U.S. Citizenship and Immigration Services

USCIS Policy Manual

Current as of April 07, 2020

Volume 7 - Adjustment of Status

Part A - Adjustment of Status Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

There are two general paths to lawful permanent resident (LPR) status. Aliens living abroad apply for an immigrant visa at a consular office of the Department of State (DOS). Once issued a visa, an alien may enter the United States and become an LPR upon entry. Aliens who qualify for LPR status who are living in the United States may file an application with USCIS to adjust their status to LPR status, or they may apply for an immigrant visa abroad.

Congress created the adjustment of status provisions to enable an alien physically present in the United States to become an LPR without incurring the expense and inconvenience of traveling abroad to obtain an immigrant visa. Congress has further modified the adjustment of status provisions to:

- Promote family unity;
- Advance economic growth and a robust immigrant labor force;
- Accommodate humanitarian resettlement; and
- Ensure national security and public safety.

B. Background

Adjustment of status to lawful permanent residence describes the process by which an alien obtains U.S. lawful permanent resident status while physically present in the United States. USCIS issues a permanent resident card (Form I-551) (commonly called a green card) to the successful adjustment applicant as proof of such immigrant status.

Most adjustment of status approvals are granted based on family or employment relationships. Unlike immigrant visa petition processing where the focus is on the relationship between the petitioner and beneficiary, the focus on an adjustment application is on the applicant's eligibility and admissibility.

The following overview provides a brief history of permanent immigration and adjustment of status, along with a summary of major developments in U.S. immigration law over the years.

1. Early Immigration Laws

Prior to the late 19th century, immigration was essentially unregulated. At that time, Congress imposed the first qualitativerestrictions, which barred certain undesirable immigrants such as criminals and those with infectious diseases from entering the country.

During the 1920s, Congress established annual quotas that imposed the first numerical restrictions on immigration. This was known as the National Origins Quota System. The system limited immigration from each country to a designated percentage of foreign-born persons of that nationality who resided in the United States according to the 1910 census. These quotas did not apply to spouses and children (unmarried and under 21 years old) of U.S. citizens.[1]

These immigration laws required all intending immigrants to obtain an immigrant visa at a U.S. embassy or consulate abroad and then travel to the United States and seek admission as lawful permanent residents.[2]As such, these laws provided no legal procedure by which an alien already physically present in the United States could become a permanent resident without first leaving the country to obtain the required immigrant visa.

By 1935, the administrative process of pre-examination was developed so that an alien already temporarily in the United States could obtain permanent resident status more quickly and easily.[3]In general, the pre-examination process consisted of an official determination in the United States of the alien's immigrant visa eligibility, followed by a trip to Canada or another country for an arranged immigrant visa appointment at a U.S. consulate, and a prompt return and admission to the United States as a permanent resident. The government processed over 45,000 pre-examination cases from 1935 to 1950.[4]

Near the onset of World War II, the U.S. government became increasingly concerned about the possibility of hostile foreign enemies living in the United States. In response, Congress enacted the Alien Registration Act of 1940, which required foreign-born persons 14 years of age and older to report to a U.S. post office, and later to an immigration office, to be fingerprinted and register their presence in the United States.[5]Those found to have no legal basis to remain in the United States were required to leave or were removed. Those with a valid claim to permanent residency received an Alien Registration Card.

2. Immigration and Nationality Act of 1952

The passage of the Immigration and Nationality Act (INA) of 1952 organized all existing immigration laws into one consolidated source.[6]The INA retained a modified system of both qualitative and numerical restrictions on permanent immigration. The INAestablished a revised version of the controversial National Origins Quota System, limiting immigration from the eastern hemisphere while leaving immigration from the western hemisphere unrestricted.

The INA also introduced a system of numerically limited immigrant preference categories, some based on desirable job skills and others based on family reunification. Spouses and children (unmarried and under 21 years old) of U.S. citizens remained exempt from any quota restrictions.

In addition, the INA established a formal system of temporary (or nonimmigrant) categories under which aliens could come to the United States for various temporary purposes such as to visit, study, or work. For the first time, the INA also provided a procedure for aliens temporarily in the United States to adjust status to permanent resident status without having to travel abroad and undergo consular processing.

Although it has since been amended many times, the INA remains the foundation of current immigration law in the United States.

3. Post-1952 Developments

Congress amended the INA in 1965 to abolish the National Origins Quota System, creating in its place separate quotas for immigration from the eastern and western hemispheres.[7] These amendments also established a revised preference system of six categories for family-based and employment-based categories, and added a seventh preference category for refugees. Finally, the law introduced an initial version of what has evolved into today's permanent labor certification program.

Further amendments in 1976 and 1978 ultimately combined the eastern and western hemisphere quotas into a single worldwide quota system which limited annual immigration from any single country to 20,000 and established an overall limit of 290,000 immigrants per year.[8]

The Refugee Act of 1980 established a separate immigration program for refugees, eliminating the existing seventh preference category, and formally adopted the legal definition of "refugee" used by the United Nations.[9]

The Immigration Reform and Control Act (IRCA) of 1986 provided a pathway for obtaining permanent resident status to certain agricultural workers and undocumented aliens who had been continuously present in the United States since before January 1, 1982.[10] IRCA also increased immigration enforcement at U.S. borders and established a program which, for the first time in history, required U.S. employers to verify all newly hired employees' work authorization in the United States. This is sometimes called the employer sanctions program or the I-9 program.

Congress next enacted the Immigration Marriage Fraud Amendments of 1986 (IMFA) with the goal of deterring immigration-related marriage fraud.[11] IMFA's key provision stipulated that aliens who obtain immigrant status based on a marriage existing for less than two years be granted lawful permanent residence initially on a conditional basis. This conditional status may be converted to full permanent resident status after two years, generally upon a showing that the conditional resident and his or her U.S. citizen spouse entered into the marriage in good faith and continued to share a life together.

