CHAPTER 3

ADJUSTMENT OF STATUS

Introduction

There are two alternate ways to obtain lawful permanent resident (LPR) status through a family-based petition: (1) consular processing, which usually takes place in the intending immigrant's country of residence;[1] or (2) adjustment of status, which is processed by U.S. Citizenship and Immigration Services (USCIS) in the United States.[2] Consular processing is discussed in chapter 4. This chapter discusses the eligibility requirements and procedure for adjusting status.

Requirements for Adjustment of Status

Historical Background

Prior to mid-1994, the law was quite clear and rigid as to who was eligible to adjust status in the United States: only aliens who had been inspected and admitted or paroled into the United States and met other eligibility requirements.[3] In general, persons who had not entered with inspection were required to return to their home country and consular process. This caused both economic and other hardships to many applicants, who had to spend money and time outside the United States. Other advantages to adjusting status in the United States include eligibility for employment authorization[4] and access to administrative and judicial appeals in removal proceedings if the application is denied.[5]

In an effort to relieve some of the workload at U.S. consulates and raise needed revenue for the legacy Immigration and Naturalization Service, Congress passed a law in 1994, codified in §245(i) of the Immigration and Nationality Act (INA), which added many new classes of aliens who were eligible to adjust in the United States if they were willing to pay a penalty fee.[6] This section was created with a three-year sunset clause, and indeed the provision lapsed at the end of 1997, with a brief extension into early 1998.[7] However, Congress restored §245(i) to cover beneficiaries of

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[1] INA §221(a).

[2] INA §245.

[3] INA §245(a) (1994).

[4] 8 CFR §274a.12(c)(9).

[5] 8 CFR §245.2(a)(5)(ii).

[6] Department of Commerce, Justice, and State Appropriations Act for 1995, Pub. L. No. 103-317, 108 Stat. 1724 (1994).

[7] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, 111 Stat. 2440 (1997).

certain petitions filed on or before April 30, 2001.[8] These individuals are considered "grandfathered" beneficiaries of §245(i).[9] Aliens who adjust pursuant to §245(i) must pay a penalty fee of $1,000, in addition to the regular fee for adjustment.[10] There are some exceptions to the penalty fee, such as for minor children.[11] The specific requirements are described in greater detail below.

The 1996 immigration law further complicated the question of who is eligible to adjust by creating many new grounds of inadmissibility and new grounds of ineligibility for adjustment pursuant to INA §245.[12] This chapter will describe eligibility for adjustment of status; the grounds of inadmissibility will be covered in chapter 6.

Sections 245(a) and 245(c): Adjustment Eligibility without Penalty Fee

Beneficiaries of an approved I-130 are eligible to adjust status in the United States without paying a $1,000 penalty fee as long as they can show all of the following:

- ***They entered the United States legally*.** This means they were inspected and admitted or paroled.[13] To be inspected and admitted is to have presented oneself to an immigration officer at the border, or its functional equivalent, for questioning.[14] To be paroled is to be allowed into the United States for a designated period based on humanitarian factors or in the public interest.[15]
- ***A visa is currently available***. This means they are an immediate relative or in a preference category for which their priority date is current.[16]
- ***They never worked without USCIS permission***—unless they are an immediate relative. They could not have worked illegally, even for a day.[17]
- ***They always maintained lawful nonimmigrant or parolee status***—unless they are an immediate relative. They could not have overstayed their period of time allowed on the I-94 by even a day.[18] "Technical violations," or those that are

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[8] The Legal Immigration and Family Equity (LIFE) Act Amendments of 2000, Pub. L. No. 106-554, appx. D, div. B, §§1501–06, 114 Stat. 2763, 2763A-324 to 2763A-328.

[9] *See* 8 CFR §245.10(a)(1) (defining "grandfathered alien" for purposes of regulations governing adjustment of status).

[10] 8 CFR §245.10(a)(7)(c).

[11] 8 CFR §245.10(a)(7)(c)(1).

[12] INA §212(a)(9)(B)(i).

[13] INA §245(a).

[14] *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). To establish "admission" for purposes of INA §245(a) eligibility, the alien need only prove procedural regularity in his or her entry, which does not necessarily require that he or she was questioned by immigration authorities or admitted in a particular status. *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010).

[15] INA §212(d)(5).

