-602	Application by Refugee for Waiver of Grounds of Inadmissibility
Refugees and asylees applying for adjustment of status under INA 209 ^[15]	Form I-602	Application by Refugee for Waiver of Grounds of Inadmissibility
Legalization applicants under INA 245A	Form I-690	Application for Waiver of Grounds of Inadmissibility
Special Agricultural Workers (SAW) under INA 210	Form I-690	Application for Waiver of Grounds of Inadmissibility
Nonimmigrants, including T and U ^[16] visa applicants (but not K and V nonimmigrants)	Form I-192	Application for Advance Permission to Enter as Nonimmigrant

1. Immigrants, Adjustment of Status Applicants, and K and V Visa Applicants

USCIS has the discretion to waive inadmissibility based on fraud or willful misrepresentation ^[17] for:

- A VAWA self-petitioner seeking adjustment of status;
- An immigrant visa applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;
- An adjustment of status applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;
- A V visa applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;
- A K visa applicant who is the fiancé(e) of a U.S. citizen, or the applicant's children; ^[18] and
- A K-3 or K-4 visa applicant. ^[19]

The instructions to [Form I-601](#) and the USCIS website detail when and where the applicant should file the waiver. ^[20]

2. Refugees

An applicant seeking admission as a refugee and who is inadmissible for fraud or willful misrepresentation may seek a waiver. ^[21] The waiver may be approved if the grant serves humanitarian purposes, family unity, or other public interests. The waiver is processed overseas as part of the refugee package.

3. Asylee and Refugee Based Adjustment Applicants

At the time of adjustment, asylees and refugees seeking adjustment of status may apply for a waiver of inadmissibility for fraud or willful misrepresentation. ^[22] The waiver can be approved if the grant serves humanitarian purposes, family unity, or other public interests. Under current USCIS policy, the officer has the discretion to grant the waiver with or without a waiver application for certain grounds of inadmissibility.

Waiver applications for refugees are usually adjudicated overseas before the applicant is admitted in the refugee classification. However, if the refugee is inadmissible based on actions that occurred prior to or after admission, the refugee can apply for a waiver when seeking adjustment.

4. Legalization and SAW Applicants

Legalization applicants ^[23] and Special Agricultural Workers (SAW) applicants ^[24] may be granted a waiver of inadmissibility based on fraud or willful misrepresentation if the grant serves humanitarian purposes, family unity, or other public interests. ^[25]

5. Nonimmigrants, including T and U Nonimmigrant Visa Applicants

An applicant seeking admission as a nonimmigrant and who is inadmissible for fraud or willful misrepresentation may obtain a waiver for advance permission to enter the United States. ^[26] This waiver is granted at the discretion of the Secretary of Homeland Security.

If the applicant is seeking a nonimmigrant visa (other than K, T, U, and V) overseas, the applicant must apply for the waiver through a U.S. Consulate. The Customs and Border Protection (CBP) Admissibility Review Office (ARO) adjudicates the waiver. ^[27] If the applicant is not required to have a visa (other than visa waiver applicants) and is applying for the waiver at the U.S. border, the application is filed with CBP. ^[28]

If the applicant is applying for a T or U nonimmigrant visa, the applicant must always file the waiver application with USCIS.

If the applicant is applying for a K or V nonimmigrant visa, the applicant is generally treated as if he or she is an intending immigrant. Therefore, the applicant must file a waiver application with USCIS if inadmissible for fraud or willful misrepresentation. ^[29] If USCIS grants the waiver, DOS will grant a nonimmigrant waiver ^[30] without CBP involvement.

Footnotes

1. ^[^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).

2. ^[^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).

3. ^[^] See Section 349 of IIRIRA, Division C of [Pub. L. 104-208](#), 110 Stat. 3009, 3009-639 (September 30, 1996).

4. ^[^] Under [INA 212\(i\)](#). The applicable law for the adjudication of an [INA 212\(i\)](#) waiver is the law in effect on the date of the decision on the waiver application. See [Matter of Cervantes-Gonzalez \(PDF\)](#), 22 I&N Dec. 560, 563 (BIA 1999).

5. ^[^] A fiancé(e) is not yet the spouse of a U.S. citizen. However, K inadmissibility issues are generally addressed as if the fiancé(e) were seeking admission as an immigrant. See 22 CFR 41.81(d). See [Matter of Sesay](#), 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an [INA 212\(i\)](#) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)'s actually marrying the citizen petitioner. See [8 CFR 212.7\(a\)\(4\)\(iii\)](#).

6. ^[^] See [INA 212\(a\)\(6\)\(C\)](#).

7. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
8. [^] See [INA 212\(a\)\(6\)\(C\)\(ii\)](#), as implemented by Section 344(a) of IIRIRA, Division C of [Pub. L. 104-208](#), 110 Stat. 3009, 3009-637 (September 30, 1996).
9. [^] Under [INA 212\(i\)](#).
10. [^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
11. [^] IIRIRA made September 30, 1996 the effective date of the new [INA 212\(a\)\(6\)\(C\)\(ii\)](#). See Section 344(c) of IIRIRA, Division C of [Pub. L. 104-208](#), 110 Stat. 3009, 3009-637 (September 30, 1996).
12. [^] See [INA 212\(i\)](#). Some separate adjustment mechanisms, such as [INA 209](#) (for refugees and asylees) may have more broadly available waivers that could apply to an applicant who is inadmissible under [INA 212\(a\)\(6\)\(C\)\(ii\)](#). For example, [INA 209\(c\)](#) allows the waiver of many grounds of inadmissibility, and does not list [INA 212\(a\)\(6\)\(C\)\(ii\)](#) as a ground that cannot be waived.
13. [^] This guidance only addresses the waiver under [INA 212\(i\)](#). The fraud or willful misrepresentation waiver discussed in this guidance is also available to applicants who obtained, or attempted to obtain, a benefit based on falsely claiming U.S. citizenship before September 30, 1996.
14. [^] This includes false claims to U.S. citizenship made before September 30, 1996.
15. [^] If the officer has sufficient information in the file to determine whether the ground can be waived, then no form is required.
16. [^] T nonimmigrant status is for victims of human trafficking. U nonimmigrant status is for victims of certain criminal activity.
17. [^] Under [INA 212\(i\)](#).
18. [^] A fiancé(e) is not yet the spouse of the U.S. citizen. K inadmissibility issues, however, are generally addressed as if the fiancé(e) were seeking admission as an immigrant. See 22 CFR 41.81(d). See *Matter of Sesay*, 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an [INA 212\(i\)](#) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)'s actually marrying the citizen petitioner.
19. [^] Foreign spouses or step-children of U.S. citizens.
20. [^] For information on the adjudication of these waivers, see Chapter 2, Adjudication of Fraud and Willful Misrepresentation Waivers [9 USCIS-PM G.2].
21. [^] These applicants seek a waiver under [INA 207](#).
22. [^] These applicants seek a waiver under [INA 209](#).
23. [^] See [INA 245A](#) and any legalization-related class settlement agreements.
24. [^] See [INA 210](#).
25. [^] For more information on waivers for legalization applicants, see [INA 245A\(d\)\(2\)\(B\)\(i\)](#). See [8 CFR 245a.2\(k\)](#), and [8 CFR 245a.18](#). For more information on waivers for SAW applicants, see [INA 210\(c\)\(2\)\(B\)\(i\)](#).
26. [^] These applicants seek relief under [INA 212\(d\)\(3\)](#).
27. [^] See [INA 212\(d\)\(3\)\(A\)\(i\)](#).
28. [^] See [Customs and Border Protection website](#) for more information.

29. ^[^] See INA 212(i).

30. ^[^] See INA 212(d)(3).

Chapter 2 - Adjudication of Fraud and Willful Misrepresentation Waivers

A. Eligibility

An applicant inadmissible for fraud or willful misrepresentation may be eligible for a waiver. Before adjudicating the waiver, the officer should determine if the applicant is inadmissible for fraud or willful misrepresentation. ^[1]

If inadmissible, the applicant must meet the following requirements before a waiver can be granted:

- The applicant must show that denial of admission to or removal from the United States would result in extreme hardship to his or her qualifying relative (or if the applicant is a VAWA self-petitioner, to himself or herself); and
- The applicant must show that a favorable exercise of discretion is warranted. ^[2]

General Guidelines for Adjudication of Fraud and Willful Misrepresentation Waivers	
Step 1	Determine whether the applicant is a VAWA self-petitioner or has established the relationship to the qualifying relative.
Step 2	Determine whether the applicant has demonstrated that his or her qualifying relative (or the applicant himself or herself, if a VAWA self-petitioner) would suffer extreme hardship if the applicant were denied admission to or removed from the United States as a result of the denial of the waiver.
Step 3	Determine whether the waiver should be granted as a matter of discretion, particularly whether positive equities such as humanitarian relief to a qualifying relative and family unity overcome negative factors such as fraud and willful misrepresentation.

B. Waiver Adjudication

1. Determine Whether the Applicant Has a Qualifying Relative

For cases other than VAWA self-petitioners, the applicant must have a qualifying relative who is either the applicant's:

- U.S. citizen parent or spouse;
- Lawful permanent resident (LPR) parent or spouse; or
- U.S. citizen fiancé(e) petitioner (for K-1 or K-2 visa applicants only).

U.S. citizen or LPR children are not qualifying relatives.

A VAWA self-petitioner does not need a qualifying relative, since the VAWA self-petitioner may claim extreme hardship to himself or herself. The VAWA self-petitioner may also claim extreme hardship to a U.S. citizen, LPR, or qualified alien parent or child. ^[3]

The evidence needed to establish that an applicant has a qualifying relative is generally the same as the evidence required to establish the underlying relationship for a relative or fiancé(e) visa petition.

2. Make an Extreme Hardship Determination

An applicant must demonstrate that his or her qualifying relative (or the applicant himself or herself, if a VAWA self-petitioner) would suffer extreme hardship if the applicant were refused admission to or removed from the United States as a result of the denial of the waiver.

If the applicant fails to establish extreme hardship, then the officer must deny the waiver application because the applicant has not met the statutory requirements of the waiver. Before denying the waiver, the officer should follow standard operating procedures regarding issuance of a Request for Evidence or Notice of Intent to Deny.

In general, a finding that the applicant has not shown extreme hardship is sufficient to support a denial of the waiver application. If the applicant has not established extreme hardship, then it is unnecessary to determine whether the waiver would have been granted as a matter of discretion. There may be instances, however, where the applicant's past actions were so egregious that the officer may want to note in the decision that even if extreme hardship were found, the application would be denied as a matter of discretion.

If the applicant has established extreme hardship, the officer should proceed with the discretionary determination.

3. Analyze Whether the Waiver Should Be Granted as a Matter of Discretion

A fraud or willful misrepresentation waiver generally requires an officer to consider whether granting the waiver is warranted as a matter of discretion. The officer should determine whether the applicant's positive factors outweigh the negative factors.

The finding of extreme hardship experienced by a qualifying relative (or the VAWA self-petitioner himself or herself) is the first positive factor for consideration. The underlying fraud or willful misrepresentation itself is the first negative factor to consider. ^[4] The nature, seriousness, and underlying circumstances of the fraud or willful misrepresentation may influence the weight given to this negative factor. Considerations include, but are not limited to:

- The facts and circumstances surrounding the fraud or willful misrepresentation;
- The reasons and motivations of the applicant when the fraud or willful misrepresentation was committed;
- Age or mental capacity of the applicant when the fraud was committed;
- Whether the applicant has engaged in a pattern of fraud or whether it was merely an isolated act of misrepresentation; ^[5] and
- The nature of the proceedings in which the applicant committed the fraud or willful misrepresentation. ^[6]

Footnotes

1. ^[^] For more on inadmissibility for fraud and willful misrepresentation, see Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

2. ^[^] Once found inadmissible, the underlying fraud or willful misrepresentation is not considered again until the officer determines whether the waiver is warranted as a matter of discretion. For more information, see Chapter 3, Effect of Granting a Waiver [9 USCIS-PM G.3].

3. [^] See INA 212(i), INA 204(a)(1)(A)(iii), and INA 204(a)(1)(A)(iv).
4. [^] See *INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996). See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).
5. [^] See *INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996).
6. [^] In *Matter of Tijam*, 22 I&N Dec. 408, 413 (BIA 1998), the Board of Immigration Appeals (BIA) stated that it considered making false statements under oath during the naturalization process to be an extremely serious adverse factor because of the government's interest in maintaining the integrity of that process.

Chapter 3 - Effect of Granting a Waiver

A. Validity of an Approved Waiver

If the waiver [1] is granted, then, except for K-1 and K-2 nonimmigrants and conditional permanent residents, [2] the grant permanently waives fraud or willful misrepresentation included in the application for purposes of any future immigration benefits application, whether immigrant or nonimmigrant. The waiver remains valid even if the person later abandons or otherwise loses lawful permanent resident (LPR) status. [3]

For conditional permanent residents, [4] the waiver only becomes valid indefinitely if and when the conditions are removed from his or her permanent resident status. Conversely, termination of the conditional permanent resident status also terminates the validity of the waiver. [5]

A waiver applies only to the specific grounds of inadmissibility and related crimes, events or incidents specified in the waiver application. [6] If, in the future, the applicant is found inadmissible for a separate incident of fraud or willful misrepresentation not already included in an approved waiver application, he or she will be required to file another waiver application. USCIS may reconsider an approval of a waiver at any time if it is determined that the decision has been made in error. [7]

B. Conditional Grant of a Waiver to K-1 or K-2 Nonimmigrant Visa Applicants

If the applicant seeks a waiver to obtain a fiancé(e) visa (K-1 or K-2), the waiver's approval is conditioned upon the K-1 nonimmigrant marrying the U.S. citizen who filed the fiancé(e) petition. [8] The waiver becomes permanent once the K-1 marries the petitioner, as discussed in the section on validity of an approved waiver. [9]

If the K-1 nonimmigrant does not marry the petitioner, the K-1 and K-2 (if applicable) will remain inadmissible for purposes of any application for a benefit on any basis other than the proposed marriage between the K-1 and the K nonimmigrant visa petitioner. [10]

C. Inadmissibility Based on Documentary Requirements [11]

If an applicant procured an immigration benefit by fraud or willful misrepresentation, the applicant may also be inadmissible for lack of documentary requirements at the time of entry. When an applicant is granted a waiver for fraud or willful misrepresentation, inadmissibility based on lack of documentary requirements at the time of entry is also implicitly waived.

Example

An applicant misrepresents a material fact during the overseas nonimmigrant visa application process. The Department of State, however, grants the applicant a visa. Later, the applicant applies for adjustment of status. During the adjustment interview, an officer discovers the misrepresentation and finds applicant inadmissible for both willful misrepresentation [12] and

failure to comply with documentary requirements. ^[13] The applicant then applies for a waiver of inadmissibility for willful misrepresentation. ^[14] Approval of the waiver has the effect of waiving inadmissibility for willful misrepresentation and for the lack of a valid visa at the time of entry.

Footnotes

1. ^[^] See [INA 212\(i\)](#).
2. ^[^] For K-1 and K-2 nonimmigrants granted a waiver, see Section B, Conditional Grant of a Waiver to K-1 or K-2 Nonimmigrant Visa Applicants [[9 USCIS-PM G.3\(B\)](#)].
3. ^[^] See [8 CFR 212.7\(a\)\(4\)\(ii\)](#).
4. ^[^] Foreign nationals lawfully admitted for permanent residence on a conditional basis. See [INA 216](#).
5. ^[^] See [8 CFR 212.7\(a\)\(4\)\(iv\)](#).
6. ^[^] See [8 CFR 212.7\(a\)\(4\)\(i\)](#).
7. ^[^] See [8 CFR 212.7\(a\)\(4\)\(v\)](#).
8. ^[^] See [8 CFR 212.7\(a\)\(4\)\(iii\)](#).
9. ^[^] See Section A, Validity of an Approved Waiver [[9 USCIS-PM G.3\(A\)](#)].
10. ^[^] See [8 CFR 212.7\(a\)\(4\)\(iii\)](#).
11. ^[^] See [INA 212\(a\)\(7\)](#).
12. ^[^] See [INA 212\(a\)\(6\)\(C\)\(i\)](#).
13. ^[^] See [INA 212\(a\)\(7\)\(B\)\(i\)](#) (for example, for not possessing a valid nonimmigrant visa).
14. ^[^] See [INA 212\(i\)](#).

Part H - Unlawful Presence

Part I - Provisional Unlawful Presence

Part J - National Interest

Part K - Family Unity, Humanitarian Purposes, or Public Interest

Part L - Nonimmigrant

Part M - Other Provisions Overcoming Inadmissibility

Part N - Motions and Appeals

Volume 10 - Consent to Reapply

Volume 11 - Travel, Employment, and Identity Documents

Part A - Secure Identity Documents Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

USCIS issues a variety of documents that establish identity and immigration status in the United States. These include, but are not limited to, employment authorization documents, travel documents, permanent resident cards, and naturalization and citizenship certificates.

B. Background

In 1946, the U.S. government began issuing different types of registration documents based on a foreign national's status in the United States. The Identification Card for the Use of Resident Citizen in the United States (Form I-179; later known as Form I-197) was introduced in 1960 to provide naturalized U.S. citizens living along the Mexican border with identification to facilitate border crossings between the United States and Mexico. Legacy Immigration and Naturalization Service (INS) guidance provided that the identification card could only be issued in certain districts of the Southwest United States. The card was issued until February 1973. ^[1]

Lawful permanent resident (LPR) cards were first issued as Form I-151. Between 1952 and 1977, legacy INS issued 17 different re-designs of the card. In 1977, the permanent resident card (PRC) (Form I-551) replaced Form I-151 as evidence of LPR status. In 1989, legacy INS introduced a new version of the PRC with a 10-year validity period. ^[2]

USCIS currently issues a number of documents for travel and identity purposes. These secure identity documents often serve multiple purposes; they may also be used as proof of a foreign national's immigration status, employment authorization, and as travel authorization. ^[3]

USCIS has also increased the security, integrity, and efficiency of secure identity document delivery, and maintains better tracking and accuracy of delivery. Various USCIS initiatives work to confirm that secure identity documents are delivered to the right address and person, an important step in the delivery of sensitive documents, which may be subject to abuse. ^[4]

C. Legal Authorities

- [8 CFR 103.2](#) - Submission and adjudication of benefit requests
- [8 CFR 103.8](#) - Service of decisions and other notices
- [8 CFR 103.16](#) - Collection, use and storage of biometric information

Footnotes

1. ^[^] Although Forms I-179 and I-197 are no longer issued by USCIS, valid existing cards continue to be acceptable documentation of U.S. citizenship. See [8 CFR 235.10](#).
2. ^[^] Except for conditional permanent residents, who are issued Forms I-551 with an expiration date of 2 years, after the date on which the foreign national became a conditional permanent resident.
3. ^[^] For more information, see [USCIS to Issue Employment Authorization and Advance Parole Card for Adjustment of Status Applicants: Questions and Answers](#)
4. ^[^] USCIS previously was unable to confirm the status of the delivery of secure identity documents, the accuracy of the delivery address, or who signed for the document. This left USCIS vulnerable to persons seeking to obtain sensitive immigration documents by theft or other illicit means. Advances in USCIS' delivery of sensitive documents have significantly reduced this risk.

Chapter 2 - USCIS-Issued Secure Identity Documents

A. Personal Information Used on Secure Identity Documents

USCIS issues a variety of secure identity documents that establish identity and immigration status in the United States. Personal information included on USCIS-issued secure identity documents includes, but is not limited to, a benefit requestor's biometrics, full legal name, date and country of birth, gender, and A-number.

1. Biometrics

USCIS has general authority to require and collect biometrics from any applicant, petitioner, sponsor, derivative, dependent, beneficiary, or requestor filing for any immigration, citizenship, and naturalization benefit. ^[1]

If the benefit request filed requires biometrics, and the requestor is in the United States, USCIS schedules a biometric services appointment at a local Application Support Center (ASC). ^[2] If the benefit requestor is outside of the United States, biometrics are captured by a USCIS international office, a U.S. embassy or consulate, or a U.S. military facility. The biometrics collected from the benefit requestor allow USCIS to verify identity and conduct national security and criminal history background checks. USCIS also uses the benefit requestor's biometric information for the initial issuance or replacement of a secure identity document.

2. Full Legal Name

All USCIS-issued secure identity documents contain the benefit requestor's full legal name. ^[3] Documents USCIS issues do not include nicknames. They do not contain initials, unless an initial appears on the official birth certificate, or the requestor legally changed his or her name to include an initial.

A benefit requestor must provide his or her full legal name on all benefit requests. The requestor's full legal name is comprised of his or her:

- Given name (first name);
- Middle name(s) (if any); and
- Family name (last name). ^[4]

The legal name is one of the following:

- The requestor's name at birth as it appears on the birth certificate (or other qualifying identity documentation when a birth certificate is unavailable); ^[5] or
- The requestor's name following a legal name change.

USCIS does not suspend the adjudication of a benefit request pending a court determination of a name change or other efforts by the requestor to establish a new legal name. USCIS creates secure identity documents using the legal name in place when the benefit request is decided.

Name Changes

If the requestor changes his or her name after USCIS issues the secure identity document, the requestor may file an application, with the appropriate fee, to request USCIS re-issue the secure identity document with the new name. ^[6] The requestor must provide sufficient evidence of the name change. USCIS does not have legal authority to change a person's name. The name change may or may not be recorded on the birth certificate, marriage certificate, or other vital document record.

3. Date of Birth

In general, the official date of birth is the date recorded on the requestor's birth certificate. USCIS recognizes dates of birth based on the Gregorian calendar in the following order: month, day, and year. Some foreign countries issue documents with the date of birth in a different order. ^[7] Most translations should have the date in the order of the month, day, and year. However, officers should verify the order of a translated date before issuing documents to avoid discrepancies.

If there is a discrepancy between a translated birth certificate and other government-issued documentation, the requestor must provide compelling evidence that the date of birth on the birth certificate is incorrect or miscalculated. For naturalization certificates, USCIS cannot change a recorded date of birth, except to correct a USCIS clerical error. ^[8]

4. Gender

USCIS-issued documents that display gender or sex identifiers are limited to indicating only female or male. Requestors who have changed their gender should be issued immigration documents that reflect their new gender. Requestors who already possess immigration documents at the time they change gender may request new documents reflecting their post-transition gender by filing the appropriate form for replacement documents. ^[9]

USCIS recognizes a requestor's gender change when a court or government with jurisdiction recognizes the change, or when a licensed health care professional certifies that the requested gender designation is consistent with that person's gender identity. USCIS issues initial or amended secure identity documents reflecting the changed gender designation if the requestor presents sufficient evidence in support of the change in gender designation along with meeting all other requirements to receive the secure identity document.

USCIS does not require proof of sex reassignment surgery, and officers should not request any records relating to such surgery. ^[10] If the requestor changed his or her name along with gender, the requestor must submit evidence that they completed any name change procedure according to the relevant U.S. state or foreign law. ^[11]

B. Delivery of Secure Identity Documents

USCIS mails secure identity documents through the [U.S. Postal Service](#) (USPS) to the address provided on a benefit request, unless the requestor requested that USCIS send any secure identity document to the U.S. business address of the attorney of record or accredited representative. ^[12]

In general, USCIS only sends secure identity documents to U.S. addresses. The requestor may, however, request that any secure identity document be sent to a designated military or diplomatic address for pickup in a foreign country, if permitted. ^[13] For example, certain travel documents (such as reentry permits and refugee travel documents) may be sent to a U.S. embassy or consulate or USCIS international office for the requestor to pick up, if this request is made when the requestor files the benefit application. ^[14]

C. Tracking Delivery

Benefit requestors may track the delivery status of their secure identity document by signing up for a [Case Status Online](#) account to obtain a tracking number. With a tracking number, requestors may also register for [Informed Delivery](#) through USPS to get previews of mail in transit. ^[15]

D. Making Address Changes

Non-U.S. citizens must report any change of address within 10 days of moving within the United States or its territories. ^[16] If a mailing address changes after a benefit request is filed, the requestor should update it online with USCIS and USPS as soon as possible to ensure he or she receives any secure identity documents USCIS sends in the mail. If more than one application or petition is pending, the requestor should ensure that USCIS updates the address on all pending benefit requests.

Requestors should use the [USPS Look Up a Zip Code](#) tool to ensure they are providing a complete address using the standard abbreviations and formatting recognized by USPS.

Footnotes

1. ^[^] See [8 CFR 103.2\(b\)\(9\)](#). See [8 CFR 103.16](#).
2. ^[^] For more information, see [Preparing for Your Biometric Services Appointment](#).
3. ^[^] See [8 CFR 320.3\(b\)\(1\)\(viii\)-\(ix\)](#), [8 CFR 322.3\(b\)\(1\)\(xiii\)](#) and [8 CFR 338.1\(b\)](#). See [6 CFR 37.3](#) for the full legal name description in the REAL ID Act, [Pub. L. 109-13 \(PDF\)](#) (May 11, 2005).
4. ^[^] A first name is sometimes referred to as a given name. A family name or surname may also include a maiden name. See [6 CFR 37.3](#) for the full legal name description in the Real ID Act, [Pub. L. 109-13 \(PDF\)](#) (May 11, 2005).
5. ^[^] There may be instances in which a birth certificate is unobtainable because of country conditions or personal circumstances. In these instances, a requestor may submit secondary evidence or affidavits to establish his or her identity. Any affidavit should explain the reasons primary evidence is unavailable. For more information, see the [Department of State Reciprocity Tables](#) for identity documents that cannot be obtained in particular countries and during specific time periods. Asylum applicants may be able to establish their identity, including their full legal name, with testimony alone.
6. ^[^] See Chapter 3, Reissuance of Secure Identity Documents [[11 USCIS-PM A.3](#)].
7. ^[^] Most western countries follow the Gregorian calendar. Other countries follow different calendars including the Hebrew (lunisolar calendar); Islamic (lunar calendar); and Julian (solar calendar). The calendars differ on days, months, and years.
8. ^[^] See [8 CFR 338.5](#). USCIS may, however, change the date of birth on a certificate of citizenship for a person who has a U.S. court order or similar state vital record changing the date of birth. See Volume 12, Citizenship & Naturalization, Part K, Certificates of Citizenship and Naturalization, Chapter 4, Replacements of Certificates of Citizenship and Naturalization [[12 USCIS-PM K.4](#)].

9. [^] See Chapter 3, Reissuance of Secure Identity Documents [[11 USCIS-PM A.3](#)].

10. [^] For more information on documentation a benefit requestor must show to establish a change in gender, see [Adjudicator's Field Manual Chapter 10.22](#), Change of Gender Designation on Documents Issued by USCIS.

11. [^] There may be instances in which evidence of a name change is unobtainable because of country conditions or personal circumstances. In some situations, USCIS permits such requestors to submit secondary evidence or affidavits to establish their identity. Any affidavit should explain the reasons primary evidence is unavailable. For more information, see the [Department of State Reciprocity Tables](#) for identity documents that cannot be obtained in particular countries and during specific time periods. Asylum applicants may be able to establish with testimony alone that they completed any name change procedure according to relevant law.

12. [^] See [8 CFR 103.2\(b\)\(19\)\(iii\)](#). A benefit requestor may also request to change, through written notice to USCIS, that USCIS mail the secure identity document to him or her instead of the attorney of record or legal representative.

13. [^] For more information regarding mailing secure identity documents overseas, see [Travel Documents](#) and [Emergency Travel](#).

14. [^] In general, if a requestor applies for advance parole while in the United States, and departs the United States before the advance parole document is issued, the requestor may be found inadmissible to the United States upon return, or even if admitted, may be found to have abandoned his or her application. There is no process for a requestor outside the United States traveling on a valid advance parole document or combo card (a card that combines an employment authorization document (EAD) and advance parole document) to apply for a replacement of a lost or stolen advance parole document to enable him or her to return the United States. In these cases, the requestor should contact the closest [USCIS international office](#) or U.S. embassy or consulate.

15. [^] For more information on how to track the delivery of secure identity documents, see [How to Track Delivery of Your Green Card, Employment Authorization Document \(EAD\), and Travel Document](#).

16. [^] See [INA 265](#). See [Change of Address Information](#).

Chapter 3 - Reissuance of Secure Identity Documents

A. General

Benefit requestors may request to renew their USCIS-issued secure identity documents that have expired or replace ones that have been lost, stolen, mutilated, or destroyed, or that contain an error.

The following table provides general information on how to request USCIS reissue certain secure identity documents.

How to Request Replacement or Reissuance of USCIS-Issued Secure Identity Documents

Secure Identity Document	How to Request Reissuance

Secure Identity Document	How to Request Reissuance
Permanent resident card	• If inside the United States, complete and submit an Application to Replace Permanent Resident Card (Form I-90) to USCIS, with appropriate fees (if required). ^[1] • If outside the United States for less than 1 year, complete and submit an Application for Travel Document (Carrier Documentation) (Form I-131A) for a transportation letter that allows an airline or other transportation carrier to board the lawful permanent resident (LPR). ^[2]
Employment authorization document	• If inside the United States, complete and submit an Application for Employment Authorization (Form I-765), with appropriate fees (if required). ^[3] • There is no process to seek a replacement employment authorization document, including a combo card, outside the United States.
Reentry permit	• If inside the United States, complete and submit an Application for Travel Document (Form I-131), with appropriate fee. • If outside the United States for less than 2 years, complete and submit an Application for Travel Document (Carrier Documentation) (Form I-131A) for a transportation letter that allows an airline or other transportation carrier to board the LPR. ^[4]
Advance parole document	• If inside the United States, complete and submit an Application for Travel Document (Form I-131), with appropriate fee. ^[5] • There is no process to seek a replacement advance parole document, including a combo card, outside the United States. In these cases, requestors should contact the closest USCIS international office or U.S. embassy or consulate.
Refugee travel document	• Whether inside or outside the United States, complete and submit an Application for Travel Document (Form I-131) with appropriate fee.
Citizenship or naturalization certificate	• Whether inside or outside the United States, complete and submit an Application for Replacement Naturalization/Citizenship Document (Form N-565). ^[6]

B. Reissuing Non-Deliverable Secure Identity Documents

USCIS receives a number of secure identity documents returned by the [U.S. Postal Service](#) (USPS) after attempting delivery. Reasons for return range from USPS error (such as misdirected mail ^[7] or correct address not recognized) to requestor error (such as an untimely address change). Benefit requestors who believe their secure identity documents have been returned to USCIS as non-deliverable may contact the [USCIS Contact Center](#). In some instances, USCIS may be able to attempt a second delivery to the original address.

1. Background

Historically, the management of secure identity documents, including storage, remailing, and destruction, occurred at multiple sites across USCIS with each location having a separate staff performing Post Office Non-Deliverables (PONDS) functions in accordance with local policies. In 2016, USCIS undertook an initiative to reduce the handling of secure identity documents, more clearly define the scope of PONDS duties, and create a more consistent and manageable process. The Office of Intake and Document Production (OIDP) established a centralized PONDS Unit at the Lee's Summit Production Facility in June 2017, which now oversees all PONDS operations.

Between June 2017 and October 2017, PONDS data showed 95 percent of secure identity documents were successfully re-mailed to requestors within 60 business days of being returned to USCIS. For documents that were unsuccessfully re-mailed, USCIS had previously kept documents for 365 calendar days. In 2018, USCIS began retaining non-deliverable secure identity documents returned to USCIS for 60 business days, or 12 weeks, before destroying them. ^[8]

Before secure identity documents are destroyed, PONDS Unit staff must search all relevant data systems to see if a new address exists. If a new address exists, USCIS re-mails the card to the new address. If no new address exists, USCIS destroys the card and updates its status in applicable systems as destroyed, in accordance with PONDS procedures.

2. Reissuing Secure Identity Documents

In certain circumstances, USCIS reissues secure identity documents if the original identity document was not successfully delivered to the requestor and has been subsequently destroyed. Depending on the scenario, USCIS may require the requestor to file a new form with fee for USCIS to reissue the secure identity document.

New Application and Fees Not Required

Generally, if USCIS-issued secure identity documents were non-deliverable due to USPS errors, USCIS reissues the secure identity document without requiring a new application and fee. The table below provides common (but not comprehensive) non-delivery scenarios involving USPS errors.

Common Non-Delivery Scenarios Involving USPS Errors

Scenario	Example	New Application and Applicable Fee Required?
USPS lost, misdirected, or destroyed mail. ^[9]	Not Applicable	No
USPS incorrectly marked as deceased but requestor is not deceased. Change of address completed by someone other than the requestor (rare).	Not Applicable	No
USPS incorrectly marked yellow label on undeliverable envelope.	USPS label indicates requestor does not reside at address; however, requestor does.	No

Scenario	Example	New Application and Applicable Fee Required?
USPS did not recognize a good address for requestor.	Not Applicable	No

Generally, if USCIS-issued secure identity documents were non-deliverable due to USCIS or certain other errors, USCIS reissues the secure identity document without requiring a new application and fee. The table below provides common (but not comprehensive) non-delivery scenarios involving USCIS and other errors.

Common Non-Delivery Scenarios Involving USCIS and Other Errors

Scenario	Example	New Application and Applicable Fee Required?
Requestor updated address timely but USCIS incorrectly entered address into data systems.	Requestor enters “123 Presidential Avenue” and USCIS erroneously enters “123 Residential Avenue.”	No
Requestor updated address timely but USCIS updated address after 48 hour document production hold and before undeliverable document was returned to USCIS as undeliverable.	Not Applicable	No
Certain USCIS systems errors. [redaction] (Such as CLAIMS 3/ELIS not interfacing with Secure Mail Initiative (SMI) which will not provide delivery history) [/redaction]	Not Applicable	No
Requestor provides confirmation that mail containing secure identity document was stolen, or mail containing secure identity document was otherwise opened unlawfully by unauthorized person. ^[10]	Not Applicable	No

New Application and Fees Required

Generally, if USCIS-issued secure identity documents were non-deliverable due to requestor error, USCIS reissues the secure identity document only upon receiving a new application and fee. ^[11] The table below provides common (but not comprehensive) non-delivery scenarios involving requestor errors.

Common Non-Delivery Scenarios Involving Requestor Errors

Scenario	Example	New Application and Applicable Fee Required?
Requestor submitted untimely address change.	- Requestor updated address well after the 10-day timeframe set by INA 265 and after USCIS mailed his or her secure identity document, but the secure identity document was not returned to USCIS as undeliverable. ^[12] - Requestor updated address after his or her secure identity document was returned to USCIS as undeliverable and destroyed.	Yes, requestor must resubmit completed application with fee.
Requestor updated address timely, but gave incomplete or incorrect address.	- Instead of “123 Main Street,” requestor entered “Main Street 123” or “213 Main Street.” - Requestor omitted apartment or suite number or included incorrect apartment or suite number. - Requestor misspelled a part of the address, such as “123 Brandway” instead of “123 Broadway.” - Requestor listed the wrong state or zip code. - Requestor provided an invalid USPS address.	Yes, requestor must resubmit completed application with fee.
Requestor provided future address, not current address.	Not Applicable	Yes, requestor must resubmit completed application with fee.
Requestor did not accept mail.	Not Applicable	Yes, requestor must resubmit completed application with fee.

C. Determining Cause of Error

USCIS determines the cause of the error through USCIS system checks. Each system history contains the date, time, and responsible party of any address update that occurs. These systems indicate when the document was produced or if it was returned. [redaction] USCIS officers should refer to Appendix – System Checklist for New Address. [/redaction] If a USCIS representative is unable to determine the cause of the error or the scenario does not fall into any of the tables listed above, the officer should consult a supervisor.

Footnotes

1. [^] There are conditions when USCIS may issue an Alien Documentation, Identification & Telecommunications (ADIT) stamp in place of a new Permanent Resident Card (PRC). One such condition may be applying for naturalization at least 6 months before the expiration of the PRC. Permanent residents in this circumstance may contact the USCIS Contact Center for more information on how to obtain an ADIT stamp instead of filing Form I-90.
2. [^] The transportation letter does not replace the PRC. LPRs must complete and submit Form I-90 upon reentry into the United States to obtain a replacement PRC.
3. [^] For more information on when a new Form I-765 and fee is required, see [Employment Authorization Document](#).
4. [^] The transportation letter does not replace the reentry permit. LPRs must complete and submit Form I-131 upon reentry into the United States to obtain a replacement reentry permit.
5. [^] In general, if a requestor applies for advance parole while in the United States, and departs the United States before the advance parole document is issued, the requestor may be found inadmissible to the United States upon return, or even if admitted, may be found to have abandoned his or her application.
6. [^] For more information, see Volume 12, Citizenship & Naturalization, Part K, Certificates of Citizenship and Naturalization, Chapter 4, Replacement of Certificate of Citizenship or Naturalization [[12 USCIS-PM K.4](#)].
7. [^] If USCIS personnel determines that a secure identity document (such as a PRC, employment authorization document (EAD), travel document, or naturalization or citizenship certificate) has been lost, misdirected, or tampered with, USCIS personnel must report the unlawful disclosure as a privacy incident. A series of actions and activities must occur to appropriately report, investigate, respond, and mitigate the privacy incident. If a benefit requestor believes his or her secure identity document has been lost, misdirected, or tampered with, he or she should report the incident to the USCIS Contact Center at 1-888-220-5228. [redaction] USCIS personnel should document all known facts about the incident in an Office of Security and Integrity (OSI) [Significant Incident Report](#) (SIR). [/redaction]
8. [^] An economic analysis found that retention of non-deliverable secure identity documents for longer than 60 days costs USCIS more than production of a new identity document.
9. [^] For more information, see [Find Missing Mail](#).
10. [^] If USCIS personnel determines that a secure identity document (such as a PRC, EAD, travel document, or naturalization or citizenship certificate) is lost, misdirected, or tampered with, USCIS personnel must report the unlawful disclosure as a privacy incident. A series of actions and activities must occur to appropriately report, investigate, respond, and mitigate the privacy incident. If a benefit requestor believes his or her secure identity document has been lost, misdirected, or tampered with, he or she should report the incident to the USCIS Contact Center at 1-888-220-5228. [redaction] USCIS personnel should document all known facts about the incident in an Office of Security and Integrity (OSI) [Significant Incident Report](#) (SIR). [/redaction]
11. [^] Unless the requestor qualifies for a fee waiver. See Request for Fee Waiver ([Form I-912](#)).
12. [^] If USCIS personnel determines that a secure identity document (such as a PRC, EAD, travel document, or naturalization or citizenship certificate) is lost, misdirected, or tampered with, USCIS personnel must report the unlawful disclosure as a privacy incident. A series of actions and activities must occur to appropriately report, investigate, respond, and mitigate the privacy incident. If a benefit requestor believes his or her secure identity document has been lost, misdirected, or tampered with, he or she should report the incident to the USCIS Contact Center at 1-888-220-5228. [redaction] USCIS personnel should document all known facts about the incident in an Office of Security and Integrity (OSI) [Significant Incident Report](#) (SIR). [/redaction]

Part B - Permanent Resident Cards

Part C - Reentry Permits

Part D - Refugee Travel Documents

Part E - Advance Parole

Part F - Employment Authorization Documentation

Volume 12 - Citizenship and Naturalization

Part A - Citizenship and Naturalization Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

The United States has a long history of welcoming immigrants from all parts of the world. The United States values the contributions of immigrants who continue to enrich this country and preserve its legacy as a land of freedom and opportunity. USCIS is proud of its role in maintaining our country's tradition as a nation of immigrants and will administer immigration and naturalization benefits with integrity.

U.S. citizenship is a unique bond that unites people around civic ideals and a belief in the rights and freedoms guaranteed by the U.S. Constitution. The promise of citizenship is grounded in the fundamental value that all persons are created equal and serves as a unifying identity to allow persons of all backgrounds, whether native or foreign-born, to have an equal stake in the future of the United States.

This volume of the USCIS Policy Manual explains the laws and policies that govern U.S. citizenship and naturalization.

USCIS administers citizenship and naturalization law and policy by:

- Providing accurate and useful information to citizenship and naturalization applicants;
- Promoting an awareness and understanding of citizenship; and
- Adjudicating citizenship and naturalization applications in a consistent and accurate manner.

Accordingly, USCIS reviews benefit request for citizenship and naturalization to determine whether:

- Foreign-born children of U.S. citizens by birth or naturalization meet the eligibility requirements before recognizing their acquisition or derivation of U.S. citizenship.
- Persons applying for naturalization based on their time as lawful permanent residents meet the eligibility requirements to become U.S. citizens.

- Persons applying for naturalization based on their marriage to a U.S. citizen meet the eligibility requirements for naturalization through the provisions for spouses of U.S. citizens.
- Members of the U.S. armed forces and their families are eligible for naturalization and ensure that qualified applicants are naturalized expeditiously through the military provisions.
- Persons working abroad for certain entities, to include the U.S. Government, meet the eligibility requirements for certain exceptions to the general naturalization requirements.

Volume 12, Citizenship and Naturalization, contains detailed guidance on the requirements for citizenship and naturalization.

Volume 12: Citizenship and Naturalization

Volume 12 Parts		Guidance
Part A	Citizenship and Naturalization Policies and Procedures	General policies and procedures relating to citizenship and naturalization
Part B	Naturalization Examination	Naturalization examination, to include security checks, interview and eligibility review
Part C	Accommodations	Accommodations and modifications that USCIS may provide in the naturalization process
Part D	General Naturalization Requirements	General naturalization requirements that apply to most lawful permanent residents
Part E	English and Civics Testing and Exceptions	Testing for educational requirements for naturalization
Part F	Good Moral Character	Good moral character for naturalization and the related permanent and conditional bars
Part G	Spouses of U.S. Citizens	Spouses of U.S. citizens who reside in the United States or abroad
Part H	Children of U.S. Citizens	Children of U.S. citizens who may have acquired or derived citizenship stateside or abroad
Part I	Military Members and their Families	Provisions based on military service for members of the military and their families
Part J	Oath of Allegiance	Oath of Allegiance for naturalization, to include modifications and waivers

Volume 12 Parts		Guidance
Part K	Certificates of Citizenship and Naturalization	Issuance and replacement of Certificates of Citizenship and Certificates of Naturalization
Part L	Revocation of Naturalization	General procedures for revocation of naturalization (denaturalization)

B. Background

Upon the adoption of the U.S. Constitution in 1787, the first U.S. citizens were granted citizenship status retroactively as of 1776. Neither an application for citizenship, nor the taking of an Oath of Allegiance was required at that time. ^[1] Persons only needed to remain in the United States at the close of the war and the time of independence to show that they owed their allegiance to the new Government and accepted its protection.

The following key legislative acts provide a basic historical background for the evolution of the general eligibility requirements for naturalization as set forth in the [Immigration and Nationality Act \(INA\)](#).

Evolution of Naturalization Requirements Prior to the Immigration and Nationality Act (INA) of 1952

Act	Statutory Provisions
Naturalization Act of 1790	- Established uniform rule of naturalization and oath of allegiance - Established two year residency requirement for naturalization - Required good moral character of all applicants
Naturalization Act of 1798	- Permitted deportation of foreign nationals considered dangerous - Increased residency requirements from 2 years to 14 years
Naturalization Act of 1802	Reduced residency requirement from 14 years to 5 years
Naturalization Act of 1891	Rendered polygamists, persons suffering from contagious disease and persons convicted of a “misdemeanor involving moral turpitude” ineligible for naturalization.

Act	Statutory Provisions
Naturalization Act of 1906	• Standardized naturalization procedures • Required knowledge of English language for citizenship • Established the Bureau of Immigration and Naturalization
The Alien Registration Act of 1940	• Required the registration and fingerprinting of all aliens in the United States over the age of 14 years

C. Legal Authorities

- [INA 103](#); [8 CFR 103](#) – Powers and duties of the Secretary, the Under Secretary, and the Attorney General
- [INA 310](#); [8 CFR 310](#) – Naturalization authority
- [INA 312](#); [8 CFR 312](#) – Educational requirements for naturalization
- [INA 316](#); [8 CFR 316](#) – General requirements for naturalization
- [INA 332](#); [8 CFR 332](#) – Naturalization administration; executive functions
- [INA 336](#); [8 CFR 336](#) – Hearings on denials of applications for naturalization
- [INA 337](#); [8 CFR 337](#) – Oath of renunciation and allegiance
- [8 CFR 2](#) – Authority of the Secretary of the Department of Homeland Security

Footnotes

1. ^[^] See Frank G. Franklin, *The Legislative History of Naturalization in the United States; From the Revolutionary War to 1861* (Chicago: The University of Chicago Press, 1906).

Chapter 2 - Becoming a U.S. Citizen

A person may derive or acquire U.S. citizenship at birth. Persons who are born in the United States and subject to the jurisdiction of the United States are citizens at birth. Persons who are born in certain territories of the United States also may be citizens at birth. In general, but subject in some cases to other requirements, including residence requirements as of certain dates, this includes persons born in:

- Puerto Rico on or after April 11, 1899; ^[1]
- Canal Zone or the Republic of Panama on or after February 26, 1904; ^[2]
- Virgin Islands on or after January 17, 1917; ^[3]
- Guam born after April 11, 1899; ^[4] or

- Commonwealth of the Northern Mariana Islands (CNMI) on or after November 4, 1986. ^[5]

Persons born in American Samoa and Swains Island are generally considered nationals but not citizens of the United States. ^[6]

In addition, persons who are born outside of the United States may be U.S. citizens at birth if one or both parents were U.S. citizens at their time of birth. Persons who are not U.S. citizens at birth may become U.S. citizens through naturalization. Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever.

In general, an applicant files a naturalization application and then USCIS grants citizenship after adjudicating the application. In some cases, a person may be naturalized by operation of law. This is often referred to as deriving citizenship. In either instance, the foreign citizen or national must fulfill all of the requirements established by Congress. In most cases, a person may not be naturalized unless he or she has been lawfully admitted to the United States for permanent residence.

Deciding to become a U.S. citizen is one of the most important decisions an immigrant can make. Naturalized U.S. citizens share equally in the rights and privileges of U.S. citizenship. U.S. citizenship offers immigrants the ability to:

- Vote in federal elections;
- Travel with a U.S. passport;
- Run for elective office where citizenship is required;
- Participate on a jury;
- Become eligible for federal and certain law enforcement jobs;
- Obtain certain state and federal benefits not available to noncitizens;
- Obtain citizenship for minor children born abroad; and
- Expand and expedite their ability to bring family members to the United States.

Footnotes

1. ^[^] See [INA 302](#).

2. ^[^] See [INA 303](#). If the person was born in the Canal Zone, he or she acquired U.S. citizenship at birth if born between February 26, 1904 and October 1, 1979, and one parent was a U.S. citizen at the time of the person's birth. The Canal Zone ceased to exist on October 1, 1979. See the so-called Torrijos–Carter Treaties (September 7, 1977). If the person was born in the Republic of Panama, but not in the Canal Zone, one parent must have been a U.S. citizen parent employed by the U.S. Government, or by the Panama Railroad Company, at the time of the person's birth.

3. ^[^] See [INA 306](#).

4. ^[^] See [INA 307](#).

5. ^[^] See Section 303 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, [Pub. L. 94-241 \(PDF\)](#), 90 Stat. 263, 266 (March 24, 1976) ([48 U.S.C. 1801](#) note). In addition, certain persons in the CNMI who were born before November 4, 1986, and their children if under age 18 on that date, became U.S. citizens at that time. See Section 301 of [Pub. L. 94-241 \(PDF\)](#), 90 Stat. 263, 265-66 (March 24, 1976) ([48 U.S.C. 1801](#) note). In addition, the Department of State will issue U.S. passports to persons born in the Northern Mariana Islands between January 9, 1978 and November 3, 1986, pursuant to a judicial decision holding that such persons are U.S. citizens. See *Sabangan v. Powell*, 375 F.3d 818 (9th Cir. 2004).

6. ^[^] See INA 308.

Chapter 3 - USCIS Authority to Naturalize

It has long been established that Congress has the exclusive authority under its constitutional power to establish a uniform rule of naturalization and to enact legislation under which citizenship may be conferred upon persons. ^[1] Before 1991, naturalization within the United States was a judicial function exercised since 1790 by various courts designated in statutes enacted by Congress under its constitutional power to establish a uniform rule of naturalization.

As of October 1, 1991, Congress transferred the naturalization authority to the Attorney General (now the Secretary of DHS). ^[2] USCIS is authorized to perform such acts as are necessary to properly implement the Secretary's authority. ^[3] In certain cases, an applicant for naturalization may choose to have the Oath of Allegiance ^[4] administered by USCIS or by an eligible court with jurisdiction. Eligible courts may choose to have exclusive authority to administer the Oath of Allegiance.

Footnotes

1. ^[^] See *Chirac v. Chirac*, 15 U.S. 259 (1817).

2. ^[^] See INA 310(a).

3. ^[^] See INA 310.

4. ^[^] See INA 337(a).

Part B - Naturalization Examination

Chapter 1 - Purpose and Background

A. Purpose

USCIS conducts an investigation and examination of all naturalization applicants to determine whether an applicant meets all pertinent eligibility requirements to become a U.S. citizen. The investigation and examination process encompasses all factors relating to the applicant's eligibility: ^[1]

- Completion of security and criminal background checks;
- Review of the applicant's complete immigration record;
- In-person interview(s) with oral and written testimony;
- Testing for English and civics requirements; and
- Qualification for a disability exception.

USCIS officers have authority to conduct the investigation and examination. ^[2] The authority includes the legal authority for certain officers to administer the Oath of Allegiance, obtain oral and written testimony during an in-person interview, subpoena witnesses, and request evidence. ^[3]

The applicant has the burden of establishing eligibility by a preponderance of the evidence throughout the examination. ^[4] The officer must resolve any pending issues and obtain all of the necessary information and evidence to make a decision on the

application. Uniformity in decision-making and application processing is vital to the integrity of the naturalization process. Consistency in the decision-making process enhances USCIS' goal to ensure that the relevant laws and regulations are applied accurately to each case.

B. Background

Beginning in 1906, a complete examination and questioning under oath was required of the “petitioner” (now “applicant”) for naturalization and his or her witnesses at the final hearing for naturalization in court. ^[5] Congress amended the statute in 1940 to include English language requirements and a provision for questioning applicants on their understanding of the principles of the Constitution. ^[6]

Today, USCIS conducts an investigation and examination of all applicants for naturalization to determine their eligibility for naturalization, including the applicant's lawful admission for permanent residence, ability to establish good moral character, attachment to the Constitution, residence and physical presence in the United States, and the English and civics requirements for naturalization.

C. Legal Authorities

- [INA 310](#), [8 CFR 310](#) – Naturalization authority
- [INA 312](#); [8 CFR 312](#) – Educational requirements for naturalization
- [INA 316](#); [8 CFR 316](#) – General requirements for naturalization
- [INA 332](#); [8 CFR 332](#) – Procedural and administrative provisions; executive functions
- [INA 335](#); [8 CFR 335](#) – Investigation and examination of applicant
- [INA 336](#); [8 CFR 336](#) – Hearings on denials of naturalization application

Footnotes

1. ^[^] See [INA 335](#). See [8 CFR 335.1](#) and [8 CFR 335.2](#).

2. ^[^] See [INA 335\(b\)](#). See [8 CFR 332.1](#) and [8 CFR 335.2](#). The authority is delegated by the Secretary of the Department of Homeland Security.

3. ^[^] See [INA 332](#), [INA 335](#), and [INA 337](#). See [8 CFR 332](#), [8 CFR 335](#), and [8 CFR 337](#).

4. ^[^] See [8 CFR 316.2\(b\)](#).

5. ^[^] In 1981, Congress enacted legislation which eliminated the character witness requirements of naturalization, though USCIS has the authority to subpoena witnesses if necessary.

6. ^[^] See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940).

Chapter 2 - Background and Security Checks

A. Background Investigation

USCIS conducts an investigation of the applicant upon his or her filing for naturalization. The investigation consists of certain criminal background and security checks. ^[1] The background and security checks include collecting fingerprints and requesting a “name check” from the Federal Bureau of Investigations (FBI). In addition, USCIS conducts other inter-agency criminal background and security checks on all applicants for naturalization. The background and security checks apply to most applicants and must be conducted and completed before the applicant is scheduled for his or her naturalization interview. ^[2]

B. Fingerprints

1. Fingerprint Requirement

USCIS must collect fingerprint records as part of the background check process on applicants for naturalization regardless of their age. ^[3] In general, applicants receive a biometric service appointment at a local Application Support Center (ASC) for collection of their biometrics (fingerprints, photographs, and signature). ^[4]

USCIS notifies applicants in writing to appear for fingerprinting after filing the naturalization application. Fingerprints are valid for 15 months from the date of processing by the FBI. An applicant abandons his or her naturalization application if the applicant fails to appear for the fingerprinting appointment without good cause and without notifying USCIS. ^[5]

Previously, USCIS had waived the fingerprint requirements for applicants 75 years old or older because it was difficult to capture readable fingerprints from this age group. As a result, applicants 75 years old or older were not required to appear at an ASC. Electronic processing of applications and improved technology now allows USCIS to capture fingerprints for applicants of all ages and enhances the ability to confirm identity and perform required background checks. ^[6]

Once an ASC collects an applicant’s biometrics, USCIS submits the records to the FBI for a full criminal background check. ^[7] The response from the FBI that a full criminal background check has been completed includes confirmation that:

- The applicant does not have an administrative or a criminal record;
- The applicant has an administrative or a criminal record; or
- The applicant’s submitted fingerprint records have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

Accommodations

USCIS makes special arrangements to accommodate the needs of applicants who are unable to attend an appointment, including applicants with disabilities and homebound or hospitalized applicants. All domestic USCIS facilities are accessible to applicants with disabilities. Applicants who are homebound or hospitalized may request an accommodation when unable to appear at an ASC for biometrics processing. Applicants should submit a copy of the appointment notice and medical documentation verifying the need for an in-home appointment with the local field office.

Applicants who need to request an accommodation for their appointment can submit a request online or call the USCIS Contact Center at any time at 800-375-5283 (TDD: 800-767-1833). ^[8]

2. Fingerprint Waivers

Applicants with Certain Medical Conditions

An applicant may qualify for a waiver of the fingerprint requirement if the applicant is unable to provide fingerprints because of a medical condition, to include birth defects, physical deformities, skin conditions, and psychiatric conditions. Only certain USCIS officers are authorized to grant a fingerprint waiver.

An officer responsible for overseeing applicant fingerprinting may grant the waiver in the following situations:

- The officer has met with the applicant in person;
- The officer or authorized technician has attempted to fingerprint the applicant; and
- The officer determines that the applicant is unable to be fingerprinted at all or is unable to provide a single legible fingerprint.

An applicant who is granted a fingerprint waiver must bring local police clearance letters covering the relevant period of good moral character to his or her naturalization interview. All clearance letters become part of the record. In cases where the applicant is granted a fingerprint waiver or has two unclassifiable fingerprint results, the officer must take a sworn statement from the applicant covering the period of good moral character.

An officer should not grant a waiver if the waiver is solely based on:

- The applicant has fewer than 10 fingers;
- The officer considers that the applicant's fingerprints are unclassifiable; or
- The applicant's condition preventing the fingerprint capturing is temporary.

An officer's decision to deny a fingerprint waiver is final and may not be appealed.

C. FBI Name Checks

The FBI conducts "name checks" on all naturalization applicants, and disseminates the information contained in the FBI's files to USCIS in response to the name check requests. The FBI's National Name Check Program (NNCP) includes a search against the FBI's Universal Index (UNI), which contains personnel, administrative, applicant, and criminal files compiled for law enforcement purposes. The FBI disseminates the information contained in the FBI's files to USCIS in response to the name check requests.

The FBI name check must be completed and cleared before an applicant for naturalization is scheduled for his or her naturalization interview. A definitive FBI name check response of "NR" (No Record) or "PR" (Positive Response) is valid for the duration of the application for which they were conducted. Definitive responses used to support other applications are valid for 15 months from the FBI process date. A new name check is required in cases where the final adjudication and naturalization have not occurred within that timeframe or the name check was processed incorrectly.

Footnotes

1. ^[^] See [INA 335](#). See [8 CFR 335.1](#).

2. ^[^] See [8 CFR 335.2\(b\)](#).

3. ^[^] See [8 CFR 103.2\(b\)\(9\)](#), [8 CFR 335.1](#), and [8 CFR 335.2](#). See Part I, Military Members and their Families, Chapter 6, Required Background Checks [[12 USCIS-PM I.6](#)], for guidance on the background and security check procedures for members or veterans of the U.S. armed forces.

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

5. ^[^] See [8 CFR 103.2\(b\)\(13\)\(ii\)](#). See Chapter 4, Results of the Naturalization Examination [[12 USCIS-PM B.4](#)].

6. ^[^] See [INA 335](#). See [8 CFR 335.1](#).

7. ^[^] See [8 CFR 335.2\(b\)](#).

8. ^[^] See USCIS web pages on [Homebound Processing](#) and [How to Request Special Accommodation](#).

Chapter 3 - Naturalization Interview

A. Roles and Responsibilities

1. USCIS Officers

Authority to Conduct Examination

USCIS officers have authority to conduct the investigation and examination, to include the naturalization interview. ^[1] The officer should introduce him or herself and explain the purpose of the naturalization examination and place the applicant under oath at the start of the interview.

USCIS' authority includes the legal authority for officers to:

- Place an applicant under oath;
- Obtain oral and written testimony during an in-person interview;
- Subpoena witnesses;
- Request evidence; and
- Administer the Oath of Allegiance (when delegated by the Field Office Director).

Questions on Eligibility

An officer's questioning of an applicant during the applicant's naturalization interview must cover all of the requirements for naturalization. ^[2] In general, the officer's questions focus on the information in the naturalization application. The officer may ask any questions that are pertinent to the eligibility determination. The officer should provide the applicant with suitable opportunities to respond to questions in all instances.

In general, the officer's questions may include, but are not limited to, the following questions:

- Biographical information, to include marital history and military service;
- Admission and length of time as a lawful permanent resident (LPR);
- Absences from the United States after becoming an LPR;
- Places of residence and employment history;
- Knowledge of English and of U.S. history and government (civics);
- Moral character and any criminal history;
- Attachment to the principles of the U.S. Constitution;
- Affiliations or memberships in certain organizations;
- Willingness to take an Oath of Allegiance to the United States; and

- Any other topic pertinent to the eligibility determination.

In most cases, the officer conducting the naturalization interview administers the required tests relating to the applicant's ability to read and write English, and his or her knowledge of U.S. history and government (civics), unless the applicant is exempt. [3] The officer who conducts the naturalization interview and who determines the applicant's ability to speak and understand English is not required to also administer the English reading and writing, and civics tests. Accordingly, a different officer may administer the tests.

Grounding Decisions on Applicable Laws

An officer must analyze the facts of each case to make a legally sound decision on the naturalization application. The officer must base his or her decision to approve or deny the application on the relevant laws, regulations, precedent decisions, and agency guidance:

- The Immigration and Nationality Act (INA) is the primary source of pertinent statutory law. [4]
- The corresponding regulations explain the statutes further and provide guidance on how the statutes are applied. [5]
- Precedent decisions have the force of law and are binding on cases within the jurisdiction of the court or appellate body making the decision. [6]
- USCIS guidance provides the agency's policies and procedures supporting the laws and regulations. The USCIS Policy Manual is the primary source for agency guidance. [7]

2. Authorized Representatives

An applicant may request the presence and counsel of a representative, to include attorneys or other representatives, at the applicant's in-person interview. The representative must submit to USCIS a properly completed notice of entry of appearance. [8]

In cases where an applicant requests to proceed without the assistance of a representative, the applicant must sign a waiver of representation. If the applicant does not want to proceed with the interview without his or her representative, the officer must reschedule the interview. Officers should consult with a supervisor if the representative fails to appear for multiple scheduled interviews.

The representative's role is to ensure that the applicant's legal rights are protected. A representative may advise his or her client on points of law but should not respond to questions the officer has directed to the applicant.

An applicant may be represented by any of the following:

- Attorneys in the United States; [9]
- Certain law students and law graduates not yet admitted to the bar; [10]
- Certain reputable individuals who are of good moral character, have a pre-existing relationship with the applicant and are not receiving any payment for the representation; [11]
- Accredited representatives from organizations accredited by the Board of Immigration Appeals (BIA); [12]
- Accredited officials of the government to which a person owes allegiance; [13] or
- Attorneys outside the United States. [14]

No other person may represent an applicant. [15]

3. Interpreters

An interpreter may be selected either by the applicant or by USCIS in cases where the applicant is permitted to use an interpreter. The interpreter must:

- Translate what the officer and the applicant say word for word to the best of his or her ability without providing the interpreter's own opinion, commentary, or answer; and
- Complete an interpreter's oath and privacy release statement and submit a copy of his or her government-issued identification at the naturalization interview.

A disinterested party should be used as an interpreter. If the USCIS officer is fluent in the applicant's native language, the officer may conduct the examination in the applicant's language of choice.

USCIS reserves the right to disqualify an interpreter provided by the applicant if an officer considers that the integrity of the examination is compromised by the interpreter's participation.

B. Preliminary Review of Application

A USCIS officer who is designated to conduct the naturalization interview should review the applicant's "A-file" and naturalization application before the interview. The A-file is the applicant's record of his or her interaction with USCIS, legacy Immigration and Naturalization Service (INS), and other governmental organizations with which the applicant has had proceedings pertinent to his or her immigration record. The officer addresses all pertinent issues during the naturalization interview.

1. General Contents of A-File

The applicant's A-file may include the following information along with his or her naturalization application:

- Documents that show how the applicant became an LPR;
- Other applications or forms for immigration benefits submitted by the applicant;
- Correspondence between USCIS and the applicant;
- Memoranda and forms from officers that may be pertinent to the applicant's eligibility;
- Materials such as any criminal records, ^[16] correspondence from other agencies, and investigative reports and enforcement actions from DHS or other agencies.

