



October 4, 2016

PM-602-0032.2

## Policy Memorandum

SUBJECT: Extension of Status for T and U Nonimmigrants (Corrected and Reissued)

### Purpose

This policy memorandum (PM) provides guidance about extensions of status for T and U nonimmigrants, including any related Forms I-485, Application to Register Permanent Residence or Adjust Status. This PM rescinds and replaces PM 602-0032.1, as discussed below. This PM revises chapters 39.1 and 39.2 of the Adjudicator's Field Manual (AFM).

PM 602-0032.1 contained information relating to a derivative T nonimmigrant's ability to adjust status to a lawful permanent resident (LPR). Under the superseded PM, a derivative T nonimmigrant could not adjust status after the principal had adjusted status and had become an LPR. USCIS reasoned that because the derivative family member's nonimmigrant status was derived from the principal, upon the principal's adjustment of status, the derivative would no longer maintain derivative T nonimmigrant status and therefore would be ineligible for adjustment of status. This meant that the derivative would have to adjust at the same time as the principal in order to preserve the eligibility to adjust status. USCIS noted statutory differences with the U nonimmigrant program, which requires derivative U nonimmigrants to meet their own physical presence requirement. No similar physical presence requirement applies to adjustment of status for derivative T nonimmigrants.

USCIS has reconsidered this interpretation of the T derivative adjustment of status provision and has edited the policy below accordingly. While applicable regulations require that a derivative T nonimmigrant must hold T nonimmigrant status at the time of filing Form I-485, the revised policy states that the derivative will not lose his or her derivative T nonimmigrant status when the principal adjusts status and becomes an LPR. Note that family members who have not previously entered or resided in the United States as derivative T nonimmigrants must be initially admitted in T nonimmigrant status before the T principal adjusts status. A derivative T nonimmigrant is eligible for adjustment of status if: (a) the principal has applied for and meets the eligibility requirements for adjustment of status under 8 CFR 245.23; and (b) the derivative was admitted in T nonimmigrant status and continues to hold such status at the time of the principal's application for adjustment of status. 8 CFR 245.23(b)(1) and (2).

Applicants may file a motion to reopen a derivative T nonimmigrant's Form I-485 if USCIS denied the application solely because the principal had already adjusted status. Applicants should file a Form I-290B, Notice of Appeal or Motion, and include a copy of the previous denial.

## Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

## Authorities

- Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), div. A; Trafficking Victims Protection Act of 2000 (TVPA), div. B; Violence Against Women Act of 2000 (VAWA 2000), Public Law No. 106-386, 114 Stat. 1464 (2000).
- Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Public Law No. 108-193, 117 Stat. 2875 (2003).
- Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law No. 109-162, 119 Stat. 2960 (2006).
- Violence Against Women and Department of Justice Reauthorization Act – Technical Amendments, Public Law No. 109-271, 120 Stat. 750 (2006).
- William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law No. 110-457, 122 Stat. 5044 (2008).

## Background

### *T Nonimmigrant Status*

On January 31, 2002, USCIS published an interim rule codified at 8 CFR 214.11, “New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status,” implementing the T nonimmigrant status created by the TVPA. This regulation contained brief information on adjustment of status and required a T nonimmigrant to file for adjustment of status within the 90 days immediately preceding the third anniversary of the approval of T nonimmigrant status. 8 CFR 214.11(p)(2) (2002). The regulation also stated that proper filing of Form I-485 would allow the applicant to remain in T nonimmigrant status, with all the rights and privileges of a T nonimmigrant, until a final decision is rendered on the application.

On January 5, 2006, the President signed VAWA 2005, lengthening the duration of status for a T nonimmigrant from three years to four years. Immigration and Nationality Act (INA) § 214(o)(7)(A). It also created an extension of T nonimmigrant status beyond the four years based on a certification from a law enforcement official that the T nonimmigrant’s presence was necessary to assist in the investigation or prosecution of the acts of trafficking. INA § 214(o)(7)(B).

On December 12, 2008, USCIS published an interim rule, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” implementing the adjustment of status provisions for T nonimmigrants at 8 CFR 245.23. Significant points of this rule, which became effective on January 12, 2009, include:

- To be eligible to file for adjustment of status, an alien must have been lawfully admitted as a T nonimmigrant and continue to hold that status at the time of the application for adjustment of status. However, T nonimmigrants who had already accrued four years in T nonimmigrant

status remained eligible for adjustment of status as long as they filed a complete application for adjustment of status before April 13, 2009. 8 CFR 245.23(a)(2)(ii).

