

Working, Travelling While Adjusting Status in the United States



Immigration Blog

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Adjustment of Status (AOS) has a very specific definition in the United States. It is defined as the process whereby someone goes from a temporary nonimmigrant status to a Lawful Permanent Resident without obtaining a visa from an embassy or consulate outside the United States. This discretionary privilege carries with it many rules and restrictions related to working and travelling.

There are two ways to do this for those who want to work while in the AOS process. The first is to enter on and maintain status in a temporary nonimmigrant working status prior to filing for AOS. In this instance, the AOS applicant can remain in status by adhering to the requirements of the nonimmigrant status; for example, the AOS applicant can only work for an employer for which their status has been approved, as nonimmigrant statuses are employer-specific. If needed and subject to certain restrictions for some applicants, it may be possible to change employers with a lengthy filing.

Another way to gain the legal ability to work during AOS is by filing an application for an open employment

authorization to work anywhere. Prior to April 2024, it was the best standard for AOS filings to include an open employment authorization application. Since April 2024, a processing fee has been added, which not all applicants will want to pay. The timing of the adjudications of these open employment authorizations has been variable and inconsistent, ranging from two months to nine months over the past several years. These employment authorization documents (EADs) were previously valid for one year or two years, sometimes requiring renewal applications to be filed based on AOS processing times. More recently, EADs have been approved for five years. This triggers a legitimate concern that the reason USCIS has extended the validity of EADs is because it feels that it may need that long to process and adjudicate the related AOS applications.

Travelling internationally during the AOS process can also be challenging. If an AOS applicant is maintaining H-1B or L-1 (nonimmigrant) working status in the United States, no special filings are required. H-1B and L-1 are considered “dual intent” statuses, and therefore the AOS applicant can enter in a temporary nonimmigrant status despite maintaining the intent to immigrate to the United States.

Any AOS applicant in another nonimmigrant status should not leave the United States before receiving advance permission to do so from USCIS, known as Advance Parole (AP). If an AOS applicant without AP (who is not in H-1B or L-1 status) does leave, he or she will either be prevented from re-entering the United States, or he or she will regain admission only to have the AOS denied later on, with the government calling the travel out of the United States “abandonment” of the AOS application.

Similar to the EAD application, prior to April 2024, there was no fee for an AP application filed with an AOS application, so it was best practice to file them together. Now, there is a separate filing fee, so a decision must be made whether to file or not. Part of that decision concerns the adjudication times, which have exceeded 12 months recently. If an AP application is filed and an emergency arises, USCIS may grant an emergency AP for 30 days. However, USCIS may also cancel any previously pending AP application. A better option, if emergency travel is needed, is to request that USCIS expedite a currently pending AP application. Again, similar to the EAD application process, APs are being approved for five years.

It is critical for AOS applicants who want to work and travel while waiting for their Lawful Permanent Residence (Green Card) to understand the rules, or to engage competent counsel to explain the rules and assist. Our Immigration Practice Team at Lippes Mathias LLP stands ready to assist. Please contact Elizabeth M. Klarin (eklarin@lippes.com) or Eileen M. Martin (emartin@lippes.com) with any questions.

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