



U.S. Citizenship and Immigration Services: Authorities and Procedures

December 20, 2021

Through legislation, Congress has [specified the conditions](#) under which non-U.S. nationals (*aliens*, as the term is used in the Immigration and Nationality Act [INA]) may lawfully enter or remain in the United States. Under this framework, aliens who satisfy applicable requirements may qualify for certain types of immigration benefits, such as adjustment to [lawful permanent resident](#) (LPR) status. [U.S. Citizenship and Immigration Services](#) (USCIS), a component of the Department of Homeland Security (DHS), is tasked with adjudicating immigration benefit applications. This Legal Sidebar provides a brief overview of USCIS’s authorities and procedures. (Two other DHS components, [Immigration and Customs Enforcement](#) [ICE] and [Customs and Border Protection](#) [CBP]), are primarily responsible for the agency’s immigration enforcement activities, and their authorities are discussed [in other CRS products](#).)

Background

The Homeland Security Act of 2002 [established USCIS](#) as the component within DHS responsible for adjudicating immigration [benefit requests](#). USCIS’s powers [derive](#) from those originally exercised by the former Immigration and Naturalization Service, which dissolved upon the creation of DHS. USCIS’s responsibilities include, among other things, the adjudication of immigrant visa petitions (e.g., [family- or employer-based](#) petitions), applications to [adjust to LPR status](#), “[affirmative](#)” [asylum](#) applications, petitions for [naturalization](#), and [employment authorization](#) applications. USCIS has the [authority to charge fees](#) for these services, and, through [regulations](#), the agency has set the required filing fees for different types of benefit requests (subject to fee waivers and exemptions in some cases).

Different USCIS “directorates” perform that agency’s adjudicatory functions relating to benefits. The [Service Center Operations](#) adjudicates benefit requests at five regional service centers in cases where applicant interviews are not required. Other benefit adjudications, many of which require [personal interviews](#), are handled by two other directorates. [Refugee, Asylum and International Operations](#) adjudicates [refugee status](#) applications, [humanitarian parole requests](#), and “[affirmative](#)” [asylum](#) applications (i.e., applications made by persons not in removal proceedings). It also considers whether aliens [apprehended at the border](#) or those who were [previously removed](#) are potentially eligible for asylum or related protections from removal. Another directorate, [Field Operations](#), adjudicates other types of benefit requests through written correspondence and interviews, processes background security checks,

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LSB10671

and conducts naturalization ceremonies. Additionally, the [Administrative Appeals Office](#) (AAO) adjudicates appeals from the denial of certain immigration benefits. (Some USCIS components perform nonadjudicatory functions; more information about these components can be [found here](#).)

Adjudication of Benefit Requests

An applicant for an immigration benefit [must show that](#) he or she [is eligible for that benefit](#) and not [inadmissible](#) (some inadmissibility grounds, including certain [criminal-based](#) grounds, are subject to discretionary waivers). The adjudicating officer generally considers whether the applicant has shown eligibility for the benefit by a [preponderance of the evidence](#) (i.e., that it is more likely than not) under the facts of the case. Federal [regulations](#) describe the procedures for adjudicating benefit requests, administrative appeals of adverse decisions, and motions to reopen or reconsider USCIS adjudications.

Adjudication Process

An applicant, who [may elect to be represented](#) by counsel, [must submit](#) all evidence related to the benefit request that is required by regulations or USCIS instructions, and any required filing fees and biometric information. USCIS [may reject](#) an application that is not signed and submitted with filing fees, and there is no appeal from the rejection. If the benefit request is properly filed, USCIS [may require](#) the applicant (or a petitioning sponsor or other individual residing in the United States) to appear for an interview.