- The failure to apply for adjustment of status in accordance with 8 CFR 245.23 will result in termination of T nonimmigrant status at the end of the four-year period unless T nonimmigrant status has been extended. 8 CFR 214.11(p)(2).
- A derivative T nonimmigrant is eligible for adjustment of status only if the principal is also eligible, and may file only concurrently with the principal T nonimmigrant or after the principal T nonimmigrant has filed for adjustment of status. 8 CFR 245.23(b)(1).
- The denial of a principal T nonimmigrant's application for adjustment of status will result in denial of the derivative T nonimmigrant's application for adjustment of status, including any adjustment application filed by a derivative after the denial of the principal's application for adjustment of status.

On December 23, 2008, the President signed the TVPRA 2008, which in section 201 amended the eligibility requirements for T nonimmigrant status at INA § 101(a)(15)(T), nonimmigrant duration of status and extension provisions at INA § 214(o), and adjustment of status requirements at INA § 245(l). Amended INA § 214(o)(7) now provides that T nonimmigrant status *may* be extended if:

- A Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the T nonimmigrant in the United States is necessary to assist in the investigation or prosecution of acts of trafficking; or
- USCIS determines that an extension of the period of T nonimmigrant status is warranted due to exceptional circumstances.

Amended INA § 214(o)(7) now provides that USCIS *must* extend T nonimmigrant status while a Form I-485 under INA § 245(l) is pending.

### *U Nonimmigrant Status*

On September 17, 2007, USCIS published an interim rule codified at 8 CFR 214.14, "New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status," implementing the U nonimmigrant status created by VAWA 2000. Title 8 CFR 214.14(g) provides that U nonimmigrant status may be approved for a period not to exceed four years in the aggregate. USCIS may grant the derivative the extra time needed to make his or her period in the United States equal four full years. 8 CFR 214.14(g)(2)(i) provides extensions of U nonimmigrant status if:

- The U nonimmigrant's initial period of stay is less than four years; or

- A qualifying family member is unable to enter the United States timely due to delays in consular processing, in which case the family member's status may be extended beyond the expiration of the principal nonimmigrant's status to ensure the family member will accrue at least three years in U nonimmigrant status for purposes of adjusting status (see PM 602-0001).

8 CFR 214.14(g)(2)(ii) provides extensions of U nonimmigrant status beyond the statutorily permissible four-year period if the certifying official on the U nonimmigrant petition attests that the nonimmigrant's presence in the United States continues to be necessary to assist in the investigation or prosecution of the qualifying criminal activity.

On December 12, 2008, USCIS published an interim rule, "Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status," implementing the adjustment of status provisions for U nonimmigrants at 8 CFR 245.24. This rule became effective on January 12, 2009. As per 8 CFR 245.24(b)(2), to be eligible to file for adjustment of status, an alien must:

- Have been lawfully admitted as a U nonimmigrant and continue to hold that status at the time of application for adjustment of status; or
- Have accrued at least four years in U interim relief status and file a complete adjustment application within 120 days of the date of approval of the U nonimmigrant petition.

Under the adjustment regulations, a derivative U nonimmigrant can adjust status at any time he or she meets the requirements to adjust status at 8 CFR 245.24. The adjustment of status of a derivative U nonimmigrant is not tied to the principal, so derivative U nonimmigrants can adjust status as long as they meet the adjustment requirements at the time of filing. Specifically, derivative U nonimmigrants must have three years of continuous physical presence in the United States and be in U nonimmigrant status at the time of filing. A derivative U nonimmigrant may need to request an extension of derivative status to accrue sufficient continuous physical presence in derivative U nonimmigrant status before applying for adjustment of status.

The TVPRA 2008 became effective on December 23, 2008. Section 201 of the TVPRA 2008 amended the duration of status and extension provisions at INA § 214(p). Amended INA § 214(p)(6) now provides that U nonimmigrant status *may* be extended if the Secretary of Homeland Security determines that an extension of such period is warranted due to exceptional circumstances.

Amended INA § 214(p)(6) now provides that USCIS *must* extend U nonimmigrant status in *any* of the following circumstances:

- A Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in INA § 101(a)(15)(U)(iii) certifies that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity; or

- When an application for adjustment of status under INA § 245(m) is pending.

