

## Understanding Travel Outside the United States While an Adjustment of Status Application (I-485) is Pending

Once a person reaches the last step of the Permanent Residence process, and assuming that the person is in the United States, we would prepare and file an application for Adjustment of Status (I-485). As part of that process we would also prepare and file a request for work authorization (EAD) as well as permission to travel (Advance Parole or AP). The EAD and AP are generally granted within 90 days of filing the Adjustment of Status application.

Depending on the type of case, which will be discussed below, there may be very complicated rules which apply to travel outside the United States while the Adjustment of Status application is pending. Therefore, it is important for you to determine which type of case you have and then follow the rules for that type of case if you consider travel.

For family cases, which means the underlying petition is an I-130 based upon a family relationship with a U.S. citizen or a permanent resident, travel is not authorized under any circumstances until the Advance Parole (AP) is approved. In other words, during the period after filing the adjustment of status application, and until the AP is approved, travel outside the United States is not permitted. After the AP is approved, the applicant is generally allowed to travel at any time during the period of time that the Advance Parole is valid. However, if a person has 180 days or more of unlawful presence, any travel outside the United States, even with an AP will trigger a three or ten year bar that can only be overcome by showing extreme hardship to a qualifying relative. If the Adjustment of Status application is not approved by the time the initial Advance Parole expires, a new application for Advance Parole must be filed, generally at least four months in advance of the expiration.

For employment based cases the rules are much more complicated. If the applicant is not in H or L status then the rules applicable to family cases apply here as well. Therefore, if the applicant is not an H or L visa holder they can not travel outside the United States until the Advance Parole is approved and the same precaution regarding the three or ten year bar set forth above applies.

If the applicant is in H or L status, then there are additional ways to travel without using Advance Parole, or by using both at the same time.

If a person is in H status (which means the principal H-1 and any H-4 dependents) or L-1 status (the principal L-1 or any L-2 dependents) then any of those applicants may travel after filing the adjustment of status application even if they do not have advance parole. However, in order to use the H or L status for travel, the person must obtain a valid H-1 visa at the U.S. Consulate abroad before they can return and be admitted in H or L status. This rule does not apply to Canadian citizens since they do not need a visa to enter the U.S. All other nationalities must have a valid H or L visa in their passport in order to re-enter the United States in H or L status. If the H or L applicant for Adjustment of Status decides not to visit the U.S. Consulate and obtain the visa, the only way they can re-enter the United States is with the Advance Parole after it is approved and after filing with the application for Adjustment of Status. Note that in order to enter the U.S. in H or L status everyone, even Canadian citizens, must have a valid H-1 or L-1 petition approved by the Immigration Service for the current employer.

In many cases, the person will have both an H or L visa in their passport which is valid as well as a valid Advance Parole approved by the Immigration Service. In this situation, the person is actually admitted in either or both the H or L visa as well as the Advance Parole. This is somewhat confusing because many times the applicant is simply admitted on the Advance Parole even though they have a valid H or L visa in their passport. For this purpose, the person is also considered to be in H or L status even though they were admitted with the Advance Parole. What is important to remember is that you must have a valid H or L visa in addition to simply having an approved H or L petition. The visa is required also.

Several examples may be helpful here. If the person has valid H-1 status and also has an approved Advance Parole, he may leave the United States and return using the Advance Parole. However, unless he also has a valid H-1 visa in his passport from the U.S. Consulate, he will only be admitted with the Advance Parole and will not be admitted with H-1 status since he did not have a visa at the time of entry. On the other hand, if this person also went to the U.S. Consulate while he was outside the U.S. and obtained an H-1 visa, he would technically be admitted with both the Advance Parole and H-1 status at the same time even if the Immigration Service officer only indicated it was an admission with the Advance Parole. In other words, with a valid visa and Advance Parole you are admitted in both categories.

In many cases the individual will have an approved EAD for work authorization and Advance Parole for travel authorization and therefore an H or L visa is not necessary. However, there are many people who desire to remain in H or L status as an insurance policy in case something happens to their Adjustment of Status application. In other words, if the Adjustment of Status application is denied, the alien would remain in H or L status and could theoretically, especially in H status, change employers and obtain a new H petition with that employer.

Therefore, each person has to decide whether or not they want to continue in H or L status even though they have a valid EAD and Advance Parole. Many people decide to do both, although it is entirely possible to remain in the United States with just the EAD and the Advance Parole until the application for Adjustment of Status is approved. On the other hand, if you decide to have both the H or L status in addition to the EAD and Advance Parole, you must have a valid H or L visa in your passport at the time you are admitted to the U.S. (unless you are a Canadian citizen).