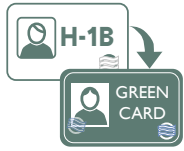




## ADJUSTMENT OF STATUS PROCESS FOR MARRIAGE-BASED APPLICANTS



Adjustment of status ("AOS") is a process by which a person who is lawfully present in the United States in temporary nonimmigrant status (e.g. H-1B, L-1, TN) may "adjust" status to permanent resident ("green card") status based on an approved immigrant petition. Where the immigrant petition is based on marriage to a United States citizen spouse, the petition and adjustment of status application are filed concurrently. Note that the United States citizen spouse is referred to as "the petitioner" and the foreign national spouse is referred to as "the applicant," or "the beneficiary." As more fully explained below, the adjustment of status process involves obtaining medical records, birth documentation and where applicable, marriage and divorce documentation, and submitting this documentation with a detailed application to the United States Citizenship and Immigration Services ("USCIS"). The following guidelines provide general information on the process of applying for an employment-based adjustment of status.<sup>1</sup>

To be eligible for adjustment of status, the applicant must not be inadmissible to the United States. There are several grounds of inadmissibility. Persons with criminal convictions, for example, may be inadmissible depending on the severity and nature of the offense(s). If you are unsure of your eligibility for adjustment, please contact your attorney at Goeschl Law Corporation to discuss the facts of your case.

All marriage-based adjustment of status applications are filed by mail with the National Benefits Center ("the NBC") of the USCIS for initial processing. Within about two to three weeks of receipt of the application, the USCIS will schedule a biometrics appointment to collect fingerprints and a digital photograph at the USCIS Application Support Center closest to the applicant's home.

After preliminary adjudication at the NBC, the application is transferred to the local USCIS office with jurisdiction over the applicant's place of residency. This is usually not the same office as the Application Support Center. The local office will then schedule a final interview to determine the applicant's eligibility for permanent residency. Both the U.S. citizen petitioner and foreign national applicant must appear together at this interview. The USCIS officer conducting the interview will ask several questions and ask to see documentation, such as wedding photos, and joint financial documents, to establish that the marriage is bona fide. Your attorney will arrange a call or in person meeting with you to prepare you for the interview once it has been scheduled. We will also provide a detailed memo describing the interview process and the likely questions to expect. Depending on the circumstances of your case, we may also recommend that our attorney attend the interview with you.

Current processing times for marriage-based immediate relative applications range from about 10 to 14 months. These processing times change dramatically over time, and individual cases can take significantly longer depending on the specific facts of the case.

<sup>1</sup>This memo is intended for clients of Goeschl Law Corporation and is for informational purposes only. While we hope that this information is helpful as general background information, we cannot warrant its applicability, accuracy, or completeness, given the many intricacies of specific factual circumstances and scenarios and the frequent changes to immigration policy and procedures. Please also note that this memo does not cover procedures for any other visa classifications.



## Affidavit of Support Requirement

In all marriage-based immediate relative cases, the petitioning U.S. citizen spouse must execute an "affidavit of support" agreeing to provide financial support to the foreign national spouse, if necessary. This document is a legally binding contract that remains in effect until the foreign national spouse becomes a U.S. citizen, or has been credited with 10 years of working in the United States, whichever is sooner. (Important Note: The U.S. citizen sponsor must notify the USCIS within 30 day of any change of address while the affidavit is in effect.) The affidavit of support also requires that the U.S. citizen show that he or she has adequate financial resources to support the foreign national spouse. Where the U.S. citizen cannot show such resources, the sponsored foreign national's income or assets may also be used to meet this requirement. Please contact our office if you have further questions on this requirement.



## Work and Travel Authorization while Adjustment of Status is Pending

With the exception of persons in valid H-1B, H-4, L-1 and L-2 statuses, once the AOS application is filed, the applicant is no longer in nonimmigrant status. He or she becomes an "adjustment applicant" until the application is approved, at which point he or she becomes a permanent resident. Persons who are in H-1B, H-4, L-1 and L-2 nonimmigrant statuses may maintain their nonimmigrant status concurrently while the AOS application is pending, provided they comply with the terms of their nonimmigrant status, and file extensions as necessary.

