

# Filing for Permanent Residence based on Employment

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## Filing for Permanent Residence based on Employment

### General Information about Filing an Application for Permanent Residence based on Employment

#### **OVERVIEW**

Several paths can lead an individual to become a permanent resident of United States while inside the U.S. One path: an employer can file a petition to sponsor someone's immigration based on offering the person a permanent job. The immigrant visa or status process leads to permanent residence status in the U.S. and is how an employer would apply for a prospective employee or current employee to reside permanently in the U.S. to fill a permanent position. In most cases, the employer will start the process by filing an application for labor certification with the U.S. Department of Labor (DOL). Once approved by DOL, the employer may then file a Form I-140 on behalf of the employee.

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## What are the different employment-based immigrant categories and how are they divided?

The preference categories are organized into a tiered structure of occupations ranging from those that are in the national interests of the U.S. to religious occupations. Essentially this means that employment-based cases are ranked according to the importance of the particular profession to the national interests of the U.S, which depends upon the occupation's economic, scientific, technologic, and social contribution to the United States. Below is a list of the employment-based preference categories and the work classifications that fall under them.

The EB-1 Category consists of:

- Aliens with extraordinary ability in the sciences, arts, education, business or athletics
- Outstanding professors or researchers; and
- Multinational executives and managers.

The EB-2 Category consists of:

- Aliens who because of their exceptional ability in the sciences, arts, or business will substantially benefit the national economy, cultural, or educational interests or welfare of the United States; and
- Aliens who are members of the professions holding advanced degrees or their equivalent.

The EB-3 Category consists of:

- Aliens with at least two years of experience as skilled workers;
- Professionals with a baccalaureate degree; and
- Other workers with less than two years experience, such as an unskilled worker who can perform labor for which qualified workers are not available in the United States.

The EB-4 Category consists of:

- Religious workers
- Employees and former employees of the U.S. Government abroad

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## Who is a principal beneficiary?

A principal beneficiary is the alien on whose behalf a petition can be filed directly.

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## Who is a derivative beneficiary?

A derivative beneficiary is an alien for whom a petition cannot be directly filed, but who can follow to join or accompany the principal beneficiary based on a spousal or parent-child relationship.

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## How do I know if I can file for permanent resident status based on my job?

Several avenues can lead an individual to become a permanent resident of United States while inside the U.S.

By answering the following questions, we can begin to see if you appear to be able to file an application for permanent resident status based on your job or job offer.

**However, please be advised that this preliminary determination does not mean you are actually eligible for permanent residence. This preliminary determination is only a tool to help you decide whether you may want to apply for the benefit you seek, and should by no means be interpreted as a determination that you are eligible for permanent residence.**

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Please choose the scenario below that most closely matches yours:

- ❑ [Your U.S. employer \(or you, if you filed under the first preference category\) has ALREADY FILED an employment-based immigrant petition \(I-140 or I-360\) on your behalf.](#)
- ❑ [Your employer \(or you\) has NOT YET FILED an employment-based immigrant petition \(I-140 or I-360\) but has already determined under what category to file the petition. You want to check the filing requirements of the I-485, Application for Permanent Resident Status, to see if you and your employer may want to file the application for permanent resident status at the same time your employer files the petition.](#)
- ❑ [An employment-based immigrant petition has not yet been filed, and you and/or your employer are unsure where to start.](#)

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You should first determine under what immigrant category, if any, an employer-based petition could be filed.

For more detailed information or information concerning the filing of the immigrant visa petition, please have the person or company who will be filing the immigrant visa petition call our Employer Business, Investor and School line at 1-800-357-2099.

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**Were you lawfully admitted into the United States by an officer of the United States government? (Inspected, then admitted or paroled)**

- [Yes](#)
- [No](#)

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**Are you currently maintaining a valid nonimmigrant status in the United States?**

- [Yes](#)
- [No](#)

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You are currently in the U.S. in one of the following nonimmigrant categories? (Choose one below.)

