Considerations for Adjustment of Status (I-485 Applications)

Daniel W. Oldenburg

I-140 Approval - Now What?

- -Changes and updates to the I-485 Permanent Residency Process
- -Employment based permanent residency
- -Concurrent filing of the I-140/I-485
- -Presupposition of an I-140 approval
- -Priority dates (Retrogression)
- -I-485 Supplement J and I-140/ I-485 portability
- -Maintenance of underlying visa status
- -I-765, I-131, and I-864

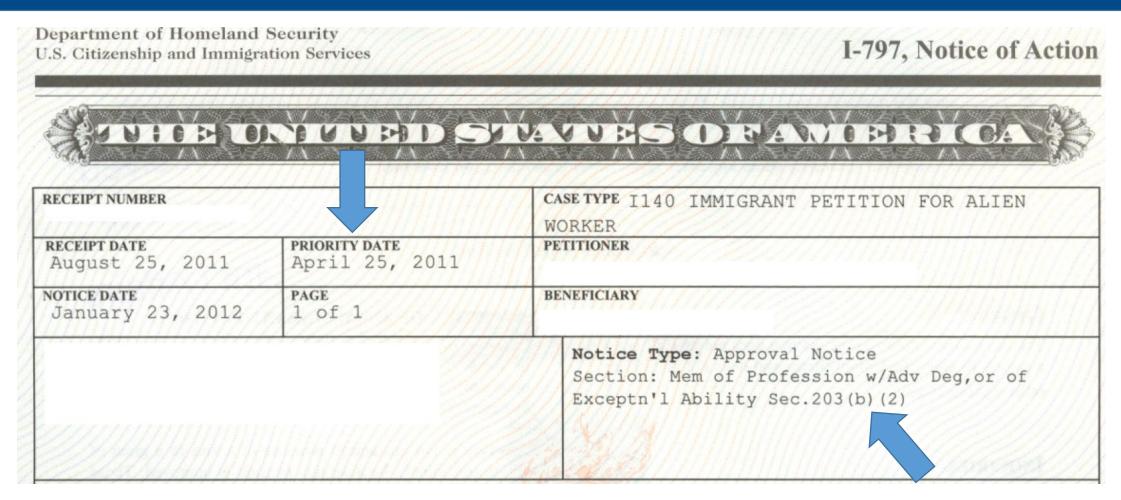


Not all I-140 Approvals are created equal

Employment Based (EB) Categories and Permanent Residency

- EB-1 Status: Priority Workers (Alien of Extraordinary Ability and Outstanding Researcher Professor)
- EB-2 Status: Professionals with Advanced Degrees or Exceptional Ability (PERM Labor Certification and National Interest Waivers).
- EB-3 Status: Skilled Workers, Professionals, and Unskilled Workers
- Why does it matter what EB category your I-140 was approved for?
- What is a priority date?

Anatomy of the I-140 Approval Notice



EB-2 Status: Professionals with Advanced Degrees or Exceptional Ability



Anatomy of the I-140 Approval Notice



I-797 NOTICE OF ACTION | DEPARTMENT OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES



Receipt Number		Case Type I140 - IMMIGRANT PE	ETITION	FOR AL	IEN WORKER	
Received Date 09/28/2020	Priority Date 09/28/2020	Petitioner				
Notice Date 10/07/2020	Page 1 of 1	Beneficiary				

c/o DANIEL WILLIAM OLDENBURG **CLINE WILLIAMS** 233 SOUTH 13TH STREET STE 1900 LINCOLN NE 68508

Notice Type: Approval Notice

Section: Outstanding Professor or Researcher,

Sec.203(b)(1)(B)

Consulate:

ETA Case Number: NA

SOC Code: 251071

Work Site:

EB-1 Status: Priority Workers (Alien of Extraordinary Ability and Outstanding Researcher Professor)



Immigrant Visa Retrogression for Employment Based Permanent Residency

- The U.S. government makes only a certain number of immigrant visas (green cards) available each year and these are allocated among the various immigrant visa categories and countries from which applicants seek to immigrate. For the past few years, the number of immigrants approved for employment-based immigrant visas has been lower than the number of visas available, resulting in no backlog in visa numbers. Recently, the DOS has seen far more immigrants approved for employment-based immigrant visas and has run out of visa numbers in certain categories, causing a temporary backlog or "retrogression" of visa numbers.
- When worldwide demand for employment based visas exceeds worldwide availability, immigrant visa numbers are further apportioned among the various countries from which applicants seek to emigrate. Each country has a limit and each approved applicant is "charged" against his or her country's limit. Most countries have fewer applicants than available visa numbers. However, certain high-immigration countries often meet or exceed their chargeability limit. These countries include China, India, Mexico, and the Philippines.



