U.S. Citizenship and Immigration Services

Fiscal Year 2023 Employment-Based Adjustment of Status FAQs

The employment-based (EB) annual limit for fiscal year (FY) 2023 will be higher than was typical before the pandemic, though lower than in FY 2021 and FY 2022. We are dedicated to ensuring we use as many available employment-based visas as possible in FY 2023, which ends on Sept. 30, 2023.

Frequently Asked Questions

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Recent Developments

Q. Can you estimate family-sponsored or employment-based immigrant visa use by USCIS and DOS during FY 2022?

A. The Department of State (DOS) has determined that the FY 2022 employment-based annual limit was 281,507 – more than double the typical annual total – due to unused family-based visa numbers from FY 2021 being allocated to the next fiscal year's available employment-based visas. By the end of the fiscal year on Sept. 30, 2022, the two agencies used all of these employment-based immigrant visas, apart from 6,396 EB-5 visas that Congress has allowed to carry over to the next fiscal year. Of these, USCIS and the Executive Office for Immigration Review (EOIR) approved more than 220,000 employment-based adjustment of status applications for individuals already present in the United States. *(Updated 10/26/2022)*

Q. Can you estimate how many employment-based immigrant visas USCIS and DOS will use during FY 2023?

A. DOS currently estimates that the FY 2023 employment-based annual limit will be approximately 197,000, due to approximately 57,000 unused family-sponsored visa numbers from FY 2022 being added to the employment-based limit for FY 2023. USCIS is committed, with its partners at DOS, to using all the available employment-based visas in FY 2023. USCIS will continue to take multiple, proactive steps in coordination with its partners at DOS to maximize the issuance of visas. *(Updated 10/26/2022)*

Note: Our Immigration and Citizenship Data "All USCIS Application and Petition Form Types" and "Application for Adjustment of Status (Form I-485)" quarterly reports do not provide a comprehensive picture of employment-based visa use. The quarterly reports do not include the visas issued by our partners at DOS, and they include 4th preference employment-based categories under "other." The quarterly "Legal Immigration and Adjustment of Status" reports published by the DHS Office of Immigration Statistics include adjustments of status but capture immigrant admissions at ports of entry rather than immigrant visa issuance by DOS, and as a result do not reflect year-to-date visa use. Neither report can be used to determine the number of employment-based immigrant visas used during a quarter.

Q. How is the employment-based annual limit distributed between the categories? What categories benefit from the estimated 57,000 unused family-sponsored visa numbers added to the employment-based annual limit?

A. Under INA 203(b), Congress divides the overall employment-based annual limit between the five employment-based categories based on fixed percentages. EB-1, EB-2, and EB-3 each receive 28.6% of the overall limit, and EB-4 and EB-5 each receive 7.1% of the overall limit. Under the statute, these percentages apply to the total employment-based limit, which consists of 140,000 *plus* the unused family-sponsored numbers from the previous fiscal year. In other words, if there were unused family-sponsored numbers in the previous fiscal year, they are distributed based on the same fixed percentages. The unused family-sponsored numbers are added to the employment-based limit immediately at the start of the year, though DOS makes their final determination of the annual limit later in the year. DOS, in collaboration with USCIS, took the reasonable estimate of unused family-sponsored numbers from FY 2022 into account when setting the dates in the October 2022 Visa Bulletin. *(Added 10/26/2022)*

Q. How will the unused family-sponsored visa numbers from FY 2022 that are added to the employment-based limit in FY 2023 be distributed, in light of per-country limits?

