



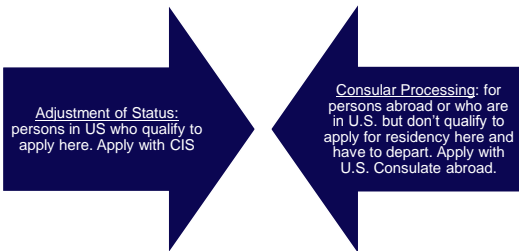
Introduction to Immigration Law Practice Week Four

Today's Webinar

- Becoming an LPR
 - Adjustment of Status
 - Consular Processing
- Exercise Review



APPLYING FOR RESIDENCY





ADJUSTMENT OF STATUS: WHAT IS IT ABOUT?



Persons eligible to “adjust status” can apply for residency in U.S.

Applications decided while they remain here.

Beneficiary submits application

Usually ⇒ interview with CIS before decision made

4



HOW DOES IT WORK?

Two statutory “doorways” to eligibility to adjust status.

Must meet requirements to go through at least one doorway, or you can’t apply for residency from inside U.S.

5



DOORWAY #1: INA § 245(a)



- “Inspected and admitted” or “paroled” or approved VAWA self-petitioner
- IR or current PRD
- Didn’t work w/o authorization and always in lawful status (except for IRs)
- Admissible



ADJUSTMENT UNDER 245(a)?

- Catrina has an approved visa petition and entered the U.S. with a tourist visa. Can she adjust status under 245(a)? What else do you need to know?
- Marie is married is to a USC and wants to apply for residency. Does she qualify for adjustment under 245(a)?



DOORWAY #2: INA § 245i



Eligible to adjust even though:

- entered without inspection OR
- entered with inspection but violated or overstayed status, *and* not immigrating in IR category



245(i) ELIGIBILITY

Javier entered U.S. without papers in 1997. He is now married to a USC. Even though Javier is an immediate relative, he can qualify to adjust status in the U.S. only if he can do so under INA section 245(i).



WHICH DOORWAY?

Martin from Nicaragua entered U.S. on a tourist visa in 1998. He remained in U.S. beyond his period of authorized stay and then married LPR Corina.

Even though Martin entered with inspection, he can only qualify to adjust status in the U.S. if he can do so under 245(i).

Unless.....?

10



245(i) HISTORY

- First 245(i) period:
Oct. 1, 1994 to Jan. 14, 1998
- Second, under LIFE Act, 245(i) eligible if petition filed between Jan. 15, 1998 and April 30, 2001, **and principal beneficiary present in U.S. on Dec. 21, 2000**

11



GRANDFATHERING

Beneficiaries (incl derivatives) of “approvable” petitions filed by the 245(i) deadline can use 245(i) to adjust status later, even based on a different petition.



GRANDFATHERING VIA I-130

- APPROVABLE WHEN FILED=
 - Filed Properly
 - Meritorious
 - Not fraudulent
 - When filed, claimed relationship to support filing really existed

13



Grandfathering Principles

- 245(i) stays with noncitizen, not petition
- If ever 245(i) status, can use in future
- Applies if were derivative beneficiary on or before 4/30/01



- Use if eligible based on subsequent I-130

14



GRANDFATHERING IN ACTION

USC Joe filed a visa petition for his sister Lola from Mexico on January 10, 1998. Lola came to U.S. EWI in May 2000.

When her PRD is current, Lola will be eligible to adjust status under 245(i) because she is grandfathered; her approvable petition was filed by January 14, 1998.

15



GRANDFATHERING IN ACTION?

LPR Jorge filed a visa petition for his married daughter Norma on May 3, 1997. The petition was never decided but Jorge has the filing receipt. Is Norma “grandfathered”?

16



IS KAREN GRANDFATHERED?

Karen entered U.S. without inspection in 2000 when she was 17. That same year her LPR father filed a visa petition for her.

Karen has now married a USC - is she eligible to adjust status? If so, under which section of the law?

17



IS NELLIE GRANDFATHERED?

LPR Dan filed visa petition for his wife Nellie on Nov. 4, 1997. They divorced before the PRD became current. Nellie is now married to another LPR who filed a visa petition for her on May 12, 2012. Nellie entered U.S. EWI.

Is Nellie eligible to adjust status?

BONUS QUESTION: What is Nellie’s PRD?

