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Chapter 5 - Adjudication Procedures

Guidance

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A. Record of Proceedings Review and Underlying Basis

The officer should place all documents in the A-file according to the established record of proceedings order, including the filing of any documents the alien submitted in response to a Request for Evidence (RFE).

In determining eligibility for adjustment of status of an alien with asylum status, the officer should review the underlying application (either [Form I-589](#) or [Form I-730](#)) that provided the alien with asylum status. The application establishes identity, family relationships, and date of grant of asylum status (if a principal asylee or a derivative asylee was within the United States at time of grant).

B. Interview Criteria

Officers make the decision to interview an alien for an asylum-based adjustment of status on a case-by-case basis.^[1] Interviews are generally required when an officer is unable to verify identity or eligibility or determine admissibility based solely on the available immigration records, USCIS records and systems, or other agency records or background checks available to the officer. Although the decision to conduct an interview is made on a case-by-case basis, an officer should generally refer a case for interview if it meets one or more of the following criteria:

- The officer cannot verify the identity of the alien through the information in the A-file, other USCIS records and systems, or other agency records or background checks;
- The officer can verify the identity of the alien through the information in the A-file, other USCIS records and systems, or other agency records or background checks, but the alien is claiming a new identity;
- Immigration records are insufficient for the officer to determine whether or not the alien has asylum status;
- The alien is a beneficiary of an approved Refugee/Asylee Relative Petition ([Form I-730](#)) that was approved when the alien was outside the United States, and he or she wa



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or her arrival to the United States or, the petition was approved when the alien was in the United States and was not interviewed prior to the approval of the petition;

- The alien's Federal Bureau of Investigation (FBI) fingerprint check results indicate a record that may cause the alien to be inadmissible, or the alien has had two unclassifiable fingerprint responses;
- Additional information is required from the alien to address potential eligibility or admissibility issues or assess potential inadmissibility waiver considerations;
- The alien has an articulable national security or terrorism-related ground of inadmissibility concern;
- There is evidence that suggests that the original grant of asylum may have been obtained through fraud or misrepresentation; [\[2\]](#)
- There is evidence that suggests that the derivative asylee no longer has the requisite relationship to adjust status as a derivative spouse or child; [\[3\]](#)
- The alien has conflicting or multiple identities, other than properly documented by legal name changes;
- A sworn statement is required to address the alien's admissibility;
- An interview would yield clarifying information, such as with an unclear response to an RFE concerning the alien's admissibility;
- The officer articulates an inadmissibility concern regarding that the alien is a citizen of, or last habitually resided in, a country that is now, or was at the time of last residence, a state sponsor of terrorism; [\[4\]](#) or
- The officer articulates a concern regarding identity, inadmissibility, national security, public safety, or fraud, and recommends an interview to help to resolve that concern.

These interview criteria may be modified in response to developing circumstances and concerns. The additional criteria for adjustment of status applications filed by aliens who are asylees with specific characteristics help ensure program integrity and improve the detection of fraud, misrepresentation, national security threats, and public safety risks.[\[5\]](#)

C. Waiver Instructions

When the officer determines that an alien is inadmissible and a waiver is available, the officer may grant the waiver without requiring submission of an Application by Refugee for Waiver of Inadmissibility Grounds ([Form I-602](#)) if:

- The alien is inadmissible under a ground of inadmissibility that may be waived (other than health-related grounds);
- USCIS records and other information available to the officer contain sufficient information to assess eligibility for a waiver;
- There is no evidence to suggest that negative factors would adversely impact the exercise of discretion; and
- It is appropriate to grant a waiver.

If the adjudicating officer determines that a waiver application ([Form I-602](#)) is not required, the officer should indicate that the waiver has been granted by annotating on the adjustment of status application the particular

inadmissibility that has been waived. The officer may use a written annotation, stamp, or pre-printed label to indicate the specific inadmissibility ground that is being waived in any open space on the face of the adjustment application.