Nonimmigrant Categories	
<b>Diplomats and Government Representatives, and their staffs and</b>	
<a href="#"><u>A</u></a>	Diplomatic Personnel
<a href="#"><u>C2</u></a>	Representative in transit to or from the United Nations Headquarters District
<a href="#"><u>C3</u></a>	Government Representatives in transit through the U.S.
<a href="#"><u>G</u></a>	Other Government Representatives
<a href="#"><u>NATO</u></a>	NATO personnel on assignment to the U.S.
<b>Tourists and Visitors on business</b>	
<a href="#"><u>B</u></a>	Tourists and Visitors on Business including citizens of Canada entering without a visa
<a href="#"><u>WB</u></a>	Visitors coming temporarily on business admitted under the Visa Waiver Program
<a href="#"><u>WT</u></a>	Tourists admitted under the Visa Waiver program
<a href="#"><u>Guam Visa Waiver</u></a>	Tourists Admitted only to Guam under Special Visa Waiver
<b>Students and Exchange Visitors, and their dependents</b>	
<a href="#"><u>F</u></a>	Academic Students
<a href="#"><u>J</u></a>	Exchange Program Visitors
<a href="#"><u>M</u></a>	Vocational Students
<b>Fiancé(e)s and certain relatives of U.S. citizens and Permanent Residents</b>	
<a href="#"><u>K1</u></a> <a href="#"><u>K2</u></a>	Fiancé(e)s of U.S. citizens and their dependent children (also see U.S. citizen services)
<a href="#"><u>K3</u></a> <a href="#"><u>K4</u></a>	Certain Husbands and Wives of U.S. citizens, and their dependent children
<a href="#"><u>V</u></a>	Certain Relatives of a Permanent Resident (LIFE Act)
<b>Others</b>	
<a href="#"><u>C1, TWOV</u></a>	Persons transiting the U.S.
<a href="#"><u>S</u></a> <a href="#"><u>U</u></a>	Certain Informants and victims of criminal activity in the U.S.
<a href="#"><u>I</u></a>	Victims of Trafficking
<a href="#"><u>Parolee</u></a>	Person paroled into U.S. temporarily
<b>Nonimmigrant Workers and their dependents</b>	
<a href="#"><u>D</u></a>	Crewmembers
<a href="#"><u>E</u></a>	Treaty Traders and Treaty Investors based on a bilateral treaty, and dependents
<a href="#"><u>H1B</u></a>	Temporary Workers in Specialty Occupations
<a href="#"><u>H1C</u></a>	Registered Nurses
<a href="#"><u>H2A</u></a>	Temporary Agricultural Workers
<a href="#"><u>H2B</u></a>	Temporary skilled and unskilled workers
<a href="#"><u>H3</u></a>	Trainees
<a href="#"><u>H4</u></a>	Dependents of H1, H2, and H-3 workers and trainees
<a href="#"><u>I</u></a>	Representatives of Foreign Information Media
<a href="#"><u>L</u></a>	Intra-Company Transferees
<a href="#"><u>O</u></a>	Persons with Extraordinary Ability and their support personnel
<a href="#"><u>P1</u></a>	Internationally recognized Athletes and Entertainers
<a href="#"><u>P2</u></a>	Artists and Entertainers pursuant to Exchange Agreements
<a href="#"><u>P3</u></a>	Culturally Unique Artists and Entertainers
<a href="#"><u>P4</u></a>	Dependents of 'P' athletes, artists and entertainers
<a href="#"><u>Q1</u></a>	International Cultural Exchange Visitors
<a href="#"><u>Q2, Q3</u></a>	Irish Peace Process cultural training program participants
<a href="#"><u>R</u></a>	Religious Workers
<a href="#"><u>TN1, TD</u></a>	Canadian professionals under NAFTA (North American Free Trade Agreement) and their dependents (TD)
<a href="#"><u>TN2, TD</u></a>	Mexican professionals under NAFTA (North American Free Trade Agreement) and their dependents (TD)

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**Since January 1, 1977, have you been employed in the United States without proper authorization?**

- [Yes](#)
- [No](#)

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**Have you ever otherwise violated your nonimmigrant status in the U.S.?**

- [Yes](#)
- [No](#)

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**Have you obtained a certification from the Department of State or NATO on Form I-566?**

- [Yes](#)
- [No](#)

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**Have you obtained a waiver of the two-year foreign residence requirement through approval by USCIS?**

- [Yes](#)
- [No](#)

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**Was the immigrant petition (I-140) or the labor certification filed on your behalf by your U.S. employer or yourself on or before April 30, 2001?**