A. Under INA 201(d)(2), the unused family-sponsored visa numbers from the previous fiscal year are added to the overall employment-based limit. Under INA 203(b), that overall employment-based limit is then divided between the five employment-based preference categories based on the fixed percentages as described above. However, within each employment-based category, the visas are still distributed with the per-country limits in effect, *unless* the exception to the per country limits of INA 202(a)(5) applies within that category. This exception is explained in detail in the Allocation of Visa Numbers section on this page. The unused family-sponsored visa numbers added to the employment-based limit in the subsequent fiscal year are not automatically distributed to applicants with the earliest priority dates because the per-country limits still apply. *(Added 10/26/2022)*

Retrogression

Q. Why do the dates in the Visa Bulletin sometimes retrogress?

A. Congress explicitly directs DOS to "make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within [the family-sponsored, employment-based and diversity categories] and to rely upon such estimates in authorizing the issuance of visas." See INA 203(g). DOS makes such estimates, and the Visa Bulletin reflects those "reasonable estimates."

However, these are estimates, and DOS working collaboratively with USCIS cannot know exactly how many individuals may ultimately apply for adjustment of status or an immigrant visa or have their applications approved. The demand for visas for adjustment of status depends on the response of noncitizens to the Visa Bulletin and the demand for immigrant visas depends on the response to the DOS Welcome Letter issued by the National Visa Center. Visa availability for a particular category or country can also change throughout the year through the fall up/fall down provisions (explained in the Allocation of Visa Numbers section on this page), through lower (or higher) use of family-sponsored visas (for example, by noncitizens chargeable to India or China), and through lower (or higher) than anticipated demand from applicants chargeable to countries other than India or China.

This balancing act is a result of Congress allowing DOS to rely on "reasonable estimates of the anticipated numbers of visas to be issued" while setting very strict and detailed annual limits and rules for the distribution of visas. Congress created a system in which DOS must regularly adjust the population of noncitizens who can potentially be issued visas (set by the Final Action Dates) in order to create sufficient demand for such visas (allowing the agencies the best chance to use all of the visas) while also restricting the issuance of such visas (to ensure that visa issuance remains within the limits established by Congress).

When the demand for visas is higher than estimated and/or the availability of visas is lower than estimated, this may require retrogression of a Final Action Date in order to ensure that visa use remains within the limits established by Congress and that visas within a particular queue (based on category and country of chargeability) are generally allocated to those with the earliest priority dates as possible. *(Added 10/26/2022)*

Q. Why has DOS retrogressed (set back) certain Final Action Dates or applied new Final Action Dates in the Visa Bulletin for October 2022?

A. In the case of the October 2022 Visa Bulletin, without a retrogression of the Final Action Date for India EB-2, visa use by the two agencies would likely exceed the available visas within the first few weeks of the fiscal year, in violation of the statute. In setting the first Visa Bulletin of the fiscal year each October, DOS makes reasonable estimates of the available employment-based immigrant visas in each category. It then, in collaboration with USCIS, reviews the pending inventory of adjustment of status and immigrant visa applications, makes reasonable estimates of new applications, estimates how many of the pending and newly filed applications are likely to result in visa use during the fiscal year, and compares those values to the available visas.

When estimating how many pending or newly filed applications are likely to result in visa use during a fiscal year, the agencies consider a variety of factors, including but not limited to:

- The potential that a certain percentage of applications will not be approved;
- Accounting for noncitizens who have multiple pending adjustment of status applications in different categories;
- Estimating and considering the number of family members who may decide to immigrate with the principal applicant;
- Considering where applications are in the adjudication process and how likely they are to result in visa use in the immediate future; and
- Adjustment of status applicants with multiple pending or approved immigrant visa petitions in different EB categories who may decide to transfer between categories based on which category

seems most advantageous to them.

When the amount of demand for a particular category (or a country within a category) exceeds the supply of visa numbers available, the category/country is considered “oversubscribed” and DOS applies a cut-off date in the Final Action Dates chart to ensure that visa use remains within the quarterly and annual limits, as well as the category and per-country limits and order of consideration, as established by Congress. *(Updated 10/26/2022)*

Q. Does retrogression affect my priority date or place in line for an immigrant visa?

A. If a noncitizen is seeking a visa in a preference category that required a labor certification from the Department of Labor (DOL), their priority date generally is the date DOL accepts the labor certification application for processing. For all other employment-based preference categories, the priority date generally is the date USCIS accepts the underlying petition for processing. Retrogression does not affect your priority date or your place in line for an immigrant visa. You may still receive a visa when one becomes available to you based on that priority date. Retrogression only means that due to the statutory limits, visas are not available to all noncitizens who want them, even if they have already filed an application for adjustment of status.