[16] 8 CFR §245.2(a)(2)(i).

[17] INA §245(c); 8 CFR §245.1(b)(4).

[18] 8 CFR §245.1(b)(6).

not the fault of the alien, will be excused.[19] Aliens who are granted an extension of stay based on a timely filed extension application, or even an untimely one that is "reasonably excusable," remain eligible for adjustment.

- ***They were not a crew member, an alien admitted in transit without a visa, an alien admitted in the S visa category, or an exchange visitor admitted in the J visa category*** (unless the J visa holder is exempt or has complied with the two-year foreign residency requirement or obtained a waiver of that requirement).[20]
- ***They were not a nonimmigrant admitted without a visa under the visa waiver program***—unless they are an immediate relative.[21]
- ***They were not admitted with a K visa***—unless they are adjusting based on marriage (within 90 days of entry) to the U.S. citizen (USC) who filed the nonimmigrant visa petition.[22]
- ***They are not inadmissible.***[23] The 10 categories comprising the grounds of inadmissibility are discussed in chapter 6. Sample waivers are provided in chapter 7.

Qualifying Under §245(i)

Overview

The amendments to the INA in 1994 and at the end of 2000 made many persons previously unable to adjust under INA §§245(a) and (c) eligible if they paid a $1,000 penalty fee.[24] In order to be eligible for §245(i), the applicant must be the beneficiary of one of these petitions filed on or before April 30, 2001: an I-130, Petition for Alien Relative; I-360, Petition for Amerasian, Widow(er), or Special Immigrant; I-526, Immigrant Petition by Alien Entrepreneur; or an ETA-750, the labor certification application.[25] That petition or application must have been approvable when filed, which is explained below. If they satisfy that requirement, the following persons, who would otherwise be ineligible to adjust status, are eligible:

- aliens who entered the United States illegally (without inspection and admission or parole)
- preference-category applicants who overstayed a period of authorized stay or who violated the terms of their nonimmigrant status
- preference-category applicants who worked without USCIS employment authorization

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[19] 8 CFR §245.1(d)(2); *Matter of L–K–*, 23 I&N Dec. 677 (BIA 2004).

[20] 8 CFR §245.1(b)(2).

[21] 8 CFR §245.1(b)(8).

[22] 8 CFR §245.1(c)(6).

[23] INA §212(a).

[24] INA §245(i).

[25] 8 CFR §245.10(a)(1).

- aliens admitted in the S or J nonimmigrant category
- crew members
- aliens admitted in the K nonimmigrant category who do not marry the USC petitioner within 90 days of admission
- aliens admitted in transit without a visa or admitted under the visa waiver program.[26]

Section 245(i) does not waive grounds of inadmissibility, and thus should not be confused with other waivers, such as the waiver required for persons who have acquired "unlawful presence" in the United States and incurred the three– or ten-year bar.[27] (However, adjusting through §245(i) allows the intending immigrant to remain in the United States and thus not trigger the three– or ten-year bar.[28]) Section 245(i) also does not prevent application of the bar to adjustment under INA §240B(d) for persons granted voluntary departure who did not leave the United States during the allotted period, nor the application of reinstatement of removal and the bar to adjustment under INA §241(a)(5) for persons deported or removed who re-entered illegally.[29]

The following persons may qualify for §245(i) relief without having to pay the penalty fee: (1) children under 17 years of age; and (2) Family Unity recipients or applicants.[30] Family Unity is a special temporary status for spouses and unmarried children of persons who gained their permanent residency through one of the legalization programs.[31] The spouse or child must have been residing in the United States before either May 5, 1988, or December 1, 1988, depending on the legalization program under which the spouse or parent immigrated.[32] In addition, the child must be under age 21 when filing for adjustment.[33]

"Approvable" Petition on File by April 30, 2001

Only applicants who had an I-130, I-360, I-526, or a labor certification filed on or before April 30, 2001, will be eligible to file for adjustment under INA §245(i). The petition must have been "approvable when filed,"[34] which means that it must have been submitted with the proper filing fee and signature, be a bona fide application, and meet

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[26] INA §§245(c), (i).

[27] *Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006).

[28] Immigration and Naturalization Service (INS) General Counsel Opinion Letter (Feb. 19, 1997), D. Martin, *published on* AILA InfoNet at Doc. No. 97021991 (*posted* Feb. 19, 1997).

