OUR PRACTICE

Adjustment of Status

Adjustment of status, for those qualified to use it, is usually preferred among the two ways to finish the multi-step process of becoming a U.S. permanent resident, because it happens within the U.S. It is the process by which the immigration service ("USCIS") confirms that someone otherwise eligible for permanent residence is not inadmissible to the U.S. We can help with all aspects of the process.

Eligibility

Most people generally eligible for adjustment of status are people who are "beneficiaries" of an immigrant petition filed by an employer or family member with a current visa number according to the Visa Bulletin, who won the visa lottery and have a current cut-off date, or who are the spouse or unmarried child under age 21 of one of those people (with some exceptions).

Even people who are substantively eligible for permanent residence, are not inadmissible, and are physically present in the U.S. can be ineligible for adjustment of status within the U.S. as the way to process for permanent residence, and thus they must use immigrant visa processing abroad instead if they can. Some people are ineligible because of the particular status in which they entered the U.S.: without inspection, in transit ("TWOV"), as a crewman, as a J-1 subject to home residency requirement without waiver, or as a K fiancé who did not marry the sponsor. People who entered under the Visa Waiver Program or Guam Visa Waiver are similarly ineligible unless they are an "immediate relative" beneficiary of a U.S. citizen's petition. In addition, family petition and lottery beneficiaries are ineligible if they do not have a perfect lifetime immigration compliance record before filing their application for adjustment or unless they are an "immediate relative" of a U.S. citizen. Employment petition beneficiaries may have been in unlawful status, including unauthorized employment, since most recent lawful admission for up to 180 days before filing (and may have violated their status on previous visits).

Under a well-publicized exception called "Section 245(i)," which we call the "pay-to-stay" provision, with complex rules and procedures, many but not all of these deficiencies in adjustment eligibility can be cured by payment of a $1,000 extra penalty fee to USCIS, but only if an approvable (but not necessarily approved) immigrant petition or labor certification was properly filed for the applicant or a parent or spouse before a cutoff date and, in some cases, the person was present in the U.S. on December 21, 2001.

There are many other ways to become eligible, including receiving refugee or asylum status, continually residing in the U.S. since 1972, qualifying under a program benefiting nationals of particular countries. Most of those applicants are exempt from many of the ineligibility rules unique to asylum and can be exempt to some inadmissibility rules as well.

Application Procedures

The procedures for adjustment can vary depending on the category of qualification for permanent residence. What is said below mainly pertains to beneficiaries of immigrant petitions. No matter what was said in the immigrant petition about the expected manner of processing, as soon as the foreign national has a current priority date (where applicable), the adjustment application package can be filed, usually at the local USCIS office with jurisdiction over the foreign national's place of residence. The USCIS requires the applicant to come to an Application Support Center for biometrics, which the USCIS runs through CIA and FBI databases to check for criminal convictions, terrorism listings and other background issues.

Most applicants can obtain interim work and travel authorizations within 3 months of request in one-year increments while their adjustment applications are pending. Adjustment processing can take more than a year; therefore, applicants may need file new interim authorization applications several months before the existing ones will expire. Managing the interface between work authorizing nonimmigrant status and the adjustment-based work authorization can be tricky, and special, confusing rules apply to H and L nonimmigrants. ***Applicants who are subject to the 3 and 10-year bars on reentry based on unlawful presence in the U.S. should not even ask USCIS for travel authorization, because by departing they will cause the bars on reentry to take devastating effect.***

USCIS submits applicants' data to the FBI, which has been taking extraordinary amounts of time to complete its assessment of a small percentage of applicants in relation to past investigations with which they have been associated or other risk factors. Applicants who have waited for several years for FBI clearance have been suing USCIS and the FBI successfully to get courts to require final decision on their cases within a few months of court order.

Once background checks have been made and the file reaches the top of the stack, the USCIS will either approve the case by mail, request more information in writing, or schedule an interview date. The applicant should bring originals of all documents that have been filed or that are requested in the interview notice. The examiner may ask questions regarding underlying basis of permanent residence and inadmissibility issues. USCIS usually does not want young children brought to the interview as evidence of a relationship.

If USCIS grants adjustment, USCIS sends the applicant by mail a permanent resident card, using the same biometrics used to run background checks.

If the application is denied, only certain applicants may appeal. Otherwise, the foreign national may move for a re-opening or reconsideration of that application. If DHS chooses to place the applicant in removal proceedings, he or she may renew the adjustment application with the Immigration Court.

How We Can Help

Baker Donelson's Immigration Group constantly represents applicants for adjustment of status. We help clients decide whether they are eligible and if not plan alternative strategies. We plan the manner of processing from the beginning and reevaluate that choice as appropriate during the initial steps to permanent residence. We help prepare and file the forms and papers in the correct way that speeds processing for interim authorizations and ultimate approval. We advise applicants whether they may travel internationally, even if seemingly authorized. We counsel clients about the effects of changes in circumstances on their ability to adjust status (such as divorce, marriage, and employment termination), and helped those clients preserve their adjustment eligibility through additional filings and other efforts. We bring lawsuits, if necessary, to get decisions on applications. We help denied applicants decide whether to pursue other options, to move to reopen, or to file rare but possible court appeals. We counsel and defend applicants who are placed in immigration court proceedings.

Important Links

- Application Procedures: Becoming a Permanent Resident
- Visa Bulletin