- [Yes](#)
- [No](#)

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**Did you ever have a non-frivolous immigrant petition, of any kind, filed on your behalf on or before April 30, 2001?**

- [Yes](#)
- [No](#)

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**Is an immigrant visa available for your pending or approved petition?**

- [Yes](#)
- [No](#)
- [I don't know](#)

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**Is an immigrant visa currently available in the employment-based preference category in which you can be categorized?**

a) [Yes](#)

b) [No](#)

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**Have you ever been deemed to be inadmissible (not eligible to enter or remain in the U.S.) or previously been found ineligible to become a permanent resident of the United States?**

- [Yes](#)
- [No](#)

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**Have you ever been deemed inadmissible or been found ineligible to become a permanent resident of the United States?**

- [Yes](#)
- [No](#)

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Based on the information you have provided, it appears you may be able to apply for permanent residence in the United States. To begin the process you may be able to file a Form I-485.

If the immigrant visa petition is an I-140 and it has not yet been filed, you may be able to file your I-485 at the same time your employer files the Form I-140.

Please note: If you entered the United States illegally or are no longer in legal immigration status, you must have a priority date (either on this petition or a prior petition) of on or prior to April 30, 2001 in order to apply for permanent resident status. You will also need to submit Supplement A of Form I-485 with the associated penalty fee.

For more detailed procedures about filing the I-485, please click [here](#).

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Based on the information you provided, you may be eligible to apply for permanent residence in the United States. However, you indicated that the petition filed on your behalf on or before April 30, 2001 was not filed by your current petitioner. Therefore, when you file your I-485 you must provide evidence that indicates you had an immigrant petition filed on your behalf on or before April 30, 2001.

If you or your employer has not filed the I-140 on your behalf yet, you may do so when you file your I-485.

For more detailed procedures, please click [here](#).

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Based on the information you have provided, it appears that your employer may want to pursue the immigrant visa petition process for you. Unfortunately, because you have indicated you have one or more of the following issues:

- A. You did not enter the United States legally, or
- B. You entered in a status that is barred from applying for permanent resident status in the United States, or
- C. You worked in the U.S. without proper authorization some time after January 1, 1977, or
- D. You violated your status in the United States, or
- E. You are not currently in a valid nonimmigrant status, or
  - You entered in A, G or NATO status and has not yet obtained a certification from the Department of State or NATO on Form I-566, or
  - You entered in "J" status and have not yet obtained a waiver of the two-year foreign residence requirement, or
  - You entered in K-1 fiance(e) status and did not seek permanent residence through marriage to the United States citizen petitioner.

It appears you cannot file to adjust your status to permanent resident in the United States. Please understand that if you are in the U.S. unlawfully and remain in the United States, you may be apprehended and placed in removal proceedings, which may have a negative impact on your eligibility for an immigrant visa. Therefore, you will need to depart the U.S. in order to apply for the immigrant visa at the U.S. Consulate.

If the petition your employer files on your behalf is approved, it will be sent to the State Department's National Visa Center (NVC). The NVC will pre-process it and forward it to the U.S. Consulate nearest your country of origin. You will be notified and may be invited to apply for your immigrant visa outside the United States at a U.S. Consulate when your visa becomes available.

Visa processing times vary depending upon the visa category and country of origin of the employee. For more information about visa processing and availability, please see the visa availability list at the State Department's web site at [www.state.gov](http://www.state.gov).

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Based on the information you provided, you are currently not eligible to apply for permanent residence because an immigrant visa is not currently available to you based on your priority date and immigrant visa category being sought. An immigrant visa must be available before you can apply for permanent residence.

Please check the Department of State's visa bulletin regularly. Once an immigrant visa becomes available for you, we invite you to return here and determine your best option at that time.

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Based upon the information you have provided, it appears you may be ineligible to apply for permanent residence in the United States.

An approved or pending **Form I-140**, *Petition for Alien Worker*, does not cure inadmissibility or ineligibility of a foreign national to become a permanent resident of the U.S.

You would need to receive a waiver of inadmissibility. In order to receive a waiver, you would have to specifically request or apply for the waiver. Even if a specific waiver exists for your situation, there is no guarantee that it would be granted. Some grounds of inadmissibility do not have a waiver, resulting in the permanent inadmissibility of an applicant from the U.S.