An officer's signature and approval stamp on the adjustment application also serves as the signature and approval of the waiver for any waived grounds of inadmissibility specified on the face of the adjustment application. Waivers granted because the vaccinations were not medically appropriate or other blanket waivers for medical grounds do not require a waiver annotation on the adjustment application or the Report of Immigration Medical Examination and Vaccination Record ([Form I-693](#)). All others require an annotation.

When a waiver application is required, the officer should stamp the waiver application approved, check the block labeled "Waiver of Grounds of Inadmissibility is Granted," and make the appropriate endorsements in the space provided.

In both instances, there is no need for a separate approval notice since the approval of the adjustment of status application also indicates the approval of the waiver or the waiver application.

If the alien is statutorily ineligible for a waiver (that is, the alien is inadmissible under a ground of inadmissibility that cannot be waived) or if there are sufficient negative factors to warrant a discretionary denial of the waiver application, the officer denies the waiver application and specifies the reason(s) for denying the waiver in the denial of the adjustment of status application.

While there is no appeal from the denial of the waiver application, the alien is notified in the denial notice of the right to renew the adjustment application before an immigration judge during removal proceedings.^[6] The alien has the opportunity to again seek a waiver of inadmissibility in conjunction with that application.

D. Requests to Change Name or Date of Birth

Aliens sometimes enter the United States with fraudulent documentation. This fraudulent biographical information may be entered into the agency's information systems as an alias. The alien will have to address and reconcile any outstanding discrepancies in biographical information found in A-file, other USCIS records and data systems, or other agency records or background checks at the time of adjudication of the adjustment of status application.

While an alien who is a principal asylee would have had his or her identity confirmed at the time asylum status was granted, this may not be true for aliens who are derivative asylees who had neither an overseas interview nor an interview by a USCIS officer as a part of the [Form I-730](#) adjudication process.

In this case, the alien who is a derivative asylee may have to provide documentation as proof of his or her true identity if the biographical information contained on the [Form I-730](#) does not match the information contained on the adjustment of status application. Additionally, the alien would need to provide a reasonable explanation for why his or her true identity, including name and date of birth, was not properly established with the Form I-730.

During the asylum or overseas interview, aliens reviewed their asylum application or relative petition and biographical information and had the opportunity to correct any errors or resolve any identity issues at that time. Therefore, an officer should be cautious in reviewing any documents that now assert a change to the alien's name or date of birth, as it raises the possibility that the person either used an alias or committed fraud or misrepresentation at the time of the asylum or overseas interview. An officer may not accept an affidavit as proof of a changed name or date of birth.

An officer should be aware that name changes may legitimately occur after the asylum or overseas interview, such as in the case of a legal adoption, marriage, or divorce. Aliens requesting a name change at the time of adjustment need to submit one of the following civil-issued documents:

- Legal name change decree – lists former and new legal name;
- Marriage certificate – lists maiden name/last name of spouse;
- Divorce decree – shows restoration of maiden name; or
- Adoption decree – lists adopted child’s birth name and the names of the adoptive parents.

E. Spelling of Names and Naming Convention Issues

From time to time, aliens may complete an adjustment application by filling out their name in some variation of that which was listed on the [Form I-589](#) or [Form I-730](#). Although aliens may be permitted on other local or federal government-issued documents to change their name or use a slightly different spelling, aliens are not permitted to change the spelling of their names from that listed on their asylum application or relative petition or to use another version of their name at time of adjustment of status, unless the alien provides documentation of a legal name change. This is prohibited in order to preserve the continuity and integrity of immigration records on the alien.

The asylum application or relative petition might contain an error in the spelling or the order of an alien’s name. If an officer, based on a review of underlying documents in the A-file, recognizes that the original application or petition clearly had an error and the alien is requesting the corrected name on the adjustment of status application, the officer may correct the error by amending the name on the application. If the alien is granted permanent resident status, the name must also be corrected in the appropriate electronic immigration systems.

