

Frequently Asked Questions About Adjustment of Status

By Scott M. Borene*

1. *What is adjustment of status?*

Adjustment of status is a legal term for the process through which an individual present in the U.S. seeks to switch into Lawful Permanent Resident (“green card”) status without leaving the U.S. The alternative is for an individual to seek permanent resident status by applying for an immigrant visa at a U.S. Consulate outside the United States.

2. *Who is eligible to apply for adjustment of status?*

In order to be eligible to apply for adjustment of status to Lawful Permanent Residence, an individual must usually first get an approval from U.S. Citizenship and Immigration Services (USCIS) of an immigrant petition that was filed on his or her behalf by a U.S. employer or a U.S. citizen family member. In addition, an individual must have been lawfully admitted to the U.S. and must satisfy all relevant legal requirements including those discussed below in order to apply for adjustment of status.

3. *Who is not eligible to apply for adjustment of status?*

According to general adjustment of status standards, an individual usually may not seek adjustment of status to permanent resident in the United States if he or she entered the U.S. illegally. Even if an individual entered the U.S. legally, he or she usually may not apply for adjustment of status if he or she is currently in the U.S. in certain nonimmigrant classifications. For example, some individuals in B visitor status, J exchange visitor status, or individuals admitted to the U.S. under the visa waiver program, may be refused permission to adjust status in the U.S. In addition, an individual may usually not apply for adjustment of status in the U.S. if he or she is out of status at the time of filing or if he or she has violated certain immigration rules in the past. Finally, an applicant for adjustment of status must be admissible, meaning that he or she is not subject to the grounds of inadmissibility (i.e. security risks, conviction of a serious crime, etc.). In some cases an individual who cannot apply for adjustment of status in the U.S. may still be eligible to apply for an immigrant visa at a U.S. consulate abroad or be eligible for a “waiver of inadmissibility”.

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4. *When can someone apply for adjustment of status?*

Even though an individual may be the beneficiary of an approved immigrant petition, he or she may not file for adjustment of status until an immigrant visa is immediately available. Whether an immigrant visa is available depends on what type of family-sponsored or employment-sponsored immigrant petition was approved on the individual's behalf and the individual's country of nationality. Some immigrant visas are subject to annual numerical limits ("quotas") per country and per category. For example, an immigrant visa is always immediately available to individuals who are immediate relatives of U.S. citizens because there is no numerical limit on this category; however, other relatives of U.S. citizens from particular countries may have to wait to apply for adjustment of status. If the numerical limit is exceeded for a certain country or a certain category, an immigrant visa may not be immediately available. The U.S. Visa Bulletin issued by the U.S. Department of State summarizes the immigrant numbers available on a monthly basis.

5. *Who is eligible to file an adjustment of status application concurrently with an immigrant petition?*

Certain individuals seeking permanent resident status may file an adjustment of status application concurrently with an immigrant petition if an immigrant visa is immediately available. Immediate relatives of U.S. citizens, other family members of U.S. citizens, and beneficiaries of employment-based immigrant petitions with current priority dates may file an adjustment of status application concurrently with an immigrant visa petition.

6. *How long does it take for someone to obtain permanent resident status?*

Processing times vary among the service centers and district offices of the USCIS. Recently, it has been taking on average a year or more to obtain permanent resident status from the time of filing the adjustment of status application. Since processing times vary widely and may change abruptly for many reasons (e.g. staffing changes, uneven regional workloads, changes in government policy and procedure, etc.) processing times estimates are only approximations and not reliable predictions.

7. *Who is required to attend an interview as part of the adjustment of status process?*

Individuals seeking adjustment of status on the basis of marriage to a U.S. citizen are required to attend an interview at the appropriate local USCIS office. Other family members of U.S. citizens seeking adjustment of status on the basis of the relationship may or may not have an interview scheduled. This is also the case with individuals seeking adjustment of status on the basis of employment. It is generally within the discretion of the Immigration Officer whether or not an interview is necessary. If there are questions surrounding the qualifying relationship or employment, or for random government quality control reasons, an interview may be scheduled.

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8. *Can someone work in the U.S. while the adjustment of status application is pending?*

Yes. There are two means by which an adjustment of status applicant may be authorized to work while the application is pending. First, an applicant who was authorized to work at the time of filing the adjustment of status application pursuant to a nonimmigrant category such as H-1 Temporary Work status may continue to work for the employer as long as the nonimmigrant classification has not expired and the individual continues to comply with all legal requirements of that classification. Second, all adjustment of status applicants can apply for an employment authorization document (EAD) at the time of filing the adjustment of status application. Since approval and issuance of an EAD card may take up to 90 days or longer after application filing, the timing of application preparation and filing and proposed employment start dates should be considered carefully. The EAD is issued in one-year increments during the pendency of the adjustment of status application so the individual must apply for periodic renewal of his or her work authorization if the adjustment of status application takes more than one year to process.

9. *Can someone travel abroad while the adjustment of status application is pending?*

Yes, but a pending adjustment of status applicant must usually first obtain a travel document from the USCIS. “Advance parole” is the legal term for the USCIS’ granting of permission to a pending adjustment applicant to return from travel abroad. Any bona fide personal or business reason for travel during the pendency of the adjustment of status application is usually sufficient to obtain advance parole. Advance parole may be granted for up to one year for multiple entries. Any pending adjustment of status applicant who leaves the U.S. without first obtaining advance parole will usually be deemed to have abandoned the pending adjustment of status application. There is a limited exception to this rule for H-1 and L-1 nonimmigrants with pending adjustment of status applications. H and L nonimmigrants may depart and be readmitted to the U.S. in the same nonimmigrant status provided they intend to resume employment with the authorized employer and they present a valid nonimmigrant visa and a receipt notice evidencing that an adjustment of status application is pending.

