

Adjustment of Status

Adjustment of status is the process used by a foreign national who is physically present in the United States to become a lawful permanent resident ("LPR"). Adjustment of status ("AOS") is an alternative to obtaining an immigrant visa through a U.S. consulate abroad, a process known as consular processing. Depending on the backlog at USCIS service centers, adjustment of status may be preferred by foreign nationals over consular processing because (1) it avoids the expense and inconvenience of travel back to the home country, (2) AOS applicants, including immediate family members, are entitled to employment authorization and permission to travel while the AOS application is pending, (3) employment-based AOS applicants receive job mobility benefits provided under recent legislation, and (4) there are more options for reconsideration of an unfavorable decision by USCIS.

Requirements Under Regular Adjustment Procedures [INA §245]:

The AOS applicant must:

- have been inspected and admitted or paroled (some limited exceptions apply);
- be lawfully here, except for immediate relatives, battered spouses and children, and special immigrants under INA §101(a)(27)(H);
- have an immediately available visa number at time of filing;
- submit adjustment of status application;
- be eligible to adjust and otherwise admissible.

Bars to Adjustment of Status:

The following are bars to adjustment of status (many of these bars can be overcome by filing for adjustment of status under INA §245(i) if the individual is eligible to apply under that section of law):

- Foreign National Crewmen

This limitation applies to those actually entering as crewmen by occupation, purpose, and function, even if admitted in a different visa category.

- Transit Without Visa ("TWOV")

These are foreign nationals proceeding in immediate and continuous transit through the United States to a foreign destination.

- Visa Waiver/Conditional Residents

Foreign nationals admitted as visitors under the U.S. visa waiver program cannot adjust status unless they are immediate relatives of U.S. citizens. Pursuant to INA §245(f), an alien lawfully admitted to the United States for permanent residence on a conditional basis under §216A may not adjust status.

- Unauthorized Employment

Subject to INA §245(i) and 245(k), applicants for adjustment of status who have engaged in unauthorized employment on or after January 1, 1977 are barred from adjustment of status pursuant to INA §245(c)(2). Unauthorized employment is a bar to adjustment of status to persons who engaged in unauthorized employment even after their adjustment application was filed. This bar does not apply to employment-based petitions where person worked no more than 180 days without permission since his last entry into the U.S. [INA §245(k)]. Immediate relatives and special immigrants described in INA §§101(a)(27)(H), (I), (J), or (K) are also exempt from this bar.

- Failure to Continuously Maintain a Legal Status

Status violations during prior visits to the United States as well as during the current stay may render an applicant ineligible for adjustment of status if they cannot take advantage of the relief provided by INA §§245(i) or 245(k). Status violations can be cured if the foreign national is an immediate relative.

Each USCIS district office and service center has its own procedure for filing adjustment of status applications.

Generally, after filing, the client receives a fingerprint notice. Sometime later, the client is scheduled for an interview. In

many cases, certain applicants for adjustment status will not be interviewed. These applicants can include employment-based applicants, children and parents of United States citizens. A decision on all other types of AOS applications will generally be decided at the time of the interview.

Once the foreign national receives an approval notice, he or she must get temporary evidence of permanent residence. The approval notice alone is not sufficient evidence for a foreign national to be readmitted to the United States after leaving, nor is it evidence of employment authorization. Therefore, it is a good practice to obtain temporary evidence of permanent residence, such as an I-551 temporary stamp in the foreign national's unexpired passport. Information on where to obtain the I-551 stamp is usually printed on the approval notice. The I-551 stamp serves as temporary proof of the foreign national's LPR status and is valid for one year, which is normally enough time for the alien to receive the actual Resident Alien Card from USCIS. If production of the Resident Alien Card is delayed, the I-551 stamp may be renewed.

Timeframes for processing adjustment of status applications vary, depending on the volume of applications in each USCIS office.

Age-Out Cases:

Dependent applicants for adjustment of status who turn 21 years of age prior to the adjudication of their application lose eligibility to adjust their status based upon the principal's original application. USCIS service centers and district offices generally will expedite an adjustment application involving a child who is aging out if the problem is clearly identified and brought to their attention.

Adjustment of Status Before an Immigration Judge:

A foreign national who is placed in removal proceedings (i.e., a Notice to Appear is filed by the USCIS with the immigration court) becomes subject to the jurisdiction of the immigration court. In this situation, the immigration judge has the authority to adjudicate the foreign national's application for adjustment of status. The foreign national must meet the eligibility requirements, including having an I-130 or I-140 Immigrant Visa petition previously approved by USCIS.