

## I-485 Application to Register Permanent Residence or Adjust Status

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### SECTION 1: MAILROOM MODULE

I-485 National SOP Introduction This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis as training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.
- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents      The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

**Introduction** The Service Center mailroom retrieves most of its mail from the Post Office. Various Express Mail services also bring correspondence directly to the Center throughout each business day. Regardless of the manner in which mail is received, there are several requirements that must be met for mailroom processing of the I-485 prior to Data Entry. Those requirements and the standards and suggested approaches to reach the requirements, are detailed in this section. Besides preparation for data entry, another result of achieving the requirements in this section is that certain cases that do not meet eligibility criteria will be routed to U.S. CIS Review.

## Section 1: Table of Contents

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### Opening Mail

**Description** Throughout processing in both the mailroom and data entry sections, submissions are maintained in groups, or batches. These submissions are stored as

groups of like applications (i.e., batches), indicating when U.S. CIS received the forms in the mailroom.

**Requirement** All submissions must be opened, sorted and batched according to the date of arrival and form type. It is recommended that envelopes be opened on three sides to ensure that all of the contents have been removed.

**Standards** Complete the standards below for all mail arriving in the mailroom to meet the requirement above.

No. Standard

1.1 From the submissions, identify the I-485 filings.

1.2 Endorse all I-485 remittances on the back of the remittance. This may be completed using a computer slip printer.

IF... THEN...

The file will be moved for set up      Secure the remittances to the rest of the submission, place the I-485 filing in a container labeled "I-485 Filings" and sort by the "received" date.

The same person will be setting up the file      Leave the remittances out of the envelope and continue processing.

### Setting-Up Mail

**Description** Set-Up is the function performed by clerks that are responsible for the physical set-up of the I-485 and any concurrently filed applications/petitions. Mail Set-Up assembles contents of the envelope (from top to bottom) using black clips. It is suggested that the envelope be slit open on three sides to ensure that all of the contents are located and removed.

**IRS Form 9003**      Effective 9/21/01, U.S. CIS discontinued distribution, use and collection of Form 9003 with the Form I-485. Service centers and field offices that adjudicate adjustment of status applications do not need to send the completed forms to the IRS. Applicants' forms prepared for transfer to the IRS should be shredded or destroyed, and these forms may be removed from applicants' current files and disposed of in a similar manner. (See Immigration Services Division, Field Service Operations memo "Discontinue Use of IRS Form 9003," 9/21/01, HQISD 70/23.)

Requirements All of the applications/petitions submitted must be date- and time-stamped and placed in record of proceeding (ROP) order along with any supporting evidence, including the photos, which should be in a glassine bag. Also, the mailing envelope must be retained. Additionally, the I-693 should remain sealed until the filing is determined to be acceptable.

Note: Due to local Mailroom concerns, the Vermont Service Center may open the I-693 medical records during initial processing (i.e., "Opening Mail"). However, if the record is opened and then the filing needs to be rejected, the clerk needs to reseal the envelope and annotate across the flap a statement such as, "Medical – Do Not Open."

Standards Complete the standards below to set-up the applications/petitions submitted.

No. Standard

2.1 Retain the postmark and return address portion of the mailing envelope for assembly into the packet.

Standards (continued)

No. Standard

2.2 Date- and time-stamp the first page of each application/petition and the Supplement A, if submitted, legibly using the received date and date-stamp number or employee ID number. Do not date-stamp over areas designated for other purposes. Advice: Place the date-stamp vertically in the right-hand margin.

2.3 If photos are supplied, place them in a glassine envelope and staple the bag to the left-hand side of the first page of the I-485. Staple the glassine bag to the middle of the form so that it folds around the front of the form. Do not staple through the photos.

Note: If no photos were submitted, they will be requested during adjudication.

2.4 If the I-485 is accompanied by an I-765 and/or I-131, place the photos as follows:

A. I-131 – Place 2 photos in a glassine bag and staple the bag on the front to the top left corner.

B. I-765 – Place 2 photos in a glassine bag and staple the bag on the front to the bottom right corner.

C. I-485 – Place 2 photos in a glassine bag and staple the bag as in Standard 2.3.

If the number of photographs is insufficient, preference is first given to the I-131, followed by the I-765, and then the I-485.

Standards (continued)

No. Standard

2.5 If a G-28 was submitted, check whether or not it is acceptable and annotate the processing worksheet. The G-28 is only acceptable if the following sections are complete:

- 2nd Block – Applicant’s name
- 3rd Block – Type of Appearance must be checked (Box 1, 2, 3 and 1, 3 and 2, OR 4 must be checked)
- 3rd Block – The representative or attorney’s original signature (original facsimile stamp is acceptable)
- 4th Block – Name and proper signature of person consenting

If only one copy of the G-28 has been submitted and you have concurrently filed applications, photocopy the G-28 for each application and initial the copies with your employee number.

2.6 Establish the ROP by placing submitted documents for each file in a file folder in the following order:

Left-Hand Side of File (Top to Bottom)

- A. G-28, Notice of Appearance as Attorney or Accredited Representative, if acceptable
- B. I-485 Application
- C. I-485 Supplement A (245(i) cases only)
- D. G-325A, Biographical Information Form
- E. I-864, Affidavit of Support
- F. Evidence of lawful entry (e.g., I-94 card, passport stamp, etc.)
- G. Any supporting documentation
- H. I-693, Medical Examination Report (in sealed envelope)
- I. I-797, Notice of Action
- J. Postmark and return address portion of original envelope

Right-Hand Side of File (Top to Bottom)

- A. I-485 Processing Worksheet
- B. G-28, if unacceptable
- C. I-89 (if submitted)
- D. Miscellaneous Correspondence

Advice: Fasten each group with a black clip.

Standards (continued)

No. Standard

2.7 Other forms may be concurrently filed with the I-485 (i.e., I-131, I-765, I-601, etc.). Use the following chart and determine where to place concurrently filed forms:

IF the following is submitted... THEN...

I-131\* Place the form in a separate folder according to the local SOP.

I-765\* Place the I-765 in a separate receipt folder.

Other concurrent formClip together with all other concurrently filed forms and place in the I-485 folder. Place the concurrent form on the left-hand side on top of

the return address, and place its supporting documentation on the right-hand side behind the Miscellaneous Correspondence.

2.8 If an I-140 is concurrently filed with the I-485, determine the status of the I-140 and follow the necessary standards in the Concurrent I-140 Filings SOP in addition to the standards and steps required by the I-140 and I-485 National SOPs.

2.9 Keep family packs together by placing all applications for that family in an accordion folder secured with rubber bands.

### Reviewing for Eligibility

Description Reviewing for eligibility involves a review of six basic eligibility criteria:

1. Correct Fee;
2. 245(i) Penalty Fee;
3. Proper Signature;
4. Appropriate Basis for Eligibility;
5. Visa Availability; and
6. Jurisdiction.

Requirement Contractors should review the case for eligibility criteria and/or 245(i) Penalty Fee involvement. The processing worksheet should be completed and initialed, as appropriate, during this review.

Each filing should be reviewed against all required criteria. If after review, an application would only be rejected for fee and/or signature, the file may be rejected without being sent to U.S. CIS Review. However, prior to rejection, the fee and/or signature deficiency must undergo a secondary review by an individual other than the contract employee originating the rejection. This secondary review may be performed by a supervisor, U.S. CIS employee, contractor personnel, or any individual skilled in checking for fee and/or signature deficiencies. If another individual is preparing the rejection notice, he or she may perform the secondary review.

If the application is found to involve the 245(i) Penalty Fee or not to meet other basic eligibility criteria, the file will be sent to U.S. CIS for review. In order for the U.S. CIS reviewer to understand why the application is being rejected, annotate all reasons on the processing worksheet.

This review should be accomplished after the filing has been placed in ROP order, as proper set up enables the reviewer to more easily identify the documentation.

#### Criterion 1:

Correct Fee Ensure that all applicable fees are present.

Note: The I-485 filing fee is not required for refugee applicants filing under Section 209 of the INA.

Standards Complete the following standards to ensure correct fee criteria are met:

No. Standard

3.1 Review the remittance to ensure that the correct amount is attached for each form.

The following fees are in effect as of 2/19/02:

|   |         |
|---|---------|
| I-485 (applicants 14 years of age or older)     | \$255   |
| I-485 (applicants younger than 14 years of age) | \$160   |
| I-485 Supplement A (Not needed at filing)       | \$1,000 |
| Fingerprint Fee (14-79) (Not needed at filing)  | \$50    |

Other forms:

|       |        |       |         |
|-------|--------|-------|---------|
| I-131 | \$110  | I-191 | \$195   |
| I-212 | \$195  | I-601 | No fee* |
| I-602 | No fee | I-765 | \$120   |
| I-824 | \$140  | I-864 | No fee  |
| I-130 | \$130  |       |         |

\*No fee if filed concurrently

3.2 Refer to local guidelines for determination of fee acceptability.

Note: It is acceptable to receive one payment for a family pack or concurrent filings, but ensure that the fee payment is correct.

IF... THEN...

A request to waive the fee is submitted      Annotate the processing worksheet. Send to U.S. CIS Review for decision on the fee waiver request after reviewing for all eligibility criteria.

No fee is present, the fee is not receipted elsewhere, and there is no request to waive the fee      Annotate the processing worksheet.

Only one payment is submitted for a family pack and the fee payment is incorrect      Annotate the processing worksheet.

Only one payment is submitted for the I-485 and all concurrent filings, and the fee payment is incorrect      Annotate the processing worksheet.

Standards (continued)

No. Standard

3.3 Secure the remittance, if necessary. Staple remittances for concurrent applications according to the SOP for that form.

IF... THEN...

The file will be moved (e.g., for data entry or U.S. CIS Review) Staple the remittance to the lower left corner of the top document on the left side of the ROP.

The file will not be moved Do not staple the remittance

Criterion 2:

245(i) Penalty Fee The contractor must check to see if a 245(i) Penalty fee has been included.

Standards Follow the standards below to review for payment of the 245(i) Penalty fee.

No. Standard

4.1 Check for the \$1000 penalty fee and annotate the processing worksheet to indicate whether or not the fee was submitted. If a penalty fee was submitted, flag the case for U.S. CIS Review.

Criterion 3: Proper

Signature The contractor must review the application to determine whether the applicant has appropriately signed the I-485 application.

Standards Follow the standards below to review for proper signature.

Keep in mind the following:

- All forms of original signature are acceptable, including an "X," thumbprint, or an original facsimile signature stamp.
- A TYPEWRITTEN NAME IS NOT A SIGNATURE.
- Applicants 14 years of age or older must sign their own applications, but applications submitted for applicants under the age of 14 can be signed by a parent/guardian.

Standards (continued)

No. Standard

5.1 Verify that the applicant/petitioner has properly signed the application(s)/petition (i.e., an original signature in the designated location on the application/petition). Annotate the processing worksheet to indicate whether it is complete and correct or incorrect, missing and/or signed by the wrong individual.

Criterion 4:

Appropriate Basis for Eligibility Determine the basis for eligibility for the filing by the applicant.

Keep in mind the following:

In order to be eligible to request adjustment of status, an applicant must have an approved Employment-based or Family-based petition. These petitions validate an applicant's eligibility under a certain section of law.

Approved Employment-based underlying petitions include:

- I-140, Petition for Alien Worker;
- I-526, Immigrant Petition for an Alien Entrepreneur; and
- I-360, Religious Workers.

Approved Family-based underlying petitions include:

- I-130, Petition for Alien Relative; and
- I-360, Petition for Special Immigrant--Battered Spouses.

In addition, an applicant may be eligible to apply for legal permanent residence under a special program. These case types do not require an underlying visa petition.

Standards Determine the basis for eligibility by completing the following standards:

No. Standard

6.1 Write the receipt number for the underlying approved visa petition on the I-485 processing worksheet in the "Mailroom" section.

6.2 Use the I-797 in the ROP or the special program noted (if no I-797) to determine if the filing meets the basis for eligibility and annotate the processing worksheet.

Advice: The recommended approach is to check if the I-797 confirms approval of the underlying petition/application or to look for evidence of a special program, as outlined in the chart below.

Standards (continued)

No. Standard

6.2

(cont.) IF... THEN...

The I-797 confirms approval of the underlying filing Use chart 1-6.2A to determine if the form type – the basis for filing – meets the basis for eligibility and annotate the processing worksheet.

The I-797 does not confirm approval Annotate the processing worksheet.

There is no I-797 Use chart 1-6.2B to determine if the applicant qualifies under a special program and annotate the processing worksheet.

Chart 1-6.2A – Underlying Petition as Basis for Filing

IF the underlying petition... AND the basis for eligibility indicated on the I-485 is...  
THEN the application...

Is an I-140, I-360 Religious Worker, or I-526 Employment-based Meets the basis for eligibility.

Is an I-140, I-360 Religious Worker, or I-526 Not employment-based Does not meet the basis for eligibility.

Is an I-130 Family-based Meets the basis for eligibility.

Is an I-130 Not family-based Does not meet the basis for eligibility.

Chart 1-6.2B – Special Program as Basis for Filing

IF there is no underlying petition and the filing... AND the basis for eligibility indicated on the I-485 is... THEN the application...

Is addressed to the Asylee/Refugee Post Office Box in Nebraska The special program for Asylees/Refugees Meets the basis for eligibility.

Is addressed to the Asylee/Refugee Post Office Box in Nebraska Not the special program for Asylees/Refugees Does not meet the basis for eligibility.

Indicates that the applicant's country of birth was Cuba The special program for Cuban Adjustments. Meets the basis for eligibility.

Standards (continued)

Chart 1-6.2B – Special Program as Basis for Filing, Cont'd.

IF there is no underlying petition and the filing... AND the basis for eligibility indicated on the I-485 is... THEN the application...

Indicates that the applicant's country of birth was Cuba Not the special program for Cuban Adjustments. Does not meet the basis for eligibility.

Indicates NACARA The special program for NACARA. Meets the basis for eligibility.

Indicates NACARA Not the special program for NACARA. Does not meet the basis for eligibility.

Indicates HRIFA The special program for HRIFA. Meets the basis for eligibility.

Indicates HRIFA Not the special program for HRIFA. Does not meet the basis for eligibility.

Indicates DV or Lottery The special program for DV or lottery winners. Meets the basis for eligibility.

Indicates DV or Lottery Not the special program for DV or lottery winners. Does not meet the basis for eligibility.

Criterion 5:

**Visa Availability** If the immigrant is applying based on an underlying petition, use the priority date of the immigrant visa petition to determine the visa availability. If the basis for eligibility is a special program, do not review for Criterion 5.

When applying for adjustment of status, the applicant must be immediately eligible for the immigrant visa at the time of filing, unless the immigrant is qualified to apply based on a special program. The clerk must determine the immigrant classification that makes the applicant eligible for adjustment.

**How to Find the Priority Date** To find the priority date, look at the section labeled "priority date" on the applicant's I-797 approval notice. You will need this date to determine visa availability.

**Standards** Follow the standards below in reviewing for visa availability.

No. Standard

7.1 Using the priority date of the underlying petition, determine if a visa is immediately available to the applicant and annotate the processing worksheet accordingly.

Advice: The following "Recommended Action" steps (7a.1 to 7a.7) are the preferred method for determining visa availability.

Step Recommended Action

7a.1 Locate the priority date of the underlying petition.

7a.2 Determine the section of law of the underlying visa petition. To do this, see below.

IF...

THEN...

There is an approval notice in the ROP  
Check the I-797 approval notice for the section of law.

There is not an  
I-797

Annotate the processing worksheet and route the file to U.S. CIS for review after completing the review of the eligibility criteria.

7a.3 Locate the date stamp on the I-485 application.

7a.4 Locate the Visa Bulletin for the month that corresponds to the date stamp on the I-485 application.

7a.5 Using the section of law and classification chart below, determine the applicant's specific classification and preference category.

