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Chapter 10 - Duration and Extensions of Status

Guidance

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A. Overview

T nonimmigrant status is limited to 4 years for a principal T nonimmigrant, unless the principal qualifies for an extension.^[1] USCIS may grant eligible family members derivative T nonimmigrant status for a period that does not exceed the expiration date of the period approved for the T-1 principal.^[2]

T nonimmigrant status is extended by operation of law during the time that a principal or eligible family member's Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) under INA 245(l) is pending.^[3] Additionally, as a matter of discretion, USCIS may grant an extension of T nonimmigrant status for up to 4 additional years in the following two circumstances:

- A law enforcement agency (LEA), prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the nonimmigrant in the United States is necessary to assist in the investigation or prosecution of such activity;^[4] or
- USCIS determines that an extension is warranted due to exceptional circumstances.^[5]

B. Applications for Extensions of Status

1. Extensions Based on Adjustment of Status Application

To receive an extension of T nonimmigrant status based on filing an Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) under INA 245(l), the T nonimmigrant must file the application in accordance with the form instructions.^[6] If the T nonimmigrant files the adjustment application while still in valid T nonimmigrant status, the applicant does not need to file an Application to Extend/Change Nonimmigrant Status ([Form I-539](#)).



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However, if USCIS receives the adjustment application after the period of T nonimmigrant status has expired, the filing does not operate to extend T nonimmigrant status. The Notice of Action (Form I-797) receipt notice for the adjustment application indicates that for applicants who properly and timely file their adjustment application, USCIS extends their T nonimmigrant status for as long as the adjustment application is pending.

Because both timely and untimely applicants receive the receipt notice, the receipt notice by itself does not demonstrate an automatic extension of T nonimmigrant status. Applicants may provide both the receipt notice and the Arrival/Departure Record (Form I-94) showing their most up-to-date period of T nonimmigrant status to demonstrate that their adjustment application was timely filed and their T nonimmigrant status has been automatically extended.

The extension of T nonimmigrant status is valid until USCIS makes a decision on the adjustment application and, during that time, the applicant continues to be in valid T nonimmigrant status with all the associated rights, privileges, and responsibilities. T nonimmigrants seeking to adjust status are authorized to work in the United States while their adjustment application is pending.

Proof of Employment Authorization

Principal T-1 nonimmigrants seeking to adjust status may present a Form I-94 reflecting their most recent validity period of T-1 nonimmigrant status with the receipt notice as evidence of employment authorization for 24 months from the expiration date on the Form I-94, unless the adjustment application is denied or withdrawn, whichever is earlier.

Principal T-1 nonimmigrants seeking to adjust status may file an Application for Employment Authorization ([Form I-765](#)) concurrently with the adjustment application to obtain an Employment Authorization Document (EAD). While the adjustment application is pending, USCIS issues any EAD, as well as renewals of such EAD, using the (c)(9) eligibility code.^[7]

USCIS also issues derivative T nonimmigrants who properly file an adjustment application a receipt notice. USCIS does not extend the status of a derivative T nonimmigrant based solely on the principal T nonimmigrant's pending adjustment application. Derivatives must independently file an adjustment application. To obtain employment authorization during the extended period of T nonimmigrant status, derivative T nonimmigrants must file an Application for Employment Authorization (Form I-765).

2. Extensions Based on Law Enforcement Need or Exceptional Circumstances

To request an extension of T nonimmigrant status based on law enforcement need or exceptional circumstances, the T nonimmigrant must file an Application to Extend/Change Nonimmigrant Status ([Form I-539](#)), along with supporting evidence, in accordance with the form instructions. The T nonimmigrant bears the burden of establishing eligibility for this discretionary extension of status.

Derivative family members who have not previously entered or resided in the United States as a T nonimmigrant cannot receive an extension of status. Instead, USCIS may issue an amended approval notice with updated validity dates.

If USCIS approves the Form I-539, USCIS issues a notice of extension of the T nonimmigrant status on a Notice of Action (Form I-797).

The extension of T nonimmigrant status based on law enforcement need or exceptional circumstances is valid for 1 year from the date the initial T nonimmigrant status ends. In the case of a Form I-539 untimely filed after T nonimmigrant status has expired, the extension is valid from the date the previous status expired and for 1 year from approval of the extension.^[8] During that period, the applicant continues to be in valid T nonimmigrant status with all the associated rights, privileges, and responsibilities.

USCIS issues any EAD (including renewals) using the (a)(16) eligibility code for principals and (c)(25) eligibility code for derivatives.^[9] Applicants must file an application for employment authorization in order to receive an EAD, which they may file concurrently with Form I-539.

C. Timing of Application

The applicant should file the Application to Extend/Change Nonimmigrant Status ([Form I-539](#)) before the applicant's T nonimmigrant status expires. USCIS, however, has discretion to grant an extension after the expiration of the status.^[10] When filing a Form I-539 untimely, the applicant should explain the reason(s) for the late filing.^[11]

USCIS exercises its discretion to grant or deny an untimely filed extension request based upon the justification for the untimely filing in the specific circumstances of the case. If USCIS grants an extension of T nonimmigrant status, USCIS issues a new Form I-797 extension notice valid from the date that the previous status expired and ending 1 year after the approval of the application to extend status. Once an applicant receives this new Form I-797, the applicant may then file an application to adjust status before the expiration of the extension.