CLINE WILLIAMS

Numerical Limits on Immigration to the U.S.

Employment Based Immigrant Visa Quotas per FY

The overall numerical limit for permanent employment-based immigrants is 140,000 per year. This number includes the immigrants plus their eligible spouses and minor children, meaning the actual number of employment-based immigrants is less than 140,000 each Fiscal Year. The 140,000 visas are divided into five preference categories, detailed in Table 3.

Table 3: Permanent Employment-Based Preference System

Preference Category	Eligibility	Yearly Numerical Limit		
1 Priority Workers	"Persons of extraordinary ability" in the arts, science, education, business, or athletics; outstanding professors and researchers; multinational managers and executives.	40,000* or 28.6%		
2 Professionals with Advanced Degrees or Exceptional Ability	Members of the professions holding advanced degrees, or persons of exceptional abilities in the arts, science, or business.	40,000** or 28.6%		
3 Skilled Workers, Professionals, and Unskilled Workers	Skilled workers with at least two years of training or experience, professionals with college degrees, or "other" workers for unskilled labor that is not temporary or seasonal.	40,000*** or 28.6% "Other" unskilled laborers restricted to 5,000		



Cline Williams

Numerical Limits on Immigration to the U.S.

• In addition to the numerical limits placed upon the various immigration preferences, the INA also places a limit on how many immigrants can come to the United States from any one country. Currently, no group of permanent immigrants (family-based and employmentbased) from a single country can exceed seven (7) percent of the total amount of people immigrating to the United States in a single fiscal year. This is not a quota to ensure that certain nationalities make up seven percent of immigrants, but rather a limit that is set to prevent any immigrant group from dominating immigration patterns to the United States.



Breaking Down the Bulletin

- Why are there two visa bulletins?
- Which one do we use?
- How do we know which one to use?
- When will I receive my permanent residency card?
- Why should I file if my date is not Final?







October 2022 Visa Bulletin

DATES FOR FILING

Employment- based	All Chargeability Areas Except Those Listed	CHINA- mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
<mark>1st</mark>	С	С	С	С	С	С
2nd	С	08JUL19	С	01MAY12	С	С
3rd	С	15JUL18	С	01JUL12	С	С
Other Workers	08SEP22	01NOV15	08SEP22	01JUL12	08SEP22	08SEP22
4th	С	С	15APR18	С	150CT20	С
Certain Religious Workers	С	С	15APR18	С	150CT20	С
5th Unreserved (including C5, T5, I5, R5)	С	01JAN16	С	08DEC19	С	С
5th Set Aside: (Rural - 20%)	С	С	С	С	С	С
5th Set Aside: (High Unemployment - 10%)	С	С	С	С	С	С
5th Set Aside: (Infrastructure - 2%)	С	С	С	С	С	С



USCIS Indicates each month whether applicants can rely on the "Dates For Filing" or the "Final Action Dates"

Adjustment of Status Filing Charts from the Visa Bulletin

If USCIS determines there are more immigrant visas available for a fiscal year than there are known applicants for such visas, we will state on this page that you may use the *Dates for Filing* chart. Otherwise, we will indicate on this page that you must use the *Final Action Dates* chart to determine when you may file your adjustment of status application. However, if a particular immigrant visa category is "current" on the Final Action Dates chart or the cutoff date on the Final Action Dates chart is later than the date on the Dates for Filing chart, applicants in that immigrant visa category may file using the Final Action Dates chart during that month.

We anticipate designating one of the two charts each month and linking to the relevant chart below within one week of DOS' publication of the Visa Bulletin.