### LAW AND CLASSIFICATION CHART

#### Employment

| Type of Petition | Section of Law                              | Classification   | Preference                |
|------------------|---|--|---------------------------|
| I-140            | 203(b)(1)(A), 203(b)(1)(B), or 203(b)(1)(C) | E11, E12, E13  | 1st                       |
|                  | 203(b)(2)                                   | E21  | 2nd                       |
|                  | 203(b)(3)(A)(i), 203(b)(3)(A)(ii)           | E31, E32   | 3rd                       |
|                  | 203(b)(3)(A)(iii)                           | EW3  | Other workers             |
| I-360            | 101(a)(27)(C)                               | SD1  | 4th                       |
|                  | 101(a)(27)(C)                               | SR1  | Certain religious workers |
| I-526            | 203(b)(5)(A)                                | C51  | 5th                       |
|                  | 203(b)(5)(B),                               |  |                           |
| 610 P.L. 102-395 | T51, R51, I51                               | Targeted employment areas, Non-targeted employment areas, Investor pilot program |                           |

#### Family

| Type of Petition | Section of Law | Classification          | Preference                                    |
|------------------|----------------|-------------------------|---|
| I-130            | 203(a)(1)      | F11                     | 1st   |
|                  | 203(a)(2)      | F21, F22                | 2A  |
|                  | 203(a)(2)      | F24                     | 2B  |
|                  | 203(a)(3)      | F31                     | 3rd   |
|                  | 203(a)(4)      | F41                     | 4th   |
| I-130            | 201(b)         | IR1, IR2, IR5, CR1, CR2 | Immediate relative –preference not applicable |

Standards (continued)

#### Step Recommended Action

7a.6 Locate the preference category of the classification and the country of birth of the applicant on the visa bulletin. Use the "all other" column for all applicants from countries other than those specifically listed.

Note: If the applicant is an immediate relative spouse, parent, or child of a United States Citizen (USC), no preference is required; do not complete the remaining steps.

Standards (continued)

#### Step Recommended Action

7a.7 Using the priority date of the underlying immigrant visa petition, compare the priority date with the date under the column of the country of chargeability and row, which corresponds to the preference date.

IF the applicant's priority date is... THEN...

On or after the date listed on the bulletin The visa is not currently available.

Before the date listed on the bulletin The visa is available.

Note: If there is a "C" listed in the column, the visa is available. If there is a "U" listed in the column, there are no visas available.

#### Criterion 6:

**Jurisdiction** Each Service Center has jurisdiction over (or has the authority to process and adjudicate) a certain sub-set of the total forms received by the U.S. CIS. Jurisdiction is determined by geography and by basis for eligibility. If a form is not from the area serviced by the Service Center or does not fall under a special program adjudicated by the Service Center, it cannot be processed there. Therefore, a check for appropriate jurisdiction must be made. The following criteria will be used for checking jurisdiction.

**Definition of Jurisdiction by Geography** Most Employment-based applications are subject to jurisdiction based upon geography. An applicant is under the jurisdiction of a Service Center if:

- The applicant resides in a state over which the Service Center has jurisdiction; or
- The I-797 or CLAIMS receipt number indicates that the underlying petition was processed in the Service Center.

**Definition of Jurisdiction by Basis for Eligibility** All special programs' applications are subject to jurisdiction based upon basis for eligibility. An applicant is under the jurisdiction of a Service Center if the applicant qualifies under a special program processed at a designated Service Center.

#### Jurisdiction

**Guidelines** The following chart may be used to determine the states and special programs under each Service Center's jurisdiction.

Service Center State Special Programs

California AZ, CA, Guam, HI, NV

Nebraska AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, ND, NE, OH, OR, SD, UT, WA, WI, WY, MT · HRIFA

- Refugee
- Asylee
- Syria Adjustments

- Indochinese Adjustments
- Vermont CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VT, WV, VI
- Battered Spouse
- Family-based Applications from the Baltimore District Office
- I-360 NATO
- I-360 International Broadcasters
- Texas AL, AR, FL, GA, KY, LA, MS, NM, NC, SC, OK, TN, TX · NACARA

Standards To check for jurisdiction, complete the following standards:

No. Standard

8.1 Check for proper jurisdiction based upon geography and the basis for eligibility and annotate the processing worksheet.

Advice: The recommended method for determining whether or not to accept a filing based on jurisdiction is to follow the instructions on the jurisdiction charts on the following pages.

Jurisdiction Table: Vermont Service Center

If the I-485 is submitted with... And the jurisdiction is Baltimore... And the jurisdiction is other than Baltimore... Then you should...

Approval notice:

I-140

I-526

I-360 (Religious Worker)

Accept if the visa is available.

If not Baltimore, see next column. But within VSC jurisdiction or VSC approved IV petition Accept if visa is available.

Outside VSC jurisdiction and VSC did not approve IV petition Reject to the applicant with instructions to file at the local district office.

Concurrently filed:

I-526 Reject for jurisdiction.

- Texas Service Center (TSC) has jurisdiction over AL, AR, CT, DC, DE, FL, GA, KY, LA, MA, MD, ME, MS, NC, NH, NJ, NM, NY, OK, PA, PR, RI, SC, TN, TX, VA, VI, VT, and WV.

- California Service Center (CSC) has jurisdiction over AK, AZ, CA, CO, GU, HI, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, NV, OH, OR, SD, UT, WA, WI, and WY.

Concurrently filed:

I-360 (Religious Worker) With one remittance. Reject, not eligible to file concurrently.

With separate remittance. Accept IV petition and reject I-485.  
 Concurrently filed:  
 I-360 (Special Immigrant SKs)  
 I-360 (Special Immigrant Juveniles) Accept if the visa is available.  
 Reject to the applicant with instructions to file at the local district office.  
 Concurrently filed:  
 I-360 (NATO Applicants) Accept if the visa is available. Reject if the visa is not available.  
 Concurrently filed:  
 I-360 (Widow(er) of US Citizen) If within VSC jurisdiction, accept.  
 If outside VSC jurisdiction, reject to the applicant with instructions to file at the service center with proper jurisdiction.  
 Concurrently filed:  
 I-360 (Battered Spouse) If visa is available, accept I-485.  
 · Remember that the applicant may retain his/her priority date from a previously filed I-130, regardless of the decision made on the filing. Refer to 8 CFR Section 204.2(h) for further guidance.  
 If visa is not available:  
 · With one remittance, reject both I-485 and I-360.  
 · With separate remittance, accept I-360 and reject I-485.

Jurisdiction Table: Vermont Service Center, continued

If the I-485 is submitted with... And the jurisdiction is Baltimore... And the jurisdiction is other than Baltimore... Then you should...  
 Approval notice:  
 I-130 Accept if visa is available. Reject to the applicant with instructions to file at the local district office.  
 Concurrently filed:  
 I-130 Accept if visa is available. Reject to allow for filing of both forms at the District.  
 If visa is not available:  
 · One remittance: reject both I-485 and I-130.  
 · Separate remittances: accept I-130 and reject I-485.  
 Approval notice:  
 I-129F Accept Reject to the applicant with instructions to file at the local district office.  
 Approval notice:  
 I-360 (Battered Spouse) Accept if visa is available. Reject to the applicant with instructions to file at the local district office.  
 Approval notice:  
 I-360 – all other categories Accept if visa is available.  
 Reject if visa is not available. Reject to the applicant with instructions to file at the local district office.  
 All other eligibilities, i.e., Diversity, Lautenberg Accept if eligibility is established.  
 Diversity must have a visa available.

Reject to the applicant with instructions to file at the local district office.  
 Haitian DED (HRIFA)      Reject to the applicant with instructions to file at NSC.  
 NSC has sole jurisdiction.  
 Asylees / Refugees      Reject to the applicant with instructions to file at NSC. NSC has  
 sole jurisdiction as of 7/6/98.  
 Cuban Adjustments  
 Residing in Florida      Reject to the applicant with instructions to file at TSC. TSC has  
 sole jurisdiction.  
 Cuban Adjustments  
 Residing outside of Florida      Reject to the applicant with instructions to file at the local  
 district office.  
 NACARA      Reject to the applicant with instructions to file at TSC. TSC has sole  
 jurisdiction.

Jurisdiction Table: Nebraska Service Center

If the I-485 is submitted with...      And the jurisdiction is LIN... And the jurisdiction is  
 other than

LIN... Then you should...

Approval notice:

I-140

I-526

I-360 (Religious Worker)

I-797 receipt notice must indicate LIN, then accept if the visa is available I-797  
 receipt notice does not indicate LIN, but residence address is within NSC jurisdiction

Accept if visa is available.

I-797 receipt notice does not indicate LIN, and residence address is not  
 within NSC jurisdiction      Reject to the applicant with instructions to file at the local  
 district office.

Concurrently filed:

I-526

I-360 With one remittance      Reject, not eligible to file concurrently.

With separate remittances      Accept IV petition IF other than Amerasian,  
 Juvenile or Battered Spouse and reject I-485. Amerasian and Juveniles are rejected back  
 to the applicant along with the I-485 and instructions to file at the local district office. For  
 Battered Spouse, see below.

Concurrently filed:

I-360 (Battered Spouse)      Reject to the applicant with instructions to file at VSC.

VSC has sole jurisdiction.

Approval notice:

I-360 (Battered Spouse)      Reject to the applicant with instructions to file at the local  
 district office.

Approval notice:

I-360 – all other categories    Reject to the applicant with instructions to file at the local district office.

Approval notice:

I-130    Reject to the applicant with instructions to file at the local district office.

Concurrently filed:

I-130    With one remittance

          Reject, not eligible to file concurrently.

          With separate remittances    Accept the visa petition and reject the I-485.

Approval notice:

I-129F    Reject to the applicant with instructions to file at the local district office.

Approval notice:

Other form types    Reject to the applicant with instructions to file at the local district office.

No approval Notice I-797    Reject unless EB IV petition approval is indicated through systems checks, or other basis for adjustment is indicated. (See Below)

#### Jurisdiction Table: Nebraska Service Center, continued

If the I-485 is submitted with...    And the jurisdiction is LIN...    And the jurisdiction is other than

LIN...    Then you should...

Refugee    Accept if the following criteria are met:

- The applicant was admitted as a refugee and has been physically present for at least one year in the United States prior to filing the I-485.
- Block H is checked for “Refugee” and/or Form I-485 Part One current U.S. CIS status indicates “Refugee.”

Asylee    Accept if the following criterion is met:

- The applicant has been physically present for at least one year in the United States in Asylee status prior to filing the I-485.

Haitian DED (HRIFA)    Accept if the following criteria are met:

- The applicant is a national of Haiti.
- Part 2 of the application is marked "H" with "HRIFA - principal" or "HRIFA - dependent" written in the space provided.
- HRIFA Dependent applicants who file without a principal will only be accepted if the principal alien’s adjustment application has been located.
- I-485 Supplement “C” may be included in the submission.
- The application may indicate a code of admission (COA) in the COA field, and that COA should match a code of admission on the HRIFA code of admission list.
- Law is the Haitian Refugee Immigration Fairness Act (HRIFA).
- There is no priority date.
- For more information, refer to Adjudications Appendix B: HRIFA.

NACARA    Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.

PIP-LAUTENBERG    Reject to the applicant with instructions to file at the local district office.

Marielito PIP    If paroled into the U.S. between 4/1/80-5/18/80, accept.

Diversity Lottery      Reject to the applicant with instructions to file at the local district office.

Cuban Adjustment

Residing outside of FL      Reject to the applicant with instructions to file at the local district office.

Cuban Adjustment Residing in Florida      Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.

Previous A or G Status; Section 13 of 1957 Act      Reject to the applicant with instructions to file at the local district office.

Continuous Residence in the US prior to 01/01/72      Reject to the applicant with instructions to file at the local district office.

Any other claimed basis for Adjustment of Status      Reject to the applicant with instructions to file at the local district office.

#### Jurisdiction Table: Texas Service Center

| If the I-485 is... | And is submitted with... | And the jurisdiction is TSC... |
|--------------------|--------------------------|--------------------------------|
|--------------------|--------------------------|--------------------------------|

|                  |                           |                                  |
|------------------|---------------------------|----------------------------------|
| Employment-based | Approval notice for I-140 | Accept if the visa is available. |
|------------------|---------------------------|----------------------------------|

|   |                           |                                  |
|---|---------------------------|----------------------------------|
| · | Approval notice for I-526 | Accept if the visa is available. |
|---|---------------------------|----------------------------------|

|  |                           |                           |
|--|---------------------------|---------------------------|
|  | Approval notice for I-360 | Hold for U.S. CIS Review. |
|--|---------------------------|---------------------------|

Concurrently filed:

I-526; I-360 (except Battered Spouse);

I-130 With one remittance      Reject, not eligible to file concurrently.

|  |  |   |
|--|--|---|
|  | With separate remittances for each application | Accept the petition and reject the I-485. |
|--|--|---|

|              |                                     |   |
|--------------|-------------------------------------|---|
| Family-based | Approval notice for I-129F or I-130 | Reject to the applicant with instructions to file at the local district office. |
|--------------|-------------------------------------|---|

|  |   |   |
|--|---|---|
|  | Approval notice for I-360 Battered Spouse | Reject to the applicant with instructions to file at district office. |
|--|---|---|

Concurrently filed:

|                         |  |   |
|-------------------------|--|---|
| I-360 (Battered Spouse) |  | Reject to the applicant with instructions to file at VSC. |
|-------------------------|--|---|

| If the I-485 is... | And is marked... | Then you should... |
|--------------------|------------------|--------------------|
|--------------------|------------------|--------------------|

|        |  |                         |
|--------|--|-------------------------|
| NACARA | NACARA across the top of the application, NACARA as the current status, and/or H and NACARA are written on the application | Accept the application. |
|--------|--|-------------------------|

|                             |   |                         |
|-----------------------------|---|-------------------------|
| Cuban Adjustment in Florida | E, F, G, H, or I and is based on Cuban nationality and they reside in Florida | Accept the application. |
|-----------------------------|---|-------------------------|

|   |   |   |
|---|---|---|
| · | E, F, G, H, or I and is based on Cuban nationality and they reside outside of Florida | Reject to the applicant with instructions to file at the local district office. |
|---|---|---|

|                |  |  |
|----------------|--|--|
| Asylee/Refugee |  | Reject to the applicant with instructions to file at NSC. NSC has sole jurisdiction. |
|----------------|--|--|



Residing in Florida TSC has sole jurisdiction. Reject to the applicant with instructions to file at TSC.  
Cuban Adjustments  
Residing outside of Florida Reject to the applicant with instructions to file at the local district office.

### Routing Applications

**Requirement** Applications found to be deficient by Mailroom personnel should be routed either to U.S. CIS Review or for secondary review and system rejection, as appropriate. Additionally, applications containing a fee waiver request must be routed to U.S. CIS Review. All potential reasons for rejection should be identified prior to routing applications; therefore, this requirement should be fulfilled after the review of all of the eligibility criteria has been performed.

**Standards** Follow the standards below to route applications appropriately.

#### No. Standard

9.1 After review, any application to be rejected only for fee and/or signature deficiencies should be referred for secondary review and then forwarded for system rejection.

9.2 Any application to be rejected for reason(s) other than just fee and/or signature deficiencies should be batched and forwarded to U.S. CIS Review.

9.3 Any application containing a fee waiver request should be routed to U.S. CIS Review.

9.4 Any application submitted with the \$1000 penalty fee should be routed to U.S. CIS Review.

### Opening the I-693 Medical Record

**Requirement** Ensure that the Medical Evaluation Form I-693 and vaccination supplement are submitted by the applicant in an unopened, sealed envelope. If an application will be rejected, the I-693 should be returned to the applicant unopened with the application; therefore, the review of the I-693 should be performed after all eligibility criteria have been reviewed and the filing is determined to be acceptable. After verifying the envelope was unopened, assemble the medical record into the record.

**Note:** Due to local Mailroom concerns, the Vermont Service Center may open the I-693 medical records during initial processing (i.e., "Opening Mail"). However, if the record is opened and then the filing needs to be rejected, the clerk needs to reseal the envelope and annotate across the flap a statement such as, "Medical – Do Not Open."

Keep in mind the following:

- NIW Physicians are not required to submit an I-693 when filing an I-485. Applicants will be notified when the I-693 is to be submitted by a RFE from U.S. CIS after officer review.
- Refugee-based applications are not required to include an I-693; instead, the application should include an OF 157, which is usually included with the refugee travel packet (see Adjudications Appendix A).

**Standards** Follow the standards below for a file determined to be acceptable to complete the mailroom processing of the I-693 medical record.

No. Standard

- 10.1 Annotate the processing worksheet to indicate whether or not the medical form was received in a properly sealed envelope. If no I-693 was received, note that on the processing worksheet as well so that a RFE can be mailed to the applicant prior to adjudication.
- 10.2 Open the sealed medical record envelope containing the I-693.
- 10.3 Staple the envelope to the back of the form and assemble the medical record into the correct ROP order.

Reviewing the I-765 and the I-131

**Requirement** If submitted, the concurrently filed I-765 and I-131, which will be found in separate file folders attached to the I-485, should be route to U.S. CIS Review or processed, depending on the acceptability of the I-485.

**Standards** Complete the following standards to meet the requirement for reviewing concurrently filed I-765s and I-131s.

