Chapter 2 - Eligibility Requirements

Guidance Resources (12) Appendices (0) Updates (6)

An alien must meet certain eligibility requirements to adjust status to that of a lawful permanent resident (LPR).

INA 245(a) Adjustment of Status Eligibility Requirements
The applicant must have been: • Inspected and admitted into the United States; or • Inspected and paroled into the United States.
The applicant must properly file an adjustment of status application.
The applicant must be physically present in the United States.
The applicant must be eligible to receive an immigrant visa.
An immigrant visa must be immediately available when the applicant files the adjustment of status application[1] and at the time of final adjudication.[2]
The applicant must be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.
The applicant merits the favorable exercise of discretion.[3]

A. “Inspected and Admitted” or “Inspected and Paroled”

In 1960, Congress amended INA 245(a) and made adjustment of status available to any otherwise eligible applicant who has been “inspected and admitted or paroled” into the United States.[4] Since 1960, the courts, legacy Immigration and Naturalization Service, and USCIS have read the statutory language “inspected and admitted or paroled” as:

- Inspected and admitted into the United States; or
- Inspected and paroled into the United States.

This requirement must be satisfied before the alien applies for adjustment of status.[5] If an applicant has not been inspected and admitted or inspected and paroled before filing an adjustment application, the officer must deny the adjustment application.[6]

The inspected and admitted or inspected and paroled requirement does not apply to the following aliens seeking adjustment of status:

- INA 245(i) applicants; and
- Violence Against Women Act (VAWA) applicants.[7]

Special immigrant juveniles (SIJ) and other special immigrants are not exempt from this requirement. However, statutory provisions expressly state that these special immigrants are considered paroled for adjustment eligibility purposes. Accordingly, the beneficiaries of approved SIJ petitions meet the inspected and admitted or inspected and paroled requirement, regardless of their manner of arrival in the United States. [8] Certain special immigrants also meet this requirement.[9]

1. Inspection

Authority

Per delegation by the Secretary of Homeland Security, U.S. Customs and Border Protection (CBP) has jurisdiction over and exclusive inspection authority at ports-of-entry.[10]

Definition and Scope

Inspection is the formal process of determining whether an alien may lawfully enter the United States. Immigration laws as early as 1875 specified that inspection must occur prior to an alien's landing in or entering the United States and that prohibited aliens were to be returned to the country from which they came at no cost or penalty to the conveyor or vessel.[11] Inspections for air, sea, and land arrivals are now codified in the Immigration and Nationality Act (INA), including criminal penalties for illegal entry.[12]

To lawfully enter the United States, an alien must apply and present himself or herself in person to an immigration officer at a U.S. port of entry when the port is open for inspection.[13] An alien who arrives at a port of entry and presents himself or herself for inspection is an applicant for admission. Through the inspection process, an immigration officer determines whether the alien is admissible and may enter the United States under all the applicable provisions of immigration laws.

As part of the inspection, the alien must:

- Present any and all required documentation, including fingerprints, photographs, other biometric identifiers, documentation of status in the United States, and any other requested evidence to determine the alien's identity and admissibility; and
- Establish that he or she is not subject to removal under immigration laws, Executive Orders, or Presidential Proclamations.[14]

In general, if the alien presents himself or herself for questioning in person, the inspection requirement is met.[15] Nonetheless, if the alien enters the United States by falsely claiming U.S. citizenship, the alien is not considered to have been inspected by an immigration officer. In addition, the entry is not considered an admission for immigration purposes.[16]

Inspection Outcomes

Upon inspection, the officer at the port of entry typically decides one of the following outcomes for the alien:

- The officer admits them;
- The officer paroles them;
- The officer allows them to withdraw his or her application for admission and depart immediately from the United States;[17]
- The officer denies them admission into the United States; or
- The officer defers the inspection to a later time at either the same or another CBP office or a port of entry.[18]

2. Admission[19]

An alien is admitted if the following conditions are met: [20]

- The alien applied for admission as an "alien" at a port of entry; and
- An immigration officer inspected the applicant for admission as an "alien" and authorized him or her to enter the United States in accordance with the procedures for admission.[21]

An alien who meets these two requirements is admitted, even if the alien obtained the admission by fraud.[22] Likewise, the alien is admitted, even if the CBP officer performed a cursory inspection.

As long as the alien meets the procedural requirements for admission, the alien meets the inspected and admitted requirement for adjustment of status.[23] Any type of admission can meet the inspected and admitted requirement, which includes, but is not limited to, admission as a nonimmigrant, an immigrant, or a refugee.

Notwithstanding, if the alien makes a false claim to U.S. citizenship or to U.S. nationality at the port of entry and an immigration officer permits the alien to enter the United States, the alien has not been admitted.[24] A U.S. citizen arriving at a port of entry is not subject to inspection; therefore, an alien who makes a false claim to U.S. citizenship is considered to have entered without inspection.[25]

Similarly, an alien who entered the United States after falsely claiming to be a returning LPR is not considered to have been procedurally inspected and admitted because a returning LPR generally is not an applicant for admission.[26] An LPR returning from a temporary trip abroad would only be considered to be seeking admission or readmission to the United States if any of the following factors applies:

- The LPR has abandoned or relinquished his or her LPR status;
- The LPR has been absent from the United States for a continuous period in excess of 180 days;
- The LPR has engaged in illegal activity after having departed the United States;
- The LPR has departed from the United States while under legal process seeking his or her removal from the United States, including removal proceedings under the INA and extradition proceedings;
- The LPR has committed an offense described in the criminal-related inadmissibility grounds, unless the LPR has been granted relief for the offense;[27] or
- The LPR is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.[28]

Evidence of Admission

An Arrival/Departure Record (Form I-94), including a replacement[29] when appropriate, is the most common document evidencing an alien's admission.[30] The following are other types of documentation that may be accepted as proof of admission into the United States:

- Admission stamp in passport, which may be verified using DHS systems;
- Employment Authorization Card (Form I-688A), for special agricultural worker applicants, provided it was valid during the last claimed date of entry on the adjustment application;
- Temporary Resident Card (Form I-688), for special agricultural workers or legalization applicants granted temporary residence, provided it was valid during the last claimed date of entry on the adjustment application; and
- Border Crossing Card (Form I-586 or Form DSP-150[31]), provided it was valid on the date of last claimed entry.

