ADJUSTMENT OF STATUS (AOS), USCIS FORM I-485, CONCURRENT I-140 FILING | FAQ

A. General AOS questions

A1. When will my AOS application be filed?

We require many different documents from you and/or your family to prepare the application. Therefore, your ability to get to us all requested documents will directly impact how quickly we can prepare and file your application. Our firm must review all documents you have provided to us to ensure all requested documents are present and in order. We must then prepare the forms based upon the questionnaires you have completed for us, and send them to you and/or your family for review and signature. Once the signed forms and all required documents are received, we will file the application within one to two business days. However, given the amount of time it often takes applicants to get passport photos, secure birth, marriage, and/or divorce documents, and possibly completed medical examinations (Form I-693) if filing with a priority date current under the "Final Action Dates" chart, the overall AOS process can take days or weeks to complete, depending upon the applicant's ability to rapidly respond to our requests for necessary documents.

A2. How can I confirm that your office has received any documents I have mailed to you?

All mail that you send us should be sent by some form of return receipt mail. Given the volume of mail and other correspondence that we receive, we cannot automatically confirm the receipt of mail in our office. This allows us to concentrate our efforts in processing cases expeditiously. Of course, we are always happy to respond to inquiries made via e-mail or phone.

A3. Can I travel internationally before I file the AOS?

Yes. You can travel as long as you have a valid visa stamp in your passport, your current nonimmigrant status has not expired (regardless of whether an extension was filed or not) and you have your original nonimmigrant visa petition approval notice. However, we cannot file the AOS unless you are physically present in the U.S., therefore please discuss your travel dates with your attorney. Furthermore, we will need to update the AOS application forms to include the latest entry information before the applications can be submitted. If you do make a trip prior to filing your AOS application, please provide us with copies of your latest I-94 card/record (and the I-94 cards/records for any family members immigrating with you) along with a copy of the latest entry stamp(s) in your passport(s) upon return.

A4. Can I travel after I file the AOS?

Yes. If you hold valid H-1B or L-1 status, there are two ways to travel. You can apply to USCIS for Advance Parole or you can travel with a valid H-1B or L-1 approval notice.

If you hold any other nonimmigrant status (e.g., TN/F-1/J-1 or O-1 status), you may not travel in nonimmigrant status and must await approval of the Advance Parole. If you have any international travel plans in the next three months (and you are not in valid H-1B or L-1 status) please contact us immediately so that the planned I-485 application filing date is adjusted to allow for travel.

Advance Parole. To obtain Advance Parole, you must file Form I-131 Application for Advance Parole with USCIS at the same time as or after you file your AOS (USCIS Form I-485) application. Processing times are variable but are typically 90 days. This travel document must be issued and in your possession prior to your departure from the U.S. and it must be presented at the port of entry along with your passport.

H-1B or L-1 Nonimmigrant Visa. You may also travel pursuant to your H-1B or L-1 status if you have the following upon entry to the U.S.: (1) a valid H-1B or L-1 visa stamp in your passport (unless Canadian and visa exempt) and (2) an original H-1B or L-1 approval notice (unless you applied for admission on the basis of a blanket L-1 and have not since filed an extension). In addition, you must also intend to continue to work for the same H or L employer upon your entry to the U.S. If your dependents are traveling, please note that in addition to the three items, they must also have a copy of your H or L visa petition approval notice as well as any USCIS H-4 or L-2 approval notices they received. Furthermore, if they plan to use the H-4/L-2 classifications, you must remain on H-1B/L-1 classification. If you use an Advance Parole, they cannot use the derivative nonimmigrant visa classifications and must use Advance Paroles. Lastly, if an H-4 spouse or an H-4/L-2 child works on an EAD card (see below) based on the pending application for adjustment of status, s/he is no longer maintaining H-4 or L-2 status (with the exception of H-4 spouses who have work authorization due to the H-1B's AC21 extension or I-140 approval). This means that if your

spouse intends to continue working upon return to the US, s/he should use an AP to enter the U.S. and not return on an H-4 visa (with the exception of H-4 spouses who have work authorization due to the H-1B's AC21 extension or I-140 approval). L-2 spouses are treated differently, in that all L-2 spouses can work and there is no possible violation of L-2 status due to employment.

A5. What if I am planning on getting married?

