U.S. Citizenship and Immigration Services

USCIS Policy Manual

Current as of December 20, 2019

Volume 7 - Adjustment of Status

Part B - 245(a) Adjustment

Chapter 7 - Other Barred Adjustment Applicants

There are additional classes of aliens barred from adjusting status. When determining whether the bars below apply, an officer should only consider the applicant's current period of stay since the most recent admission into the United States prior to filing his or her adjustment application, unless the applicant is an alien removable for engagement in terrorist activity.

When reviewing whether the bar for aliens removable for engagement in terrorist activity applies, an officer should examine every entry, admission, and time spent in the United States by the applicant. It is irrelevant how much time has passed since each entry or whether the applicant subsequently left the United States and returned lawfully.

A. Crewmen

A nonimmigrant crewman is barred from adjusting status.[1] This bar applies to an alien serving as a crewman who is permitted to land as a D-1 or D-2 nonimmigrant, as shown on the alien's Arrival/Departure Record (Form I-94) or Crewman's Landing Permit (Form I-95), and by the corresponding visa contained in the crewman's passport. The bar also applies to an alien who was admitted as a C-1 nonimmigrant to join a crew.[2]

In addition, the alien's service as a crewman is controlling regardless of the alien's actual nonimmigrant status, if any. For example, an alien admitted in B-2 nonimmigrant visitor status while serving as a crewman is barred from adjustment.[3] The bar applies even if the alien was not employed as a crewman in the sense of serving as a crewman for pay.[4] The bar does not apply, however, to Violence Against Women Act (VAWA)-based applicants.

B. Alien Admitted in Transit Without Visa

Any alien admitted to the United States in transit without a visa (TWOV) is barred from adjusting status.[5] This bar does not apply to an alien who was admitted as a transit alien with a C-1 or C-2 or C-3 nonimmigrant visa.

On August 2, 2003, DHS and the Department of State suspended the TWOV program. On August 7, 2003, DHS published an interim rule implementing the suspension.[6] Aliens who transit through the United States after that date are required to obtain a C nonimmigrant visa.[7] Thus, the bar does not apply to an alien (other than crewmen) admitted as a C-1 or C-2 or C-3 nonimmigrant if the alien had a C-1, C-2, or C-3 nonimmigrant visa in order to transit through the United States. Nevertheless, INA 245(c)(3) still bars an alien who, in fact, was admitted as a TWOV when he or she last came to the United States. The bar does not apply, however, to VAWA-based applicants.

C. Visa Waiver Programs

An alien admitted as a nonimmigrant without a visa under a Visa Waiver Program is barred from adjustment of status.[8] Similarly, an alien admitted as a nonimmigrant without a visa to Guam or to the CNMI is barred from adjustment of status.[9] These bars do not apply, however, to those seeking to adjust status as an immediate relative of a U.S. citizen or VAWA-based applicants.

D. Alien Admitted as Witness or Informant

An alien admitted to the United States as an informant of terrorist or criminal activity (S nonimmigrant) is barred from adjusting status.[10] The state or federal law enforcement agency (LEA) that originally requested the alien's S nonimmigrant status may request that the S nonimmigrant be allowed to adjust status to that of a lawful permanent resident. The LEA initiates this special process through a filing with the Department of Justice.[11] Aliens admitted as S nonimmigrants are prohibited from seeking adjustment of status apart from this process. The bar does not apply, however, to VAWA-based applicants.

E. Alien Removable for Engagement in Terrorist Activity

An alien is barred from adjusting status if:

- He or she is deportable for having engaged in or incited terrorist activity;
- He or she has been a member of or received military training from a terrorist organization; or
- He or she has been associated with terrorist organizations, and he or she intends to engage in such activities while in the United States that could endanger the welfare, safety, or security of the United States.[12]

The officer should consider all entries and time periods spent inside the United States when determining whether this bar applies. Furthermore, any restricted activity, whether it occurs before or after an alien files the adjustment application, bars the alien from adjusting status. Finally, in addition to the adjustment bar, the alien may also be inadmissible for such activity.[13] While the bar does not apply to VAWA-based applicants, VAWA-based applicants may still be inadmissible for such activity.