Q. My category retrogressed or a Final Action Date was applied. What is my path forward to a Green Card?

A. When a visa becomes available to you in the future based on the Final Action Date for your country and category as compared to your priority date, USCIS will be able to approve your adjustment of status application if you are admissible, merit a favorable exercise of discretion, and are otherwise eligible. While your I-485 application for adjustment of status is pending, you are eligible to seek certain benefits, among which are:

- You may apply for employment authorization, and that employment authorization, if granted, is not tied to a particular employer, position, or job classification, and is currently granted in increments of up to two years;
- You may apply for advance parole, which, if granted, authorizes you to travel outside of the United States during the advance parole validity period and apply for parole into the United States upon your return (at a U.S. port of entry) without abandoning your adjustment of status application;
- If your employment-based adjustment of status application has been pending with USCIS for 180 days or more, you may request to "port" the underlying job opportunity upon which your adjustment is based to a new employer or new job offer that is the same or similar to the original one without the portability request alone impacting your priority date;
- Depending on the facts of your case, your children who have also applied for adjustment of status as your derivative beneficiaries might not age out of eligibility to adjust status as your derivative beneficiaries; and
- You are generally considered to be "in a period of stay authorized" while your application is pending and would not accrue unlawful presence while “in a period of authorized stay.”

Please note that USCIS is making every effort to reduce processing times for employment authorization and advance parole applications. *(Updated 10/26/2022)*

Q. If my adjustment of status application was approved, but then the Final Action Date for my category and country of chargeability later retrogresses, does that affect my status as a lawful permanent resident?

A. Retrogression has no effect on lawful permanent residents. *(Added 10/26/2022)*

Q. Does retrogression affect consular processing?

A. Yes. DOS and USCIS are only authorized to issue immigrant visa numbers (for purposes of consular processing or adjustment of status) if the applicant in the given family-sponsored or employment-based preference category has a priority date which is earlier than the date shown in the Final Action Dates chart of the Visa Bulletin for their country of chargeability and immigrant visa category (or the Visa Bulletin shows that the category is current, that is, visa numbers are authorized for issuance to all qualified applicants). *(Added 10/26/2022)*

Q. How does retrogression of the Final Action Dates affect eligibility for exemption from the 6-year limit on H-1B status?

A. Under INA 214(g)(4), the period of "authorized admission" as an H-1B nonimmigrant "may not exceed 6 years." However, there are certain exemptions to this limitation, including the exemption established by Congress in section 104(c) of the American Competitiveness in the Twenty-First Century Act (PDF) and codified in regulation in 8 CFR 214.2(h)(13)(iii)(E). Under that exemption, USCIS may grant additional periods in H-1B status in increments of up to 3 years for a noncitizen who currently maintains or previously held H-1B status, who is the beneficiary of an approved EB-1, EB-2, or EB-3 immigrant visa petition, and who is eligible to be granted LPR status in one of those categories but for the application of the per country limitation. If an applicant for adjustment of status is otherwise eligible for the exemption and does not have an immigrant visa available to them in EB-1, EB-2, or EB-3 due to the application of the per-country limitations of INA 202(a)(2), USCIS may grant additional periods in H-1B status in increments of up to 3 years. *(Added 10/26/2022)*

Q. Does retrogression, the issuance of a Request for Evidence or Notice of Intent to Deny, or the scheduling of an interview reset the 180-day portability clock?