When inspected and admitted to the United States, the following nonimmigrants are exempt from the issuance of an Arrival/Departure Record:[32]

- A Canadian citizen admitted as a visitor for business, visitor for pleasure, or who was permitted to directly transit through the United States;
- A nonimmigrant residing in the British Virgin Islands who was admitted only to the United States Virgin Islands as a visitor for business or pleasure;[33]
- A Mexican national admitted with a B-1/B-2 Visa and Border Crossing Card (Form DSP-150) at a land or sea port of entry as a visitor for business or pleasure for a period of 30 days to travel within 25 miles of the border; and
- A Mexican national in possession of a Mexican diplomatic or official passport.[34]

In these situations, an applicant should submit alternate evidence to prove his or her inspection and admission to the United States. This may include a Border Crossing Card, plane tickets evidencing travel to the United States, or other corroborating evidence.

3. Parole

Authority

The Secretary of Homeland Security delegated parole authority to USCIS, CBP, and U.S. Immigration and Customs Enforcement (ICE).[35]

Definition and Scope

An alien is paroled if the following conditions are met:

- They are seeking admission to the United States at a port of entry; and
- An immigration officer inspected them as an "alien" and permitted them to enter the United States without determining whether they may be admitted into the United States.[36]

A grant of parole is a temporary and discretionary act exercised on a case-by-case basis. Parole, by definition, is not an admission.[37]

Paroled for Deferred Inspection[38]

On occasion, CBP grants deferred inspection to arriving aliens found inadmissible during a preliminary inspection at a port of entry. Deferred inspection is generally granted only after CBP:

- Verifies the alien's identity and nationality;
- Determines that the alien would likely be able to overcome the identified inadmissibility by obtaining a waiver or additional evidence; and
- Determines that the alien does not present a national security risk to the United States.

The decision to defer inspection is at the CBP officer's discretion.

If granted deferred inspection, CBP paroles the alien into the United States and defers completion of the inspection to a later time. An alien paroled for a deferred inspection typically reports for completion of inspection within 30 days of the deferral[39] to a CBP office with jurisdiction over the area where the alien will be staying or residing in the United States.[40]

The grant of parole for a deferred inspection satisfies the "inspected and paroled" requirement for purposes of adjustment eligibility.[41]

Urgent Humanitarian Reasons or Significant Public Benefit

DHS may parole an alien based on urgent humanitarian or significant public benefit reasons.[42] DHS may grant urgent humanitarian or significant public benefit parole only on a case-by-case basis.[43] Any type of urgent humanitarian, significant public benefit, or deferred inspection-directed parole meets the "paroled into the United States" requirement.[44]

Parole in Place: Parole of Certain Aliens Present Without Admission or Parole

An alien who is present in the United States without inspection and admission or inspection and parole is an applicant for admission.[45] DHS can exercise its discretion to parole such an alien into the United States.[46] In general, USCIS grants parole in place only sparingly.

The fact that an alien is a spouse, child, or parent of an active duty member of the U.S. armed forces, a member in the Selected Reserve of the Ready Reserve, or someone who previously served in the U.S. armed forces or the Selected Reserve of the Ready Reserve ordinarily weighs heavily in favor of parole in place. Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such an alien.

If DHS grants parole before the alien files an adjustment application, the alien meets the "inspected and paroled" requirement for adjustment. Parole in place does not permit approval of an adjustment application that was filed before the grant of parole.[47]

Parole in place does not relieve the alien of the need to meet all other eligibility requirements for adjustment of status and the favorable exercise of discretion.[48] For example, except for immediate relatives and certain other immigrants, an alien must have continuously maintained a lawful status since entry into the United States.[49]

Conditional Parole

Conditional parole is also known as release from custody. This is a separate and distinct process from parole and does not meet the "inspected and paroled" requirement for adjustment eligibility.[50]

Evidence of Parole

Evidence of parole includes:

- A parole stamp on an advance parole document;[51]
- A parole stamp in a passport; or
- An Arrival/Departure Record (Form I-94) endorsed with a parole stamp.[52]

4. Commonwealth of the Northern Mariana Islands

A Commonwealth of the Northern Mariana Islands (CNMI) applicant who is granted parole meets the inspected and paroled requirement. On May 8, 2008, the Consolidated Natural Resources Act was signed into law, which replaced the CNMI's prior immigration laws and extended most U.S. immigration law provisions to the CNMI for the first time in history.[53] The transition period for implementation of U.S. immigration law in the CNMI began on November 28, 2009.

As of that date, all aliens present in the CNMI (other than LPRs) became present in the United States by operation of law without admission or parole. In recognition of the unique situation caused by the extension of U.S. immigration laws to the CNMI, all aliens present in the CNMI on or after that date who apply for adjustment of status are considered applicants for admission[54] to the United States and are eligible for parole.

Because of these unique circumstances, USCIS grants parole to applicants otherwise eligible to adjust status to serve as both an inspection and parole for purposes of meeting the requirements for adjustment. Under this policy, the USCIS Guam Field Office or the USCIS Saipan Application Support Center grants parole to an applicant otherwise eligible for parole and adjustment immediately prior to approving the adjustment of status application.

5. Temporary Protected Status

Temporary Protected Status is Generally Not an Admission for INA 245(a) Adjustment Purposes

Temporary protected status (TPS) is not an admission for purposes of adjustment under INA 245(a), except in those circuits where a circuit court has ruled otherwise.[55]

Therefore, an alien who entered the United States without having been inspected and admitted or inspected and paroled, and who is subsequently granted TPS, does not meet the inspected and admitted or inspected and paroled requirement under INA 245(a) for adjustment.[56]

For purposes of adjustment of status under INA 245, an alien in TPS is considered as being in and maintaining lawful status as a nonimmigrant only during the period that TPS is in effect.[57] Absent circuit court precedent to the contrary, TPS does not satisfy the separate INA 245(a) requirement of being inspected and admitted or inspected and paroled, nor does it cure any previous failure to maintain continuously a lawful status in the United States.