## **Policy**

### *T Nonimmigrants*

Due to the complex changes to the statutory and regulatory requirements for T nonimmigrant status and related adjustment of status applications, this section on T nonimmigrants is divided into four groups with specific instructions for those applications that fall within each group.

The following information applies to T nonimmigrants afforded an extension of status during the pendency of an application for adjustment of status under INA § 245(l):

- To receive an extension of T nonimmigrant status based on the filing of an application for adjustment of status, the T nonimmigrant must file Form I-485 in accordance with the form instructions. If the T nonimmigrant files the Form I-485 while still in valid T nonimmigrant status, there is no need to file the Form I-539, Application to Extend/Change Nonimmigrant Status.
- All Forms I-485 will be adjudicated according to the T adjustment regulation at 8 CFR 245.23.
- When a T nonimmigrant properly files for adjustment of status, USCIS will issue two new Forms I-797, Notice of Action: a receipt notice for the application for adjustment of status, and a notice of extension of the T nonimmigrant status.
- The extension of T nonimmigrant status will be valid until a decision is rendered on the pending Form I-485 and, during that time, the applicant will continue in valid T nonimmigrant status with all the associated rights, privileges, and responsibilities.
- While the Form I-485 is pending, the applicant is authorized to work. The Form I-797, Notice of Action that indicates an extension of status can be used for verifying the employment authorization of individuals on a Form I-9, Employment Eligibility Verification for one year from the expiration date of the applicant's previous period of T nonimmigrant status, unless the Form I-485 is denied or withdrawn, whichever is earlier. The applicant may also apply for an employment authorization document (EAD) by filing Form I-765, Application for Employment Authorization. An applicant may file Form I-765 concurrently with Form I-485. Any EAD, including renewals, will be issued using the (c)(9) eligibility code.

Derivative T nonimmigrants who properly file Form I-485 will be issued two new Forms I-797, as described above. Derivative T nonimmigrant status will not be extended based on the principal T nonimmigrant's pending Form I-485. A derivative T nonimmigrant's status will be automatically extended when the derivative properly files for adjustment of status.

The following information applies to T nonimmigrants seeking an extension of status based on law enforcement need or exceptional circumstances:

- To request an extension of T nonimmigrant status based on law enforcement need or exceptional circumstances, the T nonimmigrant must file Form I-539, Application to Extend/Change Nonimmigrant Status, along with supporting evidence, in accordance with the form instructions.
- For derivative T nonimmigrant family member extension of status requests, follow the instructions for Form I-539. Derivative family members who have not previously entered or resided in the United States as T nonimmigrants cannot receive an extension of status. Instead, USCIS may issue an amended approval notice with updated validity dates.
- The Form I-539 should be filed before the T nonimmigrant status expires but no more than 90 days before expiration. However, if the T nonimmigrant can explain in writing why he or she is filing the Form I-539 after the T nonimmigrant status has expired, USCIS has discretion to grant, on a case-by-case basis, an extension based on an untimely filed Form I-539.
- When a T nonimmigrant properly files a Form I-539, USCIS will issue two new Forms I-797, Notice of Action: a receipt notice for Form I-539 and, if the Form I-539 is approved, a notice of extension of the T nonimmigrant status.
- The extension of T nonimmigrant status based on law enforcement need or exceptional circumstances will be valid for one year from the date the T nonimmigrant status ends. In the case of a Form I-539 untimely filed after T nonimmigrant status has expired, the extension will be valid from the date the previous status expired and for one year from approval of the extension. During that period, the applicant will continue in valid T nonimmigrant status with all the associated rights, privileges, and responsibilities.
- Any EAD (including renewals) will be issued using the (a)(16) eligibility code for principals and (c)(25) eligibility code for derivatives. An applicant may file Form I-765 concurrently with Form I-539.