[29] INA §241(a)(5); *Fernandez-Vargas v. Ashcroft,* 548 U.S. 30 (2006).

[30] 8 CFR §245.10(c).

[31] 8 CFR §236.10.

[32] INA §245(i)(1)(C).

[33] *Adjudicator's Field Manual* (AFM), ch. 23.5(c)(3)(C).

[34] 8 CFR §245.10(a)(3).

all other substantive requirements.[35] The petition might later be denied, revoked, or withdrawn.[36] However, what is important is whether, based on the facts known at the time of filing, it was approvable by USCIS or the Department of Labor (DOL).

Beneficiaries

All beneficiaries of an I-130, I-360, I-526, or labor certification are eligible to take advantage of INA §245(i) through "grandfathering," even if they are seeking adjustment based on a different petition.[37] USCIS has adopted an "alien-based" interpretation, which means the status of being a grandfathered beneficiary stays with the alien.[38] There is no time period during which the alien must use that 245(i) adjustment eligibility. Beneficiaries include the unmarried children under 21 and the spouse of the principal beneficiary (derivatives) in existence at the time the preference-category petition was filed.[39] The derivative beneficiary does not have to adjust with the principal beneficiary or even be named on the I-130 petition to be considered a grandfathered alien.

The grandfathering provision also includes derivative beneficiaries in the second-preference visa categories who "age out" before the principal beneficiary immigrates, and on whose behalf separate I-130 petitions may have been filed. Likewise, it includes second-preference derivative beneficiaries who lose preference status when the petitioner naturalizes, and thus require a separate I-130 petition to be filed.

The BIA has held that in order for a derivative beneficiary to be grandfathered under 245(i), the principal beneficiary of the qualifying visa petition must satisfy the grandfathering requirements, including the physical presence requirement.[40] The implication of this decision is that as long as the principal beneficiary satisfies the physical presence and other requirements, a derivative beneficiary who is grandfathered and who qualifies to file independently based on a separate petition need not satisfy the physical presence requirements.

"After-acquired" spouses and children—children born after the petition was filed, and the spouse of the principal beneficiary in the third– or fourth-preference category whose marriage took place after the petition was filed—are allowed to adjust under §245(i) as long as they acquired their status as spouse or child before the adjustment

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[35] 8 CFR §245.10(a)(2).

[36] 8 CFR §245.10(a)(3).

[37] *See* 8 CFR §245.10(a)(1) (defining "grandfathered alien" for purposes of regulations governing adjustment of status).

[38] INS Memorandum, R. Bach, "Accepting Applications for Adjustment of Status Under Section 245(i) of the Immigration and Nationality Act" (June 10, 1999), *published on* AILA InfoNet at Doc. No. 99061940 (*posted* June 19, 1999).

[39] 8 CFR §245.10(a)(1)(ii).

[40] *Matter of Ilic*, 25 I&N Dec. 717 (BIA 2012).

of the principal.[41] There is an important distinction between "grandfathered" aliens, or those on whose behalf the original application was filed, and derivatives, who include the spouse and unmarried child of the principal beneficiary in the preference categories. After-acquired spouses or children who were neither grandfathered aliens nor derivatives at the time the application was filed can still take advantage of §245(i). These spouses and children do not acquire "grandfathered" status, but they can apply for adjustment under §245(i) as derivatives of the principal grandfathered alien.[42]

In sum, §245(i) protects all of the following persons if they were "beneficiaries" of an approvable petition filed on or before April 30, 2001:

- derivatives who could have derived status at the time the petition was filed, even if they were not identified on the petition
- derivatives who lose derivative status need to file a new I-130 petition
- beneficiaries who marry and lose second-preference eligibility, but who can still establish immediate-relative or third-preference eligibility, and who need to file a new I-130 petition
- aliens whose LPR or USC spouse divorces or dies but who qualify under a new I-130 petition filed by a subsequent spouse or under a widow's I-360 self-petition
- after-acquired spouses (*i.e.*, the marriage takes place after the petition is filed) and after-acquired children (*i.e.*, those born after the petition is filed), as long as they acquire the status of spouse or child before the principal adjusts and they are adjusting as derivatives of the principal beneficiary.

