Chapter 5 - Adjudication

Guidance

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A. Burden and Standard of Proof

The applicant has the burden of establishing eligibility for adjustment of status by a preponderance of the evidence.[1]

B. General

1. Confidentiality Protections

Applicants for adjustment of status based on T nonimmigrant status are entitled to certain confidentiality protections that prohibit DHS from disclosing any information about them to third parties, except in limited circumstances.[2] DHS is also prohibited from using adverse information provided solely by the trafficker in the adjudication of a protected individual's application or petition.[3]

2. Verify Underlying Basis to Adjust Status and Ongoing Eligibility

Officers should review the adjustment application and the underlying approved application for T nonimmigrant status to ensure that the applicant meets the eligibility criteria. In processing T nonimmigrant-based adjustment of status applications, officers follow general guidelines for determining ongoing eligibility for adjustment of status cases.[4]

3. Determine Admissibility and Conduct Security Checks

Officers must confirm that the applicant is admissible to the United States or that any inadmissibility grounds were waived during adjudication of the T nonimmigrant status application. The offi... inadmissibility grounds not previously waived before making a final determinatio... application.[5] Inadmissibility grounds that were already waived at the T nonimmigrant status stage are

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considered waived for purposes of adjustment as a T nonimmigrant and do not require a new waiver on Application for Waiver of Grounds of Inadmissibility (Form I-601).

Officers must ensure that all required security checks are completed and unexpired and that any derogatory information is resolved, as necessary, before adjudicating an adjustment application. Officers must also address any national security concerns that may be present in a case.[6]

4. Interview

USCIS may require T nonimmigrant applicants for adjustment of status to attend an in-person interview if USCIS decides an interview is necessary.[7]

5. Numerical Limitation on Adjustments

Only 5,000 T-1 principal nonimmigrants may adjust status in a given fiscal year.[8] This numerical limitation does not apply to derivative T nonimmigrants who seek to adjust status. The 5,000 cap is an overall cap, and there are no limitations on individual countries.

If USCIS receives additional adjustment applications after the yearly limit is reached, USCIS reviews the applications in the order in which they were received to determine whether the application is approvable but for the numerical cap. Applications determined to be approvable after the numerical cap has been reached are placed on a waiting list. USCIS notifies the applicants in writing of their placement on the waiting list.

Priority on the waiting list is based upon the date on which the application was filed, with the oldest applications receiving the highest priority. At the beginning of the next fiscal year, USCIS approves applications on the waiting list in order of highest priority, so long as the applicant remains admissible and eligible for adjustment of status, and continues to merit a favorable exercise of discretion.

C. Discretionary Analysis

If the applicant has demonstrated that they meet the eligibility requirements, and USCIS has waived any applicable grounds of inadmissibility, the officer must also determine that approval of the application for adjustment of status is warranted as a matter of discretion.[9]

Depending on the nature of an applicant's adverse factors, the applicant may be required to demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship.[10] Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient.[11]

In general, USCIS does not exercise favorable discretion when an applicant for adjustment of status has an unexecuted exclusion, deportation, or removal order that has not been rescinded or cancelled.

However, because approval of an application for T nonimmigrant status cancels, by operation of law, a previous order of removal, deportation, or exclusion issued by DHS, as of the date of the approval,[12] officers should not consider such cancelled orders an adverse factor in their discretionary analysis.[13] Likewise, if a prior order of removal, deportation, or exclusion issued by an immigration judge or the Board of Immigration Appeals has been reopened and terminated,[14] officers should not consider such cancelled orders as an adverse factor in their discretionary analysis.

D. Decision

1. Approvals

An officer may approve the Application to Register Permanent Residence or Adjust Status (Form I-485) if:

- The adjustment application is properly filed;
- The applicant meets all eligibility requirements;
- USCIS has not yet reached the numerical limit on T-1 adjustments of status for the fiscal year;
- The applicant is admissible to the United States (or has had any grounds of inadmissibility waived as required); and
- The applicant warrants a favorable exercise of discretion.

A derivative T nonimmigrant is eligible for adjustment of status only if the principal T-1 nonimmigrant is also eligible. USCIS cannot approve a derivative's adjustment application if the principal's application for adjustment has not been approved.[15]

When an officer approves a T nonimmigrant's adjustment of status application, the adjustment of status date is the date the adjustment application is approved. USCIS issues the following documents to the applicant upon approval:

- Notice of Action (Form I-797) to communicate approval of the application; and
- Permanent Resident Card (Form I-551), with a validity period of 10 years.

The officer assigns the applicant's code of admission as outlined in the table below:

Codes of Admission for T Nonimmigrant Adjustment

Applicant's Status	Code of Admission	Description
T-1	ST6	Victim of a severe form of trafficking in persons
T-2	ST7	Spouse of ST6
T-3	ST8	Child of ST6
T-4	ST0	Parent of ST6
T-5	ST9	Sibling of ST6
T-6	ST1	Adult or minor child of ST7, ST8, ST0, ST9

Once a T-1 principal nonimmigrant adjusts status to that of a lawful permanent resident, any family members without derivative T nonimmigrant status will be unable to receive T nonimmigrant status based on their relationship to the T-1 principal.

For example, if a family member residing abroad is the beneficiary of an approved derivative T nonimmigrant application and is not initially admitted to the United States as a T nonimmigrant before the T-1 principal nonimmigrant adjusts status, the family member is no longer eligible to be admitted as a T nonimmigrant.