2. Jurisdiction for Application ^[17]

In most cases, the USCIS office having jurisdiction over the applicant's residence at the time of filing has the responsibility for processing and adjudicating the naturalization application. ^[18] An officer should review whether the jurisdiction of a case has changed because the applicant has moved after filing his or her naturalization application. The USCIS office may transfer the application to the appropriate office with jurisdiction when appropriate. ^[19] In addition, an applicant for naturalization as a battered spouse of a U.S. citizen ^[20] or child may use a different address for safety which does not affect the jurisdiction requirements.

In cases where an officer becomes aware of a change in jurisdiction during the naturalization interview, the officer may complete the interview and then forward the applicant's A-file with the pending application to the office having jurisdiction. The

officer informs the applicant that the application's jurisdiction has changed. The applicant will receive a new appointment notice from the current office with jurisdiction.

3. Results of Background and Security Checks ^[21]

An officer should ensure that all of the appropriate background and security checks have been conducted on the naturalization applicant. The results of the background and security checks should be included as part of the record.

4. Other Documents or Requests in the Record

Requests for Accommodations or Disability Exceptions

USCIS accommodates applicants with disabilities by making modifications to the naturalization examination process. ^[22] An officer reviews the application for any accommodations request, any oath waiver request or for a medical disability exception from the educational requirements for naturalization. ^[23]

Previous Notice to Appear, Order to Show Cause, or Removal Order

An officer reviews an applicant's record and relevant databases to identify any current removal proceedings or previous proceedings resulting in a final order of removal from the United States. If an applicant is in removal proceedings, a Notice to Appear or the previously issued "Order to Show Cause" may appear in the applicant's record. ^[24] USCIS cannot make a decision on any naturalization application from an applicant who is in removal proceedings. ^[25]

The officer should deny the naturalization application if the applicant has already received a final order of removal from an immigration judge, unless:

- The applicant was removed from the United States and later reentered with the proper documentation and authorization; or
- The applicant is filing for naturalization under the military naturalization provisions. ^[26]

C. Initial Naturalization Examination

All naturalization applicants must appear for an in-person examination before a USCIS officer after filing an Application for Naturalization (Form N-400). ^[27] The applicant's examination includes both the interview and the administration of the English and civics tests. The applicant's interview is a central part of the naturalization examination. The officer conducts the interview with the applicant to review and examine all factors relating to the applicant's eligibility.

The officer places the applicant under oath and interviews the applicant on the questions and responses in the applicant's naturalization application. ^[28] The initial naturalization examination includes:

- An officer's review of information provided in the applicant's naturalization application,
- The administration of tests on the educational requirements for naturalization; ^[29] and
- An officer's questions relating to the applicant's eligibility for naturalization. ^[30]

The applicant's written responses to questions on his or her naturalization application are part of the documentary record signed under penalty of perjury. The written record includes any amendments to the responses in the application that the officer makes in the course of the naturalization interview as a result of the applicant's testimony. The amendments, sworn affidavits, and oral statements and answers document the applicant's testimony and representations during the naturalization interview(s).

At the officer's discretion, he or she may record the interview by a mechanical, electronic, or videotaped device, may have a transcript made, or may prepare an affidavit covering the testimony of the applicant. ^[31] The applicant or his or her authorized attorney or representative may request a copy of the record of proceedings through the Freedom of Information Act (FOIA). ^[32]

The officer provides the applicant with a notice of results at the end of the examination regardless of the outcome. ^[33] The notice provides the outcome of the examination and should explain what the next steps are in cases that are continued. ^[34]

D. Subsequent Re-examination

USCIS may schedule an applicant for a subsequent examination (re-examination) to determine the applicant's eligibility. ^[35] During the re-examination:

- The officer reviews any evidence provided by the applicant in a response to a request for evidence issued during or after the initial interview.
- The officer considers new oral and written testimony and determines whether the applicant meets all of the naturalization eligibility requirements, to include re-testing the applicant on the educational requirements (if necessary).

In general, the re-examination provides the applicant with an opportunity to overcome deficiencies in his or her naturalization application. Where the re-examination is scheduled for failure to meet the educational requirements for naturalization during the initial examination, the subsequent re-examination is scheduled between 60 and 90 days from the initial examination. ^[36]

If the applicant is unable to overcome the deficiencies in his or her naturalization application, the officer denies the naturalization application. An applicant or his or her authorized representative may request a USCIS hearing before an officer on the denial of the applicant's naturalization application. ^[37]

E. Expediting Applications from Certain SSI Beneficiaries

USCIS will expedite naturalization applications filed by applicants:

- Who are within one year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and
- Whose naturalization application has been pending for four months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants, who have pending applications, must inform USCIS of the approaching termination of benefits by InfoPass appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within one year or less and that their naturalization application has been pending for four months or more from the date of receipt by USCIS; and
- A copy of the applicant's most recent SSA letter indicating the termination of their SSI benefits. (The USCIS alien number must be written at the top right of the SSA letter).

Applicants who have not filed their naturalization application may write "SSI" at the top of page one of the application. Applicants should include a cover letter or cover sheet along with their application to explain that their SSI benefits will be terminated within one year or less.

Footnotes

1. [^] See [INA 335\(b\)](#). See [8 CFR 335.2](#).
2. [^] See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].
3. [^] See Part E, English and Civics Testing and Exceptions [[12 USCIS-PM E](#)].
4. [^] See [Pub. L. 82-414](#) (June 27, 1952), as amended.
5. [^] See [Title 8 of the Code of Federal Regulations \(8 CFR\)](#). Most of the corresponding regulations have been promulgated by legacy INS or USCIS.
6. [^] Precedent decisions are judicial decisions that serve as an authority for deciding an immigration matter. Precedent decisions are decisions designated as such by the Board of Immigration Appeals (BIA), Administrative Appeals Office (AAO), and appellate court decisions. Decisions from district courts are not precedent decisions in other cases.
7. [^] The [Adjudicator's Field Manual \(AFM\)](#) and policy memoranda also serve as key sources for guidance on topics that are not covered in the Policy Manual.
8. [^] See [8 CFR 335.2\(a\)](#). The representative must use the Notice of Entry of Appearance as Attorney or Representative ([Form G-28](#)).
9. [^] See [8 CFR 292.1\(a\)\(1\)](#).
10. [^] See [8 CFR 292.1\(a\)\(2\)](#).
11. [^] See [8 CFR 292.1\(a\)\(3\)](#).
12. [^] See [8 CFR 292.1\(a\)\(4\)](#) and [8 CFR 292.2](#).
13. [^] See [8 CFR 292.1\(a\)\(5\)](#).
14. [^] See [8 CFR 292.1\(a\)\(6\)](#). In naturalization cases, attorneys licensed only outside the United States may represent an applicant only when the naturalization proceeding can occur overseas and where DHS allows the representation as a matter of discretion. Attorneys licensed only outside the United States cannot represent an applicant whose naturalization application is processed solely within the United States unless the attorney also qualifies under another representation category.
15. [^] See [8 CFR 292.1\(e\)](#).
16. [^] For example, a Record of Arrest and Prosecution ("RAP" sheet).
17. [^] See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [[12 USCIS-PM D.6](#)].
18. [^] An applicant who is a student or a member of the U.S. armed forces may have different places of residence that may affect the jurisdiction requirement. See [8 CFR 316.5\(b\)](#).
19. [^] See [8 CFR 335.9](#).
20. [^] See [INA 319\(a\)](#).
21. [^] See Chapter 2, Background and Security Checks [[12 USCIS-PM B.2](#)].
22. [^] See Part C, Accommodations [[12 USCIS-PM C](#)].
23. [^] See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (N-648) [[12 USCIS-PM E.3](#)]. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [[12 USCIS-PM J.3](#)].

24. [^] An "Order to Show Cause" was the notice used prior to enactment of IIRIRA on April 1, 1997.
25. [^] This does not apply in cases involving naturalizations based on military service where the applicant may not be required to be lawfully admitted for permanent residence. See [INA 318](#) and [INA 329](#).
26. [^] See [INA 328\(b\)\(2\)](#) and [INA 329\(b\)\(1\)](#).
27. [^] See [8 CFR 335.2\(a\)](#).
28. [^] If an applicant is unable to undergo any part of the naturalization examination because of a physical or developmental disability or mental impairment, a legal guardian, surrogate or an eligible designated representative completes the naturalization process for the applicant. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [[12 USCIS-PM J.3](#)].
29. [^] See Part E, English and Civics Testing and Exceptions [[12 USCIS-PM E](#)]. USCIS may administer the test separately from the interview.
30. [^] See the relevant Volume 12 [[12 USCIS-PM](#)] part for the specific eligibility requirements for each naturalization provision.
31. [^] See [8 CFR 335.2\(c\)](#).
32. [^] The applicant or authorized attorney or representative may request a copy of the record of proceedings by filing a Freedom of Information/Privacy Act Request ([Form G-639](#)).
33. [^] The officer must use the Naturalization Interview Results (Form N-652).
34. [^] See Chapter 4, Results of the Naturalization Examination [[12 USCIS-PM B.4](#)].
35. [^] A USCIS field office may allow the applicant to provide documentation by mail in order to overcome any deficiencies without scheduling the applicant to come in person for another interview.
36. [^] See [8 CFR 335.3\(b\)](#) (Re-examination no earlier than 60 days from initial examination). See [8 CFR 312.5\(a\)](#) (Re-examination for educational requirements scheduled no later than 90 days from initial examination). In cases where an applicant does not meet the educational requirements for naturalization during the re-examination, USCIS denies the application. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [[12 USCIS-PM E.2](#)].
37. [^] See Chapter 6, USCIS Hearing and Judicial Review [[12 USCIS-PM B.6](#)]. See Section A, Roles and Responsibilities [[12 USCIS-PM B.3\(A\)](#)], for a list of authorized representatives. See [8 CFR 292.1](#).

Chapter 4 - Results of the Naturalization Examination

USCIS has 120 days from the date of the initial naturalization interview to issue a decision. If the decision is not issued within 120 days of the interview, an applicant may request judicial review of his or her application in district court. The officer must base his or her decision on the laws, regulations, precedent decisions, and governing policies.

The officer may:

- Approve the application;
- Continue the examination without making a decision (if more information is needed), if the applicant needs to be rescheduled, or for other relevant reasons; or
- Deny the application.

The officer must provide the applicant with a notice of results at the end of the interview regardless of the outcome. The notice should address the outcome of the interview and the next steps involved for continued cases. ^[1]

A. Approval of Naturalization Application

If an officer approves a naturalization application, the application goes through the appropriate internal procedures before the USCIS office schedules the applicant to appear at a ceremony for the administration of the Oath of Allegiance. ^[2] The internal procedures include a “re-verification” procedure where all approved applications are reviewed for quality. The officer who conducts the re-verification is not the same officer who conducts the interview. While the officer conducting the re-verification process does not adjudicate the application once again, the officer may raise any substantive eligibility issues.

USCIS does not schedule an applicant for the Oath of Allegiance in cases where USCIS receives or identifies potentially disqualifying information about the applicant after approval of his or her application. ^[3] If USCIS cannot resolve the disqualifying information and the adjudicating officer finds the applicant ineligible for naturalization, USCIS then issues a motion to reopen and re-adjudicates the naturalization application.

B. Continuation of Examination

1. Continuation to Request Evidence

An officer issues the applicant a written request for evidence if additional information is needed to make an accurate determination on the naturalization application. ^[4] In general, USCIS permits a period of 30 days for the applicant to respond to a request for evidence. ^[5]

The request for evidence should include:

- The specific documentation or information that the officer is requesting;
- The ways in which the applicant may respond; and
- The period of time that the applicant has to reply.

The applicant must respond to the request for evidence within the timeframe specified by the officer. If the applicant timely submits the evidence as requested, the officer makes a decision on the applicant’s eligibility. If the applicant fails to submit the evidence as requested, the officer may adjudicate the application based on the available evidence. ^[6]

2. Scheduling Subsequent Re-examination

If an applicant fails any portion of the naturalization test, an officer must provide the applicant a second opportunity to pass the test within 60 to 90 days after the initial examination unless the applicant is statutorily ineligible for naturalization based on other grounds. ^[7] An officer should also schedule a re-examination in order to resolve any issues on eligibility.

The outcome of the re-examination determines whether the officer conducting the second interview continues, approves, or denies the naturalization application. ^[8]

If the applicant fails to appear for the re-examination and USCIS does not receive a timely or reasonable request to reschedule, the officer should deny the application based on the applicant’s failure to meet the educational requirements for naturalization. The officer also should include any other areas of ineligibility within the denial notice.

C. Denial of Naturalization Application

If an officer denies a naturalization application based on ineligibility or lack of prosecution, the officer must issue the applicant and his or her attorney or representative a written denial notice no later than 120 days after the initial interview on the application. ^[9] The written denial notice should include:

- A clear and concise statement of the facts in support of the decision;
- Citation of the specific eligibility requirements the applicant failed to demonstrate; and
- Information on how the applicant may request a hearing on the denial. ^[10]

The table below provides certain general grounds for denial of the naturalization application. An officer should review the pertinent parts of this volume that correspond to each ground for denial and its related eligibility requirement for further guidance.

General Grounds for Denial of Naturalization Application (Form N-400)

Failure to establish...	Citation
Lawful Admission for Permanent Residence	• INA 316(a)(1) • INA 318 • 8 CFR 316.2(a)(2)
Continuous Residence	• INA 316(a)(2) • INA 316(b) • 8 CFR 316.2(a)(3) • 8 CFR 316.5(c)
Physical Presence	• INA 316(a) • 8 CFR 316.2(a)(4)
3 Months of Residence in State or Service District	• INA 316(a) • 8 CFR 316.2(a)(5)
Good Moral Character	• INA 316(a)(3) • INA 316(e) • INA 101(f) • 8 CFR 316.10
Attachment and Favorable Disposition to the Good Order and Happiness of the United States	• INA 316(a)(3) • 8 CFR 316.11

Understanding of English (Including Reading, Writing, and Speaking)	• INA 312(a)(1) • 8 CFR 312.1
Knowledge of U.S. History and Government	• INA 312(a)(2) • 8 CFR 312.2
Lack of Prosecution	• INA 335(e) • 8 CFR 335.7

D. Administrative Closure, Lack of Prosecution, Withdrawal, and Holding in Abeyance

1. Administrative Closure for Failing to Appear at Initial Interview

An applicant abandons his or her application if he or she fails to appear for his or her initial naturalization examination without good cause and without notifying USCIS of the reason for non-appearance within 30 days of the scheduled appointment. In the absence of timely notification by the applicant, an officer may administratively close the application without making a decision on the merits. ^[11]

An applicant may request to reopen an administratively closed application without fee by submitting a written request to USCIS within one year from the date the application was closed. ^[12] The date of the applicant's request to reopen an application becomes the date of filing the naturalization application for purposes of determining eligibility for naturalization. ^[13]

If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, USCIS:

- Considers the naturalization application abandoned; and
- Dismisses the application without further notice to the applicant. ^[14]

2. Failing to Appear for Subsequent Re-examination or to Respond to Request for Evidence

If the applicant fails to appear at the subsequent re-examination or fails to respond to a Request for Evidence within 30 days, officer must adjudicate the application on the merits. ^[15] This includes cases where the applicant fails to appear at a re-examination or to provide evidence as requested.

An officer should consider any good cause exceptions provided by the applicant for failing to respond or appear for an examination in adjudicating a subsequent motion to reopen.

3. Withdrawal of Application

The applicant may request, in writing, to withdraw his or her application. The officer must inform the applicant that the withdrawal by the applicant constitutes a waiver of any future hearing on the application. If USCIS accepts the withdrawal, the applicant may submit another application without prejudice. USCIS does not send any further notice regarding the application.

If the District Director does not consent to the withdrawal, the officer makes a decision on the merits of the application. ^[16]

4. Holding Application in Abeyance if Applicant is in Removal Proceedings

USCIS cannot adjudicate the naturalization application of an applicant who is in removal proceedings. ^[17] In general, USCIS holds the application in abeyance until the immigration judge has either issued a final order of removal or terminates the removal proceedings. Field offices should follow the advice of local USCIS counsel on how to proceed with such cases.

Footnotes

1. ^[^] The officer issues a Notice of Examination Results (Form N-652).
2. ^[^] See Part J, Oath of Allegiance [[12 USCIS-PM J](#)].
3. ^[^] See [8 CFR 335.5](#). See Chapter 5, Motion to Reopen [[12 USCIS-PM B.5](#)].
4. ^[^] The officer issues a request for evidence on Form N-14.
5. ^[^] See [8 CFR 335.7](#). The applicant has up to three more days after the 30-day period for responding to an RFE in cases where USCIS has mailed the request. See [8 CFR 103.8\(b\)](#).
6. ^[^] See [8 CFR 335.7](#).
7. ^[^] See [8 CFR 312.5\(a\)](#) and [8 CFR 335.3\(b\)](#).
8. ^[^] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [[12 USCIS-PM E.2](#)].
9. ^[^] See [INA 335\(d\)](#). See [8 CFR 336.1\(a\)](#).
10. ^[^] See [8 CFR 336.1\(b\)](#). See Chapter 6, USCIS Hearing and Judicial Review [[12 USCIS-PM B.6](#)].
11. ^[^] See [8 CFR 103.2\(b\)\(13\)\(ii\)](#), [8 CFR 335.6\(a\)](#), and [8 CFR 335.6\(b\)](#). Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families [[12 USCIS-PM I](#)].
12. ^[^] See [8 CFR 335.6\(b\)](#). See Chapter 5, Motion to Reopen [[12 USCIS-PM B.5](#)].
13. ^[^] See [8 CFR 335.6\(b\)](#).
14. ^[^] See [8 CFR 335.6\(c\)](#).
15. ^[^] See [INA 335\(e\)](#). See [8 CFR 335.7](#).
16. ^[^] See [INA 335\(e\)](#). See [8 CFR 335.10](#).
17. ^[^] See [INA 318](#). This does not apply in cases involving naturalizations based on military service under [INA 329](#) where the applicant may not be required to be lawfully admitted for permanent residence.

Chapter 5 - Motion to Reopen

A. USCIS Motion to Reopen

An officer must execute a motion to reopen a previously approved naturalization application if:

- USCIS receives or identifies disqualifying derogatory information about the applicant after approval of his or her application prior to the administration of the Oath of Allegiance; ^[1] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause. ^[2]

USCIS notifies the applicant in writing about the receipt of derogatory information or multiple failures to appear through the motion to reopen. The applicant has 15 days to respond to the motion to reopen and overcome the derogatory information or provide good cause for failing to appear at the Oath ceremony. ^[3]

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer denies the motion to reopen and schedules the applicant for the Oath of Allegiance. If the applicant is unable to overcome the derogatory information, the officer grants the motion to reopen and denies the application on its merits. ^[4]

USCIS must not schedule an applicant for the administration of the Oath of Allegiance if USCIS receives or identifies disqualifying derogatory information. USCIS must not administer the Oath of Allegiance to the applicant until the matter is resolved favorably.

An applicant who fails to appear for at least two ceremonies to administer the Oath of Allegiance without good cause abandons his or her intent to be naturalized. USCIS considers multiple failures to appear to be equivalent to receipt of derogatory information after the approval of a naturalization application. ^[5]

B. Motion to Reopen Administratively Closed Application

An applicant may request to reopen an administratively closed naturalization application with USCIS by submitting a written request to USCIS within one year of the date his or her application was administratively closed. ^[6] The applicant is not required to pay any additional fees. USCIS considers the date of the applicant's request to reopen an application as the filing date of the naturalization application for purposes of determining eligibility for naturalization. ^[7] USCIS sends the applicant a notice approving or denying the motion to reopen.

Footnotes

1. ^[^] See 8 CFR 335.5.

2. ^[^] See 8 CFR 337.10.

3. ^[^] See 8 CFR 335.5.

4. ^[^] See 8 CFR 336.1.

5. ^[^] See 8 CFR 337.10.

6. ^[^] Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families, Chapter 6, Required Background Checks, Section C, Ways Service Members may Meet Fingerprint Requirement [12 USCIS-PM I.6(C)].

7. ^[^] See 8 CFR 335.6(b).

Chapter 6 - USCIS Hearing and Judicial Review

A. Hearing Request

An applicant or his or her authorized representative ^[1] may request a USCIS hearing before an officer on the denial of the applicant's naturalization application. The applicant or authorized representative must file the request with USCIS within 30 days after the applicant receives the notice of denial. ^[2]

B. Review of Timely Filed Hearing Request

1. Hearing Scheduled within 180 Days

Upon receipt of a timely hearing request, USCIS schedules the hearing within 180 days. The hearing should be conducted by an officer other than the officer who conducted the original examination or the officer who denied the application. The officer conducting the hearing must be classified at a grade level equal to or higher than the grade of the examining officer. ^[3]

2. Review of Application

An officer may conduct a de novo review of the applicant's naturalization application or may utilize a less formal review procedure based on:

- The complexity of the issues to be reviewed or determined; and
- The necessity of conducting further examinations essential to the naturalization requirements. ^[4]

A de novo review means that the officer makes a new and full review of the naturalization application. ^[5]

An officer conducting the hearing has the authority and discretion to:

- Review all aspects of the naturalization application and examine the applicant anew;
- Review any record, file or report created as part of the examination;
- Receive new evidence and testimony relevant to the applicant's eligibility; and
- Affirm the previous officer's denial or re-determine the decision in whole or in part.

The officer conducting the hearing:

- Affirms the findings in the denial and sustains the original decision to deny;
- Re-determines the original decision but denies the application on newly discovered grounds of ineligibility; ^[6] or
- Re-determines the original decision and reverses the original decision to deny, and approves the naturalization application.

3. English and Civics Testing at Hearing

In hearings involving naturalization applications denied on the basis of failing to meet the educational requirements (English and civics), ^[7] officers must administer any portion of the English or civics tests that the applicant previously failed. Officers provide only one opportunity to pass the failed portion of the tests at the hearing.

C. Improperly Filed Hearing Request

1. Untimely Filed Request

If an applicant files a hearing request over 30 days after receiving the denial notice (33 days if notice was mailed by USCIS ^[8]), USCIS considers the request improperly filed. If an applicant's untimely hearing request meets either the motion to reopen or motion to reconsider requirements, USCIS will treat the hearing request as a motion. ^[9] USCIS renders a decision on the merits of the case in such instances. If the request does not meet the motion requirements, USCIS rejects the request without refund of filing fee. ^[10]

Hearing Request Treated as a Motion to Reopen

USCIS treats an untimely request for a hearing as a motion to reopen if the applicant presents new facts and evidence. If the application or petition was denied due to abandonment, the request must be filed with evidence that the decision was in error because:

- The requested evidence leading to the denial was not material to the issue of eligibility;
- The required initial evidence was submitted with the application, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- USCIS sent the relevant correspondence to the wrong address or the applicant filed a timely change of address before USCIS sent the correspondence. ^[11]

Hearing Request Treated as a Motion to Reconsider

USCIS handles an untimely hearing request for a hearing as a motion to reconsider if:

- The applicant explains the reasons for reconsideration;
- Pertinent precedent decisions establish that the decision to deny was based on an incorrect application of law or USCIS policy; and
- The applicant establishes that the decision to deny was incorrect based on the evidence of record at the time of the decision. ^[12]

2. Requests Improperly Filed by Unauthorized Persons or Entities

USCIS considers a hearing request improperly filed if an unauthorized person or entity files the request. ^[13] USCIS rejects these requests without refund of filing fee. ^[14]

3. Requests Improperly Filed by Attorneys or Authorized Representatives

USCIS considers a hearing request improperly filed if an attorney or representative files the request without properly filing a notice of entry of appearance entitling that person to represent the applicant. The officer must ask the attorney or representative to submit a proper filed notice within 15 days. ^[15]

If the attorney or representative replies with a properly executed notice within 15 days, the officer should handle the hearing request as properly filed. If the attorney or representative fails to do so, the officer may nevertheless make a new decision favorable to the applicant through the officer's own motion to reopen without notifying the attorney or representative. ^[16]

D. Judicial Review

A naturalization applicant may request judicial review before a United States district court of his or her denied naturalization application after USCIS issues the decision following the hearing with a USCIS officer. ^[17] The applicant must file the request

before the United States District Court having jurisdiction over the applicant's place of residence. The district court reviews the case de novo and makes its own findings of fact and conclusions of law.

Footnotes

1. ^[^] See Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities [12 USCIS-PM B.3(A)], for a list of authorized representatives. See 8 CFR 292.1.
2. ^[^] See INA 336(a). See 8 CFR 336.2. See the Request for Hearing on a Decision in Naturalization Proceedings under Section 336 of the INA (Form N-336).
3. ^[^] See 8 CFR 336.2(b).
4. ^[^] See 8 CFR 336.2(b).
5. ^[^] The term “de novo” is Latin for “anew.” In this context, it means the starting over of the application's review.
6. ^[^] In re-determining the decision, the officer may take any action necessary, including issuing a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID).
7. ^[^] See INA 312. See 8 CFR 312. See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E].
8. ^[^] See 8 CFR 103.8(b).
9. ^[^] See 8 CFR 336.2(c)(2)(ii).
10. ^[^] See 8 CFR 336.2(c)(2)(i).
11. ^[^] See 8 CFR 103.5(a)(2).
12. ^[^] See 8 CFR 103.5(a)(3).
13. ^[^] See Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities [12 USCIS-PM B.3(A)], for a list of authorized representatives. See 8 CFR 292.1.
14. ^[^] See 8 CFR 336.2(c)(1)(i).
15. ^[^] See 8 CFR 336.2(c)(1)(ii). See Form G-28.
16. ^[^] See 8 CFR 336.2(c)(1)(ii) and 8 CFR 103.5(a)(5)(i).
17. ^[^] See INA 310(c). See INA 336(a).

Part C - Accommodations

Chapter 1 - Purpose and Background

A. Purpose

USCIS accommodates naturalization applicants with disabilities by making modifications to the naturalization process. ^[1] USCIS aims to provide applicants with disabilities an equal opportunity to successfully complete the process. While USCIS is not required to make major modifications that would result in a fundamental change to the naturalization process or

an undue burden for the agency, USCIS makes every effort to provide accommodations to naturalization applicants with disabilities.

- USCIS evaluates disability accommodation requests on a case-by-case basis as accommodations vary according to the nature of the applicant's disability. In determining what type of accommodation is necessary, USCIS gives primary consideration to the requests of the person with a disability.
- USCIS provides applicants with the requested accommodation or an effective alternative that addresses the unique needs of the applicant where appropriate. ^[2]

Applicants may request an accommodation at the time of filing their naturalization application or at any other time during the naturalization process. ^[3]

B. Background

The Rehabilitation Act requires all federal agencies to provide reasonable accommodations to persons with disabilities in the administration of their programs and benefits. ^[4] USCIS does not exclude persons with disabilities from its programs or activities based on their disability. The Rehabilitation Act and the implemented Department of Homeland Security (DHS) regulations ^[5] require USCIS to provide accommodations that assist an applicant with a disability to have an equal opportunity to participate in its programs, to include the naturalization process.

C. Difference between Accommodations and Waivers

Accommodations are different from statutory waivers or exceptions. For example, if an officer grants an applicant a waiver for a naturalization educational requirement, the applicant is exempt from meeting that educational requirement. An accommodation is a modification of an existing practice or procedure that will enable an applicant with a disability to participate in the naturalization process.

The accommodation does not exempt the applicant from the obligation to satisfy any applicable requirement for naturalization. The accommodation is a modification to the way in which the applicant may establish that he or she meets the requirement. ^[6]

D. Legal Authorities

- Section 504 of the Rehabilitation Act of 1973 ^[7] – Nondiscrimination under federal grants
- 29 U.S.C. 794 – Nondiscrimination under federal grants and programs
- 6 CFR 15 – DHS federal regulations on non-discrimination on the basis of disability of persons who access DHS programs or activities
- 8 CFR 334.4 – Examination and off-site visits for sick or disabled applicants

Footnotes

1. ^[^] See 6 CFR 15.3 for the applicable definitions relating to enforcement of nondiscrimination on the basis of disability DHS federal programs or activities.

2. [^] See, for example, [6 CFR 15.50](#) and [6 CFR 15.60](#).

3. [^] In some cases, applicants with physical impairments such as blindness or low vision or hearing loss may have submitted a medical disability exception form ([Form N-648](#)) along with their naturalization application to request an exception from the English and civics tests as they may be unable to take the tests, even with an accommodation. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648) [[12 USCIS-PM E.3](#)].

4. [^] See Section 504 of the Rehabilitation Act of 1973, [Pub. L. 93-112 \(PDF\)](#), 87 Stat. 355, 394 (September 26, 1973). See [29 U.S.C. 794\(a\)](#). The Act prohibits qualified persons with a disability from being excluded from participation in, denied the benefits of, or being subjected to discrimination under any programs or activities conducted by federal agencies solely on the basis of their disability.

5. [^] See [6 CFR 15](#).

6. [^] The accommodations discussed in this part are distinguished from the oath waiver process by which the applicant's complete examination is conducted by a legal guardian or surrogate appointed by a court of law, or an eligible designated representative. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [[12 USCIS-PM J.3](#)].

7. [^] See [Pub. L. 93-112 \(PDF\)](#), 87 Stat. 355, 394 (September 26, 1973).

Chapter 2 - Accommodation Policies and Procedures

USCIS has established policies and procedures for handling and processing accommodation requests, which include:

- Providing information locally as needed on how to request accommodations;
- Designating a point-of-contact to handle accommodation requests whenever possible;
- Responding to inquiries and reviewing accommodation requests timely;
- Establishing internal processes for receiving and for properly filing requests; and
- Processing requests and providing accommodations whenever appropriate.

A. Requesting an Accommodation

1. Submitting the Request

It is the applicant's responsibility to request an accommodation in advance, each time an accommodation is needed. Generally, the applicant, his or her attorney or accredited representative, or legal guardian should request an accommodation concurrently with the filing of the naturalization application. However, an applicant may also call the USCIS Contact Center at 1-800-375-5283 (TDD: 1-800-767-1833) in order to request an accommodation, or may also request an accommodation with the field office at any time during the naturalization process.

2. Timeliness of Request

The field office's ability to provide an accommodation on the date that it is needed may be affected by the timeliness of the accommodation request. Some types of accommodations do not require advance notice and can be immediately provided. This may include a USCIS employee speaking loudly or slowly to an applicant, or allowing additional time for an applicant to answer during the examination. Other types of accommodations may be difficult to provide without advance planning. This may

include providing a sign language interpreter, additional time for the examination, or scheduling an applicant for an off-site examination.

B. Documentation and Evidence

USCIS evaluates each request for an accommodation on a case-by-case basis. While an applicant is not required to include documentation of his or her medical condition, there may be rare cases where documentation is needed to evaluate the request.^[1]

C. Providing Accommodations as Requested

If an accommodation is warranted, a field office should provide the accommodation on the date and time the applicant is scheduled for his or her appearance. The field office should aim to provide the requested accommodation without having to reschedule the applicant's appointment. If an accommodation cannot be provided for the scheduled appointment, the applicant and his or her attorney or accredited representative should be notified as soon as possible. The applicant's appointment should be rescheduled within a reasonable period of time.

Footnotes

1. ^[^] Officers should contact local USCIS counsel prior to contacting the applicant and his or her attorney or accredited representative for further information.

Chapter 3 - Types of Accommodations

There are many types of accommodations that USCIS provides for applicants with disabilities.^[1] Accommodations typically relate to the following:

- Naturalization interview;
- Naturalization test; and
- Oath of Allegiance.

Each accommodation may apply to any aspect of the naturalization process as needed, to include any pre-examination procedures.

USCIS recognizes that some applicants may only require one accommodation, while others may need more. Some applicants may need one accommodation at a particular stage of the naturalization process and may require the same or another type of accommodation at a later date.

A. Accommodations for the Naturalization Examination

Field offices are able to make modifications to provide accommodations during the naturalization examination to applicants with disabilities. The table below serves as a quick reference guide listing common examples of accommodations to the naturalization examination for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation example.

Accommodations for the Naturalization Examination

Accommodation	Explanation
Extending examination time and breaks	Some applicants with disabilities may need more time than is regularly scheduled for the examination
Providing English sign language interpreters or other aids for deaf or hard of hearing applicants	Deaf or hard of hearing applicants may need a sign language interpreter, or other accommodation, to complete the examination
Allowing relatives to attend the examination and assist in signing forms	Presence of a relative may have a calming effect, and such persons may assist applicants who are unable to sign or make any kind of mark
Legal guardian, surrogate, or designated representative at examination	Some applicants are unable to undergo an examination because of a physical or developmental disability or mental impairment
Allowing nonverbal communication	Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in non-verbal ways
Off-site examination	Some applicants may be unable to appear at the field office because of their disability

1. Extending Examination Time and Breaks

An officer may provide additional time for the examination and allow breaks if necessary for applicants with disabilities who have requested that type of accommodation. USCIS recognizes that some applicants may need more time than is regularly scheduled.

2. Providing Accommodations for Deaf or Hard of Hearing Applicants

In determining what type of auxiliary aid is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

Unless the applicant chooses to bring his or her own English sign language interpreter, the field office must provide an English sign language interpreter for a deaf or hard of hearing applicant upon his or her request. ^[2]

The Rehabilitation Act requires USCIS to make an effective accommodation for the person's disability, and USCIS cannot transfer the accommodation burden back to the person. For example, if the person uses the sign language Pidgin English, USCIS must provide an interpreter who uses Pidgin English if one is reasonably available. USCIS cannot tell the person it will provide an American Sign Language (ASL) interpreter and require the person to provide an interpreter to translate between Pidgin English and ASL. ^[3]

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allow the applicant to answer the officer's questions in writing, as needed.

3. Allowing Relatives and Others to Attend Examinations and Assist in Signing Forms

In cases where an applicant has a disability, the officer may allow an applicant's family member, legal guardian, or other person to attend the examination with the applicant. The presence of such a person or persons may help the applicant to remain calm and responsive during the examination. However, if the presence of such person or persons becomes disruptive to the examination, the officer may at any time remove the person from the examination and reschedule the examination if the applicant is unable to proceed at that time.

An officer may allow the person accompanying the applicant to repeat the officer's questions in cases where such repetition facilitates the applicant's responsiveness. An applicant's mark is acceptable as the applicant's signature on the naturalization application or documents relating to the application when an applicant is unable to sign. A family member may assist an applicant to sign, initial, or make a mark when completing the attestation on the naturalization application. Except as provided below, a family member or other person may not sign the naturalization application for the applicant.

4. Legal Guardian, Surrogate, or Designated Representative at Examinations

Currently, all applicants for naturalization are required to appear in person and give testimony under oath as to their eligibility for naturalization. ^[4] When an applicant is unable to undergo an examination because of a physical, developmental disability, or mental impairment, a legal guardian, surrogate, or an eligible designated representative completes the naturalization process for the applicant. USCIS waives the Oath of Allegiance and the legal guardian, surrogate, or designated representative attests to the applicant's eligibility for naturalization. In addition to oath waiver, this process may require accommodations including off-site examinations. ^[5]

Persons eligible to act on behalf of the applicant include:

- A person who a proper court has designated as the applicant's legal guardian or surrogate and who is authorized to exercise legal authority over the applicant's affairs; or
- In the absence of a legal guardian or surrogate, a U.S. citizen, spouse, parent, adult son or daughter, or adult brother or sister who is the primary custodial caregiver and who takes responsibility for the applicant.

USCIS will only recognize one designated representative in the following order of priority:

- Legal guardian or surrogate (highest priority);
- U.S. citizen spouse;
- U.S. citizen parent;
- U.S. citizen adult son or daughter;
- U.S. citizen adult brother or sister (lowest priority).

If there is a priority conflict between the persons seeking to represent the applicant and the persons share the same degree of familial relationship, USCIS gives priority to the party with seniority in age.

The person acting on behalf of the applicant must provide proof of legal guardianship, or documentation to establish the familial relationship, such as a birth certificate, marriage certificate, or adoption decree. In addition, the person must provide documentation to establish that he or she has the primary custodial care and responsibility for the applicant (for example,

income tax returns, Social Security Administration documents, and affidavits from other relatives). A spouse, parent, adult son or daughter, or adult brother or sister who is not the legal guardian or surrogate must provide evidence of U.S. citizenship.

5. Allowing Nonverbal Communication

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant's representative (if any) should agree to the form of communication.

6. Off-Site Examination

An officer may conduct a naturalization examination in an applicant's home or other residence such as a nursing home, hospice, hospital, or senior citizens center when appropriate. ^[6] This applies to cases where the applicant's illness or disability makes it medically unsuitable for him or her to appear at the field office in person.

B. Accommodations for the Naturalization Test

An applicant with a disability may require an accommodation to take the English and civics tests. The officer should use the appropriate accommodation to meet the applicant's particular needs. In addition, some applicants with disabilities may qualify for an exception to these requirements for naturalization. ^[7]

The table below serves as a quick reference guide listing common examples of accommodations to the naturalization test for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation.

Accommodations for the Naturalization Test

Accommodation	Explanation
Providing reading tests in large print	Partially blind applicants may be unable to read small print
Oral writing test	Applicants with physical impairments or with limited use of their hands may be unable to write sentences in the test itself
Allowing nonverbal communication	Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in non-verbal ways
Providing English sign language interpreters	Deaf or hard of hearing applicants may need a sign language interpreter to complete the tests

1. Providing Reading Test in Large Print

An officer should provide the current reading naturalization test version in large print for applicants who are partially blind (have low vision). ^[8]

2. Oral Writing Test

An officer should administer the writing portion of the naturalization test orally for applicants with physical impairments, which cause limited or no use of their hands in a way as to preclude the applicant’s ability to write. The applicant may satisfy the writing requirements by spelling out the words from the writing test.

3. Allowing Nonverbal Communication

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant’s representative (if any) should agree to the form of communication.

4. Providing Sign Language Interpreters

In determining what type of accommodation is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

Unless the applicant chooses to bring his or her own English sign language interpreter, the field office must provide an English sign language interpreter for a deaf or hard of hearing applicant upon his or her request. ^[9]

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allowing the applicant to answer the officer’s questions in writing, as needed.

C. Accommodations for the Oath of Allegiance

A disability or medical impairment may make it difficult for some applicants to take the Oath of Allegiance at the oath ceremony. The table below lists examples of accommodations to the Oath of Allegiance. The paragraphs that follow the table provide further guidance on each accommodation. Some applicants may qualify for a waiver of the Oath of Allegiance. ^[10]

Accommodations for the Oath of Allegiance	
Accommodation	Explanation
Simplifying language for assent to the oath	Applicants with disabilities may need simpler language to show they assent to the oath
Expedited scheduling for oath	Applicants with disabilities may be unable to attend a later ceremony because of their condition

Accommodation	Explanation
Providing sign language interpreter at oath	Deaf or hard of hearing applicants may need a sign language interpreter to participate in the ceremony
Off-site administration of oath	Applicants with disabilities may be unable to attend the court or field office ceremony because of their condition

1. Simplifying Language for Assent to the Oath

An officer may question the applicant about the Oath of Allegiance in a clear, slow manner and in simplified language if the applicant presents difficulty understanding questions regarding the oath. This approach allows the applicant to understand and assent to the Oath of Allegiance and understand that he or she is becoming a U.S. citizen.

2. Expedited Scheduling for Oath

A field office should expedite administration of the Oath of Allegiance for an applicant who is unable to attend a ceremony at a later time because of his or her medical impairment. The expedited process may include a ceremony on the same day or an off-site visit.

3. Providing Sign Language Interpreter at Oath

A field office should provide an English sign language interpreter for an applicant who is deaf or hard of hearing or permit the applicant to use his or her own interpreter during an administrative oath ceremony or for a judicial ceremony where a court is unable to provide an English sign language interpreter.

4. Off-Site Administration of Oath

A field office should administer the Oath of Allegiance immediately following the off-site examination for an applicant who is unable to attend because of his or her medical condition. Some applicants may have appeared at the field office for the examination, but due to a deteriorating condition are unable to attend the oath ceremony. In such cases, an off-site visit may be scheduled to administer the Oath of Allegiance.

Footnotes

1. ^[^] The lists of accommodations in this chapter are not exhaustive. USCIS determines and provides accommodations on a case-by-case basis.
2. ^[^] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [[12 USCIS-PM E.2](#)].
3. ^[^] Contact the Registry of Interpreters for the Deaf (RID) at 703-838-0030 (voice), 703-838-0459 (TTY), or use RID's searchable interpreter agency referral database.

4. ^[^] See [8 CFR 335.2](#).
5. ^[^] See Part J, Oath of Allegiance [[12 USCIS-PM J](#)].
6. ^[^] See [INA 335\(b\)](#).
7. ^[^] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [[12 USCIS-PM E.2](#)]. See [INA 312\(b\)](#). See [8 CFR 312.1\(b\)](#) and [8 CFR 312.2\(b\)](#).
8. ^[^] Officers may photocopy the current versions of the test into larger print or increase the font electronically.
9. ^[^] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [[12 USCIS-PM E.2](#)].
10. ^[^] See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [[12 USCIS-PM J.3](#)].

Part D - General Naturalization Requirements

Chapter 1 - Purpose and Background

A. Purpose

Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever. ^[1] There are various ways a foreign citizen or national may become a U.S. citizen through the process of naturalization. This chapter addresses the general naturalization requirements. ^[2]

The applicant has the burden of establishing by a preponderance of the evidence that he or she meets the requirements for naturalization.

B. General Eligibility Requirements

The following are the general naturalization requirements that an applicant must meet in order to become a U.S. citizen: ^[3]

General Eligibility Requirements for Naturalization

The applicant must be age 18 or older at the time of filing for naturalization

The applicant must be a lawful permanent resident (LPR) for at least five years before being eligible for naturalization

The applicant must have continuous residence in the United States as an LPR for at least five years immediately preceding the date of filing the application and up to the time of admission to citizenship

The applicant must be physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application

General Eligibility Requirements for Naturalization

The applicant must have lived within the state or USCIS district with jurisdiction over the applicant's place of residence for at least three months prior to the date of filing

The applicant must demonstrate good moral character for five years prior to filing for naturalization, and during the period leading up to the administration of the Oath of Allegiance

The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law

The applicant must be able to read, write, and speak and understand English and have knowledge and an understanding of U.S. history and government

C. Legal Authorities

- [INA 312](#); [8 CFR 312](#) – Educational requirements for naturalization
- [INA 316](#); [8 CFR 316](#) – General requirements for naturalization
- [INA 318](#) – Prerequisite to naturalization, burden of proof

Footnotes

1. ^[^] See [INA 101\(a\)\(23\)](#).
2. ^[^] See [INA 316](#). See relevant parts in Volume 12 [[12 USCIS-PM](#)] for other naturalization provisions and requirements.
3. ^[^] See [INA 316](#).

Chapter 2 - Lawful Permanent Resident (LPR) Admission for Naturalization

A. Lawful Permanent Resident (LPR) at Time of Filing and Naturalization

1. Lawful Admission for Permanent Residence

In general, an applicant for naturalization must be at least 18 years old and must establish that he or she has been lawfully admitted to the United States for permanent residence at the time of filing the naturalization application. ^[1] An applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the Immigration and Nationality Act (INA) if his or her lawful permanent resident (LPR) status was obtained by mistake or fraud, or if the admission was otherwise not in compliance with the law. ^[2]

In determining an applicant's eligibility for naturalization, USCIS must determine whether the LPR status was lawfully obtained, not just whether the applicant is in possession of a Permanent Resident Card (PRC). If the status was not lawfully obtained for

any reason, the applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA, and is ineligible for naturalization even though the applicant possesses a PRC.

An applicant must also reside continuously in the United States for at least five years as an LPR at the time of filing,^[3] though the applicant may file his or her application up to 90 days before reaching the five-year continuous residence period.^[4]

2. Effective Date of Lawful Permanent Residence

A person is generally considered to be an LPR at the time USCIS approves the applicant's adjustment application or at the time the applicant enters and is admitted into the United States with an immigrant visa.^[5] Most applicants applying for adjustment of status become LPRs on the date USCIS approves the application.^[6]

For certain classifications, however, the effective date of becoming an LPR may be a date that is earlier than the actual approval of the status (commonly referred to as a "rollback" date). For example, a person admitted under the Cuban Adjustment Act is generally an LPR as of the date of the person's last arrival and admission into the United States or 30 months before the filing of the adjustment application, whichever is later.^[7] A refugee is generally considered an LPR as of the date of entry into the United States.^[8] A parolee granted adjustment of status pursuant to the Lautenberg Amendment is considered an LPR as of the date of parole into the United States.^[9] In addition, USCIS generally considers an asylee's date of admission as an LPR to be one year prior to the date of approval of the adjustment application.^[10]

B. Conditional Residence in the General Requirements (INA 316)

A conditional permanent resident (CPR) filing for naturalization under the general provision on the basis of his or her permanent resident status for five years^[11] must have met all of the applicable requirements of the conditional residence provisions.^[12] CPRs are not eligible for naturalization unless the conditions on their resident status have been removed because such CPRs have not been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.^[13] Unless USCIS approves the applicant's Petition to Remove Conditions on Residence ([Form I-751](#)), the applicant remains ineligible for naturalization.^[14]

C. Exceptions

1. Nationals of the United States

The law provides an exception to the LPR requirement for naturalization for non-citizen nationals of the United States. Currently, persons who are born in American Samoa or Swains Island, which are outlying possessions of the United States, are considered nationals of the United States.^[15]

A non-citizen national of the United States may be naturalized without establishing lawful admission for permanent residence if he or she becomes a resident of any state^[16] and complies with all other applicable requirements of the naturalization laws. These nationals are not "aliens" as defined in the INA and do not possess a PRC.^[17]

2. Certain Members of the U.S. Armed Forces

Certain members of the U.S. armed forces with service under specified conditions are also exempt from the LPR requirement.^[18]

D. Documentation and Evidence

USCIS issues a PRC to each person who has been lawfully admitted for permanent residence as evidence of his or her status. LPRs over 18 years of age are required to have their PRC in their possession as evidence of their status. ^[19] The PRC contains the date and the classification under which the person was accorded LPR status. The PRC alone, however, is insufficient to establish that the applicant has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA. ^[20]

Footnotes

1. ^[^] See INA 101(a)(20) and INA 334(b). See 8 CFR 316.2(a)(2).
2. ^[^] See INA 318. See *Matter of Koloamatangi* (PDF), 23 I&N Dec. 548, 550 (BIA 2003). See *Estrada-Ramos v. Holder*, 611 F.3d 318 (7th Cir. 2010). See *Mejia-Orellana v. Gonzales*, 502 F.3d 13 (1st Cir. 2007). See *De La Rosa v. DHS*, 489 F.3d 551 (2nd Cir. 2007). See *Savoury v. U.S. Attorney General*, 449 F.3d 1307(11th Cir. 2006). See *Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005). See *Monet v. INS*, 791 F.2d 752 (9th Cir. 1986). See *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983).
3. ^[^] See Chapter 3, Continuous Residence [12 USCIS-PM D.3].
4. ^[^] See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].
5. ^[^] See INA 245(b).
6. ^[^] In general, a lawful permanent resident card should have the correct date of LPR status. For additional information on adjustment of status dates, see Volume 7, Adjustment of Status [7 USCIS-PM].
7. ^[^] See Section 1 of the Cuban Adjustment Act, Pub. L. 89-732 (PDF), 80 Stat. 1161, 1161 (November 2, 1966). See *Matter of Carrillo* (PDF), 25 I&N Dec. 99 (BIA 2009).
8. ^[^] See INA 209(a)(2).
9. ^[^] See 8 CFR 1245.7(e).
10. ^[^] See INA 209(b). See Volume 7, Adjustment of Status [7 USCIS-PM].
11. ^[^] See INA 316(a).
12. ^[^] See INA 216.
13. ^[^] See INA 216 and INA 318.
14. ^[^] See Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; Part H, Children of U.S. Citizens [12 USCIS-PM H]; and Part I, Military Members and their Families [12 USCIS-PM I], for special circumstances under which the applicant may not be required to have an approved petition to remove conditions prior to naturalization.
15. ^[^] See INA 101(a)(29) and INA 308.
16. ^[^] See INA 325. See 8 CFR 325.2. Non-citizen nationals may satisfy the residence and physical presence requirements through their residence and presence within any of the outlying possessions of the United States.
17. ^[^] See INA 101(a)(20).
18. ^[^] See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].
19. ^[^] See INA 264(e).

20. ^[^] See Section A, Lawful Permanent Resident (LPR) at Time of Filing and Naturalization [12 USCIS-PM D.2(A)].

Chapter 3 - Continuous Residence

A. Continuous Residence Requirement

An applicant for naturalization under the general provision ^[1] must have resided continuously in the United States after his or her lawful permanent resident (LPR) admission for at least five years prior to filing the naturalization application and up to the time of naturalization. An applicant must also establish that he or she has resided in the state or service district having jurisdiction over the application for three months prior to filing. ^[2]

The concept of continuous residence involves the applicant maintaining a permanent dwelling place in the United States over the period of time required by the statute. The residence in question “is the same as that alien’s domicile, or principal actual dwelling place, without regard to the alien’s intent, and the duration of an alien’s residence in a particular location measured from the moment the alien first establishes residence in that location.” ^[3] Accordingly, the applicant’s residence is generally the applicant’s actual physical location regardless of his or her intentions to claim it as his or her residence.

Certain classes of applicants may be eligible for a reduced period of continuous residence, for constructive continuous residence while outside the United States, or for an exemption from the continuous residence requirement altogether. ^[4] These classes of applicants include certain military members and certain spouses of U.S. citizens. ^[5]

The requirements of “continuous residence” and “physical presence” are interrelated but are different requirements. Each requirement must be satisfied (unless otherwise specified) in order for the applicant to be eligible for naturalization. ^[6]

B. Maintenance of Continuous Residence following LPR Status

USCIS will consider the entire period from the LPR admission until the present when determining an applicant’s compliance with the continuous residence requirement.

An order of removal terminates the applicant's status as an LPR and therefore disrupts the continuity of residence for purposes of naturalization. However, an applicant who has been readmitted as an LPR after a deferred inspection or by an immigration judge in removal proceedings can satisfy the residence and physical presence requirements in the same manner as any other applicant for naturalization. ^[7]

Other examples that may raise a rebuttal presumption that an applicant has abandoned his or her LPR status include cases where there is evidence that the applicant voluntarily claimed nonresident alien status to qualify for special exemptions from income tax liability or fails to file either federal or state income tax returns because he or she considers himself or herself to be a non-resident alien. ^[8]

C. Breaks in Continuous Residence

An applicant for naturalization has the burden of establishing that he or she has complied with the continuous residence requirement, if applicable. There are two types of absences from the United States that are automatically presumed to break the continuity of residence for purposes of naturalization. ^[9]

- Absences of more than 6 months but less than one year; and
- Absences of one year or more.

An officer may also review whether an applicant with multiple absences of less than 6 months will be able to satisfy the continuous residence and physical presence requirements. In some cases, an applicant may not be able to establish that his or her principal actual dwelling place is in the United States or establish residence within the United States for the statutorily required period of time. ^[10]

1. Absence of More than Six Months (but Less than One Year)

An absence of more than six months [more than 181 days but less than one year (less than 365 days)] during the period for which continuous residence is required is presumed to break the continuity of such residence. This includes any absence that takes place prior to filing the naturalization application or between filing and the applicant's admission to citizenship. ^[11]

An applicant's intent is not relevant in determining the location of his or her residence. The period of absence from the United States is the defining factor in determining whether the applicant is presumed to have disrupted his or her residence.

An applicant may overcome the presumption of loss of his or her continuity of residence by providing evidence to establish that the applicant did not disrupt his or her residence. The evidence may include, but is not limited to, documentation that during the absence: ^[12]

- The applicant did not terminate his or her employment in the United States or obtain employment while abroad.
- The applicant's immediate family remained in the United States.
- The applicant retained full access to his or her United States abode.

2. Absence of One Year or More

An absence from the United States for a continuous period of one year or more (365 days or more) during the period for which continuous residence is required will break the continuity of residence. This applies whether the absence takes place prior to or after filing the naturalization application. ^[13]

The naturalization application of a person who is subject to the continuous residence requirement must be denied for failure to meet the continuous residence requirements if the person has been continuously absent for a period of one year or more without qualifying for the exception benefits of [INA 316\(b\)](#). An applicant who is absent for one year or more to engage in qualifying employment abroad may be permitted to preserve his or her residence. ^[14]

3. Eligibility after Break in Residence

An applicant who is required to establish continuous residence for at least 5 years ^[15] and whose application for naturalization is denied for an absence of one year or longer, may apply for naturalization four years and one day after returning to the United States to resume permanent residence. An applicant who is subject to the three-year continuous residence requirement ^[16] may apply two years and one day after returning to the United States to resume permanent residence. ^[17]

D. Preserving Residence for Naturalization (Form N-470)

Certain applicants ^[18] may seek to preserve their residence for an absence of one year or more to engage in qualifying employment abroad. ^[19] Such applicants must file an Application to Preserve Residence for Naturalization Purposes ([Form N-470](#)) in accordance with the form instructions.

In order to qualify, the following criteria must be met:

- The applicant must have been physically present in the United States as an LPR for an uninterrupted period of at least one year prior to working abroad.
- The application may be filed either before or after the applicant's employment begins, but before the applicant has been abroad for a continuous period of one year. ^[20]

In addition, the applicant must have been:

- Employed with or under contract with the U.S. government or an American institution of research ^[21] recognized as such by the Attorney General;
- Employed by an American firm or corporation engaged in the development of U.S. foreign trade and commerce, or a subsidiary thereof if more than 50 percent of its stock is owned by an American firm or corporation; or
- Employed by a public international organization of which the United States is a member by a treaty or statute and by which the applicant was not employed until after becoming an LPR. ^[22]

The applicant's spouse and dependent unmarried sons and daughters are also entitled to such benefits during the period when they were residing abroad as dependent members of the principal applicant's household. The application's approval notice will include the applicant and any dependent family members who were also granted the benefit.

The approval of an application to preserve residence does not relieve an applicant (or any family members) from any applicable required period of physical presence, unless the applicant was employed by, or under contract with, the U.S. government. ^[23]

In addition, the approval of an application to preserve residence does not guarantee that the applicant (or any family members) will not be found, upon returning to the United States, to have lost LPR status through abandonment. USCIS may find that an applicant who claimed special tax exemptions as a nonresident alien to have lost LPR status through abandonment. The applicant may overcome that presumption with acceptable evidence establishing that he or she did not abandon his or her LPR status. ^[24]

Approval of an application to preserve residence also does not relieve the LPR of the need to have an appropriate travel document when the LPR seeks to return to the United States. ^[25] A Permanent Resident Card (PRC) card, generally, is acceptable as a travel document only if the person has been absent for less than one year. ^[26] If an LPR expects to be absent for more than one year, the LPR should also apply for a reentry permit. The LPR must actually be in the United States when he or she applies for a reentry permit. ^[27]

E. Residence in the Commonwealth of the Northern Mariana Islands

As of November 28, 2009, the Commonwealth of the Northern Mariana Islands (CNMI) is defined as a state in the United States for naturalization purposes. ^[28] Previously, residence in the CNMI only counted as residence in the United States for naturalization purposes for an alien who was an immediate relative of a U.S. citizen residing in the CNMI.

All other noncitizens, including any non-immediate relative LPRs, were considered to be residing outside of the United States for immigration purposes. Therefore, some LPRs residing in the CNMI, before the Consolidated Natural Resources Act of 2008 (CNRA) was enacted, were considered to have abandoned their lawful permanent resident status if they continuously lived in the CNMI.

Under the current law, USCIS no longer considers lawful permanent residents to have abandoned their LPR status solely by residing in the CNMI. This provision is retroactive and provides for the restoration of permanent resident status. However, the provision did not provide that the residence would count towards the naturalization continuous and physical presence

requirements. Therefore, USCIS will only count residence in the CNMI on or after November 28, 2009, as continuous residence within the United States for naturalization purposes. ^[29]

F. Documentation and Evidence

Mere possession of a PRC for the period of time required for continuous residence does not in itself establish the applicant's continuous residence for naturalization purposes. The applicant must demonstrate actual maintenance of his or her principal dwelling place, without regard to intent, in the United States through testimony and documentation.

For example, a "commuter alien" may have held and used a PRC ^[30] for seven years, but would not be eligible for naturalization until he or she had actually taken up permanent residence in the United States and maintained such residence for the required statutory period.

USCIS will review all of the relevant records to determine whether the applicant has met the required period of continuous residence. The applicant's testimony will also be considered to determine whether the applicant met the required period of continuous residence.

Footnotes

1. ^[^] See INA 316(a).
2. ^[^] See INA 316(a). See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].
3. ^[^] See 8 CFR 316.5(a).
4. ^[^] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].
5. ^[^] See Part I, Military Members and their Families [12 USCIS-PM I].
6. ^[^] See Chapter 4, Physical Presence [12 USCIS-PM D.4].
7. ^[^] See 8 CFR 316.5(c)(3) and 8 CFR 316.5(c)(4).
8. ^[^] See 8 CFR 316.5(c)(2).
9. ^[^] See INA 316(b).
10. ^[^] See 8 CFR 316.5(a). See Section A, Continuous Residence Requirements [12 USCIS-PM D.3(A)].
11. ^[^] See 8 CFR 316.5(c)(1).
12. ^[^] See 8 CFR 316.5(c)(1)(i).
13. ^[^] See INA 316(b).
14. ^[^] See Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].
15. ^[^] See INA 316(a).
16. ^[^] See INA 319(a).
17. ^[^] See 8 CFR 316.5(c)(1)(ii).

18. [^] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5], for classes of applicants eligible to preserve residence.
19. [^] The applicant may also need to apply for a reentry permit to be permitted to enter the United States.
20. [^] See 8 CFR 316.5(d).
21. [^] See 8 CFR 316.20. See uscis.gov/AIR for lists of recognized organizations.
22. [^] See INA 316(b). See 8 CFR 316.20.
23. [^] See INA 316(c). See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].
24. [^] See *Matter of Huang (PDF)*, 19 I&N Dec. 749 (BIA 1988). In removal proceedings, the Department of Homeland Security bears the burden of proving abandonment by clear and convincing evidence. But if the probative evidence is sufficient to meet that standard of proof, approval of the application to preserve residence, by itself, would not preclude a finding of abandonment.
25. [^] See INA 212(a)(7)(A).
26. [^] See 8 CFR 211.1(a)(2).
27. [^] See 8 CFR 223.2(b)(1).
28. [^] See INA 101(a)(36) and INA 101(a)(38). See 48 U.S.C. 1806(a) and 48 U.S.C. 1806(f). See Section 705(b) of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. 110-229 (PDF), 122 Stat. 754, 867 (May 8, 2008) (48 U.S.C. 1806 note).
29. [^] See Section 705(c) of the CNRA, Pub. L. 110-229 (PDF), 122 Stat. 754, 867 (May 8, 2008) (48 U.S.C. 1806 note). See *Eche v. Holder*, 694 F.3d 1026 (9th Cir. 2012).
30. [^] See 8 CFR 211.5.

Chapter 4 - Physical Presence

A. Physical Presence Requirement

An applicant for naturalization is generally required to have been physically present in the United States for at least half the time for which his or her continuous residence is required. Applicants for naturalization under INA 316(a) are required to demonstrate physical presence in the United States for at least 30 months (at least 913 days) before filing the application. [1]

Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization. The continuous residence [2] and physical presence requirements are interrelated but each must be satisfied for naturalization.

USCIS will count the day that an applicant departs from the United States and the day he or she returns as days of physical presence within the United States for naturalization purposes. [3]

B. Documentation and Evidence

Mere possession of a Permanent Resident Card (PRC) for the period of time required for physical presence does not in itself establish the applicant's physical presence for naturalization purposes. The applicant must demonstrate actual physical

presence in the United States through documentation. USCIS will review all of the relevant records to assist with the determination of whether the applicant has met the required period of physical presence. The applicant's testimony will also be considered in determining whether the applicant met the required period of physical presence.

Footnotes

1. ^[^] See [INA 316\(a\)](#). See [8 CFR 316.2](#).
2. ^[^] See Chapter 3, Continuous Residence [[12 USCIS-PM D.3](#)].
3. ^[^] USCIS will only count residence in the Commonwealth of the Northern Mariana Islands on or after November 28, 2009, as time counted for physical presence within the United States for naturalization purposes.

Chapter 5 - Modifications and Exceptions to Continuous Residence and Physical Presence

Certain classes of applicants may be eligible for a reduced period of continuous residence and physical presence. Certain applicants may also be eligible to count time residing abroad as residence and physical presence in the United States for naturalization purposes.

Other applicants may be exempt from the residence or physical presence requirement, or both. Although not required in all cases, applicants are generally required to have been “physically present and residing within the United States for an uninterrupted period of at least one year” at some time after becoming a lawful permanent resident (LPR) and before filing to qualify for an exemption.

A. Qualifying Employment Abroad

The table below serves as a quick reference guide on certain continuous residence and physical presence provisions for persons residing abroad under qualifying employment. The paragraphs that follow the table provide further guidance on each class of applicant.

Continuous Residence and Physical Presence for Qualifying Employment Abroad

Employer or Vocation	Provision	Continuous Residence	Physical Presence
U.S. government or contractor	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Exempt through N-470 process
American institution of research	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement
American firm	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement

Employer or Vocation	Provision	Continuous Residence	Physical Presence
Media organizations	INA 319(c)	Exempt	
Interpreter, translator, or security-related position (executive or manager)	Sec. 1059(e) of Pub. L. 109-163	Entire period abroad may count as continuous residence and physical presence in United States if engaged in qualifying employment for any portion of period abroad	
Religious vocation	INA 317	Time residing abroad in religious vocation may count as residence and physical presence in United States	

1. Employee of U.S. Government or Specified Entities

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment by or contract with the U.S. government abroad will not break the continuity of their residence during such time abroad. ^[1] Such persons are exempt from the physical presence requirement. ^[2] Persons employed by or under contract with the Central Intelligence Agency can accrue the required year of continuous physical presence at any time prior to applying for naturalization and not just before filing the application to preserve residence. ^[3]

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment abroad by an American institution of research recognized as such by the Attorney General (now DHS Secretary) or by an American firm ^[4] engaged in development of U.S. foreign trade and commerce or its subsidiary, or a public international organization, will not break the continuity of their residence during such time abroad. Such applicants are subject to the physical presence requirement. ^[5]

Only applicants who are employed by or under contract with the U.S. government may be exempt from the physical presence requirements. All other applicants who are eligible to preserve their residence remain subject to the physical presence requirement.

