

# Consular Processing vs Adjustment: EB5 Guide

A comprehensive guide from EB5 Attorneys

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Consular processing and adjustment of status are the two paths to a U.S. immigrant visa. Adjustment of status (Form I 485) lets eligible applicants who are already in the United States obtain permanent residence without leaving. Consular processing requires the intending immigrant to complete the process at a U.S. embassy or consulate abroad. Which path is available to you depends on your current immigration status, entry history, and visa category. This guide covers when each option applies, how they differ procedurally, and the risks each carries.

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## When Adjustment of Status Is Available

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Adjustment of status (AOS) under INA section 245 allows an intending immigrant to complete the green card process inside the United States without departing. To qualify for AOS under the standard provision of INA section 245(a), the applicant must: be physically present in the United States; have been inspected and admitted or paroled into the United States; be admissible to the United States or qualify for a waiver of any ground of inadmissibility; have an immediately available immigrant visa number (meaning no waiting list delay in their category); and be filing for a category eligible for adjustment. Immediate relatives of U.S. citizens (spouses, unmarried children under 21, parents of U.S. citizens age 21 or older) always have immediately available visa numbers, so they can file Form I 485 as soon as the underlying Form I 130 is approved or concurrently with Form I 130. Preference category beneficiaries (adult children, siblings, and employment based categories) must wait until a visa number is available for their category and country of birth, as shown in the monthly Visa Bulletin published by the State Department. Individuals who entered without inspection (crossing the border without going through a port of entry) generally do not qualify for AOS under section 245(a), with certain narrow exceptions. However, section 245(i), a grandfathered provision, allows individuals who were beneficiaries of petitions filed before April 30, 2001 to adjust status on payment of a \$1,000 penalty fee, even if they entered without inspection. INA section 245(k) provides a limited exception for certain employment based applicants who fell out of status for no more than 180 days total.

## When Consular Processing Is Required or Preferable

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Consular processing is required when the applicant is outside the United States or when AOS is not available due to entry without inspection, prior removal orders, or other bars to adjustment. It may also be preferable in certain situations even when AOS is theoretically available. Applicants who are outside the United States when their visa petition is approved have no choice but to consular process. They work through the National Visa Center (NVC) and ultimately attend an interview at a U.S. embassy or consulate in their country of last habitual residence or another eligible country. Applicants who entered without inspection and do not qualify under section 245(i) cannot adjust status and must consular process, though departing may trigger the three or ten year unlawful presence bars under INA section 212(a)(9)(B). Applicants in certain nonimmigrant categories that are specifically excluded from AOS eligibility (such as certain visa waiver entrants or crewmen) must consular process regardless of their entry method. Consular processing may be preferable for applicants who: are experiencing long wait times at USCIS field offices for AOS interviews; have family members abroad who are derivative beneficiaries and would need to immigrate separately; or prefer to complete the process in a single consular interview rather than through multiple USCIS filings. Consular processing is generally faster for some categories and countries, and slower for others. Comparing current processing times at USCIS versus the relevant U.S. consulate is an important part of the choice analysis.

## DS 260 vs Form I 485: The Two Application Paths

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The core application documents differ between the two paths. Adjustment of status applicants file Form I 485 (Application to Register Permanent Residence or Adjust Status) with USCIS, along with several concurrent forms. The I 485 package typically includes: Form I 485 (main application); Form I 864 (Affidavit of Support) from the sponsor; Form I 765 (Application for Employment Authorization), which allows the applicant to work while AOS is pending; Form I 131 (Application for Travel Document, i.e., advance parole), which allows the applicant to travel abroad without abandoning the AOS application; Form I 693 (Medical Examination), completed by a USCIS designated civil surgeon; and supporting civil documents (birth certificate, marriage certificate, passport copies, police certificates). The combined USCIS filing fees for an AOS package are substantial; see the current fee schedule at [uscis.gov](https://uscis.gov). Consular processing applicants complete Form DS 260 (Immigrant Visa Application) online through the Consular Electronic Application Center (CEAC) managed by the Department of State. DS 260 collects information similar to I 485 but is submitted to the State Department rather than USCIS. The NVC also requires Form DS 261 (Choice of Address and Agent) and Form I 864 (Affidavit of Support). After DS 260 is submitted and the NVC determines the package is complete (documentarily qualified), it schedules the consular interview. The medical examination for consular processing is conducted by a panel physician approved by the embassy, not a USCIS civil surgeon. Panel physician fees vary by country and physician; expect \$200 to \$400 or more.