No. Standard

- 11.1 If submitted, use the chart below and take the appropriate action for reviewing the I-765 and/or I-131.

|   |   |
|---|---|
|   | IF the I-765 and/or I-131 is... THEN...                                       |
|   | Received with a rejected I-485, or with an accepted I-485 but without the fee |
| Route the file with the I-485 to U.S. CIS for review. | Filed without an I-485  |
| the form.   | Use the local I-765 or I-131 SOP to process                                   |

## Identifying Expedites

**Requirement** Contractors should identify expedites, which will then be pulled and batched with a colored expedite sheet. Expedites should follow the same process as the other files, but will be hand-carried throughout the process and given priority processing by each unit.

**Definition of an Expedite** Applicants under 21 years of age may petition for an I-485 as a child (i.e., an individual under 21 years of age and single) of a principal applying for adjustment of status. Once an applicant turns 21 years of age, the Service is obliged to deny him or her the preference status of being a child. In order to prevent a child from losing this status, the Service will expedite those cases in which the applicant is close to turning 21 or "aging-out." Therefore, files that are 1 year or less from "aging-out" must be identified up front and routed through the expedite process. These cases are known as expedites. Exceptions include: Refugees; Certain HRIFA dependents (Refer to Adjudications Appendices, Appendix B); and Asylees. Keep in mind the following: Asylee adjustment applicants should not be expedited due to cap considerations. They can receive asylum status "Nunc Pro Tunc" after 21, thereby allowing continued processing of their application.

**Standards** Complete the following standards to identify an expedite:

- | No.  | Standard  |
|------|---|
| 12.1 | Check the date of birth for any child applicant under 21 years old.<br>IF the applicant is... THEN...<br>Between 20 and 21 years of age and his or her file is not part of a family pack Pull the file for both the principal and the child so that the files can be worked together. Annotate the processing worksheet.<br>Between 20 and 21 years of age and the file is part of a family pack Pull the files for the entire family. Annotate the processing worksheet. |
| 12.2 | Place a colored expedite sheet on the file and batch it with the other expedites.   |

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## SECTION 2: U.S. CIS REVIEW MODULE

I-485 National SOP Introduction      This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application

of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis as training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.
- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents      The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

Introduction Since contractors cannot perform adjudications functions, those applications that do not meet one or more of the stated eligibility criteria must be routed to U.S. CIS Review. The information contained in this section is information you will need to know in order to perform U.S. CIS Review. Please familiarize yourself with this section prior to performing U.S. CIS Review.

After the Mailroom has reviewed the I-485 for eligibility, U.S. CIS must confirm certain reasons for rejection cited by the contractor and assess 245(i) eligibility. This stage in the process is referred to as U.S. CIS Review. These criteria include reviewing for: the 245(i) Penalty Fee, Reject Criteria, the I-693 Medical Record, and the I-765 and I-131. In addition to reviewing reject criteria, U.S. CIS must review for more complex adjudicative issues, such as 245(i) eligibility, which is the first topic to be discussed in this section. If after reviewing a potential reject, U.S. CIS finds the filing to be acceptable, U.S. CIS must also review the I-693 Medical Record and any concurrently filed I-765s and I-131s.

Note: U.S. CIS should only review those criteria identified by the contractor and indicate all reject criteria for Data Entry for preparation of the reject notice that will be sent back to the applicant.

U.S. CIS Personnel The selection of the U.S. CIS personnel that will be assigned to U.S. CIS Review will be the responsibility of Management at each service center. Keep in mind that U.S. CIS Review does not necessarily have to be completed by an officer.

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Reviewing for 245(i) Eligibility

**When to Perform** This procedure should be performed after the I-485 application, which involves the 245(i) Penalty Fee and/or does not meet eligibility criteria, has gone through the initial mailroom review.

**Definition of 245(i) Eligibility or "Penalty Fee"** The applicant who is requesting consideration under 245(i) of the Act is required to submit a properly completed I-485 Supplement A and the penalty fee of \$1,000.00.

Applicants who are under the age of 17 years at the time the I-485 is filed, or applicants who have received benefits under section 301 Family Unity program are not required to submit the penalty fee, but are required to submit the properly completed I-485 Supplement A.

If the penalty fee is submitted without a properly completed Supplement A, it will be rejected.

If the Supplement A is submitted without the penalty fee, it will be treated as supporting documentation and will not be rejected.

**Definition of 245(i) Grandfathering** In order for the applicant to be eligible to grandfather the 245(i) benefit at this stage in the process, the record must contain documentary evidence, which demonstrates that the applicant is eligible to grandfather 245(i). Acceptable evidence may include, but is not limited to, copies of the Form I-797 approval notice, copies of the petition or ETA 750, etc.

**Procedure** To verify whether an applicant is eligible under 245(i) of the Act, complete the following steps.

Note: For more information regarding sections 245(a), 245(k) or 245(i) of the Act, see Section 7: Adjudications, Discussion of Section 245 of the Act.

**Step** Action: U.S. CIS

1.1 Review to see if the applicant meets letter A, and letter B or C:

A. The application is accompanied by the I-485 Supplement A and penalty fee. The penalty fee for applications filed after December 29, 1996 is \$1,000.00. The penalty fee for applications filed between October 1, 1994 and December 29, 1996 is \$650.00;

B. The underlying visa petition has a priority date on or before April 30, 2001; or

C. The applicant is eligible to grandfather the 245(i) benefit by way of a previously filed or approved family or employment-based petition, or ETA 750 filed on his or her behalf, if the petition has a priority date or ETA 750 has a L.O. date on or before April 30, 2001 and has been determined to be "approvable when filed," or in the case of the

ETA 750, "properly filed." (If the L.O. date is blank, the R.O. date can be used to determine the priority date.) Dependent applicants may be eligible for the grandfathering benefit by way of the principal applicant's eligibility. The applicant may be eligible by means of a prior petition or labor certification filed by the principal applicant.

1.2 Use the following chart to determine subsequent actions once eligibility has been determined. You may also use the 245(i) Eligibility Table below to determine the appropriate next step:

IF the applicant... THEN...

Is eligible for 245(i) and the I-485 is otherwise acceptable Proceed to "Reviewing for Reject Criteria."

Is not eligible under 245(i) and has submitted one remittance The entire package will be rejected, but continue to the next section to verify other reject criteria.

Is not eligible under 245(i) and has submitted separate remittances Reject the I-485 Supplement A and the \$1,000 penalty fee. Proceed to review for reject criteria.

Step Action: U.S. CIS

1.2 cont'd. IF the applicant... THEN...

Is eligible to file under section 245(k) or 245(a) of the Act and has submitted separate remittances for the I-485 application and penalty fee Reject the I-485 Supplement A and the \$1,000 penalty fee. Proceed to "Reviewing for Reject Criteria."

#### 245(i) Eligibility Table

I-485 is submitted with... And the priority date is... Then...

Supplement A and Penalty Fee On or before 4/30/01 Accept the filing and continue to the next step.

After 4/30/01 with no grandfathering eligibility Accept the I-485, reject the supplement and penalty fee, and continue to the next step to verify other reject criteria.

After 4/30/01 with grandfathering eligibility Accept the filing and continue to the next step.

Supplement A and Penalty Fee and it's DV/Lottery Anytime Reject the entire package, but continue to the next step to verify other reject criteria.

Supplement A without Penalty Fee Anytime Accept the filing and continue to the next step.

Penalty Fee without Supplement A Anytime with one remittance Reject the entire package, but continue to the next step to verify other reject criteria.

Anytime with more than one remittance Accept the I-485 application, but reject the \$1,000 fee as not needed. Continue to the next step.

I-485 is submitted with... And the filing date is after November 26, 1997...

Then...

Supplement A and Penalty Fee      Eligible under 245(k) and there is one remittance  
Reject the entire package, but continue to the next step to verify other reject  
criteria.

Eligible under 245(k) and there is more than one remittance Accept the I-485, but  
reject Supplement A and the penalty fee. Continue to the next step.

#### Reviewing for Reject Criteria

When to Perform      Once the I-485 application has been reviewed for 245(i) eligibility,  
U.S. CIS must review any of the remaining 5 reject criteria identified by the mailroom.

Note: Applications that are only deficient for reasons involving a remittance that is  
missing, unsigned, or for the wrong amount, and/or involving an improperly signed  
application, are not required to be processed by U.S. CIS Review.

Procedure      To review the application for reject criteria, perform the following steps:

Step      Action: U.S. CIS

2.1      Identify the reason(s) for rejection annotated by the contractor on the processing  
worksheet.

2.2      Verify that the reason(s) for rejection is(are) valid using the corresponding  
instructions below. Instructions for reject criteria are listed in the following order:

1.      Correct Fee/ Fee Waiver Request
2.      Signature
3.      Basis for Eligibility
4.      Visa Availability
5.      Jurisdiction

IF the I-485 filing... THEN...

Is not acceptable      Initial and date the notation on the processing  
worksheet, and route the file to data entry for production of a reject notice.

Is acceptable      Modify, initial and date the notation on the processing  
worksheet, and continue to the next section.

Reminders      ·      Make sure family groupings are kept together:

-      If you reject a family member, reject all I-485 applications for that family.

- Exception: Refugee/Asylee adjustments do not require the I-485 applications for the entire family to be rejected if you reject one family member.
- Check to see if the case requires priority processing (see the “Identifying Expedites” section in the last chapter).

Criterion 1: Correct Fee      The first step in Reviewing for Eligibility is that U.S. CIS must ensure that all applicable fees are present.

Note: The I-485 filing fee is not required for refugee applicants filing under Section 209 of the INA.

Procedure      If the application is only going to be rejected for fee and or signature, then the file does not need to go to U.S. CIS Review. However, if other criteria are identified as being deficient during Mailroom review, U.S. CIS Review should also review for a correct fee in addition to the deficiency noted.

Step      Action: U.S. CIS

3.1      Review the remittance to ensure that the correct amount is attached for each form.

The following fees are in effect as of 2/19/02:

|   |         |
|---|---------|
| I-485 (applicants 14 years of age or older)     | \$255   |
| I-485 (applicants younger than 14 years of age) | \$160   |
| I-485 Supplement A (Not needed at filing)       | \$1,000 |
| Fingerprint Fee (14-79) (Not needed at filing)  | \$50    |

Other forms:

|       |         |       |        |
|-------|---------|-------|--------|
| I-130 | \$130   | I-131 | \$110  |
| I-191 | \$195   | I-212 | \$195  |
| I-601 | No fee* | I-602 | No fee |
| I-765 | \$120   | I-824 | \$140  |
| I-864 | No fee  |       |        |

\*No fee if filed concurrently

3.2      Refer to local guidelines for determination of fee acceptability. Complete the following, if not already done: secure the remittance by stapling it to the lower left corner of the top document on the left side of the ROP. Staple remittances for concurrent applications according to the SOP for those forms.

IF... THEN...

A request to waive the fee is submitted      Annotate the processing worksheet and refer to local waiver procedures.

No fee is present, the fee is not receipted elsewhere, there is no record of a duplicate application, and there is no request to waive the fee      Reject.

Only one payment is submitted for a family pack or for the I-485 and all concurrent files AND the fee payment is incorrect Reject.

Criterion 2: Signature If the application is only going to be rejected for fee and or signature, then the file does not need to go to U.S. CIS Review. However, if other criteria are identified as being deficient during Mailroom review, U.S. CIS Review should also review for a proper signature in addition to the deficiency noted.

Procedure Follow the chart below to review for proper signature.

Step Action: U.S. CIS

4.1 Verify that the applicant/petitioner has properly signed the application(s)/petition (i.e., an original signature in the designated location on the application/petition). All forms of original signature are acceptable, including an "X," thumbprint, or an original facsimile signature stamp. A TYPEWRITTEN NAME IS NOT A SIGNATURE. Applicants 14 years of age or older must sign their own application(s). Applications submitted for applicants under the age of 14 can be signed by a parent/guardian.

IF the signature is... THEN...

Complete and correct Accept.

Incorrect, missing or signed by the wrong applicant Reject.

Criterion 3: Basis for Eligibility In order to be eligible to request adjustment of status, an applicant must have an approved Employment-based or Family-based petition. These petitions validate an applicant's eligibility under a certain section of law.

Approved Employment-based underlying petitions include:

- I-140, Petition for Alien Worker
- I-526, Immigrant Petition for an Alien Entrepreneur
- I-360, Religious Workers

Approved Family-based underlying petitions include:

- I-130, Petition for Alien Relative
- I-360, Petition for Special Immigrant--Battered Spouses

In both cases, the approval of the basis for eligibility will be annotated on the approval notice or I-797. If the contractor has identified a rejection for eligibility, U.S. CIS must review the application to determine if it should be rejected. The section below allows you to determine, based upon the I-797, what the basis for eligibility is for each applicant and if that basis for eligibility is valid.

In addition, an applicant may be eligible to apply for legal permanent residence under a special program. These case types do not require an underlying visa petition.

Procedure Determine the basis for eligibility by completing the following steps:

Step Action: U.S. CIS

5.1 Locate the I-797 in the ROP and review it for approval of the underlying petition.

Note: If the basis of eligibility is a special program, there will not be an I-797 in the ROP.

IF... THEN...

The I-797 confirms approval Go to step 5.2.

The I-797 does not confirm approval or is not present Search in CLAIMS for evidence of an approved underlying petition. Go to step 5.2.

Step Action: U.S. CIS

5.2 Identify the basis for filing by the form type or by the special program identified.

IF the underlying petition... THEN the basis for eligibility is...

Is an I-140, I-360 Religious Worker, I-526 Employment-based

Is an I-130 Family-based

IF the I-485 indicates... THEN the basis for eligibility is...

It is addressed to the Asylee/Refugee Post Office Box in Nebraska The special program for Asylees/Refugees

Cuban Adjustments Special Program for Cuban Adjustment Act The special program for Cuban Adjustments

HRIFA The special program for HRIFA

NACARA The special program for NACARA

DV or Lottery The special program for DV or lottery winners

5.3 Check the applicant's basis for filing (i.e., Family-based, Employment-based, or Special Program). Verify that the applicant has checked the appropriate box in Part 2 of the I-485.

IF... THEN...

The appropriate box is checked Continue to the next step.

The appropriate box is not checked Mark the appropriate box and continue to the next step.

FAMILY-BASED I-485  
QUICK REFERENCE GUIDE

## FAMILY-BASED I-485

Classification of applicant And the applicant entered the US... And the priority date of the underlying visa petition is... Then apply this section of law...  
IR

Legally  
Anytime 245(a)  
As an EWI On or before 4/30/01 245(i)  
After 4/30/01 \*ineligible to adjust  
Preference

Legally and maintained status Anytime 245(a)  
As an EWI and/or violated their status On or before 4/30/01 245(i)  
After 4/30/01 \*ineligible to adjust

\*Ineligible Applicants These applicants are ineligible to adjust status after 4/30/01 under 245(a) or 245(i):

## IMMEDIATE RELATIVES

- who entered as a TWOV and crew members

## PREFERENCE RELATIVES

- who entered as a TWOV and crew members
- who work without labor certification or authorization from U.S. CIS
- who have not maintained a valid nonimmigrant status
- who violated the terms of their admission
- who entered under the Visa Waiver Pilot Program

## EMPLOYMENT-BASED I-485

### QUICK REFERENCE GUIDE

## EMPLOYMENT-BASED I-485

Applicant entered the U.S... And received the I-485... And the priority date of the underlying visa petition is... Then apply this section of law...

Legally and maintained their status Anytime Anytime 245(a)  
Legally but violated their status for 180 days or less On or After 11/26/97 Anytime  
245(k)

**NO PENALTY FEE REQUIRED**

Legally but violated their status for more than 180 days      On or After 11/26/97   On or before 4/30/01 245(i)

**PENALTY FEE REQUIRED**

**AND**

**SUPPLEMENT A**

After 4/30/01   ineligible to adjust

As an EWI   Anytime      On or before 4/30/01   245(i)

**PENALTY FEE REQUIRED**

**AND**

**SUPPLEMENT A**

After 4/30/01   ineligible to adjust

Criterion 4: Visa Availability When applying for adjustment of status the applicant must be immediately eligible for the immigrant visa at the time of filing. If the contractor has identified a lack of visa availability, U.S. CIS must review the application to determine if it should be rejected using the priority date of the immigrant visa petition.

Definition of Cross-Country Chargeability The officer must determine the country of chargeability of visa issuance. The country of chargeability is the country of the applicant's birth. Visas for the dependents will be first charged against the dependent's country of birth. If unavailable, the visa may be charged against the country of birth of the principal applicant. If the visa is unavailable for the principal applicant's country of birth, the visa may be charged to the country of birth of the principal applicant's spouse (but not the children). See section 202 of the INA for rules of chargeability.