The applicant's spouse and dependent unmarried sons and daughters, included in the application, are entitled to the same benefits for the period during which they were residing abroad with the applicant. ^[6]

2. Employee of Certain Media Organizations Abroad

An applicant for naturalization employed by a U.S. incorporated nonprofit communications media organization that disseminates information significantly promoting United States interests abroad, that is so recognized by the Secretary of Homeland Security, is exempt from the continuous residence and physical presence requirements if:

- The applicant files the application for naturalization while still employed, or within six months of termination of employment;
- The applicant has been continuously employed with the organization for at least five years after becoming an LPR;
- The applicant is within the United States at the time of naturalization; and

- The applicant declares a good faith intention to take up residence within the United States immediately upon termination of employment. ^[7]

3. Employed as an Interpreter, Translator, or Security-Related Position (Executive or Manager) ^[8]

Time Abroad as Continuous Residence and Physical Presence in the United States

An applicant's time employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter, translator, or in a security-related position in an executive or managerial capacity ^[9] does not break any period for which continuous residence or physical presence in the United States is required for naturalization. The period abroad under such employment is treated as a period of residence and physical presence in the United States for naturalization purposes.

This benefit commonly referred to as the "section 1059(e)" provision only applies to the continuous residence and physical presence naturalization requirements. Applicants must still meet all other requirements for naturalization. The applicant has the responsibility of providing all documentation to establish eligibility. ^[10]

Qualifying Employment Abroad

In order to count time abroad as continuous residence and physical presence in the United States for purposes of naturalization under the "section 1059(e)" provision, the applicant must meet all of the following requirements during such time abroad:

- The applicant must be:
 - Employed by the Chief of Mission or the U.S. armed forces;
 - Under contract with the Chief of Mission or the U.S. armed forces; or
 - Employed by a firm or corporation under contract with the Chief of Mission or the U.S. armed forces;
- The applicant must be employed as:
 - An interpreter;
 - Translator; or
 - In a security-related position in an executive or managerial capacity; and
- The applicant must have spent at least a portion of the time abroad working directly with the Chief of Mission or the U.S. armed forces.

Security-Related Position Must be in an Executive or Managerial Capacity ^[11]

An applicant who was in a security-related position must have been in an executive or managerial capacity under such employment to qualify for the section 1059(e) benefits. USCIS uses the same definitions and general considerations that apply to other employment-based scenarios in the immigration context when determining whether an applicant worked in an executive or managerial capacity.

In general, an executive or managerial capacity requires a high level of authority and a broad range of job responsibilities. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. The duties of the security-related position must primarily be of an executive or managerial nature, and a majority of the executive's or manager's time must be spent on duties relating to policy or operational management. This does not preclude the executive or manager from regularly applying his or her professional expertise to functions that are not executive or managerial in nature.

To be employed in an “executive capacity” means an assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization. ^[12]

To be employed in a “managerial capacity” means an assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function, or component of the organization;
- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. ^[13]

USCIS does not deem an applicant to be an executive or manager simply because he or she has such a title in an organization or because the applicant periodically directs the organization as the owner or sole managerial employee. The focus is on the applicant’s primary duties. In this regard, there must be sufficient staff, such as contract employees or others, to perform the day-to-day operations of the organization in order to enable the applicant to be primarily employed in an executive or managerial function. ^[14]

USCIS does not consider a person to be acting in a managerial or executive capacity merely on the basis of the number of employees that the person supervises. USCIS takes into account the reasonable needs of the organization with regard to the overall purpose and stage of development of the organization in cases where staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity. ^[15]

Applicable Period of Absence

Section 1059(e) benefits are available for an absence from the United States when an applicant is employed in a qualifying position and has worked directly with the Chief of Mission or the U.S. armed forces for any period of time during that absence. However, if the applicant spent part of that time abroad in employment other than the specified qualifying employment, then the applicant does not receive credit for that part of the time.

Other employment abroad, or employment as an interpreter, translator, or in a security-related position (as described above) by an entity other than the Chief of Mission or the U.S. armed forces, or under contract with them, does not provide a benefit to the applicant. Such an applicant would still be required to meet the continuous residence and physical presence requirements unless the applicant qualified for the preservation of his or her residence (through the N-470 process). ^[16]

4. Employed Abroad in Religious Vocation

LPRs who go abroad temporarily for the purpose of performing the ministerial or priestly functions of a religious denomination, or of serving as a missionary, ^[17] brother, nun, or sister for a religious denomination or interdenominational mission having a bona fide organization within the United States, may treat such time abroad as continuous residence and physical presence in the United States for naturalization purposes.

LPRs must have been physically present and residing within the United States for an uninterrupted period of at least one year in order to qualify. ^[18]

B. Qualifying Military Service

Applicants with certain types of military service may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part I, Military Members and their Families, ^[19] for modifications and exceptions for applicants with certain types of military service, to include:

- One Year of Military Service – [INA 328](#);
- Service during Hostilities – [INA 329](#);
- Service in WWII Certain Natives of Philippines – Section 405 of IMMACT90; and
- Members who Enlisted under Lodge Act – Act of June 30, 1950, 64 Stat. 316.

C. Spouse, Child, or Parent of Certain U.S. Citizens

The spouse, child, or parent of certain U.S. citizens may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part G, Spouses of U.S. Citizens, ^[20] for modifications and exceptions for spouses of certain U.S. citizens, to include:

- Spouse of U.S. Citizen for 3 Years – [INA 319\(a\)](#);
- Spouse of Military Member Serving Abroad – [INA 319\(e\)](#);
- Surviving Spouse of U.S. Citizen – [INA 319\(d\)](#); and
- Surviving Spouse Person Conducting U.S. Intelligence. ^[21]

See Part H, Children of U.S. Citizens, ^[22] for modifications and exceptions to the continuous residence and physical presence requirements for children of certain U.S. citizens.

- Child of U.S. Government Employee (Abroad) – [INA 320](#);
- Surviving Child of U.S. Citizen – [INA 319\(d\)](#); and
- Surviving Child of Person Conducting U.S. Intelligence. ^[23]

These parts will also include information on modifications and exceptions to the continuous residence and physical presence requirements for surviving parents of certain U.S. citizens.

D. Other Special Classes of Applicants

The table below serves as a quick reference guide to certain continuous residence and physical presence provisions for special classes of applicants. The paragraphs that follow the table provide further guidance on each class of applicant.

Continuous Residence and Physical Presence for Special Classes of Applicants

Applicant	Provision	Continuous Residence	Physical Presence
Citizens who lost citizenship through foreign military service	INA 327		Exempt
Noncitizen nationals	INA 325	Time residing in outlying possession may count as residence and physical presence in the United States	
Service on certain U.S. vessels	INA 330	Time in service on certain U.S. vessels may count as residence and physical presence in the United States	
Service contributing to national security	INA 316(f)		Exempt

1. Citizens who Lost U.S. Citizenship through Foreign Military Service ^[24]

Former citizens who lost citizenship through service during the Second World War in foreign armed forces not then at war with the United States can regain citizenship. The applicant must be admitted as an LPR. However, the applicant is exempt from the continuous residence and physical requirements for naturalization. ^[25]

2. Noncitizen Nationals of the United States

The time a noncitizen national of the United States spends within any of the outlying possessions of the United States counts as continuous residence and physical presence in the United States. ^[26]

3. Service on Certain U.S. Vessels

Any time an LPR has spent in qualifying honorable service on board a vessel operated by the United States or on board a vessel whose home port is in the United States will be considered residence and physical presence within the United States. ^[27] The qualifying service must take place within five years immediately preceding the date the applicant files for naturalization.

4. Service Contributing to National Security

The Director of Central Intelligence, the Attorney General, and the Director of USCIS may designate annually up to five persons who have “made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities.” Such persons are exempted from the continuous residence and physical presence requirements. ^[28]

Footnotes

1. ^[^] Any Peace Corps personal service contractor (PSC) who entered into a contract with the Peace Corps on or after November 21, 2011 is a U.S. government employee under the Immigration and Nationality Act (INA). See the Kate Puzey Peace Corps Volunteer Protection Act of 2011 (Puzey Act), [Pub. L. 112-57 \(PDF\)](#) (November 21, 2011), 22 U.S.C. 2509(a)(5), amending Section

10(a)(5) of the Peace Corps Act, [Pub. L. 87-293 \(PDF\)](#) (September 22, 1961), 22 U.S.C. 3901. Prior to enactment of the Puzey Act, PSCs were not considered U.S. government employees.

2. [^] See [INA 316\(b\)](#) and [INA 316\(c\)](#).

3. [^] See [INA 316\(c\)](#).

4. [^] USCIS has adopted the AAO decision in [Matter of Chawathe \(PDF\)](#), 25 I&N Dec. 369 (AAO 2010). The decision states that under [INA 316\(b\)](#), a publicly held corporation may be deemed an “American firm or corporation” if the applicant establishes that the corporation is both incorporated and trades its stock exclusively on U.S. Stock Exchange markets. If the applicant is unable to meet this qualification, then he or she must meet the requirements under [Matter of Warrach \(PDF\)](#), 17 I&N Dec. 285, 286-287 (Reg. Comm. 1979). USCIS then determines the nationality of the corporation by reviewing whether more than 50 percent is owned by U.S. citizens. The applicant must establish this by a preponderance of the evidence.

5. [^] See [INA 316\(b\)](#) and [INA 316\(c\)](#). See [8 CFR 316.20](#). See [uscis.gov/AIR](#) for a list of recognized organizations.

6. [^] See [INA 316\(b\)\(2\)](#). See [8 CFR 316.5\(d\)\(1\)\(ii\)](#).

7. [^] See [INA 319\(c\)](#). See [8 CFR 319.4](#).

8. [^] See Section 1059(e) of the National Defense Authorization Act of 2006, [Pub. L. 109-163 \(PDF\)](#) [[8 U.S.C. 1101 Note](#)] (January 6, 2006), as amended. The subsection ‘(e)’ provision relating to naturalization was added to Section 1059 on June 15, 2007. The amendments state that certain persons do not break the continuity of their residence in the United States for naturalization purposes during time abroad if employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter or translator in Iraq or Afghanistan. See [Pub. L. 110-36 \(PDF\)](#) (June 15, 2007). On December 28, 2012, Section 1059(e) was further amended by adding certain security-related positions (in an executive or managerial capacity), in addition to interpreters and translators, as types of qualifying employment. The amendments also removed the geographical limitation of qualifying employment within Iraq or Afghanistan. See [Pub. L. 112-227 \(PDF\)](#) (December 28, 2012).

9. [^] See [INA 101\(a\)\(44\)\(A\)](#) and [INA 101\(a\)\(44\)\(B\)](#) for statutory definitions of the terms “managerial capacity” and “executive capacity.” See [8 CFR 204.5\(j\)\(2\)](#), [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#), and [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#). See [Adjudicator’s Field Manual, Chapter 22.2\(i\)\(3\)\(D\) – \(G\)](#) for further guidance on managerial and executive capacity and the evaluation of such positions.

10. [^] [Pub. L. 110-36 \(PDF\)](#) added Section 1059(e) to the National Defense Authorization Act for Fiscal Year 2006, which added the interpreter and translator provisions.

11. [^] See [INA 101\(a\)\(44\)\(A\)](#) and [INA 101\(a\)\(44\)\(B\)](#) for statutory definitions of the terms “managerial capacity” and “executive capacity.” See [8 CFR 204.5\(j\)\(2\)](#), [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#), and [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#). See [Adjudicator’s Field Manual, Chapter 22.2\(i\)\(3\)\(D\) – \(G\)](#) for further guidance on managerial and executive capacity and the evaluation of such positions. See [Foreign Affairs Manual \(FAM\)](#), [9 FAM 402.12](#), Intracompany Transferees.

12. [^] See [INA 101\(a\)\(44\)\(B\)](#). See [8 CFR 204.5\(j\)\(2\)](#). See [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#).

13. [^] See [INA 101\(a\)\(44\)\(A\)](#). See [8 CFR 204.5\(j\)\(2\)](#). See [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#).

14. [^] See [INA 101\(a\)\(44\)\(A\)](#) and [INA 101\(a\)\(44\)\(B\)](#) for statutory definitions of the terms “managerial capacity” and “executive capacity.” See [8 CFR 204.5\(j\)\(2\)](#), [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#), and [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#). See [Adjudicator’s Field Manual, Chapter 22.2\(i\)\(3\)\(D\) – \(G\)](#) for further guidance on managerial and executive capacity and the evaluation of such positions. See [9 FAM 402.12](#), Intracompany Transferees.

15. [^] See [INA 101\(a\)\(44\)\(C\)](#).

16. [^] See [INA 316\(b\)](#) and [INA 316\(c\)](#). Certain applicants who meet the requirements of [INA 316\(b\)](#) to preserve residence may also qualify for benefits under [INA 316\(c\)](#) dealing with physical presence. See Section A, Qualifying Employment Abroad [[12 USCIS-PM D.5\(A\)](#)].
17. [^] See [INA 317](#). A missionary is a member of a religious group sent into an area to do religious teaching or evangelism. See *Matter of Rhee* (PDF), 16 I&N Dec. 607 (BIA 1978) (The term “minister” means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergy of such denomination). See [8 CFR 204.5\(m\)\(5\)](#) and [8 CFR 214.2\(r\)\(3\)](#).
18. [^] See [INA 317](#).
19. [^] See [12 USCIS-PM I](#).
20. [^] See [12 USCIS-PM G](#).
21. [^] See Section 305 of the Intelligence Authorization Act of 1997, [Pub. L. 104-293 \(PDF\)](#), 110 Stat. 3461, 3465 (October 11, 1996).
22. [^] See [12 USCIS-PM H](#).
23. [^] See Section 305 of the Intelligence Authorization Act of 1997, [Pub. L. 104-293 \(PDF\)](#), 110 Stat. 3461, 3465 (October 11, 1996).
24. [^] See [INA 327](#).
25. [^] See [8 CFR 327.1\(f\)](#).
26. [^] See [INA 325](#). See [8 CFR 325.2](#). Unless otherwise provided under [INA 301](#), the following persons are nationals, but not citizens of the United States at birth: (1) a person born in an outlying possession of the United States on or after the date of formal acquisition of such possession; (2) a person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person; (3) a person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty- one years, not to have been born in such outlying possession; and (4) a person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years: during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and at least five years of which were after attaining the age of fourteen years. See [INA 101\(a\)\(22\)](#) and [INA 308](#).
27. [^] See [INA 330](#). See [8 CFR 330.1](#).
28. [^] See [INA 316\(f\)](#).

Chapter 6 - Jurisdiction, Place of Residence, and Early Filing

A. Three-Month Residency Requirement (in State or Service District)

In general, an applicant for naturalization must file his or her application for naturalization with the state or service district that has jurisdiction over his or her place of residence. The applicant must have resided in that location for at least three months prior to filing.

The term “state” includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands (CNMI). ^[1] The term “service district” is defined as the geographical area over which a USCIS office has jurisdiction. ^[2]

The service district that has jurisdiction over an applicant’s application may or may not be located within the state where the applicant resides. In addition, some service districts may have jurisdiction over more than one state and most states contain more than one USCIS office.

In cases where an applicant changes or plans to change his or her residence after filing the naturalization application, the applicant is required to report the change of address to USCIS so that the applicant’s A-file (with application) can be transferred to the appropriate office having jurisdiction over the applicant’s new place of residence.

B. Place of Residence

The applicant’s “residence” refers to the applicant’s principal, actual dwelling place in fact, without regard to intent. ^[3] The duration of an applicant’s residence in a particular location is measured from the moment the applicant first establishes residence in that location. ^[4]

C. Place of Residence in Certain Cases

There are special considerations regarding the place of residence for the following applicants: ^[5]

1. Military Member

Special provisions exist for applicants who are serving or have served in the U.S. armed forces but who do not qualify for naturalization on the basis of the military service for one year. ^[6]

- The service member’s place of residence may be the state or service district where he or she is physically present for at least three months immediately prior to filing (or the examination if filed early);
- The service member’s place of residence may be the location of the residence of his or her spouse or minor child, or both; or
- The service member’s place of residence may be his or her home of record as declared to the U.S. armed forces at the time of enlistment and as currently reflected in the service member’s military personnel file.

2. Spouse of Military Member (Residing Abroad)

The spouse of a U.S. armed forces member may be eligible to count the time he or she is residing (or has resided) abroad with the service member as continuous residence and physical presence in any state or district of the United States. ^[7] Such a spouse may consider his or her place of residence abroad as a place of residence in any state or district in the United States.

3. Students

An applicant who is attending an educational institution in a state or service district other than the applicant’s home residence may apply for naturalization where that institution is located, or in the state of the applicant’s home residence if the applicant is financially dependent upon his or her parents at the time of filing and during the naturalization process. ^[8]

4. Commuter

A commuter must have taken up permanent residence (principal dwelling place) in the United States for the required statutory period and must meet the residency requirements to be eligible for naturalization. ^[9]

5. Residence in Multiple States

If an applicant claims residence in more than one state, the residence for purposes of naturalization will be determined by the location from which the applicant's annual federal income tax returns have been and are being filed. ^[10]

6. Residence During Absences of Less than One Year

An applicant's residence during any absence abroad of less than one year will continue to be the state or service district where the applicant resided before departure. If the applicant returns to the same residence, he or she will have complied with the three-month jurisdictional residence requirement when at least three months have elapsed, including any part of the absence, from when the applicant first established that residence. ^[11]

If the applicant establishes residence in a different state or service district from where he or she last resided, the applicant must reside three months at that new residence before applying in order to meet the three-month jurisdictional residence requirement. ^[12]

7. Noncitizen Nationals of the United States

A noncitizen national may naturalize if he or she becomes a resident of any state and is otherwise qualified. ^[13] Noncitizen nationals will satisfy the continuous residence and physical presence requirements while residing in an outlying possession. Such applicants must reside for three months prior to filing in a state or service district to be eligible for naturalization.

D. 90-Day Early Filing Provision (INA 334)

An applicant filing under the general naturalization provision may file his or her application up to 90 days before he or she would first meet the required 5-year period of continuous residence as an LPR. ^[14] Although an applicant may file early according to the 90 day early filing provision, the applicant is not eligible for naturalization until he or she has reached the required five-year period of continuous residence as a lawful permanent resident (LPR).

USCIS calculates the early filing period by counting back 90 days from the day before the applicant would have first satisfied the continuous residence requirement for naturalization. For example, if the applicant would satisfy the five-year continuous residence requirement for the first time on June 10, 2010 USCIS will begin to calculate the 90-day early filing period from June 9, 2010. In such a case, the earliest that the applicant is allowed to file would be March 12, 2010 (90 calendar days earlier).

In cases where an applicant has filed early and the required three month period of residence in a state or service district falls within the required five-year period of continuous residence, jurisdiction for filing will be based on the three-month period immediately preceding the examination on the application. ^[15]

E. Expediting Applications from Certain Supplemental Security Income (SSI) Beneficiaries

USCIS will expedite naturalization applications filed by applicants:

- Who are within one year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and

- Whose naturalization application has been pending for four months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants must inform USCIS of the approaching termination of benefits by InfoPass appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within one year or less and that their naturalization application has been pending for four months or more from the date of receipt by USCIS; and
- A copy of the applicant's most recent SSA letter indicating the termination of their SSI benefits. (The USCIS alien number must be written at the top right of the SSA letter).

Footnotes

1. ^[^] See [INA 101\(a\)\(36\)](#). As of November 28, 2009, the CNMI is part of the definition of United States. See Consolidated Natural Resources Act of 2008, [Pub. L. 110-229](#) (May 8, 2008). See Chapter 3, Continuous Residence, Section E, Residence in the Commonwealth of the Northern Mariana Islands [[12 USCIS-PM D.3\(E\)](#)].
2. ^[^] See [8 CFR 316.1](#).
3. ^[^] See [INA 101\(a\)\(33\)](#). This is the same as the applicant's actual domicile.
4. ^[^] See [8 CFR 316.5\(a\)](#).
5. ^[^] See [8 CFR 316.5\(b\)](#).
6. ^[^] See [INA 328](#). See Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328) [[12 USCIS-PM I.2](#)].
7. ^[^] See [INA 319\(e\)](#). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [[12 USCIS-PM I.9\(B\)](#)]. See Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States [[12 USCIS-PM G.3](#)].
8. ^[^] See [8 CFR 316.5\(b\)\(2\)](#).
9. ^[^] See [8 CFR 211.5](#). See [8 CFR 316.5\(b\)\(3\)](#).
10. ^[^] See [8 CFR 316.5\(b\)\(4\)](#).
11. ^[^] See [8 CFR 316.5\(b\)\(5\)](#).
12. ^[^] See [8 CFR 316.2\(a\)\(5\)](#).
13. ^[^] See [INA 325](#). See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [[12 USCIS-PM D.5](#)].
14. ^[^] See [INA 334\(a\)](#). See [8 CFR 334.2\(b\)](#).
15. ^[^] See [8 CFR 316.2\(a\)\(5\)](#).

Chapter 7 - Attachment to the Constitution

A. Attachment to the Constitution

An applicant for naturalization must show that he or she has been and continues to be a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States during the statutorily prescribed period. ^[1] “Attachment” is a stronger term than “well disposed” and implies a depth of conviction, which would lead to active support of the Constitution. ^[2]

Attachment includes both an understanding and a mental attitude including willingness to be attached to the principles of the Constitution. An applicant who is hostile to the basic form of government of the United States, or who does not believe in the principles of the Constitution, is not eligible for naturalization. ^[3]

To be admitted to citizenship, naturalization applicants must take the Oath of Allegiance in a public ceremony. At that time, an applicant declares his or her attachment to the United States and its Constitution. ^[4] To be admitted to citizenship:

- The applicant must understand that he or she is taking the Oath freely without any mental reservation or purpose of evasion;
- The applicant must understand that he or she is sincerely and absolutely renouncing all foreign allegiance;
- The applicant must understand that he or she is giving true faith and allegiance to the United States, its Constitution and laws; and
- The applicant must understand that he or she is discharging all duties and obligations of citizenship including military and civil service when required by the law.

The applicant’s true faith and allegiance to the United States includes supporting and defending the principles of the Constitution by demonstrating an acceptance of the democratic, representational process established by the U.S. Constitution, and the willingness to obey the laws which result from that process. ^[5]

B. Selective Service Registration

1. Males Required to Register

In general, males must register with Selective Service within 30 days of their 18th birthday but not after reaching 26 years of age. The U.S. government suspended the registration in April of 1975 and resumed it in 1980. An applicant who refused to or knowingly and willfully failed to register for Selective Service negates his disposition to the good order and happiness of the United States, attachment to the principles of the Constitution, good moral character, and willingness to bear arms on behalf of the United States. ^[6]

Applicants may register for Selective Service at their local post office, return a Selective Service registration card received by mail, or online at the Selective Service System website. ^[7] Confirmation of registration may be obtained by calling (847) 688-6888 or online at sss.gov. The officer may also accept other persuasive evidence presented by an applicant as proof of registration.

USCIS assists with the registration process by transmitting the appropriate data to the Selective Service System (SSS) for male applicants between the ages of 18 and 26 who apply for adjustment of status. After registering the eligible male, Selective Service will send an acknowledgement to the applicant that can be used as his official proof of Selective Service registration.

2. Failure to Register for Selective Service

USCIS will deny a naturalization application when the applicant refuses to register with Selective Service or has knowingly and willfully failed to register during the statutory period. ^[8] The officer may request for the applicant to submit a status information letter and registration acknowledgement card before concluding that he failed to register.

The status information letter will indicate whether a requirement to register existed. The applicant must show by a preponderance of the evidence that his failure to register was not a knowing or willful act. ^[9] Failure on the part of USCIS or SSS to complete the process on behalf of the applicant, however, will not constitute a willful failure to register on the part of the applicant.

The denial notice in cases where willful failure to register is established may also show that in addition to failing to register, the applicant is not well disposed to the good order and happiness of the United States. This determination depends on the applicant's age at the time of filing the application and up until the time of the oath:

Applicants Under 26 Years of Age

The applicant is generally ineligible.

Applicants Between 26 and 31 Years of Age

The applicant may be ineligible for naturalization. USCIS will allow the applicant an opportunity to show that he did not knowingly or willfully fail to register, or that he was not required to do so.

Applicants Over 31 Years of Age

The applicant is eligible. This is the case even if the applicant knowingly and willfully failed to register because the applicant's failure to register would be outside of the statutory period.

3. Males Not Required to Register

The following classes of males are not required to register for Selective Service:

- Males over the age of 26;
- Males who did not live in the United States between the ages of 18 and 26 years;
- Males who lived in the United States between the ages of 18 and 26 years but who maintained lawful nonimmigrant status for the entire period; and
- Males born after March 29, 1957 and before December 31, 1959. ^[10]

C. Draft Evaders

In general, the law prohibits draft evaders and deserters from the U.S. armed forces during wartime from naturalizing for lack of attachment to the Constitution and favorable disposition to the good order of the United States. ^[11]

A conviction by a court martial or a court of competent jurisdiction for a military desertion or a departure from the United States to avoid a military draft will preclude naturalization. ^[12] USCIS may obtain such information from the applicant's testimony during the naturalization examination (interview), security checks, and from the Request for Certification of Military or Naval Service (Form N-426). ^[13]

An applicant who admits to desertion during wartime, but who has not been convicted of desertion by court martial or court of competent jurisdiction may still be eligible for naturalization. ^[14] An applicant's military record may list him or her as a deserter but without a final conviction.

D. Membership in Certain Organizations

The officer will review an applicant's record and testimony during the interview on the naturalization application to determine whether he or she was ever a member of or in any way associated (either directly or indirectly) with:

- The Communist Party;
- Any other totalitarian party; or
- A terrorist organization.

Current and previous membership in these organizations may indicate a lack of attachment to the Constitution and an indication that the applicant is not well disposed to the good order and happiness of the United States. ^[15] Membership in these organizations may also raise issues of lawful admission, good moral character, ^[16] or may even render the applicant removable. ^[17]

The burden rests on the applicant to prove that he or she has an attachment to the Constitution and that he or she is well disposed to the good order and happiness of the United States, among the other naturalization requirements. An applicant who refuses to testify or provide documentation relating to membership in such organizations has not met the burden of proof. USCIS may still deny the naturalization application under such grounds in cases where such an applicant was not removed at the end of removal proceedings. ^[18]

1. Communist Party Affiliation

An applicant cannot naturalize if any of the following are true within 10 years immediately preceding his or her filing for naturalization and up until the time of the Oath of Allegiance:

- The applicant is or has been a member of or affiliated with the Communist Party or any other totalitarian party;
- The applicant is or has advocated communism or the establishment in the United States of a totalitarian dictatorship;
- The applicant is or has been a member of or affiliated with an organization that advocates communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterance or through any written or printed matter published by such organization;
- The applicant is or has been a subversive, or a member of, or affiliated with, a subversive organization;
- The applicant is knowingly publishing or has published any subversive written or printed matter, or written or printed matter advocating communism;
- The applicant is knowingly circulating or has circulated, or knowingly possesses or has possessed for the purpose of circulating, subversive written or printed matter, or written or printed matter advocating communism; or
- The applicant is or has been a member of, or affiliated with, any organization that publishes or circulates, or that possesses for the purpose of publishing or circulating, any subversive written or printed matter, or any written or printed matter advocating communism.

2. Exemptions to Communist Party Affiliation

The burden is on the applicant to establish eligibility for an exemption. An applicant may be eligible for naturalization if he or she establishes that:

- The applicant's membership or affiliation was involuntary;

- The applicant's membership or affiliation was without awareness of the nature or the aims of the organization, and was discontinued when the applicant became aware of the nature or aims of the organization;
- The applicant's membership or affiliation was terminated prior to his or her attaining the age of 16;
- The applicant's membership or affiliation was terminated more than 10 years prior to the filing for naturalization;
- The applicant's membership or affiliation was by operation of law; or
- The applicant's membership or affiliation was necessary for purposes of obtaining employment, food rations, or other essentials of living. ^[19]

Even if participating without awareness of the nature or the aims of the organization, the applicant's participation must have been minimal in nature. The applicant must also demonstrate that membership in the covered organization was necessary to obtain the essentials of living like food, shelter, clothing, employment, and an education, which were routinely available to the rest of the population.

For purposes of this exemption, higher education qualifies as an essential of living only if the applicant can establish the existence of special circumstances which convert the need for higher education into a need as basic as the need for food or employment, and that he or she participated only to the minimal extent necessary to receive the essentials of living.

However, unless the applicant can show special circumstances that establish a need for higher education as basic as the need for food or employment, membership to obtain a college education is not excusable for obtaining an essential of living. ^[20]

3. Nazi Party Affiliation

Applicants who were affiliated with the Nazi government of Germany or any government occupied by or allied with the Nazi government of Germany, either directly or indirectly, are ineligible for admission into the United States and permanently barred from naturalization. ^[21] The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in the Nazi Party.

4. Persecution and Genocide

An applicant who has engaged in persecution or genocide is permanently barred from naturalization because he or she is precluded from establishing good moral character. ^[22] Additionally, an applicant who engaged in persecution or genocide prior to admission as a lawful permanent resident (LPR) would have been inadmissible. Such an applicant would not have lawfully acquired LPR status in accordance with all applicable provisions and would be ineligible for naturalization. ^[23] Such persons may also be deportable. ^[24]

5. Membership or Affiliation with Terrorist Organizations

Information concerning an applicant's membership in a terrorist organization implicates national security issues. Such information is important in determining the applicant's eligibility in terms of the good moral character and attachment requirements.

Footnotes

1. ^[^] See INA 316(a). See 8 CFR 316.11.

2. [^] See *In re Shanin*, 278 F. 739 (D.C. Mass. 1922).
3. [^] See *Allan v. United States*, 115 F.2d 804 (9th Cir. 1940).
4. [^] See [INA 337](#). See [8 CFR 337.1](#). See Part J, Oath of Allegiance [[12 USCIS-PM J](#)].
5. [^] The oath requirements may be modified for religious objections or waived for applicants with an inability to comprehend the oath. Prior to November 6, 2000, certain disabled applicants were precluded from naturalization because they could not personally express intent or voluntary assent to the oath requirement. However, subsequent legislation authorized USCIS to waive the oath requirements for anyone who has a medical condition constituting physical or developmental disability or mental impairment that makes him or her unable to understand or communicate an understanding of the meaning of the oath. An applicant for whom USCIS granted an oath waiver is considered to have met the requirement of attachment to the principles of the Constitution of the United States. See [Pub. L. 106-448 \(PDF\)](#) (November 6, 2000). See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [[12 USCIS-PM J.3](#)].
6. [^] See [INA 316\(a\)](#) and [INA 337\(a\)\(5\)\(A\)](#). See the Selective Training and Service Act of 1940, Pub. L. 76-783 (September 16, 1940).
7. [^] See [sss.gov](#).
8. [^] Failure to register is not a permanent bar to naturalization.
9. [^] See [50 U.S.C. 3811](#).
10. [^] See Section 1-101 of [Proclamation 4771 of July 2, 1980 \(PDF\)](#), 94 Stat. 3775. See [50 U.S.C. 3806](#). See Section 3(a) of the Selective Training and Service Act of 1940, Pub. L. 76-783, 54 Stat. 885, 885 (September 16, 1940). See [50 U.S.C. 3802\(a\)](#).
11. [^] See [INA 316\(a\)\(3\)](#).
12. [^] See [INA 314](#).
13. [^] See Part I, Military Members and their Families [[12 USCIS-PM I](#)].
14. [^] See *State v. Symonds*, 57 Me. 148 (1869). See *Holt v. Holt*, 59 Me. 464 (1871). See *McCafferty v. Guyer*, 59 Pa. 109 (1868).
15. [^] See [INA 313](#) and [INA 316](#). See [8 CFR 316](#).
16. [^] See Part F, Good Moral Character [[12 USCIS-PM F](#)].
17. [^] See [INA 237\(a\)\(4\)](#).
18. [^] See [INA 313](#). See the Legal Decisions and Opinions of the Office of Immigration Litigation Case Summaries - No. 93-380, *Price v. U.S. Immigration and Naturalization Service*, seeking review of *Price v. U.S. Immigration and Naturalization Service*, 962 F.2d 836 (9th Cir. 1992).
19. [^] See [INA 313\(d\)](#).
20. [^] See *Langhammer v. Hamilton*, 194 F. Supp. 854, 857 (1961).
21. [^] See [INA 212\(a\)\(3\)\(E\)](#).
22. [^] See [INA 101\(a\)\(42\)](#), [INA 101\(f\)](#), and [INA 208\(b\)\(2\)\(A\)\(i\)](#). See Part F, Good Moral Character, Chapter 4, Permanent Bars to Good Moral Character (GMC), Section C, Persecution, Genocide, Torture, or Severe Violations of Religious Freedom [[12 USCIS-PM F.4\(C\)](#)].
23. [^] See [INA 318](#). See Chapter 2, LPR Admission for Naturalization [[12 USCIS-PM D.2](#)].

24. ^[^] See [INA 212\(a\)\(3\)\(E\)](#).

Chapter 8 - Educational Requirements

In general, applicants for naturalization must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. Applicants must also demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization.

An applicant may be eligible for an exception to the English requirements if he or she is a certain age and has been an LPR for a certain period of time. In addition, an applicant who has a physical or developmental disability or mental impairment may be eligible for a medical exception of both the English and civics requirements. ^[1]

Footnotes

1. ^[^] See [INA 312](#) and [8 CFR 312](#). See Part E, English and Civics Testing and Exceptions [[12 USCIS-PM E](#)].

Chapter 9 - Good Moral Character

One of the requirements for naturalization is good moral character (GMC). An applicant for naturalization must show that he or she has been, and continues to be, a person of good moral character. In general, the applicant must show GMC during the five-year period immediately preceding his or her application for naturalization and up to the time of the Oath of Allegiance. Conduct prior to the five-year period may also impact whether the applicant meets the requirement. ^[1]

Footnotes

1. ^[^] See Part F, Good Moral Character [[12 USCIS-PM F](#)].

Part E - English and Civics Testing and Exceptions

Chapter 1 - Purpose and Background

A. Purpose

In general, a naturalization applicant must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. An applicant must also demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization. ^[1]

B. Background

Prior to 1906, an applicant was not required to know English, history, civics, or understand the principles of the constitution to naturalize. If the court determined the applicant was a “thoroughly law-abiding and industrious man, of good moral character,”

the applicant became a U.S. citizen. ^[2] As far back as 1908, the former Immigration Service and the Courts determined that a person could not establish the naturalization requirement of showing an attachment to the Constitution unless he or she had some understanding of its provisions. ^[3]

In 1940, Congress made amendments to include an English language requirement and certain exemptions based on age and residence, as well as a provision for questioning applicants on their understanding of the principles of the Constitution. ^[4] In 1994, Congress enacted legislation providing an exception to the naturalization educational requirements for applicants who cannot meet the requirements because of a medical disability. Congress also amended the exceptions to the English requirement based on age and residence that are current today. ^[5]

On October 1, 2008, USCIS implemented a redesigned English and civics test. With this redesigned test, USCIS ensures that all applicants have the same testing experience and have an equal opportunity to demonstrate their understanding of English and civics.

C. Legal Authorities

- [INA 312](#); [8 CFR 312](#) – Educational requirements for naturalization
- [INA 316](#); [8 CFR 316](#) – General requirements for naturalization

Footnotes

1. ^[^] See [INA 312](#). See [8 CFR 312](#).
2. ^[^] See *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897).
3. ^[^] See *In re Meakins*, 164 F. 334 (E.D. Wash. 1908). See *In re Vasicek*, 271 F. 326 (E.D. Mo. 1921).
4. ^[^] See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137 (October 14, 1940).
5. ^[^] See the Immigration and Nationality Technical Corrections Act of 1994, [Pub. L. 103-416](#) (October 25, 1994).

Chapter 2 - English and Civics Testing

A. Educational Requirements

An officer administers a naturalization test to determine whether an applicant meets the English and civics requirements.

The naturalization test consists of two components:

- English language proficiency, which is determined by the applicant's ability to read, write, speak and understand English; and
- Knowledge of U.S. history and government, which is determined by a civics test.

An applicant has two opportunities to pass the English and civics tests: the initial examination and the re-examination interview. USCIS will deny the naturalization application if the applicant fails to pass any portion of the tests after two attempts. In cases where an applicant requests a USCIS hearing on the denial, officers must administer any failed portion of the tests. ^[1]

Unless excused by USCIS, the applicant's failure to appear at the re-examination for testing or to take the tests at an examination or hearing counts as a failed attempt to pass the test.

B. Exceptions

An applicant may qualify for an exception from the English requirement, civics requirement, or both requirements. The table below serves as a quick reference guide on the exceptions to the English and civics requirements for naturalization.

Exceptions to English and Civics Requirements for Naturalization

Exceptions [INA 312(b)]	Educational Requirements	
	English: Read, write, speak, and understand	Civics: Knowledge of U.S. history and government
Age 50 or older and resided in U.S. as an LPR for at least 20 years at time of filing	Exempt	Still required. Applicants may take civics test in their language of choice using an interpreter.
Age 55 or older and resided in U.S. as an LPR for at least 15 years at time of filing	Exempt	
Age 65 or older and resided in U.S. as an LPR for at least 20 years at time of filing	Exempt	Still required but officers administer specially designated test forms. Applicants may take the civics test in their language of choice using an interpreter.
Medical Disability Exception (Form N-648)	May be exempt from English, civics, or both	

1. Age and Residency Exceptions to English

An applicant is exempt from the English language requirement but is still required to meet the civics requirement if:

- The applicant is age 50 or older at the time of filing for naturalization and has lived as a lawful permanent resident (LPR) in the United States for at least 20 years; or
- The applicant is age 55 or older at the time of filing for naturalization and has lived as an LPR in the United States for at least 15 years.

The applicant may take the civics test in his or her language of choice with the use of an interpreter.

2. Special Consideration for Civics Test

An applicant receives special consideration in the civics test if, at the time of filing the application, the applicant is 65 years of age or older and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence. ^[2] An applicant who qualifies for special consideration is administered specific test forms.

3. Medical Disability Exception to English and Civics

An applicant who cannot meet the English and civics requirements because of a medical disability may be exempt from the English requirement, the civics requirement, or both requirements.

C. Meeting Requirements under IRCA 1986

The Immigration Reform and Control Act of 1986 (IRCA) mandated that persons legalized under [INA 245A](#) meet a basic citizenship skills requirement in order to be eligible for adjustment to LPR status. An applicant was permitted to demonstrate basic citizenship skills by:

- Passing the English and civics tests administered by legacy Immigration and Naturalization Service (INS); or
- Passing standardized English and civics tests administered by organizations then authorized by the INS. ^[3]

At the time of the naturalization re-examination, the officer will only retest the applicant on any portion of the test that the applicant did not satisfy under IRCA. In all cases, the applicant must demonstrate the ability to speak English at the time of the naturalization examination, unless the applicant meets one of the age and time as resident exemptions of English or qualifies for a medical waiver. ^[4]

D. English Portion of the Test

A naturalization applicant must only demonstrate an ability to read, write, speak, and understand words in ordinary usage. ^[5] Ordinary usage means comprehensible and pertinent communication through simple vocabulary and grammar, which may include noticeable errors in pronouncing, constructing, spelling, and understanding completely certain words, phrases, and sentences.

An applicant may ask for words to be repeated or rephrased and may make some errors in pronunciation, spelling, and grammar and still meet the English requirement for naturalization. An officer should repeat and rephrase questions until the officer is satisfied that the applicant either fully understands the question or is unable to understand English. ^[6]

1. Speaking Test

An officer determines an applicant's ability to speak and understand English based on the applicant's ability to respond to questions normally asked in the course of the naturalization examination. The officer's questions relate to eligibility and include questions provided in the naturalization application. ^[7] The officer should repeat and rephrase questions during the naturalization examination until the officer is satisfied that the applicant either understands the questions or does not understand English.

An applicant who does not qualify for a waiver of the English requirement must be able to communicate in English about his or her application and eligibility for naturalization. An applicant does not need to understand every word or phrase on the application.

Passing the Speaking Test

If the applicant generally understands and responds meaningfully to questions relevant to his or her naturalization eligibility, then he or she has sufficiently demonstrated the ability to speak English.

Failing the Speaking Test

An applicant fails the speaking test when he or she does not understand sufficient English to be placed under oath or to answer the eligibility questions on his or her naturalization application. The officer must still administer all other parts of the naturalization test, including the portions on reading, writing, and civics.

An officer cannot offer or accept a withdrawal of a naturalization application from an applicant who does not speak English unless the applicant has an interpreter present who is able to clearly understand the consequences of withdrawing the application. ^[8]

2. Reading Test

To sufficiently demonstrate the ability to read in English, applicants must read one sentence out of three sentences. The reading test is administered by the officer using standardized reading test forms. Once the applicant reads one of the three sentences correctly, the officer stops the reading test.

Passing the Reading Test

An applicant passes the reading test if the applicant reads one of the three sentences without extended pauses in a manner that the applicant is able to convey the meaning of the sentence and the officer is able to understand the sentence. In general, the applicant must read all content words but may omit short words or make pronunciation or intonation errors that do not interfere with the meaning.

Failing the Reading Test

An applicant fails the reading test if he or she does not successfully read at least one of the three sentences. An applicant fails to read a sentence successfully when he or she:

- Omits a content word or substitutes another word for a content word;
- Pauses for extended periods of time while reading the sentence; or
- Makes pronunciation or intonation errors to the extent that the applicant is not able to convey the meaning of the sentence and the officer is not able to understand the sentence.

3. Writing Test

To sufficiently demonstrate the ability to write in English, the applicant must write one sentence out of three sentences in a manner that the officer understands. The officer dictates the sentence to the applicant using standardized writing test forms. An applicant must not abbreviate any of the words. Once the applicant writes one of the three sentences in a manner that the officer understands, the officer stops the writing test.

An applicant does not fail the writing test because of spelling, capitalization, or punctuation errors, unless the errors interfere with the meaning of the sentence and the officer is unable to understand the sentence.

Passing the Writing Test

The applicant passes the writing test if the applicant is able to convey the meaning of one of the three sentences to the officer. The applicant's writing sample may have the following:

- Some grammatical, spelling, or capitalization errors;
- Omitted short words that do not interfere with meaning; or
- Numbers spelled out or written as digits.

Failing the Writing Test

An applicant fails the writing test if he or she makes errors to a degree that the applicant does not convey the meaning of the sentence and the officer is not able to understand the sentence.

An applicant fails the writing test if he or she writes the following:

- A different sentence or words;
- An abbreviation for a dictated word; ^[9]
- Nothing or only one or two isolated words; or
- A sentence that is completely illegible.

E. Civics Portion of the Test

A naturalization applicant must demonstrate a knowledge and understanding of the fundamentals of the history, the principles, and the form of government of the United States (civics). ^[10]

1. Civics Test

To sufficiently demonstrate knowledge of civics, the applicant must answer correctly at least six of ten questions from the standardized civics test form administered by an officer. The officer administers the test orally. ^[11] Once the applicant answers six of the ten questions correctly, the officer stops the test.

Passing the Civics Test

An applicant passes the civics test if he or she provides a correct answer or provides an alternative phrasing of the correct answer for six of the ten questions.

Failing the Civics Test

An applicant fails the civics test if he or she provides an incorrect answer or fails to respond to six out of the ten questions from the standardized test form.

2. Special Consideration

An officer gives special consideration to an applicant who is 65 years of age or older and who has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence. ^[12] The age and time requirements must be met at the time of filing the naturalization application. An officer only asks questions from the three "65/20" test forms when administering the civics test to such applicants. The test forms only contain 20 specially designated civics questions from the usual list of 100 questions.

3. Due Consideration

An officer should exercise “due consideration” on a case-by-case basis in choosing subject matters, phrasing questions, and evaluating responses when administering the civics test. The officer’s decision to exercise due consideration should be based on a review of the applicant’s:

- Age;
- Background;
- Level of education;
- Length of residence in the United States;
- Opportunities available and efforts made to acquire the requisite knowledge; and
- Any other relevant factors relating to the applicant’s knowledge and understanding. ^[13]

F. Failure to Meet the English or Civics Requirements

If an applicant fails any portion of the English test, the civics test, or all tests during the initial naturalization examination, USCIS will reschedule the applicant to appear for a second examination between 60 and 90 days after the initial examination. ^[14]

In cases where the applicant appears for a re-examination, the reexamining officer must not administer the same English or civics test forms administered during the initial examination. The officer must only retest the applicant in those areas that the applicant previously failed. For example, if the applicant passed the English speaking, reading, and civics portions but failed the writing portion during the initial examination, the officer must only administer the English writing test during the re-examination. ^[15]

If an applicant fails any portion of the naturalization test a second time, the officer must deny the application based upon the applicant’s failure to meet the educational requirements for naturalization. The officer also must address any other areas of ineligibility in the denial notice. An applicant who refuses to be tested or to respond to individual questions on the reading, writing, or civics test, or fails to respond to eligibility questions because he or she did not understand the questions as asked or rephrased, fails to meet the educational requirements. An officer should treat an applicant’s refusal to be tested or to respond to test questions as a failure of the test. ^[16]

G. Documenting Test Results

All officers administering the English and civics tests are required to record the test results in the applicant’s A-file. Officers are required to complete and provide to each applicant at the end of the naturalization examination the results of the examination and testing, unless the officer serves the applicant with a denial notice at that time. ^[17] The results include the results of the English and civics tests.

Footnotes

1. ^[^] Only one opportunity to pass the failed portion of the tests is provided at the hearing. See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request [[12 USCIS-PM B.6\(B\)](#)].

2. ^[^] See [INA 312\(b\)\(3\)](#).
3. ^[^] The INS Standardized Citizenship Testing Program was conducted by five non-government companies on behalf of the INS. That program was established in 1991 and ended on August 30, 1998. See [63 FR 25080](#) (May 6, 1998).
4. ^[^] See [INA 245A\(b\)\(1\)\(D\)\(iii\)](#). See [8 CFR 312.3](#).
5. ^[^] See [INA 312](#). See [8 CFR 312](#).
6. ^[^] See [8 CFR 335.2\(c\)](#).
7. ^[^] See [8 CFR 312.1\(c\)\(1\)](#).
8. ^[^] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination, Section D, Administrative Closure, Lack of Prosecution, Withdrawal, and Holding in Abeyance [[12 USCIS-PM B.4\(D\)](#)].
9. ^[^] An abbreviation for a dictated word may be accepted if the officer has approved the abbreviation.
10. ^[^] See [8 CFR 312.2](#).
11. ^[^] See [8 CFR 312.2\(c\)\(1\)](#).
12. ^[^] See [INA 312\(b\)\(3\)](#).
13. ^[^] See [8 CFR 312.2\(c\)\(2\)](#).
14. ^[^] See [8 CFR 335.3\(b\)](#) (re-examination no earlier than 60 days from initial examination). See [8 CFR 312.5\(a\)](#) (re-examination no later than 90 days from initial examination).
15. ^[^] See [8 CFR 312.5](#).
16. ^[^] See [8 CFR 312.5\(b\)](#).
17. ^[^] Officers must use Naturalization Interview Results (Form N-652).

Chapter 3 - Medical Disability Exception (Form N-648)

A. Medical Disability Exception Requirements

In 1994, Congress enacted legislation providing an exception to the English and civics requirements for naturalization applicants who cannot meet the requirements ^[1] because of a physical or developmental disability or mental impairment. ^[2]

The English and civics requirements do not apply to naturalization applicants who are unable to comply due to a “medically determinable” physical or developmental disability or mental impairment that has lasted, or is expected to last, at least 12 months. The regulations define medically determinable as an impairment that results from abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques. ^[3]

The applicant has the burden of proof, by a preponderance of the evidence standard, to demonstrate that he or she has a disability or impairment that affects functioning such that, even with reasonable accommodations, he or she is unable to meet the English and civics requirements for naturalization. Illiteracy alone is not a valid reason to seek an exception to the English and civics requirements. In addition, advanced age, in and of itself, is not a medically determinable physical or developmental disability or mental impairment.

A licensed medical professional ^[4] must complete the form and certify, under penalty of perjury, that the applicant's medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements.

B. Filing

1. Initial Submission

An applicant seeking an exception to the English and civics requirements must submit a Medical Certification for Disability Exceptions (Form N-648) as an attachment to the Application for Naturalization (Form N-400). ^[5] USCIS generally only considers a Form N-648 that is concurrently filed with a Form N-400 to be filed timely, but later-filed or multiple Forms N-648 may be accepted in certain circumstances as set forth below.

2. Late Submissions

USCIS may consider a later-filed Form N-648 if the applicant provides a credible explanation for filing the N-648 after filing the Form N-400 and submits sufficient evidence in support of that explanation. For example, if a significant change in the applicant's medical condition since the submission of the initial Form N-648 has taken place, a later-filed Form N-648 would be appropriate. Other explanations for not filing the Form N-648 with the initial Form N-400 may also be acceptable, and an officer should consult with his or her supervisor and USCIS counsel in those cases.

The officer should review the explanation and documentation carefully, because without sufficient probative evidence, a late submission can raise credible doubts about the validity of the medical certification, especially where little or no effort is made to explain the delay, and the applicant claims that the stated disability or impairment was present before the naturalization application was filed. ^[6] USCIS may require the submission of an additional Form N-648, which may be from the same medical professional, or refer the applicant to another medical professional for a new Form N-648, if there are credible doubts as to the veracity of the medical certification.

3. Multiple Submissions

If multiple Forms N-648 are submitted at the same time, an officer should question the applicant about the reasons for any additional Forms N-648, and carefully examine any discrepancies between the documents. Two different Forms N-648 from different medical professionals may also raise questions of credibility about the validity of the medical certification. Significant discrepancies may be a basis for finding the Form N-648 insufficient. In the absence of a reasonable justification, multiple submissions may raise credible doubts about the validity of the medical certification, especially where the stated disability or impairment was not identified or discussed earlier. ^[7] USCIS may require the submission of an additional Form N-648, which may be from the same medical professional, or refer the applicant to another medical professional for a new Form N-648, if there are credible doubts as to the veracity of the medical certification.

4. Properly Filed

Properly Filed Medical Certification for Disability Exceptions (Form N-648)

Completed, certified, and signed by all appropriate parties.

Properly Filed Medical Certification for Disability Exceptions (Form N-648)

In addition, the medical certification must contain the following information:

- Clinical diagnosis of the applicant's medical condition(s) and, if applicable, the relevant medical code recognized by the Department of Health and Human Services (HHS). ^[8] This includes the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Classification of Diseases (ICD) codes.
- Description of the medical condition(s) forming the basis for the disability exception.
- Date(s) the medical professional examined the applicant.
- Description of the doctor-patient relationship indicating whether the medical professional regularly treats the applicant for the cited conditions or an explanation of why he or she is certifying the disability form instead of any regularly treating medical professional.
- Statement that the medical condition has lasted, or is expected to last, at least 12 months.
- Statement whether the medical condition is the result of the illegal use of drugs.
- Explanation of what caused the medical condition, if known.
- Description of the clinical methods used to diagnose the medical condition.
- Description of the medical condition's effect on the applicant's ability to successfully complete the educational requirements for naturalization.
- Statement whether the medical professional used an interpreter to examine the applicant.

C. Distinction Between Medical Disability Exception and Accommodation

Requesting an exception to the English and civics requirements is different from requesting an accommodation for the naturalization examination process. ^[9] An approved exception exempts the applicant from the English requirement, the civics requirement, or both requirements completely or partially, depending on the facts of the specific case. An accommodation, on the other hand, simply modifies the manner in which an applicant meets the educational requirements; it does not exempt the applicant from the English or civics requirements.

Reasonable accommodations may include, but are not limited to, sign language interpreters, extended time for completing the English and civics requirements, and completing the English and civics requirements at an off-site location. A disability exception requires an applicant to show that his or her medical condition prevents the applicant from complying with the English or civics requirements or both, even with reasonable accommodations. The impact of a particular medical condition may vary between individual cases. It may be possible to accommodate one applicant who is affected by a particular medical condition, while another applicant affected by the same condition may be eligible for a disability exception. For example, someone who has low vision may require the accommodation of a large print version of the reading test in order to complete the requirement. However, if a person is not able to read because of the medical condition even with an accommodation, then the person needs to file a [Form N-648](#). In such cases, where an accommodation is insufficient, USCIS may accept a later filed Form N-648.

D. Authorized Medical Professionals

USCIS only authorizes the following licensed medical professionals to certify the disability exception form:

- Medical doctors;
- Doctors of osteopathy; and
- Clinical psychologists. [\[10\]](#)

These medical professionals must be licensed to practice in any state of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, or the Commonwealth of the Northern Mariana Islands.

The medical professional must, at a minimum:

- Conduct at least one in-person examination of the applicant;
- Explain the nature and extent of the medical condition on [Form N-648](#);
- Explain how the medical condition relates to the applicant's inability to comply with the educational requirements;
- Attest that the medical condition has lasted or is expected to last at least 12 months; and
- Attest that the cause of the medical condition is not related to the illegal use of drugs.

The medical professional must complete the [Form N-648](#) using common terminology that a person without medical training can understand. While staff associated with the medical professional may assist in completing the form, the medical professional alone is responsible for providing the necessary information, answering the questions, and verifying and attesting to the accuracy of the form's content.

The medical professional certifying the form may choose to provide medical diagnostic reports, records, and statements as attachments to the Form N-648 as evidence of the disability. Any supporting documentation should be clearly probative of the medical disability that prevents the applicant from completing the required English and civics requirements.

Failure to correctly fill out each question with the appropriate, corresponding responses may result in a finding that the Form N-648 is insufficient.

E. Review of Medical Certification for Sufficiency

1. General Guidelines for Review

The officer must carefully review the form to determine whether the applicant is eligible for the exception. The table below provides general guidelines on what steps the officer should and should not take when reviewing the [Form N-648](#).

N-648 Review Guidelines

When reviewing the form, the officer should:
• Determine whether the form has been properly completed.
• Ensure that the medical professional has fully answered all of the required questions and has signed and certified the Form N-648 along with the applicant.

When reviewing the form, the officer should:

- Ensure that the Form N-648 relates to the applicant and that there are no discrepancies between the form and other available information, including biographic data, testimony during the interview, or information contained in the applicant's A-file.
- Determine whether the Form N-648 contains enough information to establish that the applicant is eligible for the exception by a preponderance of the evidence. This determination includes ensuring that the medical professional's explanation is both sufficiently detailed as well as specific to the applicant and to the applicant's stated disability (rather than a generic, "one size fits all" explanation).
- Ensure the Form N-648 fully addresses the underlying medical condition and its causal connection or nexus with the applicant's inability to comply with the English or civics requirements or both.
- If the record reflects that the applicant has a regularly treating medical professional, but another medical professional has completed the Form N-648, ensure that the Form N-648 includes a credible and sufficiently detailed explanation for the reason that the regularly treating medical professional did not complete the Form N-648.

When reviewing the form, the officer should not:

- Attempt to determine the validity of the medical diagnosis or second guess why this diagnosis precludes the applicant from complying with the English and civics requirements.
- Request to see an applicant's medical or prescription records solely to question whether there was a proper basis for the medical professional's diagnosis unless evidence exists that creates discrepancies or anomalies that those records can help resolve. The officer may ask follow-up questions to resolve any outstanding issues.
- Require that an applicant undergo specific medical, clinical, or laboratory diagnostic techniques, tests, or methods.
- Conclude that the applicant has failed to meet the burden of proof simply because he or she did not previously disclose the alleged medical condition in other immigration-related medical examinations or documents. It is appropriate, however, to consider this as a factor when determining the sufficiency of the Form N-648. The officer should always carefully examine the evidence of record and ask follow-up questions to resolve any outstanding issues.
- Refer an applicant to another medical professional solely because the applicant sought care from a professional who shares the same language, culture, ethnicity, or nationality.

2. Medical Examination and Demonstrating Nexus

Reviewing the request for the medical disability exception, the officer must focus on whether the medical professional has sufficiently explained with enough supporting details that the applicant has a disability or impairment and its nature. The medical professional must also explain how the applicant's disability or impairment prohibits the applicant from being able to

demonstrate the English or civics requirements or both. The explanation should be sufficiently detailed and tailored to the individual applicant's diagnosed medical disabilities or impairment.

After review of the record, the officer may only grant an exception if the applicant has demonstrated by a preponderance of the evidence that there is a nexus (or causal connection) between the disability or impairment and:

- The applicant's inability to read, write, and speak words in ordinary usage in the English language;
- The applicant's inability to know and understand the fundamentals of history and of the principal form of government of the United States; or
- Both.

[Form N-648](#) requires the medical professional to describe the severity of the medical condition. The medical professional must explain the basis of his or her assessment, such as known symptoms of the condition, tests conducted, and observations. The officer can question the applicant during the naturalization interview about the applicant's daily life activities. If discrepancies exist regarding the applicant's daily life and activities between the naturalization application and information contained in the A-file, the Form N-648 itself, or from any other source of information, the officer should question the applicant during the interview about those discrepancies.

3. Use of Interpreters

Certification on Form N-648 and Presence of Interpreter at Medical Examination

If it is unclear whether an interpreter was used during the medical examination, the officer must ask the applicant whether the medical examination that formed the basis of the [Form N-648](#) was performed with the assistance of an interpreter.

For example, the officer may question the applicant during the interview:

- About the applicant's visits with the medical professional and the nature of their relationship.
- About the manner of communication used to conduct the medical examination.

If an interpreter was used during the medical examination but the interpreter's certification on the [Form N-648](#) is blank, the form is considered incomplete. The officer must then provide the applicant with notice of the deficiency and an opportunity to bring a properly completed Form N-648 to the re-examination.

If necessary, the officer may also choose to subpoena and question the interpreter, if any, who was present at the medical examination about their translations during a medical examination in connection with the applicant's [Form N-648](#). If the officer wishes to question an interpreter he or she must be under the general oath. If the person who interpreted at the medical examination is to be questioned as a witness and is the same person as the person interpreting at the naturalization interview, the interpreter must then be disqualified from interpreting for that applicant at the naturalization interview. ^[11] In this case, the officer should reschedule the interview, as needed, to permit the applicant an opportunity to find a new interpreter.

Interpreter at Interview

During the interview, the officer should question the applicant under oath in the applicant's preferred language, with use of an interpreter, ^[12] if needed, to address any issues of concern related to the [Form N-648](#). In the agency's discretion, and in all cases, the officer may also disqualify an interpreter provided by the applicant for cause and reschedule the interview. ^[13] If the office has a language service available, the officer may use the language service when the interpreter is disqualified.

4. Requesting Supplemental Form N-648

In general, USCIS does not request a supplemental disability determination from another doctor after evaluating the originally submitted [Form N-648](#). However, if there is a question as to whether the medical professional actually examined and diagnosed the applicant or there are credible doubts as to the veracity of the medical certification because it is clearly contradicted by other evidence, the officer may request a new Form N-648 from a different doctor. The officer should exercise caution when requesting an applicant obtain a supplemental disability determination from another authorized medical professional. The officer should:

- Explain the reasons for doubting the veracity of the information on the original Form N-648, to include any observations or applicant responses to questions during the interview that raised issues of credible doubt or sworn statements submitted at the time of the interview;
- Consult with a supervisor and receive approval before requesting that the applicant undergo a supplemental disability determination; and
- Provide the applicant with the relevant state medical board contact information to facilitate the applicant's ability to find another medical professional.

5. Credible Doubt, Discrepancies, Misrepresentation, and Fraud

In general, USCIS should accept the medical professional's diagnosis. However, an officer may find a [Form N-648](#) insufficient if there is a finding of credible doubt, discrepancies, misrepresentation or fraud as to the applicant's eligibility for the disability exception.

The officer must provide the applicant an opportunity to address any specific discrepancies or inconsistencies during the interview. When issuing a request for evidence, the officer should only request the information necessary to make a determination on the sufficiency of the [Form N-648](#). In some cases, USCIS may require the submission of an additional Form N-648 or request the applicant's medical reports or other supplementary medical background information if there is a question whether the medical professional actually examined and diagnosed the applicant or there are credible doubts as to the veracity of the medical certification because it is clearly contradicted by other evidence.

Below are some factors that may give rise to credible doubts during the course of the [Form N-648](#) adjudication: ^[14]

- The medical professional's responses on the Form N-648 lack probative value because the responses do not contain a reasonable degree of detail or fail to provide any basis for the stated diagnosis and the nexus to the inability to learn, speak or read or understand English;
- The medical professional did not explain the specific medical, clinical, or laboratory diagnostic techniques used in diagnosing the applicant's medical condition on the Form N-648;
- The Form N-648 does not include an explanation of the doctor-patient relationship indicating that the medical professional completing the Form N-648 regularly treats the applicant for the cited conditions, or a reasonable justification for not having the Form N-648 completed by the regularly treating medical professional (if applicable);
- The Form N-648 was completed by the certifying medical professional more than 6 months prior to the filing of the naturalization application;
- The Form N-648 provides information inconsistent with information provided on the naturalization application or at the interview. For example, the effects of the medical condition on the applicant's daily life such as employment capabilities or ability to attend educational programs;
- Previous medicals including Report of Medical Examination and Vaccination Record, Form I-693 did not identify long-term medical condition which may be inconsistent with the Form N-648's indication of when the condition began, if indicated;

- The applicant or the medical professional failed to provide a reasonable justification for the late filing of the Form N-648;
- The applicant during the interview indicates that he or she was not examined or diagnosed by the medical professional, the medical professional did not certify the form him or herself, or the applicant merely paid for the Form N-648 without a doctor's examination and diagnosis;
- The medical professional completing the Form N-648 is under investigation for immigration fraud, Medicaid fraud, or other fraud schemes by USCIS Fraud Detection and National Security (FDNS) Directorate, Immigration and Customs Enforcement, or another federal, state, or local agency, or a state medical board;
- The medical professional has engaged in a pattern of submitting Forms N-648 with similar or "boiler plate" language that does not reflect a case-specific analysis;
- The interpreter used during the medical examination, the N-400 interview, or both, is known or suspected, by FDNS or another state or federal agency, to be involved in any immigration fraud, including and especially Form N-648 related fraud;
- The evidence in the record or other credible information available to the officer indicates fraud or misrepresentation;
- The applicant provides multiple Forms N-648 with different diagnoses and information and from different doctors; or
- Any other articulable grounds that are supported by the record.