## NVC Processing Steps

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For consular processing cases, the National Visa Center (NVC) is the intermediary between USCIS (which approves the underlying petition) and the U.S. consulate (which conducts the immigrant visa interview). After USCIS approves the Form I 130 or I 140 petition, the case is transferred to NVC. NVC assigns a case number and sends instructions to both the petitioner and the beneficiary. The petitioner pays the Affidavit of Support fee (\$120 as of April 2026) and submits the Form I 864 with supporting financial documents (tax returns, pay stubs, employer letter). The beneficiary pays the immigrant visa application fee (\$325 as of April 2026) and submits Form DS 260 with supporting civil documents. NVC reviews the submitted documents and may issue a Checklist if documents are missing or need clarification. This process is called documentary qualification. Once NVC determines the case is documentarily qualified (DQ), it schedules the applicant for a consular interview. Scheduling depends on visa availability (for preference categories, the applicant must wait for a current priority date in the Visa Bulletin before NVC can schedule) and the consulate's interview slot availability. Processing times from petition approval to NVC scheduling to interview have ranged from three months to over a year depending on category, country, and consulate capacity. Current NVC processing times are published at [travel.state.gov](https://travel.state.gov).

## Work Authorization During Adjustment of Status

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One significant advantage of adjustment of status over consular processing is that AOS applicants can apply for work authorization while their case is pending. Form I 765 (Application for Employment Authorization) filed concurrently with Form I 485 allows the applicant to legally work in any job for any employer while the AOS is pending. This is category (c)(9) employment authorization. The EAD is typically issued within three to five months of filing (USCIS publishes current processing times). The EAD can be renewed if the AOS remains pending. Under current USCIS policy, certain AOS applicants may also qualify for automatic extension of their EAD while the renewal is pending if they filed on time. Consular processing applicants outside the United States do not have access to U.S. work authorization while their case is pending abroad. If they are already in the United States in a nonimmigrant status with work authorization (H 1B, L 1, O 1, etc.), they can continue working under that status. If they choose to maintain H 1B status through an employer while their immigrant visa is pending at NVC, they can continue working without the need for an EAD, though this requires maintaining dual intent.

## Travel During Adjustment of Status: Advance Parole

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AOS applicants who travel outside the United States without authorization are deemed to have abandoned their pending I 485. To travel internationally while AOS is pending, applicants must obtain advance parole by filing Form I 131 (Application for Travel Document) concurrently with or after filing the I 485. When I 131 is filed concurrently with I 485, USCIS may issue advance parole as part of a combo card that includes both the EAD and advance parole in a single document. Processing times for I 131 filed separately are typically two to four months. If an AOS applicant departs the United States before receiving advance parole, they are generally deemed to have abandoned their I 485, unless they are in valid H 1B, H 4, L 1, or L 2 status and departing for a reason consistent with their nonimmigrant status. Return from travel on advance parole constitutes a new inspection and parole at the port of entry. This is legally significant because it means the applicant is re paroled each time they return, which satisfies the INA section 245(a) inspection and admission requirement for the purpose of that re entry. Consular processing applicants outside the United States do not need advance parole; they simply travel as they normally would and receive their immigrant visa through the consulate. After visa issuance, they travel to the United States and are admitted as permanent residents at the port of entry.

## Interview Locations and What to Expect

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AOS interviews are conducted at USCIS field offices in the United States. The field office assigned to the applicant's case is determined by the applicant's home address zip code. Interview scheduling depends on field office capacity; wait times from filing to interview notice have ranged from six months to over twenty four months at different offices in recent years. At the AOS interview, a USCIS officer reviews the application, verifies identity, questions the applicant about the facts in the application, and may question the petitioner sponsor if it is a family based case. Marriage based AOS interviews scrutinize the bona fides of the marriage. Applicants and petitioners should be prepared to answer questions about how they met, the wedding, shared finances, living arrangements, and daily life together. USCIS may request additional documentation at or after the interview. Consular processing interviews are conducted at U.S. embassies and consulates in the country specified by the NVC. Interview wait times vary significantly by consulate; high volume posts in countries with large backlogs (Mexico City, Mumbai, Manila) often have longer wait times than less busy consulates. At the consular interview, a consular officer reviews the DS 260, questions the applicant about the information provided, verifies civil documents, and makes an admissibility determination. Approved applicants receive their passport with an immigrant visa affixed. The visa stamp typically has a six month validity period, and the applicant must enter the United States before it expires. Upon entry, the applicant is processed as a permanent resident and receives a I 551 stamp (Permanent Resident Stamp) in their passport while the physical green card is mailed.