### 1) Work Authorization Advisories



#### 1.1.) Work Authorization Advisory for Adjustment Applicants in H-1B or L-1 Status

Persons maintaining H-1B or L-1 status while their adjustments are pending do not require an EAD card to work at their H-1B or L-1 employer. However, if the person accepts employment at a different employer, he or she will need the EAD card, and will no longer be entitled to H-1B or L-1 status. The person will be an adjustment applicant only, and will need to use the advance parole (AP) travel document. For future U.S. entries.

#### 1.2.) Work Authorization Advisory for Adjustment Applicants in H-4 or L-2 Status

Persons in H-4 and L-2 status are not allowed to work in the United States unless he or she has been granted a work authorization from the USCIS as a derivative spouse of an H-1B or L-nonimmigrant. Such persons may continue employment for as long as the H-4/L-2 EAD is valid and the principal alien continues to be employed by his/her H-1B/L-1 employer. They may also apply for EADs as an applicant for AOS as explained above.

An individual who has not been granted H-4 or L-2 EAD may apply for an EAD on a separate basis, as an applicant for AOS as explained above. Once the individual commences employment based on an AOS-based EAD, such individuals are no longer considered to be in H-4/L-2 status, and so will be required to use Advance Parole for future U.S. entries.

#### 1.3.) Work Authorization Advisory for Adjustment Applicants Not in H-1B, H-4, L-1 or L-2 Status

As noted above, persons who are in a nonimmigrant status other than H-1B, H-4, L-1 or L-2 lose their nonimmigrant status when they file their adjustment of status applications. If the person had work authorization prior to filing the adjustment application, however, he or she will be able to



maintain that work authorization until it expires, or until the person departs the country on advance parole. If the person leaves the country on advance parole, his or her work authorization will no longer be valid, and he or she will need an EAD card to continue working in the United States upon return.



## 2) International Travel Advisories

### 2.1). Travel Advisory for Adjustment Applicants in H-1B, H-4, L-1 and L-2 Status.

Persons maintaining valid H-1B, H-4, L-1 and L-2 nonimmigrant statuses may continue to maintain their nonimmigrant status through the AOS process, and do not need an AP travel document to leave and reenter the United States. Such persons must be physically present in the United States at the time of filing the AOS application, but once it is filed they may leave the United States and reenter the U.S. using their existing, unexpired work visas.

Note, however that if an H-1B or L-1 visa holder has accepted employment with an employer other than the one noted on his or her work visa or I-129 approval notice, the person is no longer in valid H-1B or L-1 status, and would therefore need an approved AP to leave and reenter the U.S.

Please note that if you travel outside the United States with your valid H-1B, H-4, L-1 or L-2 visa while your application for AP is pending, USCIS will deny the application due to abandonment. The denial of the advance parole AP application, however, will not affect your pending green card application or your current status in the United States. You will be eligible to reapply for AP if necessary.

### 2.2) Travel Advisory for Adjustment Applicants Not in H-1B, H-4, L-1 or L-2 Status.

If you are not in H-1B, H-4, L-1 or L-2 nonimmigrant status at the time of filing your AOS, you may not leave the United States for any reason until you have received an Advance Parole travel document. As noted above, this generally takes about 3 months from the time of filing. If you leave the country without an approved Advance Parole, your application will be deemed abandoned, and you may not be allowed to reenter.

Please note that if you apply for renewal of your advance parole travel document, that you may not travel outside the United States until the renewal is granted, even if you are traveling with your previously approved Advance Parole. As noted above, any international travel while an application for advance parole is pending, will be denied for abandonment.