If any one or more of these indicators are present, the officer should consult with his or her supervisor for next steps, which may include requesting additional documentation or finding the [Form N-648](#) insufficient.

In addition, there may be cases where USCIS suspects or determines that an applicant, interpreter, or medical professional has committed fraud in the process of seeking a medical disability exception. The officer should consult with his or her supervisor to determine whether to refer such a case to FDNS. If an officer or the local FDNS office determines that an applicant, interpreter, or medical professional has made material misrepresentations or committed fraud, the officer must explain those findings in the naturalization denial notice.

The officer should determine that a request for a medical disability exception is insufficient if:

- The [Form N-648](#) is not properly completed;
- The medical professional fails to explain how the applicant's medical condition prohibits the applicant from meeting the English requirement, the civics requirement, or both requirements;
- The medical professional who certified the Form N-648 is not authorized to make such certification; ^[15]
- The applicant was not examined or diagnosed by the certifying medical professional;
- The applicant described in the Form N-648 is not the same person as the naturalization applicant;
- The Form N-648 was completed or certified by someone other than the certifying medical professional; or
- Significant anomalies, discrepancies, or fraud indicators exist that preclude a finding of eligibility under a preponderance of the evidence standard.

The table below provides the general procedures for finding the [Form N-648](#) to be insufficient. The procedures apply to any phase of the naturalization examination, including the initial examination, re-examination, or hearing on a denial.

General Procedures Upon Determination the Form N-648 is Insufficient

If the Form N-648 is insufficient at the naturalization examination or hearing:

- USCIS proceeds with the initial or re-examination or hearing on a denial as if the applicant had not submitted a Form N-648.
- USCIS must provide the applicant with an opportunity to take all portions of the English and civics requirements.
- An applicant has a total of two opportunities to pass the English and civics requirements before the application for naturalization is adjudicated: once during the initial examination and then later during the re-examination interview.
- An applicant may decline to complete the English and civics requirements. However, declining to continue the interview or complete the requirements counts as a failed attempt to pass the English and civics requirements. ^[16]
- An applicant's failure to appear at the re-examination or hearing on a denial, or to complete the requirements for any reason results in a denial, unless excused by USCIS for good cause.

F. Interview, Re-Examination, and Hearing after an Insufficient Form N-648**1. Initial Interview***Passing the English and Civics Requirements* ^[17]

If an applicant's [Form N-648](#) is found to be insufficient, but the applicant subsequently meets the English and civics requirements in the same examination:

- The officer must provide the applicant the opportunity to proceed with the naturalization examination to determine if the applicant meets the other applicable eligibility requirements.
- The officer should not determine that the applicant engaged in fraud or lacks good moral character for the sole reason that the applicant met the educational requirements after submitting an insufficient Form N-648.
- The officer may question the applicant further, however, on the reasons for submitting the form, the applicant's relationship to the medical professional, and any other relevant factors, if deemed necessary.

Failing the English and Civics Requirements

If an applicant's [Form N-648](#) is found to be insufficient, and the applicant fails to meet the English and civics requirements:

- The officer must notify the applicant of the Form N-648 deficiencies in writing. USCIS may choose to issue the applicant a request for evidence that specifically addresses the issues with the Form N-648.
- The officer should schedule the applicant to appear for a re-examination, and for a second opportunity to meet the English and civics requirements, between 60 and 90 days after the initial examination.

2. Re-Examination

If new information is received in support of a [Form N-648](#) that USCIS found insufficient at the initial interview, the officer must review the evidence at the re-examination. In addition, the officer conducting the re-examination should review the original Form N-648 and accompanying evidence for consistency with the new information.

If an applicant submits a [Form N-648](#) for the first time at the re-examination interview, the officer should carefully question the applicant as to why he or she did not submit the Form N-648 at the time of filing the naturalization application as required by the regulations, or at the initial interview.

The officer should follow the same procedure and apply the same criteria during the re-examination regarding late or multiple [Form N-648](#) submissions. The officer should carefully consider whether there is any evidence of change in medical conditions or other credible explanation justifying the initial submission of the Form N-648 at the re-examination. The officer should then weigh the explanation and evidence provided by the applicant regarding the late filing. USCIS may consider the timing of the filing and any additional Form N-648s submitted by the applicant when assessing the applicant's credibility with regard to the disability exception.

If the applicant has established that he or she is eligible for the disability exception, the officer should then allow the naturalization interview and examination to continue with the use of an interpreter, if applicable, exempting the applicant from the English or civics requirements, or both, as indicated on the form.

If, on the other hand, the applicant does not provide sufficient evidence that the late submission is due to a material change in his or her medical condition, or does not provide another credible explanation, the applicant may not be eligible for the disability exception. If the officer determines for any reason that the [Form N-648](#) is insufficient to establish eligibility for the disability waiver, the officer may not grant the exception but should afford the applicant a second opportunity to take the English and civics tests.

If the applicant fails any portion of the test or declines to continue with the re-examination, the officer must deny the naturalization application based on the applicant's failure to meet the English and civics requirements. In the naturalization denial notice, the officer must provide an explanation for finding the form insufficient to show eligibility for the disability exception.

If the officer issued a request for evidence at the initial interview and determines that the evidence submitted in response to the request for evidence is insufficient:

- The officer must proceed with the re-examination as if the applicant had not submitted a [Form N-648](#);
- The officer must provide the applicant with a second opportunity prior to adjudication to take any portion of the English and civics tests that the applicant previously failed;
- The officer must not provide the applicant a third opportunity to submit a Form N-648 or to take the English and civics tests;
- If the applicant fails any portion of the testing, including declining the test or failing to respond to test questions correctly, the officer must deny the naturalization application based on the applicant's failure to meet the English and civics requirements; and
- The officer must provide an explanation of the Form N-648's deficiencies in the naturalization application's denial notice.

3. Hearing on Denial

All denied naturalization applicants may file a Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA) ([Form N-336](#)) within 30 calendar days of receiving the adverse decision. ^[18]

USCIS may conduct a full de novo hearing on a denied naturalization application, including a full review of any previously submitted [Form N-648](#) as well as other information contained in the record. ^[19] An applicant may submit additional documentation at the hearing, including a new or initial Form N-648 and relevant medical diagnostic reports, records, or statements. Although an applicant may submit a Form N-648 for the first time during a hearing, the officer may question the credibility of the N-648 as described above. At the hearing, an applicant will only be allowed to submit one Form N-648 and only allowed to attempt to satisfy the educational requirements once.

In addition, the officer also should follow the same procedures in the hearing as provided in this chapter when making a determination that a [Form N-648](#) filed for the first time at the hearing is sufficient or insufficient.

G. Sufficient Form N-648

The officer should determine that a request for a medical disability exception is sufficient if, at a minimum:

- The [Form N-648](#) is properly completed per the form instructions;
- The medical professional explains in detail how the applicant’s medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements; and
- No anomalies, discrepancies, or fraud indicators exist, based on the totality of evidence of record, that call into question a finding of eligibility under a preponderance of the evidence standard.

The table below provides the general procedures for cases where an applicant qualifies for a disability exception. The procedures apply to any phase of the naturalization examination, including the initial examination or re-examination, or hearing on a denial.

General Procedures Upon Determination the Form N-648 is Sufficient

If the officer determines an applicant’s Form N-648 is sufficient at the naturalization examination or hearing:

- USCIS first proceeds with the interview in the applicant’s preferred language with the use of an interpreter, if applicable.
- If the medical professional indicated on the form that the applicant is unable to comply with any or part of the English and civics requirements, USCIS waives the indicated requirement(s).
- USCIS then proceeds to determine whether the applicant meets all other naturalization eligibility requirements.

Footnotes

1. ^[^] The term “English and civic requirements” refers to demonstrating English language proficiency, which is determined by an ability to read, write, speak, and understand English, as well as knowledge of U.S. history and government, which is determined by a civics test. See Chapter 2, English and Civics Testing, Section A, Educational Requirements [[12 USCIS-PM E.2\(A\)](#)].

2. ^[^] See [INA 312\(b\)\(1\)](#). See Section 108 of the Immigration and Nationality Technical Corrections Act of 1994, [Pub. L. 103-416](#), 108 Stat. 4305, 4309 (October 25, 1994) (adding [INA 312\(b\)](#)).

3. [^] See [INA 312\(b\)](#). See [8 CFR 312.1\(b\)\(3\)](#). See [8 CFR 312.2\(b\)](#).
4. [^] See Section D, Authorized Medical Professionals [[12 USCIS-PM E.3\(D\)](#)].
5. [^] See [8 CFR 312.2\(b\)\(2\)](#).
6. [^] For more information about credible doubt, see Section E, Review of Medical Certification for Sufficiency, Subsection 5, Credible Doubt, Discrepancies, Misrepresentation, and Fraud [[12 USCIS-PM E.3\(E\)\(5\)](#)].
7. [^] For more information on adjudicating late or multiple submissions, see Section B, Filing [[12 USCIS-PM E.3\(B\)](#)].
8. [^] See [45 CFR 162.1002](#). The relevant medical codes, if any, are required to ensure the medical professional provides his or her medical opinion with a certain level of specificity. The codes should not be used by officers to attempt to determine the validity of the medical diagnosis or second-guess why the diagnosis precludes the applicant from complying with the educational requirements.
9. [^] See Part C, Accommodations [[12 USCIS-PM C](#)].
10. [^] See [8 CFR 312.2\(b\)\(2\)](#).
11. [^] However, in the officer's discretion, a "good cause" exception may be granted that would allow the witness to interpret. See [Adjudicator's Field Manual \(AFM\) Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation](#).
12. [^] The interpreter must be under oath. See [Adjudicator's Field Manual \(AFM\) Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation](#).
13. [^] See [Adjudicator's Field Manual \(AFM\) Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation](#).
14. [^] The list provided is not exhaustive and is meant only to provide some examples for officers when reviewing Form N-648 sufficiency. Officers should consult with their supervisor if there are any questions.
15. [^] See Section D, Authorized Medical Professionals [[12 USCIS-PM E.3\(D\)](#)].
16. [^] An officer should annotate that the applicant declined to take any part of the educational requirements in the record.
17. [^] See [INA 312](#).
18. [^] See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review [[12 USCIS-PM B.6](#)].
19. [^] See [8 CFR 336.2](#).

Part F - Good Moral Character

Chapter 1 - Purpose and Background

A. Purpose

One of the general requirements for naturalization is good moral character (GMC). GMC means character which measures up to the standards of average citizens of the community in which the applicant resides. ^[1] In general, an applicant must show that he or she has been and continues to be a person of GMC during the statutory period prior to filing and up to the time of the Oath of Allegiance. ^[2]

The applicable naturalization provision under which the applicant files determines the period during which the applicant must demonstrate GMC. ^[3] The applicant's conduct outside the GMC period may also impact whether he or she meets the GMC requirement. ^[4]

While USCIS determines whether an applicant has met the GMC requirement on a case-by-case basis, certain types of criminal conduct automatically preclude applicants from establishing GMC and may make the applicant subject to removal proceedings. ^[5] An applicant may also be found to lack GMC for other types of criminal conduct (or unlawful acts).

An officer's assessment of whether an applicant meets the GMC requirement includes an officer's review of:

- The applicant's record;
- Statements provided in the naturalization application; and
- Oral testimony provided during the interview.

There may be cases that are affected by specific jurisdictional case law. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense rises to the level of precluding an applicant from establishing GMC. In addition, the offenses and conduct which affect the GMC determination may also render an applicant removable.

B. Background

The Naturalization Act of 1790 introduced the long-standing GMC requirement for naturalization. Any conduct or act that offends the accepted moral character standards of the community in which the applicant resides should be considered without regard to whether the applicant has been arrested or convicted of an offense.

In general, an applicant for naturalization must establish GMC throughout the requisite periods of continuous residence in the United States. In prescribing specific periods during which GMC must be established, Congress generally intended to make provision for the reformation and eventual naturalization of persons who were guilty of certain past misconduct.

C. Legal Authorities

- [INA 101\(f\)](#) – Good moral character definition
- [INA 316](#); [8 CFR 316](#) – General naturalization requirements
- [INA 316\(e\)](#); [8 CFR 316.10](#) – Good moral character requirement
- [INA 318](#) – Prerequisite to naturalization, burden of proof

Footnotes

1. ^[^] See [8 CFR 316.10\(a\)\(2\)](#). See [INA 101\(f\)](#). See *In re Mogus*, 73 F.Supp. 150 (W.D. Pa. 1947) (moral standard of average citizen).

2. ^[^] See [INA 316\(a\)](#). See [8 CFR 316.10\(a\)\(1\)](#).

3. ^[^] See Chapter 2, Adjudicative Factors, Section A, Applicable Statutory Period [[12 USCIS-PM F.2\(A\)](#)].

4. ^[^] See [INA 316\(e\)](#). See [8 CFR 316.10\(a\)\(2\)](#).

5. ^[^] See [INA 101\(f\)](#).

Chapter 2 - Adjudicative Factors

A. Applicable Statutory Period

The applicable period during which an applicant must show that he or she has been a person of good moral character (GMC) depends on the corresponding naturalization provision. ^[1] In general, the statutory period for GMC for an applicant filing under the general naturalization provision starts five years prior to the date of filing. ^[2]

The statutory period starts three years prior to the date of filing for certain spouses of U.S. citizens. ^[3] The period during which certain service members or veterans must show GMC starts one or five years from the date of filing depending on the military provision. ^[4]

In all cases, the applicant must also show that he or she continues to be a person of GMC until the time of his or her naturalization. ^[5]

B. Conduct Outside of the Statutory Period

USCIS is not limited to reviewing the applicant's conduct only during the applicable GMC period. An applicant's conduct prior to the GMC period may affect the applicant's ability to establish GMC if the applicant's present conduct does not reflect a reformation of character or the earlier conduct is relevant to the applicant's present moral character. ^[6]

In general, an officer must consider the totality of the circumstances and weigh all factors, favorable and unfavorable, when considering reformation of character in conjunction with GMC within the relevant period. ^[7] The following factors may be relevant in assessing an applicant's current moral character and reformation of character:

- Family ties and background;
- Absence or presence of other criminal history;
- Education;
- Employment history;
- Other law-abiding behavior (for example, meeting financial obligations, paying taxes);
- Community involvement;
- Credibility of the applicant;
- Compliance with probation; and
- Length of time in United States.

C. Definition of Conviction

1. Statutory Definition of Conviction for Immigration Purposes

Most of the criminal offenses that preclude a finding of GMC require a conviction for the disqualifying offense or arrest. A "conviction" for immigration purposes means a formal judgment of guilt entered by the court. A conviction for immigration purposes also exists in cases where the adjudication of guilt is withheld if the following conditions are met:

- A judge or jury has found the alien guilty or the alien entered a plea of guilty or nolo contendere ^[8] or has admitted sufficient facts to warrant a finding of guilt; and
- The judge has ordered some form of punishment, penalty, or imposed a restraint on the alien's liberty. ^[9]

It is not always clear if the outcome of the arrest resulted in a conviction. Various states have provisions for diminishing the effects of a conviction. In some states, adjudication may be deferred upon a finding or confession of guilt. Some states have a pretrial diversion program whereby the case is removed from the normal criminal proceedings. This way the person may enter into a counseling or treatment program and potentially avoid criminal prosecution.

If the accused is directed to attend a pre-trial diversion or intervention program, where no admission or finding of guilt is required, the order may not count as a conviction for immigration purposes. ^[10]

2. Juvenile Convictions

In general, a guilty verdict, ruling, or judgment in a juvenile court does not constitute a conviction for immigration purposes. ^[11] A conviction for a person who is under 18 years of age and who was charged as an adult constitutes a conviction for immigration purposes.

3. Court Martial Convictions

A general "court martial" is defined as a criminal proceeding under the governing laws of the U.S. armed forces. A judgment of guilt by a court martial has the same force and effect as a conviction by a criminal court. ^[12] However, disciplinary actions in lieu of a court martial are not convictions for immigration purposes.

4. Deferrals of Adjudication

In cases where adjudication is deferred, the original finding or confession of guilt and imposition of punishment is sufficient to establish a conviction for immigration purposes because both conditions establishing a conviction are met. If the court does not impose some form of punishment, then it is not considered a conviction even with a finding or confession of guilt. A decision or ruling of nolle prosequi ^[13] does not meet the definition of conviction.

5. Vacated Judgments

If a judgment is vacated for cause due to Constitutional defects, statutory defects, or pre-conviction errors affecting guilt, it is not considered a conviction for immigration purposes. The judgment is considered a conviction for immigration purposes if it was dismissed for any other reason, such as completion of a rehabilitative period (rather than on its merits) or to avoid adverse immigration consequences. ^[14]

A conviction vacated where a criminal court failed to advise a defendant of the immigration consequences of a plea, which resulted from a defect in the underlying criminal proceeding, is not a conviction for immigration purposes. ^[15]

6. Foreign Convictions

USCIS considers a foreign conviction to be a "conviction" in the immigration context if the conviction was the result of an offense deemed to be criminal by United States standards. ^[16] In addition, federal United States standards on sentencing govern the determination of whether the offense is a felony or a misdemeanor regardless of the punishment imposed by the foreign jurisdiction. ^[17] The officer may consult with local USCIS counsel in cases involving foreign convictions.

7. Pardons

An applicant who has received a full and unconditional executive pardon ^[18] prior to the start of the statutory period may establish GMC if the applicant shows that he or she has been reformed and rehabilitated prior to the statutory period. ^[19] If the applicant received a pardon during the statutory period, the applicant may establish GMC if he or she shows evidence of extenuating or exonerating circumstances that would establish his or her GMC. ^[20]

Foreign pardons do not eliminate a conviction for immigration purposes. ^[21]

8. Expunged Records

Expunged Records and the Underlying Conviction

A record of conviction that has been expunged does not remove the underlying conviction. ^[22] For example, an expunged record of conviction for a controlled substance violation ^[23] or any crime involving moral turpitude (CIMT) does not relieve the applicant from the conviction in the immigration context. ^[24] In addition, foreign expungements are still considered convictions for immigration purposes. ^[25]

The Board of Immigration Appeals (BIA) has held that a state court action to “expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute” has no effect on removing the underlying conviction for immigration purposes. ^[26]

The officer may require the applicant to submit evidence of a conviction regardless of whether the record of the conviction has been expunged. It remains the applicant’s responsibility to obtain his or her records regardless of whether they have been expunged or sealed by the court. USCIS may file a motion with the court to obtain a copy of the record in states where the applicant is unable to obtain the record.

D. Effect of Probation

An officer may not approve a naturalization application while the applicant is on probation, parole, or under a suspended sentence. ^[27] However, an applicant who has satisfactorily completed probation, parole, or a suspended sentence during the relevant statutory period is not automatically precluded from establishing GMC. The fact that an applicant was on probation, parole, or under a suspended sentence during the statutory period, however, may affect the overall GMC determination.

E. Admission of Certain Criminal Acts

An applicant may be unable to establish GMC if he or she admits committing certain offenses even if the applicant has never been formally charged, indicted, arrested or convicted. ^[28] This applies to offenses involving “moral turpitude” or any violation of, or a conspiracy or attempt to violate, any law or regulation relating to a controlled substance. ^[29] When determining whether an applicant committed a particular offense, the officer must review the relevant statute in the jurisdiction where it is alleged to have been committed.

The officer must provide the applicant with a full explanation of the purpose of the questioning stemming from the applicant’s declaration that he or she committed an offense. In order for the applicant’s declaration to be considered an “admission,” it must meet the long held requirements for a valid “admission” of an offense: ^[30]

- The officer must provide the applicant the text of the specific law from the jurisdiction where the offense was committed;
- The officer must provide an explanation of the offense and its essential elements in “ordinary” language; and

- The applicant must voluntarily admit to having committed the particular elements of the offense under oath. ^[31]

The officer must ensure that the applicant is under oath when taking the sworn statement to record the admission. The sworn statement must cover the requirements for a valid admission, to include the specifics of the act or acts that may prevent the applicant from establishing GMC. The officer may consult with his or her supervisor to ensure that sufficient written testimony has been received from the applicant prior to making a decision on the application.

F. “Purely Political Offense” Exception

There is an exception to certain conditional bars to GMC in cases where the offense was a “purely political offense” that resulted in conviction, or in conviction and imprisonment, outside of the United States. ^[32] Purely political offenses are generally offenses that “resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious or political minorities.” ^[33]

The “purely political offense” exception applies to the following conditional bars to GMC: ^[34]

- Conviction for one or more crimes involving moral turpitude (CIMTs); ^[35]
- Conviction of two or more offenses with a combined sentence of five years or more; ^[36] and
- Incarceration for a total period of 180 days or more. ^[37]

These conditional bars to GMC do not apply if the underlying conviction was for a “purely political offense” abroad. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense should be considered a “purely political offense.”

G. Extenuating Circumstances

Certain conditional bars to GMC should not adversely affect the GMC determination if the applicant shows extenuating circumstances. ^[38] The extenuating circumstance must precede or be contemporaneous with the commission of the offense. USCIS does not consider any conduct or equity (including evidence of reformation or rehabilitation) subsequent to the commission of the offense as an extenuating circumstance.

The “extenuating circumstances” provision applies to the following conditional bars to GMC: ^[39]

- Failure to support dependents; ^[40]
- Adultery; ^[41] and
- Unlawful acts. ^[42]

These conditional bars to GMC do not apply if the applicant shows extenuating circumstances. The officer should provide the applicant with an opportunity during the interview to provide evidence and testimony of extenuating circumstances in relevant cases.

H. Removability and GMC

Certain permanent and conditional bars to GMC may warrant a recommendation that the applicant be placed in removal proceedings. ^[43] This depends on various factors specific to each case. Not all applicants who are found to lack GMC are removable. An applicant may be found to lack GMC and have his or her naturalization application denied under those grounds

without necessitating a recommendation for removal proceedings. USCIS will not make a decision on any naturalization application from an applicant who is in removal proceedings. ^[44]

Footnotes

1. ^[^] See the relevant Volume 12 [\[12 USCIS-PM\]](#) part for the specific statutory period pertaining to each naturalization provision.
2. ^[^] See Part D, General Naturalization Requirements, Chapter 1, Purpose and Background, Section B, General Eligibility Requirements [\[12 USCIS-PM D.1\(B\)\]](#). See [INA 316\(a\)](#). See [8 CFR 316.2\(a\)\(7\)](#).
3. ^[^] See Part G, Spouses of U.S. Citizens, Chapter 1, Purpose and Background, Section C, Table of General Provisions [\[12 USCIS-PM G.1\(C\)\]](#). See [INA 319\(a\)](#) and [8 CFR 319.1\(a\)\(7\)](#).
4. ^[^] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [\[12 USCIS-PM I.9\(B\)\]](#). See [INA 328\(c\)](#) and [INA 329](#). See [8 CFR 328.2\(d\)](#) and [8 CFR 329.2\(d\)](#).
5. ^[^] See [8 CFR 316.10\(a\)\(1\)](#).
6. ^[^] See [INA 316\(e\)](#). See [8 CFR 316.10\(a\)\(2\)](#).
7. ^[^] See *Ralich v. United States*, 185 F.2d 784 (1950) (provided false testimony within the statutory period and operated a house of prostitution prior to the statutory period). See *Marcantonio v. United States*, 185 F.2d 934 (1950) (applicant had rehabilitated his character after multiple arrests before statutory period).
8. ^[^] The term “nolo contendere” is Latin for “I do not wish to contest.”
9. ^[^] See [INA 101\(a\)\(48\)\(A\)](#).
10. ^[^] See *Matter of Grullon* [\(PDF\)](#), 20 I&N Dec. 12 (BIA 1989).
11. ^[^] See *Matter of Devison-Charles* [\(PDF\)](#), 22 I&N Dec. 1362 (BIA 2000).
12. ^[^] See *Matter of Rivera-Valencia* [\(PDF\)](#), 24 I&N Dec. 484 (BIA 2008).
13. ^[^] The term “nolle prosequi” is Latin for “we shall no longer prosecute.”
14. ^[^] See *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006).
15. ^[^] See *Matter of Adamiak* [\(PDF\)](#), 23 I&N Dec. 878 (BIA 2006). See *Alim v. Gonzales*, 446 F.3d 1239 (11th Cir 2006).
16. ^[^] See *Matter of Squires* [\(PDF\)](#), 17 I&N Dec. 561 (BIA 1980). See *Matter of McNaughton* [\(PDF\)](#), 16 I&N Dec. 569 (BIA 1978).
17. ^[^] See *Lennon v. INS*, 527 F.2d 187 (2nd Cir. 1975).
18. ^[^] Executive pardons are given by the President or a governor of the United States.
19. ^[^] See [8 CFR 316.10\(c\)\(2\)\(i\)](#).
20. ^[^] See [8 CFR 316.10\(c\)\(2\)\(ii\)](#).
21. ^[^] See *Marino v. INS*, 537 F.2d 686 (2nd Cir. 1976). See *Mullen-Cofee v. INS*, 976 F.2d 1375 (11th Cir. 1992). See *Matter of B-*, 7 I&N Dec. 166 (BIA 1956) (referring to amnesty).
22. ^[^] See *Matter of Marroquin* [\(PDF\)](#), 23 I&N Dec. 705 (A.G. 2005).

23. [^] For cases arising in the Ninth Circuit involving state law convictions for simple possession of a controlled substance, please consult local counsel as the date of the conviction may affect whether possible treatment under the Federal First Offender Act renders the conviction invalid for immigration purposes. See *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir 2011).
24. [^] See [8 CFR 316.10\(c\)\(3\)\(i\)](#) and [8 CFR 316.10\(c\)\(3\)\(ii\)](#).
25. [^] See *Danso v. Gonzales*, 489 F.3d 709 (5th Cir. 2007). See *Elkins v. Comfort*, 392 F.3d 1159 (10th Cir. 2004).
26. [^] See *In re Roldan-Santoyo* (PDF), 22 I&N Dec. 512 (BIA 1999).
27. [^] See [8 CFR 316.10\(c\)\(1\)](#).
28. [^] See [8 CFR 316.10\(b\)\(2\)\(iv\)](#).
29. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period [[12 USCIS-PM F.5](#)]. See [8 CFR 316.10\(b\)\(2\)\(i\)](#) (offenses involving “moral turpitude”). See [8 CFR 316.10\(b\)\(2\)\(iii\)](#) (violation of controlled substance law).
30. [^] See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957).
31. [^] See *Matter of J-*, 2 I&N Dec. 285 (BIA 1945).
32. [^] See *In re O’Cealleagh* (PDF), 23 I&N Dec. 976 (BIA 2006) (finding that a CIMT offense must be completely or totally political for “purely political offense” exception to apply).
33. [^] See [22 CFR 40.21\(a\)\(6\)](#).
34. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period [[12 USCIS-PM F.5](#)], for further guidance on each bar to GMC.
35. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section A, One or More Crimes Involving Moral Turpitude [[12 USCIS-PM F.5\(A\)](#)].
36. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More [[12 USCIS-PM F.5\(B\)](#)].
37. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [[12 USCIS-PM F.5\(D\)](#)].
38. [^] See [8 CFR 316.10\(b\)\(3\)](#).
39. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period [[12 USCIS-PM F.5](#)], for further guidance on extenuating circumstances.
40. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section K, Failure to Support Dependents [[12 USCIS-PM F.5\(K\)](#)].
41. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section L, Adultery [[12 USCIS-PM F.5\(L\)](#)].
42. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts [[12 USCIS-PM F.5\(M\)](#)].
43. [^] See [INA 237](#) (“general classes of deportable aliens”).
44. [^] See [INA 318](#). See Part B, Naturalization Examination, Chapter 3, Naturalization Interview, Section B, Preliminary Review of Application [[12 USCIS-PM B.3\(B\)](#)].

Chapter 3 - Evidence and the Record

A. Applicant Testimony

Issues relevant to the good moral character (GMC) requirement may arise at any time during the naturalization interview. The officer's questions during the interview should elicit a complete record of any criminal, unlawful, or questionable activity in which the applicant has ever engaged regardless of whether that information eventually proves to be material to the GMC determination.

The officer should take into consideration the education level of the applicant and his or her knowledge of the English language. The officer may rephrase questions and supplement the inquiry with additional questions to better ensure that the applicant understands the proceedings. ^[1]

The officer must take a sworn statement from an applicant when the applicant admits committing an offense for which the applicant has never been formally charged, indicted, arrested or convicted. ^[2]

B. Court Dispositions

In general, an officer has the authority to request the applicant to provide a court disposition for any criminal offense committed in the United States or abroad to properly determine whether the applicant meets the GMC requirement. USCIS requires applicants to provide court dispositions certified by the pertinent jurisdiction for any offense committed during the statutory period. In addition, USCIS may request any additional evidence that may affect a determination regarding the applicant's GMC. The burden is on the applicant to show that an offense does not prevent him or her from establishing GMC.

An applicant is required to provide a certified court disposition for any arrest involving the following offenses and circumstances, regardless of whether the arrest resulted in a conviction:

- Arrest for criminal act committed during the statutory period;
- Arrest that occurred on or after November 29, 1990, that may be an aggravated felony; ^[3]
- Arrest for murder;
- Arrest for any offense that would render the applicant removable;
- Arrest for offenses outside the statutory period, if when combined with other offenses inside the statutory period, the offense would preclude the applicant from establishing GMC; and
- Arrest for crime where the applicant would still be on probation at the time of adjudication of the naturalization application or may have been incarcerated for 180 days during the statutory period.

These procedures are not intended to limit the discretion of any officer in requesting documentation that the officer needs to properly assess an applicant's GMC.

In cases where a court disposition or police record is not available, the applicant must provide original or certified confirmation that the record is not available from the applicable law enforcement agency or court.

C. Failure to Respond to Request for Evidence

In cases where the initial naturalization examination has already been conducted, the officer should adjudicate the naturalization application on the merits where the applicant fails to respond to a request for additional evidence. ^[4] The officer should not deny the application for lack of prosecution after the initial naturalization examination. ^[5]

Footnotes

1. ^[^] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2], for guidance on rephrasing questions.
2. ^[^] See 8 CFR 316.10(b)(2)(iv). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].
3. ^[^] See INA 101(a)(43). See Chapter 4, Permanent Bars to Good Moral Character (GMC), Section B, Aggravated Felony [12 USCIS-PM F.4(B)].
4. ^[^] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4], for guidance on decisions on the application, to include cases where the applicant fails to respond.
5. ^[^] See INA 335(e). See 8 CFR 335.7.

Chapter 4 - Permanent Bars to Good Moral Character (GMC)

A. Murder

An applicant who has been convicted of murder at any time is permanently barred from establishing good moral character (GMC) for naturalization. ^[1]

B. Aggravated Felony

In 1996, Congress expanded the definition and type of offense considered an “aggravated felony” in the immigration context. ^[2] An applicant who has been convicted of an “aggravated felony” on or after November 29, 1990, is permanently barred from establishing GMC for naturalization. ^[3]

While an applicant who has been convicted of an aggravated felony prior to November 29, 1990, is not permanently barred from naturalization, the officer should consider the seriousness of the underlying offense (aggravated felony) along with the applicant's present moral character in determining whether the applicant meets the GMC requirement. If the applicant's actions during the statutory period do not reflect a reform of his or her character, then the applicant may not be able to establish GMC. ^[4]

Some offenses require a minimum term of imprisonment of one year to qualify as an aggravated felony in the immigration context. The term of imprisonment is the period of confinement ordered by the court regardless of whether the court suspended the sentence. ^[5] For example, an offense involving theft or a crime of violence is considered an aggravated felony if the term of imprisonment ordered by the court is one year or more, even if the court suspended the entire sentence. ^[6]

The table below serves as a quick reference guide listing aggravated felonies in the immigration context. The officer should review the specific statutory language for further information.

“Aggravated Felonies” in the Immigration Context

Aggravated Felony	Citation

Aggravated Felony	Citation
Murder, Rape, or Sexual Abuse of a Minor	INA 101(a)(43)(A)
Illicit Trafficking in Controlled Substance	INA 101(a)(43)(B)
Illicit Trafficking in Firearms or Destructive Devices	INA 101(a)(43)(C)
Money Laundering Offenses (over \$10,000)	INA 101(a)(43)(D)
Explosive Materials and Firearms Offenses	INA 101(a)(43)(E)(i)–(iii)
Crime of Violence (imprisonment term of at least 1 yr)	INA 101(a)(43)(F)
Theft Offense (imprisonment term of at least 1 yr)	INA 101(a)(43)(G)
Demand for or Receipt of Ransom	INA 101(a)(43)(H)
Child Pornography Offense	INA 101(a)(43)(I)
Racketeering, Gambling (imprisonment term of at least 1 yr)	INA 101(a)(43)(J)
Prostitution Offenses (managing, transporting, trafficking)	INA 101(a)(43)(K)(i)–(iii)
Gathering or Transmitting Classified Information	INA 101(a)(43)(L)(i)–(iii)
Fraud or Deceit Offenses or Tax Evasion (over \$10,000)	INA 101(a)(43)(M)(i), (ii)
Alien Smuggling	INA 101(a)(43)(N)
Illegal Entry or Reentry by Removed Aggravated Felon	INA 101(a)(43)(O)
Passport, Document Fraud (imprisonment term of at least 1 yr)	INA 101(a)(43)(P)
Failure to Appear Sentence (offense punishable by at least 5 yrs)	INA 101(a)(43)(Q)

Aggravated Felony	Citation
Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles	INA 101(a)(43)(R)
Obstruction of Justice, Perjury, Bribery of Witness	INA 101(a)(43)(S)
Failure to Appear to Court (offense punishable by at least 2 yrs)	INA 101(a)(43)(T)
Attempt or Conspiracy to Commit an Aggravated Felony	INA 101(a)(43)(U)

C. Persecution, Genocide, Torture, or Severe Violations of Religious Freedom

The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in any of the activities addressed in this section.

1. Nazi Persecutions

An applicant who ordered, incited, assisted, or otherwise participated in the persecution of any person or persons in association with the Nazi Government of Germany or any government in an area occupied by or allied with the Nazi Government of Germany is permanently barred from establishing GMC for naturalization. ^[7]

2. Genocide

An applicant who has ordered, incited, assisted, or otherwise participated in genocide, at any time is permanently barred from establishing GMC for naturalization. ^[8] The criminal offense of “genocide” includes any of the following acts committed in time of peace or time of war with the specific intent to destroy in whole or in substantial part a national, ethnic, racial, or religious group as such:

- Killing members of that group;
- Causing serious bodily injury to members of that group;
- Causing the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- Subjecting the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- Imposing measures intended to prevent births within the group; or
- Transferring by force children of the group to another group. ^[9]

3. Torture or Extrajudicial Killings

An applicant who has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture or under color of law of any foreign nation any extrajudicial killing is permanently barred from establishing GMC for

naturalization. ^[10]

“Torture” is defined as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his or her custody or physical control. ^[11]

An “extrajudicial killing” is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized peoples. ^[12]

4. Particularly Severe Violations of Religious Freedom

An applicant who was responsible for, or directly carried out, particularly severe violations of religious freedom while serving as a foreign government official at any time is not able to establish GMC. ^[13] “Particularly severe violations of religious freedom” are defined as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to life, liberty, or the security of persons. ^[14]

Footnotes

1. ^[^] See 8 CFR 316.10(b)(1)(i).

2. ^[^] See INA 101(a)(43). See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208 (PDF), 110 Stat. 3009-546 (September 30, 1996).

3. ^[^] See 8 CFR 316.10(b)(1)(ii).

4. ^[^] See 8 CFR 316.10(a)(2).

5. ^[^] See INA 101(a)(43)(B). See *Matter of S-S* (PDF), 21 I&N Dec. 900 (BIA 1997).

6. ^[^] See INA 101(a)(43)(F) and INA 101(a)(43)(G).

7. ^[^] See INA 101(f)(9) and INA 212(a)(3)(E).

8. ^[^] See INA 101(f)(9) and INA 212(a)(3)(E). See 18 U.S.C. 2340 and 18 U.S.C. 1091(a).

9. ^[^] See 18 U.S.C. 1091. See Article II of the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (78 U.N.T.S. 278 [Dec. 9, 1948]).

10. ^[^] See INA 101(f)(9) and INA 212(a)(3)(E).

11. ^[^] See 18 U.S.C. 2340.

12. ^[^] See 28 U.S.C. 1350 (Note). See Section 3(a) of the Torture Victim Protection Act of 1991.

13. ^[^] See INA 101(f)(9) and INA 212(a)(2)(G).

14. ^[^] See 22 U.S.C. 6402.

Chapter 5 - Conditional Bars for Acts in Statutory Period

In addition to the permanent bars to good moral character (GMC), the Immigration and Nationality Act (INA) and corresponding regulations include bars to GMC that are not permanent in nature. USCIS refers to these bars as “conditional bars.” These bars are triggered by specific acts, offenses, activities, circumstances, or convictions within the statutory period for naturalization, including the period prior to filing and up to the time of the Oath of Allegiance. ^[1] An offense that does not fall within a permanent or conditional bar to GMC may nonetheless affect an applicant’s ability to establish GMC. ^[2]

With regard to bars to GMC requiring a conviction, the officer reviews the relevant federal or state law or regulation of the United States, or law or regulation of any foreign country to determine whether the applicant can establish GMC.

The table below serves as a quick reference guide on the general conditional bars to establishing GMC for acts occurring during the statutory period. The sections and paragraphs that follow the table provide further guidance on each bar and offense.

Conditional Bars to GMC for Acts Committed in Statutory Period

Offense	Citation	Description
One or More CIMTs	- INA 101(f)(3) 8 CFR 316.10(b)(2)(i), (iv)	Conviction or admission of one or more CIMTs (other than political offense), except for one petty offense
Aggregate Sentence of Five Yrs or More	- INA 101(f)(3) 8 CFR 316.10(b)(2)(ii), (iv)	Conviction of two or more offenses with combined sentence of five years or more (other than political offense)
Controlled Substance Violation	- INA 101(f)(3) 8 CFR 316.10(b)(2)(iii), (iv)	Violation of any law on controlled substances, except for simple possession of 30g or less of marijuana
Incarceration for 180 Days	- INA 101(f)(7) 8 CFR 316.10(b)(2)(v)	Incarceration for a total period of 180 days or more, except political offense and ensuing confinement abroad
False Testimony under Oath	- INA 101(f)(6) 8 CFR 316.10(b)(2)(vi)	False testimony for the purpose of obtaining any immigration benefit
Prostitution Offenses	- INA 101(f)(3) 8 CFR 316.10(b)(2)(vii)	Engaged in prostitution, attempted or procured to import prostitution, or received proceeds from prostitution

Offense	Citation	Description
Smuggling of a Person	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(viii)	Involved in smuggling of a person to enter or try to enter the United States in violation of law
Polygamy	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(ix)	Practiced or is practicing polygamy (the custom of having more than one spouse at the same time)
Gambling Offenses	• INA 101(f)(4)–(5) • 8 CFR 316.10(b)(2)(x)–(xi)	Two or more gambling offenses or derives income principally from illegal gambling activities
Habitual Drunkard	• INA 101(f)(1) • 8 CFR 316.10(b)(2)(xii)	Is or was a habitual drunkard
Failure to Support Dependents	• INA 101(f) • 8 CFR 316.10(b)(3)(i)	Willful failure or refusal to support dependents, unless extenuating circumstances are established
Adultery	• INA 101(f) • 8 CFR 316.10(b)(3)(ii)	Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established
Unlawful Acts	• INA 101(f) • 8 CFR 316.10(b)(3)(iii)	Unlawful act that adversely reflect upon GMC, unless extenuating circumstances are established

A. One or More Crimes Involving Moral Turpitude

1. Crime Involving Moral Turpitude (CIMT)

“Crime involving moral turpitude” (CIMT) is a term used in the immigration context that has no statutory definition. Extensive case law, however, has provided sufficient guidance on whether an offense rises to the level of a CIMT. The courts have held that

moral turpitude “refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.” [3]

Whether an offense is a CIMT is largely based on whether the offense involves willful conduct that is morally reprehensible and intrinsically wrong, the essence of which is a reckless, evil or malicious intent. The Attorney General has decreed that a finding of “moral turpitude” requires that the perpetrator committed a reprehensible act with some form of guilty knowledge. [4]

The officer should consider the nature of the offense in determining whether it is a CIMT. [5] In many cases, the CIMT determination depends on whether the relevant state statute includes one of the elements that involves moral turpitude. For example, an offense or crime may be a CIMT in one state, but a similarly named crime in another state may not be a CIMT because of differences in the definition of the crime or offense. The officer may rely on local USCIS counsel in cases where there is a question about whether a particular offense is a CIMT.

The table below serves as a quick reference guide on the general categories of CIMTs and their respective elements or determining factors. The paragraphs that follow the table provide further guidance on each category.

General Categories of Crimes Involving Moral Turpitude (CIMTs)

CIMT Category	Elements of Crime
Crimes against a person	Criminal intent or recklessness, or is defined as morally reprehensible by state (may include statutory rape)
Crimes against property	Involving fraud against the government or an individual (may include theft, forgery, robbery)
Sexual and family crimes	No one set of principles or elements; see further explanation below (may include spousal or child abuse)
Crimes against authority of the Government	Presence of fraud is the main determining factor (may include offering a bribe, counterfeiting)

Crimes Against a Person

Crimes against a person involve moral turpitude when the offense contains criminal intent or recklessness or when the crime is defined as morally reprehensible by state statute. Criminal intent or recklessness may be inferred from the presence of unjustified violence or the use of a dangerous weapon. For example, aggravated battery is usually, if not always, a CIMT. Simple assault and battery is not usually considered a CIMT.

Crimes Against Property

Moral turpitude attaches to any crime against property which involves fraud, whether it entails fraud against the government or against an individual. Certain crimes against property may require guilty knowledge or intent to permanently take property. Petty theft, grand theft, forgery, and robbery are CIMTs in some states.

Sexual and Family Crimes

It is difficult to discern a distinguishing set of principles that the courts apply to determine whether a particular offense involving sexual and family crimes is a CIMT. In some cases, the presence or absence of violence seems to be an important factor. The presence or absence of criminal intent may also be a determining factor. The CIMT determination depends upon state statutes and the controlling case law and must be considered on a case-by-case basis.

Offenses such as spousal or child abuse may rise to the level of a CIMT, while an offense involving a domestic simple assault generally does not. An offense relating to indecent exposure or abandonment of a minor child may or may not rise to the level of a CIMT. In general, if the person knew or should have known that the victim was a minor, any intentional sexual contact with a child involves moral turpitude. ^[6]

Crimes Against the Authority of the Government

The presence of fraud primarily determines the presence of moral turpitude in crimes against the authority of the government. Offering a bribe to a government official and offenses relating to counterfeiting are generally CIMTs. Offenses relating to possession of counterfeit securities without intent and contempt of court, however, are not generally CIMTs.

2. Committing One or More CIMTs in Statutory Period

An applicant who is convicted of or admits to committing one or more CIMTs during the statutory period cannot establish GMC for naturalization. ^[7] If the applicant has only been convicted of (or admits to) one CIMT, the CIMT must have been committed within the statutory period as well. In cases of multiple CIMTs, only the commission and conviction (or admission) of one CIMT needs to be within the statutory period.

Petty Offense Exception

An applicant who has committed only one CIMT that is considered a “petty offense,” such as petty theft, may be eligible for an exception if all of the following conditions are met:

- The “petty offense” is the only CIMT the applicant has ever committed;
- The sentence imposed for the offense was six months or less; and
- The maximum possible sentence for the offense does not exceed one year. ^[8]

The petty offense exception does not apply to an applicant who has been convicted of or who admits to committing more than one CIMT even if only one of the CIMTs was committed during the statutory period. An applicant who has committed more than one petty offense of which only one is a CIMT may be eligible for the petty offense exception. ^[9]

Purely Political Offense Exception

This bar to GMC does not apply to a conviction for a CIMT occurring outside of the United States for a purely political offense committed abroad. ^[10]

B. Aggregate Sentence of Five Years or More

An applicant may not establish GMC if he or she has been convicted of two or more offenses during the statutory period for which the combined, imposed sentence was five years or more. ^[11] The underlying offenses must have been committed within the statutory period.

Purely Political Offense Exception

The GMC bar for having two or more convictions does not apply if the convictions and resulting sentence or imprisonment of five years or more occurred outside of the United States for purely political offenses committed abroad. ^[12]

C. Controlled Substance Violation

1. Controlled Substance Violations

An applicant cannot establish good moral character (GMC) if he or she has violated any controlled substance-related federal or state law or regulation of the United States or law or regulation of any foreign country during the statutory period. ^[13] This includes conspiring to violate or aiding and abetting another person to violate such laws or regulations.

This conditional bar to establishing GMC applies to a conviction for such an offense or an admission to such an offense, or an admission to committing acts that constitute the essential elements of a violation of any controlled substance law. ^[14] Furthermore, a conviction or admission that the applicant has been a trafficker in a controlled substance, or benefited financially from a spouse or parent's trafficking is also a conditional bar. ^[15]

Controlled substance is defined in the Controlled Substances Act (CSA) as a "drug or other substance, or immediate precursor" that is included in the schedule or attachments in the CSA. ^[16] The substance underlying the applicant's state law conviction or admission must be listed in the CSA. ^[17] Possession of controlled substance related paraphernalia may also constitute an offense "relating to a controlled substance" and may preclude the applicant from establishing GMC. ^[18]

2. Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana

A number of states and the District of Columbia (D.C.) have enacted laws permitting "medical" ^[19] or "recreational" ^[20] use of marijuana. ^[21] Marijuana, however, remains classified as a "Schedule I" controlled substance under the federal CSA. ^[22] Schedule I substances have no accepted medical use pursuant to the CSA. ^[23] Classification of marijuana as a Schedule I controlled substance under federal law means that certain conduct involving marijuana, which is in violation of the CSA, continues to constitute a conditional bar to GMC for naturalization eligibility, even where such activity is not a criminal offense under state law. ^[24]

Such an offense under federal law may include, but is not limited to, possession, manufacture or production, or distribution or dispensing of marijuana. ^[25] For example, possession of marijuana for recreational or medical purposes or employment in the marijuana industry may constitute conduct that violates federal controlled substance laws. Depending on the specific facts of the case, these activities, whether established by a conviction or an admission by the applicant, may preclude a finding of GMC for the applicant during the statutory period. An admission must meet the long held requirements for a valid "admission" of an offense. ^[26] Note that even if an applicant does not have a conviction or make a valid admission to a marijuana-related offense, he or she may be unable to meet the burden of proof to show that he or she has not committed such an offense.

3. Exception for Single Offense of Simple Possession ^[27]

The conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana. ^[28] This exception is also applicable to paraphernalia offenses involving controlled substances as long as the paraphernalia offense is "related to" simple possession of 30 grams or less of marijuana. ^[29]

D. Imprisonment for 180 Days or More

An applicant cannot establish GMC if he or she is or was imprisoned for an aggregate period of 180 days or more during the statutory period based on a conviction. ^[30] This bar to GMC does not apply if the conviction resulted only in a sentence to a

period of probation with no sentence of incarceration for 180 days or more. This bar applies regardless of the reason for the conviction. For example, this bar still applies if the term of imprisonment results from a violation of probation rather than from the original sentence. ^[31]

The commission of the offense resulting in conviction and confinement does not need to have occurred during the statutory period for this bar to apply. Only the confinement needs to be within the statutory period for the applicant to be precluded from establishing GMC.

Purely Political Offense Exception

This bar to GMC does not apply to a conviction and resulting confinement of 180 days or more occurring outside of the United States for a purely political offense committed abroad. ^[32]

E. False Testimony

1. False Testimony in Statutory Period

An applicant who gives false testimony to obtain any immigration benefit during the statutory period cannot establish GMC. ^[33] False testimony occurs when the applicant deliberately intends to deceive the U.S. Government while under oath in order to obtain an immigration benefit. This holds true regardless of whether the information provided in the false testimony would have impacted the applicant's eligibility. The statute does not require that the benefit be obtained, only that the false testimony is given in an attempt to obtain the benefit. ^[34]

While the most common occurrence of false testimony is failure to disclose a criminal or other adverse record, false testimony can occur in other areas. False testimony may include, but is not limited to, facts about lawful admission, absences, residence, marital status or infidelity, employment, organizational membership, or tax filing information.

2. Three Elements of False Testimony

There are three elements of false testimony established by the Supreme Court that must exist for a naturalization application to be denied on false testimony grounds: ^[35]

Oral Statements

The "testimony" must be oral. False statements in a written application and falsified documents, whether or not under oath, do not constitute "testimony." ^[36] However, false information provided orally under oath to an officer in a question-and-answer statement relating to a written application is "testimony." ^[37] The oral statement must also be an affirmative misrepresentation. The Supreme Court makes it clear that there is no "false testimony" if facts are merely concealed, to include incomplete but otherwise truthful answers.

Oath

The oral statement must be made under oath in order to constitute false testimony. ^[38] Oral statements to officers that are not under oath do not constitute false testimony.

Subjective Intent to Obtain an Immigration Benefit

The applicant must be providing the false testimony in order to obtain an immigration benefit. False testimony for any other reason does not preclude the applicant from establishing GMC.

F. Prostitution

An applicant may not establish GMC if he or she has engaged in prostitution, procured or attempted to procure or to import prostitutes or persons for the purpose of prostitution, or received proceeds from prostitution during the statutory period. ^[39] The Board of Immigration Appeals (BIA) has held that to “engage in” prostitution, one must have engaged in a regular pattern of behavior or conduct. ^[40] The BIA has also determined that a single act of soliciting prostitution on one’s own behalf is not the same as procurement. ^[41]

G. Smuggling of a Person

An applicant is prohibited from establishing GMC if he or she is or was involved in the smuggling of a person or persons by encouraging, inducing, assisting, abetting or aiding any alien to enter or try to enter the United States in violation of law during the statutory period. ^[42]

Family Reunification Exception

This bar to GMC does not apply in certain cases where the applicant was involved in the smuggling of his or her spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law before May 5, 1988. ^[43]

H. Polygamy

An applicant who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC. ^[44] Polygamy is the custom of having more than one spouse at the same time. ^[45] The officer should review documents in the file and any documents the applicant brings to the interview for information about the applicant’s marital history, to include any visa petitions or applications, marriage and divorce certificates, and birth certificates of children.

I. Gambling

An applicant who has been convicted of committing two or more gambling offenses or who derives his or her income principally from illegal gambling activities during the statutory period is precluded from establishing GMC. ^[46] The gambling offenses must have been committed within the statutory period.

J. Habitual Drunkard

An applicant who is or was a habitual drunkard during the statutory period is precluded from establishing GMC. ^[47] Certain documents may reveal habitual drunkenness, to include divorce decrees, employment records, and arrest records. In addition, termination of employment, unexplained periods of unemployment, and arrests or multiple convictions for public intoxication or driving under the influence may be indicators that the applicant is or was a habitual drunkard.

K. Failure to Support Dependents

An applicant who willfully failed or refused to support his or her dependents during the statutory period cannot establish GMC unless the applicant establishes extenuating circumstances. ^[48] The GMC determination for failure to support dependents includes consideration of whether the applicant has complied with his or her child support obligations abroad in cases where it is relevant. ^[49]

Even if there is no court-ordered child support, the courts have concluded that parents have a moral and legal obligation to provide support for their minor children, and a willful failure to provide such support demonstrates that the individual lacks GMC. ^[50]

An applicant who fails to support dependents may lack GMC if he or she:

- Deserts a minor child; ^[51]
- Fails to pay any support; ^[52] or
- Obviously pays an insufficient amount. ^[53]

If the applicant has not complied with court-ordered child support and is in arrears, the applicant must identify the length of time of non-payment and the circumstances for the non-payment. An officer should review all court records regarding child support, and non-payment if applicable, in order to determine whether the applicant established GMC. ^[54]

Extenuating Circumstances

If the applicant shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination. ^[55]

The officer should consider the following circumstances:

- An applicant's unemployment and financial inability to pay the child support; ^[56]
- Cause of the unemployment and financial inability to support dependents;
- Evidence of a good-faith effort to reasonably provide for the support of the child; ^[57]
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated; ^[58] and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears. ^[59]

L. Adultery

An applicant who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC. ^[60]

Extenuating Circumstances

If the applicant shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination. ^[61] Extenuating circumstances may include instances where the applicant divorced his or her spouse but later the divorce was deemed invalid or the applicant and the spouse mutually separated and they were unable to obtain a divorce. ^[62]

M. Unlawful Acts

An applicant who has committed, was convicted, or imprisoned for an unlawful act or acts during the GMC period may be found to lack GMC. ^[63] This provision may apply to cases where an offense is not specifically listed in the other relevant GMC provisions but rises to the level of preventing the applicant from establishing GMC. ^[64] This provision does not require the applicant to have been charged or convicted of the offense.

An "unlawful act" includes any act that is against the law, illegal or against moral or ethical standards of the community. The fact that an act is a crime makes any commission thereof an unlawful act. ^[65]

Considering Extenuating Circumstances for Unlawful Acts

If the applicant shows extenuating circumstances, the commission of an unlawful act ^[66] or acts should not adversely affect the GMC determination. ^[67] An extenuating circumstance must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act. ^[68]

An officer may not consider conduct or equities (including evidence of reformation or rehabilitation) subsequent to the commission of the unlawful act as an extenuating circumstance. Consequences after the fact and future hardship are not considered extenuating circumstances. ^[69] If a jury or a court acquitted the applicant, he or she has not committed an unlawful act.

The factors considered in the determination are included in the denial notices in cases that result in an unfavorable determination.

Examples of Unlawful Acts

The following are examples of offenses that may be considered under the unlawful acts regulation. Each GMC determination is made on a case-by-case basis, to include determinations involving an “unlawful act” consideration.

1. Unlawful Voting and False Claim to U.S. Citizenship for Voting

An applicant may fail to show GMC if he or she engaged in unlawful voting or falsely claimed U.S. citizenship for voting. ^[70] In September 1996, Congress enacted legislation to address unlawful voting and false claims to U.S. citizenship for purposes of registering to vote or voting. ^[71]

- A noncitizen who is convicted of unlawful voting may be fined, imprisoned up to one year, or both, and subject to removal. ^[72]
- A noncitizen who is convicted of making a false claim to U.S. citizenship to register to vote or vote may be fined, imprisoned up to five years, or both, and subject to removal. ^[73]

The officer may request the applicant to provide a sworn statement regarding his or her testimony on illegal voting or false claim to citizenship for voting. The officer may also require an applicant to obtain any relevant evidence, such as the voter registration card, applicable voter registration form, and voting record from the relevant board of elections commission.

The table below serves as a quick reference guide on the effect on GMC determinations by unlawful voting or for false claims to U.S. citizenship. Further guidance is provided below.

Effect on GMC by Unlawful Voting or False Claim to U.S. Citizenship in Statutory Period

Offense	Penalty if Convicted	Effect on GMC		
		If Convicted	If Imprisoned	If Not Convicted
Unlawful Voting 18 U.S.C. 611	May be fined or imprisoned up to 1 yr, or both	Unlikely a CIMT and will not bar GMC by itself	Bars GMC if incarcerated for 180 days or more, or if sentence from convictions total 5 yrs or more	May bar GMC depending on totality of the circumstances, and on whether exceptions apply
False Claim to	May be fined or imprisoned up to	CIMT and will bar GMC (may		

Citizenship	5 yrs, or both	be a felony)		
18 U.S.C. 1015(f)				

Offenses without Convictions

An officer may find the applicant to lack GMC if the applicant was not convicted of unlawful voting or false claim to citizenship for voting. The officer should consider the totality of the circumstances and weigh all favorable and unfavorable factors of each case, to include whether the applicant qualifies for an exception.

An applicant may only have engaged in unlawful voting if his or her conduct was unlawful under the relevant federal, state, or local election law. The officer should consider the controlling statutes in cases involving potential unlawful voting offenses, because some local municipalities permit lawful permanent residents (LPRs) or other noncitizens to vote in municipal elections.

The officer does not need to focus on the underlying election law for false claims to U.S. citizenship. An applicant may be considered to have made a false claim to U.S. citizenship if the following conditions have been met on or after September 30, 1996.

- The applicant actually falsely represented himself or herself as a U.S. citizen; and
- The applicant made such misrepresentation in order to register to vote or for voting.

Convictions

A conviction for unlawful voting, by itself, generally should not bar an applicant from establishing GMC because the conviction is unlikely to be a CIMT. ^[74] On the other hand, making a false claim to U.S. citizenship in order to register to vote or to vote is a CIMT. An applicant who is convicted of a CIMT is generally precluded from establishing GMC.

A conviction for making a false claim to U.S. citizenship in order to register to vote or for voting is a felony and prevents an applicant from showing GMC unless an exception applies. ^[75]

Imprisonment

Unless an applicant qualifies for an exception, the applicant is barred from establishing GMC if:

- The applicant was convicted and imprisoned for 180 days or more during the statutory period for unlawful voting or for making a false claim to U.S. citizenship; ^[76] or
- The applicant has multiple convictions with an aggregate sentence of five years or more, which include conviction(s) for unlawful voting or making a false claim to U.S. citizenship. ^[77]

Exceptions

In 2000, Congress added exceptions for GMC determinations and removal of noncitizens for unlawful voting and false claims to U.S. citizenship. ^[78] The exceptions only apply to convictions that became final on or after October 30, 2000. ^[79]

An applicant qualifies for an exception if the following conditions are met:

- The applicant's natural or adoptive parents are or were U.S. citizens at the time of the violation; ^[80]
- The applicant permanently resided in the United States prior to reaching the age of 16 years; and
- The applicant "reasonably believed" at the time of the violation that he or she was a U.S. citizen.

To assess whether the applicant “reasonably believed” that he or she was a U.S. citizen at the time of the violation, the officer must consider the totality of the circumstances in the case, weighing such factors as the length of time the applicant resided in the United States and the age when the applicant became an LPR.

2. Failure to File Tax Returns or Pay Taxes

An applicant who fails to file tax returns or pay his or her taxes may be precluded from establishing GMC. LPRs are generally taxed in the same way as U.S. citizens. This means that their worldwide income may be subject to U.S. tax and may need to be reported on their U.S. tax return. The income of LPRs is subject to the same graduated tax rates that apply to U.S. citizens. ^[81]

An applicant who did not originally file tax returns or did not pay the appropriate taxes may be able to establish GMC by submitting a letter from the tax authority indicating that:

- The applicant has filed the appropriate forms and returns; and
- The applicant has paid the required taxes, or has made arrangements for payment.

If the officer uncovers inconsistencies in facts submitted on the application for naturalization and material elements on the applicant’s tax return, such as marital status, number of children, and employment, the applicant may be precluded from establishing GMC due to an attempt to defraud the Internal Revenue Service (IRS) by avoiding taxes. ^[82]

Footnotes

1. ^[^] See [INA 316\(a\)](#). See [8 CFR 316.10](#).

2. ^[^] See [INA 101\(f\)](#). See Chapter 1, Purpose and Background [[12 USCIS-PM F.1](#)].

3. ^[^] See *Medina v. United States*, 259 F.3d 220, 227 (4th Cir. 2001), quoting *Matter of Danesh (PDF)*, 19 I&N Dec. 669, 670 (BIA 1988). See *Matter of Perez-Contreras (PDF)*, 20 I&N Dec. 615, 618 (BIA 1992). See *Matter of Flores (PDF)*, 17 I&N Dec. 225 (BIA 1980) (and cases cited therein).

4. ^[^] See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687, 688, 706 (A.G. 2008).

5. ^[^] See *Matter of Esfandiary (PDF)*, 16 I&N Dec. 659 (BIA 1979).

6. ^[^] See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687 (A.G. 2008).

7. ^[^] See [INA 101\(f\)\(3\)](#). See [8 CFR 316.10\(b\)\(2\)\(i\)](#).

8. ^[^] See [INA 212\(a\)\(2\)\(A\)\(ii\)\(II\)](#).

9. ^[^] See *Matter of Garcia-Hernandez (PDF)*, 23 I&N Dec. 590, 594-95 (BIA 2003).

10. ^[^] See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [[12 USCIS-PM F.2\(F\)](#)].

11. ^[^] See [8 CFR 316.10\(b\)\(2\)\(ii\)](#).

12. ^[^] See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [[12 USCIS-PM F.2\(F\)](#)].

13. ^[^] See [21 U.S.C. 802](#) for federal definition of “controlled substance.” For good moral character provisions, see [INA 101\(f\)\(3\)](#), [INA 212\(a\)\(2\)\(A\)\(i\)\(II\)](#), and [INA 212\(a\)\(2\)\(C\)](#). Also, see [8 CFR 316.10\(b\)\(2\)\(iii\) and \(iv\)](#). Note that the conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana. See Subsection 3, Exception for Single Offense of Simple Possession [[12 USCIS-PM F.5\(C\)\(3\)](#)].

14. [^] An admission must comply with the requirements outlined in [Matter of K \(PDF\)](#), 7 I&N Dec 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense); See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].

15. [^] See [INA 101\(f\)\(3\)](#) and [INA 212\(a\)\(2\)\(C\)](#).