If you are planning on getting married and your future spouse is not a Permanent Resident or U.S. citizen, please contact your attorney. If you immigrate before you are married, your new spouse will not be able to immigrate as your derivative beneficiary. This means that you would have to file a separate petition after you immigrate and your spouse may not be able to remain in the U.S. with you until his/her own immigration is completed.

If you marry after your adjustment of status is filed and before it has been approved, while your new spouse would be eligible to immigrate as a derivative beneficiary or a "follow to join" beneficiary through a consulate, this issue needs to be addressed immediately. Furthermore, for your spouse to be in the United States prior to filing his/her adjustment of status, s/he must be in a valid nonimmigrant status that allows for such a submission such as H-4, L-2, etc.

A6. What happens if I am pregnant at the time of my medical exam?

There are certain tests that pregnant applicants cannot complete. Only a USCIS-approved physician can determine which of the vaccinations are medically appropriate for the applicant, given age, medical history and current medical condition. The applicant may check with the physician at the time of the medical exam. It is possible that the USCIS will later issue a Request for Evidence (RFE) in order to obtain an updated medical examination and this can delay the processing of the application for adjustment of status. For example, if a TB test cannot be made because the applicant is pregnant, the USCIS may issue an RFE requesting TB test results. It is possible to submit the I-485 application without a medical exam, in which case USCIS will issue a RFE.

A7. Can I also apply for an Employment Authorization Document ("EAD") and Advance Parole travel document ("AP")?

Yes. An applicant for adjustment of status can submit applications for employment authorization (I-765) and advance parole travel authorization (I-131) as a pending immigrant. This is also true for derivative family members. However, if you are in H-1B/H-4/L-1/L-2 status, we recommend you continue to maintain your underlying nonimmigrant visa classification while the I-485 application is pending.

A8. I am currently on an H-1B visa, which expires in five months. If I file and obtain an EAD, do I need an H-1B visa extension?

Once an I-485 application for adjustment of status is pending, one's status in the U.S. is that of a pending adjustment applicant. It is not necessary to maintain an underlying nonimmigrant status, as an adjustment applicant could obtain an EAD and an AP to work and travel, but maintaining nonimmigrant status does provide for a "backup" in the unlikely event that a I-485 application is denied. Individuals are allowed to maintain H or L classification in the U.S. while they have applications for adjustment of status pending. Therefore, adjustment applicants who held H or L status could choose to maintain their nonimmigrant status (e.g. by working only for the petitioning employer), and use the H-1B or L-1 visas for travel and employment authorization, with similar rules for their derivative family members (e.g. H-4 not working, H-4 or L-2 not using AP). However, if the I-485 application is denied and the individual did NOT maintain the underlying nonimmigrant classification, then they would go out of status in the U.S. Although employment-based I-485 applications are usually approved, it is advisable to be aware of the risk.

It may be important to maintain one's nonimmigrant status throughout the time that the I-485 application is pending, for in the event that the case is denied; therefore it is our recommendation that if possible, I-485 adjustment applicants maintain their underlying nonimmigrant visa classification.

A9. Can I quit my job?

Maybe. There are several different factors to consider, please speak to your immigration attorney before taking any action.

Most employment based AOS applications are based on a job offer by a sponsoring employer (e.g., if your Permanent Residency is based on either an approved labor certification, a petition for an Outstanding Researcher/Professor or on a Multinational Executive/Manager). Ideally, you will continue to work for the sponsor throughout the entire immigration process. But the U.S. Government has codified ways for

employees to have more flexibility in changing positions or employers. The regulations codifying the below elements are in effect as of January 17, 2017.

Retention of priority dates:

For employees with an approved I-140 petition, priority dates can be retained and transferred to new and approved I-140 petitions. The priority date for the initial approved I-140 will be available to the employee as long as it was not revoked for fraud, willful misrepresentation of a material fact, the invalidation or revocation of a labor certification, or material error.

Retention of employment-based immigrant visa petitions:

For employees with an approved I-140 petition who have not obtained permanent residency because of immigrant visa backlogs, any Form I-140 petition that has been approved for at least 180 days will not be subject to automatic revocation based solely on withdrawal by the petitioner or termination of the petitioner's business. The I-140 petition will similarly not be automatically revoked if an associated AOS has been pending for at least 180 days. The approved I-140 petitions will continue to be valid for several purposes, including priority date retention and job portability.