How to Find the Priority Date      To find the priority date, look at the section labeled "priority date" on the applicant's I-797 approval notice. You will need this date to determine visa availability in the steps below.

Procedure      Follow the steps below to determine if a visa is available to the applicant at the time of filing.

Step      Action: U.S. CIS

6.1      Locate the priority date of the underlying petition.

6.2      Determine the classification/section of law of the underlying visa petition. To do this, see below.

IF...      Then...

            There is an approval notice in the ROP      Check the I-797 approval notice for the section of law

If there is not an I-797 Search in CLAIMS for evidence of an approved underlying petition

- 6.3 Locate the date stamp on the I-485 application.
- 6.4 Locate the Visa Bulletin for the month that corresponds to the date stamp on the I-485 application.
- 6.5 Using the section of law and classification chart below, determine the applicant's specific classification and preference category.

#### LAW AND CLASSIFICATION CHART

##### Employment

| Type of Petition | Section of Law                              | Classification | Preference   |
|------------------|---|----------------|--|
| I-140            | 203(b)(1)(A), 203(b)(1)(B), or 203(b)(1)(C) | E11, E12, E13  | 1st  |
|                  | 203(b)(2)                                   | E21            | 2nd  |
|                  | 203(b)(3)(A)(i), 203(b)(3)(A)(ii)           | E31, E32       | 3rd  |
|                  | 203(b)(3)(A)(iii)                           | EW3            | Other workers  |
| I-360            | 101(a)(27)(C)                               | SD1            | 4th  |
|                  | 101(a)(27)(C)                               | SR1            | Certain religious workers  |
|                  | 101(a)(27)(I)(iii)                          | SK1            | 4th  |
| I-526            | 203(b)(5)(A)                                | C51            | 5th - non targeted employment areas  |
|                  | 203(b)(5)(B),                               |                |  |
| 610 P.L.         | 102-395                                     | T51, R51, I51  | Targeted employment areas, Non-targeted employment areas, Investor pilot program |

##### Family

| Type of Petition | Section of Law | Classification          | Preference                                    |
|------------------|----------------|-------------------------|---|
| I-130            | 203(a)(1)      | F11                     | 1st   |
|                  | 203(a)(2)      | F21, F22                | 2A  |
|                  | 203(a)(2)      | F24                     | 2B  |
|                  | 203(a)(3)      | F31                     | 3rd   |
|                  | 203(a)(4)      | F41                     | 4th   |
| I-130            | 201(b)         | IR1, IR2, IR5, CR1, CR2 | Immediate relative –preference not applicable |

Step Action: U.S. CIS

- 6.6 Locate the preference category of the classification and the country of birth of the applicant on the visa bulletin. Use the “all other” column for all applicants from countries other than those specifically listed.
- 6.7 Using the priority date of the underlying immigrant visa petition, compare the priority date with the date under the column of the country of chargeability and row, which corresponds to the preference date.

IF the applicant's priority date is... THEN the visa is...

On or after the date listed on the bulletin      Not currently available.

Before the date listed on the bulletin      Available.

Note: If there is a “C” listed in the column, the visa is available. If there is a “U” listed in the column, there are no visas available.

Step      Action: U.S. CIS

6.8      Annotate the processing worksheet accordingly.

            IF the visa is...              THEN...

            Available              Continue to the next reject criterion.

            Not available      Continue to the next step to check for cross-country chargeability.

6.9      Check for cross-country chargeability to see if the applicant may qualify for a visa from another country.

            IF the visa is...              THEN...

            Available              Continue to the next reject criterion.

            Not available      Annotate the worksheet as a reject but continue to review the other reject criteria.

**Criterion 5: Jurisdiction**      Each Service Center has jurisdiction over (or has the authority to process and adjudicate) a certain sub-set of the total forms received by the U.S. CIS. Jurisdiction is determined by geography and by basis for eligibility. If a form is not from the area serviced by the Service Center or does not fall under a special program adjudicated by the Service Center, it cannot be processed there. Therefore, a check for appropriate jurisdiction must be made. The following criteria will be used for checking jurisdiction.

**Definition of Jurisdiction by Geography**      Most employment-based applications are subject to jurisdiction based upon geography. An applicant is under the jurisdiction of a Service Center if:

- The applicant resides in a state over which the Service Center has jurisdiction; or
- The I-797 or CLAIMS receipt number indicates that the underlying petition was processed in the Service Center.

**Definition of Jurisdiction by Basis for Eligibility**      All special program applications are subject to jurisdiction based upon basis for eligibility. An applicant is under the jurisdiction of a Service Center if the applicant qualifies under a special program processed at that Service Center.

## Jurisdiction

Guidelines Use the chart below to determine the states and special programs under jurisdiction of each Service Center.

| Service Center | State  | Special Programs  |
|----------------|--|---|
| California     | AZ, CA, Guam, HI, NV   |   |
| Nebraska       | AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, ND, NE, OH, OR, SD, UT, WA, WI, WY, MT | · HRIFA<br>· Refugee<br>· Asylee<br>· Syria Adjustments<br>· Indochinese Adjustments  |
| Vermont        | CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VT, WV, VI                 | · Battered Spouse<br>· Family-based Applications from the Baltimore District Office<br>· I-360 NATO<br>· I-360 International Broadcasters |
| Texas          | AR, AL, FL, GA, KY, LA, MS, NM, NC, SC, OK, TN, TX                             | · NACARA  |

Procedure To check for jurisdiction, complete the following steps:

Step Action: U.S. CIS

7.1 Check for proper jurisdiction based upon geography and the basis for eligibility. To do so, use the chart for your Service Center identified below.

### Jurisdiction Table: Vermont Service Center

If the I-485 is submitted with... And the jurisdiction is Baltimore... And the jurisdiction is other than Baltimore... Then you should...

Approval notice:

I-140

I-526

I-360 (Religious Worker)

Accept if the visa is available.

If not Baltimore, see next column. But within VSC jurisdiction or VSC approved IV petition Accept if visa is available.

Outside VSC jurisdiction and VSC did not approve IV petition Reject to the applicant with instructions to file at the local district office.

Concurrently filed:

I-526 Reject for jurisdiction.

· Texas Service Center (TSC) has jurisdiction over AL, AR, CT, DC, DE, FL, GA, KY, LA, MA, MD, ME, MS, NC, NH, NJ, NM, NY, OK, PA, PR, RI, SC, TN, TX, VA, VI, VT, and WV.

· California Service Center (CSC) has jurisdiction over AK, AZ, CA, CO, GU, HI, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, NV, OH, OR, SD, UT, WA, WI, and WY.

Concurrently filed:

I-360 (Religious Worker) With one remittance. Reject, not eligible to file concurrently.

With separate remittance. Accept IV petition and reject I-485.

Concurrently filed:

I-360 (Special Immigrant SKs)

I-360 (Special Immigrant Juveniles) Accept if the visa is available.

Reject to the applicant with instructions to file at the local district office.

Concurrently filed:

I-360 (NATO Applicants) Accept if the visa is available. Reject if the visa is not available.

Concurrently filed:

I-360 (Widow(er) of US Citizen) If within VSC jurisdiction, accept.

If outside VSC jurisdiction, reject to the applicant with instructions to file at the service center with proper jurisdiction.

Concurrently filed:

I-360 (Battered Spouse) If visa is available, accept I-485.

· Remember that the applicant may retain his/her priority date from a previously filed I-130, regardless of the decision made on the filing. Refer to 8 CFR Section 204.2(h) for further guidance.

If visa is not available:

· With one remittance, reject both I-485 and I-360.

· With separate remittance, accept I-360 and reject I-485.

#### Jurisdiction Table: Vermont Service Center, continued

If the I-485 is submitted with... And the jurisdiction is Baltimore... And the jurisdiction is other than

Baltimore... Then you should...

Approval notice:

I-130 Accept if visa is available. Reject to the applicant with instructions to file at the local district office.

Concurrently filed:

I-130 Accept if visa is available. Reject to allow for filing of both forms at the District.

If visa is not available:

· One remittance: reject both I-485 and I-130.

· Separate remittances: accept I-130 and reject I-485.

Approval notice:

I-129F Accept Reject to the applicant with instructions to file at the local district office.

Approval notice:

I-360 (Battered Spouse) Accept if visa is available. Reject to the applicant with instructions to file at the local district office.

Approval notice:

I-360 – all other categories Accept if visa is available.

Reject if visa is not available. Reject to the applicant with instructions to file at the local district office.

All other eligibilities, i.e., Diversity, Lautenberg Accept if eligibility is established. Diversity must have a visa available.

Reject to the applicant with instructions to file at the local district office.

Haitian DED (HRIFA) Reject to the applicant with instructions to file at NSC.

NSC has sole jurisdiction.

Asylees / Refugees Reject to the applicant with instructions to file at NSC. NSC has sole jurisdiction as of 7/6/98.

Cuban Adjustments

Residing in Florida Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.

Cuban Adjustments

Residing outside of Florida Reject to the applicant with instructions to file at the local district office.

NACARA Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.

#### Jurisdiction Table: Nebraska Service Center

If the I-485 is submitted with... And the jurisdiction is LIN... And the jurisdiction is other than

LIN... Then you should...

Approval notice:

I-140

I-526

I-360 (Religious Worker)

I-797 receipt notice must indicate LIN, then accept if the visa is available I-797 receipt notice does not indicate LIN, but residence address is within NSC jurisdiction

Accept if visa is available.

I-797 receipt notice does not indicate LIN, and residence address is not within NSC jurisdiction Reject to the applicant with instructions to file at the local district office.

Concurrently filed:

I-526

I-360 With one remittance Reject, not eligible to file concurrently.

With separate remittances Accept IV petition IF other than Amerasian, Juvenile or Battered Spouse and reject I-485. Amerasian and Juveniles are rejected back to the applicant along with the I-485 and instructions to file at the local district office. For Battered Spouse, see below.

Concurrently filed:

I-360 (Battered Spouse)      Reject to the applicant with instructions to file at VSC.  
VSC has sole jurisdiction.

Approval notice:

I-360 (Battered Spouse)      Reject to the applicant with instructions to file at the local  
district office.

Approval notice:

I-360 – all other categories      Reject to the applicant with instructions to file at the local  
district office.

Approval notice:

I-130      Reject to the applicant with instructions to file at the local district office.

Concurrently filed:

I-130      With one remittance

            Reject, not eligible to file concurrently.

            With separate remittances      Accept the visa petition and reject the I-485.

Approval notice:

I-129F      Reject to the applicant with instructions to file at the local district office.

Approval notice:

Other form types      Reject to the applicant with instructions to file at the local district  
office.

No approval Notice I-797      Reject unless EB IV petition approval is indicated through  
systems checks, or other basis for adjustment is indicated. (See Below)

#### Jurisdiction Table: Nebraska Service Center, continued

If the I-485 is submitted with...      And the jurisdiction is LIN...      And the jurisdiction is  
other than

LIN...      Then you should...

Refugee      Accept if the following criteria are met:

- The applicant was admitted as a refugee and has been physically present for at  
least one year in the United States prior to filing the I-485.

- Block H is checked for "Refugee" and/or Form I-485 Part One current U.S. CIS  
status indicates "Refugee."

Asylee      Accept if the following criterion is met:

- The applicant has been physically present for at least one year in the United States  
in Asylee status prior to filing the I-485.

Haitian DED (HRIFA)      Accept if the following criteria are met:

- The applicant is a national of Haiti.

- Part 2 of the application is marked "H" with "HRIFA - principal" or "HRIFA -  
dependent" written in the space provided.

- HRIFA Dependent applicants who file without a principal will only be accepted if  
the principal alien's adjustment application has been located.

- I-485 Supplement "C" may be included in the submission.

- The application may indicate a code of admission (COA) in the COA field, and  
that COA should match a code of admission on the HRIFA code of admission list.

- Law is the Haitian Refugee Immigration Fairness Act (HRIFA).
- There is no priority date.
- For more information, refer to Adjudications Appendix B: HRIFA.

NACARA Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.

PIP-LAUTENBERG Reject to the applicant with instructions to file at the local district office.

Marielito PIP If paroled into the U.S. between 4/1/80-5/18/80, accept.

Diversity Lottery Reject to the applicant with instructions to file at the local district office.

Cuban Adjustment

Residing outside of FL Reject to the applicant with instructions to file at the local district office.

Cuban Adjustment Residing in Florida Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.

Previous A or G Status; Section 13 of 1957 Act Reject to the applicant with instructions to file at the local district office.

Continuous Residence in the US prior to 01/01/72 Reject to the applicant with instructions to file at the local district office.

Any other claimed basis for Adjustment of Status Reject to the applicant with instructions to file at the local district office.

#### Jurisdiction Table: Texas Service Center

|                    |                          |                                |
|--------------------|--------------------------|--------------------------------|
| If the I-485 is... | And is submitted with... | And the jurisdiction is TSC... |
|--------------------|--------------------------|--------------------------------|

|                  |                           |                                  |
|------------------|---------------------------|----------------------------------|
| Employment-based | Approval notice for I-140 | Accept if the visa is available. |
|------------------|---------------------------|----------------------------------|

|   |                           |                                  |
|---|---------------------------|----------------------------------|
| · | Approval notice for I-526 | Accept if the visa is available. |
|---|---------------------------|----------------------------------|

|   |                           |                           |
|---|---------------------------|---------------------------|
| · | Approval notice for I-360 | Hold for U.S. CIS Review. |
|---|---------------------------|---------------------------|

Concurrently filed:

I-526; I-360 (except Battered Spouse);

I-130 With one remittance Reject, not eligible to file concurrently.

|  |   |
|--|---|
| With separate remittances for each application | Accept the petition and reject the I-485. |
|--|---|

|              |                                     |   |
|--------------|-------------------------------------|---|
| Family-based | Approval notice for I-129F or I-130 | Reject to the applicant with instructions to file at the local district office. |
|--------------|-------------------------------------|---|

|   |   |
|---|---|
| Approval notice for I-360 Battered Spouse | Reject to the applicant with instructions to file at district office. |
|---|---|

Concurrently filed:

|                         |   |
|-------------------------|---|
| I-360 (Battered Spouse) | Reject to the applicant with instructions to file at VSC. |
|-------------------------|---|

|                    |                  |                    |
|--------------------|------------------|--------------------|
| If the I-485 is... | And is marked... | Then you should... |
|--------------------|------------------|--------------------|

NACARA NACARA across the top of the application, NACARA as the current status, and/or H and NACARA are written on the application Accept the application.

Cuban Adjustment E, F, G, H, or I and is based on Cuban nationality and they reside in Florida Accept the application.

E, F, G, H, or I and is based on Cuban nationality and they reside outside of Florida Reject to the applicant with instructions to file at the local district office.

Asylee/Refugee Reject to the applicant with instructions to file at NSC. NSC has sole jurisdiction.

Haitian DED (HRIFA) Reject to the applicant with instructions to file at NSC. NSC has sole jurisdiction.

All other eligibilities, i.e. Diversity, Lautenberg Reject to the applicant with instructions to file at the local district office.

#### Jurisdiction Table: California Service Center

|   |   |  |
|---|---|--|
| If the I-485 is submitted with ...                            | And the jurisdiction is CSC...  | Then you should...   |
| Approval notice for:  |   |  |
| I-140   |   |  |
| I-526   |   |  |
| I-360 (Religious Worker)                                      | With CSC approved IV petition or special handling petition                      | Accept if visa is available.   |
|   | If outside CSC jurisdiction and not special handling petition                   | Reject to the applicant with instructions to file at the appropriate service center. |
| Concurrently filed:   |   |  |
| I-526   |   |  |
| I-360 (Religious Worker, NATO Applicants, Special Immigrants) | With one remittance   | Reject, not eligible to file concurrently.   |
|   | With separate remittances   | Accept the petition and reject the I-485.  |
| Approval notice:  |   |  |
| I-130   | Reject to the applicant with instructions to file at the local district office. |  |
| Concurrently filed:   |   |  |
| I-130   | With one remittance   | Reject, not eligible to file concurrently.   |
|   | With separate remittances   | Accept the petition and reject the I-485.  |
| Approval notice:  |   |  |
| I-129F  | Reject to the applicant with instructions to file at the local district office. |  |
| Concurrently filed:   |   |  |
| I-360 (Battered Spouse)                                       | Reject to the applicant with instructions to file at VSC.                       |  |
| Approval notice:  |   |  |
| I-360 (Battered Spouse)                                       | Reject to the applicant with instructions to file at district office.           |  |
| Approval notice:  |   |  |
| I-360 – all other categories                                  | Reject to the applicant with instructions to file at the local district office. |  |

|   |  |
|---|--|
| All other eligibilities, i.e., Diversity, Launtenberg | Reject to the applicant with instructions to file at the local district office.                  |
| Haitian DED (HRIFA)                                   | Reject to the applicant with instructions to file at NSC. NSC has sole jurisdiction.             |
| Asylees / Refugees                                    | Reject to the applicant with instructions to file at NSC. NSC has sole jurisdiction as of 7/6/98 |
| NACARA  | Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.             |
| Cuban Adjustments Residing in Florida                 | Reject to the applicant with instructions to file at TSC. TSC has sole jurisdiction.             |
| Cuban Adjustments Residing outside of Florida         | Reject to the applicant with instructions to file at the local district office.                  |

Reviewing the I-693 Medical Record

**When to Perform** If U.S. CIS determines that the application has met all eligibility criteria, U.S. CIS needs to ensure that the applicant has submitted the Medical Evaluation Form I-693 and vaccination supplement in an unopened, sealed envelope before assembling the I-693 in the record.