4. Immigration Act of 1990

Congress made the most sweeping changes to the original INA by passing the Immigration Act of 1990 (IMMACT 90).[12] Key provisions adopted by IMMACT 90 include:

- Significantly increased the worldwide quota limits on permanent immigration from 290,000 to 675,000 per year (plus up to another 125,000 for refugees);
- Established separate preference categories for family-based and employment-based immigration, including moving several special immigrant categories into the employment-based preferences and adding a new category for immigrant investors;
- Established the Diversity Visa Program, making immigrant visas available to randomly selected aliens coming from countries with historically low rates of immigration;
- Created several new nonimmigrant work visa categories: O, P, Q, and R; and
- Reorganized and expanded the types of qualitative bars to U.S. entry, known as inadmissibility or exclusion grounds.

Congress continued to refine the U.S. immigration system by enacting two laws in 1996, the Antiterrorism and Effective Death Penalty Act[13] and the Illegal Immigration Reform and Immigrant Responsibility Act of

1996 (IIRIRA),[14] which in part were intended to improve border control, expand worksite enforcement of the employer sanctions program, and enhance removal of criminal and other deportable aliens. These laws also introduced the concept of unlawful presence as an exclusion ground, expanded the definition of aggravated felon, and eliminated or greatly restricted the scope of judicial review involving certain administrative actions and decisions by U.S. immigration authorities.

5. Other Adjustment of Status Provisions

Over the years, Congress has created several adjustment programs otherwise different from general adjustment that apply to relatively small numbers of aliens who meet highly particularized criteria. Most of these programs are found in laws that are not part of the INA.

C. Legal Authorities[15]

- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- INA 209; 8 CFR 209 – Adjustment of status of refugees

Footnotes

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1. [^] See 1921 Emergency Quota Law, Pub. L. 67-5 (May 19, 1921). See Immigration Act of 1924, also known as the National Origins Act or the Johnson–Reed Act, Pub. L. 68-139 (May 26, 1924).

2. [^] This process is known as “consular processing.”

3. [^] See 2 C. Gordon & H. Rosenfield, Immigration Law and Procedure, Section 7.3a. See *Jain v. INS*, 612 F.2d 683 (2nd Cir. 1979).

4. [^] See Abraham D. Sofaer, The Change of Status Adjudication: A Case Study of the Informal Agency Process, 1 J. Legal Studies 349, 351 (1971).

5. [^] Also known as the Smith Act, Pub. L. 76-670 (June 28, 1940).

6. [^] This Act is also referred to as the McCarran-Walter Act, Pub. L. 82-414 (PDF) (June 27, 1952).

7. [^] See Pub. L. 89-236 (PDF) (October 3, 1965).

8. [^] See Pub. L. 95-412 (PDF) (October 5, 1978).

9. [^] See Pub. L. 96-212 (PDF) (March 17, 1980).

10. [^] See Pub. L. 99-603 (PDF) (November 5, 1986).

11. [^] See Pub. L. 99-639 (PDF) (November 10, 1986).

12. [^] See Pub. L. 101-649 (November 29, 1990).

13. [^] See Pub. L. 104-132 (PDF) (April 24, 1996).

14. [^] See Pub. L. 104-208 (PDF) (September 30, 1996).

15. [^] This is not an exhaustive list of the legal foundations of adjustment of status. Each part of this volume contains extensive lists of legal authorities relevant to the specific adjustment of status provisions discussed.

Legal Authorities

INA 209, 8 CFR 209 - Adjustment of status of refugees and asylees

Forms

AR-11, Change of Address

G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

I-485, Application to Register Permanent Residence or Adjust Status

Appendices

No appendices available at this time.

Technical Update - Replacing the Term “Foreign National”

October 08, 2019

This technical update replaces all instances of the term “foreign national” with “alien” throughout the Policy Manual as used to refer to a person who meets the definition provided in INA 101(a)(3) [“any person not a citizen or national of the United States”].

Read More

AFFECTED SECTIONS

1 USCIS-PM - Volume 1 - General Policies and Procedures

2 USCIS-PM - Volume 2 - Nonimmigrants

6 USCIS-PM - Volume 6 - Immigrants

7 USCIS-PM - Volume 7 - Adjustment of Status

8 USCIS-PM - Volume 8 - Admissibility

9 USCIS-PM - Volume 9 - Waivers

10 USCIS-PM - Volume 10 - Employment Authorization

11 USCIS-PM - Volume 11 - Travel and Identity Documents

12 USCIS-PM - Volume 12 - Citizenship and Naturalization

POLICY ALERT - Use of Form G-325A

October 25, 2018

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the USCIS Policy Manual to remove references to Biographic Information (Form G-325A).

Read More

AFFECTED SECTIONS

7 USCIS-PM A - Part A - Adjustment of Status Policies and Procedures

7 USCIS-PM B - Part B - 245(a) Adjustment

7 USCIS-PM F - Part F - Special Immigrant-Based (EB-4) Adjustment

7 USCIS-PM L - Part L - Refugee Adjustment

7 USCIS-PM M - Part M - Asylee Adjustment

7 USCIS-PM O - Part O - Registration

POLICY ALERT - Adjustment of Status Policies and Procedures and 245(a) Adjustment

February 25, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance addressing the general policies and procedures of adjustment of status as well as adjustment under section 245(a) of the Immigration and Nationality Act (INA).

Read More

AFFECTED SECTIONS

7 USCIS-PM A - Part A - Adjustment of Status Policies and Procedures

7 USCIS-PM B - Part B - 245(a) Adjustment

Current as of April 07, 2020