18



245(i) UNDER LIFE ACT

- Extended 245(i) eligibility to beneficiaries of petitions filed with INS on or before April 30, 2001.
- If qualifying petition filed after January 14, 1998, **noncitizen must show physical presence in U.S. on Dec. 21, 2000.**

19



QUALIFYING PETITIONS INCLUDE

- I-130 (petition for relative)
- Labor Certification (petition for worker)
- I-360 (Amerasian; widow; VAWA; SIJS)
- I-526 (petition for entrepreneur)

20



PAYING THE PENALTY FEE

- \$1,000 Penalty fee



- Exceptions:
Under 17
Family Unity eligible

21



ADJUSTMENT MECHANICS

- Application filed on I-485 form
- If eligibility based on 245(i), also file I-485A form
- Applications reviewed for sufficiency at NBC, then sent to District Offices for interview and adjudication

22



HOW LONG DOES IT TAKE?

- IT DEPENDS!
- Where can you check on processing times? Are they the same for all district offices?

23



WHAT HAPPENS WHILE YOU WAIT?

- **Employment Authorization** – which also provides access to:
 - SSN - which also provides access to:
 - drivers license, state ID
- **Advance Parole** – permission to travel and return
- These applications decided by NBC when adjustment application submitted

24



VARIATION– ONE-STEP FILING

- **Step 1 (I-130 petition) and Step 2 (residency application)** may be filed together for immediate relatives or preference category when visa immediately available and eligible for adjustment of status.

Monique enters U.S. on a tourist visa and marries USC Joe. Monique can do “one-step”, submitting I-130 and adjustment application together to CIS. Monique is eligible to adjust status under INA section _____

25



WHAT IF APPLICATION IS DENIED?

- Can that happen??????
- Make sure your client IS eligible before you file, but if s/he is denied, there is no appeal – just renewal before IJ (immigration judge) in removal proceedings

26



ADJUSTMENT OF STATUS EXERCISE Eligible to Adjust?

- Mr. Vasquez came to the U.S. from Honduras with no documents. He has lived here since 1996. His US citizen brother filed a petition for him and it became current this month.
- Mr. Vasquez married Marcia in 2004. She is from El Salvador and came to the US with no documents in 2003.
- Mr. Nguyen is from Vietnam. He entered the US in 2000 on a student visa and overstayed his visa. His LPR mother filed an I-130 petition for him on April 30, 2001. Mr. Nguyen was 25 years old and married at that time. His mother has since died. Now Mr. Nguyen is married to an LPR, has an approved I-130, and wants to adjust.
- Ms. Moreno entered the U.S. without documents from Mexico. She had a labor certification filed through her employer on April 1, 2001. The employer went bankrupt. Ms. Moreno married an LPR in 2002 and now wants to apply for permanent residency through him.

27



CONSULAR PROCESSING



28



WHAT IS CONSULAR PROCESSING ?

- Procedure for obtaining immigrant visa at U.S. consulate abroad
- For beneficiaries living abroad or unable to adjust status in U.S.
- Department of State (DOS) rules and regulations

29



HOW DOES IT WORK?

- Preliminary processing through National Visa Center (NVC) in Portsmouth, NH.
- USCIS sends approved I-130s to NVC.
- When priority date close to current, NVC begins process
- NVC collects required fees
- NVC involved in document collection and review for all consular posts

30



HOW DOES IT WORK?

- Scheduling interview
- Medical exam
- Interview at consulate

31



PREPARING YOUR CLIENT

- Review all documents and applications
- Screen for possible inadmissibility
- Prepare for waiver if necessary
- Describe process and waiting time, including local logistics
- Determine how client will communicate with you
- Advise to tell truth, be respectful
- Obtain name of consular official if refused

32



WHAT HAPPENS NEXT?

- Application is approved or refused
- If approved, six months to enter at port of entry
- If refused, obtain additional documents or file waivers (for some, can file waiver before interview)
- One year to file evidence
- If refused, contact consulate about the application; e-mail often best
- Can seek intervention or advisory opinion from State Dept. in cases of legal error by consulate
- Seek help from congressional representative

33



Quiz Review: True or False

- When an immigrant visa is issued, the maximum period of validity is six months
- Children under age 21 do not have to pay the \$1000 under INA Sec. 245(i)

34



What's Up for Week Five

- Topics: U.S. Citizenship: Acquisition, Derivation and Naturalization
BIA Recognition and Accreditation
- Reading
- Exercises

35



Questions?



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36