



# CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

## **Frequently Asked Questions: Eligibility to Adjust if Started with Consular Processing**

**Q: My client was in the process of applying for an immigrant visa abroad. Now that the client is in the United States, is adjustment of status an option?**

A: Eligibility to adjust status depends on the basis for seeking an immigrant visa. If it was a family-based category, it also depends on whether the client is classified as an immediate relative (spouse, unmarried child, or parent of a U.S. citizen) or is in one of the preference categories. Immediate relatives need only to have been inspected and admitted or paroled. Preference category applicants need to have always maintained lawful immigration status (including their parole status) since their entry to the United States before applying for adjustment. Maintaining lawful immigration status requires the applicant not to have overstayed the authorized period of time indicated on the Form I-94 issued upon their entry. The applicant must also not have worked without permission or otherwise violated the terms of admission. All applicants for adjustment must also be admissible.

**Q: What if the case is pending with the National Visa Center (NVC)?**

A: A client who resides in the United States and satisfies the eligibility requirements for adjustment of status but who has a pending immigrant visa application with the NVC does not need to seek permission before filing for adjustment. The USCIS will contact the NVC directly and request transfer of the file. To prevent the NVC from terminating the approved petition based on failure to respond to notices, the client should inform the NVC of his or her intention to apply for adjustment of status. This can be done by contacting the NVC via its website, at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/ask-nvc.html>. It is recommended that practitioners keep in touch with the NVC on at least an annual basis to avoid receiving termination notices and provide the NVC with a copy of the applicant's permanent resident card once received.

**Q: What if the case is with the consulate?**

A: It does not matter whether the application was pending with the NVC or has been transferred to the consulate. If the client is now residing in the United States and is eligible to adjust status, simply file the necessary forms with USCIS and inform the U.S. consulate of this. Contact information for the immigrant visa sections of the U.S. consulates is available on their websites.

**Q: What is involved in filing for adjustment of status under INA § 245(a)?**

A: The application packet includes Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-864, Affidavit of Support under Section 213A of the INA (unless exempt); and Form I-693, Report of Medical Examination and Vaccination Record. Most applicants also file Form I-765, Application for Employment Authorization, and Form I-131, Application for Travel Document. Applicants will also need to submit proof of an approved underlying petition as well as evidence of their admission or parole. In addition, applicants must provide copies of identity documents, such as their government-issued ID and a birth certificate. Practitioners can access a checklist of required supporting documents on the USCIS website at <https://www.uscis.gov/i-485Checklist>.

**Q: My client already paid the immigrant visa fee to the Department of State. Do they still need to pay the I-485 fee to USCIS?**

A: Yes. There is no exemption to paying the I-485 application fee for those who have already paid the immigrant visa fee to the Department of State. A fee waiver is available to those applying for adjustment of status under a provision exempt from the public charge ground of inadmissibility. The request for a fee waiver is typically submitted on Form I-912 and must be accompanied by supporting documentation. However, Afghan nationals paroled into the United States pursuant to Operation Allies Welcome are exempt from paying the adjustment of status filing fee and fee waivers are not required.

Family-based applicants for adjustment of status are not eligible for fee waivers—they must pay the filing fee.

**Q: My client already submitted the affidavit of support and supporting financial documents to the Department of State. Do they have to re-submit them to USCIS?**

A. Yes, these documents should be re-submitted to USCIS as part of the complete adjustment of status packet.

**Q. My client completed the medical exam through the U.S. consulate in the home country. Does my client need to re-do the medical exam?**

A. Clients who have already completed the medical exam can indicate that in their adjustment application. The medical exam is not considered to be required “initial evidence,” so USCIS will not reject the I-485 application if the medical is not included. However, depending on how much time passes before adjudication of the application or if the medical exam was not complete, USCIS may request that the applicant complete a new medical exam. If the validity period of the I-693 has not expired, they may submit it with their Form I-485. On December 9, 2021, USCIS temporarily waived the “60-Day Rule” for immigration medical examinations and vaccination records that allows applicants to submit their completed Form I-693 where the civil surgeon signed the form more than 60 days prior to the submission with their adjustment of status application. The USCIS alert is available at <https://www.uscis.gov/newsroom/alerts/uscis-temporarily-waiving-60-day-rule-for-civil-surgeon-signatures>.