

## USCIS Response to Coronavirus (COVID-19)



U.S. Citizenship  
and Immigration  
Services

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## Fiscal Year 2022 Employment-Based Adjustment of Status FAQs

The overall employment-based annual limit for immigrant visas in fiscal year 2022 is approximately twice as high as usual, primarily due to consular closures abroad during the COVID-19 pandemic which led to almost all 140,000 family-sponsored visa numbers going unused during fiscal year (FY) 2021. We are dedicated to ensuring we use as many available [employment-based visas](#) as possible in FY 2022, which ends on Sept. 30, 2022.

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, Report of Medical Examination and Vaccination Record, **we recommend you [visit a civil surgeon](#) and have a valid Form I-693 on hand** when we send the request to you. This is particularly important if you recently received a notice that your application was transferred from a USCIS service center to a USCIS field office and you know your application does not have a valid Form I-693. If you are a noncitizen with pending adjustment of status applications, do **not** send an unsolicited Form I-693 to us, as explained in detail below. 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.

Read more about the [many steps \(PDF, 1015.37 KB\)](#) we have already taken this fiscal year to help ensure we use all of the available employment-based immigrant visas.

### Frequently Asked Questions

#### **How many employment-based visas did USCIS and DOS use in FY 2021? How many employment-based visas went unused in FY 2021?**

The annual limit for employment-based visa use in FY 2021 was 262,288, nearly double the typical annual total. The Department of State (DOS) publishes the official figures for visa use in their [Report of the Visa Office](#). Overall, the two agencies combined to use 195,507 employment-based immigrant visas in FY 2021. DOS issued 19,779 employment-based immigrant visas, and USCIS used 175,728 employment-based immigrant visas through adjustment of status, more than 52% higher than the average before the pandemic. Despite our best efforts, 66,781 visas went unused at the end of FY 2021.

#### **UPDATED: Can you estimate how many family-sponsored or employment-based immigrant visas USCIS and DOS will use during FY 2022?**

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DOS has determined that the FY 2022 employment-based annual limit is 281,507 – (slightly more than double the typical annual total) – due to unused family-based visa numbers from FY 2021 being allocated to the current fiscal year’s available employment-based visas. Through July 31, 2022, the two agencies have combined to use 210,593 employment-based immigrant visas (FY2022 data is preliminary and subject to change). USCIS alone approved more than 10,000 employment-based adjustment of status applications in the week ending August 14, 2022, and DOS continues its high rate of visa issuance, as well. We remain committed to taking every viable policy and procedural action to maximize our use of all available visas by the end of the fiscal year and are well-positioned to use the remaining visas.

**Note:** Our Immigration and Citizenship Data “All USCIS Application and Petition Form Types” and “Application for Adjustment of Status (Form I-485)” quarterly reports will not be as up-to-date as the above number. The quarterly reports do not include the visas issued by our partners at DOS and they include certain 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.

### **NEW: Will my case be processed faster if I file a second Form I-485?**

Submitting a new adjustment of status application typically does not result in faster adjudication, and may have the opposite effect by adding extra burden to the USCIS workload. We are identifying and prioritizing all employment-based adjustment of status applications with available visas and approved underlying petitions, including those received prior to this fiscal year. This includes applications where noncitizens have submitted transfer of underlying basis requests. Please see below for a full explanation of how to submit a transfer of underlying basis request.

### **What are the key challenges in using the available employment-based visas in FY 2022?**

In FY 2022, the key challenges we have faced in processing the extraordinary number of available employment-based immigrant visas include :

- USCIS capacity constraints. Due to the COVID-19 pandemic and resource constraints resulting from the prior administration, we face an unprecedented backlog of cases across most forms processed by the agency. All of these forms – for naturalization, employment authorization documents, humanitarian petitions, family reunification, and many more — are competing for limited resources and adjudications officers at a time when we need to surge resources to ensure we use of the unprecedented number of employment-based visas;
- Lower-than-optimal demand in EB-1 and EB-2 categories earlier this fiscal year;
- Continued capacity limitations at DOS consular posts;
- Missing or invalid Form I-693 filings; and
- Lapse in authorization of the EB-5 Regional Center Program until March 2022. We are committed to restarting the program, including the changes required by the new authorizing legislation.

