

- Dates for Filing Applications chart, which provides the earliest dates when applicants may be able to apply.

In general, adjustment applicants must use the Application Final Action Dates chart to determine whether a visa is available. However, if USCIS determines there are immigrant visas available for the filing of additional adjustment applications, the Dates for Filing Applications chart may be used to determine when to file an adjustment of status application with USCIS.<sup>[12]</sup> USCIS and DOS provide information on which chart should be used in a particular month on the [USCIS website](#) and DOS [Visa Bulletin](#).

### C. Concurrent Filings<sup>[13]</sup>

In general, the beneficiary of an immigrant visa petition may file for adjustment of status only after USCIS has approved the petition and a visa is available. In certain instances, the beneficiary may file an adjustment application together or concurrently with the underlying immigrant petition.

Concurrent filing of the adjustment application is possible only where approval of the underlying immigrant petition would make a visa number immediately available. Concurrent filing of the adjustment application is permitted in the following immigrant categories:

- Family-based immigrants, including immediate relatives, and widow(er)s of a U.S. citizen;
- Violence Against Women Act (VAWA) self-petitioner;
- Employment-based immigrants in the 1st, 2nd, or 3rd preference categories;
- Special immigrant Amerasians;
- Special immigrant juveniles;
- G-4 international organization employees, NATO-6 employees, and certain family members; and
- Certain members of the U.S. armed forces.

### D. Jurisdiction

USCIS has the legal authority to adjudicate most adjustment of status cases. An immigration judge (IJ) of the Executive Office for Immigration Review (EOIR) has jurisdiction in certain situations.<sup>[14]</sup> Except if the applicant is an arriving alien, the IJ (and not USCIS) has jurisdiction if an applicant is in removal proceedings, even if the proceedings have been administratively closed or if there is a final order of deportation or removal which has not yet been executed.<sup>[15]</sup>

The IJ does not have jurisdiction of applications filed by aliens in deportation or removal proceedings if they are determined to be “arriving aliens.”<sup>[16]</sup> However, there is one exception to this general rule as well. The IJ has jurisdiction over an adjustment application filed by an “arriving alien” in deportation or removal proceedings if all of the following apply:

- The adjustment application was properly filed with USCIS while the “arriving alien” was in the United States;
- The applicant departed from and returned to the United States based on a grant of an advance parole document to pursue the previously filed adjustment application;

- USCIS denied the adjustment application;
- DHS placed the “arriving alien” in removal proceedings either upon return to the United States on the advance parole document or after USCIS denied the adjustment application; and
- The applicant is seeking to renew his or her previously denied application for adjustment of status in proceedings.

The IJ has jurisdiction only with respect to the application filed before the applicant left with the advance parole document. If the applicant is pursuing a new application for adjustment of status based on a new ground such as a new petition, the IJ does not have jurisdiction over the new claim. USCIS has jurisdiction over the application, even if the applicant was placed in proceedings after having been paroled into the United States to pursue a previously filed application for adjustment of status that was ultimately denied by USCIS.

USCIS has jurisdiction to adjudicate an adjustment application when the IJ does not have jurisdiction, including when “arriving aliens” do not meet all of the above criteria. USCIS continues to retain jurisdiction over such an arriving alien’s adjustment application even if the applicant has an unexecuted final order of removal.<sup>[17]</sup> A removal order is considered executed once immigration authorities remove the alien from the United States or the alien departs from the United States.<sup>[18]</sup>

#### *Effect of Departure*

In general, an adjustment applicant who departs the United States abandons his or her application unless USCIS previously granted them advance parole for such absences.<sup>[19]</sup>