A. No. For more information about portability, please see Volume 7, Part E, Chapter 5 of the USCIS Policy Manual. *(Added 10/26/2022)*

Q. Do biometrics "expire" due to retrogression?

A. No, the biometrics collected by USCIS in connection with a pending adjustment of status application never "expire." While biometrics-based background checks are valid for a period of 15 months, USCIS refreshes the background check associated with the pending adjustment of status application by resubmitting the previously provided biometrics; a new biometrics appointment is not required. *(Added 10/26/2022)*

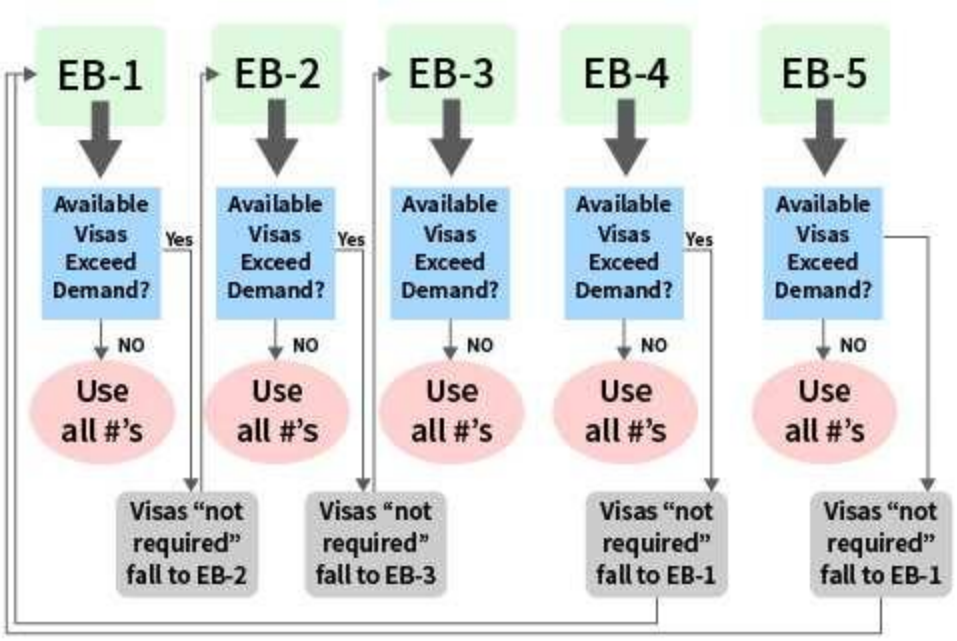
Allocation of Visa Numbers

Q. If a category/country is "Current" in the Visa Bulletin, does that mean that there must be little or no inventory of pending applications with USCIS and DOS for that category/country?

A. No. A category can be "Current" in the Visa Bulletin even when there are tens of thousands of applications pending with the agencies. "If there are sufficient [remaining visa] numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered 'Current.'" See DOS's The Operation of the Immigrant Numerical Control System (PDF). For example, if EB-2 has 49,000 visas available for applicants from countries other than India and China, and there are 48,000 pending applications, then the category can be "Current." *(Added 10/26/2022)*

Q. If visas are "not required" in a particular employment-based category, are they made available in the other employment-based categories?

A. Congress has established statutory provisions that allow for the flow of visas "not required" in certain employment-based categories to be made available to applicants in other employment-based categories. These are commonly referred to as the "fall up/fall down" provisions. Under INA 203(b), visas not required in EB-4 and unreserved visas not required in EB-5 are made available in EB-1. Visas not required in EB-1 are made available in EB-2, and visas not required in EB-2 are made available in EB-3. Congress did not create a pathway in the statute for visas not required in EB-3 to be made available in another employment-based category. Please note that with the enactment of the EB-5 Reform and Integrity Act of 2022 on March 15, 2022, Congress established special rules for the carryover of some unused EB-5 visas from one fiscal year to the next. As a result, not all EB-5 visas that are "not required" in that category can be made available in EB-1. DOS, in collaboration with USCIS, considers every month if visas may be "not required" in a particular employment-based category based on reasonable estimates, and sets the dates in the Visa Bulletin accordingly. Below is a simplified visual representation of what this looks like. *(Updated 10/26/2022)*



Q. Why does USCIS not allow noncitizens to apply for adjustment of status based on the Dates for Filing chart every month of the year?