F. Decision

1. Approvals

If the application is properly filed, the alien meets the eligibility requirements, satisfies admissibility or waiver requirements, and warrants a favorable exercise of discretion, then the officer may approve the adjustment application.

Effective Date of Residence

The date of adjustment for aliens with an approved asylum-based adjustment applications is 1 year before the date of being approved for permanent residence.

For example, an alien is granted asylum status on January 1, 2007. The alien files for adjustment of status on March 15, 2009, and the application is approved on July 1, 2009. The date of adjustment of status is rolled back 1 year to July 1, 2008. This is the date that appears on the alien’s Permanent Resident Card and in USCIS systems. Additionally, the 1-year roll back is counted toward physical presence for naturalization purposes.

Code of Admission

An alien who has been granted asylum status as a principal asylee is adjusted using the code “AS-6.” The AS-6 code is reserved for the principal asylee to ensure there is no confusion regarding the eligibility to file a relative petition. The AS-6 code also applies to aliens who were granted asylum through the nunc pro tunc process. An alien who adjusts status as a spouse of an asylee (AS-2 classification) is given the code “AS-7.” An alien who adjusts status as a child of a principal asylee (AS-3 classification) is given the code “AS-8.”

Classes of Aliens and Corresponding Codes of Admission

Alien	Code of Admission
Asylee (Principal)	AS6
Spouse of a Principal Asylee (AS6)	AS7
Child of a Principal Asylee (AS6)	AS8

The officer must ensure that the alien's new Class of Admission (COA) information is updated in the appropriate electronic systems, so that the alien receives a Permanent Resident Card. After completion, cases are routed to the National Records Center.

2. Denials

If an alien fails to establish eligibility for adjustment under this section, the application is denied. The officer must provide the alien with a written notice specifying the reasons for denial in clear language the alien can understand. While there is no appeal from denial of this type of case,^[7] a motion to reopen may be considered if timely filed within 30 days of the date of the denial and received before removal proceedings are instituted.

An alien may also renew the application for adjustment while in removal proceedings before an immigration judge.^[8] If a motion includes a waiver, and the motion to reopen is granted, the officer must adjudicate the waiver before a final decision can be made on the adjustment of status application.

If an officer denies the adjustment of status application due to ineligibility for adjustment of status, improper filing, or abandonment of the application, the alien should not be placed into removal proceedings and the alien still keeps his or her asylum status. In certain instances, if the officer denies the adjustment of status application because the alien is inadmissible, the alien may be placed into removal proceedings.

Footnotes

^[^1] See [8 CFR 209.2\(e\)](#).

^[^2] If evidence demonstrates an articulable ground for possible termination of asylum status, such as a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted, or that the alien no longer meets the definition of a refugee under [INA 101\(a\)\(42\)](#), the officer should refer the file for further review and action on potential termination of asylum status. For more information on

the grounds of asylum termination and procedures, see [8 CFR 208.24](#) and Chapter 6, Termination of Status and Notice to Appear Considerations [[7 USCIS-PM M.6](#)].

[[^3](#)] For more information on derivative asylees ineligible for adjustment of status, see Chapter 2, Eligibility Requirements, Section C, Derivative Asylee Continues to be the Spouse or Child of the Principal Asylee, Subsection 2, Derivative Asylees Ineligible for Adjustment of Status [[7 USCIS-PM M.2\(C\)\(2\)](#)].

[[^4](#)] For a list of countries the Secretary of State has designated to be state sponsors of terrorism, see the U.S. Department of State's [State Sponsors of Terrorism](#) website.

[[^5](#)] These criteria are well within the parameters of [8 CFR 209.2\(e\)](#), as they retain an officer's discretion, and each is reasonably related to the admissibility and eligibility of the alien. Additionally, officers must continue to make each determination to require an interview on a case-by-case basis.

[[^6](#)] See [8 CFR 209.2\(f\)](#).

[[^7](#)] See [8 CFR 209.2\(f\)](#).

[[^8](#)] See [8 CFR 209.2\(f\)](#).

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