



July 23, 2007

Frequently Asked Questions¹

Employment-Based Adjustment Applications Filed by Aliens Whose Priority Dates are Current under Department of State July Visa Bulletin No. 107

Q1: Will USCIS reject a concurrently filed EB I-140/I-485 case if it is lacking a required Labor Certification?

A1. USCIS will not accept an I-140 based on a required labor certification application if the approved labor certification application is not submitted in connection with the filing. USCIS will not accept a concurrently filed Form I-485 if the required Form I-140 is rejected for lack of an approved labor certification application.

Q2: Will USCIS reject an application for missing or incorrect filing fees?

A2: Yes, in accordance with standard procedure and applicable regulations, USCIS will reject any filings submitted with incorrect filing fees.

Q3: Will USCIS reject an application for a missing signature?

A3. Yes, in accordance with standard procedure and applicable regulations, USCIS will reject any filings that do not contain required signatures.

Q4: Will a concurrently filed I-140/I-485 be rejected if filed with an incorrect I-140 or I-1485 fee?

A4. USCIS will reject any filings submitted with the incorrect filing fees.

Q5: Where should employment-based adjustment applications be filed?

A5. Forms I-485 may be filed at either the Nebraska Service Center or the Texas Service Center in accordance with the Direct Filing Update issued June 21, 2007.

Q6: What happens if an application is filed at the wrong Service Center?

A6. Forms I-485 should be filed at either the Texas or Nebraska Service Centers. However, through August 17, 2007 only, employment-based adjustment applications filed at the California and Vermont Service Centers will not be rejected and will be relocated to the appropriate Service Center. Filing at the wrong location could result in processing delays.

¹ USCIS may issue future “FAQs” on this topic for the benefit of the public, should additional questions arise. Such FAQs will be dated and numbered for ease of reference.

Q7: Which fees apply to I-765 and I-131 applications associated with AOS applications filed on or after July 30th under the July Bulletin?

A7. The fee of \$180 for Forms I-765 and the fee of \$170 for Form I-131 will remain in effect for those aliens eligible to file an employment-based adjustment of status application pursuant to July Visa Bulletin No. 107. These fees will remain in effect for all such applications filed between July 17 – August 17, 2007.

Q8: What is the correct fee for concurrently filed I-140s filed between July 30 and August 17?

A8. The new fee applies to Forms I-140, whether or not concurrently filed with an employment-based adjustment application, that are filed on or after July 30, 2007. That fee is \$475.

Q9: Will customers eligible to file adjustment applications under July Visa Bulletin No. 107 have the option to pay the NEW filings fees in connection with adjustment applications filed on or after July 30, 2007 and on or before August 17, 2007?

A9. No, customers will not have the option of paying the new filing fees for adjustment applications. USCIS has determined that aliens in employment-based categories filing applications pursuant to July Visa Bulletin No. 107 should be subject to the pre-July 30, 2007 fees as that fee schedule would have applied had aliens been allowed to file throughout the month of July.

Q10: Will USCIS accept employment-based adjustment of status applications under July Visa Bulletin No. 107 if the priority date is August 1, 2007 or later?

A10. No.

Q11: Will USCIS accept adjustment applications under July Visa Bulletin No. 107 if the priority date is before July 31, 2007, but the certification is granted after August 1, 2007?

A11. Yes, USCIS will accept such cases provided they are submitted by August 17, 2007.

Q12: Will USCIS accept concurrently filed I-140s/I-485s filed after July 31 when a labor certification is not required (i.e. priority date is established on or after August 1)?

A12. USCIS will accept properly filed Forms I-140 filed on behalf of aliens with a priority date on or after August 1, 2007; however, pursuant to August Visa Bulletin No. 109, USCIS will reject any concurrently filed adjustment of status applications filed by aliens with a priority on or after August 1, 2007.

Q13: Can applications be filed without a required medical examination report?

A13. Yes. Consistent with its current regulations and practice, USCIS will accept adjustment of applications filed pursuant to Visa Bulletin No. 107 without a completed medical examination. In such cases, USCIS will issue a request for evidence.

Q14: USCIS' July 17, 2007 press release stated that USCIS would accept applications filed not later than August 17, 2007. Does this mean applications delivered on August 17, 2007 will be accepted but those arriving August 18, 2007 will be rejected?

A14. Yes

Q15: How long will aliens have to wait for their employment-based applications to be adjudicated?

A15. Applicants should monitor the State Department's visa bulletin to determine whether a visa number is available based upon their individual priority dates. There are annual statutory limitations, thus some aliens may have to wait a significant period of time, perhaps years, before visa numbers become available.

Applications for interim benefits (employment authorization and advance parole) will be processed prior to final adjudication of the adjustment application and in accordance with USCIS standard procedures.

Q16: When will premium processing of Forms I-140 be reinstated?

A16. Premium processing of Forms I-140 has been suspended until further notice. USCIS will publish any updates on the availability of premium processing for Forms I-140 on its website.

Q17: How will USCIS interpret the language of AC21 Sec 104(c) (for three-year H-1B extensions) during a period in which AOS applications could be filed?

A17. USCIS interprets AC21 §104(c) as only applicable when an alien, who is the beneficiary of an approved I-140 petition, is eligible to be granted lawful permanent resident status but for application of the per country limitations. Any petitioner seeking an H-1B extension on behalf of a beneficiary pursuant to AC21 §104(c) must thus establish that at the time of filing for such extension, the alien is not eligible to be granted lawful permanent resident status on account of the per country immigrant visa limitations.

Q18: Will there be any delays in processing applications received as a result of the July 17 notice reopening the filing period for employment-based adjustment applications under the July Visa Bulletin?

