

Adjustment of Status

Adjustment of Status is a legal immigration process by which an individual is able to apply for legal permanent residence from within the United States.

There are several requirements before the person may be eligible for adjustment of status. Generally, in order for a person to be eligible to apply for adjustment of status he or she must have entered the United States legally, a visa number is immediately available to them, and they have not violated the terms of their non-immigrant stay in the U.S. Individuals who apply for adjustment of status on the basis of an immediate relative petition may be forgiven for their non-compliance with their non-immigrant visa terms as long as they entered the U.S. lawfully. Individuals who entered the U.S. on certain non-immigrant visas are not eligible for adjustment of status even if they meet all other criteria. You should check with an immigration practitioner to determine whether you are eligible for adjustment of status prior to proceeding.

Certain individuals are able to apply for adjustment of status even if they entered the U.S. without inspection and even if they have violated the terms of their non-immigrant stay. A person who had an immigrant petition filed for him or her prior to April 30, 2001 and the petition was approved at the time it was filed, such person may apply for an adjustment of status in the U.S. based on an immediately available immigrant visa upon a payment of a fine that will accompany the adjustment of status petition. For individuals who had a petition filed for them after January 14, 1998 and before April 30, 2001, they must show that they were physically present in the United States on December 21, 2000.

Consular Processing

A person who lives in the U.S. and has a visa number available but is unable to adjust status in the U.S. may apply for the immigrant visa through the U.S. Embassy or Consulate in his or her country of nationality. However, such person should be aware of the fact that once they leave the U.S., they could trigger the 3-10 year bar from re-entry into the U.S., which will require them to present a waiver of inadmissibility. A person who is in this situation should consult with an immigrant practitioner prior to proceeding as the person could be barred from re-entry to the U.S. once they have departed.

Admissibility

Whether a person is applying for an immigrant visa through adjustment of status or consular processing, he or she must still be admissible or qualifies for a waiver of inadmissibility.