ADJUSTMENT OF STATUS VS CONSULAR PROCESSING

This memo compares the two different paths toward completing the final step of the employment-based immigration process. Upon filing (and in most cases, obtaining approval of) an immigrant visa petition (e.g. Form I-140, I-130, I-526, etc.), the green card itself can be obtained through one of two ways:

(1) Adjustment of Status: Assuming the applicant is in the US, eligible and admissible, it is possible to file for adjustment of status (AOS) within the United States, by submitting USCIS Form I-485 to the US Citizenship and Immigration Services (USCIS); or

(2) Consular Processing: Regardless of whether the applicant is in the US or not, it is possible to apply for an immigrant visa with the Department of State (DOS), through the National Visa Center (NVC) and/or a US consulate or embassy outside the United States.

If opting to file Form I-485, the intending immigrant may "concurrently" file both Forms I-140 and I-485 together, as long as the immigrant visa "priority date" is current. Concurrent filing can involve simultaneous filing of the Forms I-140 and I-485, or initial filing of the Form I-140, then filing of the Form I-485 while the Form I-140 remains pending.

A. Adjustment of Status – The Advantages

A1. Convenience. This is an option only if the applicant is in the US. Because the Form I-485 is mailed to the USCIS within the US, there is no need to depart the US, or otherwise incur the inconvenience and expense of an interview abroad at a US consulate.

A2. Employment authorization for AOS applicants and dependent family member. AOS applicants can apply for an Employment Authorization Document (EAD) concurrently with--or at any time after--the filing of Form I-485. Initial EADs can be valid for a variable period of time, and subsequent renewal EADs can be requested prior to expiration. H-1B and L-1 visa holders may file for extension of nonimmigrant work authorization instead of, or in addition to, filing for an EAD via Form I-765. The advantages to maintaining nonimmigrant work authorization include: (1) potentially longer work authorization periods, as compared to the EAD, and (2) continuing valid nonimmigrant status, in the unlikely event the Form I-485 is denied, as opposed to relying solely on being in a “period of authorized stay” based solely on the fact that a I-485 is pending. We always encourage filing an EAD concurrently with the Form I-485, given lengthy AOS processing times. That way, the AOS applicant has a "back up" means of employment authorization, untethered from the nonimmigrant status. Dependents of AOS applicants may also apply for EADs. Therefore, family members on "dependent" nonimmigrant visas (e.g., O-3, TD, etc.), who were otherwise prohibited from

employment in the United States, may seek employment authorization as AOS applicants. Even H-4 nonimmigrants who might already possess H-4 EADs should file for AOS-based EADs. These EADs provide an essentially unrestricted right to engage in employment or self-employment. EADs may be regularly extended, until the AOS application is adjudicated.

A3. Permission to travel (advance parole authorization). All AOS applicants may apply to the USCIS Service Center for advance parole (AP) via USCIS Form I-131. Advance parole refers to advance USCIS permission to depart the United States temporarily after filing the Form I-485. If an advance parole document is used, the individual is paroled rather than admitted to the US. USCIS regulations permit AOS applicants who hold valid, multiple-entry H-1B or L visas to travel abroad without needing to apply for AP, as long as their H-1B or L-1 nonimmigrant visa status remains valid. (For example, principle AOS applicants must not have used an EAD to work in a manner that does not comply with the terms of their H-1B/L-1). USCIS will consider those working in other nonimmigrant visa categories besides H-1B or L-1 (e.g., TN, E-3, O-1, etc.), to have abandoned their AOS applications if they use their nonimmigrant visas to travel.
Note however that USCIS can be expected to deny AP applications if H-1B or L-1 nonimmigrants travel in H/L status while the Form I-131 application is pending. Therefore, international travel while the AP remains pending is inadvisable, even for H-1B and L-1 workers, if travel can be avoided. Similarly, AP renewal applications can be filed while the AOS remains pending, but international travel during the AP renewal process can result in a denial of the new I-131 application. While this could be remedied by simply refiling the Form I-131 application to request AP all over again, the point is that time and money could be wasted without careful coordination with travel schedules. During periods that USCIS parole processing times are lengthy, applying for AP may not be a feasible option to gain travel authorization.