However, it is important to note that in order to obtain an immigrant visa or adjust status, you must either have a new I-140 petition filed on your behalf or be eligible for job portability, which brings us to the 180-day portability rule (see B11 below).

A10. What about the 180-day portability rule that I have read about?

An applicant applying for adjustment of status based on a job offer with one company can switch jobs or employers if the adjustment has been filed and is pending for 180 days or more, provided that the I-140 is approved (or "approvable" if still pending), and the new job (either with the same or different employer) is in the "same or similar occupational classification as the job for which the petition was filed." Before switching positions or jobs your immigration attorney should review the specifics of your case.

A11. I have heard that Consular Processing (CP) is faster than I-485. Should I change to CP?

The advantages of I-485 processing outweigh CP in virtually all situations. In this regard, please see our memorandum on AOS vs. CP, http://www.jackson-hertogs.com/?p=5754.

B. Preparing and filing the AOS

B1. I have completed the AOS questionnaire and uploaded the required documents. Can you confirm that you have everything?

It will take time for us to review the documentation and the information in our database to see if any information or documentation is missing.

B2. What is the next step? Can we file my AOS now?

Once we review the documentation and information we will likely have questions. If there are no questions, we will send you the draft forms to review.

B3. When will I receive the draft forms?

We cannot give you a specific date based on the volume of cases.

B4. What happens once I have reviewed the draft forms?

We will send you the final forms to sign/date.

B5. Will you FedEx the forms to me so I can sign?

There is no need to send the forms via FedEx. We will email them to you to sign and date and ask you to email them back to us. USCIS accepts a scanned copy of an original signature.

B6. How about the photos and medical exam? How should I send those?

These items should be sent to us via FedEx or UPS at Jackson & Hertogs, 909 Montgomery Street, Suite 200, San Francisco, CA 94133. Please write your name on the back of the passport-style photos using a ballpoint pen. We need 6 passport-style photos for each applicant.

B7. Can you file my AOS using premium processing?

No, premium processing is not available for AOS filings.

B8. What if you file my AOS and I do not get a receipt until early or mid-November? I am worried about my priority date not being current in November.

Receipts are sent to us by the USCIS via regular mail. It can take several weeks to receive the AOS receipts from the USCIS. On the receipts the USCIS has two dates. One date is the date that the AOS app was received at the USCIS. The other date is the date the receipt was issued. The key date is the date that the USCIS received the application.

C. Questions about Form I-944

C1. What documentation do you need for proof of assets?

Evidence of assets and resources include:

a. Checking and savings account statements;
b. Annuities;
c. Stocks and bonds (cash value)/certificates of deposit;
d. Retirement accounts (including 401k) and educational accounts;
e. Net cash value of real estate holdings; and
f. Any other evidence of substantial assets that can be easily converted into cash

You should only include the assets that can be converted into cash within 12 months. On the questionnaire, provide the value of any asset held in the United States or outside the United States, in U.S. dollars.

C2. I own a home. Are mortgage statements considered an asset?

Mortgage statements are not considered assets unless you accompany it with a recent home appraisal and mortgage statement for the home's net value. The net value of the home is the appraised value of the home, minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home. If you wish to include the net value of your or your household member's home, then you must include documentation demonstrating that you or the household member owns it, a recent appraisal by a licensed appraiser, and evidence of the amount of all loans secured by a mortgage, trust deed, or other lien on the home.

C3. What kind of proof of health insurance do you need?

If you currently have health insurance, provide the following:

1. For each policy, a copy of each policy page showing the terms and type of coverage and individuals covered; or
2. Letter on the company letter head or other evidence from your health insurance company stating you are currently enrolled in health insurance and providing the terms and type of coverage; or
3. The latest Form 1095-B, Health Coverage; Form 1095-C, Employer-Provided Health Insurance Offer and Coverage (if available) with evidence of renewal of coverage for the current year.

A health insurance card is insufficient without effective and expiration dates.

C4. How can I get proof of my credit score?

You can obtain a free credit report once a year under the Fair Credit Reporting Act from each one of the three credit reporting agencies.

You are only required to provide one credit report from any of the three nationwide credit reporting agencies, Equifax, Experian, and TransUnion. See **https://www.usa.gov/credit-reports** for more information.