Congress made clear that TPS was intended to be a temporary form of relief and not a path to permanent residence.[58] There is no statutory language or legislative history to suggest that Congress intended a grant of TPS to be considered an admission or parole for adjustment purposes. Therefore, it is USCIS' long-held position that a grant of TPS does not cure an alien's entry without inspection or constitute an inspection and admission of the alien.[59] The federal appellate courts for the Third and Eleventh Circuits have affirmed USCIS' interpretation that a grant of TPS is not an admission for adjustment purposes.[60]

Temporary Protected Status is Considered an Admission for INA 245(a) Adjustment Purposes in the Sixth and Ninth Circuits Only

Despite USCIS' and legacy Immigration and Naturalization Service (INS)'s longstanding interpretation, the federal appellate courts in the Sixth Circuit[61] in *Flores v. USCIS*[62] and the Ninth Circuit[63] in *Ramirez v. Brown*[64] have ruled that, for purposes of adjustment of status, an alien who enters the United States without inspection and who is subsequently granted TPS meets the inspected and admitted requirement under INA 245(a).[65] Therefore, if the applicant resides in the Sixth or Ninth Circuits, the applicant is deemed admitted for purposes of adjustment of status under INA 245(a), but only so long as the applicant remains in TPS on the date that USCIS adjudicates his or her application for adjustment of status.

USCIS does not consider *Flores* and *Ramirez* to extend to aliens who may have once had TPS, including those whose TPS was withdrawn by USCIS or the U.S. Department of Justice due to ineligibility, or for whom a country's TPS designation has been terminated by DHS.

USCIS does not apply *Flores* outside the Sixth Circuit or *Ramirez* outside the Ninth Circuit.

A TPS beneficiary in the Sixth and Ninth Circuits must still be otherwise eligible for adjustment of status and warrant a favorable exercise of discretion.[66] The TPS beneficiary must still have a visa number available,[67] must be admissible[68] to the United States, and may not be barred from adjustment.[69] For example, a TPS beneficiary may be ineligible based on a failure to maintain continuously a lawful status during any period before the grant of TPS, unless eligible for an exemption from this bar to adjustment.[70] Also, an alien who last entered the United States as an alien crewman is barred from adjustment of status under INA 245(a), notwithstanding the subsequent grant of TPS.[71]

Return Following Departure from United States with Prior Consent

TPS beneficiaries may travel abroad temporarily with the prior consent of DHS pursuant to INA 244(f)(3).[72] If a TPS beneficiary travels abroad temporarily, with prior consent from DHS, he or she may return to the United States in accordance with the terms of DHS's authorization in the same immigration status that he or she had at the time of departure, with certain exceptions.[73] Upon return, the alien resumes the same immigration status and the same incidents of status that the alien possessed before departure.[74] The departure and return of the alien pursuant to INA 244(f)(3) makes no change at all to any aspect of the alien's prior immigration status in the United States. Travel authorization for a TPS beneficiary "is a unique form of travel authorization and operates as a legal fiction that restores the alien to the status quo ante as if the alien had never left the United States."[75]

Since the purpose of Section 304(c) of the Miscellaneous and Technical Immigration and Nationality Amendments Act of 1991 (MTINA) is to return the TPS beneficiary to the "same immigration status the alien had at the time of departure," this provision of MTINA "cannot be interpreted to put TPS recipients in a better position than they had been upon their physical departure from the United States[.]"[76] The TPS beneficiary's travel and return "does not alter their immigration status for purposes of adjustment of status[.]"[77]

When DHS provides prior consent to a TPS beneficiary for his or her travel abroad, it documents that consent by providing an advance parole document (Form I-512) to the alien, as required by regulation.[78] DHS issues an advance parole document for this purpose solely as a matter of administrative convenience. TPS travel authorization is unique and affords the TPS beneficiary only what is provided for under MTINA by restoring the alien to "the same immigration status the alien had at the time of departure."[79] The travel authorization for the TPS beneficiary allows the alien "to return to the United States in a procedurally regular fashion after foreign travel[.]"[80] However, "[a] status quo ante return cannot create a condition needed to establish eligibility for a benefit for which the alien" would not have been eligible at the time of departure.[81] TPS beneficiaries who depart and return to the United States with the prior consent of DHS pursuant to INA 244(f)(3) are neither admitted nor paroled upon return, but simply resume the same immigration status they had before departing. "The same immigration status" encompasses not only that status of an alien who may be present without

inspection and admission or inspection and parole, but all other legal incidents of status, such as an alien's status in deportation, exclusion, or removal proceedings.

This is consistent with the clear intent of Congress in passing INA 244 and implementing TPS. INA 244(h) provides that a supermajority vote is required for Congress to provide TPS recipients with LPR status.[82] Therefore, TPS travel authorization under INA 244(f)(3) and Section 304(c) of MTINA cannot be construed to circumvent Congress' intent that TPS not provide a direct path to permanent residence.[83] Congress clearly proscribed its own ability to confer permanent residency on TPS recipients, and nothing in MTINA reflects a change of that intent.[84]

The holding of *Matter of Z-R-Z-C-* recognized the applicant's reliance interests on past practices and guidance and therefore the holding was not applied to that applicant. Similarly, applicants who have previously received consent to travel and have traveled with DHS consent pursuant to INA 244(f)(3) are likely to have relied upon the past practices and guidance. Accordingly, the statutory construction announced by Matter of Z-R-Z-C- only applies to TPS recipients who departed and returned to the United States under INA 244(f)(3) after the date of the AAO's Adopted Decision, August 20, 2020.[85] *Matter of Z-R-Z-C-* does not impact TPS recipients who adjusted status to lawful permanent residence under the past practice or prior guidance. Such aliens, when applying for naturalization, may not be denied based on INA 318 grounds for being adjusted under past practice or prior guidance.

6. Asylum[86]

An asylee whose adjustment application is based on his or her asylee status adjusts under INA 209(b).[87] An asylee, however, may seek to adjust under INA 245(a) if the asylee prefers to adjust on a basis other than the asylee's status. This may arise in cases where, for example, an asylee marries a U.S. citizen and subsequently seeks to adjust status as an immediate relative of a U.S. citizen rather than under the asylee provision. In order to adjust under INA 245(a), however, the asylee must meet the eligibility requirements that apply under that provision.

There may be circumstances where asylees are not able to meet certain requirements for adjustment under INA 245(a). For instance, an alien who enters without inspection and is subsequently granted asylum does not satisfy the inspected and admitted or inspected and paroled requirement.[88] On the other hand, an asylee who departs the United States and is admitted or granted parole upon return to a port of entry meets the inspected and admitted or inspected and paroled requirement.

7. Waved Through at Port-of-Entry

In some cases, an alien may claim that he or she arrived at a port of entry and presented himself or herself for inspection as an alien, but the inspector waved (allowed to pass) him or her through the port of entry without asking any questions.