If the application does not meet the eligibility criteria, it is rejected and sent back to the applicant unopened.

If the applicant has not submitted an I-693 and vaccination supplement, a Request for Further Evidence notice will be sent to the applicant to alert them that this piece of information is missing from their file and they must present it at the time of adjudication. NIW Physicians are not required to submit an I-693 when filing an I-485. Applicants will be notified when the I-693 is to be submitted by an RFE from U.S. CIS after officer review.

Note: Asylees are required to submit the I-693 and the Supplement per 8 CFR 2-9.2(d), except those applicants who had medical examinations in Guam. All asylees must submit the Supplement. Refugees are not required to submit the I-693, but are required to submit the supplement per 8 CFR 209.1(c). See Adjudications Appendix A.

**Procedure** If a case meets all of the eligibility criteria, complete the following steps:

**Step** Action: U.S. CIS

8.1 Annotate the processing worksheet to indicate whether the medical form was received in a properly sealed envelope.

- 8.2 Open the sealed medical record envelope containing the I-693.
- 8.3 Staple the envelope to the back of the form in the upper left corner and replace the medical record in the correct order of ROP.
- 8.4 Assemble the I-693 in the record.

#### Reviewing the I-765 and the I-131

**When to Perform** After reviewing the I-693 Medical Record, U.S. CIS should review concurrently filed I-765s and I-131s for I-485 applications that meet all eligibility criteria.

**Procedure for Reviewing the I-765 and I-131** If the I-485 filing is determined to be acceptable, complete the following steps to review concurrently filed I-765s and I-131s. Follow the procedure for whichever form(s) is(are) filed.

**Step Action: U.S. CIS**

- 9.1 Write the receipt number for the underlying approved visa petition on the I-485 processing worksheet in the “Mailroom” section.
- 9.2 Initial the I-485 worksheet with your ID codes in the appropriate block of the worksheet.
- 9.3 Route the file to CIS checks.

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### SECTION 3: CENTRAL INDEX SYSTEM/G-325A PROCESSING MODULE

**I-485 National SOP Introduction** This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis as training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
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- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents      The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Introduction When an alien files with the Immigration Service, he or she is sometimes assigned an Alien Registration Number (A-number). The A-number consists of an "A" followed by 9 digits, for example, A99333888. The A-number is used to create a record for the alien in the Central Index System (CIS) in National Systems. This A-number follows the alien throughout his or her dealings with the Immigration Service, and is

attached to his or her immigration documentation. Each A-file is tracked by the corresponding A-number.

Thus, when an I-485 is processed at the Service Center, a search of CIS is required to determine if the applicant has previously been assigned an A-number and/or to validate his/her alleged number. Searches may also reveal that the applicant has a violation. If multiple A-numbers are identified during CIS review or a violation is found, the case is sent to the Case Resolution Unit (CRU). CRU will determine the appropriate A-number as well as any other corresponding files for that applicant. Background information from an American consulate or embassy may be required via the G-325A Biographic Information form. If required, G-325A processing will be initiated at this point.

### Section 3: Table of Contents

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#### Conducting CIS Checks

**Description** A CIS search is used to determine if the alien has been previously assigned an A-number, if he or she has identified the correct A-number, or to identify whether he or she has been assigned more than one A-number.

**Definition of a CIS Search** There are three standard ways to check for A-numbers using CIS:

- 9102 or 9106 Sounds-Like Name Searches
- 9103 Exact Name Search
- 9101 ID Search

If the search(es) is successful in locating a previous A-number(s), it is required that the name, including aliases and the date of birth, is compared with the information provided by the applicant on the I-485. If everything matches, the A-number can be used. If the match is close, but there is uncertainty, the file should be routed to CRU for further review. If a match is not found, the alien will be assigned an A-number.

**Multiple A-numbers** When more than one A-number matches the applicant's information exactly, printouts must be made and the I-485 and concurrently filed applications/ petitions should be forwarded to the Case Resolution Unit (CRU). Annotate the multiple A numbers on the processing worksheet. CRU will reconcile the problem and return the filing to Data Entry, indicating the A-number to be used.

The following A-number series should not be used:

- 90-93 Million;
- 80-89 Million; and
- 100 Million.

**Requirements A** CIS search is required on all I-485 applications. Any questionable matches or matches with violations must be routed to CRU. Multiple A-numbers assigned to one applicant must be consolidated. Additionally, if the applicant already has an A-file, then it must be requested. On the other hand, if the applicant does not have an A-file, one must be created.

**Using CIS** To access CIS, select "National Systems." Type your User ID and Password at the "Teleview" menu. Type the number that corresponds to CIS on the command line and press <Enter>. Type in the number of the CIS screen in which you would like to search and press <Enter>. When finished with a search, press <Home> or <Alt+9> to return to the main screen.

**Standards** Follow the standards below to perform a CIS Search.

Advice: Search up to 2,000 names, but do not run this search for more than 10 minutes.

No. Standard

1.1 If the applicant has provided an A-number, search that A-number and make a screen print.

Advice: The recommended approach is to type in the A # (format: A99999999) in the CIS "9101" screen and press <Enter>.

1.2 Perform an "Exact Name" search and make a screen print.

Advice: The recommended approach is to enter the following in the appropriate fields in the CIS "9103" screen exactly as it appears on the I-485 and then press <Enter>:

- LASTNAME
- FIRSTNAME
- DOB Range – Type the year and then "1"

1.3 Perform a "Sounds Like" search and make a screen print.

Advice: The recommended approach is to enter the following in the appropriate fields in the CIS "9106" screen exactly as it appears on the I-485 and then press <Enter>:

- LASTNAME
- FIRSTNAME
- DOB (Date of Birth)

1.4 If no record is found with the “Exact Name” and “Sounds Like” searches, perform an “ID #” search. Make a screen print after each search.

Advice: The recommended approach is use the CIS “9101” screen to first search the SSN (format: SS111223333), and if that does not produce a match, to search with the I-94#, if available.

No. Standard

1.5 When the initial CIS search is completed, annotate the processing worksheet and, if necessary, route the file according to the chart below.

Note: If there is a match and no multiple A-numbers, or there is no match, this chart does not apply; simply continue processing.

|  |   |   |              |
|--|---|---|--------------|
|  | IF the A-number is...                                 | AND...  | THEN...      |
|  | A match   | There are multiple A-numbers                      | Annotate the |
| processing worksheet and route to CRU. |   |   |              |
|  | A match   | The match shows a violation, NAILS entry or FBI # | Route        |
| all files to Data Entry and then CRU.  |   |   |              |
|  | A questionable match                                  | Verification cannot confirm the A-number that     |              |
| should be used                         |   | Route the file to CRU.                            |              |
|  | A questionable match                                  | Verification cannot confirm the A-number that     |              |
| should be used                         | AND the match shows a violation, NAILS entry or FBI # | Route the file                                    |              |
| to CRU.                                |   |   |              |

1.6 If there was not a match, assign an A # and place the corresponding applications in the A-file jacket. Then search the A-number to be assigned. If a record is found where the A-number has recently been assigned to another applicant, assign a new number and route the file for resolution.

Advice: The recommended approach is to wand or type in the A # (format: A99999999) in the CIS “9101” screen and press <Enter>.

1.7 Annotate the appropriate A-number on the I-485; I-765, I-131, and any other concurrently filed forms if applicable; and the processing worksheet.

## Processing the G-325A

### Description

Establishing completeness of records may entail preparation of a request for background check from an American consulate or embassy. The G-325A Biographic Information form must be completed by all applicants between the ages of 14 and 79. Processing this form initiates a record check abroad for the applicant. This request, however, is not needed for all applicants. If the applicant entered the U.S. more than a year ago, the G-325A will not be processed. This limitation is imposed because the Department of State generally destroys the nonimmigrant visa application when the date of issuance is one year old.

The G-325A is generally submitted with four copies--a white (original), green, pink, and blue copy. You will only need to use two legible copies, usually the white (file) and the

blue (consul) copy. The only exception to this rule is when the I-485 is accompanied by an I-130. The applicant of the I-485 is required to submit a G-325A for the underlying I-130 petition. In this instance, you would include the pink copy of the G-325A in the I-130 ROP.

Further, if an I-130 petition is included in the A-file, the spouse of the applicant of the I-485 is required to submit a G-325A for that riding petition. The spouse's G-325A should be included in the record of proceeding and not processed according to these instructions. It is considered a supporting document and will be reviewed at the time of adjudication.

**Requirements** After conducting the CIS check, the I-485 application must be reviewed for determination of whether or not the G-325A must be processed for a records check abroad. If so, the G-325A must then be prepared.

**Standards** To determine if the G-325A must be processed and, if so, to prepare the G-325A, follow the standards below.

Keep in mind the following:

- If the applicant is not between the ages of 14 and 79 or has been in the U.S. as a nonimmigrant for more than one year, you will not process the G-325A.

No. Standard

2.1 If the applicant is not between the ages of 14 and 79 or the applicant has been in the U.S. as a nonimmigrant for more than one year, as evidenced by the "Date Visa was Issued (mm/dd/yyyy)" in "Part 3: Processing Information" of the I-485, circle "N" on the "G-325A" line under "CIS" on the processing worksheet. Do not complete any additional standards in this section (i.e., do not process the G-325A).

2.2 If the applicant does not meet the conditions in standard 2.1, complete the remaining standards in this section.

2.3 Confirm that there is a blue copy of the G-325A. If the blue copy is missing, annotate the processing worksheet in the remarks section of the "G-325A" line for the adjudicator and submit the green copy instead of the blue copy.

2.4 Annotate the A-number on the G-325A.

2.5 Provided that the "Date Visa was Issued (mm/dd/yyyy)" in Part 3 of the I-485 application is less than one year from the current calendar year filing date of the I-485, verify or complete the following on the G-325A:

- Birth date;
- Nationality;
- City and country of birth;
- Applicant's signature – if missing, refer to Center Adjudications Officer (CAO);
- Name and A-number in the bottom box should match the data on the top; and
- Write in the A-number in the blank provided at the top right of the form and in the **BOLDED** block near the bottom of the form.

If any of this information is missing from the G-325A, you can usually find the information on the I-485 application in order to fill in the blanks. If not, leave the blank empty.

2.6 Circle "Y" on the "G-325A" line under "CIS" on the processing worksheet so that the G-325A can be sent to the consulate.

No. Standard

2.7 Verify that the consulate you are going to forward the G-325A to (i.e., the consulate annotated on the I-485) is an open post.

Advice: To verify that the consulate is an open post, it is recommended that you use the Visa Issuing Post Bulletin, which is a listing of all the open consulates/embassies.

IF the consulate... THEN...

Is not on the list and there is no embassy Use the consulate general (CG) for that country.

Does not exist, but there is an embassy. Send it to the embassy.

2.8 Write the name of the consulate/embassy on the bottom of the blue copy.

2.9 Write your ID number in the space provided on the G-325A.

2.10 Send the blue copy of the G-325A to the mailroom. The white copy is to be included in the record of proceeding order below the I-485 application.

Review by Case Resolution Unit

Description The Case Resolution Unit (CRU) will review all of the multiple A-numbers or discrepant A-numbers identified during the CIS check. These A-numbers will include the applicant's primary A-number (if any), any additional A-numbers, any data discrepancies, as well as any receipt files. The CRU will determine which files to request for file consolidation and will circle and initial the correct A-number on the processing worksheet and indicate which additional A-numbers (if any) relate. (Notations on the processing worksheet should be made in the space provided for multiple A-numbers.) If the CRU identifies an A-number with a violation, the CRU will modify the I-765 and the I-131 to block automatic granting of the concurrent filing. After review, CRU should return the files to resume normal processing.

Requirement If multiple A-numbers for a single applicant or A-numbers with discrepancies are found during the CIS checks, these cases must be routed to CRU for resolution.

Standards (Refer to the standards under “Conducting CIS Checks” above.)

## Performing File Requests

**Description** File requests are those requests made for all receipt files and A-files related to the I-485 applicant, so that they can be consolidated. These files were identified during the CIS check or by the Case Resolution Unit and annotated in list form (both file number and location) on the I-485 processing worksheet.

There are four types of requests which can be initiated depending on the file location:

- Internal requests for petitions currently housed at the Service Center;
- Requests to an American Consulate/Embassy and the National Visa Center;
- Requests to the Harrisonburg Facility; and
- External requests to other U.S. CIS offices.

This section only refers to external requests to other U.S. CIS offices. The other types of requests are discussed in the File Maintenance module.

**Expedited Requests** Expedited requests will be handled on a case-by-case basis. If you encounter a file that requires an expedited visa petition request, i.e., an age-out, please see your supervisor and follow local expedite procedures.

**Requirement** If files that pertain to an I-485 applicant are being held at another U.S. CIS office, they must be requested. This process should be completed after the completion of the CIS checks and, if necessary, CRU review, as it is during those processes that these files are identified.

Standards Follow the standards below to perform an external request from another U.S. CIS facility.

No. Standard

3.1 Access the CIS “9501” screen.

**Advice:** To access CIS, first select National Systems. Then type your User ID and Password at the Teleview menu. Type the number that corresponds to CIS on the command line and press <Enter>. Type “9501” at the Command prompt.

3.2 Complete the required fields in the FTR screen, including the designation “I-485” somewhere in the person/action field.

**Advice:** To access the FTR screen, type “01” in the “Select Transaction Number” field in the “9501” screen. Then enter the “A-number” you are requesting.

- 3.3 Verify the data you entered for accuracy when the FTR screen is redisplayed. If any of the data is inaccurate, press <F3> to cancel the request and start again with standard 3.1 until the request is complete.
- 3.4 Annotate the processing worksheet to show that the request has been made.
- 3.5 If you need to perform another request, repeat standards 3.2 and 3.3.

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## SECTION 4: DATA ENTRY MODULE

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**Introduction** Data Entry must receipt all applications and petitions received at the Service Center to include the I-485, I-765, and I-131. These steps should be completed after the application undergoes Central Index System and G-325A processing, as the A-number must be validated prior to data entry. This module includes the standards for receipting the I-485, I-765, and I-131 into CLAIMS GUI or CLAIMS 3 LAN, and the standards for producing an Employment Authorization Document (EAD) for those applicants who have filed an I-765 concurrently with the I-485 or after the I-485 has been filed.

Once a file is data entered and scanned, it will be staged (i.e., shelved) to await adjudication. In order to find individual files easily, the U.S. CIS uses RAFACS, a local tracking system. RAFACS records are created for each file in Data Entry. In addition to processing accepted I-485 applications, Data Entry is also responsible for processing system reject notices for those applicants whose I-485s have been rejected.

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### Entering Data

**Description** Once the information from the I-485 is entered into CLAIMS, a record for the applicant is uploaded to CIS. If there is no prior record in CIS, CLAIMS will create one. If a prior record exists, CLAIMS will update the record with the data entered from the I-485.

**Requirements** Data Entry must receipt the I-485, I-765, and I-131 into CLAIMS GUI; affix labels to the file; secure the fee; and complete the processing worksheet.

**Standards** Follow the standards below to receipt the I-485 application and ensure that a complete record is established.

Keep in mind the following:

- While entering data, leave a field blank if the data requested in CLAIMS is not present on the I-485.
- If you are working with a NIW Physician's file, you must elect not to schedule for fingerprints if there is only one remittance for both the application and fingerprint fee. Additionally, if the file lacks the fingerprint fee, system-receipt the application fee payment, and manually-receipt the fingerprint fee payment when submitted.