**Group 1: Applicant Filed for Adjustment of Status While in T Nonimmigrant Status**

Under the T nonimmigrant regulations that were in effect before the adjustment regulations, a proper filing for adjustment of status must have been made within the 90 days preceding the third anniversary of the approval of the T nonimmigrant status. 8 CFR 214.11(p)(2) (2002). Those T nonimmigrants who properly filed for adjustment of status in accordance with the previous regulations, even though they had accrued less than three years in T nonimmigrant status, will have the Form I-485 adjudicated. Based on the proper filing made under old 8 CFR 214.11(p)(2), these applicants are considered to continue in T nonimmigrant status until a final decision is made on the application for adjustment of status. Because these T nonimmigrants filed their adjustment of status applications prior to the promulgation of the T adjustment regulations, adjudicators may need to send a Request For Evidence to request evidence required by the adjustment regulation. 8 CFR 245.23(e)

Apart from those T nonimmigrants who filed in accordance with the filing instructions in the previous version of 8 CFR 214.11(p)(2) (2002), USCIS will not accept early filings for adjustment of status from principal T nonimmigrants with less than three years in T nonimmigrant status (except for those adjustment of status applications based on the exception at 8 CFR 245.23(a)(3) allowing for filing before three years in T nonimmigrant status because an investigation or prosecution is complete). Any Form I-485 filed before the principal T nonimmigrant accrues three years in T nonimmigrant status (other than the exception) will be rejected as untimely filed.

**Group 2: Applicant Filed for Adjustment of Status After T Nonimmigrant Status Expired but Before April 13, 2009**

The adjustment regulation allowed those applicants with expired T nonimmigrant status to file for adjustment of status by April 13, 2009 (90 days from the effective date of the T adjustment regulation). 8 CFR 245.23(a)(2)(ii).

Those applicants in Group 2 with expired T nonimmigrant status who properly filed a Form I-485 *before* April 13, 2009, are considered to continue in T nonimmigrant status until a final decision is made on the adjustment of status application.

**Group 3: Applicant's T Nonimmigrant Status Expired and Applicant Failed to File for Adjustment of Status Before April 13, 2009**

Those T nonimmigrants whose status has expired but who did not file for adjustment of status before April 13, 2009, should not have their T nonimmigrant status extended, unless they request an extension based on law enforcement need or exceptional circumstances. See INA § 214(o)(7)(B)(i) and (iii). One of these extensions is necessary for the T nonimmigrant, whose status has expired, to be eligible to file for adjustment of status.

As outlined above, to request either of these extensions, the T nonimmigrant files Form I-539 along with supporting evidence. The nonimmigrant bears the burden of establishing eligibility for an extension. To establish law enforcement need, supporting evidence may include a new Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, or other evidence from law enforcement explaining that the applicant's presence is necessary, and any other credible evidence. To establish exceptional circumstances, supporting evidence may include an applicant's affirmative statement or any other credible evidence. The T nonimmigrant should explain in writing why he or she is filing the Form I-539 after the T nonimmigrant status has expired. USCIS will exercise its discretion to grant or deny an untimely filed extension request based upon the justification for the untimely filing in the specific circumstances of the case. If USCIS grants an extension of T nonimmigrant status, USCIS will issue a new Form I-797 extension notice valid from the date the previous status expired and for one year from approval of the extension. Once an applicant receives this new Form I-797, he or she may then file Form I-485 to adjust status to LPR before the expiration of the extension.

One example of possible exceptional circumstances is when a principal T nonimmigrant's status has expired and the approved derivative did not receive a T visa from a U.S. consulate to enter

the United States before the expiration of the principal's T nonimmigrant status. In the evidence submitted to establish exceptional circumstances, the principal should explain what exceptional circumstances prevented the derivative(s) from entering the United States. Once the extension is granted and the derivative(s) enter the United States, the principal and derivative T nonimmigrants can file for adjustment of status.

**Group 4: Derivative Family Members**

Once a principal T nonimmigrant is no longer a T nonimmigrant, whether through adjustment of status to lawful permanent residence or through expiration of the T nonimmigrant status, any derivative T nonimmigrants may no longer be eligible for initial admission into the United States on a T visa.

To be eligible to apply for adjustment of status, a derivative T nonimmigrant must continue to hold T nonimmigrant status at the time of filing the application for adjustment of status. 8 CFR 245.23(b)(2). For ease of processing, derivative T nonimmigrants are encouraged, but are not required, to file for adjustment of status concurrently with the principal T nonimmigrant. A derivative T nonimmigrant's status will be automatically extended when the derivative properly files for adjustment of status.

