

# **The ABC'S Of Immigration: Consular Processing Versus Adjustment of Status**

by Gregory Siskind

There are two methods of securing permanent residence in the US once a person is approved for immigration. One is called consular processing; the other is adjustment of status. As the name implies, consular processing applicants apply for and process an immigrant visa at a US consulate abroad, most often in their home country. Adjustment of status is the process by which a person already in the US has their immigration status adjusted to that of a permanent resident. The applicant determines the desired method of processing at the time the initial petition for classification as an immigrant is filed.

Consular processing was once the only way to obtain an immigrant visa. When adjustment of status was created, it became highly popular and that attraction only increased after reentry bars were created in 1996. Those bars prevent certain people who leave the US after overstaying a visa from reentering the US.

## **CONSULAR PROCESSING**

### **How does one apply to consular process?**

USCIS forwards the approved immigrant petition to the National Visa Center (NVC), which is part of the State Department. When an immigrant visa number becomes available, the NVC will send a barcode sheet to the applicant, which must then be returned to the NVC with the appropriate fees (one check or money order per family member). Once payment has been received, the NVC will send form DS-230 Part I to the applicant for completion. Once that form has been returned to the NVC, the NVC will send form DS-230 Part II along with a list of documents that should be brought to the consular appointment.

### **Are any other forms required?**

Applicants will have to submit an Affidavit of Support (Form I-864) along with their complete federal tax returns.

### **Where do I send the forms?**

The address for the NVC is:

National Visa Center

32 Rochester Avenue

Portsmouth, New Hampshire 03801-2909

All correspondence with the NVC for a particular case should include the applicant's case number in the upper right hand corner.

### **After the paperwork and interview are completed, what is the next step?**

If the application is approved, the person will be issued an immigrant visa, which is good for only six months. If the person does not enter the US within that period of time, the visa will expire and the opportunity to immigrate will be lost.

If the application is denied, the principle consular officer at the post reviews it. If the

officer desires, he can get a second opinion from the State Department. However, if, after this point, the denial is upheld, there is no appeal available to the applicant.

## **ADJUSTMENT OF STATUS**

### **How does one apply through adjustment of status?**

A person applies for adjustment of status with the USCIS from within the US. Family-based adjustment applications are generally filed with a local USCIS office and employment-based applications are generally filed with a USCIS regional service center. However, there are exceptions to this basic rule so be sure to check at [uscis.gov](http://uscis.gov) before a case is filed. Along with the adjustment form, results of a medical examination, an affidavit of support, if required, evidence of the approval for immigration and a copy of the applicant's passport must be submitted. Evidence of any familial relationships must also be submitted, if family members are seeking to adjust their status with the principle applicant. The adjustment of status application may be filed together with the immigrant visa petition.

### **Are any other forms required?**

If the applicant wishes to work or travel abroad while the adjustment of status application is pending, additional forms must be filed. A person can receive work and travel authorization for only one year at a time, so in many cases, because of USCIS processing delays, the applicant must renew these documents.

### **Do adjustment of status applicants have to appear for an interview?**

Not all adjustment of status applicants are interviewed, although the law provides that any adjustment applicant may be interviewed. Interviews are always conducted in marriage cases, but are less frequent in other family relationships. Interviews are much less typical in employment-based cases.

### **After the forms and interview are completed, what is the next step?**

After approval for adjustment of status, it takes some months before the physical green card is obtained. If the approval follows an interview, the USCIS will stamp the applicant's passport with an indication that they are a US permanent resident. If there is no interview, the applicant will receive a notice that the application has been approved, which they can take to a local USCIS office and obtain the stamp. A few months later, they will receive the green card.

If the decision takes longer than 180 days, because of portability, an employment-based applicant may change employers.

Applicants should note that even without the physical card, once adjustment has been granted, the applicant IS a permanent resident. The stamp in the passport is legally equivalent to the actual green card.

## **CHOOSING BETWEEN CONSULAR PROCESSING & ADJUSTMENT OF STATUS**

Deciding whether to pursue consular processing or adjusting status can be a difficult choice. The chief advantage of consular processing is speed. Consular processing is generally much faster than adjusting status. Six to eight months is not unusual compared to one to three years at various USCIS offices around the US.

Adjusting status has several advantages. First, processing can take place with no traveling abroad. Also, the applicant can work while waiting for processing to take place. Additionally, if the decision takes longer than 180 days, because of portability, an employment-based applicant may change employers. Finally, processing in the US sometimes means that potential bars on reentry can be avoided that would keep an applicant outside the US for several years.

Another key advantage of adjusting status is that an I-140 employment based immigrant application and I-130 petitions for immediate relatives can be filed simultaneously with an adjustment of status application. This has helped to cut down the time advantage of consular processing. Recently, the USCIS has announced it will begin testing pilot programs for speedy processing of simultaneously filed petitions.

The question often arises over whether it is possible to pursue BOTH consular processing and adjustment of status simultaneously. The question is controversial. There is no statutory bar to processing both ways, but the USCIS takes the position that if it learns that one is pursuing both consular processing and adjustment of status at the same time, it will consider an adjustment application abandoned. This would typically arise when someone is in the process of adjusting status and files a request with the USCIS to cable an approval notice to a consulate to initiate consular processing. However, the issue will typically not arise in the reverse circumstances — when one begins with consular processing and then decides to pursue adjustment of status.

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