## Footnotes

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1. [^] See [8 CFR 103.2\(a\)\(1\)](#).
2. [^] See [8 CFR 103.2\(a\)\(1\)](#) (for location), [8 CFR 103.2\(a\)\(7\)\(i\)](#) (for filing fee and signature), and [8 CFR 245.2\(a\)\(2\)\(i\)](#) (for available visa).
3. [^] See [INA 245\(a\)\(3\)](#) and [8 CFR 245.2\(a\)\(2\)](#).
4. [^] See [8 CFR 103.2\(a\)\(7\)](#).
5. [^] See [8 CFR 103.7](#).
6. [^] See [8 CFR 103.7\(b\)\(1\)\(i\)\(U\)\(3\)](#).
7. [^] See [8 CFR 103.7\(c\)](#). Biometrics fees may also be waived.
8. [^] For more information, see the [USCIS website](#).
9. [^] See [8 CFR 103.7\(b\)\(1\)\(i\)\(U\)\(3\)](#).
10. [^] For more information, see Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [[7 USCIS-PM A.6\(C\)](#)].
11. [^] USCIS rejects adjustment applications filed before a visa number is available. See [8 CFR 245.2\(a\)\(2\)](#).
12. [^] USCIS considers several factors to determine if there is a greater supply of visas than the demand for those visas. To determine visa availability, USCIS compares the number of visas available for the remainder of the fiscal year with documentarily qualified visa applications reported by DOS; pending adjustment of status applications reported by USCIS; and historical drop-off rate of applicants for adjustment of status (for example, denials, withdrawals, and abandonments).

13. [^] See [8 CFR 245.2\(a\)\(2\)\(i\)\(B\)](#) and [8 CFR 245.2\(a\)\(2\)\(i\)\(C\)](#).
14. [^] See [8 CFR 245.2\(a\)\(1\)](#) and [8 CFR 1245.2\(a\)\(1\)](#).
15. [^] A TPS beneficiary who obtains USCIS' authorization to travel abroad temporarily (as evidenced by an advance parole document issued under [8 CFR 244.15\(a\)](#)) and who returns to the United States in accordance with such authorization "shall be inspected and admitted in the same immigration status the alien had at the time of departure" unless the alien is determined to be inadmissible based on certain criminal and security bars (TPS bars) listed in INA 244(c)(2)(A)(iii). See Section 304(c)(1)(A)(ii) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), [Pub. L. 102-232 \(PDF\)](#), 105 Stat. 1733, 1749 (December 12, 1991), as amended. Therefore, unless those TPS bars apply, the TPS beneficiary, upon return to the United States, resumes the exact same immigration status and circumstances as when he or she left the United States. For example, if the TPS beneficiary had an outstanding, unexecuted final order of removal at the time of departure, then he or she, upon lawful return, remains a TPS beneficiary who continues to have an outstanding, unexecuted final order of removal. Similarly, if the TPS beneficiary was in removal proceedings at the time of departure but did not have a final order of removal, then he or she remains a TPS beneficiary in removal proceedings upon lawful return, unless those proceedings have been otherwise terminated. See Section 304(c)(1)(A)(ii) of MTINA, [Pub. L. 102-232 \(PDF\)](#), 105 Stat. 1733, 1749 (December 12, 1991), as amended.
16. [^] See [8 CFR 1.2](#) for definition of an "arriving alien."
17. [^] See [Matter of Yauri \(PDF\)](#), 25 I&N Dec. 103 (BIA 2009).
18. [^] See [INA 101\(g\)](#). However, in the case of a TPS beneficiary with an outstanding final removal order, the alien's departure does not execute the removal order if he or she received prior authorization to travel and departed and returned with a valid advance parole document.
19. [^] See [8 CFR 245.2\(a\)\(4\)\(ii\)](#). In certain circumstances, a departure does not cause abandonment of the adjustment application. See [8 CFR 245.2\(a\)\(4\)\(ii\)\(B\)-\(D\)](#).

## Legal Authorities

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[8 CFR 103.2](#) - Submission and adjudication of benefit requests

[8 CFR 103.7](#) - Fees

[8 CFR 245.2\(a\)](#) - Application for adjustment of status

[INA 209](#), [8 CFR 209](#) - Adjustment of status of refugees and asylees

## Forms

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[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](#)

[I-912, Request for Fee Waiver](#)

## Appendices