## Unlawful Presence Bars and When You Have a Choice

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The three year and ten year unlawful presence bars under INA section 212(a)(9)(B) are a critical consideration for anyone who accrued unlawful presence in the United States. Unlawful presence is accrued by anyone who remains in the United States beyond their authorized period of admission or who is present without any admission. A person who accrues more than 180 days but less than one year of unlawful presence and then departs triggers a three year bar to admission. A person who accrues one year or more and departs triggers a ten year bar. These bars only activate upon departure from the United States. For applicants who qualify for adjustment of status inside the United States, the bars are not triggered because AOS is completed without departure. For applicants who must consular process and who accrued unlawful presence, the bars activate upon departure. The Form I 601A (Application for Provisional Unlawful Presence Waiver) allows eligible applicants to apply for a waiver of the three or ten year bar before they depart, reducing time abroad. To qualify, the applicant must be an immediate relative of a U.S. citizen (or in some employment based categories) and must demonstrate that denial would cause extreme hardship to a qualifying U.S. citizen or permanent resident relative. When you have a choice between AOS and consular processing, the primary factors are: whether you have accrued unlawful presence (if yes, AOS avoids triggering the bar); whether you need work authorization during processing (AOS provides it; consular does not); whether you need to travel internationally during processing (advance parole for AOS has its own risks); whether family members abroad are principal or derivative beneficiaries; and comparative processing times at USCIS versus the relevant consulate. Consult an immigration attorney to weigh these factors for your specific circumstances.

# Frequently Asked Questions

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## 1. Can I switch from consular processing to adjustment of status?

Yes, in many cases. If you entered the United States after filing for consular processing and your underlying petition is still approved, you may be able to file Form I 485 for AOS if you meet the eligibility requirements (inspected entry, admissibility, available visa number). This is sometimes called porting or switching tracks. However, switching requires careful timing to ensure the consular case is properly withdrawn and the AOS file is complete. Consult an immigration attorney before attempting to switch processing tracks mid case.

## 2. What is the NVC and how long does it take?

The National Visa Center (NVC) is a State Department processing center that handles immigrant visa cases between USCIS approval and the consular interview. NVC collects the financial sponsorship documents (Form I 864) and the immigrant visa application (DS 260) and determines when the case is documentarily qualified for a consular interview. NVC processing times have ranged from two months to over twelve months depending on workload and case completeness. Current processing times are published at [travel.state.gov](https://travel.state.gov).

## 3. Do I need an attorney for consular processing?

You are not legally required to have an attorney for consular processing. However, consular interviews are consequential, and errors in the DS 260 or supporting documents can result in visa denial and potential bars to reentry. An attorney helps ensure the application is complete, prepares you for interview questions, identifies any grounds of inadmissibility that need to be addressed before the interview, and advises on document presentation. For straightforward cases with no complications, self representation is possible. For cases with any complexity (criminal history, prior unlawful presence, prior visa denials, prior removal), attorney assistance is strongly advisable.

## 4. How long does adjustment of status take in 2026?

Adjustment of status processing times vary by USCIS field office. In 2026, most field offices are taking between twelve and twenty four months from filing to interview scheduling for family based cases. Some offices are faster; some are slower. Employment based AOS cases may move faster if the applicant's priority date is current. USCIS publishes current processing time estimates at [uscis.gov](https://uscis.gov) by office and form type. Filing concurrently (I 130, I 485, I 765, I 131 all at once) allows work authorization to begin while the main petition is pending.

## 5. What is the unlawful presence bar and how does it affect my choice of path?

The unlawful presence bar under INA section 212(a)(9)(B) is triggered when a person who accrued more than 180 days of unlawful presence departs the United States. The bar is three years for 180 days to one year of unlawful presence and ten years for one year or more. For AOS applicants, completing the process inside the United States means departure does not occur and the bar is not triggered. For consular processing applicants who accrued unlawful presence, departure triggers the bar and they may be unable to reenter for years unless they obtain a Form I 601A waiver. This bar is one of the most important reasons to prefer AOS when available.

## 6. Can I work while my green card is being processed?

For adjustment of status applicants, yes. Filing Form I 765 concurrently with Form I 485 requests an Employment Authorization Document (EAD) that typically issues in three to five months. AOS applicants already in valid work authorized status (H 1B, L 1, O 1) can continue working under their existing status while AOS is pending. Consular processing applicants outside the United States cannot obtain U.S. work authorization while processing abroad. Those who remain in the United States in a work authorized nonimmigrant status during consular processing can continue working under that status.

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