Where an alien physically presents himself or herself for questioning and makes no knowing false claim to U.S. citizenship, the alien is considered to have been inspected even though he or she volunteers no information and is asked no questions by the immigration authorities. Such an alien satisfies the inspected and admitted requirement of INA 245(a) as long as the alien sufficiently proves that he or she was indeed waved through by an immigration official at a port of entry.[89]

An officer may find that an adjustment applicant satisfies the inspected and admitted requirement based on a claim that he or she was waved through at a port of entry if:

- The applicant submits evidence to support the claim, such as third-party affidavits from those with personal knowledge of the facts stated in the affidavits and corroborating documentation; and
- The officer determines that the claim is credible.[90]

The burden of proof is on the applicant to establish eligibility for adjustment of status.[91] Accordingly, the applicant must support and sufficiently establish the claim that he or she was admitted as an alien and not as a presumed U.S. citizen. For example, if the applicant was in a car with U.S. license plates and with U.S. citizens onboard, the applicant should submit persuasive evidence to establish he or she physically presented himself or herself to the inspector and was admitted as an alien.[92]

B. Properly Filing an Adjustment Application

To adjust status, an alien must file an Application to Register Permanent Residence or Adjust Status (Form I-485) in accordance with the form instructions. The adjustment application must be properly signed and accompanied by the appropriate fee.[93] The application must be filed at the correct filing location, as specified in the form instructions. USCIS rejects adjustment applications if the application is:

- Filed at an incorrect location;
- Not filed with the correct fee, unless granted a fee waiver;
- Not properly signed; or
- Filed when an immigrant visa is unavailable.[94]

C. Eligible to Receive an Immigrant Visa

1. General Eligibility for an Immigrant Visa

An adjustment applicant must be eligible to receive an immigrant visa. An applicant typically establishes eligibility for an immigrant visa through an immigrant petition in one of the categories listed in the table below.

Eligibility to Receive an Immigrant Visa

Immigrant Category	Petition	Who May Qualify
Family-Based	Petition for Alien Relative (Form I-130)	• Immediate relatives of U.S. citizens[95] • Unmarried sons and daughters of U.S. citizens (21 years of age and older) • Spouses and unmarried children (under 21 years of age) of LPRs • Unmarried sons and daughters of LPRs • Married sons and daughters of U.S. citizens • Brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age or older)
Family-Based	Petition for Alien Fiancé(e) (Form I-129F)	• Fiancé(e) of a U.S. citizen
Family-Based	Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)	• Widow or widower of a U.S. citizen • VAWA self-petitioners
Employment-Based	Immigrant Petition for Alien Worker (Form I-140)	• Priority workers • Members of the professions holding an advanced degree or persons of exceptional ability • Skilled workers, professionals, and other workers
Employment-Based	Immigrant Petition by Alien Investor (Form I-526)	• Investors
Special Immigrants	Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)	• Religious workers • Certain international employees • Panama Canal Zone employees • Certain physicians • International organization officers and employees • Special immigrant juveniles • Certain U.S. armed forces members • Certain broadcasters • Certain Afghanistan and Iraq nationals
Diversity Immigrant Visa[96]	Not applicable (Diversity visas do not require a USCIS-filed petition)	• Diversity immigrants

2. Dependents

The spouse and children of certain family-based, employment-based, and Diversity Immigrant Visa adjustment applicants may also obtain LPR status through their relationship with the principal applicant. Because the

spouse and children do not have an independent basis to adjust status apart from their relationship to the principal immigrant, they are “dependents” of the principal for purpose of eligibility for adjustment of status.

Dependents do not have their own underlying immigrant petition and may only adjust based on the principal’s adjustment of status. In general, dependent applicants must have the requisite relationship to the principal both at the time of filing the adjustment application and at the time of final adjudication.[97]

3. Concurrent Filing

The immigrant petition establishing the underlying basis to adjust is typically filed before the alien files the adjustment application. In some instances, the applicant may file the adjustment application at the same time the immigrant petition is filed.[98]

D. Immigrant Visa Immediately Available at Time of Filing and at Time of Approval

In general, an immigrant visa must be available before an alien can apply for adjustment of status.[99] An immigrant visa is always available to aliens seeking adjustment as immediate relatives. Visas are numerically limited for most other immigrant categories eligible to adjust; applicants in these numerically limited categories may need to wait until a visa is available before they can file an adjustment application. Furthermore, an immigrant visa must be available for issuance on the date USCIS approves any adjustment application.[100]

E. Admissible to the United States

An adjustment of status applicant must be admissible to the United States.[101] An applicant who is inadmissible may apply for a waiver of the ground of inadmissibility, if a waiver is available, or another form of relief. The applicable grounds of inadmissibility and any available waivers depend on the immigrant category under which the applicant is applying.[102]

F. Bars to Adjustment of Status

An applicant may not be eligible to apply for adjustment of status if one or more bars to adjustment applies.[103] The bars to adjustment of status may apply to aliens who either entered the United States in a particular status or manner, or committed a particular act or violation of immigration law.[104] The table below refers to aliens ineligible to apply for adjustment of status, unless otherwise exempt.[105]

Aliens Barred from Adjustment of Status

Alien	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
Crewman[106]	245(c)(1)	Only most recent permission to land, or admission prior to filing for adjustment	VAWA-based applicants
In Unlawful Immigration Status on the Date the Adjustment Application is Filed OR Who Failed to Continuously Maintain Lawful Status Since Entry into United States[107] OR Who Continues in, or Accepts, Unauthorized Employment Prior to Filing for Adjustment	245(c)(2)[108]	All entries and time periods spent in the United States (departure and return does not remove the ineligibility)[109]	VAWA-based applicants Immediate relatives[110] Certain special immigrants[111] 245(k) eligible[112]
Admitted in Transit Without a Visa (TWOV)	245(c)(3)	Only most recent admission prior to filing for adjustment	VAWA-based applicants

Alien	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
Admitted as a Nonimmigrant Without a Visa under a Visa Waiver Program[113]	245(c)(4)	Only most recent admission prior to filing for adjustment	VAWA-based applicants Immediate relatives
Admitted as Witness or Informant[114]	245(c)(5)	Only most recent admission prior to filing for adjustment	VAWA-based applicants
Who is Deportable Due to Involvement in Terrorist Activity or Group[115]	245(c)(6)	All entries and time periods spent in the United States	VAWA-based applicant[116]
Seeking Adjustment in an Employment-based Immigrant Category and Not in a Lawful Nonimmigrant Status	245(c)(7)	Only most recent admission prior to filing for adjustment	VAWA-based applicants Immediate relatives and other family-based applicants Special immigrant juveniles[117] 245(k) eligible[118]
Who has Otherwise Violated the Terms of a Nonimmigrant Visa[119] OR Who has Ever Engaged in Unauthorized Employment[120]	245(c)(8)[121]	All entries and time periods spent in the United States (departure and return does not remove the ineligibility)[122]	VAWA-based applicants Immediate relatives[123] Certain special immigrants 245(k) eligible[124]

In all cases, the alien is subject to any and all applicable grounds of inadmissibility even if the alien is not subject to any bar to adjustment, or is exempt from any or all the bars to adjustment.