DHS regulations [provide](#) that the absence of required evidence creates a presumption of ineligibility for an immigration benefit (but if a required document is unavailable, an applicant may submit [secondary evidence or affidavits](#) instead). Generally, if the required evidence is not submitted, USCIS may [deny the benefit request or request submission](#) of the missing evidence within a specified period of time. If the initial evidence is submitted but does not show eligibility, USCIS [may either](#) (1) deny the application, (2) request more evidence, or (3) notify the applicant of its intent to deny the application and the basis for denial. If an applicant [fails to respond](#) to a request for more evidence or notice of intent to deny, USCIS may deny the application as abandoned (which is not appealable), deny it based on the evidence already in the record, or deny for both reasons. The reasons for a denial must be [explained in writing](#). If the decision is appealable, the officer is to [provide](#) the applicant the appropriate appeal form.

Use of Discretion

Generally, if evidence submitted with a benefit request shows eligibility, USCIS [will grant](#) the application. However, for most benefit requests, USCIS [may still decide](#) whether the applicant merits that benefit as a matter of discretion. The [Board of Immigration Appeals](#) (BIA)—the highest administrative body responsible for interpreting federal immigration laws—has long recognized that granting an immigration benefit is “[a matter of administrative grace](#),” and the applicant [has the burden](#) of showing that a favorable exercise of discretion is warranted. In exercising discretion, USCIS [must balance](#) any adverse factors with favorable equities and considerations. Typically, adverse [factors have included](#) prior immigration violations, criminal history, and any other evidence of bad character. Favorable [factors have included](#) family ties and length of residence in the United States, evidence of hardship in the event of an adverse decision, history of employment, community service, and any other evidence of good character (e.g., affidavits from family or friends). In 2020, USCIS [issued policy guidance](#) that lists discretionary factors to be considered in adjudications, and explains how officers should weigh those factors.

Although USCIS’s decision is typically discretionary, some benefit requests do not involve discretion. If the alien shows eligibility, the agency must grant the application. For example, under provisions of the INA, an alien applying for U.S. citizenship “[shall be naturalized](#)” if the alien meets specified criteria.

Similarly, an alien spouse who is granted conditional permanent resident status “shall” have that conditional status removed upon a determination that the alien’s qualifying marriage is bona fide.

Administrative Appeals

Under DHS regulations, certain USCIS decisions may be appealed. The AAO, the appellate body within USCIS, has jurisdiction to consider some (but not all) benefit request decisions, including the denial of most employer-based immigrant visa petitions, Temporary Protected Status (TPS) applications, and naturalization applications. An AAO appeal (and any supporting brief) is typically filed within 30 days after service of the adjudicating officer’s decision (33 days if served by mail). Generally, the officer is required to review the appeal, and the officer may, within 45 days, treat the appeal as a motion to reopen or reconsider and take favorable action. Otherwise, the officer must forward the appeal to the AAO. On appellate review, the AAO considers the record anew (*de novo*) and addresses any questions of fact, law, policy, or discretion. The AAO decision may be published as a precedential decision.

While the AAO generally has appellate jurisdiction over USCIS decisions, the BIA, an agency within the Department of Justice’s Executive Office for Immigration Review, may also have jurisdiction. Typically, the BIA adjudicates appeals of decisions by immigration judges in formal removal proceedings. DHS regulations also confer the BIA with authority to review certain USCIS decisions, including the denial of family-based visa petitions. An appeal to the BIA must be filed within 30 days after service of the USCIS decision. The BIA exercises *de novo review* of all questions raised on appeal from the USCIS decision.

Motions to Reopen and Reconsider

An alien (or petitioning sponsor) may file a motion to reopen or to reconsider following a USCIS decision (including an AAO decision). The motion must be filed within 30 days of the decision (33 days if the decision is mailed). An untimely motion to reopen may be excused if the delay is reasonable and beyond the control of the filer. A motion to reopen must state the new facts to be presented in the reopened proceedings and be supported by affidavits or other evidence. A motion to reopen an application denied as abandoned for failure to respond to a request for evidence must also show that the requested evidence was immaterial, that the evidence was submitted, or that the evidence request was never received. A motion to reconsider must provide the basis for reconsideration, be supported by any precedential rulings to show that the underlying decision incorrectly applied law or policy, and show that the decision was incorrect based on the evidence. An adjudicating officer’s decision on a motion to reopen or reconsider may be appealed to the AAO if the original decision was appealable. An alien may also file a motion to reopen or reconsider following a BIA decision under standards and procedures set forth in DOJ regulations.

