

Which one is better? Reviewing AOS (Adjustment of Status) vs IVP (Immigrant Visa Processing) for Foreign Nationals Currently in the U.S.



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A frequent discussion we have with our corporate clients and their employees after an I-140 (employment-based immigrant petition) approval is how to proceed with the final stage of the green card process for the employee and their accompanying family members. The question often posed is – “Which one is better – AOS (*Adjustment of Status*) or IVP (*Immigrant Visa Processing*) – to proceed with?”

In my opinion, the better question really is “Which option is best for this particular individual with their specific circumstances?”. It’s truly not a one-size-fits-all scenario – there are nuances within each individual’s circumstances that dictate which option would likely suit them best. Not one particular factor dictates the best strategy, but rather a combination of factors that form the best picture and help us identify the ‘best’ solution for them to proceed with.

Some of the factors that go into evaluating which option is best for an individual include:

- What status is the foreign national in currently?
  - When does their current status expire?
  - Does their status allow for dual intent and concurrent travel? (e.g. H-1B/L-1's allow for dual intent – whereas other categories do not.)
  - Do we have the ability to extend their non-immigrant status? (e.g. Are they maxed out of L-1 time? Can we file an internal extension if necessary?)
  
- What is their nationality?
  - Are we expecting long delays based on their nationality to complete the process based on the priority dates on the visa bulletin? (e.g. Indian and Chinese nationals typically face significant wait times.)
  
- What is their need to travel?
  - If they file for AOS, are they able to remain in the U.S. for an extended period of time while the green card application/advance parole application are pending? (Currently, Advance Parole applications are taking anywhere from 3-6+ months.)
  - Is the employer comfortable with this? Will this affect the individual's ability to complete their job duties or is the employer comfortable with this limitation?
  - Is the employee comfortable with this? Does the employee have a potential critical need to travel outside the U.S. such as aging parents or pre-planned trips that they cannot reschedule?
  - If they choose IVP, are they comfortable with returning abroad to complete their medicals and waiting for processing of their immigrant visas post-interview?
  
- Are the accompanying family members in any special situations?
  - Are there any children that might age out? (Children over the age of 21 who cannot benefit from the CSPA would not be eligible to immigrate with their family members.)
  - Does the employee want to seek work authorization as soon as possible for their spouse and/or accompanying family members?
  
- What are current overall processing times for AOS vs. IVP?
  - For AOS, currently, we are frequently seeing applicants able to complete the green card process in 8-10 months.
  - For IVP, currently, since the Dept. of State is still working to catch up on COVID backlogs and employment-based applicants are at the lowest priority level, we are seeing significant delays resulting in a wait time of years. While the Dept. of State has stated its commitment to significantly reducing the backlog, until this comes to fruition, applicants can expect a lengthier wait time.
  
- How important are the relevant costs to the company/employee?
  - With AOS, the filing fees alone are \$1,225/person (\$750/person for children under the age of 14 who are applying with a parent).
  - With IVP, the filing fees are \$345/pp, plus a \$220/pp Immigrant Visa Fee upon approval.
  - Legal fees tend to be comparable between the two categories.

Immigration truly is a 'big picture' type of scenario and there are many factors that need to be reviewed to determine the *best* option to help clients reach their ultimate goal. This type of conversation requires reviewing all

of these factors together, rather than any one factor in a vacuum – which is why these discussions with our corporate clients and their employees are extremely critical and productive at this stage of the process.

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