F. Nonimmigrant Admitted as Fiancé(e) of U.S. Citizen

An alien fiancé(e) of a U.S. citizen cannot adjust status except on the basis of the marriage to the U.S. citizen who filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the fiancé(e).[14] Likewise, a child of the fiancé(e) may only adjust on the basis of his or her parent's marriage to the U.S. citizen petitioner.[15]

The terms of the nonimmigrant fiancé(e) status require that the nonimmigrant fiancé(e) marry the petitioner within 90 days after becoming a nonimmigrant.[16] Furthermore, if the nonimmigrant has not been married for two years or more at the time of adjustment, the nonimmigrant fiancé(e) and any children of the fiancé(e) may only obtain permanent residence on a conditional basis.[17]

Marriage Legally Terminated

A nonimmigrant fiancé(e) who contracts a valid and bona fide marriage to the U.S. citizen petitioner within the requisite 90-day time period remains eligible to adjust status on that basis, even if the marriage is legally terminated (whether by death, dissolution, or divorce) prior to adjustment of status and regardless of whether the nonimmigrant fiancé(e) remarries thereafter.[18] The applicant remains subject to all conditional permanent residency requirements, if applicable.[19]

G. Conditional Permanent Residents

In general, an alien granted lawful permanent resident status on a conditional basis[20] is ineligible to adjust status on a new basis under the provisions of INA 245(a).[21] Instead, conditional permanent residents (CPRs) must generally comply with the requirements of INA 216 or 216A to remove the conditions on their lawful permanent resident status.[22]

This bar to adjustment, however, only applies to an alien in the United States in lawful CPR status. In *Matter of Stockwell (PDF)*,[23] the Board of Immigration Appeals adopted a narrow interpretation of the regulation implementing this adjustment bar,[24] stating that the bar no longer applies if USCIS terminates the alien's CPR status.[25]

USCIS can terminate CPR status for reasons specified in INA 216 or INA 216A. [26] Although the immigration judge may review the termination in removal proceedings, the bar no longer applies upon USCIS terminating the CPR status; it is not necessary that an immigration judge have affirmed USCIS' decision to terminate the alien's CPR status before the alien may file a new adjustment application.

Therefore, under INA 245(a), USCIS may adjust the status an alien whose CPR status was previously terminated, if:[27]

- The alien has a new basis for adjustment;
- The alien is otherwise eligible to adjust;[28] and
- USCIS has jurisdiction over the adjustment application.[29]

When seeking adjustment of status again, the alien may not reuse the immigrant petition associated with the previous CPR adjustment or admission. Therefore, the alien must have a new basis to adjust.

An alien seeking to adjust status again who was admitted as a fiancé(e) (K nonimmigrant) may only re-adjust based on an approved Petition for Alien Relative (Form I-130) filed by the same U.S. citizen who filed the Petition for Alien Fiancé(e) (Form I-129F) on his or her behalf.[30]

The alien must also be otherwise eligible to adjust status including not being inadmissible or barred by INA 245(c).

Adjudication and Decision

If the alien successfully adjusts status on a new basis, USCIS generally considers the date of admission to be the date USCIS approved the subsequent adjustment application.[31] Time spent in the prior CPR status does not count toward the residency requirement for naturalization purposes.[32]

If USCIS determines the alien is not eligible to adjust, USCIS denies the application.[33] USCIS officers should follow current agency guidance on issuing a Notice to Appear after denying the application.[34]

Footnotes

1. [^] See INA 245(c)(1).

2. [^] See *Matter of Tzimas (PDF)*, 10 I&N Dec. 101 (BIA 1962).

3. [^] See *Matter of Campton (PDF)*, 13 I&N Dec. 535, 538 (BIA 1970). See *Matter of G-D-M- (PDF)*, 25 I&N Dec. 82 (BIA 2009) (service as crewman, not nonimmigrant status, is controlling for determining eligibility for non-lawful permanent resident cancellation).

4. [^] See *Matter of Campton (PDF)*, 13 I&N Dec. 535, 538 (BIA 1970).

5. [^] See INA 245(c)(3).

6. [^] See 68 FR 46926 (PDF) (Aug. 7, 2003).

7. [^] See INA 101(a)(15)(C). See 68 FR 46926, 46926-28 (PDF) (Aug. 7, 2003). See 68 FR 46948, 46948-49 (PDF) (Aug. 7, 2003).

8. [^] See INA 217. See INA 245(c)(4).

9. [^] See INA 212(l). See INA 245(c)(4).

10. [^] See INA 245(c)(5).

11. [^] See INA 245(j). See 8 CFR 245.11.

12. [^] See INA 245(c)(6). See INA 237(a)(4)(B). See INA 212(a)(3)(B) and INA 212(a)(3)(F). See INA 212(a)(3)(B) in general for definitions related to terrorist activities and exceptions.

13. [^] See INA 212(a)(3).

14. [^] See INA 101(a)(15)(K). See INA 245(d).

15. [^] See INA 245(d).