Limitations to USCIS’s Adjudicatory Authority

USCIS’s authority to adjudicate benefit requests may be restricted in some cases. For example, regulations provide that USCIS has jurisdiction to adjudicate an application for adjustment to LPR status unless an immigration judge has jurisdiction over the application. If an alien is in formal removal proceedings, an immigration judge has “exclusive jurisdiction” over the adjustment application. This rule, however, does not apply to an “arriving alien” (an alien who seeks admission into the United States at a designated port of entry) who is placed in formal removal proceedings, except in limited circumstances. Accordingly, an arriving alien in removal proceedings generally may only file an adjustment application with USCIS. Some federal courts have rejected legal challenges to this regulatory framework brought by arriving aliens who sought to pursue adjustment in their formal removal proceedings. However, in cases where there is a final order of removal, some courts have held that the BIA may not rely on the

regulations to deny an arriving alien’s motion to reopen his or her removal proceedings in order to provide time for USCIS to adjudicate a pending adjustment application.

USCIS’s ability to adjudicate asylum applications may also be limited in some circumstances. Generally, an alien (regardless of legal status) who is **physically present** in the United States may “**affirmatively**” apply for asylum with USCIS. Under **DHS regulations**, an asylum officer adjudicates the application and, following an interview, either grants or denies the application, or (if the alien is removable) refers the application for formal removal proceedings. If the alien is already placed in **formal removal proceedings**, the alien generally may only apply for asylum “**defensively**” *in those proceedings*—not before USCIS. Of special note, USCIS has **initial jurisdiction** over asylum applications filed by **unaccompanied alien children**, **even if the child is in removal proceedings** (if USCIS determines the child is not eligible for asylum, the child **may also pursue** asylum defensively in formal removal proceedings).

Additionally, some applications are only adjudicated in formal removal proceedings and not before USCIS. For instance, certain removable aliens who have resided in the United States for lengthy periods of time and meet other requirements may apply for **cancellation of removal** in removal proceedings. Aliens may also pursue **voluntary departure**, which allows them to depart the United States at their own expense rather than being removed, strictly in removal proceedings. Applications for **withholding of removal** and **protection under the Convention Against Torture**, which are humanitarian protections related to asylum that bar an alien’s removal to a country where the alien likely faces persecution or torture (but that, **unlike asylum**, provide no path to LPR status) are also adjudicated in removal proceedings.

Judicial Review of USCIS Adjudications

An alien may potentially challenge a USCIS decision in **federal district court** under the **Administrative Procedure Act** (APA), which generally authorizes judicial review of federal agency decisions. The alien (or petitioning sponsor) must show that the USCIS decision is a “**final agency action for which there is no other adequate remedy**,” meaning that it is **not subject to further administrative review and conclusively determines** the alien’s legal rights and obligations. Applying this standard, **some federal courts have held that a USCIS decision is not final** agency action if the alien is subsequently placed in formal removal proceedings and can renew the denied application (e.g., an **adjustment of status application**) in those proceedings. In these circumstances, the alien may challenge the denial of the application only by filing a **petition for review** of a final order of removal in the federal courts of appeals.