Current Month's Adjustment of Status Filing Charts

For Family-Sponsored Filings:

In the F2A category, there is a cutoff date on the Dates for Filing chart. However, the category is "current" on the Final Action Dates chart. This means that applicants in the F2A category may file using the Final Action Dates chart for November 2020.

For all the other family-sponsored preference categories, you must use the Dates for Filing chart in the Department of State Visa Bulletin for November 2020.

For Employment-Based Preference Filings:

For all employment-based preference categories, you must use the Dates for Filing chart in the Department of State Visa Bulletin for November 2020.





October 2022 Visa Bulletin

Final Action Dates

Employment- based	All Chargeability Areas Except Those Listed	CHINA- mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	С	С	С	С	С	С
2nd	С	08JUN19	С	01APR12	С	С
3rd	С	15JUN18	С	01APR12	С	С
Other Workers	01JUN20	01SEP12	01JUN20	01APR12	01JUN20	01JUN20
4th	С	С	15MAR18	С	15SEP20	С
Certain Religious Workers	U	U	U	U	U	U
5th Unreserved (including C5, T5, I5, R5)	С	22MAR15	С	08NOV19	С	С
5th Set Aside: Rural (20%)	С	С	С	С	С	С
5th Set Aside: High Unemployment (10%)	С	С	С	С	С	С
5th Set Aside: Infrastructure (2%)	С	С	С	С	С	С



October 2022 Visa Bulletin

DATES FOR FILING

Next Month's Adjustment of Status Filing Charts

For Family-Sponsored Filings:

For all family-sponsored preference categories, you must use the <u>Dates for Filing chart in the Department of State Visa Bulletin for October 2022</u>.

For Employment-Based Preference Filings:

For all employment-based preference categories, you must use the <u>Dates for Filing chart in the Department of State Visa Bulletin for October 2022</u>



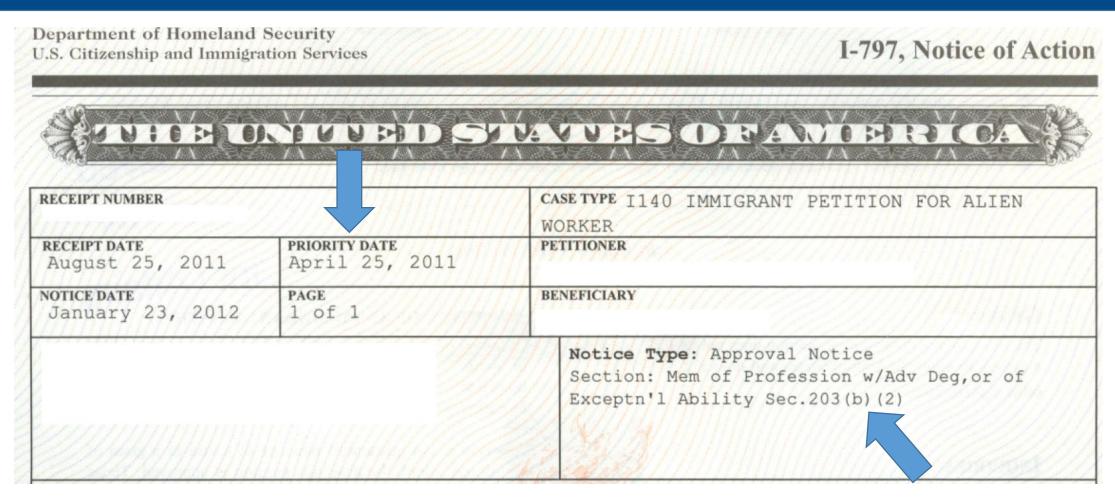
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Employment- based	All Chargeability Areas Except Those Listed	CHINA- mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
<mark>1st</mark>	С	С	С	С	С	С
2nd	С	08JUL19	С	01MAY12	С	С
3rd	С	15JUL18	С	01JUL12	С	С
Other Workers	08SEP22	01NOV15	08SEP22	01JUL12	08SEP22	08SEP22
4th	С	С	15APR18	С	150CT20	С
Certain Religious Workers	С	С	15APR18	С	150CT20	С
5th Unreserved (including C5, T5, I5, R5)	С	01JAN16	С	08DEC19	С	С
5th Set Aside: (Rural - 20%)	С	С	С	С	С	С
5th Set Aside: (High Unemployment - 10%)	С	С	С	С	С	С
5th Set Aside: (Infrastructure - 2%)	С	С	С	С	С	С