10. *Can an applicant include his or her spouse and children on the adjustment of status application?*

Yes. The spouse and children of an adjustment of status applicant may apply for adjustment of status as derivatives of the principal applicant. Each child and the spouse must submit a separate application. A child of the principal applicant may only be included if he or she is under 21 years of age and unmarried.

11. *Can an applicant change employers while the adjustment of status application is pending?*

A person whose employment-sponsored adjustment of status application has been pending for more than 180 days may be able to change employers or jobs without affecting the validity of the underlying immigrant petition if the new employment is within “the same or a similar occupational classification” and if the I-140 petition has been approved. Generally, most family-sponsored applicants and certain self-petitioning employment-based applicants such as Extraordinary Ability Priority Workers may change employment while the application is pending.

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12. Do all applicants have to submit a medical examination as part of the adjustment of status application?

Yes, all applicants for adjustment of status to permanent residence must submit a medical examination form that was completed by a USCIS designated physician (civil surgeon). The medical results are valid for 12 months for immigration purposes. With limited exceptions, all applicants must also provide proof that they have received certain vaccinations as part of the medical examination. An individual will usually need to receive those required vaccinations for which they cannot provide a valid vaccination record.

13. What is the role of the employer in the adjustment of status process?

Generally, an employer is not involved in the adjustment of status application itself because it deals with the individual's personal eligibility and not the employment situation. An employer may need to provide a letter verifying the employment, position, and salary of the applicant to submit in support of the application.

14. What does the adjustment of status application consist of?

The standard required documents include various USCIS forms, photographs, medical examination results, fingerprints, and filing fees. Additional supporting documents often include birth certificates, marriage and divorce certificates, etc. One should always check with the appropriate USCIS office to determine the specific required documents because the documents required vary and may change. Additional forms, photographs, fees and other documents are required if an individual wants to apply for a travel document or employment authorization.

15. How is someone notified of the approval of the adjustment of status application?

This depends on whether or not an individual has an interview. If an applicant is interviewed, the final determination is usually made by the officer at the end of the interview. If the application is approved and an immigrant visa is immediately available, the applicant may receive a temporary I-551 stamp in his or her passport showing that he or she is a permanent resident. This stamp will serve as evidence of the individual's permanent resident status until the actual "green card" (i.e. permanent residence card) arrives in the mail. If the interview is waived, an applicant will receive the final determination via mail, but usually will not receive a temporary I-551 stamp.

16. What happens if the application is incomplete?

If the application is missing an important form or filing fee, the entire application will probably be sent back to the applicant along with a letter explaining the reason for its return. If all of the required forms are submitted but some information is incomplete or unclear (e.g. the medical form was improperly completed), the USCIS will likely send a Request for Evidence (RFE) letter asking for additional documents or information. The applicant has a specified period of time within which to submit the additional requested information or else the application may be denied.

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17. What should someone do if they cannot remember or obtain all of the information required on the forms?

It is very important to always provide the most accurate and complete information possible. However, if someone does not remember or cannot obtain some of the information required, he or she should provide as much information as possible. Do not provide information unless you are confident that it is accurate. For non-citizens especially, giving inaccurate information to the immigration authorities may be a very serious violation of immigration law and can lead to many problems including removal and permanent exclusion from the United States.

18. What is §245(i)?

This is Section 245(i) of the Immigration and Nationality Act which extends the eligibility for adjustment of status to some individuals who were otherwise ineligible because they entered the U.S. without inspection, engaged in unlawful employment, or failed to maintain lawful status. These individuals are required to pay a penalty fee in addition to the regular filing fees in exchange for the opportunity to apply for adjustment of status in the U.S. This provision initially took effect in 1994 and sunset on January 14, 1998. Therefore, anyone who was the beneficiary of an immigrant petition filed before January 14, 1998 preserved the right to apply for §245(i) adjustment of status at a later date. In 2000, a limited extension of the program was enacted under the LIFE Act. This extension of the program sunset on April 30, 2001. Therefore, anyone who is the beneficiary of an immigrant petition filed before this date is “grandfathered” under this provision and preserves the right to apply for §245(i) adjustment of status at a later date. Those individuals eligible to apply under §245(i) of the LIFE Act program must also prove that they were present in the United States on December 21, 2000.

19. What bars to admission are waived under §245(i)?

This provision allows the following otherwise ineligible individuals to apply for adjustment of status in the U.S.: individuals who entered the U.S. without inspection; individuals who overstayed an authorized period of nonimmigrant stay or who violated a nonimmigrant status in any way, and individuals who have engaged in unauthorized employment.

20. What is the immigration attorney’s role in the adjustment of status process?

The assistance of an immigration attorney is not required but can be very helpful with an application as complex as the adjustment of status application. The attorney can assist an individual with completing the required forms and obtaining and organizing the required supporting documents. In addition, attorneys may attend the interview with an adjustment applicant.

Qualified immigration attorneys who have examined and analyzed the facts and evidence in a particular case may be able to prevent many problems before they occur.



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