Filing Under §245(i)

Adjustment applicants filing under INA §245(i) must include proof that an I-130, I-360, I-526, or labor certification was filed on their behalf on or before April 30, 2001.[43] In most cases, this will be satisfied by submitting the USCIS or DOL filing receipt indicating a priority date on or before that date. However, applicants are able to qualify under §245(i) if the I-130 petition was postmarked by that date. If the USCIS filing receipt indicates that it received the I-130 after April 30, 2001, applicants may need to submit other proof that the I-130 was filed timely, such as certified-mail receipts or express-mail tracking records.

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[41] Bach Memorandum, *supra* note 38.

[42] USCIS Memorandum, W. Yates, "Clarification of Certain Eligibility Requirements Pertaining to an Application to Adjust Status Under Section 245(i) of the Immigration and Nationality Act" (Mar. 9, 2005), *published on* AILA InfoNet at Doc. No. 05031468 (*posted* Mar. 14, 2005). But see *Matter of Legaspi*, 25 I&N Dec 328 (BIA 2010)(derivative spouse is not independently grandfathered for 245(i) by virtue of marriage to a grandfathered alien who adjusted under 245(a)).

[43] 8 CFR §245.10(a)(2).

In addition, if the petition was filed after January 14, 1998, the adjustment applicant will have to submit proof of physical presence in the United States on December 21, 2000.[44] To demonstrate physical presence on December 21, 2000, the applicant should submit documentation issued by the Department of Homeland Security (DHS) or other federal, state, or local authorities. The applicant also may submit nongovernment-issued documentation, such as school records, rent receipts, utility bill receipts, employment records, and credit card statements.[45] Spouses and unmarried children accompanying or following to join a principal beneficiary in the preference categories (*i.e.*, derivatives) are exempt from the physical presence requirement.[46]

According to USCIS, until a grandfathered alien adjusts status, there is no limit to the number of applications he or she may file for adjustment of status under §245(i). This reverses the policy of some local district offices, which were allowing the grandfathered alien to use §245(i) only once. Under the clarified policy, aliens who are denied or who withdraw their adjustment application may use their grandfathered status to reapply in the future, should they become eligible.[47]

Discretionary Act

Adjustment of status is a discretionary act on the part of USCIS.[48] This means that even if the applicant satisfies all the statutory requirements, and is not inadmissible, he or she still may be denied due to certain negative factors that the adjudicator believes are significant. In practice, however, USCIS rarely exercises its discretion to deny an applicant unless there are serious adverse factors that outweigh the positive ones. Negative factors that have caused such an exercise of discretion include criminal convictions or fraudulent conduct that does not make the applicant inadmissible.[49]

Process for Adjusting Status

The application for adjustment is made on Form I-485. The current form was revised on January 18, 2011, but earlier editions of the form are also accepted. An alien relative petition (Form I-130) may be filed at the same time as the I-485 for a person who will be eligible to adjust as soon as the visa petition is approved, such as an immediate relative.[50] Other applicants will have to file their I-485 with the I-130 approval notice once the priority date is "current," or a visa is available, in accordance with the Department of State *Visa Bulletin*.

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[44] INA §245(i)(1)(C).

[45] 8 CFR §245.10(n).

[46] 8 CFR §245.10(a)(1)(B)(ii).

[47] Yates Memorandum, *supra* note 42.

[48] INA §245(a).

[49] AFM ch. 23.2(d).

[50] 8 CFR §245.2(a)(2)(B).

Completing the Form I-485

Part 1

The beneficiary of the approved I-130, or concurrently filed I-130, becomes the applicant on the I-485 application. Part 1 of the I-485 requires background information on the applicant, including name, address, date of birth, and country of birth. Include only Social Security numbers obtained lawfully by the applicant from the Social Security Administration, not fictitious or "borrowed" ones.

The "A" number, or alien registration number, refers to the number assigned to LPRs, persons placed in removal proceedings (including prior deportation or exclusion), and persons who have otherwise been involved in an investigation conducted by DHS. Refer to the I-130 approval notice or the alien's I-94, and enter this number here. If no "A" number appears, then enter "none."

When indicating "date of last arrival," refer to the applicant's I-94 entry document, if any. Otherwise, enter the date the applicant entered the United States, either legally or illegally. If the applicant has an I-94, enter the number on that card. Otherwise, put "none." If the applicant entered the United States legally and is in current nonimmigrant status, enter the nonimmigrant classification where the form asks for "current USCIS status." If the applicant entered legally but has overstayed the time allowed, note that. If the applicant was paroled into the country pursuant to INA §212(d)(5), enter that information. If the applicant entered the country without inspection and admission, write "entered without inspection" or "EWI."