16. [^] See [21 U.S.C. 802\(6\)](#). The term “controlled substance” does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

17. [^] See [21 U.S.C. 802\(6\)](#). See also *Ruiz-Vidal v. Gonzales*, 473 F.3d 1072, 1078 (9th Cir. 2007); [Matter of Hernandez-Ponce \(PDF\)](#), 19 I&N Dec. 613, 616 (BIA 1988); [Matter of Mena \(PDF\)](#), 17 I&N Dec. 38, 39 (BIA 1979); [Matter of Paulus \(PDF\)](#), 11 I&N Dec. 274, 275-76 (BIA 1965).

18. [^] The paraphernalia offense must be connected to a drug defined in [21 U.S.C. 802](#). See *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015). Conviction for, or an admission to the essential elements of a trafficking offense may be considered a Crime Involving Moral Turpitude, which may trigger a bar to a finding of GMC. See [INA 101\(f\)\(3\)](#). See [8 CFR 316.10\(b\)\(2\)\(i\)](#). See Section A, One or More Crimes Involving Moral Turpitude [12 USCIS-PM F.5(A)].

19. [^] See, for example, Cal. Health & Safety Code section 11362.5; Colo. Rev. Stat. 44-11-101, *et. seq.*; Haw. Rev. Stat. sections 329-121 to 329-128; Me. Rev. Stat. Ann., Tit. 22, 2383-B(5); Nev. Rev. Stat. sections 453A.010-453A.810; Ore. Rev. Stat. sections 475.300-475.346.

20. [^] See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3), Colo Rev. State. Sections 44-12-101, *et. seq.* These laws are commonly known as permitting certain “recreational use” of marijuana and may include conduct such as use, possession, purchase, transport, and consumption. See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3).

21. [^] “Marihuana” is defined by the Controlled Substances Act (21 U.S.C. 802(16)):

(A) Subject to subparagraph (B), the term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B) The term “marihuana” does not include –

(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

22. [^] See [21 U.S.C. 812\(c\)](#).

23. [^] See [21 U.S.C. 812\(b\)\(1\)\(B\)](#).

24. [^] See [21 U.S.C. 812\(b\)\(1\)\(B\)](#). See [21 U.S.C. 844\(a\)](#).

25. [^] See [21 U.S.C. 841\(a\)](#) (“unlawful for any person knowingly or intentionally...to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.”). See [21 U.S.C. 844](#) (simple possession). See [21 U.S.C. 802\(15\)](#) (defining manufacture) and [8 U.S.C. 802\(22\)](#) (defining production).

26. [^] See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. See [Matter of K- \(PDF\)](#), 7 I&N Dec. 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense).

27. [^] The BIA defined “offense” in INA 212(h) as “refer[ring] to the specific unlawful acts that made the alien inadmissible, rather than to any generic crime.” *Matter of Martinez Espinoza* (PDF), 25 I&N Dec. 118, 124 (2009). Multiple offenses that are parts of a single act and are committed simultaneously may be considered a “single offense.” *Matter of Davey* (PDF), 26 I&N Dec. 37 (BIA 2012).
28. [^] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(iii). As explained in subsection 2, the decriminalization of certain activities involving marijuana in certain states and the District of Columbia (D.C.) does not affect the applicability of the controlled substances violation conditional bar to establishing GMC.
29. [^] See *Matter of Martinez Espinoza*, 25 I&N Dec. 118 (BIA 2009), abrogated on other grounds by *Mellouli v. Lynch*, 135 S.Ct. 1980 (U.S. 2015).
30. [^] See INA 101(f)(7). See 8 CFR 316.10(b)(2)(v).
31. [^] See *Matter of Piroglu* (PDF), 17 I&N Dec. 578 (BIA 1980).
32. [^] See Chapter 2, Adjudicative Factors, Section F, “Purely Political Offense” Exception [12 USCIS-PM F.2(F)].
33. [^] See INA 101(f)(6). See 8 CFR 316.10(b)(2)(vi).
34. [^] See *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999).
35. [^] See *Kungys v. United States*, 485 U.S. 759, 780-81 (1988).
36. [^] See *Matter of L-D-E*, 8 I&N Dec. 399 (BIA 1959).
37. [^] See *Matter of Ngan*, 10 I&N Dec. 725 (BIA 1964). See *Matter of G-L-T-*, 8 I&N Dec. 403 (BIA 1959).
38. [^] See *Matter of G-*, 6 I&N Dec. 208 (BIA 1954).
39. [^] See INA 101(f)(3) and INA 212(a)(2)(D)(i) and INA 212(a)(2)(D)(ii). See 8 CFR 316.10(b)(2)(vii).
40. [^] See *Matter of T*, 6 I&N Dec. 474 (BIA 1955).
41. [^] See *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).
42. [^] See INA 101(f)(3) and INA 212(a)(6)(E). See 8 CFR 316.10(b)(2)(viii).
43. [^] See INA 212(a)(6)(E)(ii). See Section 301 of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649, 104 Stat. 4978, 5029 (November 29, 1990).
44. [^] See INA 101(f)(3) and INA 212(a)(10)(A). See 8 CFR 316.10(b)(2)(ix).
45. [^] Polygamy is not the same as bigamy. Bigamy is the crime of marrying a person while being legally married to someone else. An applicant who has committed bigamy may be susceptible to a denial under the “unlawful acts” provision.
46. [^] See INA 101(f)(5). See 8 CFR 316.10(b)(2)(x) and 8 CFR 316.10(b)(2)(xi).
47. [^] See INA 101(f)(1). See 8 CFR 316.10(b)(2)(xii).
48. [^] See 8 CFR 316.10(b)(3)(i). See *Hague Convention on the International Recovery of Child Support*.
49. [^] See *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*.
50. [^] See *Brukiewicz v. Savoretti*, 211 F.2d 541 (5th Cir. 1954). See *Petition of Perdiak*, 162 F.Supp. 76 (S.D. Cal. 1958). See *Petition of Dobric*, 189F.Supp. 638 (D. Minn. 1960). See *In re Malaszenko*, 204 F.Supp. 744 (D.N.J. 1962) (and cases cited). See *Petition*

of *Dobric*, 189 F.Supp. 638 (D. Minn. 1960). See *In re Huymaier*, 345 F.Supp. 339 (E.D. Pa. 1972). See *In re Valad*, 465 F.Supp. 120 (E.D. Va. 1979).

51. [^] See *U.S. v. Harrison*, 180 F.2d 981 (9th Cir. 1950).

52. [^] See *In re Malaszenko*, 204 F.Supp. 744 (D. N.J. 1962). See *In re Mogus*, 73 F.Supp. 150 (W.D. Pa. 1947).

53. [^] See *In re Halas*, 274 F.Supp. 604 (E.D. Pa. 1967). See *Petition of Dobric*, 189 F.Supp. 638 (D. Minn. 1960).

54. [^] See 8 CFR 316.10(b)(3)(i).

55. [^] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

56. [^] See *In re Huymaier*, 345 F.Supp. 339 (E.D. Pa. 1972).

57. [^] See *Petition of Perdiak*, 162 F.Supp. 76 (S.D. Cal. 1958).

58. [^] See *In re Valad*, 465 F.Supp. 120 (E.D. Va. 1979).

59. [^] See *Etape v. Napolitano*, 664 F.Supp.2d 498, 517 (D. Md. 2009).

60. [^] See 8 CFR 316.10(b)(3)(ii).

61. [^] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

62. [^] See *In re Petition of Schroers*, 336 F.Supp. 1348 (S.D.N.Y. 1971). See *In re Petition of Russo*, 259 F.Supp. 230 (S.D.N.Y. 1966). See *Dickhoff v. Shaughnessy*, 142 F.Supp. 535 (S.D.N.Y. 1956).

63. [^] See INA 101(f). See 8 CFR 316.10(b)(3)(iii).

64. [^] See 8 CFR 316.10(b)(1) and 8 CFR 316.10(b)(2) (other relevant GMC regulations).

65. [^] See *U.S. v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005). See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir.2005). Collateral estoppel bars a defendant who is convicted in a criminal trial from contesting this conviction in a subsequent civil action with respect to issues necessarily decided in the criminal trial. See *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 157 (1963).

66. [^] See 8 CFR 316.10(b)(3)(iii).

67. [^] See INA 101(f). See 8 CFR 316.10(b)(3)(iii). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

68. [^] See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir. 2005) citing *Rico v. INS*, 262 F.Supp.2d 6 (E.D.N.Y. 2003).

69. [^] See *Jean-Baptiste v. United States*, 395 F.3d 1190 (11th Cir. 2005).

70. [^] See 18 U.S.C. 611 (voting by aliens). See 18 U.S.C. 1015(f) (false claim to U.S. citizenship).

71. [^] See INA 212(a)(10)(D)(i) and INA 237(a)(6)(A) (addressing unlawful voting). See INA 212(a)(6)(C)(ii)(I) and INA 237(a)(3)(D) (i) (addressing false claims to U.S. citizenship). These provisions were added by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 (PDF) (September 30, 1996).

72. [^] See 18 U.S.C. 611 (voting by aliens).

73. [^] See 18 U.S.C. 1015(f) (false claim to U.S. citizenship).

74. [^] See 18 U.S.C. 611 (voting by noncitizens). See 8 U.S.C. 1015(f) (false claim to U.S. citizenship).

75. [^] See INA 101(f)(3).

76. [^] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)]. See INA 101(f)(7).

77. [^] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More [12 USCIS-PM F.5(B)]. See INA 101(f)(3).

78. [^] See INA 101(f). See INA 212(a)(10)(D)(ii) and INA 237(a)(6)(B) (unlawful voting exception). See INA 212(a)(6)(C)(ii) (II) and INA 237(a)(3)(D)(i) (false claims to U.S. citizenship exception). These provisions were added by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000).

79. [^] See Section 201(d)(3) of the CCA, Pub. L. 106-395, 114 Stat. 1631, 1636 (October 30, 2000).

80. [^] As a matter of policy, USCIS has determined that the applicant's parents had to be U.S. citizens at the time of the illegal voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

81. [^] See IRS Publication 519, U.S. Tax Guide for Aliens (PDF).

82. [^] The following involve defrauding the United States by avoiding taxes (a CIMT). See *Matter of M*, 8 I&N Dec. 535 (BIA 1960). See *Matter of E*, 9 I&N Dec. 421 (BIA 1961). See *Carty v. Ashcroft*, 395 F.3d 1081 (9th Cir. 2005) (state failure to pay taxes; evasion is same as fraud). See *Wittgenstein v. INS*, 124 F.3d 1244 (10th Cir. 1997) (state crime).

Part G - Spouses of U.S. Citizens

Chapter 1 - Purpose and Background

A. Purpose

Spouses of United States citizens may be eligible for naturalization on the basis of their marriage under special provisions of the [Immigration and Nationality Act \(INA\)](#), to include overseas processing. In general, spouses of U.S. citizens are required to meet the general naturalization requirements. ^[1] The special provisions, however, provide modifications to those requirements.

The spouse of a U.S. citizen may naturalize through various provisions:

- The spouse of a U.S. citizen may naturalize under the general naturalization provisions for applicants who have resided in the United States for at least five years after becoming a lawful permanent resident (LPR). ^[2]
- The spouse of a U.S. citizen may naturalize after residing in the United States for three years after becoming an LPR, rather than five years as generally required. ^[3]
- The spouse of a U.S. citizen employed abroad who is working for the U.S. Government (including the armed forces) or other qualified entity may naturalize in the United States without any required period of residence or physical presence in the United States after becoming an LPR. ^[4]
- The spouse of a U.S. citizen who is serving abroad in the U.S. armed forces may naturalize abroad while residing with his or her spouse, and time spent abroad under these circumstances is considered residence and physical presence in the United States for purposes of the general five-year or three-year provision for spouses. ^[5]
- The surviving spouse of a U.S. citizen who dies during a period of honorable service in an active-duty status in the U.S. armed forces or was granted citizenship posthumously may naturalize in the United States without any required period of residence or physical presence after becoming an LPR. ^[6]

In addition, spouses, former spouses, or intended spouses of U.S. citizens may naturalize if they obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse. ^[7]

B. Background

The current naturalization provisions for spouses of U.S. citizens reflect legislation dating back to 1922. Congress considered it inefficient and undesirable to require the spouse of a U.S. citizen to wait five years before naturalization. ^[8] Congress made further amendments in 1934, to include a required period of three years of residence. In 1940, Congress incorporated provisions into the Nationality Act of 1940 that were substantially similar to those of the 1922 and 1934 acts. Today's statutes reflect Congress' long-standing aim to facilitate the naturalization process for spouses of U.S. citizens to provide spouses with the protections afforded by U.S. citizenship.

C. Table of General Provisions

The table below serves as a quick reference guide to the pertinent naturalization authorities for spouses of U.S. citizens. The chapters that follow the table provide further guidance.

General Provisions for Applicants filing as Spouses of U.S. Citizens

Provision	Marriage and Marital Union	Continuous Residence	Physical Presence	Eligibility for Overseas Processing
Spouses of U.S. Citizens Residing in United States INA 319(a)	Married and living in marital union for at least 3 years prior to filing	3 years after becoming an LPR	18 months during period of residence	Not applicable, except for spouses of military members who may complete entire process from abroad – INA 319(e)
Spouses of U.S. Citizens Employed Abroad INA 319(b)	Married prior to filing	Must be LPR at filing; no specified period required		Not applicable; all must be in U.S. for interview and Oath
Spouses of Deceased Service Members INA 319(d)	Must have been married and living in marital union at time of death	Must be LPR at filing; no specified period required		Not applicable; all must be in U.S. for interview and Oath

D. Legal Authorities

- [INA 316](#); [8 CFR 316](#) – General requirements for naturalization
- [INA 319](#); [8 CFR 319](#) – Spouses of U.S. citizens
- [INA 319\(e\)](#); [8 CFR 316.5\(b\)\(6\)](#) and [8 CFR 316.6](#) – Residence, physical presence, and overseas naturalization for certain spouses of military personnel
- [8 U.S.C. 1443a](#) – Overseas naturalization for service members and their family

Footnotes

1. ^[^] See [INA 316](#). See [8 CFR 316](#). See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].
2. ^[^] See [INA 316\(a\)](#). See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].
3. ^[^] See [INA 319\(a\)](#). See Chapter 3, Spouses of U.S. Citizens Residing in the United States [[12 USCIS-PM G.3](#)].
4. ^[^] See [INA 319\(b\)](#). See Chapter 4, Spouses of U.S. Citizens Employed Abroad [[12 USCIS-PM G.4](#)].
5. ^[^] See [INA 316\(a\)](#), [INA 319\(a\)](#), and [INA 319\(e\)](#). See [8 U.S.C. 1443a](#). See Part I, Military Members and their Families [[12 USCIS-PM I](#)].
6. ^[^] See [INA 319\(d\)](#). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [[12 USCIS-PM I.9\(B\)](#)].
7. ^[^] See [INA 319\(a\)](#). See Chapter 3, Spouses of U.S. Citizens Residing in the United States [[12 USCIS-PM G.3](#)].
8. ^[^] See H.R. REP. 67-1110, 2d Sess., p. 2. See Immigration Act of September 22, 1922.

Chapter 2 - Marriage and Marital Union for Naturalization

A. Validity of Marriage

1. Validity of Marriages in the United States or Abroad

Validity of Marriage for Immigration Purposes

The applicant must establish validity of his or her marriage. In general, the legal validity of a marriage is determined by the law of the place where the marriage was celebrated (“place-of-celebration rule”). Under this rule, a marriage is valid for immigration purposes in cases where the marriage is valid under the law of the jurisdiction in which it is performed. ^[1]

In all cases, the burden is on the applicant to establish that he or she has a valid marriage with his or her U.S. citizen spouse for the required period of time. ^[2] In most cases, a marriage certificate is prima facie evidence that the marriage was properly and legally performed.

USCIS does not recognize the following relationships as marriages, even if valid in the place of celebration:

- Polygamous marriages; ^[3]
- Certain marriages that violate the strong public policy of the state of residence of the couple; ^[4]

- Civil unions, domestic partnerships, or other such relationships not recognized as marriages in the place of celebration; ^[5]
- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated; ^[6] or
- Relationships entered into for purposes of evading immigration laws of the United States. ^[7]

Validity of Marriage Between Two Persons of the Same Sex

In June 2013, the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA), which had limited the terms “marriage” and “spouse” to opposite-sex marriages for purposes of all federal laws, was unconstitutional. ^[8] In accordance with the Supreme Court decision, USCIS determines the validity of a same-sex marriage by the place-of-celebration rule, just as USCIS applies this rule to determine the validity of an opposite-sex marriage. ^[9]

Therefore, in cases of marriage between persons of the same sex, officers will review the laws of the jurisdiction in which the marriage took place to determine if the jurisdiction recognizes same-sex marriages and the marriage otherwise is legally valid.

Since the place-of-celebration rule governs same-sex marriages in exactly the same way that it governs opposite-sex marriages, unless the marriage is polygamous or otherwise falls within an exception to the place-of-celebration rule as discussed above, the legal validity of a same-sex marriage is determined exclusively by the law of the jurisdiction where the marriage was celebrated.

If the same-sex couple now resides in a jurisdiction different from the one in which they celebrated their marriage, and that jurisdiction does not recognize same-sex marriages, the officer will look to the law of the state where the marriage was celebrated in order to determine the validity of the marriage. The domicile state’s laws and policies on same-sex marriages will not affect whether USCIS will recognize a marriage as valid.

Validity of Marriage in Cases Involving Transgender Persons

USCIS accepts the validity of a marriage in cases involving transgender persons if the state or local jurisdiction in which the marriage took place recognizes the marriage as a valid marriage, subject to the exceptions described above (such as polygamy). ^[10]

2. Validity of Foreign Divorces and Subsequent Remarriages

The validity of a divorce abroad depends on the interpretation of the divorce laws of the foreign country that granted the divorce and the reciprocity laws in the state of the United States where the applicant remarried. ^[11] If the divorce is not final under the foreign law, remarriage to a U.S. citizen is not valid for immigration purposes. ^[12]

An officer should ensure that the court issuing the divorce had jurisdiction to do so. ^[13] Foreign divorce laws may allow for a final decree even when the applicants are not residing in the country. Some states, however, do not recognize these foreign divorces and do not provide reciprocity. The applicant and his or her former spouse’s place of domicile at the time of the divorce is important in determining whether the court had jurisdiction.

3. Evidence

The burden is on the applicant to establish that he or she is in a valid marriage with his or her U.S. citizen spouse for the required period of time. ^[14] A spouse of a U.S. citizen must submit with the naturalization application an official civil record to establish that the marriage is legal and valid. If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record. ^[15]

B. Common Law Marriage

The concept of common law marriage presupposes an honest good-faith intention on the part of two persons, free to marry, to live together as husband and wife from the inception of the relationship. Some states recognize common law marriages and consider the parties to be married. ^[16] In order for a common law marriage to be valid for immigration purposes:

- The parties must live in that jurisdiction; and
- The parties must meet the qualifications for common law marriage for that jurisdiction.

Other states may recognize a common law marriage contracted in another state even if the recognizing state does not accept common law marriage as a means for its own residents to contract marriage.

USCIS recognizes common law marriages for purposes of naturalization if the marriage was valid and recognized by the state in which the marriage was established. ^[17] This applies even if the naturalization application is filed in a jurisdiction that does not recognize or has never recognized the principle of common law marriage.

The officer should review the laws of the relevant jurisdiction on common law marriages to determine whether the applicant and spouse should be considered to be married for purposes of naturalization and when the marriage commenced.

C. U.S. Citizenship from Time of Filing until Oath

In order to take advantage of the special naturalization provisions for spouses of U.S. citizens, the applicant's spouse must be and remain a U.S. citizen from the time of filing until the time the applicant takes the Oath of Allegiance. An applicant is ineligible for naturalization under these provisions if his or her spouse is not a U.S. citizen or loses U.S. citizenship status by denaturalization or expatriation prior to the applicant taking the Oath of Allegiance. ^[18]

D. Marital Union and Living in Marital Union

1. Married and Living in Marital Union

In general, all naturalization applicants filing on the basis of marriage to a U.S. citizen must continue to be the spouse of a U.S. citizen from the time of filing the naturalization application until the applicant takes the Oath of Allegiance. In addition, some spousal naturalization provisions require that the applicant "live in marital union" with his or her citizen spouse for at least 3 years immediately preceding the date of filing the naturalization application. ^[19] USCIS considers an applicant to "live in marital union" with his or her citizen spouse if the applicant and the citizen actually reside together.

An applicant does not meet the married and "living in marital union" requirements if:

- The applicant is not residing with his or her U.S. citizen spouse at the time of filing or during the time in which the applicant is required to be living in marital union with the U.S. citizen spouse; or
- The marital relationship is terminated at any time prior to taking the Oath of Allegiance.

If the applicant ceases to reside with his or her U.S. citizen spouse between the time of filing and the time at which the applicant takes the Oath of Allegiance, the officer should consider whether the applicant met the living in marital union requirement at the time of filing.

There are limited circumstances where an applicant may be able to establish that he or she is living in marital union with his or her citizen spouse even though the applicant does not actually reside with the citizen spouse. ^[20]

In all cases where it is applicable, the burden is on the applicant to establish that he or she has lived in marital union with his or her U.S. citizen spouse for the required period of time. ^[21]

2. Loss of Marital Union due to Death, Divorce, or Expatriation

Death of U.S. Citizen Spouse

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen dies any time prior to the applicant taking the Oath of Allegiance. ^[22] However, if the applicant is the surviving spouse of a U.S. citizen who died during a period of honorable service in an active-duty status in the U.S. armed forces, the applicant may be eligible for naturalization based on his or her marriage under a special provision. ^[23]

Divorce or Annulment

A person's marital status may be terminated by a judicial divorce or by an annulment. A divorce or annulment breaks the marital relationship. The applicant is no longer the spouse of a U.S. citizen if the marriage is terminated by a divorce or annulment. Accordingly, such an applicant is ineligible to naturalize as the spouse of a U.S. citizen if the divorce or annulment occurs before or after the naturalization application is filed. ^[24]

The result of annulment is to declare a marriage null and void from its inception. An annulment is usually retroactive, meaning that the marriage is considered to be invalid from the beginning. A court's jurisdiction to grant an annulment is set forth in the various divorce statutes and generally requires residence or domicile of the parties in that jurisdiction. When a marriage has been annulled, it is documented by a court order or decree.

In contrast, the effect of a judicial divorce is to terminate the status as of the date on which the court entered the final decree of divorce. When a marriage is terminated by divorce, the termination is entered by the court with jurisdiction and is documented by a copy of the final divorce decree. USCIS determines the validity of a divorce by examining whether the state or country which granted the divorce properly assumed jurisdiction over the divorce proceeding. ^[25] USCIS also determines whether the parties followed the proper legal formalities required by the state or country in which the divorce was obtained to determine if the divorce is legally binding. ^[26] In all cases, the divorce must be final.

An applicant's ineligibility for naturalization as the spouse of a U.S. citizen due to the death of the citizen spouse or to divorce is not cured by the subsequent marriage to another U.S. citizen.

Expatriation of U.S. Citizen Spouse

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen has expatriated any time prior to the applicant taking the Oath of Allegiance for naturalization. ^[27]

3. Failure to be Living in Marital Union due to Separation

Legal Separation

A legal separation is a formal process by which the rights of a married couple are altered by a judicial decree but without eliminating the marital relationship. ^[28] In most cases, after a legal separation, the applicant will no longer be actually residing with his or her U.S. citizen spouse, and therefore will not be living in marital union with the U.S. citizen spouse.

However, if the applicant and the U.S. citizen spouse continue to reside in the same household, the marital relationship has been altered to such an extent by the legal separation that they will not be considered to be living together in marital union.

Accordingly, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are legally separated. ^[29] An applicant who is legally separated from his or her spouse during the time period in which he or she

must be living in marital union is ineligible to naturalize as the spouse of a U.S. citizen.

Informal Separation

In many instances, spouses will separate without obtaining a judicial order altering the marital relationship or formalizing the separation. An applicant who is no longer actually residing with his or her U.S. citizen spouse following an informal separation is not living in marital union with the U.S. citizen spouse.

However, if the U.S. citizen spouse and the applicant continue to reside in the same household, an officer must determine on a case-by-case basis whether an informal separation before the filing of the naturalization application renders an applicant ineligible for naturalization as the spouse of a U.S. citizen. ^[30] Under these circumstances, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are informally separated if such separation suggests the possibility of marital disunity.

Factors to consider in making this determination may include:

- The length of separation;
- Whether the applicant and his or her spouse continue to support each other and their children (if any) during the separation;
- Whether the spouses intend to separate permanently; and
- Whether either spouse becomes involved in a relationship with others during the separation. ^[31]

Involuntary Separation

Under very limited circumstances and where there is no indication of marital disunity, an applicant may be able to establish that he or she is living in marital union with his or her U.S. citizen spouse even though the applicant does not actually reside with citizen spouse. An applicant is not made ineligible for naturalization for not living in marital union if the separation is due to circumstances beyond his or her control, such as: ^[32]

- Service in the U.S. armed forces; or
- Required travel or relocation for employment.

USCIS does not consider incarceration during the time of required living in marital union to be an involuntary separation.

Footnotes

1. ^[^] See, for example, *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005); *Matter of Da Silva*, 15 I&N Dec. 778 (BIA 1976); *Matter of H-*, 9 I&N Dec 640 (BIA 1962).

2. ^[^] See 8 CFR 319.1(b)(1).

3. ^[^] See *Matter of H-*, 9 I&N Dec. 640 (BIA 1962). Polygamous marriages are not recognized as a matter of federal public policy. However, note that battered spouses who had a bigamous marriage may still be eligible for naturalization. See INA 204(a)(1)(A)(iii)(II) and INA 319(a).

4. ^[^] This is a narrow exception that under BIA case law generally has been limited to situations, such as certain incestuous marriages, where the marriage violates the criminal law of the state of residence. See *Matter of Da Silva*, 15 I&N Dec 778 (BIA 1976); *Matter of Zappia*, 12 I&N Dec. 439 (BIA 1967); *Matter of Hirabayashi*, 10 I&N Dec 722 (BIA 1964); *Matter of M*, 3 I&N Dec. 465 (BIA 1948). Note that as discussed below, if the state of residence has a public policy refusing to recognize same-sex marriage,

this will not result in a same-sex marriage being considered invalid for immigration purposes if it is valid in the place of celebration.

5. [^] If the relationship is treated as a marriage, however, such as a “common law marriage,” it will be recognized.
6. [^] See [INA 101\(a\)\(35\)](#).
7. [^] See *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975); *Matter of M-*, 8 I&N Dec. 217 (BIA 1958).
8. [^] See *United States v. Windsor*, 133 S. Ct. 2675 (2013). See [1 U.S.C. 7](#) (section 3 of DOMA). See the Defense of Marriage Act (DOMA), [Pub.L. 104-199 \(PDF\)](#), 110 Stat. 2419 (September 21, 1996).
9. [^] Prior to the Supreme Court decision, *United States v. Windsor*, USCIS did not recognize relationships between two persons of the same sex as marriages or intended marriages in accordance with section 3 of DOMA.
10. [^] Officers should consult OCC in cases where the marriage was originally an opposite-sex marriage celebrated in a state that does not recognize same-sex marriage, and one of the spouses changed gender after the marriage.
11. [^] See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983). See *Matter of Ma*, 15 I&N Dec. 70 (BIA 1974).
12. [^] See *Matter of Ma*, 15 I&N Dec. 70, 71 (BIA 1974). See *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974).
13. [^] For example, law requires both parties to be domiciled in the country at the time of divorce, but that was not the case. See *Matter of Hosseinian*, 19 I&N Dec. 453 (BIA 1987). See *Matter of Weaver*, 16 I&N Dec. 730 (BIA 1979). See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983).
14. [^] See [8 CFR 319.1\(b\)\(1\)](#).
15. [^] See [8 CFR 103.2\(b\)](#). See [8 CFR 319.1](#) and [8 CFR 319.2](#).
16. [^] For purposes of determining whether a common law marriage exists, see statutes and case law for the appropriate jurisdiction.
17. [^] The date a common law marriage commences is determined by laws of the relevant jurisdiction.
18. [^] See [8 CFR 319.1\(b\)\(2\)\(i\)](#) and [8 CFR 319.2\(c\)](#).
19. [^] See [INA 319\(a\)](#). See [8 CFR 319.1\(a\)\(3\)](#) and [8 CFR 319.1\(b\)](#).
20. [^] See [8 CFR 319.1\(b\)\(2\)\(ii\)\(C\)](#) and guidance below on “Involuntary Separation” under the paragraph “Failure to be Living in Marital Union due to Separation.” See Volume 12, Citizenship and Naturalization, Part G, Spouses of U.S. Citizens, Chapter 2, Marriage and Marital Union for Naturalization, Section 3, Failure to be Living In Marital Union due to Separation [[12 USCIS-PM G.2\(D\)\(3\)](#)].
21. [^] See [8 CFR 319.1\(b\)\(1\)](#).
22. [^] See [8 CFR 319.1\(b\)\(2\)\(i\)](#). See [8 CFR 319.2\(c\)](#).
23. [^] See [INA 319\(d\)](#). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section D, Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d)) [[12 USCIS-PM I.9\(D\)](#)].
24. [^] See [8 CFR 319.1\(b\)\(2\)\(i\)](#) and [8 CFR 319.2\(c\)](#).
25. [^] See *Matter of Hussein*, 15 I&N Dec. 736 (BIA 1976).
26. [^] See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983).

27. [^] See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c). See INA 337.

28. [^] See for example, *Nehme v. INS*, 252 F.3d 415, 422-27 (5th Cir. 2001) (Discussing legal separation for purposes of derivation of citizenship).

29. [^] See 8 CFR 319.1(b)(2)(ii)(A).

30. [^] See 8 CFR 319.1(b)(2)(ii)(B).

31. [^] See *U.S. v. Moses*, 94 F. 3d 182 (5th Cir. 1996).

32. [^] See 8 CFR 319.1(b)(2)(ii)(C).

Chapter 3 - Spouses of U.S. Citizens Residing in the United States

A. General Eligibility for Spouses Residing in the United States

The spouse of a U.S. citizen who resides in the United States may be eligible for naturalization on the basis of his or her marriage.^[1] The spouse must have continuously resided in the United States after becoming an LPR for at least three years immediately preceding the date of filing the naturalization application and must have lived in marital union with his or her citizen spouse for at least those three years.

The spouse must establish that he or she meets the following criteria in order to qualify:

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Living in marital union with the citizen spouse for at least three years preceding the time of filing the naturalization application (the citizen spouse must have been a U.S. citizen for those three years).
- Continuous residence in the United States as an LPR for at least three years immediately preceding the date of filing the application and up to the time of naturalization.
- Physically present in the United States for at least 18 months (548 days) out of the three years immediately preceding the date of filing the application.
- Living within the state or USCIS district with jurisdiction over the applicant's place of residence for at least three months prior to the date of filing.
- Demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage.
- Demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics).
- Demonstrate good moral character for at least three years prior to filing the application until the time of naturalization.
- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the United States during all relevant periods under the law.

The spouse of a U.S. citizen residing in the United States may also naturalize under the general naturalization provisions for applicants who have been LPRs for at least five years.^[2] In addition, in some instances the spouse of a member of the U.S.

armed forces applying pursuant to INA 319(a) or INA 316(a) may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization. ^[3]

B. Living in Marital Union for Spouses Residing in the United States

The spouse of a U.S. citizen residing in the United States must have been living in marital union with his or her citizen spouse for at least three years immediately preceding the time of filing the naturalization application. This provision requires that the spouse live in marital union with the citizen spouse during the entire period of three years before filing. ^[4]

However, the statute does not require living in marital union for the period between the date of filing the application and the date of naturalization (date applicant takes the Oath of Allegiance). The corresponding regulation conflicts with the statute in stating that the spouse must have been married with his or her citizen spouse for at least three years at the time of the examination on the application, and not at the time of filing.

USCIS follows the language of the statute in requiring marital union only up until the time of filing. ^[5] Accordingly, only the existence of a legally valid marriage is required from the date of filing the application until the time of the applicant's naturalization. ^[6]

A person who was a spouse subjected to battery or extreme cruelty by their citizen spouse is exempt from the marital union requirement. ^[7]

C. Three Years of Continuous Residence

The spouse of a U.S. citizen residing in the United States must have continuously resided in the United States as an LPR for at least three years immediately preceding the date of the filing the application and up to the time of the Oath of Allegiance. Continuous residence involves the applicant maintaining a permanent dwelling place in the United States for the required period of time. The residence is the applicant's actual dwelling place regardless of his or her intentions to claim it as his or her residence. ^[8]

D. Eighteen Months of Physical Presence

The spouse must have been physically present in the United States for at least 18 months (548 days) out of the 3 years immediately preceding the date of filing the application. ^[9] Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization. ^[10]

E. 90-Day Early Filing Provision (INA 334)

The spouse of a U.S. citizen filing for naturalization on the basis of his or her marriage may file the naturalization application up to 90 days before the date he or she would first meet the required three-year period of continuous residence. ^[11] Although an applicant may file early and may be interviewed during that period, the applicant is not eligible for naturalization until he or she has satisfied the required three-year period of residence. All other requirements for naturalization must be met at the time of filing.

USCIS calculates the early filing period by counting back 90 days from the day before the applicant would have first satisfied the continuous residence requirement for naturalization. For example, if the day the applicant would satisfy the three-year continuous residence requirement for the first time is on June 10, 2010, USCIS will begin to calculate the 90-day early filing period from June 9, 2010.

In cases where an applicant has filed early and the required three-month period of residence in a state or Service District falls within the required three-year period of continuous residence, jurisdiction is based on the three-month period immediately preceding the examination on the application (interview). ^[12]

F. Eligibility for Persons Subjected to Battery or Extreme Cruelty

1. General Eligibility for Persons Subjected to Battery or Extreme Cruelty

On October 28, 2000, Congress expanded the provision regarding naturalization based on marriage to a U.S. citizen for persons who reside in the United States. The amendments added that any person who obtained LPR status as the spouse, former spouse, or intended spouse ^[13] of a U.S. citizen who subjected him or her to battery or extreme cruelty may naturalize under this provision. ^[14]

Specifically, the person must have obtained LPR status based on:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning spouse of an abusive U.S. citizen;
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning spouse of an abusive LPR, if the abusive spouse naturalizes after the petition has been approved; ^[15] or
- Special rule cancellation of removal for battered spouses and children in cases where the applicant was the spouse, or intended spouse of a U.S. citizen, who subjected him or her to battery or extreme cruelty. ^[16]

A person is also eligible for naturalization under the spousal naturalization provisions if he or she had the conditions on his or her residence removed based on:

- An approved battery or extreme cruelty waiver of the joint filing requirement for Petition to Remove Conditions on Residence (Form I-751), for a conditional permanent resident, if the marriage was entered into in good faith and the spouse was subjected to battery or extreme cruelty by the petitioning citizen or LPR spouse. ^[17]

2. Exception to Marital Union and U.S. Citizenship Requirements for Spouses

A person subjected to battery or extreme cruelty by his or her citizen spouse is exempt from the following naturalization requirements:

- Living in marital union with the citizen spouse for at least 3 years at the time of filing the naturalization application; and
- Applicant's spouse has U.S. citizenship from the time of filing until the time the applicant takes the Oath of Allegiance. ^[18]

The spouse must meet all other eligibility requirements for naturalization based on marriage to a U.S. citizen. ^[19]

G. Application and Evidence

1. Application for Naturalization (Form N-400)

To apply for naturalization, the applicant must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee. ^[20] The applicant should check the appropriate eligibility option on the naturalization application to indicate that he or she is applying on the basis of marriage to a U.S. citizen.

2. Evidence of Spouse's United States Citizenship

Under this provision, the burden is on the applicant to establish that he or she is married and living in marital union with a U.S. citizen. ^[21] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse. ^[22]

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record. ^[23]

Footnotes

1. ^[^] See [INA 319\(a\)](#). See [8 CFR 319.1](#).

2. ^[^] See [INA 316\(a\)](#). See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].

3. ^[^] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [[12 USCIS-PM I.9](#)].

4. ^[^] There are limited circumstances where an applicant may be able to establish that he or she is living in marital union with the citizen spouse even though the applicant does not actually reside with the citizen spouse. See Chapter 2, Marriage and Marital Union for Naturalization, Section D, Marital Union and Living in Marital Union [[12 USCIS-PM G.2\(D\)](#)].

5. ^[^] See [8 CFR 319.1\(a\)\(3\)](#). See *Ali v. Smith*, 39 F. Supp. 2d 1254. (W.D. Wash. 1999).

6. ^[^] See [INA 319\(a\)](#). See *In re Petition of Olan*, 257 F. Supp. 884 (1966). See *Petition of Yao Quinn Lee*, 480 F.2d 673 (C.A. 2, 1973). See Chapter 2, Marriage and Marital Union for Naturalization [[12 USCIS-PM G.2](#)].

7. ^[^] See [INA 319\(a\)](#). See Section F, Eligibility for Persons Subjected to Battery or Extreme Cruelty [[12 USCIS-PM G.3\(F\)](#)].

8. ^[^] See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [[12 USCIS-PM D.3](#)]. See [8 CFR 316.5\(a\)](#).

9. ^[^] See [8 CFR 319.1\(a\)\(2\)](#) and [8 CFR 319.1\(a\)\(4\)](#). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [[12 USCIS-PM D.5](#)].

10. ^[^] See [8 CFR 319.1\(a\)\(2\)](#) and [8 CFR 319.1\(a\)\(4\)](#). See Part D, General Naturalization Requirements, Chapter 4, Physical Presence [[12 USCIS-PM D.4](#)].

11. ^[^] See [INA 334\(a\)](#). See [8 CFR 334.2\(b\)](#).

12. ^[^] See [8 CFR 316.2\(a\)\(5\)](#).

13. ^[^] See [INA 101\(a\)\(50\)](#) (definition of intended spouse).

14. [^] See [INA 319\(a\)](#). See the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386](#) (October 28, 2000). See Part H, Children of U.S. Citizens, Chapter 6, Special Provisions for the Naturalization of Children [[12 USCIS-PM H.6](#)].
15. [^] See [INA 204\(a\)\(1\)\(B\)\(ii\)](#).
16. [^] See [INA 240A\(b\)\(2\)\(A\)\(i\)\(I\)](#) or [INA 240A\(b\)\(2\)\(A\)\(i\)\(III\)](#).
17. [^] See [INA 216\(c\)\(4\)\(C\)](#).
18. [^] See [8 CFR 319.1\(b\)\(2\)\(i\)](#) and [8 CFR 319.2\(c\)](#). See [INA 319\(a\)](#). See [INA 204\(a\)\(1\)\(A\)\(iii\)\(II\)\(aa\)\(CC\)\(bbb\)](#). See [INA 204\(a\)\(1\)\(A\)\(iv\)](#).
19. [^] See [INA 319\(a\)](#). See [8 CFR 319.2\(c\)](#).
20. [^] See [8 CFR 319.11\(a\)](#). See [8 CFR 103.7\(b\)\(1\)](#).
21. [^] See Chapter 2, Marriage and Marital Union for Naturalization [[12 USCIS-PM G.2](#)].
22. [^] See [INA 319\(a\)](#). See [8 CFR 319.1\(a\)](#).
23. [^] See [8 CFR 103.2\(b\)\(5\)](#). See [8 CFR 319.1](#) and [8 CFR 319.2](#).

Chapter 4 - Spouses of U.S. Citizens Employed Abroad

A. General Eligibility for Spouses of U.S. Citizens Employed Abroad

The spouse of a U.S. citizen who is “regularly stationed abroad” in qualifying employment may be eligible for naturalization on the basis of their marriage. ^[1] Spouses otherwise eligible under this provision are exempt from the continuous residence and physical presence requirements for naturalization. ^[2]

The spouse must establish that he or she meets the following criteria in order to qualify:

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Married to a U.S. citizen spouse regularly stationed abroad in qualifying employment for at least one year.
- Has a good faith intent to reside abroad with the U.S. citizen spouse upon naturalization and to reside in the United States immediately upon the citizen spouse’s termination of employment abroad.
- Establish that he or she will depart to join the citizen spouse within 30 to 45 days after the date of naturalization. ^[3]
- Understanding of basic English, including the ability to read, write, and speak.
- Knowledge of basic U.S. history and government.
- Demonstrate good moral character for at least three years prior to filing the application until the time of naturalization. ^[4]
- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the U.S. during all relevant periods under the law.

The period for showing good moral character (GMC) for spouses employed abroad is not specifically stated in the corresponding statute and regulation. ^[5] USCIS follows the statutory three-year GMC period preceding filing (until naturalization) specified for

spouses of U.S. citizens residing in the United States. ^[6]

In general, the spouse is required to be present in the United States after admission as an LPR for his or her naturalization examination and for taking the Oath of Allegiance for naturalization. ^[7]

A spouse of a member of the U.S. military applying under this provision may also qualify for naturalization under INA 316(a) or INA 319(a), which could permit him or her to be eligible for overseas processing of the naturalization application, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization. ^[8]

B. Marital Union for Spouses Employed Abroad

The spouse of a U.S. citizen employed abroad is not required to have lived in marital union with his or her citizen spouse. ^[9] The spouse only needs to show that he or she is in a legally valid marriage with a U.S. citizen from the date of filing the application until the time of the Oath of Allegiance. ^[10] Such spouses who are not living in marital union still have to show intent to reside abroad with the U.S. citizen spouse abroad and take up residence in the United States upon termination of the qualifying employment abroad. ^[11]

C. Qualifying Employment Abroad

Qualifying employment abroad means to be under employment contract or orders and to assume the duties of employment in any of following entities or positions: ^[12]

- Government of the United States (including the U.S. armed forces);
- American institution of research recognized as such by the Attorney General; ^[13]
- American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof;
- Public international organization in which the United States participates by treaty or statute; ^[14]
- Authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States; or
- Engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States.

D. Calculating Period “Regularly Stationed Abroad”

A person applying for naturalization based on marriage to a U.S. citizen employed abroad must establish that his or her citizen spouse is regularly stationed abroad. A citizen spouse is regularly stationed abroad if he or she engages in qualifying employment abroad for at least one year. ^[15] Both the statute and its corresponding regulation are silent on when to begin calculating the specified period regularly stationed abroad. ^[16]

As a matter of policy, USCIS calculates the period of qualifying employment abroad from the time the applicant spouse properly files for naturalization. ^[17] However, this policy does not alter the requirement that the applicant must intend to reside abroad with the U.S. citizen spouse after naturalization. ^[18]

Accordingly, the spouse of the U.S. citizen employed abroad may naturalize if his or her U.S. citizen’s qualifying employment abroad is scheduled to last for at least one year at the time of filing, even if less than one year of such employment remains at

the time of the naturalization interview or Oath of Allegiance provided that the spouse remains employed abroad at the time of naturalization.

The burden is on the applicant to establish that his or her U.S. citizen's qualifying employment abroad is scheduled to last for at least one year from the time of filing.

E. Exception to Continuous Residence and Physical Presence Requirements

Spouses of U.S. citizens who are regularly stationed abroad under qualifying employment may be eligible to file for naturalization immediately after obtaining LPR status in the United States. Such spouses are not required to have any prior period of residence or specified period of physical presence within the United States in order to qualify for naturalization. ^[19]

F. In the United States for Examination and Oath of Allegiance

A spouse of a U.S. citizen who is regularly stationed abroad under qualifying employment is required to be in the United States pursuant to an admission as an LPR for the naturalization examination and the Oath of Allegiance for naturalization. ^[20]

G. Application and Evidence

Application for Naturalization (Form N-400)

To apply for naturalization, the spouse of a U.S. citizen employed abroad must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee. ^[21] The applicant should check the "other" eligibility option on the naturalization application and indicate that he or she is applying pursuant to INA 319(b) on the basis of marriage to a U.S. citizen who is or will be regularly stationed abroad.

Evidence of Spouse's United States Citizenship

Under this provision, the burden is on the applicant to establish that he or she is married to a U.S. citizen. ^[22] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse. ^[23]

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record. ^[24]

Evidence of Citizen Spouse's Employment Abroad

Along with his or her naturalization application, the applicant must submit evidence demonstrating the spouse's qualifying employment abroad. ^[25]

Such evidence may include:

- The name of the employer and either the nature of the employer's business or the ministerial, religious, or missionary activity in which the employer is engaged;
- Whether the employing entity is owned in whole or in part by United States interests;
- Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;
- The nature of the activity in which the citizen spouse is engaged; and
- The anticipated period of employment abroad.

Evidence of Applicant's Intent to Reside Abroad with Citizen Spouse and Return to the United States Upon Termination of Qualifying Employment

Along with his or her naturalization application, an applicant for naturalization under INA 319(b) must submit a statement describing his or her intent to reside abroad with the citizen spouse and his or her intent to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse. ^[26]

Footnotes

1. ^[^] See [INA 319\(b\)](#). See [8 CFR 319.2](#). See Section C, Qualifying Employment Abroad [[12 USCIS-PM G.4\(C\)](#)].
2. ^[^] See [INA 319\(b\)](#). See [8 CFR 319.2\(a\)\(6\)](#).
3. ^[^] See [8 CFR 319.2\(b\)](#).
4. ^[^] See [INA 319\(a\)](#). See [8 CFR 319.1\(a\)\(7\)](#) and [8 CFR 319.2\(a\)\(5\)](#).
5. ^[^] See [INA 319\(b\)](#). See [8 CFR 319.2\(a\)\(5\)](#).
6. ^[^] See [INA 319\(a\)](#). See [8 CFR 319.1\(a\)\(7\)](#).
7. ^[^] See [INA 319\(b\)](#). See [8 CFR 319.2](#).
8. ^[^] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [[12 USCIS-PM I.9\(B\)](#)]. See [INA 319\(e\)](#). See [8 U.S.C. 1443a](#).
9. ^[^] See [INA 319\(b\)](#). See [8 CFR 319.1\(b\)\(1\)](#). See Chapter 2, Marriage and Marital Union for Naturalization [[12 USCIS-PM G.2](#)].
10. ^[^] See Chapter 2, Marriage and Marital Union for Naturalization, Section A, Validity of Marriage [[12 USCIS-PM G.2\(A\)](#)].
11. ^[^] See [8 CFR 319.2\(a\)\(4\)](#).
12. ^[^] See [INA 319\(b\)\(1\)\(B\)](#).
13. ^[^] See [8 CFR 316.20\(a\)](#). See [uscis.gov/AIR](#) lists of recognized organizations.
14. ^[^] See [8 CFR 319.5](#) and [8 CFR 316.20\(b\)](#).
15. ^[^] See [INA 319\(b\)\(1\)\(B\)](#) and [INA 319\(b\)\(1\)\(C\)](#). See [8 CFR 319.2\(a\)\(1\)](#). See Section G, Application and Evidence [[12 USCIS-PM G.4\(G\)](#)].
16. ^[^] See [INA 319\(b\)\(1\)\(B\)](#) and [INA 319\(b\)\(1\)\(C\)](#). See [8 CFR 319.2\(a\)\(1\)](#).

17. [^] This policy is effective as of January 22, 2013, effective date of first publication of the [USCIS Policy Manual](#) and will not be applied retroactively.

18. [^] See [8 CFR 319.2\(a\)\(4\)](#).

19. [^] See [INA 319\(b\)\(3\)](#). See [8 CFR 319.2\(a\)\(6\)](#). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [[12 USCIS-PM D.5](#)].

20. [^] See [INA 319\(b\)](#). See [8 CFR 319.2](#). Spouses of members of the U.S. armed forces may be eligible for overseas processing. See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [[12 USCIS-PM I.9\(B\)](#)].

21. [^] See [8 CFR 319.11\(a\)](#). See [8 CFR 103.7\(b\)\(1\)](#).

22. [^] See Chapter 2, Marriage and Marital Union for Naturalization [[12 USCIS-PM G.2](#)].

23. [^] See [INA 319\(b\)](#). See [8 CFR 319.2\(a\)](#).

24. [^] See [8 CFR 103.2\(b\)\(5\)](#). See [8 CFR 319.1](#) and [8 CFR 319.2](#).

25. [^] See [INA 319\(b\)](#). See [8 CFR 319.11\(a\)](#).

26. [^] See [8 CFR 319.2\(a\)\(4\)](#).

Chapter 5 - Conditional Permanent Resident Spouses and Naturalization

A. General Requirements for Conditional Permanent Residents

Since 1986, certain spouses of U.S. citizens have been admitted to the United States as LPRs on a conditional basis for a period of two years. ^[1] In general, a conditional permanent resident (CPR) must jointly file with his or her petitioning spouse a Petition to Remove Conditions on Residence ([Form I-751](#)) with USCIS during the 90-day period immediately preceding the second anniversary of his or her admission as a CPR in order to remove the conditions. ^[2] An approval of a petition to remove conditions demonstrates the bona fides of the marital relationship.

In order for USCIS to approve the petition to remove conditions, the CPR must establish that:

- The marriage upon which the CPR admitted to the United States was valid;
- The marriage has not been terminated; and
- The marriage was not entered into for purposes of evading the immigration laws of the United States. ^[3]

In general, USCIS requires that an applicant for naturalization must have an approved petition to remove conditions before an officer adjudicates the naturalization application. However, certain CPRs may be eligible for naturalization without filing a petition or having the conditions removed if applying for naturalization on the basis of:

- Marriage to a U.S. citizen employed abroad; or
- Qualifying military service. ^[4]

B. Spouses who Must Have an Approved Petition Prior to Naturalization

In all cases, a CPR applying for naturalization on the basis of marriage must have an approved petition prior to naturalization if the CPR:

- Has a pending petition to remove conditions at the time of filing the Application for Naturalization; or
- Reaches the 90-day period to file the petition to remove conditions prior to taking the Oath of Allegiance. ^[5]

1. Spouses who Reach Petition Filing Period Prior to Naturalization

In most cases, the 90-day period for filing the petition to remove conditions will have passed prior to an applicant becoming eligible to apply for naturalization. However, in some cases involving applicants whose citizen spouse is employed abroad and in cases in which a late filing of the petition to remove conditions is permitted, the 90-day filing period will start after filing for naturalization.

Under these circumstances, the applicant must file the petition to remove conditions and the petition must be adjudicated prior to or concurrently with the naturalization application.

2. Spouses with Pending Petitions and Naturalization Applications

An application for naturalization may not be approved if there is a pending petition for removal of conditions. If an applicant's petition to remove conditions is pending at the time of filing or is filed prior to the interview, USCIS will adjudicate the petition to remove conditions prior to or concurrently with the adjudication of the naturalization application. ^[6]

3. Failure to File or Denial of the Petition to Remove Conditions

The CPR status of an applicant is terminated and he or she must be placed into removal proceedings if:

- The applicant fails to file the petition to remove conditions; or
- If the petition to remove conditions is filed, but the petition is denied. ^[7]

C. Spouses Eligible to Naturalize without Filing Petition to Remove Conditions

1. Conditional Residents Filing on the Basis of Qualifying Military Service

Applicants for naturalization who qualify on the basis of honorable military service in periods of hostilities may be naturalized whether or not they have been lawfully admitted for permanent residence. ^[8] For this reason, such applicants are not required to comply with all of the requirements for admission to the United States, including the requirements for removal of conditions.

Accordingly, CPRs who are filing on the basis of such qualifying military service are not required to file a petition to remove conditions and may be naturalized without the removal of conditions from their permanent resident status.

2. Conditional Residents Filing as the Spouse of a U.S. Citizen Employed Abroad

A spouse of a U.S. citizen employed abroad based on authorized employment is not required to have any specific period of residence or physical presence in order to naturalize. ^[9] Consequently, a CPR spouse is not required to file the petition to remove conditions if the spouse files his or her naturalization application before he or she reaches the 90-day filing period to remove the conditions on residence. ^[10]

A CPR spouse of a U.S. citizen employed abroad may naturalize without filing a petition to remove conditions if:

- The CPR spouse has been a CPR for less than one year and nine months; and

- The CPR spouse does not reach the 90-day filing period for the petition to remove conditions prior to the final adjudication of his or her naturalization application or the time of the Oath of Allegiance. ^[11]

Even though the CPR spouse is not required to file the petition to remove conditions, he or she must satisfy the substantive requirements for removal of the conditions. ^[12] Therefore, the CPR spouse must establish that:

- The marriage was entered into in accordance with the laws of the place where the marriage occurred;
- The marriage has not been judicially annulled or terminated;
- The marriage was not entered into for the purpose of procuring an alien's admission as an immigrant; and
- No fee or other consideration was given (other than attorney's fees) for filing the immigrant or fiancé(e) visa petition that forms the basis for admission to the United States. ^[13]

An officer must not approve a CPR spouse's naturalization application unless the spouse meets these requirements. ^[14]

D. Conditional Permanent Residents Admitted as Entrepreneurs

If a CPR spouse is admitted as alien entrepreneur, ^[15] USCIS will make a determination on the CPR's petition to remove conditions before approving the CPR's naturalization application.

Footnotes

1. ^[^] See [INA 216](#). See Immigration Marriage Fraud Amendments of 1986, [Pub. L. 99-639 \(PDF\)](#) (November 10, 1986). The time period spent as a CPR counts toward the satisfaction of the continuous residence and physical presence requirements for naturalization. See [INA 216\(e\)](#).
2. ^[^] See [INA 216\(c\)](#), [INA 216\(d\)](#), and [INA 216\(e\)](#). See H.R. REP. 99-906, 1986 U.S.C.C.A.N. 5978.
3. ^[^] See [INA 216\(d\)\(1\)](#).
4. ^[^] See Section C, Spouses Eligible to Naturalize without Filing Petition to Remove Conditions [[12 USCIS-PM G.5\(C\)](#)].
5. ^[^] See [INA 216\(d\)\(2\)](#).
6. ^[^] An officer should conduct the naturalization examination even if the petition to remove conditions is not in the CPR spouse's A-file. The officer should follow internal procedures to request the petition. The officer must not approve the CPR spouse's naturalization application until the officer has reviewed and approved the petition to remove conditions.
7. ^[^] See [INA 216\(c\)\(2\)](#) and [INA 216\(c\)\(3\)](#).
8. ^[^] See [INA 329](#). See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329), Section F, Conditional Permanent Residence and Naturalization during Hostilities [[12 USCIS-PM I.3\(F\)](#)].
9. ^[^] See [INA 319\(b\)](#). See [8 CFR 319.2](#).
10. ^[^] See [INA 216\(d\)\(2\)](#). Additionally, any conditional permanent resident who is otherwise eligible for naturalization under [INA 329](#) (based on military service), and who is not required to be an LPR as provided for in [INA 329](#), is exempt from all of the requirements of [INA 216](#). See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [[12 USCIS-PM I.3](#)].

11. ^[^] If the CPR spouse reaches the 90-day filing period prior to taking the Oath of Allegiance, the applicant must file the petition to remove conditions and it must be adjudicated prior to the taking of the Oath of Allegiance. See [INA 319\(b\)](#).
12. ^[^] See [INA 319\(b\)](#) and [INA 318](#). An applicant must satisfy all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.
13. ^[^] See [INA 216](#). See [8 CFR 216.4\(c\)](#).
14. ^[^] See [INA 319\(b\)](#) and [INA 318](#). An applicant must satisfy all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions.
15. ^[^] See [INA 216A](#) (EB-5 alien entrepreneurs).

Part H - Children of U.S. Citizens

Chapter 1 - Purpose and Background

A. Purpose

United States laws allow for children to acquire U.S. citizenship other than through birth in the United States. ^[1] Persons who were born outside of the United States to a U.S. citizen parent or parents may acquire or derive U.S. citizenship at birth. Persons may also acquire citizenship after birth, but before the age of 18, through their U.S. citizen parents.

Previously, acquisition of citizenship generally related to those persons who became U.S. citizens at the time of birth, and derivation of citizenship to those who became U.S. citizens after birth due to the naturalization of a parent.

In general, current nationality laws only refer to acquisition of citizenship for persons who automatically become U.S. citizens either at the time of birth or after. In general, a person must meet the applicable definition of child at the time he or she acquires citizenship and must be under 18 years of age.

B. Background

The law in effect at the time of birth determines whether someone born outside the United States to a U.S. citizen parent or parents is a U.S. citizen at birth. In general, these laws require a combination of at least one parent being a U.S. citizen when the child was born and having lived in the United States for a period of time. In addition, children born abroad may become U.S. citizens after birth. Citizenship laws have changed extensively over time with two major changes coming into effect in 1978 and 2001.

Prior to the Act of October 10, 1978, U.S. citizens who had acquired citizenship through birth abroad to one citizen parent had to meet certain physical presence requirements in order to retain citizenship. ^[2] This legislation removed all retention requirements. Prior to the Child Citizenship Act of 2000 (CCA), effective February 27, 2001, the INA had two provisions for derivation of citizenship. ^[3] The CCA removed one provision and revised the other making it the only method for children under 18 years of age in the United States to automatically acquire citizenship after birth. ^[4]

C. Table of General Provisions

A child born outside of the United States may acquire U.S. citizenship through various ways. The table below serves as a quick reference guide to the acquisition of citizenship provisions. ^[5] The chapters that follow the table provide further guidance.

General Provisions for Acquisition of Citizenship for Children Born Abroad

INA Section	Status of Parents	Residence or Physical Presence Requirements	Child is a U.S. Citizen
301(c)	Both parents are U.S. citizens	At least one U.S. citizen parent has resided in the United States or outlying possession prior to child's birth	At Birth
301(d)	One parent is a U.S. citizen; other parent is U.S. national	U.S. citizen parent was physically present in the United States or its outlying possession for one year prior to child's birth	At Birth
301(f)	Unknown parentage	Child is found in the United States while under 5 years of age	At Birth
301(g)	One parent is a U.S. citizen; other parent is a foreign national	U.S. citizen parent was physically present in United States or its outlying possessions for at least 5 years (2 after age 14) prior to child's birth	At Birth
301(h)	Mother is a U.S. citizen and father is a foreign national	U.S. citizen mother resided in the United States prior to child's birth	At Birth (only applies to birth prior to 1934)
309(a)	Out of wedlock birth, claiming citizenship through father	Requirements depend on applicable provision: INA 301(c) , (d) , (e) , or (g)	At Birth (Out of wedlock)
309(c)	Out of wedlock birth, claiming citizenship through mother	U.S. citizen mother physically present in the U.S. or its outlying possessions for one year prior to the child's birth	At Birth (for birth after December 23, 1952)
320	At least one parent is a U.S. citizen (through birth or naturalization)	Child resides in the United States as a lawful permanent resident	At Time Criteria is Met
321 Repealed by CCA	Both parents naturalize, or in certain cases, one parent naturalizes	Child resides in the United States as a lawful permanent resident	At Time Criteria is Met

INA Section	Status of Parents	Residence or Physical Presence Requirements	Child is a U.S. Citizen
322	At least one parent is a U.S. citizen (through birth or naturalization)	Child resides outside of the United States and child's parent (or grandparent) was physically present in the U.S. or its outlying possessions for at least 5 years (2 after age 14)	At Time Oath is Administered

D. Legal Authorities

- [INA 101\(c\)](#) – Definition of child for citizenship and naturalization
- [INA 301](#) – Nationals and citizens of the United States at birth
- [INA 309](#) – Children born out of wedlock
- [INA 320](#); [8 CFR 320](#) – Children residing permanently in the United States
- [INA 322](#); [8 CFR 322](#) – Children residing outside the United States

Footnotes

1. ^[^] See [INA 301](#), [INA 320](#), and [INA 322](#).
2. ^[^] See Act of October 10, 1978, [Pub.L. 95-432 \(PDF\)](#), 92 Stat. 1046.
3. ^[^] See the Child Citizenship Act of 2000, Sec. 101, [Pub.L. 106-395](#), 114 Stat 1631, October 30, 2000 (Effective February 27, 2001).
4. ^[^] The CCA amended [INA 320](#) and removed INA 321 to create only one statutory provision and method for children in the United States to automatically acquire citizenship after birth. See [INA 320](#). See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [[12 USCIS-PM H.4](#)].
5. ^[^] Except for the reference to INA 321, the references in the table are to the current statutory requirements for citizenship. Previous versions of the law may apply.

Chapter 2 - Definition of Child for Citizenship and Naturalization

A. Definition of Child

The definition of “child” for citizenship and naturalization differs from the definition used for other parts of the Immigration and Nationality Act (INA). ^[1] The INA provides two different definitions of “child.”

- One definition of child applies to approval of visa petitions, issuance of visas, and similar issues. ^[2]
- The other definition of child applies to citizenship and naturalization. ^[3]

The most significant difference between the two definitions of child is that a stepchild is not included in the definition relating to citizenship and naturalization. Although a stepchild may be the stepparent’s “child” for purposes of visa issuance, the

stepchild is not the stepparent's "child" for purposes of citizenship and naturalization. A stepchild is ineligible for citizenship or naturalization through the U.S. citizen stepparent, unless the stepchild is adopted and the adoption meets certain requirements. ^[4]

In general, a child for the citizenship and naturalization provisions is an unmarried person under 21 years of age who is:

- The genetic, legitimated, ^[5] or adopted son or daughter of a U.S. citizen; or
- The son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child's legal parent.