Anatomy of the I-140 Approval Notice



EB-2 Status: Professionals with Advanced Degrees or Exceptional Ability



Anatomy of the I-140 Approval Notice



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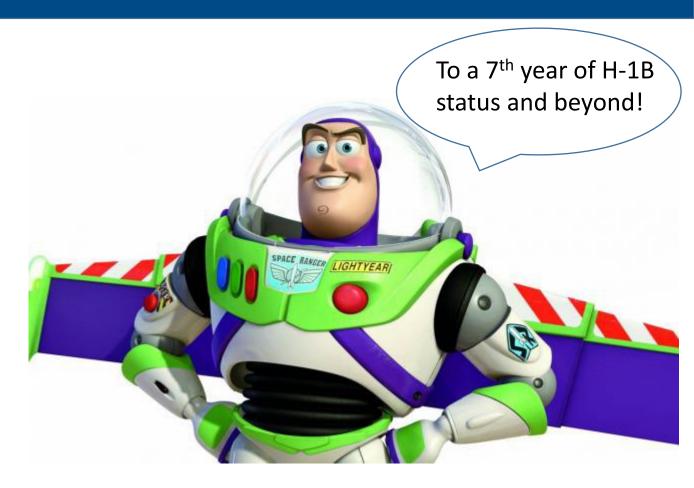
I-140 Approval for a year or longer provides additional H-1B

American Competitiveness in the Twenty-First Century Act (AC-21). This is particularly important for foreign nationals who quickly proceed through the PERM labor certification process and the I-140 immigrant petition, only to find themselves barred from filing an I-485 application to adjust to permanent resident status because their priority date is not *current* on the State Department's Visa Bulletin.

(1) The foreign national is the beneficiary of a PERM labor certification application that was *filed* at least 365 days before the sixth anniversary of the foreign national's H-1B

status: In this situation, the employer is permitted to file a petition to extend the foreign national's H-1B status in *one-year* increments beyond the normal six-year limit.

(2) Alternatively, the foreign national is the beneficiary of an I-140 immigrant petition that was *approved* before the foreign national reached the end of his six years of H-1B status and has been prevented from filing an I-485 application due to per country visa limitations (i.e, the visa backlog): In this situation, the employer is permitted to file a petition to extend the foreign national's H-1B status in *three-year* increments beyond the normal six-year limit.



CLINE WILLIAMS

INA 245A Adjustment of Status

An alien must meet certain eligibility requirements to adjust status to that of a lawful permanent resident (LPR).

INA 245(a) Adjustment of Status Eligibility Requirements

The applicant must have been:

· Inspected and admitted into the United States; or

• Inspected and paroled into the United States.

*Lawful Entry into U.S.

The applicant must properly file an adjustment of status application.

The applicant must be physically present in the United States.

*Maintenance of Status

The applicant must be eligible to receive an immigrant visa.

*I-140 Approval

An immigrant visa must be immediately available when the applicant files the adjustment of status application and at the time of final adjudication. Priority date is current

The applicant must be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.[3]



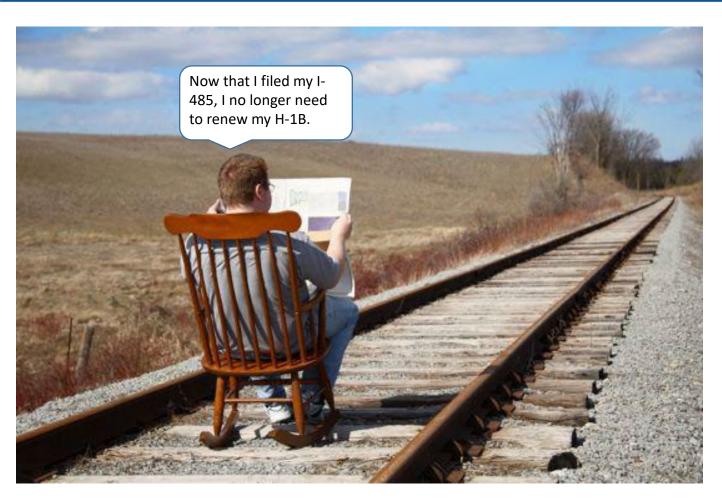
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Finally Ready to File Your Application for Permanent Residency