No. Standard

- 1.1 Complete the following:
- Verify the amount of the fee;
  - Verify that the file has been CIS searched;
  - Verify that the signature is correct;

- Check for Supplement A; and
- Check for Form I-864.

1.2 Access the blank I-485 data entry screen.

Advice: To access the data entry screen, access the LAN. Select the “GUI Receipting” icon from the Icon Menu. Select “Receipt/ Modify” from the toolbar at the top of the screen and then select “Data Entry” from the drop-down menu. Type “I485” and then press <Enter>.

No. Standard

1.3 If a G-28 was submitted, determine the validity of the G-28 by ensuring that the sections below are complete and refer to the table below to complete the “G-28 attached?” field.

- 2nd Block – Applicant’s name
- 3rd Block – Type of Appearance must be checked (Box 1, 2, 3 and 1, 3 and 2, OR 4 must be checked)
- 3rd Block – The representative or attorney’s original signature (original facsimile stamp is acceptable)

· 4th Block – Name and proper signature of person consenting

IF... THEN...

No G-28 or an invalid G-28 was submitted Enter “N” in the field and continue processing, without entering the G-28 data.

A valid G-28 was submitted Enter “Y” in the field and continue processing.

1.4 If a valid G-28 was submitted, complete the following fields in the “Information About the Attorney or Representative” sub-screen, and press <F4> to save the data.

- Name: Enter the name (Last, First, Middle) from the 4th block of the G-28 with any titles (e.g., ESQ, SR, etc.) included in the last name field (after the last name).
- Firm name/VOLAG: Complete this field only if the entry is different from the attorney’s name. This may be found in the “Complete Address” block of the G-28.
- Address: The first “Street” field is to be used for the entry, with any overflow entered in the second one. If both a PO Box and a physical address are listed, enter the PO Box address.
- Zip Code: Verify the city and state after you enter the zip code.
- Type of Appearance:
  - o If block 1 on the G-28 is checked, enter “A”
  - o If block 2 is checked, enter “B”
  - o If block 3 AND 1 or 3 AND 2 or 4 is checked, enter “C”

Keep in mind the following: Do not populate the U.S. CIS Attorney #, ATTY State License #, or VOLAG # fields.

Standards (continued)

No. Standard

1.5 Enter the received date (format: mm/dd/yyyy) using the date on the date-stamp on the face of the I-485.

1.6 Enter the following fields with data from the I-485 application:

- A-number
- Last name, first name, middle name
- Address
- Date of birth
- Country of birth
- Social security number
- Date of Arrival
- I-94 number
- Current status
- Expiration of status date

Keep in mind the following:

- There must be an entry in first and last name fields. If only one name is provided, enter the name in the Last Name field. In the First Name field, enter “No Name Given”.
- In entering the name, do not use hyphens; use a space instead.
- Symbols or numerals cannot be used in place of a name expressed in alpha characters. If someone gives such a name, use the meaning of the symbol or the spelled out number.

1.7 Enter the letter checked off in “Part 2, Application Type.”

1.8 If an occupation is provided and it matches an occupation on the occupational list in CLAIMS, enter the code in the field labeled “Occupation.” Otherwise, enter the code “999.”

1.9 Highlight the appropriate “sex” (male, female, or unknown).

Standards (continued)

No. Standard

1.10 Enter the following fields with data from the I-485 using the <Tab> key to move from field to field.

- Marital status
- U= unknown
- D= divorced
- S= single
- M= married
- P= separated
- W= widowed
- Mother’s first name
- Father’s first name
- Place of last entry
- Status at last entry

- 1.11 Type “Y” or “N” at the following prompt: “Have you previously applied for U.S. CIS permanent residence status?” If yes, simply <Tab> through the fields and continue processing.
- 1.12 Type “N” in the “IRS Form 9003 provided” field.
- 1.13 Type “Y” in the “I-89 attached” field regardless of the whether the I-89 is in the file. <Tab> through the screens and then save the I-89 sub-screen.
- 1.14 Fill in the prompt at the “I-485 Supp A Attached” field.

IF there is... THEN...

No Supplement A attached or a Supplement A without the fee is attached  
This field defaults to “N.” Press the <Tab> key to bypass the field.

A Supplement A with fee attached Type “Y” and fill in the blanks with responses to questions 11, 12 and 13 on Supplement A. Select “Yes” at the “Save Changes” prompt.

#### Standards (continued)

No. Standard

- 1.15 Fill in the prompt at the “I-864 attached” field.

IF there is... THEN...

No I-864 attached This field defaults to “N.” Press the <Tab> key to bypass this field.

An I-864 attached Type “Y” and fill in the blanks. (See the I-864 section in Adjudications Appendix E.)

- 1.16 Enter the “Fee” information in accordance with the standard keying procedures. If the fingerprint fee is required but not paid, the system will prepare a notice to solicit the fee. Tag the file to be routed to the “NO FEE SHELF” after the file has completed data entry.

NOTE: If the file was FRE'd without payment of the fingerprint fee, a manual fingerprint billing notice will need to be prepared as CLAIMS will not generate a billing notice.

- 1.17 Make sure that there is an “N” in the “Concurrent With?” field and press <F4> to save.
- 1.18 Mark if the application is signed in the “Application signed?” field.

#### Standards (continued)

Step Action

- 1.19 Leave the “Biometrics” field default entry of “Y.”

1.20 Save the information at this point. CLAIMS will assign a receipt number and print out labels to be used as follows:

- I-485 receipt block
- I-485 Processing Worksheet
- I-864, if applicable
- Supplement A, if applicable

Staple remaining labels appropriately

1.21 Affix an I-485 SWIP FEE or W sticker below the barcode on the back of the file tab.

1.22 Remove the fee payment from the I-485 and annotate the information below on the upper portion of the remittance. Alternatively, use a computer slip printer to endorse the remittance on the back.

- Receipt number
- Date and your ID#

1.23 Place the fee in the lock-box.

1.24 Annotate the I-485 Processing Worksheet in the Data Entry portion of the worksheet by circling “Y,” “N,” or “NA” in the blocks requiring an answer and writing your ID # and date.

1.25 Receipt/scan the concurrent I-765 and I-131 according to the local SOP.

## Scanning

**Description** When an applicant applies for Adjustment of Status, he or she becomes eligible for unrestricted employment during the pendency of his or her I-485. The applicant who wishes to obtain employment authorization will file an I-765 concurrently with the I-485 or, in some instances, after the I-485 has been filed. The photograph, signature and fingerprint images will be used to produce an Employment Authorization Document (EAD) for the applicant.

**Definition of Acceptable Photographs** Photographs must be submitted with the I-765 in order to produce an EAD. If a photograph has not been submitted, prepare an “Exams Slip” and route the file to the adjudicating officer to request photos.

Keep in mind the following:

- There are a number of quality assurance issues that must be considered when choosing to scan a photograph:
  - o The photo must be an “ADIT” style photo;
  - o The face of the photo cannot have staple holes, scratches, smudges or spots present; and
  - o The image cannot be too light or too dark, have shadows, etc.
- If the photo does not meet acceptable standards, an “Exams Slip” will be prepared and the case routed to the adjudicating officer.
- The photograph will need to be placed in one of the three following places in order to be located next to the other images for scanning:
  - o On the signature card;

- o On the I-765 application; or
- o On the G-28.

Definition of Acceptable Signature The applicant may sign the I-765, a signature card and a G-28, if applicable.

Keep in mind the following:

- There are many variables to consider when deciding which signature to use for scanning, including:
  - o Is the signature dark enough?
  - o Is it impeded by other writing on the document signed?
  - o Is it impeded by preprinted lines on the documents signed?
  - o Is it the applicant's signature?
  - o Is it printed vs. signed?

Definition of Acceptable Signature, Cont'd. Continued:

- The signature used must reflect the form consistently used by the applicant. Only one line, either on the top or the bottom of the signature, can show. Any lines to the left or right of the signature must be covered up with tape.
- If you choose to use the signature on the I-765, all other images should be arranged and stapled to the I-765 in order to scan the images just once. The same would hold true if you use the signature on the G-28.

Definition of Acceptable Fingerprint The fingerprint is not required in order to produce an EAD. If the fingerprint is present, it should be used unless its placement on the signature card is too low and lines will show up through the print when scanned, if the fingerprint is smudged, etc. If the fingerprint is not present, it will need to be waived when preparing the document for printing. (This is detailed in Module 5: File Maintenance under "File Connects.")

Adjusting the Images If necessary, refer to the following table when performing the scanning function in order to adjust the images that have been scanned:

| IF you want the image to be... | THEN click on the image...   |
|--------------------------------|--|
| Centered                       | And drag   |
| Enlarged                       | And then click on the "+" arrow side of the magnifying glass button.   |
| Reduced                        | And then click on the "-" arrow side of the magnifying glass button.   |
| Lighter/darker                 | And then click on the "COLOR" button. Nine photos will appear. Select the appropriate image by double clicking on the image. |
| ·                              | Foreground – click on the "+" or "-" arrow side of the full sun button   |
| ·                              | Background – click on the "+" or "-" arrow side of the half moon button  |

Requirements The applicant's photograph, signature and fingerprint images must be prepared for scanning with each piece of evidence arranged on the I-765, the signature card or the G-28, if applicable, and then scanned. Additionally, if the photo does not meet acceptable standards, an "Exams Slip" should be prepared and the case routed to the adjudicating officer. These procedures must be completed after initial data entry.

Standards – Preparing to Scan Use the standards below to prepare the I-765 or the chosen document for scanning.

No. Standard

- 2.1 Locate the best signature and cover any lines or marks, as necessary.
- 2.2 Remove the photos from the glassine envelope and choose the best one.
- 2.3 Staple the photo to either side of the best signature as appropriate. Do not staple the photo through the face.
- 2.4 Arrange the fingerprint, if provided, on the document (if not the signature card) where the best signature is located.

Standards – Scanning To scan the biometric data, use the following standards.

No. Standard

- 3.1 RAFACS the files to the Scanning Unit.
- 3.2 Access the I-765 data entry screen and populate the case data.  
Advice: To accomplish this standard, access the LAN and select the "GUI Receipting" icon from the Icon Menu. Select the "Inquiry/ Modify" option from the toolbar at the top of your screen. Wand the barcode for the receipt number and then populate the fields with data by clicking on the "Search" button.
- 3.3 Verify the data below on the I-765. If the information does not match, prepare an "Exams Slip" and route the file back to the adjudicating officer.
  - A-number, (annotated on the upper left corner of the I-765)
  - I am applying for... (authorized employment, extension must be circled or replacement noted by CAO)
  - Full name
  - Address
  - Country of birth
  - Date of birth
  - Gender – male/female
  - Marital status
  - Eligibility code (annotated on the upper left corner of the I-765)
  - G-28 data (click on Cancel or Save)

No. Standard

3.4 Select the “Capture” icon located on the main Data Entry screen.

3.5 Place the biometric data on the scanning bed for scanning.

Advice: Fold back the file folder to expose the biometric data arranged for scanning and place it face down on the scanning bed. Align the edge of the folder near the double arrows located outside of the green strip along the front glass of the scanner.

3.6 Select the “PreScan” button located on the right bottom side of the screen.

3.7 Select the red “photograph” checkbox on the right-hand side of the screen and select the photo by placing a red box around the image.

Advice: The following “Recommended Action” steps (3a.1 to 3a.4) are the preferred method for selecting the photo:

Step Recommended Action

3a.1 Move the pointer to the upper left corner of the photo image located on the left side of the screen.

3a.2 Click the left mouse button. A red dot should appear.

3a.3 Drag the dot diagonally to the lower right corner of the photo. A red box will form around the photo’s image on the screen.

3a.4 Release the mouse. The image should appear where you placed it.

3.8 Select the blue “fingerprint” box on the right hand side of the screen OR the “other” box if the fingerprint is taken from a finger other than the right index finger. Then select the fingerprint by placing a blue box around the image.

Advice: The following “Recommended Action” steps (3b.1 to 3b.4) are the preferred method for selecting the fingerprint:

Step Recommended Action

3b.1 Move the pointer to the upper left corner of the fingerprint image located on the left side of the screen.

3b.2 Click the left mouse button. A blue dot should appear.

3b.3 Drag the dot diagonally to the lower right corner of the fingerprint. A blue box will form around the fingerprint’s image on the screen.

3b.4 Release the mouse. The image should appear where you placed it.

No. Standard

3.9 Select the purple “signature” box on the right hand side of the screen and then select the signature by placing a purple box around the image.

Advice: The following “Recommended Action” steps (3c.1 to 3c.4) are the preferred method for selecting the signature:

Step Recommended Action

- 3c.1 Move the pointer to the upper left corner of the signature image located on the left side of the screen.
- 3c.2 Click the left mouse button. A purple dot should appear.
- 3c.3 Drag the dot diagonally to the lower right corner of the signature. A purple box will form around the signature's image on the screen.
- 3c.4 Release the mouse. The image should appear where you placed it.

3.10 Adjust the images appropriately. (See the chart under "Adjusting the Images" above.)

3.11 Accept and save the information.

Advice: To accept and save the biometrics, first select "Accept." In the main I-485 screen, select "Save" and then select "Yes" at the "Modify?" prompt. When finished you can click on "Cancel," and then "Clear."

3.12 Write the scanner bed # and your ID # on the receipt label of the file jacket.

3.13 After the I-765 has been scanned, the card will not be produced until the card order is released, which requires that you refer the file for approval processing of the I-765.

### Creating a RAFACS Record

**Description** Cases at the Service Center are tracked locally in RAFACS. Once a record is created in RAFACS, the record can be queried at any step in the process to determine the location or processing stage of the file.

**Requirement** A RAFACS record must be created for each file. This procedure should be completed after the file has been data entered and preferably, after it has been scanned.

**Standards** To create a RAFACS record, follow the standards below:

No. Standard

4.1 Select the RAFACS icon from the Icon Menu and then select "A" for RAFACS Users.

4.2 Enter "DENA" at the Transaction Identifier screen in RAFACS.

4.3 Wand the A/T-file barcode.

4.4 Press <F7>.

Advice: At this point, if you have any other files, you can repeat standards 4.3 and 4.4.

4.5 Separate and sort file jackets as necessary.

Advice: It is recommended that file jackets be routed for continued processing according to the chart below.

IF there is... THEN...

An I-765 and the CIS check did not identify a violation RAFACS and forward the I-765 in its receipt jacket for processing.

An I-765 and the CIS check identified a violation RAFACS and route the file for review of the violation.

An I-131 in the receipt jacket RAFACS and route the receipt file to Workload Distribution.

An I-485 without any of the above Refer to File Maintenance.

## Processing Rejects

**Description** When an I-485 is submitted to the Service Center, it may not be accepted. Reasons for rejection include, but are not limited to:

- Incorrect fee;
- Lack of signature;
- No visa availability; and
- Improper Jurisdiction.

If the I-485 is rejected, a reject notice must be prepared and mailed to the applicant.

**Requirement** Applications to be rejected are routed for rejection processing. For system rejects, this process must take place after the file has been referred for a secondary review. For manual rejects, this must take place after U.S. CIS has determined that an application should be rejected.

**Standards – System Rejects** To process a reject notice for fee and/or signature, complete the following standards:

No. Standard

- 5.1 Enter the data from the I-485 as if it were an I-485 for receipting in “GUI Receipting” within CLAIMS GUI and select “Save.” A prompt should appear since the fee and/or signature information is not complete as it should be.
- 5.2 Click “OK” in response to a statement indicating the application will be rejected.
- 5.3 One barcode and one address label will print. Affix the barcode to the application in the “FOR U.S. CIS USE ONLY” box and staple the remaining label strip to the upper corner of the application.
- 5.4 Annotate reject on barcode listed.
- 5.5 Write the principal’s receipt number on the rejected barcode label if the rejected application belongs to the dependent.
- 5.6 Staple the reject letter to the application.

No. Standard

5.7 Remove and discard the Processing Worksheet.

5.8 If the I-693 medical record was opened, reseal the envelope and annotate an instruction across the flap for the applicant not to open the record. For example, "Medical – Do Not Open."

5.9 Mail the reject notice, the application(s)/ petition and supporting documents to the applicant or attorney of record.

Standards – Manual Rejects To process a reject notice for reasons other than fee and/or signature, complete the following standards:

No. Standard

6.1 Prepare appropriate manual reject notice using the reason indicated on the I-485 processing worksheet.

6.2 Print/ Copy the Reject Notice.

6.3 Remove and discard the Processing Worksheet.

6.4 If the I-693 medical record was opened, reseal the envelope and annotate an instruction across the flap for the applicant not to open the record. For example, "Medical – Do Not Open."