1. Overlapping Bars

Some bars to adjustment may overlap in their application, despite their basis in separate sections of the law.[125] For example, an alien admitted under the Visa Waiver Program who overstays the admission is barred by both INA 245(c)(2) and INA 245(c)(4). Because some bars overlap, more than one bar can apply to an applicant for the same act or violation. In such cases, the officer should address each applicable adjustment bar in the denial notice.

2. Exemptions from the Bars[126]

Congress has provided relief from particular adjustment bars to certain categories of immigrants such as VAWA-based adjustment applicants, immediate relatives, and designated special immigrants.

Furthermore, INA 245(k) exempts eligible applicants under the employment-based 1st, 2nd, 3rd and certain 4th preference[127] categories from the INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8) bars. Specifically, an eligible employment-based adjustment applicant may qualify for this exemption if the applicant failed to maintain a lawful status, engaged in unauthorized employment, or violated the terms of his or her nonimmigrant status (admission under a nonimmigrant visa) for 180 days or less since his or her most recent lawful admission.[128]

Footnotes

[^ 1] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed [7 USCIS-PM A.3(B)].

[^ 2] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 3] See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^ 4] As originally enacted, INA 245(a) made adjustment available only to an alien who "was lawfully admitted… as a bona fide nonimmigrant and who is continuing to maintain that status." See Immigration and Nationality Act of 1952, Pub. L. 82-414 (PDF), 66 Stat. 163, 217 (June 27, 1952). Admission as a bona fide nonimmigrant remained a requirement until 1960. See Pub. L. 86-648 (PDF) (July 14, 1960). Congress amended that threshold requirement several times. The 1960 amendment removed the requirement of admission as a bona fide nonimmigrant.

[^ 5] See 8 CFR 245.1(b)(3).

[^ 6] See legacy Immigration and Naturalization Service (INS) General Counsel Opinion 94-28, 1994 WL 1753132 ("Congress enacted INA 245 in such a manner that persons who entered the U.S. without inspection are ineligible to adjust"). See S. Rep. 86-1651, 1960 U.S.C.C.A.N. 3124, 3136 ("This legislation will not benefit the alien who has entered the United States in violation of the law") and 3137 ("The wording of the amendments is such as not to grant eligibility for adjustment of status to alien crewmen and to aliens who entered the United States surreptitiously"). See *Matter of Robles* (PDF), 15 I&N Dec. 734 (BIA 1976) (explaining that entry into the United States after intentionally evading inspection is a ground for deportation under (then) INA 241(a)(2)).

[^ 7] See INA 245(a).

[^ 8] See INA 245(h)(1), which states that SIJ-based applicants are considered paroled into the United States for purposes of INA 245(a).

[^ 9] See INA 245(g), which holds that certain special immigrants, as defined under INA 101(a)(27)(k), are considered paroled into the United States for purposes of INA 245(a).

[^ 10] See Delegation of Authority to the Commissioner of U.S. Customs and Border Protection, Department of Homeland Security (DHS) Delegation No. 7010.3.

[^ 11] See Section 5 of the Act of March 3, 1875, 18 Stat. 477. See Sections 6, 8, 10, and 11 of the Act of March 3, 1891, 26 Stat. 1084. See Sections 8, 12, 16, and 18 of the Act of February 20, 1907, 34 Stat. 898. See Sections 10, 15, and 16 of the Immigration Act of 1917, Pub. L. 301 (February 5, 1917).

[^ 12] See INA 231-235 and INA 275. See *Matter of Robles* (PDF), 15 I&N Dec. 734 (BIA 1976) (holding that entry into the United States after intentionally evading inspection is a ground for deportation under (then) INA 241(a)(2)).

[^ 13] See 8 CFR 235.1(a). See *Matter of S-* (PDF), 9 I&N Dec. 599 (BIA 1962) (inspection is the process that determines an alien's initial right to enter the United States upon presenting himself or herself for inspection at a port of entry). See *Ex Parte Saadi*, 23 F.2d 334 (S.D. Cal. 1927).

[^ 14] See INA 235(d). See 8 CFR 235.1(f)(1).

[^ 15] See *Matter of Areguillin* (PDF), 17 I&N Dec. 308 (BIA 1980), and *Matter of Quilantan* (PDF), 25 I&N Dec. 285 (BIA 2010), which held that an alien who had physically presented himself or herself for questioning and made no knowing false claim of citizenship had satisfied the inspected and admitted requirement of INA 245(a); alternatively, an alien who gains admission to the U.S. upon a knowing false claim to U.S. citizenship cannot be deemed to have been inspected and admitted. See *Matter of Pinzon* (PDF), 26 I&N Dec. 189 (BIA 2013).

[^ 16] See *Reid v. INS*, 420 U.S. 619, 624 (1975) (an alien who enters the United States based on a false claim to U.S. citizenship is excludable under former INA 212(a)(19), or INA 212(a)(6)(C) today, and considered to have entered without inspection).

[^ 17] See INA 235(a)(4).

[^ 18] Deferred inspection is a form of parole. An alien who is deferred inspection is paroled into the United States for the period of time necessary to complete the inspection. See 8 CFR 235.2(c). For more information on deferred inspection, see Subsection 3, Parole [7 USCIS-PM B.2(A)(3)].

[^ 19] See INA 101(a)(13)(A). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended the statute by changing the concept of "entry" to "admission" and "admitted." See Section 301(a) of IIRIRA, Division C of Pub. L. 104-208 (PDF), 110 Stat. 3009, 3009-575 (September 30, 1996). INA 101(a)(13)(B) clarifies that parole is not admission.

[^ 20] See INA 101(a)(13)(A) ("The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer."). Legislative history does not elaborate on the meaning of "lawful."

[^ 21] See 8 CFR 235.1(f)(1).