16. [^] See INA 214(d). See INA 101(a)(15)(K).

17. [^] See INA 245(d) and INA 216. See *Matter of Sesay (PDF)*, 25 I&N Dec. 431 (2011).

18. [^] See *Matter of Sesay (PDF)*, 25 I&N Dec. 431 (2011). See *Matter of Dixon (PDF)*, 16 I&N Dec. 355 (BIA 1977). See *Matter of Blair (PDF)*, 14 I&N Dec. 153 (Reg. Comm.1972). The marriage upon which the alien obtained K nonimmigrant status must have been bona fide, even if it was terminated, in order to adjust status. See *Lutwak v. United States*, 344 U.S. 604 (1953). See *Matter of Laureano (PDF)*, 19 I&N Dec. 1 (BIA 1983). If the evidence would permit a reasonable fact finder to conclude that the marriage was not bona fide, adjustment would properly be denied. It is necessary to follow the standard procedure in 8 CFR 103.2(b)(16) before denying adjustment based on evidence of which the applicant may not be aware.

19. [^] See INA 245(d) and INA 216.

20. [^] See INA 216 and INA 216A.

21. [^] See INA 245(d) and INA 245(f). See 8 CFR 245.1(c)(5).

22. [^] See Petition to Remove the Conditions on Residence (Form I-751) and Petition by Investor to Remove Conditions on Permanent Resident Status (Form I-829).

23. [^] See *Matter of Stockwell (PDF)*, 20 I&N Dec. 309 (BIA 1991).

24. [^] See 8 CFR 245.1(c)(5) (previously 8 CFR 254.1(b)(12), which *Matter of Stockwell* cites to).

25. [^] The same is also true if the alien loses his or her CPR status, for example, through abandonment, rescission, or the entry of an administratively final order of removal. See INA 246 and 8 CFR 1.2.

26. [^] USCIS issues a Notice to Appear upon termination. See 8 CFR 216.3(a), 216.4(b)(3), 216.4(d)(2), 216.5(f), 216.6(a)(5), 216.6(b)(3), and 216.6(d)(2). An alien whose CPR status is terminated by USCIS may request an immigration judge review that termination decision during removal proceedings.

27. [^] If an alien's adjustment application was denied before the effective date of this guidance, November 21, 2019, the alien may file a new adjustment application (unless he or she is still able to timely file a motion to reopen or reconsider) for USCIS to adjudicate his or her application based on this guidance. See Notice of Appeal or Motion (Form I-290B) for more information.

28. [^] For general information on eligibility for adjustment, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A].

29. [^] Once removal proceedings have commenced, jurisdiction over an application for adjustment of status generally rests with the Executive Office for Immigration Review (EOIR). Therefore, USCIS generally does not have jurisdiction to adjudicate adjustment applications for applicants in removal proceedings, unless EOIR subsequently terminates those proceedings. Additionally, it is not necessary that an immigration judge have affirmed USCIS' decision to terminate CPR status before the new adjustment application may be filed. For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdiction [7 USCIS-PM A.3(D)].

30. [^] See INA 245(d) and 8 CFR 245.1(c)(6). See *Caraballo-Tavera v. Holder*, 683 F.3d 49 (2nd Cir. 2012). However, a K-1 nonimmigrant who is subsequently granted U nonimmigrant status (for victims of qualifying criminal activity) or T nonimmigrant status (for victims of a severe form of trafficking in persons) while in the United States may apply to adjust status based on any eligibility category that applies to him or her. See INA 248(b).

31. [^] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 11, Decision Procedures, Section A, Approvals, Subsection 1, Effective Date of Permanent Residence [7 USCIS-PM A.11(A)(1)].

32. [^] For more information, see Volume 12, Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3].

33. [^] For more information on denials, see Part A, Adjustment of Status Policies and Procedures, Chapter 11, Section C, Denials [7 USCIS-PM A.11(C)].

34. [^] See USCIS Policy Memorandum, Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens (PDF, 140 KB) (June 28, 2018).

Legal Authorities

INA 245(a) - Adjustment of status

INA 245(c) - Bars to adjustment of status

Forms

AR-11, Change of Address

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

I-129F, Petition for Alien Fiancé(e)

Appendices

No appendices available at this time.

POLICY ALERT - Adjustment on New Basis After Termination of Conditional Permanent Residence

November 21, 2019

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to update and clarify when USCIS may adjust the status of an applicant whose conditional permanent resident (CPR) status was terminated.

Read More

AFFECTED SECTIONS

7 USCIS-PM B.7 - Chapter 7 - Other Barred Adjustment Applicants

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 December 20, 2019