Where the approved derivative of a principal T nonimmigrant is awaiting initial issuance of a T visa by a consulate and the principal's nonimmigrant status is soon to expire, the principal is strongly encouraged to seek an extension of status based on exceptional circumstances, following the instructions to the Form I-539, and then wait for the derivatives to enter the United States before applying for adjustment of status. This step will prevent the derivative from being ineligible for initial admission to the United States on a derivative T visa due to the expiration of the principal's T nonimmigrant status.

*U Nonimmigrants*

The following information applies to U nonimmigrants afforded an extension of status during the pendency of an application for adjustment of status under INA § 245(m):

- To receive an extension of U nonimmigrant status based on the filing of an application for adjustment of status, the U nonimmigrant must file Form I-485, Application to Register Permanent Residence or Adjust Status, in accordance with the form instructions. If the U nonimmigrant files the Form I-485 while still in valid U nonimmigrant status, there is no need to file Form I-539, Application to Extend/Change Nonimmigrant Status.
- All adjustment of status applications will be adjudicated according to the U adjustment regulation at 8 CFR 245.24.
- When a U nonimmigrant properly files for adjustment of status, USCIS will issue two Forms I-797, Notice of Action: a receipt notice for the adjustment of status application and a notice of extension of the U nonimmigrant status.



- The extension of U nonimmigrant status will be valid until a decision is rendered on the pending Form I-485 and, during that time, the applicant will continue in valid U nonimmigrant status with all the associated rights, privileges, and responsibilities.
- While the Form I-485 is pending, the applicant is authorized to work. The Form I-797, Notice of Action that indicates an extension of status can be used to verify the employment authorization of individuals on a Form I-9 for one year from the expiration date of the applicant's previous period of U nonimmigrant status, unless the Form I-485 is denied or withdrawn, whichever is earlier. The applicant may also apply for an employment authorization document (EAD) by filing Form I-765. An applicant may file Form I-765 concurrently with Form I-485. Any EAD (including renewals) will be issued using the (c)(9) eligibility code.

Derivative U nonimmigrants who properly file an adjustment of status application will be issued two Forms I-797, as described above. Derivative U nonimmigrant status will not be extended based on the principal U nonimmigrant's pending Form I-485. A derivative U nonimmigrant's status will be automatically extended when the derivative properly files for adjustment of status.

To be eligible to file for adjustment of status, a U nonimmigrant must be in valid U nonimmigrant status and may therefore require an extension of U nonimmigrant status. The INA allows for an extension of U nonimmigrant status based on law enforcement need or upon a determination that the extension is warranted due to exceptional circumstances. INA § 214(p)(6). When an approved principal U nonimmigrant is awaiting issuance of a U visa by a consulate, the principal can seek an extension of status based on exceptional circumstances. The following information applies to U nonimmigrants seeking an extension of status based on law enforcement need or exceptional circumstances:

- To request an extension of U nonimmigrant status based on law enforcement need or exceptional circumstances, the U nonimmigrant must file Form I-539, Application to Extend/Change Nonimmigrant Status, along with supporting evidence, in accordance with the form instructions.
- For derivative U nonimmigrant family member extension of status requests, follow the instructions to Form I-539. Derivative family members who have not previously entered or resided in the United States as U nonimmigrants cannot receive an extension of status. Instead, USCIS may issue an amended approval notice with updated validity dates.
- The Form I-539 should be filed before the U nonimmigrant status expires but no more than 90 days before expiration. However, if the U nonimmigrant can explain in writing why he or she is filing the Form I-539 after the U nonimmigrant status has expired, USCIS has discretion to grant, on a case-by-case basis, an extension based upon an untimely filed Form I-539.
- When a U nonimmigrant properly files a Form I-539, USCIS will issue two Forms I-797, Notice of Action: a receipt notice for the Form I-539 and, if the Form I-539 is approved, a notice of extension of the U nonimmigrant status.

- The extension of U nonimmigrant status based on law enforcement need or exceptional circumstances will be valid for one year from the date the U nonimmigrant status ends. In the case of an untimely Form I-539 filed after U nonimmigrant status has expired, the extension will be valid from the date the previous status expired and for one year from approval of the extension. During such period, the applicant will continue in valid U nonimmigrant status with all the associated rights, privileges, and responsibilities.
- Any EAD (including renewals) will be issued using the (a)(19) eligibility code for principals and (a)(20) eligibility code for derivatives. An applicant may file Form I-765 concurrently with Form I-539.