6.5 Mail the reject notice, the application(s)/petition and supporting documents to the applicant or attorney of record.

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SECTION 5: FILE MAINTENANCE MODULE

I-485 National SOP Introduction This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis as training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.
- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications- The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents      The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all

local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

**Introduction** File Maintenance operations “stages” (or holds) files that are received from Data Entry and are waiting to receive responses to requests for files related to the A-number as identified in CIS. Once these files are delivered to the Service Center, they are consolidated into one file. This process is known as “Consolidation.”

In addition, File Maintenance stages all files while they are awaiting fingerprint responses from the FBI, fingerprint fee receipts, I-765 photo requests and G-325A responses. Once these responses are returned, they are matched up with the appropriate file. This evidence-consolidating process is known as “File Connect.”

Finally, File Maintenance checks all files to ensure that the appropriate responses and files have been received. If they have not, File Maintenance routes the file accordingly. This process is known as “Purging” and will be more specifically defined in this section.

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### File Requests

**Description of File Requests** File requests are those requests made for all A-files and receipt files related to the I-485 application, so that they can be consolidated. These files were identified during the CIS check or by the Case Resolution Unit and annotated in list form (both file number and location) on the I-485 processing worksheet. There are four types of requests which can be initiated depending on the file location:

- Internal requests for petitions currently housed at the Service Center;
- Requests to an American Consulate/Embassy and the National Visa Center;

- Requests to the Harrisonburg Facility; and
- External requests to other U.S. CIS offices.

This section refers to internal requests, external requests to the American Consulate/Embassy/National Visa Center, external requests to Harrisonburg, and external requests to other U.S. CIS offices. The latter is repeated from the Central Index System/G-325A Processing module in case the process still needs to be performed.

**Expedited Requests** Expedited requests will be handled on a case-by-case basis. If you encounter a file that requires an expedited visa petition request (i.e., an age-out) please see your supervisor and follow local expedite procedures.

**Identifying Age-Outs Using CLAIMS Sweeps** During the first week of each month, the file room supervisor will request a sweep of CLAIMS from ADP for cases that are in danger of aging-out. ADP will extract the listing from CLAIMS, including all pending I-485 applicants who will turn 21 years old within the next six months.

**Requirements Age-outs** must be identified using a CLAIMS sweep and the type of request(s) to be performed must be determined. Any receipt or A-files related to the I-485 file, which are identified as being held within the service center, or at an American Consulate, Embassy, the National Visa Center, or Harrisonburg, must be requested. This process must be completed immediately after data entry.

**Standards – Age-outs** Complete the following standards to identify and expedite age-outs using a CLAIMS sweep:

No. Standard

- 1.1 Pull files identified by the CLAIMS sweep (including family packs).
  - 1.2 Place a colored expedite sheet on the file and batch it with the other expedites.
- Note: Expedites will follow the same process steps as the other files, but will be hand-carried throughout the process and given priority processing by each unit.

**Standards – Determining the File Request** Follow the standards below to determine which type of file request must be performed.

No. Standard

- 2.1 Check the I-485 Processing Worksheet to determine the location of the petition.  
     IF the screener noted... THEN...  
     Service Center See the “Internal” requests block in this section.

National Visa Center See the “Consulate/Embassy or NVC” request block in this section.

Harrisonburg (HBG) See the “Harrisonburg” request block in this section.

Other U.S. CIS office See the “External” request block of this section.

Standards – Internal To retrieve the underlying approved visa petition or A/T-file located with the Service Center, follow the standards below.

No. Standard

3.1 Query RAFACS to determine the location of the file within the center.

3.2 Retrieve the receipt file or A/T-file from its location within the Center.

3.3 RAFACS the file to your responsible party code.

No. Standard

3.4 Perform the file consolidation. (See the Consolidating Files section of this SOP.)

For NIW Physicians, route the file to U.S. CIS Review for generation of the Supplemental Notice and Identification of Call Up dates.

Advice: For other files, it is recommended that after file consolidation you should RAFACS and route the A/T-File to the appropriate “Pending I-485 Shelf.”

3.5 Annotate the processing worksheet.

Standards – Consulate/

Embassy or NVC Follow the standards below to perform a request for the underlying approved visa petition when it is located at an American Consulate/Embassy or the National Visa Center (NVC). Reminder: This process must be completed immediately after data entry.

No. Standard

4.1 Complete an “Approved Visa Petition Request Memo” by filling in the following blanks:

· Date

· Check off the appropriate "To" location and fill in the blank, if needed

· Receipt number of the I-485

· Beneficiary's name

· Beneficiary's A-number

· Receipt number of underlying approved visa petition

4.2 Fax the memo to the NVC and associate the memo with the file.

4.3 Annotate the processing worksheet.

4.4 RAFACS and route the A/T-file to the appropriate “Pending I-485 Shelf” to wait for the return of the underlying petition.

4.5 Route request to the mailroom for appropriate forwarding if NVC indicates the petition was forwarded to the consulate.

Standards – Harrisonburg Follow the standards below to perform a request for the underlying approved visa petition when it is located at the Harrisonburg facility.

No. Standard

5.1 Complete the following blanks on a Harrisonburg Request Form:

- Receipt number
- Beneficiary's name
- Date of the request
- A-number

5.2 Fax the request to Harrisonburg.

5.3 Annotate the processing worksheet.

5.4 RAFACS and route the A/T-file to the appropriate “Pending I-485 Shelf” to wait for the return of the underlying petition.

Standards – External Follow the standards below to perform an external request from another U.S. CIS facility.

No. Standard

6.1 Access the CIS “9501” screen.

Advice: To access CIS, first select National Systems. Then type your User ID and Password at the Teleview menu. Type the number that corresponds to CIS on the command line and press <Enter>. Type “9501” at the Command prompt.

6.2 Complete the required fields in the FTR screen, including the designation “I-485” somewhere in the person/action field.

Advice: To access the FTR screen, type “01” in the “Select Transaction Number” field in the “9501” screen. Then enter the “A-number” you are requesting.

6.3 Verify the data you entered for accuracy when the FTR screen is redisplayed. If any of the data is inaccurate, press <F3> to cancel the request and start again with standard 6.1 until the request is complete.

6.4 Annotate the processing worksheet to show that the request has been made.

6.5 If you need to perform another request, repeat standards 6.2 to 6.3.

6.6 RAFACS, if necessary, and route the file to workload distribution.

IF the external request is/was performed... THEN...

Prior to Data Entry Do not RAFACS

In File Maintenance RAFACS

## Staging

**Description** The staging area houses pending I-485 filings. The filings are segregated by the month of receipt, which is identified by the RAFACS code. The date on the barcode is the date used to determine upon which shelf the I-485 should be placed. Temporary files (T-files) will be separately segregated at the end of the month's section of files. However, "family packs" will be kept together.

The files on these shelves may be awaiting:

- The return of the underlying approved visa petitions
- The A-file, if requested
- Fingerprint clearance from the FBI
- I-765 photos

**Requirement** All files must be staged in File Maintenance after they have been data entered and scanned, and are awaiting consolidation. NIW Physician cases returned from U.S. CIS Review should be routed to the "NIW Hold Shelf."

Keep in mind the following:

- A-files will be staged for 120 days following the applicant's scheduled appointment date pending receipt of the FBI fingerprint response.
- T-files will be maintained separately at the end of the month for 90 days, pending receipt of the A-File or completion of the diligent search period.
- Files awaiting photos will be staged for 87 days.

**Advice:** It is recommended that files be staged by the fingerprint scheduling date. Keep in mind that applications are scheduled for fingerprints in chronological order based on Application Support Center (ASC) availability.

**Standards** Complete the following standards in order to stage files:

No. Standard

7.1 Separate the files into two groups: A-files and T-files. Sort the files by the month of receipt.

7.2 For staging A-files, locate the section of the hold shelf designated for the month of receipt.

No. Standard

7.3 RAFACS the code located on the hold shelf section. Charge all of the files to be placed in that section to the assigned RAFACS code by wandling the barcodes on the back of the files.

7.4 Place the files in the appropriate section of the shelf. All accompanying receipt files and family packs must remain rubber-banded together in accordion folders.

### Consolidating Files

**Requirement** As requested files are received by File Maintenance, they must be consolidated or matched with their related A-File or T-File. This should be completed after the identification, request and receipt of all locally held, related A-files, T-files and/or receipt files, as well as the underlying visa petition.

**Standards** Complete the following standards to electronically consolidate received filings into A/T-files.

No. Standard

8.1 RAFACS the files into the Responsible Party Code for this function.

8.2 Type "FMCN" at the Transaction Identifier Screen and press <Enter>. Wand the barcode of the A or T-file. The following screen will appear: Entry Section: File Maintenance

Transaction: Consolidation

Survivor A-Number:

8.3 Wand the barcode of the A/T-file, wand the receipt number(s), and press <F7>.

8.4 Re-match family file packs.

Advice: The following "Recommended Action" steps (8a.1 to 8a.7) are the preferred method for re-matching family file packs.

Step Recommended Action

8a.1 Access RAFACS via the CLAIMS Menu.

8a.2 Type "RCRWRC000 (MFS)," press <Enter>, and enter the

Parent/Principal Receipt or A-number.

8a.3 Scan "Parent" file, plus all family members/riders.

8a.4 Press <F7>/<ESC> to clear the screen (this is very important!).

8a.5 Go into RCIN, scan the files to verify that the "Riding Process" (F5 should appear on the screen) has been completed and is correct.

8a.6 Rubber band the family pack together in its accordion file.

8a.7 Proceed with the next family pack.

No. Standard

8.5 Remove the I-485 and supporting documentation from the A-file (clips) and two-hole punch the ROP. Then acco-fasten the ROP in the filing jacket accordingly:

Left-Hand Side of File (Top to Bottom)

- A. G-28, Notice of Appearance as Attorney or Accredited Representative, if acceptable
- B. I-485 Application
- C. I-485 Supplement A (245(i) cases only)
- D. G-325A, Biographical Information Form
- E. I-864, Affidavit of Support
- F. Evidence of lawful entry (e.g., I-94 card, passport stamp, etc.)
- G. Any supporting documentation
- H. I-693, Medical Examination Report (in a sealed envelope)
- I. I-797, Notice of Action
- J. Postmark and return address portion of original envelope

Right-Hand Side of File (Top to Bottom)

- A. I-485 Processing Worksheet
- B. G-28, if unacceptable
- C. I-89 (if submitted)
- D. Miscellaneous Correspondence

Advice: Make sure that all documents are placed in a file folder.

8.6 Sort files for staging according to the chart below. Note: The \$50 fingerprint fee is in effect as of February 19, 2002.

|               |   |   |
|---------------|---|---|
|               | IF the worksheet indicates...                             | THEN route the file to...                       |
| filing shelf. | The \$50 fingerprint fee was submitted or is not required | The monthly                                     |
|               | The \$50 fingerprint fee was not submitted                | The "no fee" shelf.                             |
|               | NIW Physician   | The "NIW Physician Hold Shelf" by call up date. |

File Connects

Description When an I-485 is accepted at the Service Center, requests for FD-258 FBI fingerprint checks, fingerprint fees, and G-325A consular background checks are made by U.S. CIS. Responses to these requests come back to U.S. CIS and must be matched up with the appropriate files held in staging. File Maintenance "file connects" these responses to the corresponding files.

Procedures for the different types of "file connects" are described below:

- FBI Responses;
- Fingerprint Fees;
- G-325A Responses; and
- I-765 photos.

**Definition of FD-258 Fingerprint Checks** Fingerprints are a requirement for all applicants 14 through 79 years old. After a case is data entered, the applicant is scheduled for fingerprints. Fingerprints are collected at the ASC and sent to the FBI for criminal checks. Using the fingerprints, the FBI will verify whether or not an applicant has a criminal history. Once verified, the FBI will send a response indicating the results of the fingerprint check. The FBI Query/FTRK database response is accessible through Televue/National CLAIMS.

There are 4 types of responses that can be sent from the FBI:

- IDENT--The applicant was identified in the FBI database,
- Non-IDENT--The applicant was not identified in the FBI Database,
- Reject--The applicant's prints were rejected, because the fingerprints were unclassifiable by the FBI, and
- Pending--The FBI is conducting a more thorough search on the fingerprints.

**Requirement I-485 applications must be linked to the FD-258 FBI fingerprint responses, rap sheets, fingerprint fees, and G-325A consular background checks already requested by File Maintenance.**

**Requirement, Cont'd. Keep in mind the following:**

- NIW Physicians will not be scheduled for fingerprints until they are notified by U.S. CIS.
- While the U.S. CIS is waiting for a response from the FBI for a particular applicant, File Maintenance stages the file by date of data entry. It is recommended that files be staged by the fingerprint scheduling date. Keep in mind that applications are scheduled for fingerprints in chronological order based on ASC availability.

**Standards – FBI Responses** Complete the following standards to file connect FBI responses on fingerprints.

Keep in mind the following:

- If a response is not received, leave the file on the I-485 hold shelf until the purge date – do not complete the following standard yet.
- Family packs should be staged until responses are received for all family members.

No. Standard

9.1 Once received for an applicant, review the FBI Update Report, which lists the names and A-numbers of applicants, the FBI response, and the FBI process date. Record the seven-digit FD-258 Control Number generated by the FBI Query/FTRK system and the FBI processing date in the appropriate blocks of the processing worksheet.

IF... THEN...

An A-file has also been received for the applicant Retrieve and print a copy of the FBI response record from FD-258 Tracking and incorporate it into the corresponding A-file. Annotate the processing worksheet. Advice: RAFACS the file to Workload Distribution.

An A-file has not yet been received for the applicant Retrieve and print a copy of the FBI response record from FD-258 Tracking and incorporate it into the corresponding T-file. Annotate the processing worksheet. Advice: Route the file to staging to await the A-file.

Standards – Fingerprint Fees Complete the standards below to file connect fingerprint fee receipts.

Keep in mind the following:

· Applicants will be scheduled automatically for fingerprints via the National Scheduler.

No. Standard

10.1 Receive a fingerprint fee receipt for an applicant from Data Entry.

10.2 Identify the corresponding file location in RAFACS.

10.3 Pull the file and incorporate the receipt into the file.

Standards – G-325A Responses Complete the following standards to file connect G-325A responses:

No. Standard

11.1 Receive G-325A responses for an applicant from DOS.

11.2 Identify the corresponding file location in RAFACS.

11.3 Pull the file and incorporate the response into the file.

11.4 Once the G-325A is received, route the file as appropriate.

Advice: The following chart contains the recommended approach for routing:

IF... THEN...

The A-File and Fingerprint Response have been received Route the file to Workload Distribution.

The A-File and/or Fingerprint Response has not been received Return the file to staging.

Standards –

I-765 Photos Complete the following standards to file connect I-765 Photos.

- |      |  |
|------|--|
| No.  | Standard   |
| 12.1 | Receive and review the photos.                   |
| 12.2 | Locate the file and update CLAIMS appropriately. |
| 12.3 | Route the file for scanning.                     |

Purging

Description Purging is a process by which U.S. CIS identifies and resolves missing information prior to adjudication. Six types of purges are conducted in File Maintenance:

- Temp File Purge;
- Visa Petition Purge;
- FD-258 Fingerprint Response Purge;
- No Fingerprint Fee Purge;
- I-765 Photo Purge; and
- G-325A Purge.

Requirement A file must be purged from File Maintenance after completion of its designated staging period.

Temp File Purge Temporary files are staged separately at the end of each month's section of files for 90 days, pending receipt of the A-File. Following the initial file request, CIS generates two automated follow-up requests at 30-day intervals. After 90 days, three requests for the A-File will have been completed.

Standards – Temp File Perform the following standard to complete the temp file purge:

- |      |  |
|------|--|
| No.  | Standard   |
| 13.1 | After three requests for the A-file have been completed, check any remaining temp files for receipt of the A-File.             |
|      | IF... THEN...  |
|      | The A-file has been received Continue with the purge.  |
|      | The A-File has not been received AND all Agency checks are complete Forward the file to U.S. CIS for review and relocation.    |
|      | The A-File has not been received AND Agency checks are not complete Keep the file with File Maintenance for continued staging. |

**Visa Petition Purge** The visa petition purge consists of validating that the underlying visa petition has been consolidated into the file. In most cases, this will not be a problem. However if the visa petition is not in the file, it will be requested again here.

**Standards – Visa Petition** Complete the following standards to request underlying visa petitions. This procedure should be followed only after an initial request has already been made.

No. Standard

14.1 Locate the underlying visa petition in the file. If the visa petition is present, continue with the purge. If no visa petition is present, make a second request to the NVC for the visa petition (see “File Requests” above). Then stage the case for 30 days and place a copy of the request in the file.

