ADJUSTMENT OF STATUS TO PERMANENT RESIDENT

Adjustment of Status, filed on form I-485, is your personal application to the U.S. government for permanent residence. Your immediate family members, meaning spouse and minor children under the age of 21, may apply with you. While the I-140 is based on your employment with UW-Madison, this final petition concerns your personal history, such as health, finances, places of residence, family, and political and criminal background. IFSS can provide only general information and assistance on this application. In most cases, faculty and staff can complete the forms on their own, but some may wish to seek the assistance of a private attorney. IFSS has information to assist you in selecting and evaluating a private attorney on our web site at: http://www.ohr.wisc.edu/ifss/imminfo/index.htm. It is important to remember that if you do hire an attorney, that person is representing you, not the University, as the University’s role in the application process is completed upon approval of the I-140.

Adjustment of Status vs. Consular Processing

There are two ways to finalize the permanent residence process; adjustment of status in the US, and consular processing outside the US. If you have maintained legal immigration status continuously while in the U.S., you should be eligible to apply for adjustment of status. If you have ever violated your status or worked without authorization for a period of 180 days or more, you will be required to leave the U.S. and obtain an immigrant visa at the U.S. Consulate in your country of citizenship or last permanent residence (consular processing). If this applies, be sure to consult with an immigration attorney. Some who are eligible for adjustment of status may choose to do consular processing. Following are some of the pros and cons of adjusting status versus consular processing.

Adjustment of Status

- entire process takes place in the US, no need for overseas trip
- total time frame for approval is approximately six months, but is subject to change
- principal applicant and dependents can apply for work permits and travel documents, eliminating the need for extensions of stay and consular visa applications
- FBI does fingerprint clearance
- once the adjustment application has been pending for 180 days, the principal applicant may change employers within the same occupational classification
- the three and ten year bars to admission for an overstay may not apply in limited circumstances (see Overstay section below)
- the I-485 can be filed concurrently with the I-140, except for those from countries with backlogs
- Bottom line: Generally the better option for everyone physically present in the US.

Consular Processing

- takes about six months in most countries, but can vary
- must apply in country of birth or legal permanent residence
- no appeal of denial; may be inadmissible to the US unless eligible for nonimmigrant visa
must maintain nonimmigrant status in the US while awaiting consular interview
no interim work permit or travel authorization
dependent(s) may not obtain work authorization
must travel with very short notice for medical exam and interview overseas
must obtain police certificates from every country where applicant and dependents have resided for 12 months or more after age 18
security clearances could delay visa issuance for several weeks or months
must enter within six months of issuance of the Immigrant Visa.
Bottom line: the main advantage to consular processing had been that it was a quicker process, but adjustment of status now is taking approximately the same amount of time. There is essentially no benefit to consular processing for those who are eligible for adjustment of status. With tighter security procedures, consular processing could result in being stuck outside the US for a lengthy period of time. Consular processing generally is only recommended for those who will be outside the US for a lengthy period of time and will need to enter with an immigrant visa.

Forms for Adjustment of Status
The forms can be obtained by calling the US Citizenship and Immigration Service’s (USCIS) forms line at 1-800-870-3676. You should request the form I-485 packet for yourself and any eligible family members, as well as forms I-131 and I-765 for Advance Parole and an Employment Authorization Document (see below). Forms also can be downloaded from the USCIS web site. The site address is: http://www.uscis.gov/portal/site/uscis.

Filing the Application
Each eligible family member must submit a completed I-485 packet to the USCIS. In addition to the following forms, you and your family members will have to submit copies of birth, marriage (if applicable) and divorce (if applicable) certificates that have been translated into English, if the original is not in English. The completed packet must include the following documents:

- I-485 with two photos that meet USCIS specifications
- G-325A biographical information sheet for all applicants age 14 or over
- I-693* medical form
- I-797 approval notice of form I-140, unless filing concurrently
- evidence of lawful admission (copy of I-94) and maintenance of status (copies of all immigration related documents for all periods of stay in the U.S. and all pages from the passport)
- letter from the employing Department giving job title, duties, salary and assurance of continuing employment
- I-765 for EAD and I-131 for Advance Parole with photos (see Travel section below)
- filing fee (please check USCIS website for most up to date fees; must be separate checks for each person but the fee covers all forms as well as the cost of biometrics
**Vaccinations**