[^ 22] See *Matter of Areguilin* (PDF), 17 I&N Dec. 308 (BIA 1980). See INA 291 (burden of proof). See *Emokah v. Mukasey*, 523 F.3d 110 (2nd Cir 2008). While it is an "admission," procuring admission by fraud or willful misrepresentation is illegal and has several consequences. For example, the alien may be inadmissible and removable. See INA 212(a)(6)(C) and INA 237(a)(1)(A).

[^ 23] See *Matter of Quilantan* (PDF), 25 I&N Dec. 289, 290 (BIA 2010). See *Matter of Areguilin* (PDF), 17 I&N Dec. 308 (BIA 1980). See INA 245(a). The alien is not inadmissible as an illegal entrant under INA 212(a)(6)(A)(i). For more information on admissibility, see Volume 8, Admissibility [8 USCIS-PM].

[^ 24] See *Matter of Pinzon* (PDF), 26 I&N Dec. 189 (BIA 2013) (an alien who enters the United States by falsely claiming U.S. citizenship is not deemed to have been inspected by an immigration officer, so the entry is not an "admission" under INA 101(a)(13)(A)).

[^ 25] See *Reid v. INS*, 420 U.S. 619, 624 (1975). See *Matter of S-* (PDF), 9 I&N Dec. 599 (BIA 1962). An alien who makes a false claim to U.S. citizenship is inadmissible for making the claim (INA 212(a)(6)(C)(ii)). The alien may also be inadmissible for presence without admission or parole (INA 212(a)(6)(A)(i)) and unlawful presence after previous immigration violations (INA 212(a)(9)(C)).

[^ 26] Such aliens are inadmissible for presence without admission or parole and may be inadmissible for unlawful presence after previous immigration violations. See INA 212(a)(6)(A)(i) and INA 212(a)(9)(C).

[^ 27] See INA 212(a)(2). See INA 212(h) and INA 240A(a).

[^ 28] See INA 101(a)(13)(C). See generally *Matter of Collado-Munoz*, 21 I&N Dec. 1061 (BIA 1997). The alien who enters by making a false claim to LPR status at a port of entry and who is permitted to enter is inadmissible for presence without admission or parole (INA 212(a)(6)(A)(i)) and fraud and misrepresentation (INA 212(a)(6)(C)(i)). The alien may also be inadmissible for unlawful presence after previous immigration violations. See INA 212(a)(9)(C).

[^ 29] This will typically be documented by an approved Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I-102).

[^ 30] CBP or USCIS can issue an Arrival/Departure Record (Form I-94). If admitted to the United States by CBP at an airport or seaport after April 30, 2013, CBP may have issued an electronic Form I-94 to the applicant instead of a paper Form I-94. To obtain a paper version of an electronic Form I-94, visit the CBP Web site. CBP does not charge a fee for this service. Some travelers admitted to the United States at a land border, airport, or seaport, after April 30, 2013, with a passport or travel document and who were issued a paper Form I-94 by CBP may also be able to obtain a replacement Form I-94 from the CBP website without charge. Applicants may also obtain Form I-94 by filing an Application for Replacement/Initial Nonimmigrant Arrival-Departure Record (Form I-102), with USCIS. USCIS charges a fee for this service.

[^ 31] U.S. Department of State Form DSP-150.

[^ 32] See 8 CFR 235.1(h)(1)(i)-(v).

[^ 33] See 8 CFR 212.1(b).

[^ 34] See 8 CFR 212.1(c).

[^ 35] See Delegation to the Bureau of Citizenship and Immigration Services, DHS Delegation No. 0150.1; Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement, DHS Delegation No. 7030.2; Delegation of Authority to the Commissioner of U.S. Customs and Border Protection, DHS Delegation No. 7010.3.

[^ 36] See INA 212(d)(5)(A).

[^ 37] See INA 101(a)(13)(B) and 212(d)(5)(A).

[^ 38] See 8 CFR 235.2.

[^ 39] CBP generally issues a Notice to Appear 30 days after an alien's non-appearance for the deferred inspection, so an officer should review the relevant case and lookout systems for any entries related to CBP.

[^ 40] CBP generally creates either an A-file or T-file to document the deferred inspection.

[^ 41] See legacy Immigration and Naturalization Service (INS) General Counsel Opinion 94-28, 1994 WL 1753132 (whether deferred inspection constitutes parole for purposes of adjustment of status under INA 245).

[^ 42] See INA 212(d)(5).

[^ 43] See INA 212(d)(5).

[^ 44] Only parole under INA 212(d)(5)(A) meets this requirement.

[^ 45] See INA 235(a).

[^ 46] See legacy INS General Counsel Opinion 98-10, 1998 WL 1806685.

[^ 47] As with any immigration benefit request, eligibility for adjustment must exist when the application is filed and continue through adjudication. See 8 CFR 103.2(b)(1).

[^ 48] For example, parole does not erase any periods of prior unlawful status. Therefore, an alien who entered without inspection will remain ineligible for adjustment of status, even after a grant of parole, unless he or she is an immediate relative or falls within one of the other designated exceptions to INA 245(c)(2) or INA 245(c)(8).

[^ 49] See INA 245(c)(2). See Chapter 4, Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM B.4].

[^ 50] See INA 236(a)(2)(B). Neither the statute nor regulations deem a release on conditional parole equal to a parole under INA 212(d)(5)(A). Several circuits and the BIA have opined on this and rejected the argument that the two concepts are equivalent processes. See *Ortega-Cervantes v. Gonzales* (PDF), 501 F.3d 1111 (9th Cir. 2007). See *Matter of Castillo-Padilla* (PDF), 25 I&N Dec. 257 (BIA 2010). See *Delgado-Sobalvarro v. Atty. Gen.* (PDF), 625 F.3d 782 (3rd Cir. 2010). See *Cruz Miguel v. Holder*, 650 F.3d 189 (2nd Cir. 2011).

[^ 51] See Authorization for Parole of an Alien into the United States (Form I-512 or I-512L).

[^ 52] See 8 CFR 235.1(h)(2). If an alien was admitted to the United States by CBP at an airport or seaport after April 30, 2012, the alien may have been issued an electronic Form I-94 by CBP, instead of a paper Form I-94. For more information, see the CBP website.

[^ 53] See Consolidated Natural Resources Act of 2008, Pub. L. 110-229 (PDF) (May 8, 2008).

[^ 54] See INA 235(a)(1).

[^ 55] See INA 244. See 8 CFR 244.

[^ 56] See *Matter of H-G-G-* (PDF), 27 I&N Dec. 617 (AAO 2019).