A4. Portability. "Portability" of the I-140 immigrant petition means that the AOS applicant may change jobs with the same employer, or switch to an entirely different employer, or to a new geographic location, provided that (1) the I-140 immigrant petition is approved (or "approvable"), (2) the I-485 application has been pending for at least 180 days, and (3) the AOS applicant remains employed in the “same or similar occupation” as described on the original I-140 immigrant petition. While this benefit is theoretically possible to certain consular immigrant visa applicants, it is in practice unavailable at US consulates unless the immigrant visa applicant had first filed for adjustment of status via Form I-485.

A5. Police certificates not required. Consular immigrant visa processing requires the immigrant visa applicant to first obtain police certificates from every locality of their home country (or latest residence abroad) where the applicant has lived, since attaining the age of 16, as well as from any other countries where the applicant lived for six months or longer. By contrast, AOS applicants merely need attend a biometrics appointment at an Application Support Center location within the US.

A6. An attorney can accompany AOS applicants to USCIS I-485 interviews. In contrast, an attorney cannot be present at the consular immigrant visa interview.

A7. Options in the event of delay or denial. If there is a problem with an AOS application (e.g., a denial), the AOS applicant may file a Motion to Reopen that decision, renew their application in immigration court, or seek other administrative relief. However, it is challenging to seek re-review of a denied immigrant visa application at a US consulate. Delayed AOS applications are less painful to the applicant, because AOS applicants can simply continue renewing EAD/AP. In contrast, immigrant visa processing delays at a US consulate may require the applicant to remain outside the US if they do not also have a basis for nonimmigrant admission.

A8. Potentially faster processing for concurrent AOS filings. Concurrently filed I-140 immigrant visa petitions and I-485 AOS applications may experience shorter overall processing times. If the employee's long-term goal is to help family members immigrate to the US, a faster adjudication of their own AOS application might speed up the immigration process for the entire family. In addition, filing the Form I-485 earlier allows for earlier submission of EAD applications for work authorization.

B. Adjustment of Status - The Disadvantages USCIS staffing and policy changes can affect processing times as well as outcomes. For example, in May 2026, USCIS announced a higher "extraordinary" standard for AOS eligibility with no basis in the immigration laws. This change in policy could lead to significantly increased denials of adjustment of status applications, a new uncertainty has been introduced to the AOS process, as the DHS has made clear they want the new default immigration procedure to for the DOS to handle the majority of filings via consular immigrant visa processing. In addition, reduction of staff at USCIS offices can be expected to result in AOS processing delays.

B1. Unpredictable processing times. AOS processing times depend upon the USCIS lockbox and/or service center having jurisdiction over the I-485 application, and the local USCIS district offices where final review is conducted and/or interviews will be conducted.

Such delays could adversely impact AOS applicants (for example: if they are at risk of losing their job and do not qualify for portability, or if they have dependent children who might be reaching the age of 21 who may not qualify for retaining "child" status, etc.).

B2. Concurrent Filings: Risks if the I-140 petition should be denied. Filing the AOS application enables the employee and dependent family members to concurrently file applications for EAD and AP. Despite the EAD/AP providing an independent basis for work and travel authorization, it would be safest for employers of AOS applicants to continue extending underlying nonimmigrant work visa status throughout the AOS process. Waiting first for I-140 immigrant visa petition approval allows the employee to avoid risks that could arise from an AOS application denied at the same time as the Form I-140, if the I-140 should be denied for any reason. Otherwise, a denied I-140 for an applicant also relying upon a pending I-485 application could leave the employee with an automatically denied I-485, potentially impacting the ability of the employee or the employee's family members to lawfully reside in the United States. In the event of a denied I-485 application, the employee could become unlawfully present in the United States, if he or she was not maintaining lawful nonimmigrant status.