D. After the I-485 (AOS) is filed

D1. When will the USCIS issue a receipt after the Form I-485 is filed?

The AOS is filed with a centralized Lockbox prior to forwarding to the appropriate USCIS Service Center. Generally, receipts will take several weeks to be issued. Once we receive the receipts, we will forward via email the scanned copies to you. We run weekly reports to ensure that receipts are received so there is no need to follow up with us for receipts.

D2. How long is it taking to process I-485 applications?

It is impossible to predict I-485 processing times with certainty. Different USCIS Service Centers process applications on different tracks. I-485 applications cannot be adjudicated until the underlying I-140 immigrant petition is first approved. Even then, your immigrant visa priority date must be "current" under the "Final Action Dates" chart according to the latest State Department Visa Bulletin. Finally, the I-485 must be "due" for adjudication accordingly to the monthly processing time reports published by each USCIS Service Center.

Note that the posted USCIS processing times are merely estimates based upon averages. Unique circumstances can require longer processing for certain individual cases. If you filed the I-485 under an "early filing" option, USCIS will not process your I-485 until your priority date becomes current under the "Final Action Dates" chart. However, you will be eligible for EAD and Advance Parole benefits during the interim.

You may track the processing times of I-485 applications at the Service Centers via our website at **http://www.jackson-hertogs.com/?p=5415**. You can also check the status of your applications under on the USCIS website at https://egov.uscis.gov/cris/processTimesDisplayInit.do. Note that currently, only the Texas Service Center and Nebraska Service Center adjudicate employment-based I-485 applications, though occasionally employment-based I-485 applications are transferred to a local USCIS district office nearest your residence if an interview is deemed necessary.

D3. When will I receive the biometric appointment notice?

Biometrics refers to a process by which you report to a USCIS Application Support Center and your fingerprints and photo are captured. A notification for your biometric appointment will be sent directly to our office by USCIS within 4-8 weeks of filing. An inquiry cannot be made concerning fingerprinting appointments until 180 days have elapsed from the "notice" date which appears on the Form I-485 fee receipt. If you have not received the fingerprint appointment notification within six months of the date of filing your AOS, please contact your attorney.

D4. When will I receive the EAD and/or AP?

If you applying for your first Employment Authorization Document (EAD) or Advance Parole processing times will vary. As of January 17, 2017, there is no longer a 90 day processing guarantee. In most cases our office receives the Advance Parole and EAD, but USCIS may directly send the Advance Parole or EAD to you. If this is the case, it is important that you send us a copy so we can work with you to track the expiration dates of these documents. If you are applying for a renewal, in some instances there is a 180-day automatic extension of an expired EAD card if the extension is filed timely and you are applying under the same EAD category. Please note this 180-day automatic extension does not apply to those in H-4 and L-2 status seeking renewal. Please check with your attorney for personalized analysis of your case.

D5. I'd like to move, can I change my address?

If your address will change before we file the AOS or shortly thereafter, please notify your attorney to discuss timing of filing and address on the forms. If you change addresses after we submit the AOS, you must notify our office. It is also YOUR legal obligation to notify the USCIS on Form AR-11 Alien's Change of Address Card (or Form AR-11SR if subject to special registration), of any change of address within 10 days of the change. You can notify USCIS of your change of address on-line or by mail. We strongly urge you to use the on-line system. You can access the USCIS free on-line change of address page at **https://egov.uscis.gov/crisgwi/go?action=coa**. You will need to select the option that enables USCIS to update your address on pending applications and must have the receipt numbers for your (and any family member's) pending AOS available. After submitting the change of address, please save or print confirmation of your on-line address update, and e-mail the confirmation to the attorney responsible for your case.

Many times clients report that mail from USCIS continues to be sent to the old address. Please understand that it is possible that USCIS will not update its database system in a timely manner.

D6. If I return to the U.S. using my advance parole, to what date will I be admitted?

Adjustment applicants paroled into the U.S. are issued Forms I-94 valid for a date that usually corresponds to one year from the date of entry or to the end date of the parole authorization. These dates do not reflect the end of your status in the U.S. As an individual with a pending adjustment of status application who is paroled into the U.S., you have status as an adjustment applicant until a decision is reached on your application to adjust status. Therefore, the fact that the Form I-94 may be expired or expiring has no bearing on your continued status and right to remain in the U.S. Please keep in mind that you must have a valid Advance Parole document in your possession each time you depart the U.S. that will be valid at the time of your return.

