Options for Final Stage of Permanent Residence Processing:
Adjustment of Status versus Consular Processing

This memorandum provides basic information regarding options at the final stage of US permanent residence processing. It is not intended to provide advice, nor should it be construed as advice. Each person’s situation is different, and many variables can affect the choice that is best for you. In addition, immigration law and government processing times change frequently. Most foreign nationals would be wise to contact an immigration attorney before making a major decision regarding immigration processing.

Applicants for US lawful permanent residence status (LPR status, often referred to as a “green card”) normally go through a multi-stage process to obtain permanent residence. The first stage may be a family-based petition, a permanent employment certification application (“labor certification”) filed by your employer followed by an Immigrant Visa Petition (Form I-140), or an Immigrant Visa Petition in one of the categories that allows you to bypass labor certification (e.g., extraordinary ability, outstanding professor/researcher, national interest waiver). Regardless of the initial stages, the final step in processing is for the foreign national to apply for permanent residence.

There are two methods of applying for permanent residence. In Adjustment of Status, the foreign national files his or her application with US Citizenship and Immigration Services (USCIS, formerly known as INS) by mail while remaining in the US. In Consular Processing, the applicant returns to his or her home country and applies for an immigrant visa at a US consular post. Those in the process of submitting an I-140, Immigrant Petition for Alien Worker should consider these options – Adjustment of Status or Consular Processing – before the I-140 petition is filed. Individuals with approved I-140 petitions may also wish to weigh these options once again before applying for the final stage of permanent residence, since processing times and personal factors may have changed since filing the I-140. Each method involves different steps, and has advantages and disadvantages.

Changing Your Mind

A choice between Adjustment of Status or Consular Processing must be entered on Form I-140. If the foreign national indicates that he or she wishes to go through consular processing, and later decides to adjust status in the US, he or she can proceed with adjustment of status without any extra steps. Indicating that the foreign national wishes to consular process thus keeps the options open. If the foreign national indicates on Form I-140 that he or she wishes to adjust status, and later wishes to consular process, he or she normally must file a Form I-824, Application for Action on Approved Application, and wait for USCIS to issue a receipt notice, before contacting the consular post and requesting that they initiate processing. Many consular posts require approval of the Form I-824, which can take a year or more, before they will initiate consular processing.
**ADJUSTMENT OF STATUS**

In general, adjustment of status (AOS) follows these steps:

1. Form I-140, *Immigrant Petition for Alien Worker*, is filed with USCIS.
2. Upon approval of the I-140 petition, if a visa number is available, the applicant can immediately file Form I-485, *Application to Register Permanent Residence or Adjust Status*. (Concurrent processing is also possible – see below.) Whether a visa number is available depends on the foreign national’s preference category and nationality. The monthly DOS Visa Bulletin gives details about visa availability: [http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html](http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html).
3. The applicant files by mail through the designated USCIS Service Center, including evidence of a medical exam, and documentation of eligibility, identity, and maintenance of US status.
4. After the adjustment application is filed, the applicant is scheduled for biometric collection (photo and fingerprinting) at a USCIS Application Support Center. This triggers the security checks conducted on all applicants for permanent residence.
5. USCIS will issue a decision by mail. Processing times vary significantly, from a few months to a few years.
6. USCIS mails the final permanent residence card (“green card”) to the applicant directly, following approval of the case.

**Advantages of Adjustment of Status:**

- Since the applicant need not depart and reenter the US, this process may avoid some admissibility issues. Foreign national who are currently in the US who have at some time lapsed in US status, worked without authorization, or otherwise failed to maintain conditions of admission should consult with an immigration attorney before proceeding.
- USCIS decisions may be appealed. The applicant (and any family members applying for adjustment) may be allowed to remain in the US until a final decision is reached.
- Applicants (and family members applying to adjust) may apply for employment authorization while the application is pending. This authorization is issued in one or two year increments, based on USCIS discretion and authorizes work for any employer. Employment authorization can be extended if necessary.
- Applicants (and family members applying to adjust status) may apply for Advance Parole, a travel document that does not require the use of a visa. Advance parole is issued in one year increments. This can be particularly advantageous for people who travel frequently on short trips not long enough to get a new visa, or for foreign nationals for whom it is difficult to obtain a visa. Foreign nationals in H-1B/H-4 status can opt to continue traveling with those visas.
- In the vast majority employment-based adjustment applications, USCIS waives the requirement for an interview.
- If an interview is scheduled, the applicant has the right to bring immigration counsel to the interview.
- This process involves only one government entity, USCIS, as opposed to the consular process, which involves USCIS, Department of State, and Customs and Border Protection at admission.
• **Portability**: Adjustment of Status applicants whose I-485 applications have been pending for 180 days or more can change jobs or employers, as long as the new job is in the “same or similar occupational classification” as reflected in the original labor certification and/or Form I-140.