## Checklist for Filing Marriage-Based AOS Applicants

### Petitioner (United States Citizen Spouse)

- **Four (4) Photographs.** Please write the name and birth date at the back of each photo in pencil or ballpoint ink. Please see page 8 for the USCIS's photograph specifications or visit: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/photos.html>.
- **Evidence of U.S. Citizenship.** Please provide a clear copy of the petitioner's U.S. passport biographic page, naturalization certificate, birth certificate, or other evidence of U.S. citizenship. (Note: The original will be later requested by the USCIS officer.)
- **Copy of Marriage Certificate or Marriage Record.**
- **Copy of Proof of Termination of Prior Marriages,** if applicable, such as divorce decree(s) or death certificate(s)
- **Copy of Name Change Documentation,** if applicable.
- **Employment Verification Letter.** Please provide a verification letter from the petitioner's employer indicating annual salary and showing the employer's address and telephone number.
- **Federal Income Taxes.** Please provide copies of the petitioner's federal income tax return and corresponding Forms W-2 and/or 1099 for the most recent year.
- **Pay Statements.** Please provide copies of the petitioner's three most recent pay statements.
- **Evidence of Marriage,** if applicable. If your spouse is applying with you and you have been married for less than 2 years, the USCIS will likely request evidence that your marriage is "bona fide," i.e. not fraudulent. Please provide as much of the following documentation as possible:
  - i. Birth certificates for children born to you both, if applicable;
  - ii. Proof of joint residence or ownership of property;
  - iii. Copies of joint income tax returns;
  - iv. Proof of joint financial accounts;
  - v. Proof of joint medical or auto insurance coverage; and
  - vi. Photos from your relationship and marriage up until the present, especially those with family and friends.

**Important Note:** If the beneficiary's income or assets will be used to meet the Affidavit of Support requirement described on page 2, the beneficiary will need to provide an employment verification letter from his or her employer, most recent federal income tax return, and three most recent pay statements.

### Beneficiary (Foreign National Spouse) and Any Dependents

- Sealed Medical Report. You can search for an approved USCIS doctor in your area online with the USCIS at: <https://my.uscis.gov/findadoctor>.
- Eight (8) Photographs, for each applicant. Please write the name and birth date at the back of each photo in pencil or ballpoint ink. Please see page 8 for the USCIS's photograph specifications or visit: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/photos.html>.



## ADJUSTMENT OF STATUS PROCESS FOR MARRIAGE-BASED APPLICANTS

- **Copies of All Previously Issued Immigration-Related Documents.** Please provide clear copies of all documents issued to you and your family members verifying you have maintained status while in the United States, such as: most recent I-94 Admission Record, Form I-20 (if previously held F-1 status), DS-2019 (if previously held J-1 status), Form I-129S (if previously held L-1 status), Employment Authorization Document, and all previous nonimmigrant petition approval and extension notices. Your most recent I-94 Admission Record can be retrieved online at <https://i94.cbp.dhs.gov/i94/>.
- **Copy of Birth Certificate or Birth Record.** Please provide a clear copy of the birth document for each applicant that includes the applicant's full name, date and place of birth, and the names of both parents. Please see below for the USCIS's specifications or visit: <https://travel.state.gov/content/visa/en/fees/reciprocity-by-country.html>. (Note: You should keep the original or certified copy available, upon request by an USCIS officer.)
- **Copy of Name Change Documentation,** if applicable.



## Rules of Birth Documents

Please refer to this link for the type of acceptable form of birth documents from your country: <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html>.

1. Each applicant must have birth documentation. A passport is not considered as acceptable birth evidence. An acceptable birth certificate must be issued by an appropriate government authority, i.e. one charged with the responsibility for keeping birth and death records for that municipality and must include the following information:

- i. Name of child
- ii. Date of birth
- iii. Place of birth
- iv. Full name of father
- v. Full name of mother

2. If an acceptable birth document is not available, the applicant must submit two sworn birth affidavits executed by appropriate relatives and a certificate of "Nonexistence of Birth Record" issued by an appropriate government authority, i.e. one charged with the responsibility for keeping birth and death records for that municipality, attesting that there is no record of the birth. An acceptable certificate of "Nonexistence of Birth Record" must include:

- i. Name of child
- ii. Date of birth
- iii. Place of birth
- iv. Full name of father
- v. Full name of mother

3. If a birth certificate does not contain all the required information, the applicant must submit the incomplete birth certificate and one sworn birth affidavit executed by an appropriate relative.