The term "genetic child" refers to a child who shares genetic material with his or her parent, and "gestational mother" is the person who carries and gives birth to the child. A genetic parent, as well as a non-genetic gestational mother who is recognized by the relevant jurisdiction as the child's legal parent, is included within the phrase "natural" parent as referenced in the INA. ^[6] In general, absent other evidence, USCIS considers a child's birth certificate as recorded by a proper authority as sufficient evidence to determine a child's genetic relationship to the parent (or parents). The child's parent (or parents) who is included in the birth certificate is presumed to have legal custody of the child absent other evidence. ^[7]

In addition to meeting the definition of a child, the child must also meet the particular requirements of the specific citizenship or naturalization provision, which may include references to birth in wedlock or out of wedlock, and which may require that certain conditions be met by 18 years of age, instead of 21. ^[8]

B. Legitimated Child

Legitimation means "placing a child born out of wedlock in the same legal position as a child born in wedlock." ^[9] The law of the child's residence or domicile, or the law of the father's residence or domicile, is the relevant law to determine whether a child has been legitimated. ^[10] Generally, unless otherwise specified by the specific provision, if the father or child had various residences or domiciles before the child reached 16, 18 or 21 years of age (depending on the applicable provision), then the laws of the various places of residence or domicile must be analyzed to determine whether the requirements for legitimation have been met. ^[11]

A child is considered the legitimated child of his or her parent if:

- The child is legitimated in the United States or abroad under the law of either the child's residence or domicile, or the law of the child's father's residence or domicile, depending on the applicable provision; ^[12]
- The child is legitimated before he or she reaches 16 years of age (except for certain cases where the child may be legitimated before reaching 18 or 21 years of age); ^[13] and
- The child is in the legal custody of the legitimating parent or parents at the time of the legitimation. ^[14]

A non-genetic gestational mother may legitimate her child. While legitimation has been historically applied to father-child relationships, the gestational mother of a child conceived through Assisted Reproductive Technology (ART) may be required to take action after the birth of the child to formalize the legal relationship. Whether such action is required depends on the law of the relevant jurisdiction.

Post-birth formalization of the legal relationship between a gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child's birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction. ^[15]

An officer reviews the specific facts of a case when determining whether a child has been legitimated accordingly and to determine the appropriate citizenship provision.

C. Adopted Child

An adopted child means that the child has been adopted through a full, final, and complete adoption. ^[16] This includes certain siblings of adopted children who are permitted to be adopted while under 18 years of age. ^[17]

A child is an adopted son or daughter of his or her U.S. citizen parent if the following conditions are met:

- The child is adopted in the United States or abroad;
- The child is adopted before he or she reaches 16 years of age (except for certain cases where the child may be adopted before reaching 18 years of age); ^[18] and
- The child is in the legal custody of the adopting parent or parents at the time of the adoption. ^[19]

In general, the adoption must:

- Be valid under the law of the country or place granting the adoption;
- Create a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; and
- Terminate the legal parent-child relationship with the prior legal parent(s). ^[20]

D. Orphan ^[21]

In general, the definition for adopted children applies to adopted orphans. USCIS, however, does not consider an orphan adopted if any of the following conditions apply:

- The foreign adoption was not full and final;
- The foreign adoption was defective; or
- An unmarried U.S. citizen parent or a U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings. ^[22]

If the orphan is not considered adopted:

- The child must be must be readopted in the United States; or
- The child must be adopted while under 16 years of age and must have been residing in the legal custody of the adopting parent or parents for at least two years. ^[23]

In all cases, the condition that the child must have been residing in the legal custody of the adopting parent or parents is not required if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household.

E. Child Born Abroad through Assisted Reproductive Technology

1. Background

Assisted Reproductive Technology (ART)

A child may be born through ART. ART refers to fertility treatments where either the egg or sperm, or both, is handled outside the body. ART includes intrauterine insemination (IUI) and in vitro fertilization (IVF), among other reproductive technology procedures.^[24] In these procedures, the parent or parents may use a combination of his or her own genetic material or donated genetic material (donated egg, sperm, or both) in order to conceive a child.^[25]

ART and the Immigration and Nationality Act (INA)

ART was not considered at the time the INA and many of its subsequent amendments were enacted. One of the most significant impacts of ART is that ART allows for a woman to bear a child to whom she does not have a genetic relationship through the use of a donor egg. As such, a mother could have a biological relationship to her child but not a genetic relationship.

Children Born Abroad through ART

USCIS and the Department of State (DOS), who share authority over these issues, collaborated in the development of this policy. A non-genetic gestational mother (person who carried and gave birth to the child) who is also the child's legal mother may be recognized in the same way as genetic legal mothers are treated under the INA. A mother who is the gestational and legal parent of a child under the law of the relevant jurisdiction at the time of the child's birth consequently may transmit U.S. citizenship to the child if all other requirements are met.^[26]

Child Born Abroad through ART in the Citizenship and Naturalization Contexts

A child born through ART may acquire U.S. citizenship from his or her non-genetic gestational mother at the time of birth, or after birth, depending on the applicable citizenship or naturalization provision, if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and
- The child meets all other applicable requirements under the relevant citizenship or naturalization provision.

2. Jurisdiction's Recognition of Mother-Child Relationship

The relevant jurisdiction must recognize the mother-child relationship as the legal parental relationship. Whether a parent is recognized as the legal parent is generally assessed under the jurisdiction of the child's birth at the time of birth. In some jurisdictions, the non-genetic gestational mother is recognized as the legal mother without her having to take any additional affirmative steps after birth. However, in other jurisdictions, a non-genetic gestational mother may be required to take certain action after the child's birth to establish the legal relationship.

Post-birth formalization of the legal relationship between a non-genetic gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child's birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.

In either case, the law of the relevant jurisdiction governs whether the non-genetic gestational mother is the legal mother for purposes of U.S. immigration law. Importantly, a non-genetic gestational mother who is not the legally recognized mother may not transmit U.S. citizenship to the child. USCIS will follow a court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS will not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a determination by a proper authority.

The applicable citizenship provision may depend upon whether the child is born in wedlock or out of wedlock. USCIS must determine whether a child born through ART is born in wedlock or out of wedlock and will treat a child born to a legal

gestational mother in the same manner as a child born to a genetic mother when determining if the child is born in or out of wedlock.

Footnotes

1. [^] See [INA 101\(b\)](#) and [INA 101\(c\)](#).
2. [^] See [INA 101\(b\)](#).
3. [^] See [INA 101\(c\)](#).
4. [^] See Section C, Adopted Child [[12 USCIS-PM H.2\(C\)](#)].
5. [^] A child can be legitimated under the laws of the child's residence or domicile, or under the law of the father's residence or domicile. See [INA 101\(c\)](#). A person's "residence" is his or her place of general abode, that is, his or her principal, actual dwelling place without regard to intent. See [INA 101\(a\)\(33\)](#). A person's "domicile" refers to a person's legal permanent home and principal establishment, to include an intent to return if absent. Black's Law Dictionary (9th ed. 2009). In most cases, a person's residence is the same as a person's domicile.
6. [^] See [INA 101\(b\)](#) and [INA 101\(c\)](#).
7. [^] In certain cases, a court may terminate a parent's parental rights or a parent may relinquish his or her parental rights depending on the laws of the relevant jurisdiction.
8. [^] See Chapter 3, United States Citizens at Birth (INA 301 and 309) [[12 USCIS-PM H.3](#)]; Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [[12 USCIS-PM H.4](#)]; and Chapter 5, Child Residing Outside of the United States (INA 322) [[12 USCIS-PM H.5](#)].
9. [^] See *Matter of Moraga*, 23 I&N Dec. 195, 197 (BIA 2001).
10. [^] See [INA 101\(c\)\(1\)](#).
11. [^] Importantly, certain citizenship provisions limit the place of legitimation to the child's residence. See [INA 309\(a\)\(4\)\(A\)](#). In such cases, only the law of the place of residence will be analyzed to determine whether the requirements for legitimation have been met.
12. [^] See [INA 101\(a\)\(33\)](#), which defines the term "residence" as the "place of general abode." The place of general abode of a person means his or her "principal, actual dwelling place in fact, without regard to intent."
13. [^] For example, the current version of [INA 309](#) allows for legitimation until the age of 18, while [INA 101\(c\)](#) requires legitimation by the age of 16.
14. [^] See [INA 101\(c\)\(1\)](#). See also *Matter of Rivers*, 17 I&N Dec. 419, 422 (BIA 1980) (presuming a legitimated child to be in the legal custody of the legitimating parent).
15. [^] See Section E, Child Born Abroad through Assisted Reproductive Technology [[12 USCIS-PM H.2\(E\)](#)].
16. [^] See [8 CFR 320.1](#). See [8 CFR 322.1](#).
17. [^] See [INA 101\(b\)\(1\)\(E\)\(ii\)](#).
18. [^] See [INA 101\(b\)\(1\)\(E\)\(ii\)](#) and [INA 101\(b\)\(1\)\(F\)\(ii\)](#).
19. [^] See [INA 101\(c\)\(1\)](#).

20. [^] See [Adjudicator's Field Manual, Chapter 21.15, Self Petitions by Parents of U.S. Citizens.](#)

21. [^] See [INA 101\(b\)\(1\).](#)

22. [^] See [8 CFR 320.1.](#) See [8 CFR 322.1.](#)

23. [^] See [INA 101\(b\)\(1\)\(E\).](#)

24. [^] See Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), [Pub. L. 102-493 \(PDF\)](#), 106 Stat. 3146.

25. [^] In addition, a couple may use a gestational carrier (also called a gestational surrogate). A gestational surrogate is a woman, who gestates, or carries, an embryo that was formed from the egg of another woman on behalf of the intended parent or parents. The gestational carrier usually has a contractual obligation to return the infant to his or her intended legal parents. For additional information on ART, see the [Centers for Disease Control \(CDC\) Web site.](#)

26. [^] Previously, a genetic relationship with a U.S. citizen parent was required in order for a child born abroad to acquire U.S. citizenship through that parent.

Chapter 3 - United States Citizens at Birth (INA 301 and 309)

A. General Requirements for Acquisition of Citizenship at Birth

A person born in the United States who is subject to the jurisdiction of the United States is a U.S. citizen at birth, to include a person born to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe. ^[1]

In general, a person born outside of the United States may acquire citizenship at birth if:

- The person has at least one parent who is a U.S. citizen; and
- The U.S. citizen parent meets certain residence or physical presence requirements in the United States or an outlying possession prior to the person's birth in accordance with the pertinent provision. ^[2]

A person born abroad through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother acquires U.S. citizenship at birth under [INA 301](#) or [INA 309](#) if:

- The person's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the person's birth; and
- The person meets all other applicable requirements under either [INA 301](#) or [INA 309](#). ^[3]

Until the Act of October 10, 1978, persons who had acquired U.S. citizenship through birth outside of the United States to one U.S. citizen parent had to meet certain physical presence requirements to retain their citizenship. This legislation eliminated retention requirements for persons who were born after October 10, 1952. There may be cases where a person who was born before that date, and therefore subject to the retention requirements, may have failed to retain citizenship. ^[4]

An officer should determine whether a person acquired citizenship at birth by referring to the applicable statutory provisions and conditions that existed at the time of the person's birth. These provisions have been modified extensively over the years. ^[5] The following sections provide the current law.

B. Child Born in Wedlock ^[6]

1. Child of Two U.S. Citizen Parents ^[7]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- Both of the child's parents are U.S. citizens; and
- At least one parent had resided in the United States or one of its outlying possessions.

2. Child of U.S. Citizen Parent and U.S. National ^[8]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- One parent is a U.S. citizen and the other parent is a U.S. national; and
- The U.S. citizen parent was physically present in the United States or one of its outlying possessions for a continuous period of at least one year.

3. Child of U.S. Citizen Parent and Foreign National Parent ^[9]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- One parent is a foreign national and the other parent is a U.S. citizen; and
- The U.S. citizen parent was physically present in the United States for at least 5 years, including at least 2 years after 14 years of age.

Time abroad counts as physical presence in the United States if the time abroad was:

- As a member of the U.S. armed forces in honorable status;
- Under the employment of the U.S. government or other qualifying organizations; or
- As a dependent unmarried son or daughter of such persons.

4. Child of a U.S. Citizen Mother and Foreign National Father ^[10]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child was born before noon (Eastern Standard Time) May 24, 1934;
- The child's father is a foreign national;
- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother resided in the United States prior to the child's birth.

C. Child Born Out of Wedlock ^[11]

1. Child of U.S. Citizen Father

General Requirements for Fathers of Children Born Out of Wedlock

The general requirements for acquisition of citizenship at birth ^[12] for a child born in wedlock also apply to a child born out of wedlock outside of the United States (or one of its outlying possessions) who claims citizenship through a U.S. citizen father. Specifically, the provisions apply in cases where:

- A blood relationship between the child and the father is established by clear and convincing evidence;
- The child's father was a U.S. citizen at the time of the child's birth;
- The child's father (unless deceased) has agreed in writing to provide financial support for the child until the child reaches 18 years of age; and
- One of the following criteria is met before the child reaches 18 years of age:
 - The child is legitimated under the law of his or her residence or domicile;
 - The father acknowledges in writing and under oath the paternity of the child; or
 - The paternity of the child is established by adjudication of a competent court.

In addition, the residence or physical presence requirements contained in the relevant paragraph of [INA 301](#) continue to apply to children born out of wedlock, who are claiming citizenship through their fathers.

Written Agreement to Provide Financial Support

In order for a child born out of wedlock outside of the United States (or one of its outlying possessions) to acquire U.S. citizenship through his or her father, Congress included a requirement that the father agree in writing to provide financial support for the child until the child reaches the age of 18. ^[13] Congress included the language to prevent children from becoming public charges. ^[14] USCIS interprets the phrase in the statute "has agreed in writing to provide financial support" ^[15] to mean that there must be documentary evidence that supports a finding that the father accepted the legal obligation to support the child until the age of 18.

The written agreement of financial support may be dated at any time before the child's 18th birthday. If the child is under the age of 18 at the time of filing an Application for Certificate of Citizenship, the father may provide the written agreement of financial support either concurrently with the filing of the application or prior to the adjudication of the application. USCIS may request the written agreement of financial support at the time of issuance of a Request for Evidence or at the time of an interview (unless the interview is waived).

Alternatively, if the applicant is already over the age of 18, he or she may meet the requirement if one or more documents support a finding that the father accepted his legal obligation to support the child. In such cases, the evidence must have existed (and have been finalized) prior to the child's 18th birthday and must have met any applicable foreign law or U.S. law governing the child's or father's residence to establish acceptance of financial responsibility. ^[16]

In all cases, the applicant has the burden of proving the father has met any applicable requirements under the law to make an agreement to provide financial support. A written agreement of financial support is not required if the father died before the child's 18th birthday. ^[17]

Written Agreement Requirements

In order for a document to qualify as a written agreement of financial support under [INA 309\(a\)\(3\)](#), the document:

- Must be in writing and acknowledged by the father; ^[18]
- Must indicate the father's agreement to provide financial support for the child; ^[19] and
- Must be dated before the child's 18th birthday.

In addition, USCIS considers whether the agreement was voluntary.

Other Acceptable Documentation

A written agreement of financial support may come in different forms and documents. USCIS may consider other similar documentation in which the father accepts financial responsibility of the child until the age of 18. Some examples of documents USCIS may consider include:

- A previously submitted Affidavit of Support ([Form I-134](#)) or Affidavit of Support Under Section 213A of the INA ([Form I-864](#));
- Military Defense Enrollment Eligibility Reporting System (DEERS) enrollment;
- Written voluntary acknowledgement of a child in a jurisdiction where there is a legal requirement that the father provide financial support; ^[20]
- Documentation establishing paternity by a court or administrative agency with jurisdiction over the child's personal status, if accompanied by evidence from the record of proceeding establishing the father initiated the paternity proceeding and the jurisdiction legally requires the father to provide financial support; or
- A petition by the father seeking child custody or visitation with the court of jurisdiction with an agreement to provide financial support and the jurisdiction legally requires the father to provide financial support.

2. Child of U.S. Citizen Mother

The rules that determine whether a child born out of wedlock outside of the United States derives citizenship at birth from his or her U.S. citizen mother vary depending on when the child was born.

Child Born On or After December 23, 1952 and Before June 12, 2017

A child born between December 23, 1952 and June 12, 2017 who is born out of wedlock outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother was physically present in the United States or one of its outlying possessions for 1 continuous year prior to the child's birth. ^[21]

Child Born On or After June 12, 2017

A child born on or after June 12, 2017, who is born out of wedlock outside of the United States or one of its outlying possessions acquires citizenship at birth if:

- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother was physically present in the United States or one of its outlying possessions for at least 5 years prior to the child's birth (at least 2 years of which were after age 14). ^[22]

Effect of Sessions v. Morales-Santana Decision

Prior to the U.S. Supreme Court's decision in *Sessions v. Morales-Santana*, ^[23] the physical presence requirements for children born out of wedlock were different for a child acquiring citizenship through a U.S. citizen mother than for those acquiring through a U.S. citizen father. An unwed U.S. citizen mother could transmit citizenship to her child if the mother was physically present in the United States for 1 continuous year prior to the child's birth. ^[24] An unwed U.S. citizen father, by contrast, was held to the longer physical presence requirement of 5 years (at least 2 years of which were after age 14) in the United States or one of its outlying possessions. ^[25]

On June 12, 2017, the U.S. Supreme Court held, in *Sessions v. Morales-Santana*, that the different physical presence requirements for an unwed U.S. citizen father and an unwed U.S. citizen mother violated the U.S.

Constitution's Equal Protection Clause. ^[26] The U.S. Supreme Court indicated that the 5 years of physical presence (at least 2 years of which were after age 14) ^[27] requirement should apply prospectively to all cases involving a child born out of wedlock outside the United States to one U.S. citizen parent and one foreign national parent, regardless of the gender of the parent. ^[28]

The U.S. Supreme Court decision effectively eliminated, prospectively, the 1 year continuous physical presence requirement that previously applied to unwed U.S. citizen mothers, and replaced it with the higher physical presence requirement that previously applied to unwed U.S. citizen fathers. ^[29] After *Sessions v. Morales-Santana*, the 1-year continuous physical presence requirement ^[30] remains in effect only for those children born prior to June 12, 2017 outside of the United States to unwed U.S. citizen mothers.

D. Application for Certificate of Citizenship (Form N-600)

A person born abroad who acquires U.S. citizenship at birth is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. passport with the Department of State to serve as evidence of his or her U.S. citizenship. ^[31]

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen parent or legal guardian must submit the application. ^[32]

USCIS will issue a proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so. ^[33]

E. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or legal guardian if the application is filed on behalf of a child under 18 years of age. ^[34] USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records, or if the application is accompanied by one of the following:

- Consular Report of Birth Abroad (FS-240);
- Applicant's unexpired U.S. passport issued initially for a full 5 or 10-year period; or
- Certificate of Naturalization of the applicant's parent or parents. ^[35]

F. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship. ^[36]

However, the Immigration and Nationality Act (INA) permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. ^[37] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice. ^[38] An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

1. ^[^] See [INA 301\(a\)](#) and [INA 301\(b\)](#). Children of certain diplomats who are born in the United States are not U.S. citizens at birth because they are not subject to the jurisdiction of the United States. See [8 CFR 101.3](#).
2. ^[^] Any time spent abroad in the U.S. armed forces or other qualifying organizations counts towards that physical presence requirement. See [INA 301\(g\)](#).
3. ^[^] For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [[12 USCIS-PM H.2\(E\)](#)].
4. ^[^] The Act of October 10, 1978, [Pub. L. 95-432 \(PDF\)](#), repealed the retention requirements of former [INA 301\(b\)](#). The amending legislation was prospective only and did not restore citizenship to anyone who, prior to its enactment, had lost citizenship for failing to meet the retention requirements.
5. ^[^] Officers should use the Nationality Charts to assist with the adjudication of these applications.
6. ^[^] See [INA 301](#). See [Nationality Chart 1](#).
7. ^[^] See [INA 301\(c\)](#).
8. ^[^] See [INA 301\(d\)](#).
9. ^[^] See [INA 301\(g\)](#).
10. ^[^] See [INA 301\(h\)](#).
11. ^[^] See [INA 309](#). See [Nationality Chart 2](#).
12. ^[^] See [INA 301\(c\)](#), [INA 301\(d\)](#), [INA 301\(e\)](#), and [INA 301\(g\)](#). See Section A, General Requirements for Acquisition of Citizenship at Birth [[12 USCIS-PMH.3\(A\)](#)].
13. ^[^] A separate agreement or contract is not required for the father to satisfy the requirement. See [INA 309\(a\)\(3\)](#). See the Immigration and Nationality Act Amendments of 1986, [Pub. L. 99-653 \(PDF\)](#) (November 14, 1986).
14. ^[^] See the Immigration and Nationality Act Amendments of 1986, [Pub. L. 99-653 \(PDF\)](#) (November 14, 1986). The Immigration and Nationality Act (INA) was intended to keep families together and generally construed in favor of family unity and the acceptance of responsibility by family members. See *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005).
15. ^[^] See [INA 309\(a\)\(3\)](#).
16. ^[^] In many cases, the issue of whether the father agreed to provide financial support depends on foreign law. The applicant bears the burden of proving the father has met any applicable requirements to make a binding agreement under the law.

See [Matter of Annang \(PDF\)](#), 14 I&N Dec. 502 (BIA 1973). Officers should consult USCIS counsel about any requirements under the law.

17. [^] See [INA 309](#).

18. [^] A court document may be signed by a judge rather than the father, but may still serve as evidence to meet this requirement if there is an indication in the record of proceedings that the father consented to the determination of paternity.

19. [^] Since the statute only provides for the agreement of the father to provide support and does not provide for any loss of citizenship if the agreement is not met, USCIS does not consider whether the father actually provided financial support.

20. [^] For example, a birth certificate or acknowledgement document submitted and certified by the father. Under U.S. jurisdictions, a written voluntary acknowledgement of a child generally triggers a legal obligation to support the child. However, under foreign jurisdictions, a voluntary written agreement may not always trigger a legal obligation to support the child. The officer may consult with local USCIS counsel for questions regarding the effect of the law.

21. [^] See [INA 309\(c\)](#).

22. [^] See [INA 301\(g\)](#). See [Sessions v. Morales-Santana \(PDF\)](#), 137 S.Ct. 1678 (2017).

23. [^] See [Sessions v. Morales-Santana, \(PDF\)](#) 137 S.Ct. 1678 (2017).

24. [^] See [INA 309\(c\)](#).

25. [^] See [INA 301\(g\)](#).

26. [^] See [Sessions v. Morales-Santana, \(PDF\)](#) 137 S.Ct. 1678 (2017). See [U.S. Constitution, amend. XIV](#).

27. [^] See [INA 301\(g\)](#).

28. [^] See [Sessions v. Morales-Santana \(PDF\)](#), 137 S.Ct. 1678 (2017).

29. [^] See [INA 309\(c\)](#).

30. [^] See [INA 309\(c\)](#).

31. [^] See [8 CFR 341.1](#). The Secretary of State has jurisdiction over claims of U.S. citizenship made by persons who are abroad, and the Secretary of Homeland Security has jurisdiction over the administration and enforcement of the INA within the United States. See [INA 103\(a\)\(1\)](#) and [INA 104\(a\)\(3\)](#). There is nothing precluding USCIS from accepting a Form N-600 filed under [INA 301](#) or [INA 309](#) by a person who does not live in the United States. See [INA 341\(a\)](#).

32. [^] See [8 CFR 341.1](#).

33. [^] See Section F, Decision and Oath of Allegiance [[12 USCIS-PM H.3\(F\)](#)]. See [8 CFR 341.5\(b\)](#).

34. [^] See [8 CFR 341.2\(a\)\(2\)](#).

35. [^] See [8 CFR 341.2\(a\)](#).

36. [^] See [INA 337\(a\)](#). See [8 CFR 341.5\(b\)](#). See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [[12 USCIS-PM J.2](#)].

37. [^] See [INA 337\(a\)](#). See [8 CFR 341.5\(b\)](#).

38. [^] See [8 CFR 341.5\(d\)](#) and [8 CFR 103.3\(a\)](#).

Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)

A. General Requirements: Genetic, Legitimated, or Adopted Child Automatically Acquiring Citizenship after Birth ^[1]

A child born outside of the United States automatically becomes a U.S. citizen when all of the following conditions have been met on or after February 27, 2001: ^[2]

- The child has at least one parent, including an adoptive parent ^[3] who is a U.S. citizen by birth or through naturalization;
- The child is under 18 years of age;
- The child is a lawful permanent resident (LPR); ^[4] and
- The child is residing in the United States in the legal and physical custody of the U.S. citizen parent. ^[5]

A child born abroad through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother may acquire U.S. citizenship under [INA 320](#) if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and
- The child meets all other requirements under [INA 320](#), including that the child is residing in the United States in the legal and physical custody of the U.S. citizen parent. ^[6]

A stepchild who has not been adopted does not qualify for citizenship under this provision.

B. Legal and Physical Custody of U.S. Citizen Parent

Legal custody refers to the responsibility for and authority over a child. For purposes of this provision, USCIS presumes that a U.S. citizen parent has legal custody of a child and recognizes that the parent has lawful authority over the child, absent evidence to the contrary, in all of the following scenarios: ^[7]

- A biological child who currently resides with both biological parents who are married to each other, living in marital union, and not separated;
- A biological child who currently resides with a surviving biological parent, if the other parent is deceased;
- A biological child born out of wedlock who has been legitimated and currently resides with the parent;
- An adopted child with a final adoption decree who currently resides with the adoptive U.S. citizen parent; ^[8]
- A child of divorced or legally separated parents where a court of law or other appropriate government entity has awarded primary care, control, and maintenance of the child to a parent under the laws of the state or country of residence.

USCIS considers a U.S. citizen parent who has been awarded "joint custody" to have legal custody of a child. There may be other factual circumstances under which USCIS may find the U.S. citizen parent to have legal custody to be determined on a case-by-case basis.

C. Acquisition of Citizenship Prior to Child Citizenship Act of 2000

The Child Citizenship Act (CCA) applies only to those children born on or after February 27, 2001, or those who were under 18 years of age as of that date. Persons who were 18 years of age or older on February 27, 2001, do not qualify for citizenship

under [INA 320](#). For such persons, the law in effect at the time the last condition was met before reaching 18 years of age is the relevant law to determine whether they acquired citizenship. ^[9]

In general, former INA 321 applies to children who were already 18 years of age on February 27, 2001, but who were under 18 years of age in 1952, when the current Immigration and Nationality Act became effective.

In general, a child born outside of the United States to two foreign national parents, or one foreign national parent and one U.S. citizen parent who subsequently lost U.S. citizenship, acquires citizenship under former INA 321 if:

- The child's parent(s) meet one of the following conditions:
 - Both parents naturalize;
 - One surviving parent naturalizes if the other parent is deceased;
 - One parent naturalizes who has legal custody of the child if there is a legal separation of the parents; or
 - The child's mother naturalizes if the child was born out of wedlock and paternity has not been established by legitimation.
- The child is under 18 years of age when his or her parent(s) naturalize; and
- The child is residing in the United States pursuant to a lawful admission for permanent residence at the time the parent(s) naturalized or thereafter begins to reside permanently in the United States.

As originally enacted in 1952, this section did not apply to adopted children of naturalized citizens. ^[10] Beginning on October 5, 1978, however, INA 321 became generally applicable to an adopted child if the child was residing in the United States at the time the adoptive parent or parents naturalized and the child was in the custody of his or her adoptive parents pursuant to a lawful admission for permanent residence. ^[11]

D. Application for Certificate of Citizenship (Form N-600)

A person who automatically obtains citizenship is not required to file an Application for Certificate of Citizenship ([Form N-600](#)). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. passport with the Department of State to serve as evidence of his or her U.S. citizenship.

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen biological parent, adoptive parent, or legal guardian must submit the application. ^[12]

USCIS will issue proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so. ^[13]

E. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in the USCIS administrative record or do not apply: ^[14]

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.

- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
 - Divorce Decree; or
 - Death Certificate.
- Evidence of United States citizenship of parent:
 - Birth Certificate;
 - Naturalization Certificate;
 - Consular Report of Birth Abroad (FS-240);
 - A valid unexpired U.S. passport; or
 - Certificate of Citizenship.
- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.
- Documentation of legal custody in the case of divorce, legal separation, or adoption.
- Copy of Permanent Resident Card or Alien Registration Receipt Card or other evidence of lawful permanent resident status, such as an I-551 stamp in a valid foreign passport or travel document issued by USCIS.
- Copy of the full, final adoption decree, if applicable:
 - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parent(s) had custody of, and lived with, the child for at least two years. ^[15]
 - For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen). ^[16]
 - For a Hague Convention adoptee, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen). ^[17]
 - If the child was admitted as an LPR as an orphan or Hague Convention adoptee ^[18] (this evidence may already be in the child's A-file).
- Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or
- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

F. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age. ^[19] USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if the required documentation is submitted along with the application. ^[20]

G. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship. ^[21]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. ^[22] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice. ^[23] An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

1. ^[^] See [INA 320](#). See [Nationality Chart 3](#).

2. ^[^] February 27, 2001 is the effective date for these CCA amendments.

3. ^[^] If the requirements of [INA 101\(b\)\(1\)\(E\)](#), [INA 101\(b\)\(1\)\(F\)](#), or [INA 101\(b\)\(1\)\(G\)](#) are met.

4. ^[^] A person is generally considered to be an LPR once USCIS approves his or her adjustment application or once he or she enters the United States with an immigrant visa. See [INA 245\(b\)](#). For certain classifications, however, the effective date of becoming an LPR is a date that is earlier than the actual approval of the status (commonly referred to as a “rollback” date). See Part D, General Naturalization Requirements, Chapter 2, LPR Admission for Naturalization, Section A, LPR at Time of Filing and Naturalization [[12 USCIS-PM D.2\(A\)](#)]. A person who is born a U.S. national and is the child of a U.S. citizen may establish eligibility for a Certificate of Citizenship without having to establish LPR status.

5. ^[^] See [INA 320](#). See [8 CFR 320.2](#). Children of U.S. government employees temporarily stationed abroad are considered to be “residing in the United States” for purposes of acquisition of citizenship under [INA 320](#).

6. ^[^] For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [[12 USCIS-PM H.2\(E\)](#)].

7. ^[^] See [8 CFR 320.1](#).
8. ^[^] If the requirements of [INA 101\(b\)\(1\)\(E\)](#), or [INA 101\(b\)\(1\)\(F\)](#), or [INA 101\(b\)\(1\)\(G\)](#) are met.
9. ^[^] See Chapter 3, United States Citizens at Birth (INA 301 and 309) [[12 USCIS-PM H.3](#)].
10. ^[^] See Section 321(b) of INA of 1952, [Pub. L. 82-414 \(PDF\)](#), 66 Stat. 163, 245 (June 27, 1952).
11. ^[^] See Section 5 of the Act of October 5, 1978, [Pub. L. 95-417 \(PDF\)](#). The 1978 amendment limited this benefit to a child adopted while under 16 years of age. This restriction was removed in 1981 by the Act of December 21, 1981, [Pub. L. 97-116 \(PDF\)](#), but is also included in the definition of “child” in [INA 101\(c\)](#).
12. ^[^] See [8 CFR 320.3\(a\)](#).
13. ^[^] See Section G, Decision and Oath of Allegiance [[12 USCIS-PM H.4\(G\)](#)]. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [[12 USCIS-PM J.2](#)].
14. ^[^] See [8 CFR 320.3\(b\)](#).
15. ^[^] See [INA 101\(b\)\(1\)\(E\)](#). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child [[12 USCIS-PM H.2\(C\)](#)].
16. ^[^] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either “readopted” the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See [8 CFR 320.1](#).
17. ^[^] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.
18. ^[^] See [INA 101\(b\)\(1\)](#).
19. ^[^] See [8 CFR 320.4](#).
20. ^[^] See [8 CFR 341.2](#). See Section F, Documentation and Evidence [[12 USCIS-PM H.5\(F\)](#)].
21. ^[^] See [8 CFR 320.5\(a\)](#) and [8 CFR 337.1](#). See [INA 337](#). See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [[12 USCIS-PM J.2](#)].
22. ^[^] See [INA 337\(a\)](#). See [8 CFR 341.5\(b\)](#).
23. ^[^] See [8 CFR 320.5\(b\)](#) and [8 CFR 103.3\(a\)](#).

Chapter 5 - Child Residing Outside of the United States (INA 322)

A. General Requirements: Genetic, Legitimated, or Adopted Child Residing Outside the United States ^[1]

The Child Citizenship Act of 2000 (CCA) amended the INA to cover foreign-born children who did not automatically acquire citizenship under [INA 320](#) and who generally reside outside the United States with a U.S. citizen parent. ^[2]

A genetic, legitimated, or adopted child who regularly resides outside of the United States is eligible for naturalization if all of the following conditions have been met:

- The child has at least one U.S. citizen parent by birth or through naturalization, (including an adoptive parent); ^[3]
- The child's U.S. citizen parent or citizen grandparent meets certain physical presence requirements in the United States or an outlying possession; ^[4]
- The child is under 18 years of age;
- The child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent, or of a person who does not object to the application if the U.S. citizen parent is deceased; and
- The child is lawfully admitted, physically present, and maintaining a lawful status in the United States at the time the application is approved and the time of naturalization.

A child born abroad through Assisted Reproductive Technology (ART) may be eligible for naturalization under [INA 322](#) based on a relationship with his or her U.S. citizen gestational mother under [INA 322](#) if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and
- The child meets all other requirements under [INA 322](#), including that the child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent, or a person who does not object to the application if the U.S. citizen parent is deceased. ^[5]

There are certain exceptions to these requirements for children of U.S. citizens in the U.S. armed forces accompanying their parent abroad on official orders.

B. Eligibility to Apply on the Child's Behalf

Typically, a child's U.S. citizen parent files a Certificate of Citizenship application on the child's behalf. If the U.S. citizen parent has died, the child's citizen grandparent or the child's U.S. citizen legal guardian may file the application on the child's behalf within five years of the parent's death. ^[6]

C. Physical Presence of the U.S. Citizen Parent or Grandparent ^[7]

1. Physical Presence of Child's U.S. Citizen Parent

A child's U.S. citizen parent must meet the following physical presence requirements:

- The parent has been physically present in the United States or its outlying possessions for at least five years; and
- The parent met such physical presence for at least 2 years after he or she reached 14 years of age.

A parent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the parent was not a U.S. citizen.

2. Exception for U.S. Citizen Member of the U.S. Armed Forces

The child's U.S. citizen service member parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States. ^[8]

3. Reliance on Physical Presence of Child's U.S. Citizen Grandparent

If the child's parent does not meet the physical presence requirement, the child may rely on the physical presence of the child's U.S. citizen grandparent to meet the requirement. In such cases, the officer first must verify that the citizen grandparent, the citizen parent's mother or father, is a U.S. citizen at the time of filing. If the grandparent has died, the grandparent must have been a U.S. citizen and met the physical presence requirements at the time of his or her death.

Like in the case of the citizen parent, the officer also must ensure that:

- The U.S. citizen grandparent has been physically present in the United States or its outlying possessions for at least five years; and
- The U.S. citizen grandparent met such physical presence for at least 2 years after he or she reached 14 years of age.

Like the citizen parent, a grandparent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the grandparent was not a U.S. citizen.

D. Temporary Presence by Lawful Admission and Status in United States

1. Temporary Presence and Status Requirements

In most cases, the citizenship process for a child residing abroad cannot take place solely overseas.

- The child is required to be lawfully admitted to United States, in any status, and be physically present in the United States; [\[9\]](#)
- The child is required to maintain the lawful status that he or she was admitted under while in the United States; [\[10\]](#) and
- The child is required to take the Oath of Allegiance in the United States unless the oath requirement is waived. [\[11\]](#)

2. Exception for Child of U.S. Citizen Service Member of the U.S. Armed Forces

Certain children of U.S. citizen members of the U.S. armed forces are not required to be lawfully admitted to or physically present in the United States. [\[12\]](#)

E. Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)

A U.S. citizen parent of a biological, legitimated, or adopted child born outside of the United States who did not acquire citizenship automatically may file an Application for Citizenship and Issuance of Certificate Under Section 322 ([Form N-600K](#)) for the child to become a U.S. citizen and obtain a Certificate of Citizenship. The application may be filed from outside of the United States.

If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than five years after the death of the U.S. citizen parent. [\[13\]](#)

The child of a U.S. citizen member of the U.S. armed forces accompanying his or her parent abroad on official orders may be eligible to complete all aspects of the naturalization proceedings abroad. This includes interviews, filings, oaths, ceremonies, or other proceedings relating to citizenship and naturalization.

F. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in USCIS administrative record or do not apply. ^[14]

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
 - Divorce Decree; or
 - Death Certificate.
- Evidence of United States citizenship of parent:
 - Birth Certificate;
 - Naturalization Certificate;
 - Consular Report of Birth Abroad (FS-240);
 - A valid unexpired U.S. passport; or
 - Certificate of Citizenship.
- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.
- Documentation of legal custody in the case of divorce, legal separation, or adoption.
- Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements, such as school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations.
- Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status or evidence establishing that the child qualifies for an exception to these requirements as provided for children of members of the U.S. armed forces. ^[15] Such evidence may be presented at the time of interview when appropriate.
- Copy of the full, final adoption decree, if applicable
 - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parents have had custody of, and lived with, the child for at least two years. ^[16]
 - For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen). ^[17]
 - For a Hague Convention adoptee applying under INA 322, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen). ^[18]

- Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent or U.S. citizen legal guardian.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or
- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

G. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Citizenship and Issuance of Certificate Under Section 322 ([Form N-600K](#)). This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age. ^[19] USCIS, however, waives the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if any of the following documentation is submitted along with the application. ^[20]

H. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Citizenship and Issuance of Certificate Under Section 322 ([Form N-600K](#)), USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship. ^[21]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. ^[22] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice. ^[23] An applicant may file an appeal within 30 days of service of the decision.

Footnotes

1. ^[^] See [Nationality Chart 4](#).

2. ^[^] See [INA 322](#).

3. ^[^] Adoptive parent must meet requirements of either [INA 101\(b\)\(1\)\(E\)](#), [INA 101\(b\)\(1\)\(F\)](#), or [INA 101\(b\)\(1\)\(G\)](#).

4. ^[^] See Section C, Physical Presence of U.S. Citizen Parent or Grandparent [[12 USCIS-PM H.5\(C\)](#)].

5. [^] For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].
6. [^] As of November 2, 2002, a U.S. citizen grandparent or U.S. citizen legal guardian became eligible to apply for naturalization under this provision on behalf of a child. See the 21st Century Department of Justice Appropriations Authorization Act for Fiscal 2002, Pub. L. 107-273 (November 2, 2002), which amended INA 322 to permit U.S. citizen grandparents or U.S. citizen legal guardians to apply for naturalization on behalf of a child if the child's U.S. citizen parent has died.
7. [^] See INA 322(a)(2). See 8 CFR 322.2(a)(2).
8. [^] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)]. See INA 322(d). See 8 CFR 322.2(c).
9. [^] See INA 322(a)(5). See 8 CFR 322.2(a)(5).
10. [^] See INA 322(a)(5).
11. [^] See INA 322(b). See Section G, Decision and Oath of Allegiance [12 USCIS-PM H.5(G)].
12. [^] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9]. See INA 322(d). See 8 CFR 322.2(c).
13. [^] See 8 CFR 322.3(a).
14. [^] See 8 CFR 322.3(b).
15. [^] See INA 322(d)(2).
16. [^] See INA 101(b)(1)(E). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2(C)].
17. [^] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either "readopted" the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.
18. [^] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.
19. [^] See 8 CFR 322.4.
20. [^] See 8 CFR 341.2. See Section F, Documentation and Evidence [12 USCIS-PM H.5(F)].
21. [^] See 8 CFR 322.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].
22. [^] See INA 337(a). See 8 CFR 341.5(b).
23. [^] See 8 CFR 322.5(b) and 8 CFR 103.3(a).

Chapter 6 - Special Provisions for the Naturalization of Children

A. Children Subjected to Battery or Extreme Cruelty

In general, the spouse of a U.S. citizen who resides in the United States may be eligible for naturalization based on his or her marriage under section 319(a) of the Immigration and Nationality Act (INA). On October 28, 2000, Congress expanded the naturalization provision based on a family relationship to a U.S. citizen. The amendments added that children of U.S. citizens may naturalize if they obtained lawful permanent resident (LPR) status based on having been battered or subjected to extreme cruelty by their citizen parent. ^[1]

1. Eligibility for Special Provision

A child ^[2] is eligible for naturalization under the spousal naturalization provisions ^[3] if he or she obtained LPR status based on:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive U.S. citizen;
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive LPR, if the abusive parent naturalizes after USCIS approves the petition; ^[4]
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the derivative child ^[5] of a self-petitioning spouse of a U.S. citizen who was battered or subjected to extreme cruelty by a U.S. citizen spouse; ^[6] or
- Cancellation of removal where the applicant was the child of a U.S. citizen who subjected him or her to battery or extreme cruelty. ^[7]

A child is also eligible for naturalization under the spousal naturalization provisions if he or she had the conditions on his or her residence removed based on:

- An approved battery or extreme cruelty waiver of the joint filing requirement for the Petition to Remove Conditions on Residence (Form I-751). ^[8]

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant is over the age of 18 at the time of filing. The applicant must be the genetic, legitimated, or adopted son or daughter of a U.S. citizen, or the son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child's legal parent. ^[9]

Stepchildren of U.S. citizens may also naturalize under this provision if otherwise eligible. ^[10]

2. Exception to General Naturalization Requirements

An applicant subjected to battery or extreme cruelty by his or her U.S. citizen parent is exempt from the following naturalization requirements: ^[11]

- Living with the U.S. citizen parent for at least 3 years at the time of filing the naturalization application; and
- The applicant's U.S. citizen parent, who petitioned for him or her, has U.S. citizenship from the time of filing until the time the applicant takes the Oath of Allegiance. ^[12]

These exceptions also apply to derivative children.

B. Surviving Child of Members of the U.S. Armed Forces

On November 24, 2003, Congress amended certain military-related immigration provisions of the INA. This included extending certain immigration benefits to surviving spouses, children, and parents of deceased U.S. citizen service members. ^[13]

1. Eligibility for Special Provision

A surviving child, who has not already acquired U.S. citizenship, may be eligible for naturalization. ^[14] In addition, the child may qualify for certain exemptions from the general naturalization requirements. To qualify for this special provision, the applicant must be the child ^[15] of a U.S. citizen service member who died during a period of honorable service in an active duty status in the U.S. armed forces. ^[16] This includes service members who were not U.S. citizens at the time of their death but were later granted posthumous U.S. citizenship.

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant be over the age of 18 at the time of filing. The applicant must be the genetic, legitimated, or adopted son or daughter of a U.S. citizen, or the son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child's legal parent. ^[17] A person who is the surviving stepchild of a member of the U.S. armed forces is not eligible to naturalize under this provision.

2. Exceptions to General Naturalization Requirements

Under the special provision, the qualified surviving child is exempt from the following requirements:

- Continuous residence;
- Physical presence; and
- Three-month physical presence within the state or jurisdiction.

Footnotes

1. ^[^] See the Victims of Trafficking and Violence Protection Act of 2000, [Pub. L. 106-386](#) (October 28, 2000). For more information regarding battered spouses or spouses subjected to extreme cruelty, see Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States, Section F, Eligibility for Persons Subjected to Battery or Extreme Cruelty [[12 USCIS-PM G.3\(F\)](#)].
2. ^[^] The child must be 18 years of age or older to apply for naturalization.
3. ^[^] Under spousal naturalization provisions, the child is required to show 3 years of continuous residence and physical presence at least half of that time. See [INA 319\(a\)](#).
4. ^[^] See [INA 204\(a\)\(1\)\(B\)\(ii\)](#). The definition of child includes certain stepchildren. See [INA 101\(b\)\(1\)](#).
5. ^[^] A derivative child is an unmarried child who can accompany the principal beneficiary based on a parent-child relationship.
6. ^[^] See [INA 319\(a\)](#). See [INA 204\(a\)\(1\)\(A\)\(iii\)](#), [INA 204\(a\)\(1\)\(A\)\(iv\)](#), for inclusion of the derivative child in the VAWA self-petitioning provisions. See [INA 319\(a\)](#).
7. ^[^] See [INA 240A\(b\)\(2\)\(A\)\(i\)\(I\)](#) or [INA 240A\(b\)\(2\)\(A\)\(i\)\(III\)](#).
8. ^[^] The waiver must be based on either the parent being subjected to battery or extreme cruelty by the petitioning citizen or LPR spouse, or the child being subjected to battery or extreme cruelty by the conditional permanent resident parent or the petitioning citizen or LPR spouse. See [INA 216\(c\)\(4\)\(C\)](#).
9. ^[^] For further guidance on the definition of child for citizenship and naturalization purposes, see Chapter 2, Definition of Child for Citizenship and Naturalization [[12 USCIS-PM H.2](#)].

10. [^] See [INA 101\(b\)\(1\)](#).
11. [^] See [INA 319\(a\)](#).
12. [^] See [INA 204\(a\)\(1\)\(A\)\(iii\)\(II\)\(aa\)\(CC\)\(bbb\)](#). See [INA 204\(a\)\(1\)\(A\)\(iv\)](#).
13. [^] See the National Defense Authorization Act for Fiscal Year 2004, [Pub. L. 108-136 \(PDF\)](#) (November 24, 2003). See [INA 319\(d\)](#). See [INA 329A](#).
14. [^] See [INA 319\(d\)](#). For information on eligibility for surviving parents and spouses, see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [[12 USCIS-PM I.9](#)].
15. [^] See [INA 101\(c\)\(1\)](#). The child must meet the definition of child applicable to citizenship and naturalization. See Part H, Children of U.S. Citizens, Chapter 2, Definition of Child [[12 USCIS-PM H.2](#)].
16. [^] See Part H, Children of U.S. Citizens, Chapter 2, Definition of Child for Citizenship and Naturalization [[12 USCIS-PM H.2](#)].
17. [^] For further guidance on the definition of child for citizenship and naturalization purposes, see Chapter 2, Definition of Child for Citizenship and Naturalization [[12 USCIS-PM H.2](#)].

Part I - Military Members and their Families

Chapter 1 - Purpose and Background

A. Purpose

Service members, certain veterans of the U.S. armed forces, and certain military family members may be eligible to become citizens of the United States ^[1] under special provisions of the [Immigration and Nationality Act \(INA\)](#), to include expedited and overseas processing.

There are general requirements and qualifications that an applicant for naturalization must meet in order to become a U.S. citizen. These general requirements include:

- Good Moral Character (GMC);
- Residence and physical presence in the U.S.;
- Knowledge of the English language;
- Knowledge of U.S. government and history; and
- Attachment to the principles of the U.S. Constitution.

The periods of residence and physical presence in the United States normally required for naturalization may not apply to military members and certain military family members. In addition, qualifying children of military members may not need to be present in the United States to acquire citizenship. Finally, qualifying members of the military and their family members may be able to complete the entire process from overseas.

Military members and their families may call the Military Help Line for assistance: 1-877-CIS-4MIL (1-877-247-4645).

B. Background

Special naturalization provisions for members of the U.S. armed forces date back at least to the Civil War. ^[2] Currently, the special naturalization provisions provide for expedited naturalization through military service during peacetime ^[3] or during designated periods of hostilities. ^[4] In addition, some provisions benefit certain relatives of members of the U.S. armed forces.

As of March 6, 1990, citizenship may be granted posthumously to service members who died as a direct result of a combat-related injury or disease. ^[5] Before this legislation, posthumous citizenship could only be granted through the enactment of private legislation for specific individuals.

Congress and the President have continued to express interest in legislation to expand the citizenship benefits of non-U.S. citizens serving in the military since the events of September 11, 2001. Legislation to benefit service members and their family members has increased considerably since 2003.

1. Executive Order Designating Period since September 11, 2001 as a Period of Hostility

On July 3, 2002, then President, George W. Bush, officially designated by Executive Order the period beginning on September 11, 2001 as a “period of hostilities.” The Executive Order triggered immediate naturalization eligibility for qualifying service members. ^[6]

At the time of the designation, the Department of Defense (DOD) and legacy INS announced that they would work together to ensure that military naturalization applications would be processed expeditiously. USCIS adjudication procedures for military naturalization applications reflect that commitment.

2. Legislation Affecting Service Period, Overseas Naturalization, and Benefits for Relatives

On November 24, 2003, Congress enacted legislation ^[7] to:

- Reduce the period of service required for military naturalization based on peacetime service from three years to one year. ^[8]
- Add service in the Selected Reserve of the Ready Reserve during periods of hostilities as a basis to qualify for naturalization. ^[9]
- Expand the immigration benefits available to the spouses, children, and parents of U.S. citizens who die from injuries or illnesses resulting from or aggravated by serving in combat. These benefits extend to such relatives of service members who were granted citizenship posthumously.
- Waive fees for naturalization applications based on military service during peacetime or during periods of hostilities. ^[10]
- Permit naturalization processing overseas in U.S. embassies, consulates, and military bases for members of the U.S. armed forces. ^[11]

Efforts since the 2003 legislation have focused on further streamlining procedures or extending immigration benefits to immediate relatives of service members.

3. Legislation Affecting Residence, Physical Presence, and Naturalization while Abroad for Spouses and Children

On January 28, 2008, Congress amended existing statutes to allow residence abroad to qualify as “continuous residence” and “physical presence” in the United States for a spouse or child of a service member who is authorized to accompany the service member by official orders and is residing abroad with the service member. ^[12]

Under certain conditions, a spouse or child of a service member may count any period of time that he or she is residing (or has resided) abroad with the service member as residence and physical presence in the United States. This legislation also prescribes that such a spouse or child may be eligible to have any or all of their naturalization proceedings conducted abroad. Before this legislation, the law only permitted eligible service members to participate in naturalization proceedings abroad.

- [INA 284\(b\)](#) limits the circumstances under which the lawful permanent resident (LPR) spouse or child is considered to be seeking admission to the United States. This means that the spouse or child will not be deemed to have abandoned or relinquished his or her LPR status while residing abroad with the service member. The provision ensures reentry into the United States by LPR spouses and children whose presence abroad might otherwise be deemed as abandonment of LPR status.
- [INA 319\(e\)](#) allows certain LPR spouses to count any qualifying time abroad as continuous residence and physical presence in the United States and permits eligible spouses to naturalize overseas.
- [INA 322\(d\)](#) allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and allows the child to naturalize overseas.

4. Fingerprint Requirement (Kendell Frederick Citizenship Assistance Act)

On June 26, 2008, Congress mandated that USCIS use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the naturalization background check requirements unless a more efficient method is available. ^[13]

5. Expedited Application Processing (Military Personnel Citizenship Processing Act)

On October 9, 2008, Congress amended existing statutes to mandate USCIS to process and adjudicate naturalization applications filed under certain military-related provisions within six months of the receipt date or provide the applicant with an explanation for why his or her application is still pending and an estimated adjudication completion date. ^[14]

C. Legal Authorities

- [INA 319](#); [8 CFR 319](#) – Spouses of U.S. Citizens
- [INA 322](#); [8 CFR 322](#) – Children born outside of the United States
- [INA 328](#); [8 CFR 328](#) – Naturalization through peacetime military service for one year
- [INA 329](#); [8 CFR 329](#) – Naturalization through military Service during hostilities
- [INA 329A](#); [8 CFR 392](#) – Posthumous citizenship
- [8 U.S.C. 1443a](#) – Overseas naturalization for service members and their qualifying spouses and children

Footnotes

1. ^[^] The “United States” means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. See [INA 101\(a\)\(38\)](#).

2. ^[^] See [Appendix 1](#) for a table listing legislation affecting military members and their families.

3. ^[^] See Chapter 2, One Year of Military Service during Peacetime ([INA 328](#)) [[12 USCIS-PM I.2](#)].

4. ^[^] See Chapter 3, Military Service during Hostilities (INA 329) [[12 USCIS-PM I.3](#)].
5. ^[^] See [INA 329A](#). See the Posthumous Citizenship for Active-Duty Service Act of 1989, [Pub. L. 101-249 \(PDF\)](#), 104 Stat. 94. Posthumous citizenship under [INA 329A](#) was not initiated until 2004 through subsequent legislation, thereby providing substantive benefits to survivors (the amendments were retroactive to 2001). See the National Defense Authorization Act for Fiscal Year 2004, [Pub. L. 108-136](#), 117 Stat. 1392.
6. ^[^] See [Executive Order 13269 signed on July 3, 2002 \(67 FR 45287, July 8, 2002\) \(PDF\)](#). See [INA 329](#).
7. ^[^] See the National Defense Authorization Act for Fiscal Year 2004, [Pub. L. 108-136](#), 117 Stat. 1392.
8. ^[^] See [INA 328\(a\)](#).
9. ^[^] See [INA 329\(a\)](#).
10. ^[^] See [INA 328\(b\)](#) and [INA 329\(b\)](#) (Fee exemptions).
11. ^[^] See [8 U.S.C. 1443a](#) (Permitting overseas proceedings).
12. ^[^] See the National Defense Authorization Act for Fiscal Year 2008, [Pub. L. 110-181](#), 122 Stat. 3, which amended [INA 284](#), [INA 319](#), and [INA 322](#).
13. ^[^] See Chapter 6, Required Background Checks [[12 USCIS-PM I.6](#)]. See the Kendell Frederick Citizenship Assistance Act of 2008, [Pub. L. 110-251](#), 122 Stat. 2319.
14. ^[^] This legislation affects naturalization applications under [INA 328\(a\)](#), [INA 329\(a\)](#), [INA 329A](#), [INA 329\(b\)](#), and surviving spouses and children who qualify under [INA 319\(b\)](#), or [INA 319\(d\)](#). See the Military Personnel Citizenship Processing Act of 2008, [Pub. L. 110-382](#), 122 Stat. 4087.

Chapter 2 - One Year of Military Service during Peacetime (INA 328)

A. General Eligibility through One Year of Military Service during Peacetime

A person who has served honorably in the U.S. armed forces for one year at any time may be eligible to apply for naturalization, which is sometimes referred to as “peacetime naturalization.” ^[1] While some of the general naturalization requirements apply to qualifying members or veterans of the U.S. armed forces seeking to naturalize based on one year of service, ^[2] other requirements may not apply or are reduced.

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant must be 18 years of age or older.
- The applicant must have served honorably in the U.S. armed forces for at least one year.
- The applicant must be a lawful permanent resident (LPR) at the time of examination on the naturalization application.
- The applicant must meet certain residence and physical presence requirements.
- The applicant must demonstrate an ability to understand English including an ability to read, write, and speak English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least five years prior to filing the application until the time of his or her naturalization.

- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the U.S. during all relevant periods under the law.

B. Honorable Service

Qualifying military service is honorable active or reserve service in the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, or service in a National Guard unit. Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both “Honorable” and “General-Under Honorable Conditions” discharge types qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.

C. National Guard Service

Honorable service as a member of the National Guard is limited to service in a National Guard unit during such time as the unit is federally recognized as a reserve component of the U.S. armed forces. This applies to applicants for naturalization on the basis of one year of military service. ^[3]

D. Continuous Residence and Physical Presence Requirements

An applicant who files on the basis of one year of military service while he or she is still serving in the U.S. armed forces or within six months of an honorable discharge is exempt from the residence and physical presence requirements for naturalization. ^[4]

An applicant who files six months or more from his or her separation from the U.S. armed forces must have continuously resided in the United States for at least five years. In addition, the applicant must have been physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application. ^[5] However, any honorable service within the five years immediately preceding the date of filing the application will be considered towards residence and physical presence within the United States. ^[6]

An applicant with military service who does not qualify on the basis of one year of military service ^[7] may be eligible under another non-military naturalization provision. The period that the applicant has resided outside of the United States on official military orders does not break his or her continuous residence. USCIS will treat such time abroad as time in the United States. ^[8]

Footnotes

1. ^[^] See [INA 328](#).

2. ^[^] See [INA 316\(a\)](#) for the general naturalization requirements. See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].

3. ^[^] See [INA 328](#). The National Guard and Reserve service requirements under [INA 329](#) differ from those under [INA 328](#). See Chapter 3, Military Service during Hostilities (INA 329), Section C, National Guard Service [[12 USCIS-PM I.3\(C\)](#)].

4. ^[^] See [INA 328](#). See [8 CFR 328.2](#).

5. ^[^] See [INA 316\(a\)](#) and [INA 328\(d\)](#). See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].

6. ^[^] See [INA 328\(d\)](#).

7. ^[^] See [INA 328](#).

8. ^[^] Special provisions also exist regarding the “place of residence” for applicants who are serving in the U.S. armed forces but who do not qualify for naturalization through the military provisions. See [8 CFR 316.5\(b\)](#). See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [[12 USCIS-PM D.6](#)].

Chapter 3 - Military Service during Hostilities (INA 329)

A. General Eligibility through Military Service during Hostilities

Members of the U.S. armed forces who serve honorably for any period of time during specifically designated periods of hostilities may be eligible to naturalize. ^[1]

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant may be of any age.
- The applicant must have served honorably in the U.S. armed forces during a designated period of hostility.
- The applicant must either be a lawful permanent resident (LPR) or have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces:
 - In the United States or its outlying possessions, including the Canal Zone, American Samoa, or Swains Island, or
 - On board a public vessel owned or operated by the United States for noncommercial service.
- The applicant must be able to read, write, and speak basic English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least 1 year prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law.

An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence. ^[2]

B. Honorable Service

Qualifying military service is honorable service in the Selected Reserve of the Ready Reserve or active duty service in the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard. Service in a National Guard Unit may also qualify. ^[3]

Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both “Honorable” and “General-Under Honorable Conditions” discharge types qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.

C. National Guard Service

An applicant filing on the basis of military service during hostilities^[4] who has National Guard service may qualify if he or she has honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve.^[5] USCIS does not require proof of federal activation for a National Guard applicant if the applicant served in the Selected Reserve of the Ready Reserve during a designated period of hostility.^[6]

D. Designated Periods of Hostilities

The Immigration and Nationality Act (INA) and Presidential Executive Orders have designated the following military engagements and ranges of dates as periods of hostilities.^[7]

Designated Periods of Hostilities			
World War I ^[8]	April 6, 1917	→	November 11, 1918
World War II ^[9]	September 1, 1939	→	December 31, 1946
Korean Conflict ^[10]	June 25, 1950	→	July 1, 1955
Vietnam Hostilities ^[11]	February 28, 1961	→	October 15, 1978
Persian Gulf Conflict ^[12]	August 2, 1990	→	April 11, 1991
War on Terrorism ^[13]	September 11, 2001	→	Present

On July 3, 2002, President George W. Bush issued [Executive Order 13269](#), which has designated a period of hostilities and has permitted the expedited naturalization for foreign nationals eligible under [INA 329](#) as of September 11, 2001. The current designated period continues to be a designated period of hostilities for [INA 329](#) purposes until the President issues a new Executive Order terminating the designation.^[14]

E. Eligibility as Permanent Resident or if Present in United States at Induction or Enlistment

In general, an applicant who files on the basis of military service during hostilities^[15] is not required to be an LPR if he or she was physically present at the time of induction, enlistment, reenlistment, or extension of service in the U.S. armed forces:

- In the United States, the Canal Zone, American Samoa, or Swains Island; or
- On board a public vessel owned or operated by the United States for noncommercial service.

In addition, an applicant who is lawfully admitted for permanent residence after enlistment or induction is also eligible for naturalization under this provision regardless of the place of enlistment or induction.

F. Conditional Permanent Residence and Naturalization during Hostilities

If the applicant is a conditional permanent resident and is eligible to naturalize on the basis of military service during hostilities ^[16] without being an LPR based on being in the United States during enlistment or induction, the applicant is not required to file or have an approved Petition to Remove Conditions on Residence ([Form I-751](#)) before his or her Application for Naturalization ([Form N-400](#)) may be approved.

G. Department of Defense Military Accessions Vital to National Interest Program

The general guidance in this section is from information provided by the Department of Defense (DOD) on its Military Accessions Vital to National Interest (MAVNI) program. USCIS is providing this general information in the Policy Manual to assist potential service members and their families. ^[17]

1. Military Accessions Vital to National Interest Program

In 2009, DOD authorized the MAVNI pilot program as a recruitment tool to enlist certain nonimmigrants and other foreign nationals who have skills that are considered vital to the national interest of the United States. ^[18] The program applies to certain health care professionals and foreign nationals who are fluent in certain foreign languages. ^[19]

A foreign national entering active duty status or service in the Selected Reserve of the Ready Reserve may apply for military naturalization after the applicant's Request for Certification of Military or Naval Service ([Form N-426](#)) has been properly authorized, completed, and signed by the appropriate person authorized by DOD. ^[20] USCIS is unable to adjudicate a naturalization application without a properly submitted N-426.

2. General Eligibility Requirements

Eligible Candidates

To be eligible for the MAVNI program, the DOD requires applicants to be in one of the following immigration categories or authorized stays at the time of enlistment into the U.S. armed forces:

- Asylee;
- Refugee;
- Beneficiary of Temporary Protected Status (TPS);
- Person granted deferred action by USCIS under the Deferred Action for Childhood Arrivals (DACA) policy; or
- Nonimmigrant in any of the following categories: E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V.

Valid Status for 2 Years

The DOD requires most applicants for MAVNI to have been in a valid status in one of the eligible immigration categories or authorized stays listed above for at least 2 years immediately preceding the date of enlistment. The applicant is not required to be in the same qualifying category or authorized stay listed above for those 2 years on the date of enlistment.

The DOD may exempt or waive the 2-year requirement for certain applicants. Specifically, the DOD does not require DACA recipients to meet the 2-year requirement. In addition, the DOD will consider waiving the requirement that an applicant to the MAVNI program be in valid immigration status or within a period of authorized stay at the time of enlistment on a case-by-case basis under certain circumstances. ^[21]

3. Other Factors to Consider

Nonimmigrants and Absences from United States

Under DOD guidance, most applicants to the MAVNI program under a qualifying nonimmigrant category at the time of enlistment must not have been absent from the United States for more than 90 days during the 2-year period immediately preceding the date of enlistment. ^[22] The DOD does not apply this 90-day limitation on absences to DACA recipients.