[^ 57] See INA 244(f)(4). See 8 CFR 244.10(f)(2)(iv).

[^ 58] See INA 244(h). See *Matter of H-G-G-* (PDF), 27 I&N Dec. 617 (AAO 2019). See *Sanchez v. Sec'y United States Dep't of Homeland Sec.*, No. 19-1311, 2020 WL 4197523 (3rd Cir. 2020) ("Treating a grant of TPS as an admission would open the door to more permanent status adjustments that Congress did not intend.").

[^ 59] See *Matter of H-G-G-* (PDF), 27 I&N Dec. 617 (AAO 2019).

[^ 60] See *Serrano v. Attorney General*, 655 F.3d 1260 (11th Cir. 2011) and *Sanchez v. Sec'y United States Dep't of Homeland Sec.*, No. 19-1311, 2020 WL 4197523 (3rd Cir. 2020).

[^ 61] The Sixth Circuit includes Kentucky, Michigan, Ohio, and Tennessee. See Geographic Boundaries of U.S. Courts of Appeals and U.S. District Courts (PDF).

[^ 62] See *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013).

[^ 63] The Ninth Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands. See Geographic Boundaries of U.S. Courts of Appeals and U.S. District Courts (PDF).

[^ 64] See *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017).

[^ 65] The *Flores* decision is only binding on cases within the jurisdiction of the Sixth Circuit. The *Ramirez* decision is only binding on cases within the jurisdiction of the Ninth Circuit.

[^ 66] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10] and Volume 1, General Policies and Procedures, Part E, Adjudication, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

[^ 67] As required under INA 245(a)(3). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 68] See INA 212. In some cases, an adjustment of status applicant might be able to overcome certain grounds of inadmissibility by obtaining a waiver or other form of relief. If an alien is granted a waiver of a ground of inadmissibility in connection with the Application for Temporary Protected Status (Form I-821), the waiver is only valid for the TPS application and any subsequent TPS re-registration applications. It does not apply to any other immigration benefit requests, such as adjustment of status. For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

[^ 69] See INA 245(c)(1)-(8). Some adjustment bars do not apply to aliens classified as immediate relatives, certain special immigrants, and certain employment-based immigrants. Also, aliens ineligible for adjustment under INA 245(a) due to the adjustment bars may be eligible for adjustment under INA 245(i). For more information, see Chapter 3, Unlawful Immigration Status at Time of Filing (INA 245(c)(2)) [7 USCIS-PM B.3] through Chapter 8, Inapplicability of Bars to Adjustment [7 USCIS-PM B.8].

[^ 70] For example, an alien classified as an immediate relative is exempt from this bar to adjustment. See INA 245(c)(2). See Chapter 4, Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM

B.4]. See *Melendez v. McAleenan*, 928 F.3d 425 (5th Cir. 2019). See *Duron v. Stul*, 724 F. Appx. 791 (11th Cir. 2018). See *Matter of H-G-G-* (PDF), 27 I&N Dec. 617 (AAO 2019).

[^ 71] See INA 245(c)(1). See Chapter 7, Other Barred Adjustment Applicants, Section A, Crewmen [7 USCIS-PM A.7(A)]. INA 244(f)(4) "cannot alter the historical circumstances" of entry as a crewman on which the INA 245(c)(1) bar depends. See *Guerrero v. Nielsen*, 742 Fed. Appx. 793 (5th Cir. 2018).

[^ 72] See INA 244(f)(3). See 8 CFR 244.10(f)(2)(iii). See 8 CFR 244.15.

[^ 73] See Section 304(c) of the Miscellaneous and Technical Immigration and Naturalization Amendments Act of 1991 (MTINA), Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended. TPS beneficiaries subject to certain criminal, national security, and related grounds of inadmissibility as described in INA 244(c)(2)(A)(iii) may not be eligible to return in the same immigration status they had at the time of departure.

[^ 74] See legacy INS General Counsel Opinion 92-10. Status, in such a case, would be that of an alien in TPS. Incidents of status include, but are not limited to, the manner of the alien's most recent entry into the United States, pending removal orders, ongoing removal proceedings, applicable adjustment bars described in INA 245(c), and grounds of inadmissibility.

[^ 75] See *Matter of Z-R-Z-C-* (PDF, 268.36 KB), Adopted Decision 2020-02 (AAO Aug. 20, 2020) ("A status quo ante return cannot create a condition needed to establish eligibility for a benefit for which the alien would not have been entitled at the time of departure. To conclude otherwise would contravene the Congressional intent that the alien be returned to the same status the alien had at the time of departure.").

[^ 76] See *Matter of Z-R-Z-C-* (PDF, 268.36 KB), Adopted Decision 2020-02 (AAO Aug. 20, 2020).

[^ 77] See *Matter of Z-R-Z-C-* (PDF, 268.36 KB), Adopted Decision 2020-02 (AAO Aug. 20, 2020).

[^ 78] See 8 CFR 244.10(f)(2)(iii) and 8 CFR 244.15(a) which in turn provide that permission to travel abroad is sought and provided "pursuant to the Service's advance parole provisions."

[^ 79] See Section 304(c)(1)(A) of MTINA, Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended.

[^ 80] See *Matter of Z-R-Z-C-* (PDF, 268.36 KB), Adopted Decision 2020-02 (AAO Aug. 20, 2020).

[^ 81] See *Matter of Z-R-Z-C-* (PDF, 268.36 KB), Adopted Decision 2020-02 (AAO Aug. 20, 2020).

[^ 82] See *Matter of H-G-G-* (PDF), 27 I&N Dec. 617 (AAO 2019).

[^ 83] See *Sanchez v. Sec'y United States Dep't of Homeland Sec.*, No. 19-1311, 2020 WL 4197523 (3rd Cir. 2020) ("Absent a clear statutory directive, a program that provides 'limited, temporary' relief should not be read to facilitate permanent residence for aliens who entered the country illegally.").

[^ 84] See *Matter of Z-R-Z-C-* (PDF, 268.36 KB), Adopted Decision 2020-02 (AAO Aug. 20, 2020).

[^ 85] See *Matter of Z-R-Z-C-* (PDF, 268.36 KB), Adopted Decision 2020-02 (AAO Aug. 20, 2020).

[^ 86] See 8 CFR 209.2. For more information on asylee adjustment, see Part M, Asylee Adjustment [7 USCIS-PM M].

[^ 87] Due to the different statutory bases, different eligibility requirements, exceptions, and waivers apply to applicants seeking adjustment based on their asylum status compared to those seeking adjustment under INA 245(a).