• **7th year H-1B extension**: Adjustment of Status applicants who have a labor certification or Form I-140 filed 365 days or more prior to their H-1B six-year maximum (i.e., before the end of the 5th year of H-1B eligibility) can extend H-1B status in one year increments until adjudication of the I-485 is complete. (The ability to extend ends if the labor cert or I-140 is denied.)

• **Concurrent filing**: Applicants may file the I-140 petition and I-485 application at the same time. Concurrent filing allows applicants to apply for employment authorization and advance parole earlier than if they waited for the Form I-140 to be approved. Concurrent filing may result in earlier approval of permanent residence. For those whose priority date is current but may be subject to visa retrogression, concurrent filing may allow the applicant to legally remain in the US, work, and travel. For those filing highly discretionary I-140 petitions, such as extraordinary ability and NIW petitions, concurrent filing can place more at risk; if the I-140 is denied, an adjustment application based on it will also be denied.

**Disadvantages of Adjustment of Status:**

- USCIS processing times are unpredictable, and may range from 6 months to 2 years or more. There is no way to accurately predict the processing time in any specific case.
- If the applicant has criminal or immigration violations, he or she may not be eligible for adjustment of status. Applicants in these situations are advised to consult with an immigration attorney before proceeding.

**Consular Processing**

The basic steps of consular processing in general are as follows:

1. Form I-140, *Immigrant Petition for Alien Worker*, is filed with USCIS, requesting consular processing.
2. Upon approval of the Form I-140, USCIS sends notice of approval to the National Visa Center (NVC), which is a part of the US Department of State (DOS).
3. If a visa number is or will shortly be available for the applicant, NVC usually will send a fee bill for Immigrant Visa processing to the applicant or his or her attorney of record. Specific NVC and consulate procedures change often and without notice, with payment usually being required in advance. Whether a visa number is available depends on the foreign national’s preference category and nationality. The monthly DOS Visa Bulletin gives details re visa availability: [http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html](http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html).
4. NVC will forward an instruction packet (formerly called Packet 3) with forms and a list of supporting documents to be submitted by the applicant. NVC typically now provides this information electronically, through links to their website.
5. Upon return of completed forms and supporting documents, NVC will forward the application to the appropriate consular abroad. Not all consular posts process immigrant visas: In many countries with multiple posts, such as Canada, immigrant visa processing is streamlined through one location.
6. The consular post will send the applicant further instructions, information on the required medical exam, and an appointment for interview (formerly called Packet 4). The applicant will be required to have a medical exam overseas with a physician on the consular post’s list. In some cases, the medical exam may be done on the same trip as the visa interview; in other cases, it may require an additional trip.

7. In consular processing, each applicant must obtain a “police certificate” from his or her home country or country of permanent residence for each locality in which he or she has resided for six months or more since age 16. In addition, applicants must obtain police certificates for each country in which he or she has resided for more than one year since age 16. If a particular country does not issue police certificates, the applicant need not obtain one. DOS has information on each country’s specific policies and document procedures on its website. Fees and time frames for these certificates vary from one country to another.

8. Each applicant must provide original documentation of birth and marriage. Where relevant to show eligibility in a specific category, the applicant may also need to produce educational records.

9. The applicant (and all family members also applying) must travel to the consular post for an administrative interview. If the consular post approves the immigrant visa application, it will give the foreign national sealed paperwork to present upon entry to U.S., and a stamp evidencing the individual’s permanent residence status will be placed in his or her passport by US Customs and Border Protection (CBP) upon entry to the US.

10. USCIS mails the permanent residence card to the applicant, usually within a few months after entry.

**Advantages of Consular Processing:**

- Allows simultaneous processing with family members who are currently living abroad.
- Processing time may be faster than adjustment of status (nine months at most consulates).

**Disadvantages of Consular Processing:**

- Leaving and reentering the US raises issues of admissibility: if the applicant has overstayed his or her period of admission as reflected on Form I-94, he or she may be barred from entering the U.S. for 3 or 10 years.
- No employment authorization is available while the consular processing paperwork is pending.
- The applicant must obtain police certificate from each country of residence since age 16, which may be time-consuming and difficult, depending on the specific countries and number of residences abroad.
- This process always requires an interview by a consular officer at the post abroad. There are no exceptions. Interviews are set at the consulate’s discretion with three to four weeks notice. In addition to travel costs, attending the interview may interrupt education and employment.
- Many consulates do not give right to counsel at the interview.
- There is no appeal or other administrative review available regarding a denial by the consular post.
- Processing times and success rates vary from country to country. Consular posts that experience high incidences of fraud, and those with heavy processing burdens, may require additional
documentation and verification. Posts may be affected by political climates and local attitudes. Consular posts can and do change their policies without advance notice.

- The availability and scheduling of appointments depends on the individual consular post.
- Applicants may only consular process in their country of birth, their country of chargeability, or country of citizenship or other permanent residence (as defined by the consular post).
- 7th year (and subsequent) extensions in H-1B status are not available based on consular processing.
- Concurrent filing with the I-140 Petition is not available.

A final reminder: This memo is not intended as advice. The information contained in this memo is provided to give you a better understanding of the options for permanent residence.