Foreign Residency Requirement

A nonimmigrant exchange visitor under the J nonimmigrant visa classification may be eligible to apply for the MAVNI program with the DOD. Certain nonimmigrant exchange visitors are subject to a statutory foreign residence requirement. ^[23] J exchange visitors who enlist in the military through the MAVNI program are not required to comply with the foreign residence requirement in order to naturalize. ^[24] In addition, the dependent spouse or child of the exchange visitor is not required to comply with the foreign residence requirement. ^[25]

Adjustment of Status Applicants

The DOD does not disqualify otherwise eligible applicants to the MAVNI program by virtue of having a pending adjustment of status application with USCIS. ^[26]

Footnotes

1. ^[^] See [INA 329](#).
2. ^[^] See [INA 329\(b\)](#). See [8 CFR 329.2\(e\)](#).
3. ^[^] See Section C, National Guard Service [[12 USCIS-PM I.3\(C\)](#)].
4. ^[^] See [INA 329](#).
5. ^[^] See [8 CFR 329.1](#). See [10 U.S.C. 10143](#) for more information on the Selected Reserve of the Ready Reserve.
6. ^[^] The National Guard and Reserve service requirements under [INA 329](#) differ from those under [INA 328](#). See Chapter 2, One Year of Military Service during Peacetime (INA 328), Section C, National Guard Service [[12 USCIS-PM I.2\(C\)](#)].
7. ^[^] See [8 CFR 329.1](#) and [8 CFR 329.2](#).
8. ^[^] See [8 CFR 329.1](#) and [8 CFR 329.2](#). Declared by Joint Resolution of Congress of April 6, 1917 (40 Stat. 429, Ch. 1) and Joint Resolution of Congress, December 7, 1917 (40 Stat. 429, Ch. 1). Armistice signed, November 11, 1918.
9. ^[^] See [8 CFR 329.2](#). See [Proclamation No. 2714](#), Cessation of Hostilities of World War II, 61 Stat. 1048 (December 31, 1946).
10. ^[^] See [8 CFR 329.2](#).
11. ^[^] See [8 CFR 329.2](#). See [Exec. Order No. 12081](#), Termination of Expeditious Naturalization Based on Military Service, 43 FR 42237 (September 18, 1978).
12. ^[^] See [8 CFR 329.2](#). See [Exec. Order No. 12939](#), Expedited Naturalization of Aliens and Noncitizen Nationals Who Served in an Active-Duty Status During the Persian Gulf Conflict, 59 FR 61231 (November 22, 1994).
13. ^[^] See [8 CFR 329.2](#). See [Exec. Order No. 13269](#), Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45287 (July 3, 2002).
14. ^[^] See [8 CFR 329.2](#). See [Exec. Order No. 13269](#), Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45287 (July 3, 2002).

15. [^] See [INA 329](#).
16. [^] See [INA 329](#).
17. [^] For further information and details of the DOD program, see the [DOD MAVNI Fact Sheet \(PDF\)](#) or contact the DOD.
18. [^] The Secretary of Defense authorized the pilot program. See the [DOD MAVNI Fact Sheet \(PDF\)](#).
19. [^] See sections on health care professionals and eligible languages in the [DOD MAVNI Fact Sheet \(PDF\)](#).
20. [^] MAVNI enlistees should speak with their commanding officers for additional information regarding the circumstances under which the military departments will sign and certify the Form N-426.
21. [^] See section on eligibility in the [DOD MAVNI Fact Sheet \(PDF\)](#).
22. [^] See section on eligibility in the [DOD MAVNI Fact Sheet \(PDF\)](#).
23. [^] See [INA 212\(e\)](#).
24. [^] The J exchange visitor is not required to obtain a waiver of the [INA 212\(e\)](#) foreign residence requirement. See [INA 329](#).
25. [^] A J-1 exchange visitor's dependent spouse or child is issued a J-2 nonimmigrant visa.
26. [^] See [Form I-485](#), Application to Register Permanent Residence or Adjust Status. See section on eligibility in the [DOD MAVNI Fact Sheet \(PDF\)](#).

Chapter 4 - Permanent Bars to Naturalization

A. Exemption or Discharge from Military Service Because of Foreign Nationality

1. Permanent Bar for Exemption or Discharge from Military Service

An applicant who requested, applied for, and obtained a discharge or exemption from military service from the U.S. armed forces on the ground that he or she is an alien or foreign national ("alienage discharge") is permanently ineligible for naturalization unless he or she qualifies for an exception (discussed below). ^[1]

An exemption from military service is either a permanent exemption from induction into the U.S. armed services or the release or discharge from military training or service in the U.S. armed forces. ^[2] Induction means compulsory entrance into military service of the United States by conscription or by enlistment after being notified of a pending conscription.

Until 1975, applicants were required to register for the military draft. The failure to register for the draft or to comply with an induction notice is relevant to the determination of whether the applicant was liable for military service, especially in cases where an exemption was based on foreign nationality.

Certain persons were granted exemptions from the draft for reasons other than foreign nationality, including medical disability and conscientious objector. An applicant may present a draft registration card with an exempt classification under circumstances that do not relate to foreign nationality.

2. Exceptions to Permanent Bar

There are exceptions to the permanent bar to naturalization for obtaining a discharge or exemption from military service on the ground of alienage. ^[3]

The permanent bar does not apply to the applicant if he or she establishes by clear and convincing evidence that:

- The applicant had no liability for military service (even in the absence of an exemption) at the time he or she requested an exemption from military service;
- The applicant did not request or apply for the exemption from military service, but such exemption was automatically granted by the U.S. Government; ^[4]
- The exemption from military service was based upon a ground other than the applicant's alienage;
- The applicant was unable to make an intelligent choice between an exemption from military service and citizenship because he or she was misled by an authority from the U.S. Government or from the government of his or her country of nationality;
- The applicant applied for and received an exemption from military service on the basis of alienage, but was subsequently inducted into the U.S. armed forces or the National Security Training Corps; ^[5]
- Prior to requesting the exemption from military service, the applicant served a minimum of eighteen months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of his or her service, or the applicant served a minimum of twelve months and applied for registration with the Selective Service Administration after September 28, 1971; or
- Prior to requesting the exemption from military service, the applicant was a “treaty national” ^[6] who had served in the armed forces of the country of which he or she was a national. ^[7]

3. Countries with Treaties Providing Reciprocal Exemption from Military Service

The tables below provide lists of countries that currently have (or previously had) effective treaties providing reciprocal exemption from military service. ^[8]

Countries with Effective Treaties Providing Reciprocal Exemption from Military Service	
Argentina	Art. X, 10 Stat. 1005, 1009, effective 1853
Austria	Art. VI, 47 Stat. 1876, 1880, effective 1928
China	Art. XIV, 63 Stat. 1299, 1311, effective 1946
Costa Rica	Art. IX, 10 Stat. 916, 921, effective 1851
Estonia	Art. VI, 44 Stat. 2379, 2381, effective 1925
Honduras	Art. VI, 45 Stat. 2618, 2622, effective 1927
Ireland	Art. III, 1 US 785, 789, effective 1950

Countries with Effective Treaties Providing Reciprocal Exemption from Military Service

Italy	Art. XIII, 63 Stat. 2255, 2272, effective 1948
Latvia	Art. VI, 45 Stat. 2641, 2643, effective 1928
Liberia	Art. VI, 54 Stat. 1739, 1742, effective 1938
Norway	Art. VI, 47 Stat. 2135, 2139, effective 1928
Paraguay	Art. XI, 12 Stat. 1091, 1096, effective 1859
Spain	Art. V, 33 Stat. 2105, 2108, effective 1902
Switzerland	Art. II, 11 Stat. 587, 589, effective 1850
Yugoslavia Serbia	Art. IV, 22 Stat. 963, 964, effective 1881

Countries with Expired Treaties Providing Reciprocal Exemption from Military Service

El Salvador	Art. VI, 46 Stat. 2817, 2821 (effective 1926 to February 8, 1958)
Germany	Art. VI, 44 Stat. 2132, 2136 (effective 1923 to June 2, 1954)
Hungary	Art. VI, 44 Stat. 2441, 2445 (effective 1925 to July 5, 1952)
Thailand (Siam)	Art. 1, 53 Stat. 1731, 1732 (effective 1937 to June 8, 1968)

4. Documentation and Evidence

The Application for Naturalization ([Form N-400](#)) and Request for Certification of Military or Naval Service ([Form N-426](#)) contain questions pertaining to discharge due to alienage or foreign nationality. The fact that an applicant is exempted or discharged from service in the U.S. armed forces on the grounds that he or she is a foreign national (alien) may impact the applicant's eligibility for naturalization.

Selective Service and military department records are conclusive evidence of service and discharge. ^[9] Proof of an applicant's request and approval for an exemption or discharge from military service because the applicant is a foreign national may be grounds for denial of the naturalization application. ^[10]

B. Deserters or Persons Absent Without Official Leave (AWOL)

An applicant who is convicted by court martial as a deserter may be permanently barred from naturalization. ^[11] A person not ultimately court martialed for being a deserter or for being Absent without Official Leave (AWOL), however, is not permanently barred from naturalization.

An applicant who deserted or was AWOL during the relevant period for good moral character may be ineligible for naturalization under the "unlawful acts" provision. ^[12]

Footnotes

1. ^[^] See [INA 315](#). See [8 CFR 315.2](#).

2. ^[^] See [8 CFR 315.1](#). The Ninth Circuit has found that an exemption from voluntary military service is not a permanent bar under INA 315. See *Gallarde v. I.N.S.*, 486 F.3d 1136 (9th Cir 2007). [INA 329](#) has similar language about exemptions, and that language has been found to cover discharges based on alienage even in cases of voluntary enlistment. See *Sakarapanee v. USCIS*, 616 F.3d 595, (6th Cir 2010). Officers should consult with local OCC counsel in handling discharges based on alienage.

3. ^[^] See [8 CFR 315.2\(b\)](#).

4. ^[^] See *In re Watson*, 502 F. Supp. 145 (D.C. 1980).

5. ^[^] However, an applicant who voluntarily enlists in and serves in the U.S. armed forces after applying for and receiving an exemption from military service on the basis of alienage is not exempt from the permanent bar.

6. ^[^] "Treaty national" means a person who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service.

7. ^[^] See [8 CFR 315.2\(b\)](#).

8. ^[^] See [8 CFR 315.4](#).

9. ^[^] See [8 CFR 315.3](#).

10. ^[^] See [INA 315](#). See [8 CFR 315.2](#).

11. ^[^] See [INA 314](#).

12. ^[^] See Part F, Good Moral Character, Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts [[12 USCIS-PM F.5\(M\)](#)].

Chapter 5 - Application and Filing for Service Members (INA 328 and 329)

This section provides relevant information for applying for naturalization on the basis of military service. ^[1] Service members should file their applications in accordance with the instructions for the Application for Naturalization ([Form N-400](#)) and other required forms.

A. Required Forms

An applicant filing for naturalization based on one year of honorable military service during peacetime ^[2] or honorable service during a designated period of hostility ^[3] must complete and submit all of the following to USCIS:

Form N-400, Application for Naturalization

The applicant should check the appropriate eligibility option on the Application for Naturalization to indicate that he or she is applying on the basis of qualifying military service. The applicant should file the application in accordance with the form instructions.

Form N-426, Request for Certification of Military or Naval Service

The Request for Certification of Military or Naval Service confirms whether the applicant served honorably in an active duty status or in the Selected Reserve of the Ready Reserve. The form may also establish whether the applicant has ever been released from military service on the grounds that he or she is an alien or foreign national. Only those applicants applying under [INA 328](#) or [INA 329](#) are required to submit the form. An applicant applying under a different naturalization provision is not required to submit the form, even if the applicant has prior military service.

The military must complete and certify (sign) the Request for Certification of Military or Naval Service before it is submitted to USCIS. USCIS, however, will accept a completed but uncertified form submitted by an applicant who has separated from the U.S. armed forces if:

- The applicant submitted a photocopy of his or her Certificate or Release from Active Duty (DD Form 214) or National Guard Report of Separation and Record of Service (NGB Form 22) for applicable periods of service listed on [Form N-426](#); and
- The DD Form 214 or NGB Form 22 lists information on the type of separation and character of service. Such information is typically found on page “Member-4” of DD Form 214 or Block 24 of NGB Form 22.

Most military installations have a designated office that serves as a point-of-contact to assist service members with their naturalization application packets. Service members should inquire through their chain of command for the appropriate office to assist with preparing the naturalization packet.

B. Fee Exemptions

- USCIS charges no fees for filing an Application for Naturalization ([Form N-400](#)) or for biometrics capturing for applications filed under [INA 328](#) or [INA 329](#).
- There is no fee for filing a Request for a Hearing on a Decision in Naturalization Proceedings ([Form N-336](#)) for applicants whose naturalization application filed under [INA 328](#) or [INA 329](#) has been denied. ^[4]
- There is no filing fee for current and former service members for an Application for Certificate of Citizenship ([Form N-600](#)). ^[5]

C. Filing Location and Initial Processing

Naturalization applications filed on the basis of military service should be filed in accordance with the form instructions. ^[6] USCIS will permit an applicant residing abroad the option to file his or her application for naturalization with the USCIS overseas office having jurisdiction over his or her place of residence, as practicable.

An applicant serving abroad may complete all aspects of the naturalization process, including fingerprinting, interviews and oath ceremonies while residing abroad on official orders. ^[7] The applicant may request overseas processing at any time of the naturalization process.

Footnotes

1. ^[^] See [INA 328](#) and [INA 329](#).
2. ^[^] See [INA 328](#).
3. ^[^] See [INA 329](#).
4. ^[^] See [USCIS Fee Schedule Final Rule \(75 FR 58962, Sept. 24, 2010\)](#).
5. ^[^] See [USCIS Fee Schedule Final Rule \(75 FR 58962, Sept. 24, 2010\)](#).
6. ^[^] See [INA 328](#) and [INA 329](#).
7. ^[^] See [8 U.S.C. 1443a](#).

Chapter 6 - Required Background Checks

USCIS conducts security and background checks on all applicants for naturalization. Members or former members of the U.S. armed forces applying for naturalization must comply with those requirements. This chapter provides information on specific background checks required of such applicants. This chapter also provides information on the ways service members may meet the fingerprint requirement for naturalization.

A. Defense Clearance Investigative Index (DCII) Query

USCIS must conduct a Defense Clearance Investigative Index (DCII) query with the DOD as part of the background check process on any applicant with military service regardless of the section of law under which he or she is applying for naturalization. The DCII check is valid for 15 months from the initial response. The DCII check should show whether the applicant has any derogatory information in his or her military records. ^[1]

B. Fingerprint Requirement and the Kendell Frederick Citizenship Assistance Act

USCIS must collect fingerprint records as part of the background check process on most applicants for naturalization. The Kendell Frederick Citizenship Assistance Act (KFCAA) mandates USCIS to use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the fingerprint requirement for service members unless a more efficient method is available.

If DHS determines that new biometrics would “result in more timely and effective adjudication of the individual’s naturalization application,” DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints. ^[2]

C. Ways Service Members may Meet Fingerprint Requirement

The table below provides the ways in which a service member may meet the fingerprint requirement for naturalization on the basis of military service. ^[3] Such applicants may meet the requirement through any of the following ways provided in the table.

These procedures aim at USCIS compliance with the KFCOA.

Ways Service Members may Meet Fingerprint Requirement for Naturalization

- The service member may appear at any stateside USCIS Application Support Center (ASC) for fingerprint capture with or without an appointment
- The service member may have his or her fingerprints taken by USCIS personnel at select military installations in the United States via mobile fingerprinting equipment
- USCIS may re-submit the service member's fingerprints for up-to-date records if such records are on file with USCIS
- USCIS may acquire and use the service member's fingerprints taken at the time of enlistment into the military ("OPM fingerprints")
- The service member may have his or her fingerprints taken using the FD-258 fingerprint cards at a U.S. military installation (or U.S. embassy or consulate if overseas)
- USCIS will accept FD-258 fingerprint cards or comparable DOD fingerprint cards from domestic or overseas military installations (However, fingerprints captured electronically, either at an ASC or through a mobile fingerprinting unit, remain the more advantageous method for both the applicant and USCIS)

USCIS will consider an applicant's naturalization application to be abandoned and will deny the application for failure to appear for biometrics capture (fingerprinting) ^[4] if all of the following conditions are true:

- The NSC is unable to locate the applicant or three days have elapsed from the last day of the time period allotted for the applicant to appear for fingerprinting (as stated on the second ASC appointment notice);
- The applicant is stationed stateside (and is otherwise able to report to an ASC) and has not submitted FD-258 fingerprint cards;
- The applicant has not fulfilled the fingerprint requirement; and
- USCIS has determined that the enlistment fingerprints are unavailable or are unclassifiable.

Any subsequent correspondence from an affected applicant whose application was denied for failure to appear for fingerprinting within one year is considered a Service motion to reopen. ^[5] USCIS grants the motion and continues with the processing of the naturalization application. USCIS does not deny an application for abandonment for failure to provide fingerprints if USCIS has evidence that the applicant is deployed inside the United States or overseas and is unable to be fingerprinted.

Footnotes

1. ^[^] Previously, a military applicant was required to submit Form G-325B, Biographic Information, which USCIS used to initiate the DCII query. USCIS determined, however, that the information collected on [Form N-400](#) is sufficient to perform the queries

and deemed Form G-325B obsolete. As of February 18, 2010, Form G-325B is no longer required for any pending naturalization application.

2. ^[^] See the Kendell Frederick Citizenship Assistance Act of 2008, [Pub. L. 110-251 \(PDF\)](#), 122 Stat. 2319.
3. ^[^] See [INA 328](#) or [INA 329](#). See [8 CFR 335.2\(b\)](#).
4. ^[^] See [8 CFR 103.2\(b\)\(13\)\(ii\)](#).
5. ^[^] See [8 CFR 103.5\(a\)\(5\)](#).

Chapter 7 - Revocation of Naturalization

A military member whose naturalization was granted on the basis of military service on or after November 24, 2003 may be subject to revocation of naturalization if he or she was separated from the U.S. armed forces under other than honorable conditions before he or she has served honorably for a period or periods totaling at least five years. ^[1]

Footnotes

1. ^[^] See [INA 328\(f\)](#), [INA 329\(c\)](#), and [INA 340](#). See [Pub. L. 108-136 \(PDF\)](#). Such cases should be referred to U.S. Immigration and Customs Enforcement (ICE).

Chapter 8 - Posthumous Citizenship (INA 329A)

A. Eligibility for Posthumous Citizenship

In general, a person who serves honorably in the U.S. armed forces during designated periods of hostilities and dies as a result of injury or disease incurred in or aggravated by that service may be eligible for posthumous citizenship. ^[1] Posthumous citizenship establishes that the deceased service member is considered a citizen of the United States as of the date of his or her death. ^[2]

The military branch under which the deceased service member served will determine whether he or she served honorably in an active-duty status during a qualified period and whether the death was combat related.

Spouses and children of U.S. citizen service members who qualify for posthumous citizenship may be eligible for immigration benefits under special provisions of the INA. ^[3]

B. Application and Filing

The service member's next of kin, the Secretary of Defense, or the Secretary's designee in USCIS must submit an Application for Posthumous Citizenship ([Form N-644](#)) within two years of the service member's death and in accordance with the form instructions and with appropriate fee. ^[4] USCIS uses the posthumous citizenship application to verify the deceased service member's place of induction, enlistment or reenlistment; military service; and service-connected death. ^[5]

The following documents should be submitted along with the completed Application for Posthumous Citizenship, if available:

- DD Form 214, Certificate of Release or Discharge from Active Duty
- DD Form 1300, Report of Casualty/Military Death Certificate (or other military or State issued death certificate)

- Any other military or state issued certificate of the decedent's death

C. Adjudication

USCIS will issue a Certificate of Citizenship (Form N-645) in the name of the deceased service member establishing posthumously that he or she was a U.S. citizen on the date of his or her death if the Application for Posthumous Citizenship is approved. ^[6] In cases where USCIS denies the Form N-644, USCIS will notify the applicant of the decision and the reason(s) for denial. There is no appeal for a denied posthumous citizenship application. ^[7]

Footnotes

1. ^[^] See Chapter 3, Military Service during Hostilities (INA 329), Section D, Designated Periods of Hostilities [12 USCIS-PM I.3(D)].
2. ^[^] See INA 329A and 8 CFR 392.
3. ^[^] See Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].
4. ^[^] See 8 CFR 103.7.
5. ^[^] See 8 CFR 392.2.
6. ^[^] See 8 CFR 392.4. See Part K, Certificates of Citizenship and Naturalization, Chapter 2, Certificate of Citizenship [12 USCIS-PM K.2].
7. ^[^] See 8 CFR 392.3(d).

Chapter 9 - Spouses, Children, and Surviving Family Benefits

A. General Provisions for Spouses, Children, and Parents of Military Members

1. Benefits for Family Members

Spouses and children of U.S. citizen service members may be eligible for naturalization under special provisions in the INA. Certain spouses may be eligible for expedited naturalization in the United States and may not be required to establish any prior period of residence or specified period of physical presence within the United States, as generally required for naturalization.

The surviving spouse, child, or parent of a U.S. citizen who dies during a period of honorable service in an active duty status in the U.S. armed forces may be eligible for naturalization. Surviving family members seeking immigration benefits are given special consideration in the processing of their applications for permanent residence or for classification as an immediate relative.

On January 28, 2008, legislation was enacted to permit a spouse or child to count any period of time that he or she is residing abroad with the service member as authorized by official orders as residence and physical presence in the United States, under certain conditions. ^[1] The same legislation also prescribes that such a spouse or child may be eligible for overseas proceedings relating to naturalization, as previously only permitted for an eligible member of the U.S. armed forces.

Specifically, one provision limits the circumstances under which the lawful permanent resident (LPR) spouse or child is considered to be seeking admission to the United States. ^[2] Another provision allows the LPR spouse to count any qualifying

time abroad as continuous residence and physical presence in the United States and permits the spouse to naturalize overseas. ^[3] Another provision allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and permits the child to naturalize overseas. ^[4]

2. Documenting “Official Orders”

In order to count any qualifying time abroad as continuous residence and physical presence in the United States, a spouse or child of a member of the U.S. armed forces must have official military orders authorizing him or her to accompany his or her service member spouse or parent abroad, and must accompany or live with that service member as provided in those orders. ^[5]

USCIS will only accept the following documents issued by the U.S. armed forces as “official orders:”

- Copy of Permanent Change of Station (PCS) orders issued to a service member for permanent tour of duty overseas that specifically name the spouse or child applying for naturalization; or
- If the submitted PCS orders do not specifically name the applicant beyond reference to “spouse,” “child,” or “dependent,” then the applicant must submit:
- PCS orders (copy);
- Form DD-1278 (Certificate of Overseas Assignment to Support Application to File Petition for Naturalization); and
- Service member’s Form DD1172 (Application for Uniformed Services Identification Card DEERS Enrollment) naming dependents.

B. Spouses of Military Members ^[6]

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for spouses of service members. The paragraphs that follow the table provide further guidance on each provision.

Residence, Physical Presence, and Overseas Naturalization for Spouses of Members of the U.S. Armed Forces

INA Section	Residence	Physical Presence	Treatment of Time Residing Abroad	Overseas Naturalization
316(a)	LPR for 5 years	30 months	Time residing with U.S. citizen spouse serving abroad may be treated as residence and physical presence in the United States (INA 319(e))	May complete entire naturalization process from abroad
319(a)	LPR for 3 years	18 months		
319(b)	Must be LPR but no specified period of residence or physical presence is required			Must complete interview and oath in United States

1. Spouses of Service Members ([INA 316\(a\)](#) and [INA 319\(a\)](#))

Spouses of service members may qualify for naturalization through the general naturalization provision or on the basis of their marriage to a U.S. citizen. ^[7] The general provision applies to spouses who have been LPRs for five years immediately preceding the date of filing the naturalization application. ^[8] Naturalization on the basis of marriage applies to spouses of U.S. citizens who have been LPRs for three years immediately preceding the date of filing the naturalization application and who have lived in marital union with their citizen spouses for those three years. ^[9]

2. Spouses of Military Members who are or will be Stationed or Deployed Abroad (INA 319(b))

The law permits expedited naturalization in the United States for eligible spouses of U.S. citizen service members who are or will be stationed or deployed abroad. ^[10] This provision does not require any prior period of residence or specified period of physical presence within the United States for any LPR spouse of a U.S. citizen who is an employee of the United States Government (including a member of the U.S. armed forces) or recognized nonprofit organization who is stationed abroad in such employment for at least one year. ^[11]

In general, the applicant is required to be in the United States for his or her naturalization examination or interview and for taking the Oath of Allegiance for naturalization. ^[12]

Spouses of service members already accompanying and residing abroad with their military spouse may also qualify for naturalization through the general provision ^[13] or on the basis of their marriage to a U.S. citizen for three years. ^[14] Such spouses may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization. ^[15]

3. Continuous Residence and Physical Presence while Residing Abroad (INA 319(e))

Certain eligible spouses of service members may count qualifying residence abroad as residence and physical presence in the United States for purposes of naturalization. ^[16] This provision does not provide an independent basis for naturalization. The benefits of this provision only apply to an LPR who is eligible for naturalization through the general provision ^[17] or on the basis of his or her marriage to a U.S. citizen for three years. ^[18]

The spouse must meet all of the following conditions during such time abroad:

- The LPR is the spouse of a member of the U.S. armed forces;
- The LPR is authorized to accompany and reside abroad with the service member pursuant to the service member's official orders; ^[19] and
- The LPR is accompanying and residing abroad with the service member in marital union. ^[20]

The spouse is not required to be abroad at the time the officer makes such determination. For example, an applicant who is currently residing in the United States, but had previously resided abroad during the statutory residency or physical presence period, may count the time abroad as continuous residence and physical presence, if he or she meets the eligibility criteria.

The spouse of a service member who has been an LPR for five years and is applying for naturalization through the general provision does not need to establish that the service member is a U.S. citizen. ^[21] An applicant who is no longer married to a service member at the time of filing may still meet the residence and physical presence requirements if the LPR was married to the service member and met all the conditions above during the period of time in question.

The spouse of a service member who has been an LPR for three years and who is applying on the basis of his or her marriage for three years must establish that the service member has been a U.S. citizen for the required period. ^[22]

4. Overseas Naturalization for Spouses of Service Members

In addition to allowing certain time abroad to count towards the residence and physical presence requirements, [INA 319\(e\)](#) permits eligible spouses of service members to naturalize abroad without traveling to the United States for any part of the naturalization process.

In general, to be eligible to naturalize abroad, the LPR spouse of a service member must:

- Be authorized to accompany the service member abroad per the service member's official orders;
- Be residing abroad with the service member in marital union; and
- Meet the requirements of either [INA 316\(a\)](#) or [INA 319\(a\)](#) at the time of filing the naturalization application, except for the residence and physical presence requirements.

Prior to the enactment of the overseas provisions in 2008, with some exceptions, a service member's LPR spouse residing abroad with the service member had to apply for naturalization through expedited naturalization provisions. ^[23] This applied to a spouse who was eligible through the general provision ^[24] or through three years of marriage to a U.S. citizen ^[25] but whose time abroad rendered him or her unable to meet the respective continuous residence or physical presence requirements.

An LPR filing as the spouse of a service member residing abroad ^[26] was exempt from the continuous residence and physical presence requirements, but he or she was still required to return to the United States for his or her interview, naturalization, and any other related procedure. ^[27] The overseas naturalization provisions allows such an LPR spouse to apply for naturalization from abroad and complete any procedure relating to his or her application for naturalization while residing abroad. ^[28]

5. Application and Filing

Form N-400, Application for Naturalization

Eligible spouses of members of the U.S. armed forces who live abroad and want to naturalize abroad should submit an Application for Naturalization ([Form N-400](#)) in accordance with the instructions on the form and with appropriate fee. ^[29]

Spouses should indicate that they seek to naturalize through the general provision ^[30] or on the basis of their marriage to a U.S. citizen for three years ^[31] and to rely on [INA 319\(e\)](#) to meet the applicable continuous residence and physical presence requirements. Spouses should also write in: "[319\(e\)](#) Overseas Naturalization," if so desired. Only those eligible spouses who prefer naturalization abroad should apply for that option. Spouses who prefer to apply for naturalization in the United States may still elect to do so.

Form DD-1278, Certificate of Overseas Assignment to Support Application to File Petition for Naturalization

Spouses should include Form DD-1278 along with their naturalization application. Form DD-1278 must be completed and signed by the military official certifying the applicant has "concurrent travel orders" and is authorized to join their spouse military service member abroad.

Fingerprint Cards (FD258)

The spouse should submit two completed fingerprint cards (FD-258). Spouses applying overseas must have their fingerprints taken at a U.S. military base, an overseas USCIS field office, or an American Embassy/Consulate. Spouses applying in the United States must have their fingerprints taken at a USCIS Application Support Center.

Filing Location

The spouse should review and submit his or her application in accordance with the form instructions. USCIS will permit spouses who are residing abroad and eligible for the provisions under [INA 319\(e\)](#) to file their naturalization applications with the USCIS overseas office having jurisdiction over the spouse's overseas residence.

C. Children of Military Members ^[32]

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for children of service members. The paragraphs that follow the table provide further guidance on each provision.

Residence, Lawful Admission, and Overseas Naturalization for Children of Members of the U.S. Armed Forces

INA Section ^[33]	Place of Residence	Lawful Admission	Treatment of Time Residing Abroad	Automatic Citizenship or Overseas Naturalization
320	United States or Abroad	Must be LPR	Residence with U.S. citizen parent serving is treated as residence in United States	May acquire automatic citizenship (must take oath in the United States)
322	Abroad	No lawful admission required	Must reside with U.S. citizen parent serving abroad	May complete entire naturalization process from abroad

1. Children of Service Members Residing in the United States (INA 320)

Children of members of the U.S. armed forces residing in the United States may automatically acquire citizenship. ^[34] The child must be under 18 years of age and must be an LPR in order to qualify. In order to obtain a Certificate of Citizenship, a child who has automatically acquired citizenship must follow the instructions on the Application for Certificate of Citizenship ([Form N-600](#)). ^[35]

2. Children of Service Members Residing Abroad (INA 322)

In general, [INA 322](#) provides that a parent who is a U.S. citizen (or, if the citizen parent has died during the preceding five years, a citizen grandparent or citizen legal guardian) may apply for naturalization on behalf of a child born and residing outside of the United States who has not acquired citizenship automatically under [INA 320](#). The child must naturalize before he or she reaches 18 years of age.

The general criteria to qualify under [INA 322](#) include that the child must be temporarily present in the United States pursuant to a lawful admission in order to complete the naturalization. The child's qualifying U.S. citizen parent must also have been physically present in the United States or its outlying possessions for at least 5 years (2 of which after the age of 14). ^[36]

On January 28, 2008, [INA 322](#) was amended to permit certain eligible children of members of the armed forces to become naturalized U.S. citizens without having to travel to the United States for any part of the naturalization process. ^[37]

The amendments benefit children of U.S. citizen members of the military who are accompanying their parent abroad on official orders. ^[38] Specifically, [INA 322\(d\)](#) provides that:

- Such children are not required to have a lawful admission or be present in the United States; and
- The U.S. citizen service member who is the child's parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.

These benefits are available only to biological, legitimated, or adopted children of U.S. citizen members of the U.S. armed forces and do not apply to step-children of the U.S. citizen parent. This is because the definition of “child” applicable to citizenship and naturalization provisions does not include step-children. The biological or legitimated child of a U.S. citizen parent (and member of the U.S. armed forces) must meet the requirements in [INA 101\(c\)\(1\)](#). An adopted child must meet the requirements for adopted children. ^[39]

USCIS will ensure that the child of a member of the U.S. armed forces is not already a U.S. citizen (has not acquired automatic citizenship ^[40]) prior to making a determination that he or she qualifies for naturalization through [INA 322](#).

3. Lawful Admission and Maintenance Status Not Required ([INA 322\(d\)](#))

The child of a service member who is residing abroad with the service member per official orders is exempt from the temporary physical presence, lawful admission, and maintenance of lawful status requirements. ^[41]

4. Treatment of Physical Presence of U.S. Citizen Parent Residing Abroad

Any period of time the U.S. citizen service member who is the child’s parent is residing or has resided abroad will be treated as physical presence in the United States if:

- The child is authorized to accompany and reside abroad with the service member per official orders;
- The child is accompanying and residing abroad with the service member; and
- The service member is residing or has resided abroad per official orders.

The first two conditions above are the triggering events that allow any period of time abroad to count as physical presence in the United States for the U.S. citizen parent. ^[42]

If the child is residing abroad with his or her U.S. citizen parent per official orders at the time of filing the Application for Citizenship and Issuance of Certificate Under Section 322 ([Form N-600K](#)), then any previous time the parent has resided abroad on official orders will be treated as physical presence in the United States regardless of whether the child resided with the parent.

5. Overseas Naturalization for Children Eligible under [INA 322](#)

The child of a service member who is on official orders authorizing the child to accompany and reside with that parent is not required to be an LPR or to have any other kind of lawful admission in the United States. The child may complete his or her entire naturalization process, to include filing and oath, while residing abroad. ^[43]

6. Application and Filing

[Form N-600K](#), *Application for Citizenship and Issuance of Certificate Under Section 322*

To apply for citizenship for eligible children who live abroad and meet the requirements under [INA 322](#), applicants must submit an Application for Citizenship and Issuance of Certificate Under Section 322 ([Form N-600K](#)) in accordance with the instructions on the form and with appropriate fee. ^[44]

Evidence of Residence Abroad

The applicant may show that the child resides abroad on official orders with the U.S. citizen-parent service member by submitting a copy of the Permanent Change of Station (PCS) orders that include the child’s name.

If the PCS orders do not specifically name the applicant beyond reference to “child” or “dependent,” then also include a copy of the service member’s Form DD1172 (DEERS Enrollment), naming the child.

Filing Location

Applicants must submit [Form N-600K](#) in accordance with the instructions on the form. USCIS will permit such applications to be filed with the USCIS overseas office having jurisdiction over the applicant’s overseas residence. ^[45]

D. Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d))

The spouse, child, or parent of a deceased U.S. citizen member of the U.S. armed forces who died as the result of his or her honorable service may be eligible for naturalization as the surviving relative of the service member. This includes surviving relatives of service members who were granted posthumous citizenship. ^[46]

The surviving spouse must have been living in marital union with the U.S. citizen service member spouse and must not have been legally separated at the time of his or her death. The spouse, however, remains eligible for naturalization if the spouse has remarried since the service member’s death. ^[47]

The surviving spouse, child, or parent must meet the general naturalization requirements, except for the residence or physical presence requirements in the United States.

Footnotes

1. ^[^] See the National Defense Authorization Act for Fiscal Year 2008, [Pub. L. 110-181](#), 122 Stat. 3, which amended [INA 284](#), [INA 319](#), and [INA 322](#).
2. ^[^] See [INA 284\(b\)](#).
3. ^[^] See [INA 319\(e\)](#).
4. ^[^] See [INA 322\(d\)](#).
5. ^[^] See [INA 319\(e\)](#) and [INA 322\(d\)](#).
6. ^[^] This section describes certain benefits on residence, physical presence, and overseas naturalization for spouses of service members. See Part G, Spouses of U.S. Citizens [[12 USCIS-PM G](#)], for guidance on the general spousal naturalization provisions.
7. ^[^] See [INA 316\(a\)](#). See Part G, Spouses of U.S. Citizens [[12 USCIS-PM G](#)].
8. ^[^] See [INA 316\(a\)](#). See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].
9. ^[^] See [INA 319\(a\)](#).
10. ^[^] See [INA 319\(b\)](#).
11. ^[^] See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad [[12 USCIS-PM G.4](#)].
12. ^[^] See [INA 319\(b\)](#). See [8 CFR 319.2](#).
13. ^[^] See [INA 316\(a\)](#).
14. ^[^] See [INA 319\(a\)](#).

15. [^] See Part G, Spouses of U.S. Citizens [12 USCIS-PM G]. See 8 U.S.C. 1443a.
16. [^] See INA 319(e). See 8 CFR 316.5(b)(6). See 8 CFR 316.6.
17. [^] See INA 316(a).
18. [^] See INA 319(a).
19. [^] See Section A, General Provisions for Spouses, Children, and Parents of Military Members [12 USCIS-PM I.9(A)], for guidance on “official orders.”
20. [^] See 8 CFR 316.5(b)(6). See 8 CFR 316.6.
21. [^] See INA 316.
22. [^] See INA 319(a).
23. [^] See INA 319(b).
24. [^] See INA 316.
25. [^] See INA 319(a).
26. [^] See INA 319(b).
27. [^] See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad, Section F, In the United States for Examination and Oath of Allegiance [12 USCIS-PM G.4(F)].
28. [^] See 8 U.S.C. 1443a.
29. [^] See 8 CFR 103.7.
30. [^] See INA 316(a).
31. [^] See INA 319(a).
32. [^] This section describes certain benefits on residence, lawful admission, and overseas naturalization for children of service members. See Part H, Children of U.S. Citizens [12 USCIS-PM H], for guidance on the general naturalization and acquisition of citizenship provisions.
33. [^] See 8 CFR 320.2 and 8 CFR 322.2.
34. [^] See INA 320.
35. [^] See Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].
36. [^] See Part H, Children of U.S. Citizens, Chapter 5, Child Residing Outside of the United States (INA 322), Section C, Physical Presence of the U.S. Citizen Parent or Grandparent [12 USCIS-PM H.5(C)].
37. [^] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L.110-181, 122 Stat. 3.
38. [^] See Section A, General Provisions for Spouses, Children, and Parents of Military Members [12 USCIS-PM I.9(A)], for guidance on “official orders.”
39. [^] See Part H, Children of U.S. Citizens, Chapter 2, Definition of Child for Citizenship and Naturalization [12 USCIS-PM H.2]. See INA 101(b)(1)(E), (F), or (G).

40. [^] See [INA 320](#).

41. [^] See [INA 322\(d\)](#). See [INA 322\(a\)\(5\)](#) for the physical presence, lawful admission, and maintenance of lawful status requirements.

42. [^] See [INA 322\(a\)\(2\)\(A\)](#).

43. [^] See [INA 322\(d\)](#).

44. [^] See [8 CFR 103.7](#).

45. [^] See [8 U.S.C. 1443a](#).

46. [^] See [INA 319\(d\)](#).

47. [^] See [8 CFR 319.3](#).

Part J - Oath of Allegiance

Chapter 1 - Purpose and Background

A. Purpose

Before becoming a U.S. citizen, an eligible naturalization applicant must take an oath of renunciation and allegiance (Oath of Allegiance) in a public ceremony. ^[1] The applicant must establish that it is his or her intention, in good faith, to assume and discharge the obligations of the Oath of Allegiance. ^[2] The applicant must also establish that his or her attitude toward the Constitution and laws of the United States makes the applicant capable of fulfilling the obligations of the oath. ^[3]

B. Background

During the naturalization interview, the applicant signs the naturalization application to acknowledge his or her willingness and ability to take the Oath of Allegiance and to accept certain obligations of United States citizenship. Under certain circumstances, an applicant may qualify for a modification or waiver of the oath. ^[4] In such cases, an officer draws a line through the designated modified portions of the oath and the applicant is not required to recite the deleted portions. ^[5]

Applicants must generally recite the Oath of Allegiance orally during a public ceremony. Merely signing the naturalization application and a copy of the oath does not make the applicant a U.S. citizen.

C. Legal Authorities

- [INA 310](#); [8 CFR 310.1](#) – Naturalization authority
- [INA 337](#); [8 CFR 337](#) – Oath of Renunciation and Allegiance
- [Pub. L. 106-448 \(PDF\)](#) – Waiver of Oath of Renunciation and Allegiance for Naturalization of Aliens having Certain Disabilities Act of 2000

Footnotes

1. [^] See INA 337. See 8 CFR 337.1(a).
2. [^] See INA 337. See 8 CFR 337.1(c). Under certain circumstances, an “Affirmation of Allegiance” is the same as an Oath of Allegiance. See 8 CFR 337.1(b).
3. [^] See 8 CFR 337.1(c).
4. [^] See Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].
5. [^] See 8 CFR 337.1(b).

Chapter 2 - The Oath of Allegiance

A. Oath of Allegiance

In general, naturalization applicants take the following oath in order to complete the naturalization process:

“I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.” [1]

The Oath of Allegiance is administered in the English language, regardless of whether the applicant was eligible for a language waiver. However, an applicant may have a translator to translate the oath during the ceremony. In addition, an applicant may request a modification to the oath because of a religious objection or an inability or unwillingness to take an oath or recite the words “under God.” [2] An applicant or a designated representative may request an oath waiver when the applicant is unable to understand the meaning of the oath.

B. Authority to Administer the Oath

The Secretary of Homeland Security has the authority to administer the Oath and may delegate the authority to other officials within DHS and to other employees of the United States. [3]

The Secretary of Homeland Security has, through the Director of USCIS, delegated the authority to administer the Oath during an administrative naturalization ceremony to certain USCIS officials who can successively re-delegate the authority within their chains of command. [4] For example, the Director delegated this authority to the Deputy Director, District Directors, and Field Office Directors. Field Office Directors may re-delegate the authority by way of a delegation memorandum to other employees within their chains of command, such as supervisory immigration services officers.

In addition, immigration judges may also administer the Oath in administrative ceremonies. During judicial naturalization ceremonies, the judge in the district of proper jurisdiction has exclusive authority to administer the Oath.

C. Renunciation of Title or Order of Nobility

Any applicant who has any titles of heredity or positions of nobility in any foreign state must renounce the title or the position. The applicant must expressly renounce the title in a public ceremony and USCIS must record the renunciation as part of the proceedings. [5] Failure to renounce the title of position shows a lack of attachment to the Constitution.

In order to renounce a title or position, the applicant must add one of the following phrases to the Oath of Allegiance:

- I further renounce the title of (give title or titles) which I have heretofore held; or
- I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged. ^[6]

An applicant whose country of former nationality or origin abolished the title by law, or who no longer possesses a title, is not required to drop that portion of his or her name that originally designated such title as a part of his or her naturalization. ^[7]

Footnotes

1. ^[^] See [INA 337\(a\)](#). See [8 CFR 337.1\(a\)](#).
2. ^[^] See Chapter 3, Oath of Allegiance Modifications and Waivers [[12 USCIS-PM J.3](#)].
3. ^[^] See [INA 103\(a\)\(1\)\(6\)](#). Potential exercise of Oath authority by any of the following needs to be raised through chains of command to USCIS leadership and counsel for consideration: Any elected official, including the President, Vice President, or Members of Congress; military officers; judges (other than immigration judges or judges presiding over judicial ceremonies); or any person outside of USCIS, other than cases clearly involving the Secretary of Homeland Security's direct use of Oath authority.
4. ^[^] See [INA 310](#) and [8 CFR 310](#). See [INA 337](#) and [8 CFR 337](#). See Section II(V) of DHS Delegation 0150.1 (issued June 5, 2003).
5. ^[^] See [INA 337](#).
6. ^[^] See [8 CFR 337.1\(d\)](#).
7. ^[^] See *Society Vinicole de Champagne v. Mumm*, 143 F. 2d 240 (1944).

Chapter 3 - Oath of Allegiance Modifications and Waivers

The table below serves as a quick reference guide on general requirements for oath modifications and oath waiver. The sections and paragraphs that follow the table provide further guidance on each modification and oath waiver.

Oath of Allegiance Modifications and Waiver

Request	Permitted Modifications to Oath	Testimony or Evidence
Modified Oath for Religious or Conscientious Objections	Deletion of either or both of the following clauses: Bearing arms on behalf of the United States if required by law [INA 337(a)(5)(A)]; and Performing noncombatant service in the U.S. armed forces when required by law [INA 337(a)(5)(B)]	Must show opposition to clause (or clauses) based on religious training and belief or deeply held moral or ethical code. Applicant may provide an attestation or witness statement.

Request	Permitted Modifications to Oath	Testimony or Evidence
Affirmation of Allegiance in Lieu of Oath	Substitution of the words “solemnly affirm” for the words “on oath” and no recitation of the words “so help me God” [8 CFR 337.1(b)]	Not Required
Waiver of the Oath	Requirement to take the Oath of Allegiance may be waived	Evaluation by medical professional stating inability to understand (or communicate) the meaning of the oath due to a medical condition

A. Modified Oath for Religious or Conscientious Objections

1. General Modifications to the Oath

An applicant may request a modified oath that does not contain one or both of the following clauses:

- To bear arms on behalf of the United States when required by the law; and
- To perform noncombatant service in the U.S. armed forces when required by the law. [1]

In order to modify the oath, the applicant must demonstrate, by clear and convincing evidence, that he or she is unwilling or unable to affirm to these sections of the oath based on his or her religious training and belief, which may include a deeply held moral or ethical code. [2]

There is no exemption from the clause “to perform work of national importance under civilian direction when required by the law.” [3]

2. Qualifying for Modification to the Oath

Three-part Test

In order for an applicant to qualify for a modification based on his or her “religious training and belief,” the applicant must satisfy a three-part test. An applicant must establish that:

- He or she is opposed to bearing arms in the armed forces or opposed to any type of Service in the armed forces
- The objection is grounded in his or her religious principles, to include other belief systems similar to traditional religion or a deeply held moral or ethical code; and
- His or her beliefs are sincere, meaningful, and deeply held. [4]

The applicant is not eligible for a modified oath when he or she is opposed to a specific war. Religious training or belief does not include essentially political, sociological, or philosophical views. An applicant whose objection to war is based upon opinions or beliefs about public policy and the practicality or desirability of combat, or whose beliefs are not deeply held, does not qualify for the modification of the oath.

Applicant is Not Required to Belong to a Church or Religion

In addition, qualification for the exemption is not dependent upon membership in a particular religious group, nor does membership in a specific religious group provide an automatic modification to the oath. The applicant is not required to:

- Belong to a specific church or religious denomination;
- Follow a particular theology or belief; or
- Have religious training.

However, the applicant must have a sincere and meaningful belief that has a place in the applicant's life that is equivalent to that of a religious belief. ^[5] Because of this belief, for example, the applicant's conscience may not rest or be at peace if allowed to become an instrument of war. ^[6]

Evidence Establishing Eligibility

An applicant may provide, but is not required to provide, an attestation from a religious organization (or similar organization), witness statement, or any other evidence to establish eligibility. An applicant's oral testimony or written statement may be sufficient to qualify for the modification. An officer may ask an applicant questions regarding the applicant's beliefs in order to determine whether the applicant is eligible for the modification of the oath, to include, a review of the following factors:

- General pattern of pertinent conduct and experiences;
- Nature of applicant's objection and principles on which objection is based;
- Training in the home or a religious organization;
- Participation in religious or other similar activities; and
- Whether the applicant gained his or her ethical or moral beliefs through training, study, self-contemplation, or other activities comparable to formulating traditional religious beliefs in the home or through a religious organization.

An officer must not question the validity of what an applicant believes or the existence or truth of the concepts in which the applicant believes. ^[7]

Results

Depending on the specific modified oath, USCIS deletes the relevant clauses and the applicant recites the modified form of the oath at the regularly scheduled public naturalization ceremony. ^[8] An applicant is required to take the full oath if the applicant does not qualify for the modification. Otherwise, the applicant is not eligible for naturalization.

B. Affirmation of Allegiance in Lieu of Oath

An applicant may request an affirmation in lieu of an oath. The applicant may request this affirmation in lieu of an oath for any reason. ^[9] In these cases:

- The applicant substitutes the words "solemnly affirm" for the words "on oath"; and
- The applicant does not recite the words "so help me God." ^[10]

USCIS grants this modification solely upon the applicant's request. The applicant is not required to establish that the request is based solely on his or her religious training and belief. Applicants are not required to provide any documentary evidence or testimony to support a request to substitute the words "on oath" or "so help me God."

USCIS must not require the applicant to recite the deleted portions of the Oath of Allegiance at the ceremony. The officer informs the applicant that he or she is not required to recite the deleted portions and that the applicant may take the oath in

the modified form.

C. Waiver of the Oath

1. Oath of Allegiance Waiver

Oath Waiver Based on a Medical Disability

USCIS may waive the Oath of Allegiance for an applicant who is unable to understand or to communicate an understanding of its meaning because of a physical or developmental disability or mental impairment. ^[11]

An applicant for whom USCIS granted an oath waiver is considered to have met the requirement of attachment to the principles of the Constitution of the United States, and be well disposed to the good order and happiness of the United States for the required period.

In order for USCIS to adjudicate a request for an oath waiver because of a medical disability, an applicant with the assistance of a legal guardian, surrogate, or designated representative must provide a written request and a written evaluation by an authorized medical professional. ^[12] An applicant is not required to submit a specific form to request an oath waiver. ^[13] USCIS accepts an oath waiver request at any point of the naturalization process.

Oath Waiver for Children under 14 Years of Age

The INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. ^[14] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath. Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age, at the time of naturalization. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application. ^[15]

2. Legal Guardian, Surrogate, or Designated Representative

When an applicant is unable to undergo any part of the naturalization examination because of a physical or developmental disability or mental impairment, a legal guardian, surrogate, or an eligible designated representative completes the naturalization process for the applicant. USCIS waives the Oath of Allegiance and the legal guardian, surrogate, or designated representative attests to the applicant's eligibility for naturalization. ^[16] In addition to oath waiver, this process may require accommodations including off-site examinations.

For USCIS to adjudicate a request for an oath waiver, an applicant with the assistance of a legal guardian, surrogate, or designated representative, must provide a written request and a written evaluation by an authorized medical professional. ^[17] USCIS accepts a request for the waiver at any point in the naturalization process until the time of the oath ceremony. As an accommodation, field offices should work with the legal guardian, surrogate, or designated representative before the initial examination to obtain all the necessary documentation.

When an oath waiver is provided, a legal guardian, surrogate, or designated representative ^[18] signs on behalf of an applicant who is unable to understand or communicate an understanding of the Oath of Allegiance because of a physical or developmental disability or mental impairment. The legal guardian, surrogate, or representative acts on behalf of an applicant with a disability at every stage of the naturalization examination. The legal guardian, surrogate, or representative files the application on behalf of the applicant and must have knowledge of the facts supporting the applicant's eligibility for naturalization.

The guardian, surrogate, or representative addresses every requirement for naturalization and bears the burden of establishing the applicant's eligibility for naturalization.

Persons eligible to act on behalf of the applicant include:

- A person who a proper court has designated as the applicant's legal guardian or surrogate and who is authorized to exercise legal authority over the applicant's affairs; ^[19] or
- In the absence of a legal guardian or surrogate, a U.S. citizen spouse, parent, adult son or daughter, or adult brother or sister, who is the primary custodial caregiver and who takes responsibility for the applicant.

USCIS will only recognize one designated representative in the following order of priority: ^[20]

- Legal guardian or surrogate (highest priority)
- U.S. citizen spouse
- U.S. citizen parent
- U.S. citizen adult son or daughter
- U.S. citizen adult brother or sister (lowest priority)

The person acting on behalf of the applicant must provide proof of legal guardianship, or documentation to establish the familial relationship, such as a birth certificate, marriage certificate, or adoption decree. In addition, the person must provide documentation to establish that he or she has the primary custodial care and responsibility for the applicant (for example, income tax returns, Social Security Administration documents, and affidavits from other relatives). A spouse, parent, adult son or daughter, or adult brother or sister who is not the legal guardian or surrogate must provide evidence of U.S. citizenship.

USCIS continues an application where the family member acting as a designated representative is not a U.S. citizen. USCIS explains to the family member why he or she is not qualified to act as a designated representative and offers the applicant an opportunity to bring another person who may qualify.

3. Written Evaluation

In general, USCIS requires a written evaluation to establish the applicant's inability to take the Oath of Allegiance. An applicant or designated representative requesting an oath waiver submits a written evaluation completed by a medical professional licensed to practice in the United States.

The written evaluation must:

- Be completed by the medical professional who has had the longest relationship with the applicant or is most familiar with the applicant's medical history;
- Express the applicant's medical condition and disability in terms that an officer and the designated representative can understand (except for medical definitions or terms to describe the disability);
- State why and how the applicant is unable to understand or communicate an understanding of the meaning of the Oath of Allegiance because of the disability;
- Indicate the likelihood of the applicant being able to communicate or demonstrate an understanding of the meaning of the Oath of Allegiance in the near future; and
- Be signed by the medical professional completing the written evaluation and contain his or her state license number authorizing the medical professional to practice in the United States.

USCIS will not require medical professionals to provide an explanation of how they reached their diagnosis, a listing of clinical or laboratory techniques used to reach the diagnosis, or supporting documentation to establish the claimed disability. USCIS, however, will require the medical professional to provide a thorough explanation of how the applicant's disability impairs his or her functioning so severely that the applicant is unable to demonstrate an understanding of the oath requirements or communicate an understanding of its meaning.

USCIS reserves the right to request documentation if there is a question upon examination about the applicant's disability and ability to understand the oath requirement. If USCIS approves the oath waiver, USCIS does not require the applicant to appear in a public ceremony.

Footnotes

1. [^] See [INA 337\(a\)\(5\)\(A\)](#) and [INA 337\(a\)\(5\)\(B\)](#).
2. [^] The Supreme Court has addressed the meaning of "religious training and belief" in the context of exemptions from military service under section 6(j) of the Universal Military Training and Service Act." See *Welsh v. United States*, 398 U.S. 333 (1970) (holding that Welsh, who characterized his beliefs as nonreligious and expressed doubt in the existence of a Supreme Being, was entitled to a conscientious objector exemption to military service because his beliefs occupied a parallel place in his life to that of religious convictions); *United States v. Seeger*, 380 U.S. 163 (1965) (stating that the applicable test for determining whether someone's belief was based on religious training and belief was whether the belief was sincere and meaningful and "occup[ied] in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption"). See [INA 337\(a\)](#) which contains virtually the same language regarding religious training and belief as was addressed by the Supreme Court in *Welsh and Seeger*.
3. [^] See [INA 337\(a\)\(5\)\(C\)](#).
4. [^] See [INA 337](#). See *Welsh v. United States*, 398 U.S. 333 (1970). See *United States v. Seeger*, 380 U.S. 163 (1965).
5. [^] See *Welsh v. United States*, 398 U.S. 333 (1970). See *United States v. Seeger*, 380 U.S. 163 (1965).
6. [^] See *Welsh v. United States*, 398 U.S. 333 (1970).
7. [^] See *United States v. Seeger*, 380 U.S. 163 (1965): "The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's 'Supreme Being' or the truth of his concepts. But these are inquiries foreclosed to Government."
8. [^] See Chapter 1, Purpose and Background, Section A, Purpose [[12 USCIS-PM J.1\(A\)](#)]. See [INA 337](#). See [8 CFR 337.1\(b\)](#).
9. [^] The INA indicates that the affirmation is requested "by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience." See [INA 337\(a\)](#).
10. [^] See [8 CFR 337.1\(b\)](#).
11. [^] See [INA 337\(a\)](#). See [Pub. L. 106-448](#) enacted on July 12, 2000.
12. [^] For information on who is an authorized medical professional, see Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648), Section C, Authorized Medical Professionals [[12 USCIS-PM E.3\(C\)](#)].
13. [^] The oath waiver requirements are distinct from the requirements for the medical exception to the English and civics requirements for naturalization under [INA 312\(b\)](#), which requires an applicant to submit a medical exception form. See Part E,

English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648) [12 USCIS-PM E.3].

14. [^] See INA 337(a). See 8 CFR 341.5(b).

15. [^] See Part H, Children of U.S. Citizens [12 USCIS-PM H].

16. [^] See Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

17. [^] For the definition of an authorized medical professional, see Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648), Section C, Authorized Medical Professionals [12 USCIS-PM E.3(C)].

18. [^] See Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

19. [^] A legal guardian or surrogate may act on behalf of an applicant regardless of the legal guardian or surrogate's immigration status or whether he or she is a family member.

20. [^] If there is a conflict in priority between two or more persons seeking to represent the applicant, and the individuals share the same degree of familial relationship, USCIS gives priority to the person who is older.

Chapter 4 - General Considerations for All Oath Ceremonies

A. USCIS Administrative Ceremony

USCIS field offices conduct administrative ceremonies at regular intervals as frequently as is necessary. USCIS must conduct ceremonies in such a manner as to preserve the dignity and significance of the occasion. In some instances, USCIS offices may conduct daily ceremonies where the examination, adjudication, and the oath take place on the same day. District Directors and Field Office Directors must ensure that administrative ceremonies conducted by USCIS in their districts comply with the USCIS "Model Plan for Naturalization Ceremonies." [1]

An applicant must appear in person at a public ceremony unless USCIS excuses the appearance. USCIS designates the time and place for the ceremony and conducts the ceremony within the proper jurisdiction. USCIS presumes an applicant to have abandoned his or her naturalization application when the applicant fails to appear for more than one oath ceremony. [2] In such cases, USCIS executes and issues a motion to reopen and may deny the application if the applicant has not responded within 15 days. [3]

B. Derogatory Information Received before Oath or Failure to Appear

An officer must execute a motion to reopen a previously approved naturalization application if:

- USCIS receives or identifies disqualifying derogatory information about the applicant after approval of his or her application prior to the administration of the Oath of Allegiance; [4] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause. [5]

USCIS notifies the applicant in writing about the receipt of derogatory information or multiple failures to appear through the motion to reopen. The applicant has 15 days to respond to the motion to reopen and overcome the derogatory information or provide good cause for failing to appear at the Oath ceremony. [6]

USCIS must not schedule an applicant for the administration of the Oath of Allegiance if USCIS receives or identifies disqualifying derogatory information. USCIS must not administer the Oath of Allegiance to the applicant until the matter is resolved favorably.

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer approves the application and schedules the applicant for the Oath of Allegiance. If the applicant is unable to overcome the derogatory information, the officer grants the motion to reopen and denies the application on its merits. ^[7]

An applicant who fails to appear for at least two ceremonies to administer the Oath of Allegiance, without good cause, abandons his or her intent to be naturalized. USCIS considers multiple failures to appear to be equivalent to receipt of derogatory information after the approval of a naturalization application. ^[8]

Footnotes

1. ^[^] See Chapter 5, Administrative Naturalization Ceremonies [12 USCIS-PM J.5].
2. ^[^] See 8 CFR 337.10.
3. ^[^] See Part B, Naturalization Examination, Chapter 5, Motion to Reopen [12 USCIS-PM B.5]. See 8 CFR 335.3(a) and 8 CFR 337.
4. ^[^] See 8 CFR 335.5.
5. ^[^] See 8 CFR 337.10.
6. ^[^] See 8 CFR 335.5.
7. ^[^] See 8 CFR 336.1.
8. ^[^] See 8 CFR 337.10.

Chapter 5 - Administrative Naturalization Ceremonies

USCIS is committed to elevating the importance of the naturalization ceremony as a venue to recognize the rights, responsibilities, and importance of citizenship and provide access to services for new citizens. The naturalization ceremony is the culmination of the naturalization process. USCIS aims to make administrative naturalization ceremonies positive and memorable moments in the lives of the participants. USCIS honors the Oath of Allegiance with policies and practices that reflect the importance of the occasion.

The following information provides USCIS officials with guidance for conducting administrative naturalization ceremonies in a meaningful and consistent manner. ^[1]

A. Materials Distributed

USCIS may distribute materials at administrative naturalization ceremonies, including:

- U.S. Citizenship Welcome Packet (including the President's Congratulatory Letter);
- American flag;
- Citizen's Almanac ([Form M-76 \(PDF, 8.53 MB\)](#)); and
- Pocket-size Declaration of Independence and Constitution of the United States.

1. Contents of U.S. Citizenship Welcome Packet

USCIS distributes the U.S. Citizenship Welcome Packet (Form M-771) to every naturalization candidate participating in an administrative ceremony in the United States. ^[2]

The U.S. Citizenship Welcome Packet consists of the following:

- President's, Secretary's, or Director of USCIS' Congratulatory Letter and Envelope;
- Application for U.S. Passport ([Form DS-11 \(PDF\)](#));
- Important Information for New Citizens (Form M-767);
- Oath of Allegiance/The Star Spangled Banner/Pledge of Allegiance Flier (Form M-789);
- Certificate Holder; and
- A Voter's Guide to Federal Elections.

The official congratulatory letters from the President of the United States, Secretary of Homeland Security, or Director of USCIS are the only congratulatory letters USCIS distributes at naturalization ceremonies. Guests, elected officials, other U.S. government entities, and non-governmental organizations may not provide candidates with congratulatory letters within the venue.

2. Distribution of U.S. Citizenship Welcome Packet

USCIS may distribute the U.S. Citizenship Welcome Packet during the check-in process before the naturalization candidate has been administered the Oath of Allegiance but only after a USCIS officer has determined that the applicant is eligible to take the Oath of Allegiance on the day of the ceremony. ^[3]

The U.S. Citizenship Welcome Packet contains information for naturalized citizens. Before distributing the packet, officers must:

- Make a statement that an applicant does not become a U.S. citizen until he or she takes the Oath of Allegiance, regardless of the contents of the packet;
- Make a general statement about the contents of the packet; and
- Answer the candidates' naturalization-related questions.

3. The American Flag

Officers distribute the American flag to naturalization candidates. Only USCIS-issued flags made in the United States may be distributed to naturalization candidates.

4. Citizen's Almanac and Pocket-size U.S. Declaration of Independence and Constitution

The Citizen's Almanac ([Form M-76 \(PDF, 8.53 MB\)](#)) and the Pocket-size Declaration of Independence and Constitution of the United States (Form M-654) must be made available to all interested naturalization candidates or newly naturalized citizens at the:

- Check-in process;
- Conclusion of the oath ceremony program; or
- Conclusion of the naturalization examination.

Officers are not required to distribute these publications to each naturalization candidate, but must make the publications available. The items may be placed on a table in an area accessible to the naturalization candidates. USCIS may also inform candidates that both publications are available for download at uscis.gov/citizenship.