[^ 88] The grant of asylum is not an admission contemplated under INA 101(a)(13)(A). See *Matter of V-X-* (PDF), 26 I&N Dec. 147 (BIA 2013). See legacy INS General Counsel Opinion, expressed by INS Central Office, Deputy Asst. Commissioner, Adjudications, R. Michael Miller, in letter dated September 4, 1986, reprinted in Interpreter Releases, Vol. 63, No. 40, October 10, 1986, pp. 891-892.

[^ 89] See *Matter of Quilantan* (PDF), 25 I&N Dec. 285, 291-92 (BIA 2010). See *Matter of Areguillin* (PDF), 17 I&N Dec. 308 (BIA 1980). See 8 CFR 103.2(b).

[^ 90] Any documentary evidence of admission should be consistent with entry information provided in the adjustment application or in oral testimony and should not contradict any other admission or departure evidence in DHS records. For example, when there is no Arrival/Departure Record or passport with an admission stamp, an officer may rely on information in DHS records, information in the applicant's file, and the applicant's testimony to make a determination on whether the applicant was inspected and admitted or inspected and paroled into the United States.

[^ 91] See 8 CFR 103.2(b). See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^ 92] For more information, see Subsection 2, Admission [7 USCIS-PM B.2(A)(2)].

[^ 93] See 8 CFR 103.2(a) and 8 CFR 103.2(b). See 8 CFR 103.2(a)(2). See 8 CFR 103.7(b) and 8 CFR 103.7(c). The applicant may submit a fee waiver request. See Request for Fee Waiver (Form I-912).

[^ 94] See 8 CFR 103.2(a)(7) and 8 CFR 245.2(a)(2)(i). In addition, USCIS should process a fee refund when an adjustment application is accepted in error because a visa was unavailable at the time of filing and the error is

recognized before interview or adjudication. For more information on the definition of “properly filed” and fee refunds, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions [7 USCIS-PM A.3].

[^ 95] See INA 201(b). Immediate relatives of a U.S. citizen include the U.S. citizen’s spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and aliens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.

[^ 96] Diversity visas do not rely on a USCIS-filed petition to obtain a visa. The diversity visa lottery is conducted by the U.S. Department of State.

[^ 97] See 8 CFR 103.2(b)(1).

[^ 98] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section C, Concurrent Filings [7 USCIS-PM A.3(C)].

[^ 99] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of “Properly Filed,” Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)] and Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 100] See INA 245(a)(3). See 8 CFR 245.1(g)(1), 8 CFR 245.2(a)(5)(ii), and 8 CFR 103.2(b)(1). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 101] If one or more of the grounds listed in INA 212 applies to an applicant then the applicant may be inadmissible. For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

[^ 102] See Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

[^ 103] See INA 245(c).

[^ 104] Even if aliens are barred from adjusting under INA 245(a), they may still adjust under another statutory basis as long as they meet the applicable eligibility requirements.

[^ 105] An immigrant category may exempt an applicant or make an applicant eligible for a waiver of certain adjustment bars and grounds of inadmissibility. Even if an exemption applies to an applicant who would otherwise be barred from adjustment of status, the applicant may still be denied adjustment as a matter of discretion. For more information on discretion, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^ 106] It is service as a crewman that triggers the bar to adjustment, not the actual nonimmigrant status. This bar applies if the alien was actually permitted to land under the D-1 or D-2 visa category. The bar also applies if the alien was a crewman admitted as a C-1 to join a crew, or as a B-2 if serving on a crew.

[^ 107] This does not apply to aliens who failed to maintain lawful status through no fault of their own or solely for technical reasons, as defined in 8 CFR 245.1(d)(2).

[^ 108] The INA 245(c)(2) bar addresses three distinct types of immigration violations.

[^ 109] See 8 CFR 245.1(d)(3).

[^ 110] See INA 201(b). Immediate relatives of a U.S. citizen include the U.S. citizen’s spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and aliens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.

[^ 111]See special immigrants described in INA 101(a)(27)(H)-(K).

[^ 112] If an adjustment applicant is eligible for the 245(k) exemption, then he or she is exempted from the INA 245(c)(2) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^ 113] See INA 212(l) and INA 217.

[^ 114] See INA 101(a)(15)(S) and INA 245(j). The applicants are beneficiaries of a request by a law enforcement agency to adjust status (Inter-Agency Alien Witness and Informant Record (Form I-854)).

[^ 115] See INA 237(a)(4)(B).

[^ 116] Although VAWA-based applicants are exempt from all INA 245(c) bars per statute, a VAWA-based applicant may still be determined to be removable (INA 237(a)(4)(B)) or inadmissible (INA 212(a)(3)) due to egregious public safety risk and on security and related grounds.

[^ 117] INA 245(c)(7) does not apply to VAWA-based applicants, immediate relatives, family-based applicants, or special immigrant juveniles because these aliens are not seeking adjustment as employment-based applicants. See 8 CFR 245.1(b)(9).

[^ 118] If an employment-based adjustment applicant is eligible for the INA 245(k) exemption, then he or she is exempted from the INA 245(c)(7) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^ 119] This is also referred to as an alien who has violated the terms of his or her nonimmigrant status.

[^ 120] There are no time restrictions on when such a violation must have occurred while physically present in the United States. Violations either before or after the filing of Form I-485 will render an alien ineligible to adjust status under INA 245(a). An alien seeking employment during the pendency of his or her adjustment applicant must fully comply with the requirements of INA 274A and 8 CFR 274a. See 62 FR 39417 (PDF) (Jul. 23, 1997).

[^ 121] The INA 245(c)(8) bar addresses two distinct types of immigration violations.

[^ 122] See 8 CFR 245.1(d)(3).

[^ 123] USCIS interprets the exemption listed in INA 245(c)(2) for immediate relatives and certain special immigrants as applying to the 245(c)(8) bar in addition to the 245(c)(2) bar. See 62 FR 39417 (PDF) (Jul. 23, 1997).

[^ 124] If an adjustment applicant is eligible for the 245(k) exemption, then he or she is exempted from the INA 245(c)(8) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^ 125] See INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8).

[^ 126] See Chapter 8, Inapplicability of Bars to Adjustment [7 USCIS-PM B.8].

[^ 127] This applies to religious workers only.

[^ 128] Notwithstanding INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8), the officer should treat an alien who meets the conditions set forth in INA 245(k) in the same manner as an applicant under INA 245(a).