The Immigration Act of 1996 requires that all applicants for immigrant visas outside the United States and adjustment of status within the U.S. present documentation of having received vaccination against vaccine-preventable diseases. The specific vaccination criteria for any person who seeks permanent residence are as follows:

1. The vaccine must be an age-appropriate vaccine as recommended by the Advisory Committee on Immunization Practices for the general U.S. population, AND
2. At least one of the following:
   a. The vaccine must protect against a disease that has the potential to cause an outbreak
   b. The vaccine must protect against a disease that has been eliminated in the U.S. or is in the process of elimination in the U.S.

Currently, the following age-appropriate vaccinations are required:

- Diptheria
- Tetanus
- Pertussis
- Polio
- Measles
- Mumps
- Rubella
- Rotovirus
- Haemophilus influenza type b
- Hepatitis A
- Hepatitis B
- Meningococcal
- Varicella
- Pneumococcal
- Influenza


Some of these vaccinations may not be widely available in many countries and may require a series of vaccinations over a period of time. All individuals who are applying for permanent residence (either adjustment of status or consular processing) through the sponsorship of the University of Wisconsin-Madison should check into the status of their vaccinations. Should additional vaccinations be needed, it would be wise to obtain them as soon as possible so as to avoid delays in processing the adjustment of status application.

Vaccinations may be administered by any physician. However, the medical exam to be completed on form I-693 must be completed by a USCIS approved medical examiner. You can locate the nearest examiner by calling 1-800-375-5283 and putting in your zip code.
Concurrent Filing
The I-485 may be filed concurrently with the university’s I-140, provided a visa number is immediately available. **USCIS will not accept the I-485 if a visa number is not immediately available.** Only a certain number of visas are allocated each year according to the country of birth and the employment based category under which UW-Madison filed the I-140 petition. In most instances, visa numbers are immediately available for UW-Madison faculty and staff. However, backlogs can occur for individuals from certain countries that have a large number of immigrants, such as India and mainland China. The State Department announces visa availability monthly on its web site at: [http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html). Until the date in the Visa Bulletin moves up to or beyond the individual’s priority date (the date the Labor Certification, if required, or the I-140 was filed) the I-485 cannot be filed. It may also be filed at a later date along with a copy of the I-140 receipt notice. This can reduce the wait for obtaining permanent residence by several months, and dependents can obtain work authorization much sooner. See additional information on concurrent filing on the IFSS web site under Permanent Residence.

Filing the Application
The biometrics fee is included in the filing fee for the I-485. After they receive your I-485, USCIS will send you a scheduling notice that will advise you when and where you need to go to get your biometrics taken. All applicants over the age of 14 must have biometrics taken. You will be required to take a photo ID and the scheduling notice with you.

Some of the forms request an “A#.” This is not the number on the I-94 card, but rather a number that begins with an “A” and is followed by 8 or 9 digits. Most people do not have an A# and the space should be left blank or marked “N/A.”

Make a complete packet for each applicant and mail to:

U.S. Citizenship and Immigration Services Phoenix Lockbox
P.O. Box 21281
Phoenix, AZ 85036

For courier service:
USCIS
Attn: AOS
1820 E. Skyharbor Circle S
Suite 100
Phoenix, AZ 85034

If the I-485 form is being filed concurrently with the University’s form I-140, then please let IFSS know and give the form to IFSS in a sealed envelope.
Processing of the Application
The Service Center will send you a receipt for the form I-485, generally within about a week of receiving the packet. Once USCIS has adjudicated the petition, provided all documentation is complete, you should be advised that your petition has been approved and you should receive the Permanent Resident Card in the mail within a few weeks. If travel outside the US is necessary before the card arrives, you can apply for an I-551 stamp at Milwaukee. The I-551 stamp permits you to leave and re-enter the U.S. prior to receiving the Permanent Resident card and is proof of employment eligibility. Once you have the card, you should complete a new I-9 in your Department to record your permanent resident status. Please be sure to provide IFSS with a copy of your Permanent Resident Card once you receive it, as we must update the UW computer payroll records.