There is no appeal of a denial of a Form I-539. However, an applicant may file a motion to reopen or reconsider within 30 days of the denial.^[12]

D. Evidence

1. Law Enforcement Need

In cases in which the T nonimmigrant is filing for an extension of status based on law enforcement need, supporting evidence may include:

- A newly executed Declaration for Trafficking Victim ([Form I-914, Supplement B](#)); or
- Other evidence from a law enforcement official, prosecutor, judge, or other authority who can detect, investigate, or prosecute human trafficking activity and was involved in the applicable case. The applicant must include evidence that comes directly from an LEA.

USCIS does not require Form I-914, Supplement B to demonstrate law enforcement need, although it is helpful. The applicant may submit a letter on the agency's letterhead, emails, or faxes from an LEA or any other credible evidence.

2. Exceptional Circumstances

Where T nonimmigrants are filing for an extension of status based on exceptional circumstances, applicants may submit their own statement and any other credible evidence to establish exceptional circumstances. Such evidence could include, but is not limited to:

- Medical records;
- Police or court records;
- News articles;
- Correspondence with a U.S. embassy or consulate;
- Evidence of consular processing backlogs or other delays; and
- Affidavits from persons with direct knowledge or familiarity with the applicant's circumstances.^{[\[13\]](#)}

To establish eligibility for an extension of status due to exceptional circumstances, applicants should provide evidence showing how the exceptional circumstances necessitate the continuance of T nonimmigrant status.

While an applicant can file more than one extension of status, if the extension of status is based on the same evidence as a prior request, the mere fact that USCIS previously found the circumstance to be exceptional does not mean that USCIS will come to the same conclusion a second time. USCIS considers every request on a case-by-case basis and based on the evidence presented with the request.

The need to accrue continuous physical presence to be eligible to adjust status is not generally considered an exceptional circumstance warranting an extension of status. However, USCIS acknowledges that some T-1 nonimmigrants may have been unable to return to the United States due to circumstances outside their control (such as the COVID-19 pandemic or consular processing delays). USCIS may consider delays in consular processing for derivatives to be an exceptional circumstance that justifies extending the principal's T nonimmigrant status, even if it appears the principal will not be able to adjust status under [INA 245\(l\)](#).

E. Considerations for Family Members

To be eligible to apply for adjustment of status, a family member who is a derivative T nonimmigrant must continue to hold T nonimmigrant status at the time of filing the application for adjustment of status.^{[\[14\]](#)} To facilitate efficient processing, USCIS encourages derivative T nonimmigrants to file for adjustment of status concurrently with the principal T nonimmigrant. A derivative T nonimmigrant's status is automatically extended when the derivative properly files for adjustment of status.

Once a principal T nonimmigrant is no longer a T nonimmigrant, whether due to adjustment of status to lawful permanent residence, change to another nonimmigrant status, or expiration of T nonimmigrant status, derivative T nonimmigrants are no longer eligible for initial admission into the United States on a T visa.^{[\[15\]](#)}

Where the approved derivative is awaiting initial issuance of a T visa by a consulate and the principal's nonimmigrant status is soon to expire, USCIS strongly encourages the principal to seek an extension of status based on exceptional circumstances, following the instructions to the Form I-539, and then wait for the derivatives to be admitted to the United States as T derivatives before filing an adjustment application.

This prevents the derivative from being ineligible for initial admission to the United States on a derivative T visa due to the expiration of the principal's T nonimmigrant status or adjustment of status to lawful permanent residence. Once the principal T-1 nonimmigrant adjusts status, the derivative nonimmigrant can no longer be initially admitted as a T nonimmigrant.

Footnotes

[^1] See [INA 214\(o\)\(7\)\(A\)](#). See [8 CFR 214.203\(a\)](#) and [8 CFR 214.212\(a\)](#).

[^2] See [8 CFR 214.203\(b\)](#).

[^3] See [INA 214\(o\)\(7\)\(C\)](#). See [8 CFR 214.212\(h\)](#). See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 9, Death of Petitioner or Principal Beneficiary [[7 USCIS-PM A.9](#)].

[^4] See [INA 214\(o\)\(7\)\(B\)\(i\)](#).

[^5] See [INA 214\(o\)\(7\)\(B\)\(iii\)](#). See [8 CFR 214.212\(f\)](#) (stating that USCIS may approve an extension of status for a principal applicant based on exceptional circumstances when an approved eligible family member is awaiting issuance of their T visa by a consulate and the principal's T-1 status will expire soon).

[^6] USCIS adjudicates adjustment of status applications according to the T adjustment regulations at [8 CFR 245.23](#).

[^7] See [8 CFR 274a.12\(c\)\(9\)](#).

[^8] The applicant should present the Form I-797 demonstrating proof of extension of T nonimmigrant status when filing an Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) to adjust status to lawful permanent resident before the extension expires. See Volume 7, Adjustment of Status, Part J, Trafficking Victim-Based Adjustment [[7 USCIS-PM J](#)].

[^9] See [8 CFR 274a.12\(a\)\(16\)](#). See [8 CFR 274a.12\(c\)\(25\)](#).

[^10] See [8 CFR 214.212\(c\)](#).

[^11] See [8 CFR 214.212\(c\)](#).

[^12] See [8 CFR 103.5\(a\)](#). See Notice of Appeal or Motion ([Form I-290B](#)).

[^13] See [8 CFR 214.212\(g\)](#).

[^14] See [8 CFR 245.23\(b\)\(2\)](#).

[^15] See [8 CFR 214.203\(b\)](#) (stating that derivative family members' period of admission may not exceed the initial period of admission for the T-1 principal applicant).

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