### **What measures has USCIS taken during FY 2022 to use the available employment-based visas?**

Our efforts to use all of the available employment-based visas during FY 2022 include:

- Prioritizing the processing and adjudication of employment-based adjustment of status applications and underlying petitions at our lockbox intake facilities, the National Benefits Center, our service centers, and our field offices

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- Continuing to apply risk-based interview waiver determinations for employment-based adjustment of status applications, enabling us to adjudicate most applications without interview;
- Working collaboratively with DOS to ensure that the dates in the Visa Bulletin have been significantly advanced to allow for the filing and adjudication of sufficient immigrant visa and adjustment of status applications;
- Allowing applicants to use the Dates for Filing chart in the DOS Visa Bulletin through May 2022;
- Providing overtime funds and supplemental USCIS staff to support employment-based adjustment of status and underlying petition processing and adjudication
- Prioritizing adjudication of underlying immigrant visa petitions (after accounting for premium processing) to focus our efforts on beneficiaries who may receive immigrant visas in FY 2022;
- Eliminating a major backlog of noncitizens awaiting biometrics appointments, which stood at 1.4 million in January 2021, and launching a biometric reuse process to reuse for certain applicants to create efficiencies;
- Redistributing employment-based adjustment of status workloads between offices and directorates to match the workloads with the available resources;
- Publishing communication materials in [January](#), [February](#), [March](#), and [April 2022](#) notifying the public that USCIS lacked sufficient inventory in the EB-1 and EB-2 categories and encouraging eligible noncitizens to consider applying for adjustment of status in those categories;
- Establishing a new process and a dedicated single mailing address for receiving requests from employment-based adjustment of status applicants who wish to transfer their pending adjustment of status applications to a different employment-based category;
- Publishing communication materials about this new [transfer of underlying basis process](#), encouraging eligible noncitizens to consider submitting requests;
- Publishing [communication materials](#) encouraging potential adjustment of status applicants to include a valid Form I-693, Report of Medical Examination and Vaccination Record, with their adjustment of status applications;
- Proactively identifying applications that lack a valid Form I-693 and issuing requests for evidence;
- Since Dec. 9, 2021, in collaboration with the Centers for Disease Control and Prevention, temporarily waiving the requirement that the civil surgeon sign Form I-693 no more than 60 days before an applicant files for adjustment of status, through Sept. 30, 2022; and
- Initiating an ambitious hiring plan to fill 95% of the agency's vacancies by the end of calendar year 2022. These additional personnel will expand our capacity to process and adjudicate all pending applications, petitions, and requests, including employment-based visas.

### **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?**

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 Form I-693s 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.

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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.

**UPDATED: If I receive a notice of that USCIS is transferring my Form I-485 to another office, does this mean my case is active and moving toward adjudication?**

Generally, yes. We are actively transferring tens of thousands of employment-based adjustment of status applications with approved immigrant visa petitions and available visas from service centers to the Field Operations Directorate, and within that directorate between the National Benefits Center and individual field offices. While there are several reasons we might transfer an application between offices, a transfer notice indicates activity in the processing of your application. We transfer applications to maximize the use of all of our resources across the agency to help ensure we use all visas available this fiscal year.

If you have received a transfer notice, your underlying petition is approved, a visa is available to you, and you know that your previously filed Form I-485 does not have a valid Form I-693, obtaining a valid Form I-693 in the meantime may allow you to respond more quickly when we send the request to you.

**My immigrant visa petition has been approved and a visa is available to me under the Final Action Dates chart, but it appears USCIS did not transfer my adjustment of status application from the Texas or Nebraska service centers to the Field Operations Directorate. Why not?**

We continue to identify and transfer adjustment of status applications with approved petitions and available visas from the service centers to the Field Operations Directorate. As of early June 2022, we had not yet transferred all the files. We also approve thousands of new petitions linked to pending adjustment of status applications each week. We have not targeted every application with an approved petition and available visa for transfer to the Field Operations Directorate immediately. If a service center has issued a Request for Evidence or is otherwise actively processing a pending benefit request, we may not transfer the file now, but we might transfer it later. As of mid-June 2022, we had transferred approximately 67,000 applications from the service centers to the Field Operations Directorate.

**UPDATED: Why does the data on the USCIS website show such lengthy processing times for Form I-485s at the Texas Service Center and the Nebraska Service Center?**

We understand that it can be disconcerting when the [processing times](#) on our website, especially at the Texas Service Center and Nebraska Service Center, seem to get longer as the end of this fiscal year approaches. This is mostly a result of USCIS transferring visa-available, petition-approved applications from these service centers to the field offices for adjudication. The general result is that the small number of employment-based adjustment of status applications that remain at the Texas and Nebraska service centers are those that have already been pending for some time where the centers are completing the adjudication.

We emphasize that we are identifying and prioritizing the adjudication of all employment-based adjustment of status applications with available visas and approved underlying petitions, wherever they are in the process, as we make every effort to use all of the employment-based visas available in FY 2022.

**Why did USCIS encourage new EB-1 and EB-2 Filings from January through May as well as Transfer of Basis Requests from EB-3?**

We evaluated our inventory in December 2021 and concluded that for USCIS and DOS to reach the annual limit, USCIS would need significant numbers of additional applications in the EB-1 and EB-2 categories. At that point in the fiscal year, USCIS already had enough existing inventory in EB-3 and EB-4 to use all the available visas in those categories.