USCIS has announced a change in its processing of applications for Adjustment of Status, the final step of the permanent residence process. Previously, USCIS would hold an application until a “name check” had been received from the Federal Bureau of Investigation (FBI). Now, if the application has been pending for more than 180 days, and the application awaiting adjudication is otherwise approvable, USCIS will go ahead and approve the application. The FBI has committed to providing name check results within this time frame.

Maintenance of Status and Travel While a Permanent Residence Petition is Pending
Individuals in H-1B status may travel and re-enter the US in H-1B status and may extend their stay up to the maximum 6 year limit while the I-485 is pending. Adjustment applicants in H-1B status have the choice of maintaining their H-1B status, or applying for an Employment Authorization Document (EAD). This applies to both the principal H-1B and the H-4 dependents. This applies only to H-1Bs, not to O-1s, TNs, J-1s etc. People in any status other than H-1B must obtain the EAD to work and Advance Parole to travel. Travel without Advance Parole will cancel the adjustment of status application.

Those who remain in H-1B status are bound by the terms and conditions of the approved petition and may not change employment or accept additional employment. They may travel outside the US and re-enter in H-1B status, provided they:

1. intend to resume employment with the same employer in the same capacity;
2. have a valid H-1B visa (or are visa exempt as in the case of Canadians); and
3. have the original I-797 approval notice of their H-1B status and the original I-797 receipt notice for the I-485 adjustment of status application.

If the six-year maximum in H-1B status has been reached, or if the applicant wishes to seek employment with additional employers, then it will be necessary to file form I-765 with the I-485 to obtain an EAD. (In limited instances, extensions beyond the 6 years in H-1B status can be obtained after the I-485 has been filed. IFSS can provide details.) Alternatively, the I-765 can be filed at a later date, along with a copy of the I-797 receipt notice for the I-485. The I-765 should be filed at least four months prior to the expiration date of the H-1B, or the desired start date with the additional employer. Those who actually engage in employment with another employer will lose their H-1B status, and no further extensions of H-1B status would be possible.
Those who use the EAD will also need to file for Advance Parole in order to travel outside the US and re-enter. The **Advance Parole must be received prior to leaving the country.** This includes even brief trips to Canada, Mexico and the adjacent islands. The application is filed on form I-131. It is a good idea to file the I-131 along with the I-485, as USCIS is taking several months to issue the Advance Parole document. Since the Advance Parole must be obtained prior to leaving the U.S., the long processing time could preclude being able to travel should a sudden emergency arise overseas. Otherwise, the I-131 can be filed at a later date with a copy of the form I-797 receipt that USCIS will send after they receive the form I-485. **In order to continue working upon re-entry into the U.S. with Advance Parole, it is necessary to have a valid EAD.** There are certain limited exceptions for some H-1Bs, but since the fee for the I-765 is included in the I-485 fee, and the USCIS policy guidance is not particularly clear, IFSS recommends filing for the EAD.

### Advantages of Obtaining an EAD and Advance Parole

1. Advance Parole (AP) eliminates the need to apply for a new visa outside the US.
2. Applicants with an EAD may work for other employers in addition to the UW-Madison department which filed the I-140.
3. With an EAD it is not necessary to extend the nonimmigrant status.
4. EADs are issued for one year, with one limited exception. USCIS will issue EADs with a validity period of two years for certain adjustment of status applicants. The two-year EADs will only be issued to individuals who have filed for adjustment of status, and after their application was accepted by USCIS, a visa number became unavailable due to visa number retrogression for their country of birth. Individuals who are unaffected by the visa number backlogs and therefore are able to complete the adjustment of status process will only receive one-year EADs.

### Advantages of Maintaining H-1B Status

1. If the adjustment application is denied, an applicant who maintains H-1B status continues to have legal status and work authorization. Others are subject to removal from the US.
2. It takes at least 90 days to get the Employment Authorization Document (EAD) and Advance parole. If the EAD expires, employment must be terminated until the new card comes, unlike in the case of a timely filed request for extension (see #3).
3. H-1Bs who file a timely application for extension of stay with no changes in the terms and conditions may continue employment for 240 days while USCIS adjudicates the petition.
4. Applicants maintaining H-1B status may travel immediately after filing the I-485, provided they have a valid H-1B visa in their passport or obtain a new one. Advance Parole applications take at least three months during which travel is not possible.