The parolee I-94 is very different than I-94s issued pursuant to admission as a nonimmigrant (e.g., H-1B/H-4 and L-1/L-2). Nonimmigrant Forms I-94 should match up with petition or visa validity dates unless your passport will expire prior to the end date to which you would normally be admitted. If you enter the U.S. pursuant to a nonimmigrant visa, and the I-94 does not match up with the I-797 petition approval date (or if on a blanket L-1, the visa in your passport), please contact our office immediately.

D7. For how long are fingerprints valid?

Fingerprint results are valid for 15 months. If an I-485 application is pending beyond this period, USCIS will likely issue a new notice for the applicant to appear at an Application Support Center (ASC) office to be fingerprinted prior to adjudicating the application.

D8. If my fingerprints expire, can you contact the Service Center and ask them to reschedule me for new fingerprints?

The USCIS has advised us that this will be in the hands of the officer assigned to adjudicate your application and that we cannot request a new fingerprinting appointment. If the adjudication officer determines that the fingerprints have expired, s/he will order that a date be set to schedule a new fingerprint appointment. On a system-wide level, the USCIS claims to work on identifying applicants with expired fingerprints, in order to schedule new fingerprint appointments. However, there is no guarantee that this will happen. Please note that there is currently no mechanism for attorneys or their clients to alert the USCIS Service Centers to request new fingerprint appointments.

D9. Due to the delay in processing of I-485s, I have passed up two promotions and the delay is hurting my career development. What can I do?

An applicant applying for adjustment of status based on a job offer with one company can switch jobs or employers if the adjustment has been filed and is pending for 180 days or more, provided that the I-140 is approved (or "approvable" if still pending), and the new job (either with the same or different employer) is in the "same or similar occupational classification as the job for which the petition was filed." Before switching positions or jobs your immigration attorney should review the specifics of your case.

D10. I have made phone inquiries with the USCIS and I have done an internet inquiry but the answer is always the same: "your I-485 is pending". When will you make a written inquiry?

Unfortunately, there is no longer any process by which a written inquiry can be made on pending I-485 applications. In limited circumstances, it may be prudent to book an appointment to speak with a USCIS officer at the local USCIS office via an online INFOPASS appointment, **http://infopass.uscis.gov/**.

Please keep in mind that if you filed the I-485 under an "early filing" option, then USCIS will not put your I-485 into the processing queue until your priority date becomes current under the "Final Action Dates" chart.

D11. My child is turning 21 years of age and has a pending AOS. Will his/her AOS be denied on his/her 21st birthday?

Not necessarily. Under immigration law, the cut-off date for dependent benefits occurs at 21 years of age, this is also known as the "age-out" date. However, the Child Status Protection Act (CSPA) was enacted in 2002 and permits an applicant for certain immigration benefits to retain classification as a "child" even if he or she has reached the age of 21. If your child was under 21 years of age at the time the AOS was filed, in most situations, he/she will still be considered a "child" for immigration purposes and will be eligible for immigrating as your dependent. However, to benefit under CSPA, your child must remain unmarried. Also note that CSPA does not preserve nonimmigrant benefits. CSPA issues can be complex and we would recommend scheduling a consultation with your attorney to discuss all implications.

D12. Is there a limit on how many EAD and Advance Parole renewals I can apply for?

While your I-485 is pending either through a regular or early filing, there is no limit.

D13. When will my case be approved?

Processing times fluctuate with USCIS, and depends upon whether your priority date is current. The USCIS published processing times can be accessed via our website at **http://www.jackson-hertogs.com/?p=5415**. However, some cases may take longer and some may be processed more quickly. We monitor the cases and make inquiries based on the current processing times throughout the life of each case.

Please keep in mind that if you filed an I-485 application under an "early filing" option, USCIS will not put your I-485 into the processing queue until your priority date becomes current.

D14. Will I be interviewed by USCIS?

Most employment-based adjustment of status applicants are not interviewed by USCIS. However, USCIS has the discretion to interview any applicant. Some of the reasons USCIS may decide to schedule an interview include: if the applicant has a criminal record, if there is a change of employer, if there is a problem with the fingerprints, or if the case is selected as part of a random audit. If an interview is scheduled in your case, please contact our office to schedule a consultation.