A. When we determine that there are immigrant visas available for the filing of additional adjustment of status applications, noncitizens must use the Dates for Filing chart to determine when to file an adjustment of status application with USCIS. Otherwise, use the Final Action Dates chart to determine when to file an adjustment of status application with us. We make this determination

monthly based on how many visa numbers remain available for the year, USCIS and DOS visa-available inventory, and operational considerations.

Q. When does the special exception to the per-country levels for the employment-based categories apply?

A. Under INA 202(a)(5)(A), if the total number of visas available in one of the employment-based categories for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available in that category will be issued without regard to the per-country numerical limitation. This can happen as early as the first day of a fiscal year, depending on the relevant data. USCIS understands that there are some misconceptions about this topic, and states again that this special exception to the per-country levels applies (if the statutory criteria are met) in any quarter of a fiscal year, not just in the fourth quarter. For example, in the October 2022 Visa Bulletin, EB1 is "Current" for all countries of chargeability, indicating that the exception applies (based on reasonable estimates) and that visas in that category are being issued without regard to the per-country numerical limitation, benefitting applicants chargeable to India and China. *(Updated 10/26/2022)*

Q. When is a visa number subtracted from the annual limit?

A. A visa number is subtracted from the annual limit when the Department of State issues an immigrant visa to a noncitizen through consular processing or when a noncitizen acquires lawful permanent resident status upon approval of their application for adjustment of status, either with USCIS or the Executive Office for Immigration Review (EOIR) of the Department of Justice. A visa number is not subtracted from the annual limit based on any other preliminary step in the adjudication process (that is, not at the time of filing, not at the time of interview scheduling, not at the time of transferring to a USCIS Field Office, not with the issuance of a Request for Evidence, not with the approval of the underlying immigrant visa petition, not with the granting of a transfer of underlying basis request, etc.). If USCIS has approved an adjustment of status application for a principal applicant, but the applications of dependent family members remain pending, immigrant visa numbers have not yet been subtracted from the annual limit for the dependent family members. *(Added 10/26/2022)*

Q. What is cross-chargeability and how does USCIS apply it?

A. In certain situations, an applicant may benefit from the charging of their visa number to their spouse's or parent's country of birth rather than their own. This is known as cross-chargeability, and is found in INA 202(b).

In practice, cross-chargeability is used where the preference quota category is backlogged for one spouse's country of chargeability but is current for the other spouse's country of chargeability. The principal applicant may cross-charge to the derivative spouse's country, and the derivative spouse may cross-charge to the principal's country.

Derivative children may cross-charge to either parent's country as necessary. Parents may not cross-charge to a child's country. In other words, the principal applicant or derivative spouse may never use their child's country of birth for cross-chargeability.

Whenever possible, USCIS applies cross-chargeability to preserve family unity and allow family members to immigrate together.

For more information, please see the USCIS Policy Manual, Volume 7, Part A, Chapter 6. *(Added 10/26/2022)*

Q. When USCIS uses the phrase "visa available" when referring to pending applications for adjustment of status, what does this mean?

A. When USCIS uses the phrase "visa available" in reference to a pending adjustment of status application, it means that the applicant in the given family-sponsored or employment-based preference category has a priority date that is earlier than the date shown in the Final Action Dates chart of the Visa Bulletin for their country of chargeability and immigrant visa category (or the Visa Bulletin shows that the category is current, that is, visa numbers are authorized for issuance to all qualified applicants). Please note that just because a visa is available for issuance to an applicant does not mean that the applicant has been allocated a visa. *(Added 10/26/2022)*

Q. How does USCIS determine if an immigrant visa is "immediately available" when considering whether to accept or reject an adjustment of status application?