**Summary:** H-1Bs may either **maintain/extend their H-1B status and travel with a valid H-1B visa, or get an EAD to work and Advance Parole to travel.** All others need the EAD and Advance Parole.
Forms for both Advance Parole and the EAD are available on the USCIS web site: http://www.uscis.gov/portal/site/uscis.

**Overstay Penalties**
A law passed in 1996 makes maintaining status, either by extending the H-1B or obtaining an EAD, especially important. It is possible that failure to maintain status pending the adjudication of an I-485 could be considered an “overstay” under the provisions of the 1996 Immigration Act. This could result in a person being barred from the U.S. for three years for an overstay of six months to one year, or ten years for an overstay of over one year. USCIS is interpreting the new adjustment of status provisions to mean that unauthorized employment that occurs even after the I-485 is filed would also be a bar to adjustment of status in the US.

If you have ever violated your immigration status or worked without authorization, you should consult with an immigration attorney prior to leaving the country, even if USCIS has issued you an Advance Parole document. Depending on the nature and duration of the violation, leaving the U.S. could subject you to the three or ten year bar from admission to the U.S.

**PR Portability**
It is very important to keep in mind that if UW-Madison was the petitioner in the permanent residence process, the principal adjustment applicant must still be employed by UW-Madison in the same capacity when the adjustment process is finalized, with one exception. If the I-140 has been approved (per a USCIS memo dated 5/08) and the I-485 has been pending for more than 180 days, and the applicant is offered a job in the same or a similar occupation, it is possible to change employers. Caution is urged, though, as USCIS has not written implementing regulations for the law that permits changing employers, so it is not clear how they will interpret the law. Anyone who is considering a change of employers under this provision should contact IFSS and perhaps consult with an immigration attorney before making the change.

**Travel as a Permanent Resident**
Once you are a permanent resident, travel is generally not a problem, provided you have a valid passport from your country of citizenship and your Permanent Resident Card (form I-551 or green card). Refugees and asylees may not have a passport and will need to obtain a US travel document from USCIS by filing form I-131. Currently, USCIS is issuing the form I-551 for a period of 10 years, and it must be renewed prior to the expiration date. Although the Permanent Resident Status does not expire with the card, failure to renew the card could result in being barred from re-entry until a new card can be obtained, a process that could take several weeks or even months. Also, an expired I-551 is not a valid document for purposes of new employment eligibility verification.

Re-entry into the U.S. after an absence of six months or more is considered by USCIS to be a new application for entry as a permanent resident and the individual may be called upon to prove that he or she has not abandoned lawful permanent resident status. If a permanent resident plans to remain outside of the U.S. for a period of more than one year, it is necessary to file for a re-entry permit prior to leaving the country. The application is filed on form I-131 and must be filed
while the applicant is still within the U.S. but USCIS can send the permit to a designated U.S. consulate overseas. The re-entry permit is valid for up to two years. If you do not get a re-entry permit and remain outside the U.S. for more than a year, you will need to apply at a U.S. consulate for a “special immigrant” visa, which can take a long time to obtain.

For those who must remain outside the U.S. for extended periods of time, it is important to note that a return trip to the U.S. once a year for a few weeks will not necessarily be sufficient for maintaining permanent resident status. USCIS looks at the reasons for the extended absence, the individual’s intentions, income tax filings as a permanent resident, and other factors establishing the person’s ties to the U.S., such as bank accounts, credit cards, property ownership, etc. Faculty and academic staff who will be on extended leaves from the university should take steps to preserve their permanent residence prior to leaving the country and carry proof of maintenance of status when planning to be out of the country for six months or more. If the absence is due to employment, obtain a letter from the employing department detailing the terms and length of employment. If the absence is for family or personal reasons, these should be well documented.

Lengthy absences can also have an impact on eligibility for naturalization as a U.S. Citizen.

Adjustment 10/2012