Part 2

Check box "a" for applicants seeking adjustment based on an approved I-130 petition filed on their behalf. These will include immediate relatives of USCs. It also includes preference-category aliens, such as spouses of LPRs, unmarried children or sons and daughters of LPRs, and married or unmarried sons and daughters of USCs. Check box "b" if the applicant will be deriving status through the adjustment of the principal beneficiary. These could include the unmarried children of the principal alien in a second-preference petition, the spouse and unmarried children of the principal alien in a third– or fourth-preference petition, and possibly the unmarried children of the principal alien in a first-preference petition.[51] Include a copy of the principal beneficiary's approval notice. If the alien arrived as the fiancé(e) of a USC in the K visa category and married the citizen petitioner within 90 days of admission, check box "c."[52] Children of the fiancé(e) who were admitted in the K-2 category are also eligible to adjust.

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[51] 8 CFR §245.1(e)(2)(vi).

[52] 8 CFR §245.1(c)(6).

Part 3

This part requires further biographical information relating to the applicant and the applicant's family members. Enter the applicant's precise place of birth, current occupation (if any), and mother's and father's first name. The parents' names should match those on the applicant's birth certificate. Enter the name of the applicant as it appears on the I-94; if no I-94 was issued, enter "none." Enter the place of last admission, which should be recorded on the I-94. If the alien entered illegally, give the approximate place of entry, such as "near El Paso."

Indicate whether the alien was inspected, and if so, his or her status at last admission. If the alien entered with a nonimmigrant visa, this number appears on the visa placed in the alien's passport. This is not the same as the serial number placed on the I-94 form. Indicate the U.S. consulate that issued the visa and date of issuance, both of which will appear on the visa.

Enter the alien's sex and marital status. "Single" means never married. If the applicant was previously married, indicate "widowed" or "divorced." If the alien ever had applied for permanent resident status and been granted it, give the date and place of filing. The applicant once might have been an LPR and abandoned that status or been deported. If the applicant once applied for but was denied LPR status, provide the date and place of filing.

The next section asks for the name, date of birth, country of birth, and "A" number of the applicant's spouse and children, regardless of age and marital status. It is important to list all children, even if they are not living in the United States or immigrating with the applicant. Indicate whether they will be applying for adjustment concurrently with the principal alien.

List all present and past memberships in any organization since the applicant turned 16 years of age. Although only membership in a Communist or totalitarian party, or terrorist organization, will be a factor in determining admissibility,[53] list all clubs, associations, or nonpolitical organizations, such as church membership, as well. List the name of the organization, location, dates of membership, and the nature of the organization. Include foreign military service. If you are not certain whether the organizational affiliation of the applicant may create inadmissibility issues, do not file the application until you can resolve this issue. Inadmissibility based on national security grounds[54] is discussed in more detail in chapter 6.

The remaining questions in part 3 are aimed at determining whether any of the other grounds of inadmissibility might apply. The grounds of inadmissibility and possible waivers are described in chapters 6 and 7, and will not be repeated here. But it is important to note that a "yes" answer to any of the questions in this section may mean that the applicant is inadmissible. For this reason, you should not file the appli-

[53] INA §212(a)(3)(B)(i).

[54] INA §212(a)(3)(A).

cation unless you are able to evaluate whether the applicant may be found inadmissible and, if so, whether he or she qualifies for a waiver.

List all arrests and violations of any law or ordinance (excluding traffic violations). Even minor crimes may affect the applicant's eligibility,[55] so it is important not to file an application for adjustment of status on behalf of a person with any criminal record until you are able to assess what, if any, immigration consequences may result from the arrest and disposition of the case. Note that any arrest must be listed even if the conviction was subsequently expunged or vacated, and even if the person was a juvenile at the time.