The nonimmigrant bears the burden of establishing eligibility for an extension. In the case of law enforcement need, supporting evidence includes a new Form I-918 Supplement B, U Nonimmigrant Status Certification, or other evidence from law enforcement explaining that the applicant's presence is necessary, as well as any other credible evidence. In the case of exceptional circumstances, supporting evidence may include an affirmative statement or any other credible evidence to establish exceptional circumstances.

#### *U Nonimmigrant Derivative Family Members*

Once a principal U nonimmigrant is no longer a U nonimmigrant, whether through adjustment of status or through expiration of the U nonimmigrant status, any derivative U nonimmigrants may no longer be eligible for initial admission into the United States on a U visa. After admission into the United States as a derivative U nonimmigrant, derivative status may be extended beyond the expiration of the principal U nonimmigrant's status to ensure the derivative will accrue at least three years in U nonimmigrant status for purposes of adjusting status under INA § 245(m). See PM 602-0001.

To be eligible to apply for adjustment of status, a derivative U nonimmigrant must continue to hold U nonimmigrant status at the time of filing the Form I-485. 8 CFR 245.24(b)(2). A derivative U nonimmigrant's status will be automatically extended when the derivative properly files for adjustment of status under INA § 245(m).

Where the approved derivative of a principal U nonimmigrant is awaiting initial issuance of a U visa by a consulate and the principal's nonimmigrant status is soon to expire, the principal is strongly encouraged to seek an extension of status based on exceptional circumstances, following the instructions to Form I-539, and then wait for the derivatives to enter the United States before applying for adjustment of status. This step will prevent the derivative from being ineligible for initial admission to the United States on a derivative U visa due to the expiration of the principal's U nonimmigrant status. Alternatively, the principal U nonimmigrant can file Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant, concurrently or after approval of the principal's Form I-485, for certain derivative family members who have never held derivative U nonimmigrant status. After approval of the Form I-929, the derivative can apply for a visa at a U.S. consulate to enter the United States as an LPR.

## Implementation

Chapters 39.1 and 39.2 of the Adjudicator's Field Manual (AFM) are revised as follows:

- ☞ 1. The title of Chapter 39.1 and paragraph (g) of chapter 39.1 of the AFM are revised to read:

### **CHAPTER 39.1 U Nonimmigrants**

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#### **(g) Duration of U Nonimmigrant Status.**

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#### **(2) Extension of Status.**

(A) USCIS will extend U nonimmigrant status in the following two circumstances:

- If the law enforcement official investigating or prosecuting the criminal activity described in INA § 101(a)(15)(U)(iii) certifies that the presence of the U nonimmigrant is necessary to assist in the investigation or prosecution.
- During the time that Form I-485, Application to Register Permanent Residence or Adjust Status under section 245(m) of the INA is pending. INA § 214(p)(6).

(B) In its discretion, USCIS may extend U nonimmigrant status if USCIS determines that an extension of the period of nonimmigrant status is warranted due to exceptional circumstances. INA § 214(p)(6).

#### **(3) Procedures for Extension of Status.**

(A) Filing.

- The extension of status based on the pendency of an application for adjustment of status is automatic when the applicant files Form I-485.
- To request an extension of status based on law enforcement need or exceptional circumstances, the applicant must file Form I 539, Application to Extend/Change Nonimmigrant Status.
- The Form I-539 should be filed no more than 90 days before U nonimmigrant status expires. However, if the U nonimmigrant can explain in writing why he or she is filing the Form I-539 after U nonimmigrant status has expired, USCIS has discretion to grant an extension based

upon on an untimely filed Form I-539 on a case-by-case basis.

(B) Documentation.

- In general, when granting an extension of status, USCIS will issue a Form I-797, Notice of Action.
- The applicant continues in valid U nonimmigrant status with all the rights, privileges, and responsibilities provided to a U nonimmigrant.
- Extensions of status based on a pending Form I-485 will be valid until USCIS makes a final decision on the Form I-485.
- Extensions of status based on law enforcement need or exceptional circumstances will be valid for a period of one year beginning on the date U nonimmigrant status ends. In the case of a Form I-539 that is untimely filed after U nonimmigrant status has expired, the extension will be valid from the date the previous status expired and for one year from approval of the extension. Thus, the total length of the extension will be greater than one year if an untimely filed Form I-539 is approved.
- Any employment authorization document (EAD) issued in connection with a pending Form I-485 will be issued using the (c)(9) eligibility code.
- Any EAD issued in connection with an approved Form I-539 will be issued using the (a)(19) or (a)(20) eligibility code, as applicable.
- Derivatives who have been granted an extension of status will also be issued a Form I-797 by regular mail.

