



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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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.

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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