Question 2 asks for information regarding past or potential receipt of public assistance from any source, including federal, state, city, and county.[56] You do not have to indicate benefits received by other household members—only those received by the applicant. Indicate on a separate piece of paper what benefits were received and explain the reasons for their receipt.[57] For example, if the applicant has received or is receiving Supplemental Security Income or Temporary Assistance to Needy Families, this will be a negative factor that could indicate likelihood of becoming a public charge. The applicant should not be discouraged from receiving needed benefits for citizen children or other household members, including those who will be immigrating.[58]

Question 8 asks for information regarding past immigration violations. Applicants who have received a final order of deportation, exclusion, or removal, which was effected by their subsequent departure from the United States, will need to file for a waiver[59] on Form I-212, assuming they did not remain outside the United States for the required period of time (five years for orders issued upon the alien's arrival; 10 years for deportation, exclusion, or removal orders, regardless of when entered).[60] In addition, applicants with prior departure orders who re-entered the United States unlawfully face "reinstatement of removal" under INA §241(a)(5). This section of law provides authority to automatically reinstate a prior removal order against an alien who left the United States following a final order of removal and later re-entered illegally and to deny the application for adjustment. Finally, applicants who are currently in proceedings will need to apply for adjustment before the immigration court, since USCIS lacks

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[55] INA §212(a)(2)(A).

[56] INA §212(a)(4)(A).

[57] Legacy INS published a notice providing guidance on the definition of public charge at 64 Fed. Reg. 28675, 28688 (May 26, 1999), *published on* AILA InfoNet at Doc. No. 99052610 (*posted* May 26, 1999). Pursuant to that notice, USCIS will consider receipt of certain cash assistance programs, as well as those used for long-term hospitalization, as a negative factor in determining whether the intending immigrant is likely to become a public charge. Receipt of other assistance programs should not be factored into this analysis.

[58] For further discussion the public charge ground of inadmissibility, see chapter 6.

[59] INA §212(a)(9)(A)(iii).

[60] INA §212(a)(9)(A).

jurisdiction to adjudicate the application.[61] If the alien received a final order of deportation, exclusion, or removal that was never effected by a departure from the United States, the alien will need to reopen proceedings.[62] This may entail obtaining the trial attorney's consent and his or her joining in such a motion.[63]

Question 9 asks if the alien has received a final order for violating civil document fraud pursuant to INA §274C. Enforcement of this section of the law was enjoined from 1996 until early 2001, and prior orders were rescinded.[64] To date, USCIS has not recommenced enforcement of this provision. After passage of the 1996 legislation, waivers for violating §274C are available for certain applicants.[65]

The question also asks whether the alien "by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States, or any other immigration benefit."[66] This covers applicants who knowingly lied to a consular official or immigration agent at the time of admission concerning a material fact that would have made them inadmissible had they told the truth. It also covers use of false written statements or false documents at the time of admission or application for a visa, an application for employment authorization, or an application for other immigration benefits (*e.g.*, asylum, temporary protected status, a re-entry permit). It does not cover false statements on a Form I-9 Employment Eligibility Verification, or documents used to obtain a job, since the statements are not being made to a government official or to obtain admission, a visa, or other immigration benefit. There is a waiver available for this ground of inadmissibility for some applicants.[67] Also, note that while the adjustment application only asks about fraud in connection with seeking admission or an immigration benefit, a separate ground of inadmissibility applies to aliens who make a false claim to U.S. citizenship on or after September 30, 1996, for any purpose under the INA or any other federal or state law.[68] Only a small category of individuals are eligible for an exception to this inadmissibility ground.

The applicant must sign the I-485. Anyone who assists in preparing the I-485, even if a separate G-28 is filed, should also sign the application at the end of the form.[69] If you are an attorney or accredited representative, you should sign the form.

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[61] 8 CFR §245.2(a)(5).

[62] INA §240(c)(7).

[63] U.S. Immigration and Customs Enforcement Memorandum, W. Howard, "Exercising Prosecutorial Discretion to Dismiss Adjustment Cases" (Oct. 6, 2005), *published on* AILA InfoNet at Doc. No. 05101360 (*posted* Oct. 13, 2005).

[64] *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998).

[65] INA §274C(d)(7).

[66] INA §212(a)(6)(C)(i).

[67] INA §212(i).

[68] INA §212(a)(6)(C)(ii).

[69] 8 CFR §103.2(a)(2).

If you are not, but work for an agency that has attorneys or accredited representatives on staff, one of them should sign the form after reviewing it.