(C) Supporting evidence.

- If seeking an extension of status due to a law enforcement need, an applicant must submit evidence demonstrating law enforcement need, such as a new Form I-918 Supplement B, U Nonimmigrant Status Certification, or other evidence from law enforcement explaining that the applicant's presence is necessary to assist in the investigation or prosecution of the qualifying criminal activity, and any other credible evidence.
- If seeking an extension of status due to exceptional circumstances, an applicant must submit evidence demonstrating exceptional circumstances, such as an affirmative statement or any other credible evidence.

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- ☞ 2. The title of chapter 39.2 and paragraph (g) of chapter 39.2 of the *AFM* is revised to read:

### **Chapter 39.2 T Nonimmigrants**

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#### **(g) Duration of T Nonimmigrant Status.**

(1) [Reserved].

#### **(2) Extension of Status.**

(A) USCIS will extend T nonimmigrant status during the pendency of Form I-485, Application to Register Permanent Residence or Adjust Status under section 245(l) of the INA. INA § 214(o)(7)(C).

(B) In its discretion, USCIS may extend T nonimmigrant status in the following circumstances:

- If the law enforcement official investigating or prosecuting the activity related to human trafficking certifies that the presence of the T nonimmigrant is necessary to assist in the investigation or prosecution.
- If USCIS determines that an extension of the period of nonimmigrant status is warranted due to exceptional circumstances. INA § 214(o)(7)(B).

#### **(3) Procedures for Extension of Status.**

(A) Filing.

- The extension of status based on a pending Form I-485 is automatic when the applicant files Form I-485.
- To request an extension of status based on law enforcement need or exceptional circumstances, the applicant must file Form I 539, Application to Extend/Change Nonimmigrant Status.
- The Form I-539 should be filed no more than 90 days before T nonimmigrant status expires. However, if the T nonimmigrant can explain in writing why he or she is filing the Form I-539 after T nonimmigrant status has expired, USCIS has discretion to grant an extension based on an untimely filed Form I-539 on a case-by-case basis.

(B) Documentation.

- In general, when granting an extension of status, USCIS will issue a Form I-797, Notice of Action.
- The applicant continues in valid T nonimmigrant status with all the rights, privileges, and responsibilities provided to a T nonimmigrant.
- Extensions of status based on a pending Form I-485 will be valid until USCIS makes a final decision on the Form I-485.
- Extensions of status based on exceptional circumstances or a law enforcement need will be valid for a period of one year beginning on the date the T nonimmigrant status ends. In the case of an untimely filed Form I-539 after T nonimmigrant status has expired, the extension will be valid from the date the previous status expired and for one year from approval of the extension. Thus, the total length of the extension will be greater than one year if an untimely filed Form I-539 is approved.
- Any employment authorization document (EAD) issued in connection with a pending Form I-485 will be issued using the (c)(9) eligibility code.
- Any EAD issued in connection with an approved Form I-539 will be issued using the (a)(16) or (c)(25) eligibility code, as applicable.
- Derivatives who have been granted an extension of status will also be issued a Form I-797 by regular mail.

(C) Supporting evidence.

- If seeking an extension of status due to law enforcement need, an applicant must submit evidence demonstrating law enforcement need, such as a new Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victims of Trafficking in Persons, or other evidence from law enforcement explaining that the presence of the T nonimmigrant is necessary to assist in the investigation or prosecution relating to human trafficking, and any other credible evidence.
- If seeking an extension of status due to exceptional circumstances, an applicant must submit evidence demonstrating exceptional circumstances, such as an affirmative statement or any other credible evidence.

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- ☞ 3. The *AFM Transmittal Memoranda* button is revised by adding, in numerical order, the following entry:

PM-602-0032.2 (10/04/2016)	<b>Chapter 39.1</b> and <b>Chapter 39.2</b>	Provides guidance regarding extensions of T and U nonimmigrant status for applicants for adjustment of status to lawful permanent residence
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### Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### Contact Information

This guidance is effective immediately. Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy or the Service Center Operations Directorate.