**If a waiver does exist for your particular situation, to apply for the waiver:**

You would file **Form I-601**, *Application for Waiver of Ground of Inadmissibility*, with USCIS for all grounds of inadmissibility: criminal record, medical condition, unlawful presence, immigration fraud or willful misrepresentation, etc.

You would file **Form I-192**, *Application for Advance Permission to Enter as a Non-immigrant*, with USCIS for all grounds of inadmissibility instead of Form I-601 if you are applying for permission to temporarily enter the U.S. as a nonimmigrant.

You would file **Form I-212**, *Application for Permission to Reapply for Admission into the U.S. after Deportation or Removal*, with USCIS if you have been ordered removed or deported by an immigration judge. If you have been ordered removed or deported, besides filing Form I-212, you may need to file Form I-601 as well to apply for a waiver of the underlying ground of inadmissibility for which you were ordered removed.

**Note:** Waiver applications and eligibility requirements are complex. It would be in your best interest to seek legal advice from a licensed immigration attorney or from a not-for-profit agency accredited by the Board of Immigration Appeals.

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In some cases, an employee who is in the United States may be able to file for permanent resident status at the same time the employer files the I-140 petition if an immigrant visa would be immediately available to him or her. In most immigrant categories, the law limits how many people can immigrate each year. Often the demand to immigrate is greater than the limit allowed per year.

Priority dates are numerical limitations (preference) assigned to eligible applicants seeking to immigrate to the United States. This is solely due to the maximum number of visas issued per fiscal year that are divided into family sponsored, employment based, and diversity immigration.

**Note:** the term “fiscal year” is from October 1 through September 30.

Priority dates are used to make sure that each eligible person within an immigrant category is considered in chronological order. In other words, a priority date is the person’s place in line to immigrate. For employment-based categories, the priority date is either:

1. The date the I-140 is filed, if filing for an immigrant visa category that does not require a labor certification, **or**
2. The date the approved labor certification was received at the Department of Labor, as indicated on the certification, if filing for an immigrant visa category that does require a labor certification.

Because your immigrant visa category is one of the employment-based categories, a waiting list has been established based on your priority date. To determine when a petition will be next in line for continued processing, the Department of State visa office has established priority cut-off dates. Once the priority date for a particular petition becomes current, the beneficiary (the employee) would then be able to pursue the immigrant visa process outside the United States or, if otherwise eligible, the adjustment of status to permanent resident process inside the United States.

To check the State Department’s visa availability bulletin, click [here](#).

In the visa bulletin, if a date is shown for any category, this indicates that the category is oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number.

In the bulletin, if "C" is shown in a category, this means immigrant visas are immediately available for all qualified applicants in that category; and

In the bulletin, "U" means unavailable. This means no immigrant visas are available.

**After reviewing the State Department visa bulletin, does it appear that an immigrant visa is currently available to you?**

[Yes](#)

[No](#)

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## Filing for Permanent Residence based on Employment

### Filing an Application for Adjustment of Status based on Employment

#### **OVERVIEW**

This section covers the process that enables an employee to adjust status to that of lawful permanent resident based on an approved employment-based petition. An immigrant or lawful permanent resident is a foreign national who is authorized to live and work permanently in the U.S. This section covers the process of how to apply for adjustment of status to that of lawful permanent resident.

If an employer wants to sponsor someone for lawful permanent residence based upon permanent employment, he/she must go through a multi-stage process. In some cases, the employer must first file a Labor Certification Request with the Department of Labor (DOL). After the Labor Certification Request has been approved by the DOL, or if such a certification is not required, the employer starts the process with USCIS by filing Form I-140, Petition for Alien Worker. Once a visa number becomes available, the foreign national can apply for adjustment of status to that of lawful permanent resident.