Other Forms and Documents Included in Adjustment Application Packet

The complete adjustment packet is made up of the following documents:

- Form I-485, the adjustment application.
- Supplement A to Form I-485 for those applicants who are eligible to adjust under INA §245(i),[70] documentary evidence of residence in the United States on December 21, 2000, if necessary, and penalty fee of $1,000, unless the applicant qualifies for an exception.
- Form G-325A, Biographic Information Sheet (not required for persons under 14 or over 79 years of age).[71]
- Filing fee of $1,070 for applicants aged 14 to 79, plus $1,000 penalty if filing under §245(i).[72] The biometrics fee (currently $85), is included in the filing fee, as is the fee for employment authorization (Form I-765) and advance parole (Form I-131) if these are submitted at the same time. Biometrics are required for persons age 14 to 79, so the filing fee would be $985 for those who are younger or older than that. Applicants under 14 years who are filing together with a parent pay a special fee of $600. Applicants who are low income may qualify for a fee waiver.
- Two identical color passport-style photos of the applicant.
- An I-130 petition with supporting documents, or an approval notice of a previously approved relative petition. (If filing an I-130, the applicant must also file a separate fee.) A sample I-797, Notice of Action, is included as appendix 3.
- Medical exam by USCIS-approved civil surgeon, Form I-693 (including vaccination report on USCIS vaccination report form).[73] Applicants who entered on a K visa who are applying within one year of submitting their earlier medical exam results need not submit another one, but do need to submit a vaccination supplement.
- Copy of passport page with nonimmigrant visa and/or I-94 showing lawful admission or parole[74], if applying under INA §§245(a) or (c). Other acceptable

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[70] 8 CFR §245.10(b)(5).

[71] 8 CFR §245.2(a)(3).

[72] 8 CFR §103.7(b).

[73] 8 CFR §245.5.

[74] Since April 30, 2013, the U.S. Customs and Border Protection (CBP), no longer issues paper versions of the Form I-94, Arrival/Departure Record, to non-immigrants entering the U.S. by air or sea. Instead, an electronic I-94 is created and the CBP officer stamps the non-immigrant's passport, annotating the stamp with the date, class and duration of admission. A photocopy of the stamp can be included with the adjustment application as evidence of inspection and admission. The applicant can also

proof could include a border crossing card, airline tickets, an admission stamp in passport or affidavits attesting to the lawful entry.

- Evidence of financial support, which must include an I-864, Affidavit of Support Under Section 213A of the Act, signed by the sponsor.[75] The I-864 must be accompanied by the required supporting documentation detailed in the instructions, including the last federal income tax return.[76]
- Copy of applicant's birth certificate, with English translation.
- Evidence of appropriate family relationship, such as a copy of a birth or marriage certificate, with translation, if applying as derivative.[77]
- Form I-765, Application for Employment Authorization (optional).
- Form I-131, Application for Travel Document, if travel is contemplated before the adjustment is granted.[78]
- Form G-28, Notice of Entry of Appearance as Attorney or Representative, if applicable.

Applicants applying through marriage also will have to provide evidence that a marriage is bona fide, such as joint bank accounts, credit accounts, insurance policies with both names, rental agreements with both names, birth certificates of children, etc. See the list of documents to prove bona fide marriage in chapter 2.

Adjustment applicants, other than those in H-1B, K-3, K-4, or L-1 nonimmigrant status, who wish to leave the United States while the application is pending must apply for and obtain advance parole. If these applicants leave the United States without obtaining advance parole, they will be viewed as having abandoned their application.[79] Applicants must submit a Form I-131 and provide a basis for granting parole, though USCIS now routinely grants these applications without a demonstration of hardship. Any bona fide reason, including holiday visits to relatives, should suffice. Adjustment applicants who have acquired at least 180 days of unlawful presence should be discouraged strongly from leaving the United States under advance parole, since the departure will trigger the inadmissibility ground at the adjustment stage.

Where to File

In all areas of the country, USCIS now requires the adjustment application and supporting documentation to be filed by postal mail with the USCIS National Benefits

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obtain a print out of the electronic I-94 by logging onto the CBP website at www.cbp.gov/I94. The print out also can submitted with the adjustment application to prove lawful admission.

[75] INA §213A.

[76] The affidavit of support requirements and procedures are set forth in chapter 8.

[77] 8 CFR §204.1(f)(1).