4. Affidavits. An acceptable birth affidavit must be executed by one or both parents and must be sworn in the presence of a notary public. If one parent is deceased and two affidavits are required, the affidavit must be executed by the surviving parent and an older relative with direct knowledge of the birth of the child. If both parents are deceased, the affidavit must be executed by one or two older relatives with direct knowledge of the birth of the child. A birth affidavit must contain the following information:

- i. Name of child
- ii. Date of birth
- iii. Place of birth
- iv. Full name of father
- v. Full name of mother

5. A person who has used a different name from the one shown on the birth document must produce a document explaining the use of such name. The following documents are commonly available as evidence:

- i. Baptismal certificate
- ii. Marriage certificate or divorce decree
- iii. School records showing early use of adopted name

If none of the foregoing documents are available, any other document, or combination of documents, that appear to resolve the difference in names will be considered. A personal sworn statement from the applicant is not acceptable, unless there is other evidence to substantiate it.<sup>2</sup>

<sup>2</sup> Specific instructions regarding Rules of Birth Documents for Nationals of India and Pakistan are available upon request.



## Important Notice Concerning Vaccination Requirements

All immigrant visa applicants are required to obtain certain vaccinations (listed below) prior to the issuance of an immigrant visa. Panel physicians who conduct medical examinations of immigrant visa applicants are required to verify that immigrant visa applicants have met the vaccination requirement, or that it is medically inappropriate for the visa applicant to receive one or more of the listed vaccinations.

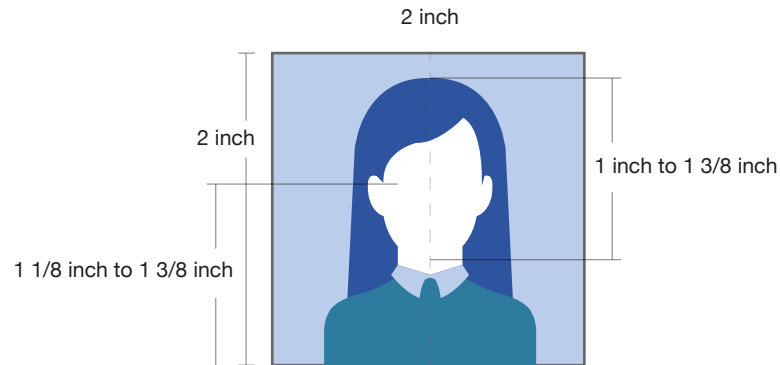
- i. Mumps,
- ii. Measles,
- iii. Rubella,
- iv. Polio,
- v. Tetanus and Diphtheria Toxoids,
- vi. Pertussis,
- vii. Influenza Type B (Hib)
- viii. Hepatitis B,
- ix. Varicella,
- x. Pneumococcal,
- xi. Influenza.

In order to assist the panel physician, and to avoid delays in the processing of an immigrant visa, all immigrant visa applicants should have their vaccination records available for the panel physician's review at the time of the immigrant medical examination. Visa applicants should consult with their regular health care provider to obtain a copy of their immunization record, if one is available. If you do not have a vaccination record, the panel physician will work with you to determine which vaccinations you may need to meet the requirement. Certain waivers of the vaccination requirement are available upon the recommendation of the panel physician.

Only a physician can determine which of the listed vaccinations are medically appropriate for you, given your age, medical history and current medical condition.



## Photo Specifications



- Taken within the last six months.
- 2 inches by 2 inches square, with the head centered in the frame. The height of the head (top of hair to bottom of chin) should measure 1 inch to 1 3/8 inches (25 mm - 35 mm).
- In color, or black and white against a white or off-white background. Photographs taken in front of busy, patterned or dark backgrounds are not acceptable.
- Unmounted, full face, with the face covering about 50% of the area of the photograph. In general, the head of the applicant, including both face and hair, should be shown from the crown of the head to the tip of the chin on top and bottom, and from hair-line side-to-side. It is preferable that the ears be exposed.
- Head-coverings are acceptable only when the applicant's face is completely exposed.

## Well-composed photo composition examples



Please refer to this link for further information on photo requirements: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/photos.html>.