- -Maintain your underlying visa status
- -I-485 Supplement J
- -I-693 Medical Exam
- -Updated Employment Verification
- -File the I-765 Application for Employment
- **Authorization Document**
- -File the I-131 Application for Advance Parole
- Document
- -File the I-864 Affidavit of Support if applicable



Maintain underlying visa status



- -Unexpected Delays
- -Issues with your permanent residency application?
- -Routine extension of status
- -Protects your ability to remain in the U.S. and remain employed.

I-485 Supplement J



Confirm you are currently employed by the sponsoring employer (Filed with I-485)

Or

Confirm you are currently employed in the same or similar occupation (In the context of I-485 portability)

CLINE WILLIAMS

Medical Exam I-693

- Required for all Permanent Residency Applicants
- Must be conducted by a Certified USCIS Physician
- Cannot be conducted more than 60 days prior to filing
- Valid for a period of two years
- Must Remain Sealed when presented to USCIS
- Needed to confirm no health-related grounds of inadmissibility



Updated Employment Verification

- Because your application for Permanent Residency is premised upon an employment based I-140 you will need to demonstrate that you are still employed in the same or similar occupation.
- Your employer will need to provide an updated employment verification letter.
- You will need to provide copies of recent pay check stubs / direct deposit statements/ payroll records to demonstrate you are currently employed.



I-140 / I-485 Portability (Change in Employment)

- Change employers when you have an approved I-140 and I-485 HAS NOT pending 180 Days.
- Your new employer will need to sponsor a new I-140 for you (generally speaking, that a new EB-2 or EB-3 labor certification). As long as your previous employer has not withdrawn the I-140 before 180 days, the regulations will permit you keep the priority date from your original I-140 approval. [8 C.F.R. § 204.5(e)].
- Why is this important?





I-140 / I-485 Portability (Change in Employment)

Change employers when you have an approved I-140 and I-485 HAS been pending 180 Days.

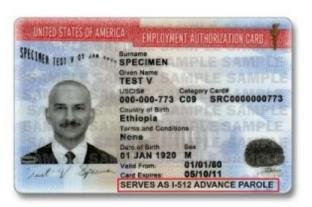
Where the labor certification is approved, the I-140 petition is approved and the I-485 application has been pending for 180 days or longer, there is nothing that the previous employer can do to stop the new employer from using the underlying labor certification and I-140 approvals.

At this point, the foreign worker retains his/her right to the labor certification and I-140 petition and the new employer need not file a new I-140. The new employer need only explain how the new job is "the same, or substantially similar" to the job described in the original labor certification application. The new job does not need to be in the same city, the same state, or at the same salary as the job listed in the underlying labor certification so long as the new job is the same, or substantially similar to the old job.

CLINE WILLIAMS

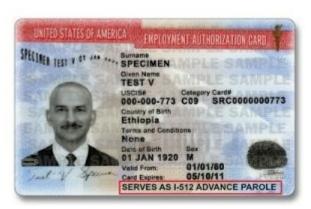
Employment Authorization Document (EAD) 1-765

- -Filed Concurrently with the I-485 Application for Permanent Residency.
- Generally arrives within 6 months after filing.
- -Is issued in 1 year increments.
- -Can be renewed if necessary.
- -Can be held simultaneously with your non-immigrant visa status.
- -Is intended to serve to bridge the gap between any potential period where your non-immigrant visa status expires, but you have not yet received your permanent residency. But remember, it is advisable to maintain your underlying non-immigrant visa status.
- Family dependents can also apply for an receive EADs.
- -Also contains the I-512 Advance Parole Travel Notation.



