

**SOP for Section 289 / North American Indian Born in Canada / Adjustment of Status and completion of Form I-181. AS OF FEBRUARY 2013**

**General: Under Section 289 of the Act, American Indians born in Canada, with at least 50% American Indian blood, cannot be denied admission to the United States. The applicant has the burden of proof establishing eligibility.**

- **In order to begin this process, the applicant must establish that he/she possesses at least 50% American Indian blood.**
- **They must also present:**
  - **a “long form” birth certificate**
  - **at least three color passport type photographs**
  - **and a letter written on Tribal letterhead attesting to the fact that the applicant possesses at least 50% American Indian blood**
  - **and a Tribal card, any other document can be used as a supporting document.**

**(b) (7)(E)**

- **An “A” file must be created.**
- **Review all documentation presented by applicant.**
- **Complete a (b) (7)(E) and open and A-file per local procedures.**
- **Complete (b) (7)(E) on all applicants over the age of 14.**
- **If all documentation is acceptable, complete Form I-181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence.**

**(b) (7)(E)**

- **Make copies of all documents. (b) (7)(E) these cards cannot be sent out of the country. (Phone # also if they have one)**
- **In the remarks section of form I-181, enter the words “Canadian born North American Indian admitted for lawful permanent residence”.**
- **Under the box marked “other law” enter the section of law “8 CFR 289”**
- **Enter the class of admission as (b) (7)(E)**

- In the “Date of Action” block place your adjudication stamp with blue ink or admission stamp with red ink and sign your name in that block. Place the class of admission (b) (7)(E) and a validity date of one year from your action.
- Complete form I-89 Data Collection Card. Transaction side 1 only. Use the template and take a single pressed fingerprint (right index), obtain applicant’s signature in block.
- Pencil the applicant’s A-number on the back of the photo (lightly).
- Officers print your name in the certification #26 on I-89 and sign your name in the rectangle # 27.
- Two sets of fingerprints must be taken on the form FDA-258 (blue). If the applicant is 14 years of age or older, take a complete set of fingerprints on Form FD-258, in compliance with Section 264 of the Act. These fingerprints need not be forwarded for clearance to the FBI but should be retained in the A-file.
- If subject has a passport, the passport can be stamped with the temporary I-551 stamp with “A” number / sec. admitted under S13 / for 1 year from your date of action.
- If subject does not have a passport, then make up a temporary I-551 using arrival portion only, (affix a photo / use dry seal located in (b) (7)(E) Dry seal should be placed half on photo, half off.
- There is no fee for the form I-181 or the I-94 if one is issued.
- Complete an IO95 entry.
- Place all documents on Supervisor’s desk for file creation and mailing.

**Denied Applications:** In any instance where admission as a lawful permanent resident based on claimed American Indian Status is denied, either because documentation is lacking, a claim to eligibility turns out to be false, or because the claimant does not possess the requisite percentum of American Indian blood, an A-file should be created. Place a memorandum in the file indicating that the application has been denied and the reasons therefore. Verbally advise the applicant of the decision.

There is no appeal from the decision, although the claimant may renew his or her request if and when he or she is able to overcome the basis of the decision. Depending on the circumstances, such an applicant may be permitted to withdraw or may be processed for expedited removal in accordance with the procedures described in Chapter 17.15.