A. Under the regulations, an immigrant visa in the family-sponsored and employment-based preference categories "is considered available for accepting and processing" the adjustment of status application "if the applicant has a priority date…which is earlier than the date shown in the [Visa] Bulletin" for their country and category (or the Visa Bulletin shows that the category is current, that is, visa numbers are authorized for issuance to all qualified applicants). See 8 CFR 245.1(g)(1). To make this determination, USCIS consults the appropriate chart in the Visa Bulletin (Final Action Dates or Dates for Filing) for the month when the application was received at the correct USCIS filing location per the form instructions. USCIS posts which charts may be used on its Adjustment of Status Filing Charts from the Visa Bulletin. Only the publication of a revised Visa Bulletin for a month would alter USCIS' decision about accepting or rejecting an application due to visa availability.

Please note that accepting or rejecting a benefit request is part of USCIS intake processing; it is not the approval or denial of the benefit request by an adjudicator. *(Added 10/26/2022)*

Family Members

Q. When is a derivative child's applicant age locked under the Child Status Protection Act, and how is that age calculated?

A. In the employment-based preference categories, a child's age under the Child Status Protection Act (CSPA) is the child's biological age at the time of visa availability less the amount of time that the underlying petition was pending, but only if the child sought to acquire status as a lawful permanent resident within one year of the date a visa is available. For more information about when a visa is considered available for CSPA purposes as well as other details about CSPA, please see Volume 7, Part A, Chapter 7 of the USCIS Policy Manual.

Q. When USCIS adjudicates a principal applicant's adjustment of status application, does USCIS also adjudicate the adjustment of status applications of the dependent family members? What if dependent family members are not approved before priority dates move back?

A. USCIS makes every effort to adjudicate the principal and derivative family members at the same time, but this is not always possible. If we deem approvable a Form I-485 of a derivative family member and a visa number is not available based on the Final Action Dates chart in the Visa Bulletin at the time we make that determination, the application will remain pending until a visa number is available, DOS allocates a visa, and USCIS completes the adjudication.

Please note that when INA 203(d) states that a derivative family member "shall…be entitled to the same status, and the same order of consideration…if accompanying or following to join" the principal applicant, it means that a derivative has the same priority date (order of consideration) and same immigrant visa category as the principal applicant. It does not mean that the derivative spouse or child always receives a visa or adjusts status on the same date as the principal applicant. This is clear from the language about "accompanying or following to join," which allows a derivative to receive an immigrant visa or adjust status after the principal applicant. For more information about derivative applicants and "accompanying or following to join," please see Volume 7, Part A, Chapter 6 of the USCIS Policy Manual. *(Updated 10/26/2022)*

Q. If I applied for adjustment of status as a principal applicant, and my spouse applied as my dependent family member, but now visas are unavailable for us based on my petition but they are available based on a petition filed for my spouse, may we transfer our pending adjustment of status applications to her petition?

A. Yes. In a situation like this, where both spouses have one or more petitions that could serve as the underlying basis for their adjustment of status applications, they can request to transfer the underlying basis from a petition filed on behalf of one spouse to a petition filed on behalf of the other if the new immigrant visa category allows for dependent spouses. For example, the couple could not transfer to a petition filed in an immediate relative category where dependents are not permitted under the statute. This is different from cross-chargeability, which is when an applicant may benefit from the charging of their visa number to their spouse's or parent's country of birth rather than their own. For more information about cross-chargeability, please see the Allocation of Visa Numbers section on this page. *(Added 10/26/2022)*

Transfer of Underlying Basis

Q. How does the transfer of underlying basis request process work?

A. We have created a centralized location for the receipt of transfer of underlying basis requests between the employment-based preference categories that are accompanied by a Form I-485 Supplement J. You may submit your written request and completed Supplement J to:

U.S. Postal Service (USPS):

USCIS
Attn: Supp J
PO Box 660834
Dallas, TX 75266-0834

FedEx, UPS, and DHL deliveries:

USCIS
Attn: Supp J (Box 660834)
2501 S. State Hwy. 121 Business
Suite 400
Lewisville, TX 75067-8003

You should only send transfer requests accompanied by a Supplement J to this address. Do not send other forms, documents, or evidence to this address.