[78] 8 CFR §245.2(a)(4)(ii)(B).

[79] 8 CFR §245.2(a)(4)(ii).

Center (NBC) in Missouri via a lockbox in Chicago. The NBC then forwards the application to the appropriate district office if an adjustment interview is required. This policy affects the filings of Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-765, Application for Employment Authorization; and Form I-131, Application for Travel Document.

According to the agency, having applicants mail their applications directly to the Chicago lockbox eliminates the need for submitting the applications through the local district office and allows USCIS to more efficiently process applications, deposit fees, and provide enhanced customer service.

The lockbox address is U.S. Citizenship and Immigration Services, P.O. Box 805887, Chicago, IL 60680-4120. For non–U.S. Postal Service deliveries (*e.g.*, private couriers), the address is U.S. Citizenship and Immigration Services, Attn. FBAS, 131 South Dearborn, 3rd Floor, Chicago, IL 60603-5517.

After filing the application(s) and supporting documents, the applicant will receive a notice from the nearest application support center instructing him or her to appear for the taking of 10-digit fingerprints.

Arriving aliens who are not in removal proceedings may apply for adjustment of status using the procedure described above.[80] An arriving alien in removal proceedings may renew an adjustment application filed with USCIS if he or she is returning on advance parole and the district director has denied the adjustment application.[81]

Filing Fees

For the most up-to-date information about filing fees, go to *www.uscis.gov* and click on the Immigration Forms tab.

Fee waivers are available to those who are unable to pay, although there is no fee waiver eligibility for the $1,000 penalty fee if applying under §245(i).[82] USCIS will consider the following factors in determining whether the applicant qualifies for the fee waiver: (1) eligibility for a federal means-tested benefit program; (2) household income as reflected on income taxes that is below the poverty level; (3) the applicant is elderly or disabled; and (4) humanitarian or compassionate factors. Documentation that should be submitted to establish the inability to pay the filing fee includes income tax returns, W-2 forms or wage statements, proof of disability, rent receipts and other evidence of living arrangements, proof of living expenses, and medical and other expenditures. Applicants may use Form I-912 to request a fee waiver. Alternatively, they may submit a declaration requesting the fee waiver and stating the reasons, along with the supporting documentation.

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[80] 8 CFR §245.2(a)(1).

[81] 8 CFR §§1245.2(a)(1)(i), (ii).

[82] 8 CFR §103.7(c).

Interview Process

The USCIS adjudicator is trained to review the applicant's file, including any approved petitions, and note any potential problems (*e.g.*, the applicant is subject to a possible ground of inadmissibility or has previously been placed in removal proceedings).[83] At the interview, the USCIS officer will go over the information in the adjustment application and confirm that it is accurate.[84] The officer also will resolve any issues that were identified during the pre-interview review. The applicant should bring the originals of any document submitted with the adjustment application. Applicants immigrating through marriage should be prepared to answer questions about the validity of their marriage. If necessary—for example, to satisfy any doubts about the bona fides of a marriage—the officer may conduct separate interviews of the parties. See chapters 2 and 5 for tips on preparing for such interviews.

For certain family-based petitions, USCIS may decide to waive the adjustment of status interview.[85] The decision as to whether an interview can be waived is made on a case-by-case basis in situations where there is enough evidence in the file to make a decision without an interview. Interviews may be waived in the following family cases:

- Unmarried minor children and stepchildren of U.S. citizens that are accompanied by original or certified copies of supporting documentation;
- Parents of U.S. citizens that are accompanied by original or certified copies of supporting documentation;
- Fiancé(e)s of U.S. citizens and the children of the fiancé(e);
- Unmarried and under 14 year old children of lawful permanent residents.[86]

Decision

If the USCIS officer approves the application, he or she will stamp the applicant's passport with temporary evidence of LPR status. The applicant will then be mailed the Form I-551, Permanent Resident Alien card.

If the examiner is going to deny the application, he or she will provide the applicant with the reasons.[87] There is no appeal of a denial, but applicants are entitled to reapply before an immigration judge if placed in removal proceedings.[88] The immigration judge will apply a de novo review of the application.

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[83] AFM ch. 23.2(f).

[84] 8 CFR §245.6.

[85] *Id.*

[86] AFM ch. 23.2(h).

[87] 8 CFR §245.2(a)(5)(ii).

[88] *Id.*