#### **General Adjustment of Status Filing Process Questions**

- [What is the process to obtain lawful permanent residence in the United States?](#)
- [Which application do I file to adjust my status in the United States?](#)
- [Are there any additional applications I can file concurrently with the I-485?](#)
- [How do I check for visa availability?](#)
- [What initial evidence must I submit with the adjustment of status application to demonstrate my eligibility?](#)
- [Where is the I-485 package filed?](#)
- [What is the filing fee for the I-485?](#)
- [Do I have to file a separate I-485 for every member of my family if I am the beneficiary of an approved Petition for an Immigrant Worker \(I-140\)?](#)
- [If I am adjusting my status in the U.S. but my family, who is derivative of my approved I-140, resides abroad, how do I apply for them?](#)
- [Am I required to submit a medical examination with my adjustment of status application? And my family?](#)

#### **Adjustment of Status Questions concerning the H-1B**

- [If I am an H-1B who wishes to change employers while my adjustment of status case is pending, how long must I wait to do so without the change in employers affecting my adjustment of status case?](#)
- [If I am an H-1B who no longer works for the petitioning employer, can I supply a letter of employment from my new employer?](#)

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## **General Adjustment of Status Filing Process Questions**

### **What is the process to obtain lawful permanent residence in the United States?**

The entire process for obtaining permanent residence both inside and outside the United States is described in the following table:

#### ***Stages- Who Does It and What Happens?***

- 1 *Employer*-Determines if prospective employee or current employee meets the basic criteria for one of the four distinct visa categories that permanent residency is granted for when based on employment. These are:
  - EB-1 Priority workers·
  - EB-2 Professionals with advanced degrees·
  - EB-2 Persons with exceptional ability·
  - EB-3 Skilled or professional workers·
  - EB-4 Special Immigrants
  
- 2 *Employer*-Files a labor certification request, Application for Alien Employment Certification (Form ETA 750), with the Department of Labor's State Workforce Agency (DOL-SWA).

**Note:** Labor Certification is not required for all employment-based categories.
  
- 3 *DOL-SWA* Grants or denies the certification request.

**Note:** Employer could skip this step if labor certification is not required.
  
- 4 *Employer*-Files on behalf of employee an approved labor certification with an immigrant visa petition, Immigrant Petition for Alien Worker (Form I-140) or Petition for an Amerasian, Widow (er), or Special Immigrant (I-360), with USCIS.
  
- 5 *USCIS*-Grants or denies Immigrant Petition for Alien Worker (Form I-140) or Petition for an Amerasian, Widow (er), or Special Immigrant (I-360).
  
- 6 *State Department*-Allocates immigrant visa numbers according to priority dates.

**Note:** For I-140s, the priority date is determined by the date that the Form ETA-750 was filed with the Department of Labor. If no labor certification was required (EB-1 categories), the date the Form I-140 was filed with USCIS is the priority date.
  
- 7 *Employee* - Determines if a visa is available based on his/her priority date and files for adjustment of status if visa number is available. If the applicant is outside the United States when an immigrant visa number becomes available, he or she will be notified and must complete the process at his or her nearest U.S. consulate office. Note: Employee may not have to wait for approval of I-140 before filing for adjustment of status as he or she may be eligible for concurrent filing, which is contingent upon visa availability.

**Continued on next page.**

- 8 *USCIS or U.S. Consulate* - If the employee is inside the U.S., USCIS will approve or deny the application for permanent residence. If the employee is outside the U.S., the U.S. Consulate will approve or deny the immigrant visa application.

For more detailed information or information concerning the filing of the immigrant visa petition, please call our Employer Business, Investor and School line at 1-800-357-2099.

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### Which application do I file to adjust my status in the United States?

Use the Form I-485, Application to Register Permanent Residence or Adjust Status, to apply for permanent resident status.

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### Are there any additional applications I can file concurrently with the I-485?

Yes, you must submit the following forms with the I-485:

- Either your original I-140, Immigrant Petition for Alien Worker (if you are filing concurrently and a visa is available), or a copy of your I-797, Notice of Action (if the petition was already approved);
- Adjustment of Status Based On an Approved Petition;
- Biographic Information (G-325A);
- Affidavit of Support (I-864) **if applicable**; and
- Medical Examination of Aliens Seeking Adjustment of Status (I-693).

In addition, you may also submit the following forms:

- Notice of Entry of Appearance as Attorney or Representative (G-28);
- Application for Employment Authorization (I-765), if you want to work while your application is processed;
- Application for Travel Document (I-131), if you need to travel outside the United States while your application is processed;
- Supplement A (I-485), and penalty fee if applicable; and
- Application for Waiver of Grounds of Excludability (I-601), if applicable.