Employment-based transfer requests that are not accompanied by a Supplement J should be submitted in writing to the USCIS office with jurisdiction over your pending I-485 application.

If you have already submitted a transfer request to a USCIS office, you should not submit a new request. All requests to transfer the underlying basis already received or that will be received at a USCIS office will be processed as usual by the USCIS office with jurisdiction over your pending Form I-485.

For transfer requests accompanied by Supplement J submitted to this address at the Dallas Lockbox, we scan the documents, upload the Supplement J information into our systems (generating a receipt notice), and notify the office or service center that currently holds the related adjustment of status application that the scanned request is available in our electronic systems. A USCIS officer reviews the transfer request and will grant or deny the request as a part of the adjudication of the adjustment of status application.

A receipt notice does not mean that USCIS has granted the transfer request, it just indicates that USCIS has uploaded the Supplement J information into our systems. USCIS does not notify the applicant when it grants a transfer request. *(Updated 10/26/2022)*

Q. How does a transfer of underlying basis request affect the calculation of a child's age under the Child Status Protection Act (CSPA)?

A. As stated in Volume 7, Part A, Chapter 7 of the USCIS Policy Manual, "[i]f an applicant has multiple approved petitions, the applicant's CSPA age is calculated using the petition underlying the adjustment of status application." When we approve a request to transfer the underlying basis of the pending adjustment of status application, we calculate the CSPA age using the approved petition that forms the new basis of the adjustment application. If we transfer an applicant's underlying basis, then we calculate an eligible applicant's CSPA age using the applicant's age at the time the immigrant visa becomes available in the new category minus the time the immigrant petition that forms the new basis of the adjustment of status application was pending.

Q. If the immigrant visa petition underlying my pending adjustment of status application has not been adjudicated, will this prevent me from transferring the basis to a different petition?

A. If you have a pending petition, that does not prevent us from granting a request to transfer the underlying basis of your pending Form I-485 to a different Form I-140.

Q. Why must applicants request to transfer the underlying basis of their pending Form I-485? Why does USCIS not review its records and make the decision for the applicants?

A. The decision to grant a transfer request is made in the discretion of USCIS. If we grant the transfer request, we will adjudicate the Form I-485 application based on the petition to which the Form I-485

was transferred. If we do not grant the transfer request, we will adjudicate the Form I-485 application based on the petition associated with the Form I-485 application prior to the transfer request.

We do not presume to know whether an adjustment of status applicant would like to transfer their pending Form I-485 application from the petition on which it is currently based to a different petition. We require transfer requests to be in writing from the applicant to ensure that the record accurately reflects the basis on which the applicant requests us to adjudicate the adjustment of status application.

To highlight the importance of applicants making this decision themselves and communicating it to us, here is an example. Consider a noncitizen with a pending Form I-485 who does not have an available visa based on the underlying petition. They have an older approved petition in a different preference category where a visa is available to them. However, the petition was filed over 10 years ago, and the noncitizen no longer has a relationship with the potential employer, or the employer may no longer exist or no longer be willing to employ the noncitizen. As a result, the noncitizen could not adjust status based on that petition.

Q. What happens when an EB-3 I-140 downgraded petition is pending and attached to a still-pending Form I-485? Is it true that the EB-3 I-140 does not have to be approved to allow a transfer of underlying basis of the Form I-485 to an approved EB-2 I-140 where the EB-2 priority date is current under the Final Action Dates?

A. A pending EB-3 petition in this scenario does not prevent USCIS from granting the applicant's request to transfer the underlying basis of their pending Form I-485 to a separate, approved Form I-140.

Q. If USCIS has granted my transfer of underlying basis request, does it mean that an immigrant visa has been allocated to me?