To help address this shortfall, we have encouraged individuals to consider [transferring the underlying basis](#) of their pending EB-3 applications to EB-1 or EB-2, if they are eligible.

**NEW: Were the USCIS efforts to encourage new EB-1 and EB-2 filings and transfer of basis requests successful? Does USCIS have sufficient employment-based inventory to use the remaining visas in collaboration with DOS?**

Our efforts, in collaboration with those of our partners at DOS, were successful. Tens of thousands of noncitizens filed new applications in these categories or requested to transfer the underlying basis of their pending applications. Based on DOS projections for further visa use at their consular posts, USCIS now has sufficient visa-available, petition-approved applications in order to use the remaining visas in the employment-based categories. Completing the adjudication of those applications is one of our highest priorities, and your prompt response to all requests for evidence will help us do so. We remain committed to taking every viable policy and procedural action to maximize our use of all available visas by the end of the fiscal year.

**How does the new transfer of underlying basis request process work, particularly as individuals consider the large forward movement of the India EB-2 Final Action Date in the June 2022 Visa Bulletin?**

We have created a new 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:

Attn: I-485 Supp J  
U.S. Department of Homeland Security  
USCIS Western Forms Center  
10 Application Way  
Montclair, CA 91763-1350

You should only send transfer requests accompanied by a Supplement J to this address, and you should 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 the new address, 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.

Please note, while you will receive a receipt notice upon receipt of Supplement J and enters it into our systems, unfortunately your Form I-485 will not reflect this change when you check Case Status Online

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(see additional details below).

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

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 the applicant’s CSPA age using the applicant’s age at the time the immigrant visa becomes available minus the time the immigrant petition that forms the new basis of the adjustment of status application was pending.

### **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?**

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.

### **UPDATED: Why do I still see a message in Case Status Online that says USCIS has temporarily paused work on my application because an immigrant visa number is not available to me, even though I have already requested that USCIS transfer the underlying basis of my application to a petition in a category where a visa is available? Is this an error, and is USCIS processing my application?**

If you have submitted a valid transfer of underlying basis request, then this Case Status Online message does not mean that USCIS has paused work on your application. At this time, our systems cannot automatically update the status of the Form I-485 to reflect the receipt of a transfer of underlying basis request or Supplement J.

Even if you submitted a transfer of underlying basis request accompanied by a Supplement J before your Form I-485 case status was updated to reflect this message, we have not paused work on your application. We are tracking all adjustment of status applications with transfer of underlying basis requests and moving them forward in the adjudication process. USCIS has also updated the message displayed to applicants in Case Status Online to reflect this.

USCIS may, in its discretion, grant a transfer request if the applicant meets certain criteria. If USCIS does not grant the transfer request, the underlying basis of your Form I-485 will remain unchanged. See the USCIS Policy Manual for more information.

### **NEW: 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?**

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.

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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.

### **Given the significant pending demand in the EB-3 India category, why do the visa numbers that the agencies are trying to use in EB-2 not “fall down” to EB-3 for use in that category?**

Under the Immigration and Nationality Act (INA), visas are made available in the EB-3 category in a number not to exceed 28.6% of the overall employment-based limit for the fiscal year, plus any visas “not required” in EB-1 and EB-2. DOS and USCIS interpret “not required” to mean that visas must first be made available to all potential applicants in a given category. This means that, before visas are deemed “not required” in a particular category, DOS must first set the category “Current” for all countries in the Visa Bulletin, allow anyone eligible to apply with USCIS or DOS, and then consider if there is a lack of demand for visas within the category. (For example, because EB-1 has been current for all of FY 2022, and numbers are falling down to EB-2.) There are hundreds of thousands of individuals in the queue for EB-2 visas, so it is inconsistent with the statute “not required” in that category.

DOS, in collaboration with USCIS, has rapidly advanced the Date for Filing for India EB-2 during this fiscal year, allowing over 100,000 potential India EB-2 applicants to apply for an immigrant visa or adjustment of status. Similar advancement of the Final Action Date has allowed noncitizens with approved EB-2 petitions to request to transfer the underlying basis of their currently pending applications, as well. USCIS highlights the 1 year forward movement of the India EB-2 Final Action Date that was effective on June 1, making visas available to many additional noncitizens.

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

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, 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.

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

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.

### **NEW: What is the order in which USCIS processes adjustment of status applications in the employment-based preference categories?**

In our efforts to use all of the employment-based visas available in FY 2022, we are identifying and prioritizing all employment-based adjustment of status applications with available visas and approved

underlying petitions.

**NEW: 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?**

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, we will request the visa number from DOS, but the case will remain pending until a visa number is available, DOS allocates it, and we complete the adjudication.

**NEW: 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 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.

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