C. Consular Processing - The Advantages

C1. No advance parole requirement means no travel restriction. If consular processing immigrant visa applicants already hold a valid nonimmigrant visa, they may travel abroad freely while waiting for the immigrant visa appointment to be scheduled. However, nonimmigrants who do not hold H-1B or L-1 visa status should remain cautious with international travel. That is because each new re-admission to the United States would require them to demonstrate they have a residence abroad which they have no intention of abandoning. This can be difficult for certain nonimmigrant visa holders, either once an I-140 immigrant petition has been filed, or simply due to passage of time.

C2. Potentially faster overall processing time. There is a chance– depending upon country of origin and comparative backlogs between the USCIS and the DOS – that consular processing may come to prove a faster way to obtain permanent resident status. On the other hand, as more people may be pushed into consular immigrant visa processing, "traffic" at the consulates is likely to increase, and thus processing times are also likely to increase.

D. Consular Processing – The Disadvantages

D1. Inadmissibility/Inconvenience/cost. Applicants for permanent residency via consular processing could be deemed inadmissible based on executive actions such as presidential proclamations and/or Department of State policy statements. Even if unaffected by a travel ban, traveling to a US consulate to appear for the required immigration interview is inconvenient and expensive for an applicant residing in the United States on a nonimmigrant visa. The consular immigrant visa interview may be scheduled at a time that does not fit well with employment considerations or personal schedules in the United States. Consular interview appointment dates are generally difficult to change, and could result in unpredictable delays to the immigrant visa application process. Attorneys are barred from appearing with their clients in the consulate interview room, and may be barred from even entering the consulate itself.

D2. Documentary requirements. Documentary requirements are more challenging for consular processing than for AOS. Applicants must obtain police clearances from all countries in which they have resided for more than 6 months since reaching the age of 16, if the DOS considers such records to be available. Those who have served in a foreign military organization must obtain a record of their military service. For information regarding whether DOS considers police, military, and other vital records available, please review the DOS website.

D3. Medical examination. The medical examination will be scheduled with an approved physician or medical clinic in the foreign country selected by the US Embassy or Consulate. The examination may require the applicant and accompanying family members to appear in the foreign country for days or weeks in advance of the interview date. Medical examinations conducted by USCIS approved US physicians or US clinics are unacceptable. Because far fewer civil surgeons are authorized by the DOS outside of the US than those authorized by the USCIS in the US, applicants may find limited choice in civil surgeons to perform the medical examination, and the process of traveling abroad for a medical examination is inconvenient and expensive.

D4. No work authorization for dependent family members. The EAD available to AOS applicants is unavailable to consular immigrant visa applicants. Therefore, accompanying family members in, say, H-4, O-3 or TD status, etc., who have not been able to work in the US, will remain unable to work in the US until their immigrant visas are issued. Because the immigrant visa interview may take years to be scheduled after filing, employment authorization may be unavailable until approval of an immigrant visa and readmission to the US.

D5. Little to no "portability" of the immigrant petition in the event of job change. AOS applicants may safely "port" their approved I-140 immigrant petition to a new role, if there are changes to the sponsored job, so long as the new job within the “same or similar occupation,” the I-140 immigrant petition is approved (or "approvable" at the time of filing), and the AOS is pending for at least 180 days. This relief applies only to AOS applicants. Therefore, someone who opts for consular processing rather than AOS forgoes the possibility of safely changing their jobs before they immigrate. If someone chooses to process through consular processing, major changes to the job duties or geographical location of employment before the consular interview, could invalidate the approved I-140 petition. If the employer goes out of business, or is acquired by another company which will not continue sponsoring the immigration process, there will be no basis for approval of the consular processing application for an immigrant visa. For consular processing cases, the employment offer upon which the immigrant visa application is based must remain in effect until the applicant has been granted lawful permanent resident status.

Conclusion

There is no "one-size-fits-all" strategy for obtaining a green card. An intending immigrant must take many factors into account before deciding to either apply for AOS within the USCIS, or for an immigrant visa at a US consulate abroad. Neither option is going to be a perfect fit for all people in all instances, though on balance, the AOS process will provide the most flexibility and protection to the intending immigrant. The advantages would need to be balanced however, against USCIS policy changes seeking to narrow eligibility for AOS.