Advance Parole Travel Document (AP) I-131

- -Filed Concurrently with the I-485 Application for Permanent Residency.
- Generally arrives within 6 months after filing.
- -Is issued in 1 year increments.
- Can be used for multiple trips and re-entries into the U.S.
- -Can be renewed if necessary.
- Can be expedited if necessary.
- -Can be held simultaneously with your non-immigrant visa status.
- -Is intended to serve to bridge the gap between any potential period where your non-immigrant visa status expires, but you have not yet received your permanent residency. But remember, it is advisable to maintain your underlying non-immigrant visa status.
- Family dependents can also apply for an receive APs.
- -Issued in combination with the EAD.



Affidavit of Support I-864

- Required when you have family dependents who are also applying with you for permanent residency.
- Needed to demonstrate that you are earning sufficient income (125% above the U.S. Poverty Guidelines) so that you can support your family members.
- Need to provide evidence of current employment and past earnings.
- Recent changes are now seeking to bank account information and/or a credit report to establish your ability to financially support your family members.
- Contract with the U.S. Government.

Sponsor's Household Size	100% of HHS Poverty Guidelines*	125% of HHS Poverty Guidelines*
	For sponsors on active duty in the U.S. armed forces who are petitioning for their spouse or child	For all other sponsors
2	\$17,240	\$21,550
3	\$21,720	\$27,150
4	\$26,200	\$32,750
5	\$30,680	\$38,350
6	\$35,160	\$43,950
7	\$39,640	\$49,550
8	\$44,120	\$55,150
	Add \$4,480 for each additional person	Add \$5,600 for each additional person



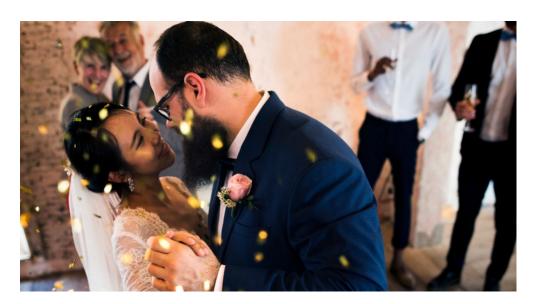
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- -Updated Employment Verification
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- Document
- -File the I-864 Affidavit of Support if applicable



A Quick Word About Family Based Sponsorship for Permanent Residency

- FORM I-130
- U.S. Citizen or Permanent Resident Petitioner (Sponsor)?
- If the sponsorship involves an immediate relative relationship, there is no need for current priority date.
- Specific considerations
 (based on the relationship)
- Can be concurrently filed with I-485.



Family Based Permanent Residency (cont.)

FAMILY-SPONSORED PREFERENCES

First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

Note: Spouses, unmarried children under 21 and parents of USCs = Immediate Relative

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

Family- Sponsored	All Chargeability Areas Except Those Listed	CHINA- mainland born	INDIA	MEXICO	PHILIPPINES
F1	08AUG16	08AUG16	08AUG16	01DEC01	22APR15
F2A	С	С	С	С	С
F2B	01JAN17	01JAN17	01JAN17	08AUG01	010CT13
F3	08NOV09	08NOV09	08NOV09	15APR01	08NOV03
F4	15DEC07	15DEC07	22FEB06	15MAR01	22APR04

INA 245A Adjustment of Status

An alien must meet certain eligibility requirements to adjust status to that of a lawful permanent resident (LPR).

INA 245(a) Adjustment of Status Eligibility Requirements

The applicant must have been:

Inspected and admitted into the United States; or

• Inspected and paroled into the United States.

*Lawful Entry into U.S.

The applicant must properly file an adjustment of status application.

The applicant must be physically present in the United States.

AOS even with status issues case by case

The applicant must be eligible to receive an immigrant visa.

*I-130 Approval

An immigrant visa must be immediately available when the applicant files the adjustment of status application and at the time of final adjudication. Priority date is current

The applicant must be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.

The applicant merits the favorable exercise of discretion.[3]





Finally Ready to File Your Application for Permanent Residency

- -Maintain your underlying visa status
- -I-485 Supplement J (Not needed for Family AOS)
- -I-693 Medical Exam
- -Updated Employment Verification
- -File the I-765 Application for Employment
- **Authorization Document**
- -File the I-131 Application for Advance Parole
- Document
- -File the I-864 Affidavit of Support if applicable