A. No, USCIS granting an applicant's transfer of underlying basis request does not mean that an immigrant visa has been allocated to the applicant. For more information about transfer of underlying basis, please see Volume 7, Part A, Chapter 8 of the USCIS Policy Manual. *(Added 10/26/2022)*

Q. If USCIS grants my transfer of underlying basis request, will USCIS consider my eligibility for adjustment of status on both bases? For example, if I applied for adjustment of status based on an EB-3 petition and USCIS granted my transfer request to an EB-2 petition, will USCIS consider my eligibility on either petition?

A. No, if USCIS grants an applicant's transfer of underlying basis request, USCIS will only adjudicate the adjustment of status application on the most recently-granted transfer request. If an employment-based adjustment of status applicant wants to transfer to another basis, they must submit a new transfer request. In this example, USCIS would only consider the applicant's eligibility for adjustment on the basis of the EB-2 petition, unless the applicant again requested a transfer to a third basis. *(Added 10/26/2022)*

Filing and Processing Questions

Q. If I am applying for adjustment of status, should I submit Form I-693 with my Form I-485?

A. USCIS encourages adjustment of status applicants to submit Form I-693, Report of Medical Examination and Vaccination Record, with their Form I-485, Application to Register Permanent Residence or Adjust Status. Doing so will help limit the need for USCIS to send Requests for Evidence, reduce processing times, and aid USCIS as it works with DOS to use all available visas.

Q. If I did not file a Form I-693 with my pending Form I-485, should I send one in now or wait for USCIS to request it, and why?

A. Noncitizens with pending adjustment of status applications should not send an unsolicited Form I-693 to us. Given the rapid movement of files between directorates and offices as we strive to optimize resources across the agency, it would be difficult to match an unsolicited Form I-693 with the related adjustment of status applications in a timely and efficient manner. This could delay the adjudication of adjustment of status applications while Forms I-693 are matched up to adjustment applications. We are proactively identifying employment-based adjustment of status applications with available visas that lack a valid Form I-693 and contacting applicants directly to request that form.

If your underlying petition is approved and a visa is available to you, but you know that your previously filed Form I-485 does not have a valid Form I-693, it will help USCIS use the available visas and adjudicate your application if you visit a civil surgeon and have a valid Form I-693 on hand when we send the request to you. The "60-day rule," which has been temporarily waived, does not apply to Forms I-693 signed by the civil surgeon after you have filed Form I-485.

Q. My immigrant visa petition has been approved and I have a pending adjustment of status application. What happens next?

A. In FY 2023, USCIS intends to transfer adjustment of status applications in the first three employment-based preference categories from the Texas Service Center (TSC) and Nebraska Service Center (NSC) to the National Benefits Center (NBC) after the approval of the petition. The Field Operations Directorate will adjudicate the adjustment of status applications.

Q. If I have more than one pending application for adjustment of status, and USCIS approves one of them, what does it do with the others?

A. If a noncitizen has become a lawful permanent resident, USCIS would deny any other pending adjustment of status applications. *(Added 10/26/2022)*

Q. What does a "Case Remains Pending" message mean in the USCIS Case Status Online tool?

A. A "Case Remains Pending" message in case status online indicates that an officer reviewed the application and determined that it could not be approved on that date because the Department of State could not allocate a visa number. Once a visa number can be allocated, USCIS will resume the processing of the application. If the applicant has submitted a transfer of underlying basis request, USCIS will continue processing that request and moving the application forward in the adjudication process. *(Added 10/26/2022)*

Q. Why do adjustment of status applicants who have lived in the United States for many years have to demonstrate that they are not inadmissible under the health-related grounds of INA

212(a)(1)?

A. USCIS may only adjust the status of a noncitizen to lawful permanent residence under INA 245(a) if the noncitizen demonstrates that they are "admissible to the United States for permanent residence." The statutory language relating to both adjustment of status and the health-related grounds of inadmissibility require USCIS to apply those grounds of inadmissibility to all adjustment of status applicants regardless of the number of years they have already lived in the United States in other statuses (with a limited exception for immunizations for certain adopted children 10 years of age or younger). USCIS cannot create a waiver or exemption from the health-related grounds of inadmissibility where Congress has not done so. *(Updated 10/26/2022)*

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