Although a USCIS decision may constitute final agency action in some situations, **INA § 242(a)(2)(B)** precludes judicial review of (1) “any judgment” as to whether to grant certain enumerated forms of relief (including adjustment of status); or (2) any other decision or action specified by statute to be in the discretion of the Secretary of Homeland Security (e.g., a **visa revocation**). There is dispute among the courts as to what constitutes a “judgment” immune to judicial review under this provision. **Most courts have construed** INA § 242(a)(2)(B) as barring judicial review of *discretionary* denials of relief, but allowing review of nondiscretionary questions, including threshold determinations of statutorily eligibility and factual findings underlying the agency’s decision. Other courts, though, **have construed** the statute as barring judicial review of *any* denial of the enumerated forms of relief, including those threshold determinations. The Supreme Court, in *Patel v. Garland*, is currently considering the proper interpretation of INA § 242(a)(2)(B), and whether it preserves judicial review of nondiscretionary determinations.

INA § 242(a)(2)(D) provides that, notwithstanding the § 242(a)(2)(B) bars, courts retain jurisdiction to review constitutional claims or questions of law raised in a petition for review of a final order of removal. **Courts have recognized that** this exception does not apply to review of USCIS determinations, which occur outside of removal proceedings.

Separately, the APA bars judicial review if a federal agency action “is committed to agency discretion by law.” This bar applies when there is no judicially manageable standard to review an agency decision. Federal courts, on occasion, have applied this provision when dismissing legal challenges to USCIS actions, including, for instance, the agency’s adjudication of certain types of visa petitions.

If a district court has jurisdiction to review a USCIS decision, the APA specifies the grounds upon which the court may set aside the agency’s action, including, among other things, if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” violates constitutional protections, exceeds statutory authority, or fails to comply with procedural requirements. The APA, which defines “agency action” to include an agency’s “failure to act,” also authorizes courts to “compel agency action unlawfully withheld or unreasonably delayed.” Based on this authority (or, in the alternative, the Mandamus Act), some courts have reviewed claims that USCIS unreasonably delayed an adjudication. In contrast, some courts have held that the pace at which USCIS adjudicates applications is not subject to judicial review.

Immigration Enforcement and Related Activities

While USCIS is mainly responsible for adjudicating benefit requests, the agency also has some immigration enforcement and related functions. For example, USCIS asylum officers conduct “credible fear” interviews to determine whether aliens who are apprehended at the border and placed in expedited removal proceedings, and who express a fear of returning to a particular country, are potentially eligible for asylum and related protections. USCIS asylum officers also conduct “reasonable fear” screenings to determine whether aliens who are apprehended in the United States after being previously removed, and who express a fear of return to the country of removal, might qualify for withholding of removal and Convention Against Torture (CAT) protection, which have higher standards of proof than asylum.

USCIS may also commence formal removal proceedings in some cases. Designated immigration officers, including supervisory adjudication and asylum officers, may issue a Notice to Appear (NTA), the charging document that commences formal removal proceedings against a removable alien. As laid out in a 2011 memorandum, which is currently binding, USCIS officials must issue an NTA in certain cases where federal statute or regulations require initiation of formal removal proceedings, such as upon the agency’s referral of an affirmative asylum application for formal removal proceedings; its termination of asylum or refugee status; its determination that an alien has a credible fear of persecution; or its denial of a removable alien’s TPS application. USCIS policy also requires NTA issuance when a case raises national security concerns or an applicant has committed fraud (even if the application is denied on a basis other than fraud). USCIS’s guidance also permits issuance of an NTA with respect to naturalization applicants who are subject to removal (e.g., because of a criminal offense). Additionally, USCIS refers cases to ICE—the DHS component responsible for interior immigration enforcement—for possible NTA issuance in some circumstances, including if the alien committed certain types of crimes.

USCIS also has some responsibilities relating to investigations and the sharing of information. For instance, the agency’s Fraud Detection and National Security directorate investigates applicants who engage in immigration benefit fraud or raise national security or public safety concerns, and it may refer cases to ICE for potential criminal investigations. The Immigration Records and Identity Services directorate may provide identity, employment, and immigration-related information about aliens to other agencies pursuant to data-sharing agreements.

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