Please note that you cannot file the Application to Register Permanent Residence or Adjust Status (Form I-485) concurrently with the Immigrant Petition for Alien Worker (I-140) unless an immigrant visa number is immediately available to you.

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### How do I check for visa availability?

You can check for visa availability by accessing the Visa Bulletin from the Department of State website. To check the State Department's visa availability bulletin, click [here](#).

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### **What initial evidence must I submit with the adjustment of status application to demonstrate my eligibility?**

Please read the [instructions to the Form I-485](#) carefully to determine what initial evidence to submit.

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### **Do I have to file a separate I-485 for every member of my family if I am the beneficiary of an approved Petition for an Immigrant Worker (I-140)?**

Yes, you must file a separate I-485 application for every member of the family that is applying for adjustment of status in the United States.

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### **If I am adjusting my status in the U.S. but my family, who is derivative of my approved I-140, resides abroad, how do I apply for them?**

If your spouse or child is residing abroad, and you are adjusting status in the United States, you should file the Application for Action on an Approved Application or Petition (Form I-824). You should file it at the same time you file your adjustment of status application to allow your family to immigrate to the United States without delay, if your adjustment of status application is approved.

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### **Am I required to submit a medical examination with my adjustment of status application? And my family?**

Yes, you and your family are required to submit a medical examination with each of your individual adjustment of status applications.

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## **Adjustment of Status Questions concerning the H-1B**

### **If I am an H-1B who wishes to change employers while my adjustment of status case is pending, how long must I wait to do so without the change in employers affecting my adjustment of status case?**

You are able to change employers while your adjustment of status case is pending without negative repercussions on your adjustment case, if:

- An Application to Adjust Status (I-485), on the basis of an employment-based immigrant petition, has been filed and remained un-adjudicated for 180 days or more; and
- The new job is in the same or similar occupational classification as the job for which the certification or approval was initially made.

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### **If I am an H-1B who no longer works for the petitioning employer, can I supply a letter of employment from my new employer?**

Yes, you can and should submit a new letter of employment from your new employer. The letter from the new employer should:

- Verify that a job offer exists; and
- Contain the new job title, job description and salary.

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## **Fingerprinting and Adjustment of Status Interviews**

### **Do my fingerprints have to be taken for the adjustment of status application?**

If you are between the ages of 14 and 79, you must be fingerprinted.

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### **Do my fingerprints have to clear before I become a permanent resident?**

Yes. Fingerprints must clear and be verified by an immigration officer before one can become a permanent resident.

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### **Does my child who is under 14 years old have to take fingerprints or have an interview?**

Children under 14 are not required to have their fingerprints taken, and the Service may waive any interview requirements.

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### **Am I required to attend an interview in order to adjust my status?**

According to immigration regulations, an immigration officer shall interview each applicant for adjustment of status; however, there are exceptions to this rule.

Therefore, your local USCIS office will notify you whether or not an interview is necessary.

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## **Is it possible for the interview to be waived by USCIS?**

Yes, it is possible for the interview requirement to be waived by the USCIS. Interview waiver criteria are standards set at a national level. If you meet one of the five criteria below, USCIS may decide to waive an interview for adjustment of status if the principal applicant:

- Is employed by the same petitioner who submitted the approved underlying employment-based visa petition.
- Has been interviewed in the course of an investigation or field examination, and the adjudicating examiner determines that further interview of the applicant is unnecessary.
- Has been approved as an alien of extraordinary ability or alien of exceptional ability and is otherwise eligible for adjustment of status.
- Has been approved as an outstanding professor or researcher, or a multinational executive/manager and has a continuing offer of employment from the same petitioner who submitted the underlying approved petition.
- Is an adjustment applicant who received a national interest waiver based on performing primary medical care to a medically under-served area; applicant must demonstrate intent to continue according to the terms and conditions of the underlying petition.

Please note that the principal applicant is the individual on whose behalf the Immigrant Petition for Alien Worker (I-140) was filed.

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## **What kind of documentary evidence is required at the time of the interview?**

You will be sent an interview notice, informing you what to bring to your interview.