5. Other Materials

USCIS field office leadership must consult with the USCIS Office of the Chief Counsel's Ethics Division to determine whether materials and publications other than the American flag and the contents of the U.S. Citizenship Welcome Packet are appropriate for distribution. Federal workers, including officers, and other invited participants, whether governmental or non-governmental, must never distribute the following within the venue where the USCIS naturalization ceremony is taking place, or anywhere within a federal facility or on federal property:

- Partisan publications;
- Publications referencing a specific political group;
- Commercial materials or publications;
- Religious materials or publications; or
- Any promotional or solicitation materials or publications.

Authorized non-U.S. governmental organizations invited by USCIS to distribute materials or publications, such as voter registration organizations, may provide USCIS-authorized materials at the conclusion of the naturalization ceremony.

Similarly, other authorized U.S. government participants, such as the Department of State's Passport Services Division, the Corporation for National and Community Service, and the Social Security Administration may distribute USCIS-authorized materials within the venue after the USCIS official has concluded the naturalization ceremony. Only USCIS-approved materials and publications may be distributed within the venue once the presiding USCIS official has concluded the naturalization ceremony.

B. Ceremony Check-In Process

USCIS officers perform the ceremony check-in process before the start of the ceremony. An officer reviews the responses on each naturalization candidate's Notice of Naturalization Oath Ceremony (Form N-445) and updates responses as necessary. Once the officer verifies each candidate's eligibility for naturalization, the officer then collects all USCIS-issued travel documents and lawful permanent resident cards from each candidate.

C. Ceremony Program

To standardize the naturalization ceremony experience, unless exempted, USCIS offices follow these steps in all administrative ceremonies: ^[4]

- Play "Faces of America;"
- Play the national anthem, The Star Spangled Banner, instrumental or vocal version; ^[5]
- Deliver opening (welcoming) remarks by Master of Ceremonies; ^[6]
- Announce the "call of countries;" ^[7]
- Administer the Oath of Allegiance to the naturalization candidates; ^[8]

- Deliver keynote remarks (USCIS leadership or guest speaker);
- Play Presidential, Secretary's, or Director of USCIS' congratulatory remarks;
- Recite the Pledge of Allegiance;
- Deliver concluding remarks (Master of Ceremonies or USCIS field leadership); ^[9] and
- Present the Certificate of Naturalization (Form N-550) by USCIS leadership or officers. ^[10]

The Naturalization Ceremony Presentation ^[11] includes all required video and musical elements the office plays at various points in the naturalization ceremony program.

Field offices may also enhance the ceremony program with additional appropriate elements, such as approved musical selections included in the Naturalization Ceremony Presentation. When USCIS plays musical selections during ceremonies, naturalization applicants are not required to stand or sing.

D. Guest Speakers

USCIS welcomes distinguished community members who are U.S. citizens by birth or naturalization to participate as guest speakers in administrative naturalization ceremonies. A guest speaker may be a:

- Civic leader;
- Government leader;
- Military leader;
- Member of Congress;
- Judge;
- Department of Homeland Security (DHS) official; or
- A person whom USCIS deems appropriate for the occasion.

Local USCIS field leadership must carefully review and select guest speakers based on their relevance to the occasion, with particular focus on their outstanding achievements, contributions to the nation or their community, personal experience, or notable activities as a citizen of the United States.

USCIS field leadership must review the qualifications of any potential guest speaker who is not a DHS employee, and approve his or her role in the program before he or she speaks at an administrative naturalization ceremony. ^[12] If USCIS headquarters selects a guest speaker for a USCIS field office's administrative naturalization ceremony, headquarters will review the person's qualifications before making the recommendation.

It is the responsibility of field leadership of the USCIS office conducting the administrative naturalization ceremony to preserve the importance, dignity, and solemnity of the occasion. After selecting and scheduling a guest speaker, the local field leadership must send the speaker a written notice, which describes USCIS's expectations regarding the appropriate length and content of remarks. USCIS must advise speakers that appropriate remarks focus on:

- Importance of U.S citizenship;
- New privileges (such as the ability to travel with a U.S. passport, apply for a position in the federal government, and vote in federal elections);

- Responsibilities of U.S. citizenship (such as voting and serving on a jury when requested);
- Civic principles within the U.S. government;
- Civic participation in the local community;
- Importance of swearing allegiance to the United States; or
- Theme of the ceremony.

Inappropriate remarks, including political (partisan or otherwise), religious, or commercial statements, are not permitted. ^[13] Out of respect for the candidates and other attendees, guest speakers serving in the keynote role should deliver remarks between 5 and 10 minutes in length. If a scheduled guest speaker is unable to participate, USCIS must approve any replacement speaker.

USCIS respects the privacy of applicants and may not release the names or personal information of applicants for naturalization unless the applicant provides consent or disclosure required by law.

E. Participation by Elected Officials and Members of Congress

1. Elected Officials

USCIS must uphold the integrity of each administrative naturalization ceremony and ensure that it is a politically neutral event. The presence of candidates for public office at a naturalization ceremony may create a perception that is inconsistent with USCIS's obligation of neutrality. Accordingly, candidates for public office, including incumbents, generally may not speak at or participate in an administrative naturalization ceremony starting from 3 months immediately preceding a primary or general election for office.

For example, if the state primary elections are on February 4, 2014, and the state general election is November 3, 2014, a candidate for public office in those primary elections may not be a guest speaker or have another formal participatory role from November 4, 2013 (3 months before the primary election) until after February 4, 2014. A candidate for the general election may not have a participatory role from August 3, 2014 (3 months before the general election) until after November 3, 2014. ^[14]

The 3-month rule does not apply to the President or Vice President of the United States. However, the 3-month rule does apply to Members of Congress. In exceptional circumstances, the USCIS Office of the Chief Counsel's Ethics Division may authorize exceptions to the 3-month rule if the candidate's participation, subject to any appropriate conditions, would not unduly compromise the ceremony's political neutrality and would serve the best interest of USCIS and enhance the ceremony. For any exceptions or issues relating to the 3-month rule, field leadership should contact the Office of Chief Counsel's Ethics Division.

2. Members of Congress

USCIS congressional liaisons coordinate with USCIS district or field office leadership regarding invitations to and requests from Members of Congress to participate in administrative naturalization ceremonies.

Congressional liaisons and the Field Operations Directorate must provide ample notice when issuing invitations to or responding to requests from Members of Congress to serve as guest speakers in naturalization ceremonies. In the event a Member of Congress is unable to serve as a guest speaker after accepting an invitation to do so, only USCIS may select an appropriate substitute.

When a congressional liaison issues an invitation to a Member's office, the invitation must include USCIS guidelines for administrative naturalization ceremonies. ^[15] Members of Congress scheduled to speak at administrative naturalization ceremonies must follow USCIS' guidance for guest speakers. ^[16] Members of Congress may not distribute any materials at a USCIS naturalization ceremony or inside the ceremony venue. ^[17]

Some members of Congress may ask USCIS to schedule naturalization ceremonies to mark particular dates or events of significance to the United States or the U.S. state being represented. USCIS district office or field office leadership may, at their discretion, honor these requests, subject to restrictions for guest speakers. ^[18]

District office or field office leadership must decline the request if there is any possibility of the event being seen as a platform for any political, controversial, religious, or commercial message. District office or field office leadership may also decline the request if supporting such a ceremony would negatively impact other activities or otherwise present operational hardships.

When a member of Congress asks USCIS to schedule a naturalization ceremony, USCIS responds in writing. If the request is to be honored, the response will provide expectations and restrictions regarding speech for guest speakers. ^[19] If the request is to be declined, USCIS will provide a reason and a copy of the ceremony guidance.

Members of Congress and their staff are always welcome to attend a naturalization ceremony as members of the public.

F. Voter Registration After Naturalization Ceremonies

1. Distribution of Voter Registration Applications ^[20]

The ability to vote in federal elections is both a right and a responsibility that comes with U.S. citizenship. ^[21] All newly naturalized citizens must be given the opportunity to register at the end of the administrative naturalization ceremony when the new citizen is then eligible to register to vote. ^[22]

The options for distribution of voter registration applications are (in preferential order):

- State or local government election offices distribute and collect voter registration applications for an election official to review and officially register the person to vote;
- Non-governmental organizations distribute and collect voter registration applications for an election official to review and officially register the person to vote; ^[23] or
- In the absence of the above options, USCIS provides voter registration applications to all new citizens. USCIS is not responsible for the collection of applications or any other activities related to voter registration.

2. Voter Registration Services

The term "voter registration services" includes one or more of the following activities:

- Distribution of voter registration application forms;
- Assisting interested applicants in completing voter registration application forms;
- Reviewing submitted forms to ensure that each form is complete;
- Collecting completed forms for submission to the local election official; or
- Providing non-partisan educational information on the voting process. ^[24]

The mechanism for registration may vary by ceremony location, but in every case must take place only after the conclusion of the ceremony, when the candidates are officially U.S. citizens.

If no space is available for governmental or non-governmental entities to provide on-site voter registration services, the USCIS field office distribute voter registration applications to each newly naturalized citizen. ^[25] USCIS bases a “no space available” determination on the location of the ceremony, the size of the facility, and the number of applicants naturalizing, as well as the layout of the space. “No space available” determinations are made on a case-by-case basis by USCIS field leadership conducting the ceremony.

3. Registration by Non-governmental Organizations

In-person voter registration services by the state or local election office is optimal. If state or local election officials are unable to participate, all interested non-governmental groups may seek the privilege of offering voter registration services at administrative naturalization ceremonies. To qualify, non-governmental organizations must be:

- Non-profit;
- Non-partisan; and
- Approved by USCIS field leadership.

All interested non-governmental organizations seeking to offer voter registration services must submit a written request to the local USCIS Field Office Director at least 60 days prior to the ceremony, including a statement that those participating in the registration process have received proper training on how to register voters. The written request must address all of the criteria indicated below. Field leadership provides a written response to each request after consultation with the USCIS Office of the Chief Counsel’s Ethics Division, at least 30 days prior to the date of the ceremony. ^[26]

Field leadership must consider requests from all interested non-governmental organizations seeking to participate in the ceremony and must offer equal, non-preferential opportunities to all qualified and approved non-governmental organizations. If multiple organizations seek to provide voter registration services at USCIS administrative naturalization ceremonies, USCIS field leadership may establish a rotating participation schedule.

When USCIS determines that an organization is qualified and is approved to participate in voter registration services at an administrative naturalization ceremony, field leadership sends the organization a letter, listing specific requirements for participation. Field leadership then contacts the organization to determine its availability to participate in scheduled administrative ceremonies.

While participating, non-governmental organizations and their representatives must not:

- Attempt to influence or interfere with a person’s right to register to vote, or to vote; ^[27]
- Participate in any political activity, partisan or otherwise, regardless of whether the ceremonies take place on federal or non-federal property; ^[28]
- Engage in religious or commercial solicitation or promotion of any kind;
- Discriminate on the basis of race, color, gender, religion, age, sexual orientation, national or ethnic origin, disability, marital status, or veteran status; ^[29]
- Collect, retain, or share the personal information of those registered to vote at naturalization ceremonies, even if this information is requested on a voluntary basis;
- Use the information provided on voter registration applications for any purpose other than voter registration; ^[30] or

- Alter completed voter registration materials in any manner. [\[31\]](#)

While participating, non-governmental organizations and their representatives must:

- Safeguard all personal information new citizens provide for voter registration;
- Follow scheduling and logistical requirements set forth by USCIS field leadership;
- Have received recent proper training on how to register voters;
- Receive an on-site briefing from field leadership regarding rules for that particular facility;
- Wear professional attire and represent themselves and their organization professionally; and
- Wear nametags that include the name of the organization while registering voters (no other identification of the organization may be worn or displayed).

4. Revocation of Participation Privilege

If a non-governmental organization fails to comply with the above requirements for participation, field leadership, in consultation with the USCIS Office of the Chief Counsel's Ethics Division, may revoke the privilege to participate and exclude the organization from participating in future administrative naturalization ceremonies.

In addition, if a USCIS official receives a complaint from a newly naturalized citizen, guest of a newly naturalized citizen, or the state or local election office regarding an organization's inappropriate behavior or lack of ability to properly provide voter registration services, field leadership, in consultation with the USCIS Office of Chief Counsel's Ethics Division, may revoke the privilege to participate upon appropriate inquiry and review of the circumstances.

5. Points-of-Contact for Voting and Voter Registration

If naturalized citizens have questions regarding voting and voter registration, USCIS refers them to:

- The governmental or non-governmental organization offering voter registration services on-site;
- Other information resources within the local area; or
- The official [USA.gov Register to Vote](#) government web site.

G. Services Provided by Other Government Entities

Federal entities, such as the Department of State's Passport Services Division, the Corporation for National and Community Service, and the Social Security Administration, as well as state and local governments, may be authorized to provide information and make services available to newly naturalized citizens and their guests at the conclusion of the administrative naturalization ceremony. [\[32\]](#) Governmental entities that desire representation at administrative naturalization ceremonies must seek advance approval from field leadership of the USCIS office conducting the ceremony.

H. Participation of Volunteers and Civic Organizations

Field leadership may permit volunteers from the community, community-based organizations, and civic organizations to participate in various roles during the administrative naturalization ceremony. For example, Field leadership may have

the U.S. armed forces color guard perform the presentation of colors and the national anthem or have volunteers lead the Pledge of Allegiance.

Field leadership will determine the appropriate level of participation for the occasion. However, under no circumstances will any non-USCIS employee perform any USCIS function. [33]

Field leadership must review the qualifications, designate the level of participation, and oversee the participation of all volunteers and organizations during the administrative naturalization ceremony. In addition, non-USCIS participants must not engage in political, religious, or commercial activity of any kind.

I. Offers to Donate Use of Facilities

USCIS must use neutral facilities [34] that are not specific to any religion, commercial enterprise, or political affiliation. In addition, administrative naturalization ceremonies should not be held as a part of, or in conjunction with, conventions or conferences.

USCIS must maintain the importance, dignity, and solemnity of naturalization ceremonies. Administrative naturalization ceremonies should always be the focus and main event, and should always be held at facilities that are neutral and appropriate. USCIS may not use:

- Religious facilities (for example, space in or connected to a place of worship);
- Facilities of an organization that practices immigration law;
- Facilities of an organization that is active in immigration legislation or political advocacy;
- Facilities of an organization that represents petitioners and applicants before DHS;
- Facilities where USCIS personnel cannot protect secure documents; or
- Facilities that may compromise the importance, dignity, and solemnity of the occasion.

USCIS employees must not solicit a gift (including use of facilities to hold an administrative naturalization ceremony) from any non-federal entity. However, USCIS may accept an unsolicited gift with the concurrence of the USCIS Field Operations Associate Director, the USCIS Office of Chief Counsel's Ethics Division, and approval of the USCIS Director.

In addition, USCIS must not use a donated facility from a prohibited source to include:

- Persons or organizations seeking official action by USCIS; [35]
- Persons or organizations doing business or seeking to do business with USCIS;
- Persons or organizations regulated by USCIS or DHS; or
- Persons or organizations with interests that may substantially affect the performance or nonperformance of the official duties of USCIS or USCIS employees.

1. Submission of Offer

The donor must submit all required documents to the Field Operations Directorate at least 4 weeks in advance of the ceremony date to guarantee timely processing. The donor must include the following documents in the gift offer request:

- An invitation letter (preferably on the organization's letterhead);

- A completed Offer of Gift from Non-Governmental Sources (Form G-1194). [\[36\]](#)

In addition to the donor's submission, an officer must submit the following documents for approval:

- Gift offer memorandum (memo to the USCIS Director from the Field Operations Associate Director, and including the requesting USCIS Region, District, and Field Office); and
- DHS, Gift Donation Form (Form 112-02-001). [\[37\]](#)

2. Review of Offer

After receipt, an authorized official reviews the documents for accuracy and consistency. The following officials then review and consider for approval the gift offer (in order of review):

- USCIS Field Operations, Associate Director;
- USCIS Office of Chief Counsel's Ethics Division; and
- USCIS Director (final approval).

Field leadership may accept a gift offer or donated facility for ceremony use from a federal, state, or local governmental agency without the approval of the USCIS Director. However, before accepting such an offer, field leadership must consider if acceptance would create a conflict of interest. Field leadership should confer with the Field Operations Directorate at headquarters and the USCIS Office of the Chief Counsel's Ethics Division before accepting gifts or a donated facility.

3. Rejection of Offer

USCIS may reject an offer of use of facilities if:

- The gift offer would not aid or facilitate the mission of USCIS and DHS;
- The acceptance of the gift would create or appear to create a conflict of interest or appearance of a conflict of interest;
- The donor seeks to obtain or conduct business with USCIS or DHS;
- The donor conducts operations or activities that are regulated by USCIS or DHS;
- The acceptance of the gift or use of the donated facility would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out USCIS and DHS responsibilities or official duties in a fair and objective manner;
- The acceptance of the gift or use of the donated facility would compromise the integrity or the appearance of the integrity of USCIS or DHS programs or any official involved in those programs;
- The acceptance of the gift or use of the donated facility would violate, or create the appearance of a violation of the Hatch Act; [\[38\]](#)
- The acceptance of the gift or use of the donated facility might reasonably create the appearance of preferential treatment or official endorsement of an outside entity; or
- The acceptance of the gift or use of the donated facility would be inconsistent with USCIS' interest in upholding the importance, dignity, and solemnity of the occasion.

The authorized agency officials may consider various factors, including the following, in their determination:

- The identity of the donor;

- The purpose of the gift as described in any written statement or oral proposal by the donor;
- The monetary or estimated market value or the cost to the donor;
- The identity of any other expected recipients of the gift on the same occasion, if any;
- The timing of the gift;
- The number of times the donor has offered gifts to USCIS;
- The nature and sensitivity of any matter pending before the agency that may affect the interest of the donor;
- The importance or consequence of an individual employee's role in any matter affecting the donor (for example, if benefits of the gift will accrue to the employee); and
- The nature of the offered gift.

At the end of the gift offer process, USCIS provides notification of the acceptance or rejection of the gift offer to the appropriate person or organization.

J. Coordination with External Organizations

When USCIS hosts an administrative naturalization ceremony ^[39] in which an external organization (such as another federal agency or a local community-based organization) plays a role, ^[40] USCIS is ultimately responsible for ensuring that the event is important, dignified, and solemn. While USCIS welcomes participation from external organizations, USCIS does not formally co-host ceremonies with external organizations. The naturalization ceremony must always be the focus of any program.

1. USCIS Responsibilities

In conducting administrative ceremonies, USCIS is responsible for the following:

- Approving the ceremony facility – USCIS follows internal policies and procedures regarding the use of space, including donations of space. ^[41] Prior to selecting the facility, USCIS reserves the right to conduct a site visit of the proposed space.
- Planning the ceremony – USCIS determines the ceremony program, including the order of events, the order of speakers, and the seating arrangements of the speakers on stage.
- Ensuring the ceremony remains the focus of the event.
- Ensuring proper use and placement of the DHS seal and signature according to approved guidelines. ^[42] When coordinating with an external entity, USCIS must avoid perceived endorsement.
- Selecting, inviting, and approving guest speakers – USCIS must approve all guest speakers. While the collaborating organization may recommend guest speakers to USCIS, the selection is at the discretion of USCIS. USCIS may request to review guest speaker remarks in advance of the ceremony for content and length. Inappropriate remarks, including political (partisan or otherwise), commercial, or religious statements, are not permitted. ^[43]
- Determining which naturalization candidates will participate in the ceremony – Organizations may not request that specific lawful permanent residents (LPRs) be naturalized at any ceremony (for example, only LPRs from a particular country). USCIS does not consider such requests, which may create a conflict of interest or the appearance of preferential treatment to specific LPRs.
- Ensuring that voter registration applications are offered to new citizens at the end of the ceremony. ^[44]

- Selecting and approving organizations requesting to distribute voter registration applications, and the methods by which such efforts are to be conducted.
- Preserving the importance, dignity, and solemnity of naturalization ceremonies.

USCIS may brief all ceremony participants on expected behavior.

2. External Organizations

The external organization is responsible for:

- Following all USCIS policies and procedures, including guidance from field leadership.
- Coordinating with USCIS on media coverage of the naturalization ceremony.
- Seeking approval from USCIS prior to distributing any materials at the ceremony. If the external organization wishes to distribute American flags to ceremony guests, those flags should be made in the United States. USCIS provides flags for all naturalization candidates.

3. Conferences and Conventions

USCIS may not schedule a ceremony as part of, or in conjunction with, another organization's event, including conferences or conventions. USCIS may determine it is operationally feasible to hold a naturalization ceremony in which conference or convention participants are invited to attend, but the ceremony must remain a separate event.

Footnotes

1. ^[^] This guidance applies only to administrative naturalization ceremonies involving an Application for Naturalization ([Form N-400](#)) where a USCIS-designated official or an immigration judge administers the Oath of Allegiance. The guidance does not apply to administrative ceremonies involving children obtaining evidence of citizenship -- Application for Citizenship ([Form N-600](#)) or Application for Citizenship and Issuance of Certificate Under Section 322 ([Form N-600K](#)) -- or judicial naturalization ceremonies where a federal, state, or local court administers the Oath of Allegiance.
2. ^[^] To the extent practicable, U.S. Citizenship Welcome Packet (Form M-771) will also be distributed to candidates participating in naturalization ceremonies overseas, subject to circumstances such as the location of the ceremony and the capacity of the military member to carry the materials.
3. ^[^] See Section B, Ceremony Check-in Process [[12 USCIS-PM J.5\(B\)](#)], and Section C, Ceremony Program [[12 USCIS-PM J.5\(C\)](#)].
4. ^[^] USCIS offices are exempt from implementing the ceremony program when conducting a home visit, or an expedited administrative naturalization ceremony. See Chapter 6, Judicial and Expedited Oath Ceremonies [[12 USCIS-PM J.6](#)].
5. ^[^] USCIS offices may incorporate a live performance as an alternative to the version on the video. If any proprietary versions of the national anthem, or any other songs, are being used, the user must ensure that the intellectual property rights of the holder(s) are respected, and the necessary legal permissions are acquired.
6. ^[^] Opening (welcoming) remarks include, but are not limited to, an introduction of ceremony principals and an overview of the ceremony program.
7. ^[^] The designated official reads aloud a list of countries represented by the naturalization candidates' former nationalities.

8. [^] See Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2]. See INA 337. See 8 CFR 337.1(a) and 8 CFR 337.1(b).
9. [^] Concluding remarks may include, but are not limited to, expressing appreciation to those family and friends in attendance, acknowledging the achievement of the naturalized citizens, announcing the services of those governmental and non-governmental entities in attendance, and explaining the distribution method for the certificates of naturalization.
10. [^] Only USCIS leadership and officers may present the Certificates of Naturalization to the naturalized U.S. citizens.
11. [^] The presentation is provided to all field offices in an electronic format and includes a PowerPoint and video materials.
12. [^] Certain prominent guest speakers, which may include elected officials and cabinet members, should receive their invitation to speak from USCIS leadership at headquarters. Therefore, local field leadership should coordinate with headquarters as early as possible and list ceremony details in the National Ceremony Scheduler.
13. [^] If a guest speaker makes inappropriate remarks during an administrative naturalization ceremony, field leadership should inform the speaker and notify the appropriate USCIS supervisor or manager. If the guest speaker does not indicate a willingness to modify his or her remarks in the future, field leadership should not accept requests from the person to speak at future administrative naturalization ceremonies.
14. [^] See 5 U.S.C. 7321-7326 (Hatch Act).
15. [^] See Chapter 5, Administrative Naturalization Ceremonies [12 USCIS-PM J.5].
16. [^] See Section D, Guest Speakers [12 USCIS-PM J.5(D)].
17. [^] See Section A, Materials Distributed, Subsection 5, Other Materials [12 USCIS-PM J.5(A)(5)].
18. [^] See Section D, Guest Speakers [12 USCIS-PM J.5(D)].
19. [^] See Section D, Guest Speakers [12 USCIS-PM J.5(D)].
20. [^] See the U.S. Election Assistance Commission.
21. [^] See National Voter Registration Act of 1993, Pub. L. 103-31 (PDF) (May 20, 1993). See 52 U.S.C. 20501(a).
22. [^] See 52 U.S.C. 20507(a)(5).
23. [^] Non-governmental organizations must be qualified and approved according to the criteria in Subsection 3, Registration by Non-governmental Organizations [12 USCIS-PM J.5(F)(3)].
24. [^] See 52 U.S.C. 20506.
25. [^] If a field office is unable to distribute voter registration forms in any of the above three manners, field leadership must notify their chain of command within the Field Operations Directorate.
26. [^] USCIS may approve the request on a one-time or standing basis, but USCIS may remove the organization at any time if the organization does not meet the participation requirements.
27. [^] See 18 U.S.C. 241 and 18 U.S.C. 242. See 52 U.S.C. 20506(a)(5) and 52 U.S.C. 20511.
28. [^] Political activity includes activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. For this purpose, political activity also includes advocacy for particular referenda or other political propositions. For example, a non-governmental group participating in voter registration activities at an administrative naturalization ceremony may not provide information for or against a state immigration law or proposition. The organization's activities while participating must also comply with the Hatch Act, 5 U.S.C. 7321-26. See 52 U.S.C. 20506(a)(5)(B).

29. [^] See [52 U.S.C. 10101](#), [52 U.S.C. 10301](#), and [52 U.S.C. 10303\(f\)\(2\)](#).
30. [^] Strict civil or criminal penalties may be imposed for the unauthorized purchase and use of voter registration information.
31. [^] See [52 U.S.C. 20702](#) (regarding the theft, destruction, concealment, mutilation, or alteration of voter records).
32. [^] The conclusion of the ceremony is after the Master of Ceremonies (USCIS official) has dismissed the new citizens.
33. [^] For example, volunteers must not perform any of the USCIS employee's duties within the ceremony check-in process.
34. [^] This includes any type of indoor or outdoor facility.
35. [^] Such as by representing applicants or petitioners before USCIS or by contracting with USCIS.
36. [^] USCIS provides Form G-1194 to the donor.
37. [^] See DHS Form 112-02-001. USCIS Office of Chief Counsel's Ethics Division and the USCIS Director must both sign the form.
38. [^] See [5 U.S.C. 7321-7326](#).
39. [^] See Chapter 6, Judicial and Expedited Oath Ceremonies [[12 USCIS-PM J.6](#)] for information on non-administrative ceremonies.
40. [^] External organizations may support USCIS naturalization ceremonies in one or more of the following ways: participating in the event agenda as determined by USCIS; promoting the event within the community; and offering to donate a neutral space in which to hold the naturalization ceremony. See Section I, Offers to Donate Use of Facilities [[12 USCIS-PM J.5\(I\)](#)].
41. [^] See Section I, Offers to Donate Use of Facilities [[12 USCIS-PM J.5\(I\)](#)].
42. [^] The seal and signature of external organizations may only be used in accordance with [DHS Management Directive 123-06: Use of the Department of Homeland Security Seal](#). Local offices should consult with the USCIS Office of the Chief Counsel's Ethics Division for guidance.
43. [^] See Section D, Guest Speakers [[12 USCIS-PM J.5\(D\)](#)].
44. [^] See Section F, Voter Registration Services [[12 USCIS-PM J.5\(F\)](#)].

Chapter 6 - Judicial and Expedited Oath Ceremonies

A. Judicial Oath Ceremony

An applicant may elect to have his or her Oath of Allegiance administered by the court or the court may have exclusive authority to administer the oath. ^[1] In these instances, USCIS must notify the clerk of court, in writing, that the Secretary of Homeland Security has determined that the applicant is eligible to naturalize.

After administering the Oath of Allegiance, the clerk of court must issue each person who appeared for the ceremony a document indicating the court administered the oath. In addition, the clerk must issue a document indicating that the court changed the applicant's name (if applicable).

B. Expedited Oath Ceremony

An applicant may request, with sufficient cause, that either USCIS or the court grant an expedited oath ceremony. ^[2] In determining whether to grant an expedited oath ceremony, the court or the USCIS District Director may consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to:

- A serious illness of the applicant or a member of the applicant's family;
- A permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;
- The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony improper; or
- An urgent or compelling circumstances relating to travel or employment determined by the court or USCIS to be sufficiently meritorious to warrant special consideration. ^[3]

USCIS may seek verification of the validity of the information provided in the request. If the applicant is waiting for a court ceremony, USCIS must promptly provide the court with a copy of the request without reaching a decision on whether to grant or deny the request.

Courts exercising exclusive authority may either hold an expedited oath ceremony or, if an expedited judicial oath ceremony is impractical, refer the applicant to USCIS. In addition, the court must inform the District Director, in writing, of the court's decision to grant the applicant an expedited oath ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

Footnotes

1. ^[^] See [INA 310\(b\)](#).

2. ^[^] See [INA 337\(c\)](#). See [8 CFR 337.3\(a\)](#).

3. ^[^] See [8 CFR 337.3\(c\)](#).

Part K - Certificates of Citizenship and Naturalization

Chapter 1 - Purpose and Background

A. Purpose

All applicants who meet the eligibility requirements to derive or acquire citizenship or to become naturalized ^[1] United States citizens are eligible to receive a certificate from USCIS documenting their U.S. citizenship. ^[2] The burden of proof is on the applicant to establish that he or she has met all of the pertinent eligibility requirements for issuance of a certificate.

- The Certificate of Citizenship is an official record that the applicant has acquired citizenship at the time of birth or derived citizenship after birth. ^[3]
- The Certificate of Naturalization is the official record that the applicant is a naturalized U.S. citizen. ^[4]

USCIS strictly guards the physical security of the certificates to minimize the unlawful distribution and fraudulent use of certificates.

B. Background

In general, in order to obtain either a Certificate of Citizenship or a Certificate of Naturalization from USCIS, a person must:

- File the appropriate form and supporting evidence;
- Appear for an interview before an officer, if required;
- Meet the pertinent eligibility requirements, as evidenced by USCIS approval of the form; and
- Take the Oath of Allegiance, if required.

USCIS District Directors, Field Office Directors, and other USCIS officers acting on their behalf, have delegated authority to administer the Oath of Allegiance in USCIS administrative oath ceremonies and to issue certificates. ^[5]

C. Legal Authorities

- [INA 310\(b\)\(4\)](#); [8 CFR 310](#) – Naturalization authority and issuance of certificates
- [INA 332\(e\)](#); [8 CFR 332](#) – Issuance of Certificates of Citizenship and Naturalization
- [INA 338](#); [8 CFR 338](#) – Contents and issuance of Certificate of Naturalization
- [INA 340\(f\)](#); [8 CFR 340](#) – Cancellation of certificate after revocation of naturalization
- [INA 341](#); [8 CFR 341](#) – Certificates of Citizenship
- [INA 342](#); [8 CFR 342](#) – Administrative cancellation of certificates, documents, or records

Footnotes

1. ^[^] The [Immigration and Nationality Act \(INA\)](#) defines naturalization as the “conferring of nationality of a state upon a person after birth, by any means whatsoever.” See [INA 101\(a\)\(23\)](#). Accordingly, any person who obtains citizenship after birth, even if that citizenship is obtained by automatic operation of law, such as under [INA 320](#), is a “naturalized” citizen under the law. For ease of reference, this volume uses the term naturalized citizen to refer to those persons who do not acquire automatically but instead file an Application for Naturalization ([Form N-400](#)) and proceed through the naturalization process in their own right.

2. ^[^] A person who automatically acquires citizenship may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.

3. ^[^] See Part H, Children of U.S. Citizens [[12 USCIS-PM H](#)].

4. ^[^] See the relevant Volume 12 [[12 USCIS-PM](#)] part for the specific eligibility requirements pertaining to the particular naturalization provision, to include Part D, General Naturalization Requirements [[12 USCIS-PM D](#)]; Part G, Spouses of U.S. Citizens [[12 USCIS-PM G](#)]; and Part I, Military Members and their Families [[12 USCIS-PM I](#)].

5. ^[^] See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance, Section B, Authority to Administer the Oath [[12 USCIS-PM J.2\(B\)](#)].

Chapter 2 - Certificate of Citizenship

A. Eligibility for Certificate of Citizenship

In order to obtain a Certificate of Citizenship, an applicant submits to USCIS:

- An Application for Certificate of Citizenship ([Form N-600](#)), if the applicant automatically acquired or derived citizenship at birth or after birth; ^[1] or
- An Application for Citizenship and Issuance of Certificate Under Section 322 ([Form N-600K](#)) for a child of a United States citizen residing outside of the United States.

The application must be submitted in accordance with the form instructions and with the appropriate fee. ^[2] In addition, applications must include any supporting evidence. An Application for Citizenship and Issuance of Certificate Under Section 322 may only be filed if the child is under 18 years of age. An Application for Certificate of Citizenship may be filed either before or after the child turns 18 years of age.

If the person claiming citizenship is 18 years of age or older, the person must establish that he or she has met the eligibility requirements for U.S. citizenship and issuance of the certificate. If the application is for a child under 18 years of age, the person applying on behalf of the child must establish that the child has met the pertinent eligibility requirements. ^[3]

B. Contents of Certificate of Citizenship

1. Information about the Applicant

The Certificate of Citizenship contains information identifying the person and confirming his or her U.S. citizenship. Specifically, the Certificate of Citizenship contains:

- USCIS registration number (A-number);
- Complete name;
- Marital status;
- Place of residence;
- Country of birth; ^[4]
- Photograph;
- Signature of applicant; and
- Other descriptors: sex, date of birth, and height.

2. Additional Information on Certificates of Citizenship

- Certificate number;
- Statement by the USCIS Director indicating that the applicant has complied with all the eligibility requirements for citizenship under the laws of the United States;
- Date on which the person became a U.S. citizen;
- Date of issuance; and
- DHS seal and Director's signature as the authority under which the certificate is issued.

3. Changes to Names or Dates of Birth per Court Order

Change to Date of Birth on Certificate of Citizenship

USCIS recognizes that the dates of birth of children born abroad are not always accurately recorded in the countries in which they were born. For example, an adopted child whose date of birth (DOB) was unknown may have been assigned an estimated DOB, or the DOB may have been incorrectly recorded or translated from a non-Gregorian calendar. ^[5]

In these cases, the incorrect or estimated DOB is reported on the child's foreign record of birth and becomes part of the USCIS record. Once in the United States, parents may obtain medical evidence indicating that the DOB on the foreign record of birth and the USCIS record is incorrect and they may choose to obtain evidence of a corrected DOB from the state of residence.

USCIS will issue a Certificate of Citizenship with the corrected DOB in cases where the applicant, or if the applicant is under age 18, the parent or legal guardian has obtained a state-issued document from the child's state of residence with a corrected DOB. ^[6] A state-issued document includes a:

- Court order;
- Birth certificate;
- Certificate recognizing the foreign birth;
- Certificate of birth abroad; or
- Other similar state vital record issued by the child's state of residence.

In cases where USCIS has already issued the Certificate of Citizenship, the applicant may request a replacement Certificate of Citizenship with a corrected DOB by filing an Application for Replacement Naturalization/Citizenship Document ([Form N-565](#)) with the appropriate fee. ^[7]

Change of Legal Name on Certificate of Citizenship

In general, a Certificate of Citizenship includes an applicant's full legal name ^[8] as the name appears on the applicant's foreign record of birth. USCIS will issue a Certificate of Citizenship with a name other than that on the applicant's foreign record of birth in cases where the applicant, or if the applicant is under age 18, the parent or legal guardian, has obtained a U.S. state court order evidencing a legal name change. ^[9]

If USCIS has already issued the Certificate of Citizenship, the applicant may request a replacement Certificate of Citizenship by filing an Application for Replacement Naturalization/Citizenship Document ([Form N-565](#)) with the appropriate fee. ^[10]

USCIS does not assist with the processing of name change petitions through the courts for applicants filing an Application for Certificate of Citizenship ([Form N-600](#)). An applicant, parent, or legal guardian must file a name change petition with the court having jurisdiction over the matter.

C. Issuance of Certificate of Citizenship

In general, USCIS issues a Certificate of Citizenship after an officer approves the person's application and the person has taken the Oath of Allegiance, if applicable, before a designated USCIS officer. USCIS will not issue a Certificate of Citizenship to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person's lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card. ^[11]

If USCIS waives the oath requirement for a person, USCIS issues the certificate after approval of his or her application for the certificate. In such cases, USCIS issues the certificate in person or by certified mail to the parent or guardian in cases involving children under 18 years of age, or to the person (or guardian if applicable) in cases involving persons 18 years of age or older. ^[12]

Footnotes

1. ^[^] This volume uses the terms “acquired” or “derived” citizenship in cases where citizenship automatically attaches to a person regardless of any affirmative action by that person to document his or her citizenship. See Part H, Children of U.S. Citizens ^[12 USCIS-PM H].
2. ^[^] See [8 CFR 103.7](#).
3. ^[^] See Part H, Children of U.S. Citizens ^[12 USCIS-PM H].
4. ^[^] An applicant who was born in Taiwan may indicate Taiwan as the country of birth on their Form N-400 if he or she shows supporting evidence. Such applicants’ Certificates of Citizenship are issued showing Taiwan as country of birth. USCIS does not issue certificates showing “Taiwan, PRC,” “Taiwan, China,” “Taiwan, Republic of China,” or “Taiwan, ROC.” People’s Republic of China (PRC) is the country name used for applicants born in the PRC.
5. ^[^] Most western countries follow the Gregorian calendar. Other countries follow different calendars including the Hebrew (lunisolar calendar); Islamic (lunar calendar); and Julian (solar calendar). The calendars differ on days, months, and years.
6. ^[^] See [INA 320\(c\)](#) (relating to cases where individuals automatically acquire citizenship under [INA 320](#) based on an adoption or re-adoption in the United States), subsection (c) added to [INA 320](#) by the Accuracy for Adoptees Act, [Pub. L. 113-74 \(PDF\)](#) (January 16, 2014). Cases where the requested DOB would result in the applicant being ineligible for citizenship because the applicant would have aged out should be raised through appropriate channels for consultation with the Office of Chief Counsel (OCC). Additionally, any cases involving particular concerns based on the corrected DOB should also be raised through appropriate channels for consultation with OCC.
7. ^[^] See Chapter 4, Replacement of Certificate of Citizenship or Naturalization ^[12 USCIS-PM K.4].
8. ^[^] A full legal name includes the person’s first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See [6 CFR 37.3](#); Real ID Act of 2005, [Pub.L.109-13](#), [49 U.S.C. 30301](#).
9. ^[^] See [8 CFR 320.3\(b\)\(1\)\(ix\)](#) and [8 CFR 322.3\(b\)\(1\)\(xiii\)](#).
10. ^[^] See Chapter 4, Replacement of Certificate of Citizenship or Naturalization ^[12 USCIS-PM K.4].
11. ^[^] See [8 CFR 341.4](#). The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under [INA 322](#).
12. ^[^] See [8 CFR 341.5](#). See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers ^[12 USCIS-PM J.3].

Chapter 3 - Certificate of Naturalization

A. Eligibility for Certificate of Naturalization

An applicant submits to USCIS an Application for Naturalization ([Form N-400](#)) along with supporting evidence to establish eligibility for naturalization. The application must be submitted in accordance with the form instructions and with appropriate

fee. ^[1] The applicant must establish that he or she has met all of the pertinent naturalization eligibility requirements for issuance of a Certificate of Naturalization. ^[2]

B. Contents of Certificate of Naturalization

1. Information about the Applicant

The Certificate of Naturalization contains certain required information identifying the person and confirming his or her U.S. citizenship through naturalization. Specifically, the Certificate of Naturalization contains:

- USCIS registration number (A-number);
- Complete name;
- Marital status;
- Place of residence;
- Country of former nationality; ^[3]
- Photograph;
- Signature of applicant; and
- Other descriptors: sex, date of birth, and height

2. Additional Information on Certificates of Naturalization

- Certificate number;
- Statement by the USCIS Director indicating that the applicant complied with all the eligibility requirements for naturalization under the laws of the United States;
- Date of issuance, which is the date the holder became a U.S. citizen through naturalization; and
- DHS seal and Director's signature as the authority under which the certificate is issued. ^[4]

3. Changes to Names per Court Order

Change of Legal Name on Certificate of Naturalization

In general, a Certificate of Naturalization includes an applicant's full legal name as the name appears on the applicant's [Form N-400](#). ^[5] Before naturalization, the applicant may present a valid court order or other proof that the applicant has legally changed his or her name in the manner authorized by the law of the applicant's place of residence. If the applicant submits such evidence, then USCIS will issue the Certificate of Naturalization in the new name.

If a naturalized individual changes his or her legal name after naturalizing, the individual may file an Application for Replacement Naturalization/Citizenship Document ([Form N-565](#)), together with the required fees and proof of the legal change of name. However, USCIS is prohibited from making any changes to an applicant's name on a Certificate of Naturalization if the applicant now claims that the name sworn to during the naturalization process was not his or her correct name, unless the applicant obtains a legal name change as described above. ^[6]

C. Issuance of Certificate of Naturalization

In general, USCIS issues a Certificate of Naturalization after an officer approves the Application for Naturalization and the applicant has taken the Oath of Allegiance. ^[7] USCIS will not issue a Certificate of Naturalization to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person's lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card. ^[8]

An applicant is not required to take the Oath of Allegiance or appear at the oath ceremony if USCIS waives the oath requirement due to the applicant's medical disability. In these cases, USCIS issues the certificate in person or by certified mail to the person or his or her legal guardian, surrogate, or designated representative. ^[9]

Footnotes

1. ^[^] See [8 CFR 103.7](#).
2. ^[^] See the relevant Volume 12 part for the specific eligibility requirements pertaining to the particular citizenship or naturalization provision, to include Part D, General Naturalization Requirements [[12 USCIS-PM D](#)], Part G, Spouses of U.S. Citizens [[12 USCIS-PM G](#)]; and Part I, Military Members and their Families [[12 USCIS-PM I](#)].
3. ^[^] Applicants with Taiwan passports may indicate Taiwan as country of nationality on their Form N-400 (Taiwan passports show "Republic of China"). Such applicants' Certificates of Naturalization are issued showing Taiwan as country of former nationality. USCIS does not issue certificates showing "Taiwan, PRC," "Taiwan, China," "Taiwan, Republic of China," or "Taiwan, ROC." People's Republic of China (PRC) is the country name used for applicants with PRC passports.
4. ^[^] See [INA 338](#). See [8 CFR 338](#).
5. ^[^] A full legal name includes the person's first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See [6 CFR 37.3](#); Real ID Act of 2005, [Pub. L. 109-13](#), [49 U.S.C. 30301](#).
6. ^[^] See [8 CFR 338.5\(e\)](#).
7. ^[^] See [INA 338](#). See [8 CFR 338](#).
8. ^[^] See [8 CFR 338.3](#). The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under [INA 329](#) who qualify for naturalization without being permanent residents.
9. ^[^] See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [[12 USCIS-PM J.3](#)].

Chapter 4 - Replacement of Certificate of Citizenship or Naturalization

The table below serves as a quick reference guide for requests to replace certificates of citizenship or naturalization. The sections and paragraphs that follow the table provide further guidance.

Basis for Requests of Replacement Certificate of Citizenship or Naturalization | Form N-565

Certificate	Correct USCIS Clerical Error	Date of Birth Correction No clerical error	Legal Name Change	Lost or Mutilated Certificate	Legal Gender Change
Certificate of Citizenship	Permitted; no fee required	Permitted if correction through U.S. state court order or similar state vital record (fee required)	Permitted if name change through court order or operation of law (fee required)	Permitted (fee required)	
Certificate of Naturalization	Permitted; no fee required	Not permitted (8 CFR 338.5)		Permitted (fee required)	

A. General Requests to Replace Certificate of Citizenship or Naturalization

In general, an applicant submits to USCIS an Application for Replacement Naturalization/Citizenship Document ([Form N-565](#)) to request a replacement Certificate of Citizenship or Certificate of Naturalization. The application must be submitted with the appropriate fee and in accordance with the form instructions. ^[1]

A person may request a replacement certificate to replace a lost or mutilated certificate. A person may also request a replacement certificate, without fee, in cases where:

- USCIS issued a certificate that does not conform to the supportable facts shown on the applicant's citizenship or naturalization application; or
- USCIS committed a clerical error in preparing the certificate. ^[2]

An applicant may submit a request to update his or her name on a Certificate of Naturalization based on a name change ordered by a state court with jurisdiction or due to marriage or divorce. ^[3] In addition, an applicant who has legally changed his or her gender may apply for a replacement certificate reflecting the new gender. ^[4]

Unless there is a USCIS clerical error, regulations prohibit USCIS from making any changes to a date of birth on a Certificate of Naturalization if the applicant has completed the naturalization process and sworn to the facts of the application, including the DOB. ^[5]

B. Replacement of Certificate of Citizenship

An applicant may submit an Application for Replacement Naturalization/Citizenship Document ([Form N-565](#)) to request issuance of a replacement Certificate of Citizenship to correct the DOB or name if the applicant has obtained a state-issued document with a corrected DOB or name. Along with his or her application and the appropriate fee, the applicant must submit the court order or other state vital record. ^[6]

An applicant may submit an Application for Replacement Naturalization/Citizenship Document ([Form N-565](#)) to request issuance of a replacement Certificate of Naturalization to correct the date of birth (DOB) if the correction is justified due to USCIS error. ^[7] No filing fee is required when an application is filed based on a USCIS error.

Footnotes

1. ^[^] See [8 CFR 103.7](#).
2. ^[^] See [8 CFR 338.5\(a\)](#).
3. ^[^] See [INA 343\(c\)](#).
4. ^[^] A request to change the gender on a certificate may also affect the marital status already listed on the certificate. See [Adjudicator's Field Manual \(AFM\) Chapter 10.22, Document Issuance Involving Status and Identity for Transgender Individuals](#). If the gender change results in the individual now being in a valid same-sex marriage, then the certificate must reflect his or her marital status as “married.”
5. ^[^] See [8 CFR 338.5\(e\)](#). The regulation at [8 CFR 338.5\(e\)](#) specifically provides that USCIS will not deem a request to change a DOB justified if the naturalization certificate contains the DOB provided by the applicant at the time of naturalization.
6. ^[^] See Chapter 2, Certificate of Citizenship, Section B, Contents of Certificate of Citizenship, Subsection 3, Changes to Names or Dates of Birth per Court Order [[12 USCIS-PM K.2\(B\)\(3\)](#)].
7. ^[^] See [8 CFR 338.5\(a\)](#), [8 CFR 338.5\(c\)](#), and [8 CFR 338.5\(e\)](#). For pre-1991 judicial naturalization cases, the regulations provide that USCIS can “authorize” the court to make a change on the certificate if it is the result of clerical error. However, USCIS plays a minimal role in these cases. See [8 CFR 338.5\(b\)](#) and [8 CFR 338.5\(e\)](#).

Chapter 5 - Cancellation of Certificate of Citizenship or Naturalization

A. Administrative Cancellation of Certificates ^[1]

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate was:

- Illegally or fraudulently obtained; or
- Created through illegality or by fraud. ^[2]

USCIS issues the person a written notice of the intention to cancel the certificate. The notice must include the reason or reasons for the intent to cancel the certificate. The person has 60 days from the date the notice was issued to respond with reasons as to why the certificate should not be cancelled or to request a hearing. ^[3] A cancellation of certificate under this provision only cancels the certificate and does not affect the underlying citizenship status of the person, if any, in whose name the certificate was issued.

When considering whether to initiate cancellation proceedings, it is important to distinguish between Certificates of Citizenship and Certificates of Naturalization. In general, USCIS issues Certificates of Citizenship to persons who automatically acquire citizenship by operation of law. If it is determined that the person in whose name the Certificate of Citizenship was issued did not lawfully acquire citizenship, USCIS can initiate cancellation proceedings. ^[4]

However, such a person may have an additional basis upon which to claim automatic acquisition of citizenship. Accordingly, if that person's Certificate of Citizenship is cancelled by USCIS, but the person subsequently provides evidence that he or she automatically acquired citizenship through some other basis, the cancellation of the first Certificate of Citizenship does not affect the new citizenship claim.

By contrast, a Certificate of Naturalization cannot be cancelled if issued to a person who lawfully filed an Application for Naturalization and proceeded through the entire naturalization process to the Oath of Allegiance. In such cases, the person obtained citizenship through the entire naturalization process and his or her citizenship status must first be revoked before the Certificate of Naturalization can be cancelled. However, a Certificate of Naturalization illegally or fraudulently obtained by a person who did not lawfully file an Application for Naturalization or who did not proceed through the naturalization process may be cancelled. ^[5]

B. Cancellation of Certificate after Revocation of Naturalization

If a court revokes a person's U.S. citizenship obtained through naturalization, the court enters an order revoking the person's naturalization and cancelling the person's Certificate of Naturalization. In such cases, the person must surrender his or her Certificate of Naturalization. Once USCIS obtains the court's order revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person's revocation of naturalization. ^[6] All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.

Footnotes

1. ^[^] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3]. A Certificate of Naturalization issued to a person who lawfully filed an Application for Naturalization and proceeded through the naturalization process to the Oath of Allegiance cannot be canceled under INA 342. Officers should consult with local USCIS counsel in such cases.
2. ^[^] See INA 342. Under the same conditions, USCIS may also cancel any copy of a declaration of intention, or other certificate, document, or record issued by USCIS or legacy INS.
3. ^[^] See 8 CFR 342.1.
4. ^[^] See INA 342.
5. ^[^] See INA 342.
6. ^[^] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3].

Part L - Revocation of Naturalization

Chapter 1- Purpose and Background

A. Purpose

Revocation of naturalization is sometimes referred to as "denaturalization." Unlike most other immigration proceedings that USCIS handles in an administrative setting, revocation of naturalization can only occur in federal court.

A person's naturalization can be revoked either by civil proceeding or pursuant to a criminal conviction. For civil revocation of naturalization, the United States Attorney's Office must file the revocation of naturalization actions in Federal District Court. ^[1] For criminal revocation of naturalization, the U.S. Attorney's Office files criminal charges in Federal District Court. ^[2]

The government holds a high burden of proof when attempting to revoke a person's naturalization. For civil revocation of naturalization, the burden of proof is clear, convincing, and unequivocal evidence which does not leave the issue in doubt. ^[3] For criminal revocation of naturalization the burden of proof is the same as for every other criminal case, proof beyond a reasonable doubt.

USCIS refers cases for civil revocation of naturalization when there is sufficient evidence to establish that the person is subject to one of the grounds of revocation.

The general grounds for civil revocation of naturalization are:

- Illegal procurement of naturalization; or
- Concealment of a material fact or willful misrepresentation.

Another ground for revocation of naturalization exists in cases where the person naturalized under the military provisions. In those cases, the person may also be subject to revocation of naturalization if he or she is discharged under other than honorable conditions before serving honorably for five years.

B. Background

On February 14, 2001, a district court issued a nationwide injunction based on a finding that USCIS has no statutory authority to administratively revoke naturalization. ^[4] A person's naturalization can only be revoked after a final order in a judicial proceeding to revoke his or her naturalization. ^[5] During a revocation of naturalization proceeding, all related documentation from the A-file is subject to discovery.

C. Difference between Revocation and Cancellation of Certificate

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate itself was obtained or created illegally or fraudulently. ^[6] Cancellation of a certificate under this provision only cancels the certificate and does not affect the citizenship status of the person in whose name the certificate was issued.

If someone was unlawfully naturalized or misrepresented or concealed facts during the naturalization process, civil or criminal proceedings must be instituted to revoke the naturalization and the status of the person as a citizen. Once the naturalization is revoked, the court also cancels the person's Certificate of Naturalization.

The main difference between cancellation and revocation proceedings is that cancellation only affects the document, not the person's underlying status. For this reason, cancellation is only effective against persons who are not citizens, either because they have not complied with the entire naturalization process or because they did not acquire citizenship under law, but who nonetheless have evidence of citizenship which was fraudulently or illegally obtained.

Where USCIS has affirmatively granted naturalization to a person, that person is a citizen unless and until that person's citizenship is revoked. ^[7] Revocation, therefore, is appropriate when:

- The person filed an Application for Naturalization ([Form N-400](#));
- The person appeared at the naturalization interview;
- The naturalization application was approved; and
- The person took the Oath of Allegiance for naturalization.

By contrast, a person who illegally obtained a Certificate of Naturalization without going through the naturalization process, and was therefore never naturalized by USCIS, is not a citizen of the United States. While the person has a certificate as evidence of U.S. citizenship, the certificate in and of itself, does not confer the status of citizenship.

In such cases, USCIS can initiate proceedings to cancel the Certificate of Naturalization. ^[8] Because the person holding this certificate did not obtain citizenship based on a USCIS process, the person maintains whatever immigration status he or she had.

D. Legal Authorities

- [INA 340](#); [8 CFR 340](#) – Revocation of naturalization
- [INA 342](#); [8 CFR 342](#) – Administrative cancellation of certificates, documents, or records

Footnotes

1. ^[^] See [INA 340\(a\)](#).
2. ^[^] A criminal conviction under [18 U.S.C. 1425](#) results in automatic revocation of naturalization under [INA 340\(e\)](#).
3. ^[^] See *Kungys v. United States*, 485 U.S. 759, 767 (1988).
4. ^[^] See Order Granting Order for Permanent Injunction, *Gorbach v. Reno*, 2001 WL 34145464 (February 14, 2001) (Entering order pursuant to *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000)).
5. ^[^] See [INA 340\(a\)](#).
6. ^[^] See [INA 342](#). See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization [[12USCIS-PM K.5](#)].
7. ^[^] The revocation must have been pursuant to [INA 340\(e\)](#) or [18 U.S.C. 1425](#).
8. ^[^] See [INA 342](#).

Chapter 2 - Grounds for Revocation of Naturalization

In general, a person is subject to revocation of naturalization on the following grounds:

A. Person Procures Naturalization Illegally

A person is subject to revocation of naturalization if he or she procured naturalization illegally. Procuring naturalization illegally simply means that the person was not eligible for naturalization in the first place. Accordingly, any eligibility requirement for naturalization that was not met can form the basis for an action to revoke the naturalization of a person. This includes the requirements of residence, physical presence, lawful admission for permanent residence, good moral character, and attachment to the U.S. Constitution. ^[1]

Discovery that a person failed to comply with any of the requirements for naturalization at the time the person became a U.S. citizen renders his or her naturalization illegally procured. This applies even if the person is innocent of any willful deception or misrepresentation. ^[2]

B. Concealment of Material Fact or Willful Misrepresentation ^[3]

1. Concealment of Material Fact or Willful Misrepresentation

A person is subject to revocation of naturalization if there is deliberate deceit on the part of the person in misrepresenting or failing to disclose a material fact or facts on his or her naturalization application and subsequent examination.

In general, a person is subject to revocation of naturalization on this basis if:

- The naturalized U.S. citizen misrepresented or concealed some fact;
- The misrepresentation or concealment was willful;
- The misrepresented or concealed fact or facts were material; and
- The naturalized U.S. citizen procured citizenship as a result of the misrepresentation or concealment. ^[4]

This ground of revocation includes omissions as well as affirmative misrepresentations. The misrepresentations can be oral testimony provided during the naturalization interview or can include information contained on the application submitted by the applicant. The courts determine whether the misrepresented or concealed fact or facts were material. The test for materiality is whether the misrepresentations or concealment had a tendency to affect the decision. It is not necessary that the information, if disclosed, would have precluded naturalization. ^[5]

2. Membership or Affiliation with Certain Organizations

A person is subject to revocation of naturalization if the person becomes a member of, or affiliated with, the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization. ^[6] In general, a person who is involved with such organizations cannot establish the naturalization requirements of having an attachment to the Constitution and of being well-disposed to the good order and happiness of the United States. ^[7]

The fact that a person becomes involved with such an organization within five years after the date of naturalization is prima facie evidence that he or she concealed or willfully misrepresented material evidence that would have prevented the person's naturalization.

C. Other than Honorable Discharge before Five Years of Honorable Service after Naturalization

A person is subject to revocation of naturalization if:

- The person became a U.S. citizen through naturalization on the basis of honorable service in the U.S. armed forces; ^[8]
- The person subsequently separates from the U.S. armed forces under other than honorable conditions; and
- The other than honorable discharge occurs before the person has served honorably for a period or periods aggregating at least five years. ^[9]

Footnotes

1. ^[^] See INA 316.

2. ^[^] See [INA 340\(a\)](#).
3. ^[^] See [INA 340\(a\)](#). See *Kungys v. United States*, 485 U.S. 759, 767 (1988). See *United States v. Nunez-Garcia*, 262 F. Supp.2d 1073 (C.D. Cal. 2003) *United States v. Reve*, 241 F. Supp.2d 470 (D. N.J. 2003). See *United States v. Ekpin*, 214 F. Supp.2d 707 (S.D. Tex. 2002). See *United States v. Tarango-Pena*, 173 F. Supp.2d 588 (E.D. Tex. 2001).
4. ^[^] See *Kungys v. United States*, 485 U.S. 759, 767 (1988).
5. ^[^] See *Kungys v. United States*, 485 U.S. 759, 767 (1988).
6. ^[^] See [INA 313](#) and [INA 340\(c\)](#).
7. ^[^] See [INA 316\(a\)\(3\)](#). See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].
8. ^[^] See [INA 328\(a\)](#). See [INA 329\(a\)](#). See Part I, Military Members and their Families [[12 USCIS-PM I](#)].
9. ^[^] See [INA 328\(f\)](#) and [INA 329\(c\)](#).

Chapter 3 - Effects of Revocation of Naturalization

A. Effective Date of Revocation of Naturalization

The revocation of a person's U.S. citizenship obtained through naturalization is effective as of the original date of naturalization. ^[1] The person returns to his or her immigration status before becoming a U.S. citizen as of the date of naturalization shown on the person's Certificate of Naturalization.

B. Cancellation of Certificate of Naturalization

If a court revokes a person's U.S. citizenship obtained through naturalization, the court enters an order revoking the person's naturalization and cancelling the person's Certificate of Naturalization. In such cases, the person must surrender his or her Certificate of Naturalization. Once USCIS obtains the court's order revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person's revocation of naturalization. All cases relating to cancellation of certificates should be coordinated through the USCIS Office of Chief Counsel office with jurisdiction. ^[2]

C. Effects of Revocation on Citizenship of Certain Spouses and Children ^[3]

1. General Effects of Person's Revocation on Citizenship of Spouse or Child

In general, certain spouses and children of persons who naturalize may become U.S. citizens through their spouses or parents' citizenship. A spouse may become a U.S. citizen through the special spousal provisions for naturalization. ^[4] A child residing in the United States or abroad may become a U.S. citizen through his or her parent's naturalization. ^[5] In general, the spouse or child of a person whose citizenship has been revoked cannot become a U.S. citizen on the basis that he or she is the spouse or child of that person. ^[6]

In addition, the citizen spouse or citizen child of a person whose citizenship has been revoked may lose his or her citizenship upon the parent or spouse's revocation of naturalization. This depends on the basis of the revocation, and in some cases, on whether the spouse or child resides in the United States at the time of the revocation.

For example, the citizenship of a spouse or child who became a U.S. citizen through the naturalization of his or her parent or spouse is not lost if the revocation was based on illegal procurement of naturalization. The spouse or child's citizenship may be lost, however, if the revocation was based on other grounds (see below).

In cases where the spouse or child loses his or her citizenship, the spouse or child loses any right or privilege of U.S. citizenship which he or she has, may have, or may acquire through the parent or spouse's naturalization. The spouse or child returns to the status that he or she had before becoming a U.S. citizen. ^[7]

2. Citizenship of Spouse or Child is Lost if Revocation for Concealment or Misrepresentation

The spouse or child of a person whose U.S. citizenship is revoked loses his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a U.S. citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked; and
- The parent or spouse's citizenship was revoked on the ground that his or her naturalization was procured by concealment of a material fact or by willful misrepresentation. ^[8]

This provision applies regardless of whether the spouse or child is residing in the United States or abroad at the time of the revocation of naturalization. ^[9]

3. Citizenship of Spouse or Child Residing Abroad is Lost if Revocation on Certain Grounds

The spouse or child of a person whose U.S. citizenship is revoked may lose his or her U.S. citizenship if the spouse or child is residing outside of the United States at the time of revocation. ^[10] This applies if the revocation was based on becoming a member of certain organizations after naturalization or for separating from the military under less than honorable conditions before serving honorably for five years.

The spouse or child of a person whose U.S. citizenship is revoked under these sections may lose his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked;
- The spouse or child resided outside of the United States at the time of revocation; and
- The parent or spouse's citizenship was revoked on the basis that:
 - The person became involved with the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization; ^[11] or
 - The person naturalized on the basis of service in the U.S. armed forces but separated from the military under other than honorable conditions before serving honorably for a period or periods totaling at least five years. ^[12]

The spouse or child's loss of citizenship under this provision does not apply if the spouse or child was residing in the United States at the time of revocation. ^[13]

Footnotes

1. [^] See [INA 340\(a\)](#).
2. [^] See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization [[12 USCIS-PM K.5](#)].
3. [^] USCIS counsel should be contacted in all cases involving possible loss of citizenship by spouses or children of persons whose naturalization has been revoked.
4. [^] See [INA 319\(a\)](#) and [INA 319\(b\)](#). See Part G, Spouses of U.S. Citizens [[12 USCIS-PM G](#)].
5. [^] See [INA 320](#) and [INA 322](#). See Part H, Children of U.S. Citizens [[12 USCIS-PM H](#)].
6. [^] See *Rosenberg v. United States*, 60 F.2d 475 (3rd Cir. 1932).
7. [^] Officers should consult with local USCIS OCC counsel in any cases involving a spouse's or child's revocation of citizenship under this provision.
8. [^] See [INA 340\(a\)](#) and [INA 340\(d\)](#).
9. [^] See [INA 340\(d\)](#).
10. [^] See [INA 340\(d\)](#).
11. [^] See [INA 313](#) and [INA 340\(c\)](#). See Part D, General Naturalization Requirements [[12 USCIS-PM D](#)].
12. [^] See [INA 328\(f\)](#) and [INA 329\(c\)](#). See Part I, Military Members and their Families [[12 USCIS-PM I](#)].
13. [^] See [INA 340\(d\)](#).

Volume 13 - Fraud and National Security [Redacted]

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