A18. Depending on the volume of applications received, there may be some delay in the issuance of receipt notices. Processing times will be updated on the USCIS web site.

Q19: What procedures should be followed when filing an I-485 application based on a pending I-140, when the petitioner has not received a copy of the I-140 receipt notice?

A19. Applicants filing a Form I-485 that does not contain a copy of an I-797 receipt notice for a previously filed Form I-140 are advised to put a brightly colored sheet of paper on top of the filing with the following notice and information:

TO THE MAILROOM: The enclosed I-485 Adjustment Application(s) should be matched with a pending I-140 Immigrant Petition for which no Receipt Notice has been received. The Immigrant Petition [type, e.g., I-140] was delivered to [Service Center] on [provide date of filing and tracking number]; Petitioner's name; Beneficiary's name; Beneficiary's date of birth; Beneficiary's country of birth.



July 27, 2007

Frequently Asked Questions - #2¹

Employment-Based Adjustment Applications Filed by Aliens Whose Priority Dates are Current under Department of State July Visa Bulletin No. 107

Q21: Will USCIS permit applicants who filed adjustment applications between July 2, 2007 – July 17, 2007, but who have not yet received a USCIS generated receipt notice, to file for Advance Parole and Employment Authorization based on proof of delivery of the I-485 application?

A21. Yes.

Q22: What will be the receipt date for employment-based adjustment applications filed between July 2, 2007 – July 17, 2007?

A22: In accordance with standard procedure, USCIS will generate receipt notices for all properly filed employment-based adjustment applications based on the date the applications were physically received by USCIS.

Q23: Will USCIS accept medical examinations completed abroad by physicians authorized by the Department of State?

A23. Yes. Please note, however, that applicants must be physically present in the United States when filing for adjustment of status.

Q24: Will an e-filed I-140 petition (that is not based on a required labor certification) filed on July 31, 2007 receive a priority date of July 31, 2007 if the supporting documents arrive at a later date?

A24. Yes, in accordance with e-filing standard procedures, the date on which the I-140 petition is received by USCIS will be the priority date. Supporting documentation must be filed within allotted time limitations.

Q25: Does a receipt notice from a courier service or overnight mailing service constitute a “post-mark”?

A25. Yes, the date the item is entered into the courier’s service system will be the postmark date for fee determination purposes.

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Q26: How will USCIS treat aliens who fell out of valid nonimmigrant status between July 2, 2007 – July 16, 2007 as a direct result of the inability to file for employment-based adjustment during that period?

A26. USCIS has discretion to consider extraordinary circumstances that are beyond the alien’s control and may forgive a short gap in status for such aliens.

Q27: If an alien’s pre-August 1, 2007 priority date based on an approved labor certification and approved I-140 petition is transferred to a subsequently filed I-140 petition pursuant to 8 CFR 204.5(e), may the later filed I-140 petition be concurrently filed with an I-485 application between August 1, 2007 and August 17, 2007?

A.27. Yes. In accordance with 8 CFR 204.5(e), an approved I-140 petition on behalf of an alien accords the alien the priority date of the approved I-140 petition for any subsequently filed I-140 petitions on the alien’s behalf. Therefore, as long as the alien’s initial priority date remains current under Visa Bulletin No. 107, a subsequently filed I-140 and an adjustment application may be filed until August 17, 2007.

Q28: If an alien has a pre-August 1, 2007 priority date based on an approved labor certification and a pending I-140 petition, may the alien be accorded the earlier priority date on a subsequently filed I-140 petition such that the later I-140 and adjustment application may be filed between August 1, 2007 and August 17, 2007?

A.28. No. In accordance with 8 CFR 204.5(e), only an approved I-140 petition on behalf of an alien accords the alien the priority date of the approved I-140 petition for any subsequently filed I-140 petitions on the alien’s behalf. A priority date may only be retained for use in conjunction with a subsequently filed Form I-140 petition if the previous petition was approved and not revoked. If the first petition remains pending, then the filing date of the labor certification submitted in support of the petition may not be used as a basis for a request to retain the priority date.

Q29: The version date on the new I-485 form is 7/30/07 and it has an "N" designation after it, meaning that the I-485 applications arriving at the service center on or after July 30, 2007 must use the new I-485 form or it will be rejected at the mailroom. Is this really true?

A29. No, the “N” designation on the new version was inadvertently uploaded to the USCIS website and has since been removed. The new and corrected I-485 application form that will be uploaded will have the “Y” designation which means that prior version of the form will not be rejected.

Q30: What is the USCIS’ interpretation of “proper signature” on a petition or application?

A30. All applications, petitions, and notices of legal representation must be properly signed. For more information, please read [Reminder Regarding Signature Requirements](#).

Q.31: If a derivative family member of a principal applicant is not able to file adjustment of status before August 17, 2007, must the derivative family member await availability of a visa number before submitting an application for adjustment of status?

A.31. A visa number must be available at the time of filing for adjustment of status. Thus, if a principle applicant with a current priority date under Visa Bulletin No. 107 files for adjustment of status between July 17, 2007 – August 17, 2007, any derivative family members must either also file during this time period, or wait until immigrant visa numbers become available at a later date pursuant to the Visa Bulletin.

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Q. 32: What is the correct filing fee for a concurrently filed I-140 with an adjustment application filed between July 30, 2007 and August 17, 2007?

A32. The new fee applies to Forms I-140, whether or not concurrently filed with an employment-based adjustment application, filed on or after July 30, 2007. That fee is \$475. USCIS encourages applicants to file all petitions and applications with only the correct filing fees.

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