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## Filing for Permanent Residence based on Employment

### Employment Authorization and Travel Documents While your Adjustment of Status Application is pending

#### **OVERVIEW**

This section covers other immigration benefits that an alien can apply for while his/her application for adjustment of status is pending.

U.S. employers must check to make sure all employees are allowed to work in the U.S. An Employment Authorization Document (EAD) provides the proof required to show that an alien is authorized to work in the U.S. Aliens with a pending application for adjustment of status require such an EAD. Applicants can apply for an EAD by filing USCIS Form I-765.

If you are not a U.S. citizen, you may need permission to return to the U.S. after traveling abroad. This permission is granted through a travel document. Advance Parole is a type of travel document. Advance parole is permission to re-enter the U.S. after traveling abroad. Most aliens who have a pending application for adjustment of status must be approved for advance parole before leaving the U.S. Travel outside the U.S. without advance parole may have severe consequences for aliens who are in the process of adjusting their status. Such aliens may be unable to return to the U.S.; their applications may be denied, or both. Applicants can apply for advance parole by filing USCIS Form I-131, Application for Travel Document,

#### **Frequently asked questions**

[Can I get employment authorization while my application for permanent residence is pending?](#)

[What category should I place in Question 16 on the application for employment authorization?](#)

[If I have a pending application for adjustment of status, can I travel outside the U.S. and reenter?](#)

[How do I apply for advance parole?](#)

[I have been out of status for a period of more than six months, should I travel outside the U.S. even with advance parole?](#)

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### **Can I get employment authorization while my application for permanent residence is pending?**

While your application for permanent residence is pending, you may be able to get an employment authorization document. In order to apply for employment authorization, you should file the Application for Employment Authorization (I-765) at the USCIS office where your adjustment of status application is pending.

If you are in a lawful H-1 or L-1 nonimmigrant status, you may not be required to get an employment authorization document if your status is valid and you remain employed by the company through which you received your H or L status.

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### **What category should I place in Question 16 on employment authorization application?**

When filing a Form I-765 in conjunction with a Form I-485, you would usually put (c)(9) in the appropriate brackets for question #16 on the employment authorization application.

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### **If I have a pending application for adjustment of status, can I travel outside the U.S. and re-enter?**

Generally speaking, if you have a pending adjustment of status case, you do need an advance parole to re-enter the United States after travel abroad. Otherwise, your adjustment of status case can be denied based on abandonment.

Please note that if you are in a lawful H-1 or L-1 nonimmigrant status, you may not be required to get an advance parole.

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### **How do I apply for advance parole?**

In order to apply for advance parole you should file the Form I-131, Application for Travel Document, at the USCIS office where your I-485, Application for Adjustment of Status, is pending.

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### **I have been out of status for a period of more than six months, should I travel outside the U.S. even with advance parole?**

Travel outside the U.S. may have severe consequences if you are in the process of adjusting your status. You may be unable to return to the U.S., and your application may be denied, or both. If you have been unlawfully present in the U.S. for certain periods of time, you can be barred from admission to lawful permanent resident status, even if you have obtained advanced parole. If you have been unlawfully present in the U.S. for more than 180 days, but less than one year, you are inadmissible to reenter for three years; if you have been unlawfully present in the U.S. for a year or more, you are inadmissible to reenter for ten years. Even if you are able to reenter under a grant of parole, you may still be ineligible to adjust your status to that of permanent resident. USCIS urges those with pending applications for adjustment of status to consult with an immigration attorney or an immigration assistance organization accredited by the Board of Immigration Appeals before traveling abroad.

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The information contained here is a basic guide to help you become generally familiar with many of our rules and procedures. Immigration law can be complex, and it is impossible to describe every aspect of every process. After using this guide, the conclusion reached, based on information you provide and/or choose, may not take certain factors such as arrests, convictions, deportations, removals or inadmissibility into consideration.

If you have any such issue, the answer we provide may not fully address your need and may cause the full and correct answer to be significantly different.

We cannot provide legal advice. If you believe you may have an issue such as any described above, it may be beneficial to consider seeking legal advice from a reputable immigration practitioner such as a licensed attorney or nonprofit agency accredited by the Board of Immigration Appeals before seeking this or any immigration benefit.

For more information about immigration law and regulations, please see our website at [www.uscis.gov](http://www.uscis.gov).

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