Additionally, unlike U-1 nonimmigrants, there is no process by which a T-1 principal who has adjusted status to that of a lawful permanent resident can apply for their derivative family members to adjust status or receive an immigrant visa if they were not previously granted derivative T nonimmigrant status.[16]

2. Requests for Evidence

USCIS generally issues a Request for Evidence (RFE) or Notice of Intent to Deny (NOID), as appropriate, if the application does not contain sufficient evidence to establish that the applicant has met all requirements or required evidence is missing.[17]

3. Denials and Revocations

Denials

Before denying an application, officers should issue an RFE if more information is needed or a NOID (where appropriate) if a decision to deny an application would be based on information of which the applicant is unaware or could not reasonably be expected to be aware.[18]

If the principal or derivative applicant is ineligible for adjustment of status, the officer denies the application. The officer may also deny the application for discretionary reasons, if applicable.

If the application is denied, USCIS provides written notification of the reasons for denial and notifies the applicant of their appeal rights.[19]

The denial of a principal T nonimmigrant's application for adjustment of status results in denial of the derivative T nonimmigrant's application for adjustment of status, including any adjustment application filed by a derivative after the denial of the principal's application for adjustment of status.[20]

Revocations of Applications for T Nonimmigrant Status

While officers do not re-adjudicate the underlying application during the adjustment of status adjudication, USCIS may consider possible revocation of the approval of the underlying T nonimmigrant status if:

- The record contains new evidence or information that could impact the underlying decision; or
- The officer has identified an error in the approval, or other basis for revocation set forth in 8 CFR 214.213.[21]

If USCIS revokes T nonimmigrant status or denies the adjustment of status application for an individual who was in removal proceedings that were terminated or cancelled, DHS may file a new Notice to Appear.[22]

4. Appeals and Motions to Reopen

An applicant may appeal the denial of an adjustment application based on T nonimmigrant status to the Administrative Appeals Office (AAO).[23] The denial is not final until the time for filing an appeal has passed or the AAO makes a decision on the appeal.[24]

If USCIS denies an Application for Waiver of Grounds of Inadmissibility (Form I-601) associated with a T-based adjustment application, the applicant may also appeal the decision on the Form I-601 to the AAO.

Applicants may also file a motion to reopen[25] or a motion to reconsider[26] for a T-based adjustment application or a Form I-601 that has been denied.[27]

Footnotes

[^ 1] See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion, Section A, Burden of Proof and Standard of Proof [7 USCIS-PM A.10(A)].

[^ 2] See 8 U.S.C. 1367(a)(2). Disclosure is permitted to sworn officers and employees of DHS, the U.S. Department of Justice (DOJ), and the U.S. Department of State (DOS) (including any bureau or agency of DHS, DOJ, or DOS) for legitimate department, bureau, or agency purposes, as they are not considered third parties. See 8 U.S.C. 1367(b) for exceptions when disclosure is otherwise permitted.

[^ 3] See 8 U.S.C. 1367(a)(1)(F) and 8 U.S.C. 1367(a)(2). For additional information, see Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 7, Privacy and Confidentiality, Section E, VAWA, T, and U Cases [1 USCIS-PM A.7(E)].

[^ 4] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section B, Determine Ongoing Eligibility [7 USCIS-PM A.6(B)].

[^ 5] See INA 245(l)(2).

[^ 6] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section E, Security Checks and National Security Concerns [7 USCIS-PM A.6(E)].

[^ 7] See 8 CFR 245.6.

[^ 8] See 8 CFR 245.23(l).

[^ 9] See 8 CFR 245.23(e)(3). See *Matter of Arai* (PDF), 13 I&N Dec. 494 (BIA 1970). See *Matter of Ortiz-Prieto* (PDF), 11 I&N Dec. 317 (BIA 1965). For additional information on discretionary determinations for adjustment applications, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^ 10] See 8 CFR 245.23(e)(3).

[^ 11] See 8 CFR 245.23(e)(3). See *Matter of Jean* (PDF), 23 I&N Dec. 373, 383-84 (A.G. 2002). See *Pimentel v. Mukasey*, 530 F.3d 321 (5th Cir. 2008). See *Mejia v. Gonzales*, 499 F.3d 991 (9th Cir. 2007).

[^ 12] See 8 CFR 214.204(o)(1).

[^ 13] For more guidance relating to discretion, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion, Section B, Adjustment of Status Applications Involving Discretion [7 USCIS-PM A.10(B)] and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

[^ 14] See 8 CFR 214.204(o)(2).

[^ 15] See 8 CFR 245.23(h).

[^ 16] T-1 principals who have adjusted status may file immigrant visa petitions for certain eligible family members through the regular immigrant visa petition process. See INA 203 and INA 204.

[^ 17] See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 18] See 8 CFR 103.2(b)(16)(i).

[^ 19] See 8 CFR 245.23(i). For a discussion of procedures used when denying an adjustment of status application, see Part A, Adjustment of Status Policies and Procedures, Chapter 11, Decision Procedures, Section C, Denials [7 USCIS-PM A.11(C)].

[^ 20] See 8 CFR 245.23(i).

[^ 21] See 8 CFR 214.213(b). For more information regarding revocation of T nonimmigrant status, see Volume 3, Humanitarian Protection and Parole, Part B, Victims of Trafficking, Chapter 13, Revocation of Status [3 USCIS-PM B.13].

[^ 22] See INA 239.

[^ 23] See 8 CFR 103.3(a).

[^ 24] See 8 CFR 214.204(q).

[^ 25] See 8 CFR 103.5.

[^ 26] See 8 CFR 103.5.

[^ 27] The applicant may appeal the denial to the AAO or may file a motion to reopen or reconsider by filing a Notice of Appeal or Motion (Form I-290B).

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