14.2 If the NVC notifies the U.S. CIS that the petition is at the consulate, request the petition from the consulate. Stage the file for 90 days while awaiting a response.

14.3 If there is no response after the second follow-up request, annotate the processing worksheet to indicate that two requests have been made. Route the file to Workload Distribution. The adjudicator can then adjudicate the case based on the I-797 Approval Notice.

**FD-258 Fingerprint Response Purge** The U.S. CIS has established a 120-day waiting period from the date of fingerprint scheduling to allow applicants to submit fingerprints. When an applicant fails to appear for fingerprinting or a response is not received within that 120-day period, and the applicant has otherwise not advised the U.S. CIS of a change of address or requested that he/she be rescheduled, the case must be denied for abandonment. Accordingly, after 120 days, File Maintenance must check any remaining files for receipt of a processed FD-258 or evidence of a change of address or request for rescheduling. Perform the task "FD-258 Fingerprint Response Purge" for purging of all files awaiting a FBI response.

**Standards – Fingerprint Response** Perform the following standards to complete the FD-258 fingerprint response purge:

No. Standard

15.1 Review the FBI update reports from the FBI Query System for those files with a FD-258 response.

15.2 Pull all files that have a response.

15.3 Conduct a FBI fingerprint query. Select option “15” in the CLAIMS mainframe, to perform an inquiry for each applicant. Perform a query using one of three methods:

1) Search by A-Number: Type “0” followed by the A-number;

- 2) Search by barcode: Cursor to the CIDN selection on this screen and wand in the CIDN barcode on the face of the application. Note: This is not the receipt barcode, but rather the shorter barcode label affixed below the receipt file sticker; or
  - 3) Search by name: Search using the Last name/First name search option.
- 15.4 Run a screen print of the FBI response data and place a copy in the file, attached to the right hand side of the folder.
- 15.5 Refer to “Table V: FBI Response Description” below for the required case action based on the response type and complete the action indicated.

Table V: FBI Response Description

| If the FBI Response Description is...  | Then you will...   | And make this comment on the Batch Sheet... |
|--|--|---|
| NON-IDENT  |  |   |
| Or   |  |   |
| IDENT  |  |   |
| (w/ rap sheet) and the “Date Processed by FBI” is less than 12 months old      | Route the file to Workload Distribution.   | N/A   |
| and the “Date Processed by FBI” is more than 12 months but less than 15 months | Route the file to U.S. CIS and process as an expedite.   | Mark as an expedite on the batch sheet      |
| NON-IDENT and the “Date Processed by FBI” is more than 15 months               | Annotate the worksheet and return the file to the monthly hold shelf. The case must be rescheduled.            | Reschedule                                  |
| IDENT (w/ rap sheet) and the “Date Processed by FBI” is more than 15 months    | Annotate the worksheet and contact the OFL to obtain an updated rap sheet.                                     | Updated Rap Sheet                           |
| IDENT  |  |   |
| (w/o rap sheet)  | Contact the fingerprint POC for the FBI to obtain the missing RAP sheet.                                       | N/A   |
| Only 1 R (UNCLASSIFIABLE)  | Annotate the worksheet and return the file to the monthly hold shelf. The case will be rescheduled by the ASC. | Reschedule                                  |
| More than 1 R (UNCLASSIFIABLE)   | Route the file to U.S. CIS for relocation.   | N/A   |
| R (IMMEDIATE) or   |  |   |
| R (MASTHEAD)   | Annotate the worksheet and return the file to the monthly hold shelf. The case will be rescheduled by the ASC. | Reschedule                                  |

Table V: FBI Response Description, continued

| If the FBI Response Description is...        | Then you will...   | And make this comment on the Batch Sheet...            |
|--|--|--|
| No record that an FD-258 was sent to the FBI | Confirm that the applicant notice was sent and today’s date is greater than 120 days beyond the date of notice | Route the file to U.S. CIS for abandonment processing. |
|  |  | N/A  |

Cannot confirm that the applicant notice was sent or today's date is greater than 120 days beyond the date of notice Reschedule for fingerprints and return to the monthly hold shelf. Reschedule  
That the FBI received an FD-258 for the applicant but there is no record or the response is pending and the FD-258 was received by the FBI more than 30 days ago Route to U.S. CIS for problem resolution.  
and the FD-258 was received by the FBI less than 30 days ago Route the file back to the monthly hold shelf. N/A

No Fingerprint Fee Purge If the applicant did not initially submit the \$50 fingerprint fee (effective February 19, 2002), the fee is requested at data entry and an 87-day call-up is established pending receipt of the fee. After that period, purge these cases by performing the task "No Fingerprint Fee Purge."

Standards – No Fingerprint Fee Complete the following standards for purging files lacking a fingerprint fee:

No. Standard

- 16.1 Pull all files once they reach the 87-day call-up. Verify that the mailroom is current for that call up date.
- 16.2 Send all cases to U.S. CIS for abandonment processing.

I-765 Photo Purge If the applicant did not initially submit photos, they are requested at data entry and an 87-day call-up is established pending receipt of the photos. Purge these cases by performing the "I-765 Photo Purge" task.

Standards – No I-765 Photo Complete the following standards for files lacking I-765 photos:

No. Standard

- 17.1 Pull all files once they reach the 87-day call-up. Verify that the mailroom is current for that call up date.
- 17.2 Verify in CLAIMS that a response has not been received.
- 17.3 Send all cases to U.S. CIS for abandonment processing.

G-325A Purge If no response is received from the consulate or embassy within 60 days of the date the G-325A was sent, purge these cases.

Standards – G-325A Purge Complete the following standards regarding G-325A responses:

- | No.  | Standard  |
|------|---|
| 18.1 | Pull all files once they reach the 60-day call-up. Verify that the mailroom is current for that call up date. |
| 18.2 | Verify in CLAIMS that a response has not been received.   |
| 18.3 | Send all cases to U.S. CIS for abandonment processing.  |

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## SECTION 6: WORKLOAD DISTRIBUTION MODULE

I-485 National SOP Introduction This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis as training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.

- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents      The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

Introduction Workload Distribution (WD) is in charge of staging, routing and distributing files. There are five different types of staging areas that WD handles:

- Work ready for adjudication;
- Work awaiting a response from a request for evidence;
- Work awaiting a response from an Intent to Deny;
- Work awaiting submission of an I-89 card;
- Work awaiting a visa number.

WD stages files that had a visa number available at the time of filing; however, between the date of receipt and the date of adjudication, the visa became unavailable. These I-485 filings are otherwise ready for approval. They are staged chronologically by priority date, preference category and country of chargeability.

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Workload Distribution

Requirement Once files have been received from File Maintenance, Workload Distribution (WD) must stage, route and distribute files.

Staging and Distributing Work Ready for Adjudication Workload Distribution stages work by month of data entry receipt date. It is recommended that files be staged by the fingerprint scheduling date, keeping in mind that applications are scheduled for fingerprints in chronological order based on ASC availability. All files for that month must be RAFACSeD to a shelf labeled with the month of data entry receipt. U.S. CIS supervisors regularly advise both the adjudicators and WD of current operating priorities. Therefore, when an adjudicator makes a request for work, WD must fill and distribute the request based upon priorities and the amount of work requested.

Standards –Ready for Adjudication To stage and distribute files ready for adjudication, complete the standards below.

Keep in mind the following:

- Expedited cases should be kept separate from routine cases and routed directly to U.S. CIS for immediate processing. Do not stage these files.

No. Standard

- 1.1 Stage the files by month of data entry receipt date.

Advice: It is recommended that files be staged by the fingerprint scheduling date, keeping in mind that applications are scheduled for fingerprints in chronological order based on ASC availability.

- 1.2 Receive request for work.
- 1.3 RAFACS and fill work requests.

#### 1.4 Maintain workload distribution logs.

**Staging and Distributing Requests for Evidence** Workload Distribution may stage files awaiting evidence for a Request for Evidence. These files are shelved under a separate RAFACS code. An applicant has 87 days to respond to a Request for Evidence. After the applicant sends in the requested evidence, Workload Distribution must file-connect these pieces of evidence with the appropriate case and then return them to the adjudicator who originated the Request for Evidence. If the applicant does not respond within 87 days, the application is considered "abandoned" and is sent for local abandonment processing.

**Standards – RFEs** To stage and distribute RFEs, complete the standards below.

Keep in mind the following:

- NIW Physicians are staged on a separate shelf by call-up date. If the applicant does not submit the required documents by the date indicated on the call-up notice, the officer will issue an Intent to Deny the application.

No. Standard

2.1 Stage files for which a Request for Evidence has been issued on the RFE hold shelf. Stage these files for 87 days. Exception – NIW Physicians are staged for the amount of time indicated on the call-up notice on a separate shelf.

2.2 Determine the next appropriate action. Verify that the mailroom is current on correspondence for that call-up date.

IF a response is... THEN...

Received Update the response in CLAIMS, match to the file and route to the appropriate adjudicator.

Not received within 87 days Pull the file and stamp it as “NO RESPONSE” and route for local abandonment processing.

**Staging and Distributing Intents to Deny** Workload Distribution may stage files awaiting evidence for an Intent to Deny. These files are shelved under a separate RAFACS code. An applicant has 33 days to respond to an Intent to Deny. After the applicant sends in the requested evidence, Workload Distribution must file-connect the evidence with the appropriate case and return it to the adjudicator who originated the Intent to Deny (if no fee is involved). If an additional fee is involved, Data Entry will request the file from Workload Distribution when the fee is submitted with the Intent to Deny notice. Data Entry will route the file to the adjudicator who originated the Intent to Deny. If the applicant does not respond within 33 days, the application is considered "abandoned" and is sent for abandonment processing.

Standards - ITDs To stage and distribute ITDs, complete the standards below.

- | No. | Standard   |
|-----|--|
| 3.1 | Stage files for which an Intent to Deny has been issued on the ITD hold shelf. Stage these files for 33 days.  |
| 3.2 | Verify that the mailroom is current on correspondence for that call-up date.   |
| 3.3 | Determine the next appropriate action.<br>IF a response is... THEN...<br>Received with the \$1000 penalty fee Data Entry will request the file, complete the receipting process, and route the file to the appropriate adjudicator.<br>Received with Supplement A, but no fee Update the response in CLAIMS, match to the file and route to the appropriate adjudicator.<br>Received without fee or Supplement A Update the response in CLAIMS, match to the file and route to the appropriate adjudicator.<br>Not received within 33 days Pull the file and stamp "NO RESPONSE" and route to the appropriate adjudicator. |

Staging for the I-89 Hold Shelf The I-89 Hold Shelf holds cases awaiting receipt of the I-89 card. These I-485 filings are approved cases. These files are held for 120 days.

Standards –  
I-89 Hold Shelf To stage and distribute for the I-89 Hold Shelf, complete the standards below.

- | No. | Standard  |
|-----|---|
| 4.1 | Stage files awaiting receipt of the I-89 card for 120 days.   |
| 4.2 | Determine the next appropriate action.<br>IF the I-89 is... THEN...<br>Received Match the card to the file and route to Data Entry for scanning and card production.<br>Not received after 120 days Pull the file and route to the file room as a completed case. |

Staging for the Visa Hold Shelf The Visa Hold Shelf holds cases whereby a visa number was available at the time of filing, however, between the date of receipt and the date of adjudication, the visa became unavailable. These I-485 filings are otherwise ready for approval. These cases must be staged chronologically by priority date,

preference category and country of chargeability until a visa becomes available. They are to be reviewed monthly to determine visa availability.

Standards – Visa Hold Shelf To stage and distribute for the Visa Hold Shelf, complete the standards below.

No. Standard

5.1 Stage files for which a visa is not yet available until a visa becomes available.

5.2 Review the files monthly to determine the next appropriate action.

IF a visa is... THEN...

Available Pull the file and return it to the appropriate adjudicator.

Not available Leave the file on the shelf.

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## SECTION 7: ADJUDICATIONS MODULE

I-485 National SOP Introduction This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may

have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis for training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.
- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications- The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents      The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

Introduction “Adjudications” is the process by which an I-485 application is examined for a determination of whether it requires additional information, is approvable, or is deniable.

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Basis for Filing

Overview This chapter discusses the filing requirements of principal applicants and their dependents and provides guidance for the adjudicative process. The basis for filing for each individual application will be covered.

In This Chapter This chapter discusses the following topics:

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Introduction Applicants may apply for adjustment of status based on one of the provisions listed in Part 2 of the I-485 application. The provisions and the requirements for each will be discussed in this section.

“A derivative applicant may apply for adjustment of status anytime after a spouse or parent was granted lawful permanent residence as long as the relationship existed at the time the principal applicant received the benefit and the visa category allows for derivative status for spouses and children. Keep in mind that the child must also meet the definition of ‘child’ as set forth in Section 101 of the Act.”

When looking at the actual I-485 application, each provision is delineated by a capital letter (A-H). The applicant will check the section under which they wish to adjust. The officer should verify that the correct provision has been noted. For example, block “a” may be checked and annotated with the name of a spouse who is a US citizen. However, block “a” is based on an approved immigrant petition with an immediately available visa, not a spouse’s approval, which is block “b.” The officer must correct the face of the I-485 with red ink and be certain to update CLAIMS with the correct letter delineation. The provisions below are broken down in the same manner.

I am applying for adjustment to permanent resident status because:

A. An immigrant petition giving me an immediately available immigrant visa number has been approved, or a relative, special immigrant juvenile, special immigrant military visa petition filed with this application will give me an immediately available visa number if approved

- Section of law is 245 (8 CFR 245).

- 

- The priority date is the date that the "immigrant petition" is filed. The exception to this is the I-140 that requires a labor certification. The priority date on this petition is the date the Department of Labor received the labor certification from the petitioner of the I-140.

- 

- Must have a Form I-797 approval notice or an acceptable concurrently filed immigrant petition\*.

- 

- Per section 204.2(d)(4), all IRs and CRs must have an I-130 filed on their behalf. Derivative children classifiable as IRs and CRs cannot be adjusted based on the principal applicant's I-130.

- 

- I-140s approved prior to IMMACT 90 as P61s are the equivalent to the approval as an EW3. Similarly, I-140s as P31s are the equivalent to E32s.

- 
- I-485s approved under the Chinese Student Protection Act (CSPA) are classified as EC-6. Visas will be requested from the employment-based third preference visa pool (E-36). Derivatives of EC6s are adjusted as E39s and E30s. Only the principal will maintain the original EC classification.
- 

- \*Note: At present, only VSC accepts concurrently filed I-130 and I-360 applications from Baltimore as a valid basis for filing.

B. My spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category which allows derivative status for spouses and children

- Section of law is 245 (8 CFR 245).

- The priority date for dependents is the priority date of the principal alien's application.

- These applicants are the spouse and/or children of an alien who is an LPR, or who has an adjustment of status case pending

- Family members' applications should remain together.

C. I entered as a K-1 fiancé(e) of a U.S. Citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e)

- Section of law is 245 (8 CFR 245).

- The priority date is the date of filing of the I-485.

- Must have evidence of admission as a K-1.

- A Form I-693 medical is not required if the applicant was admitted as a K-1/K-2 within the last year. The vaccination supplement is required.

- Not held to the "Penalty Fee" requirement.

- The marriage to the I-129F petitioner has to have occurred within 90 days after entry.
- 

- If marriage occurred after the 90 days, they are not eligible for CF-1 adjustment. An I-130 must be filed.

- If the marriage occurred to someone other than the I-129F petitioner, an I-130 must also be filed.

- Relocate these filings to the District office.

D. I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment

- Section of law is 209(b).

- Must have evidence of Asylee status.

- An applicant granted asylum has to wait one year before applying to permanently adjust his/her status to AS6 (or AS7 or AS8). The 1-year period commences the date the applicant is granted Asylee status.

- Because these applicants adjust status under 8 CFR 209, they do not need to have entered legally, do not need to have maintained any status, nor are they eligible to apply under section 245(i) and therefore do not need to pay the penalty fee.

- Dependents can either be included on an asylum application of a principal applicant, or the principal applicant may file an I-730 after he/she has been granted Asylee status. The beneficiary of the I-730 is considered to have acquired AS2 or AS3 status as of the date the I-730 is approved, if the beneficiary was in the United States at the time of approval. If the beneficiary was outside of the US when the I-730 was approved, he/she does not acquire asylum status until admitted to the US.

- Asylees are required to submit Form I-693 and vaccination supplement. Iraqi Kurds who were processed for asylum under Operation Pacific Haven need to submit only the vaccination supplement, if the record contains a copy of the medical examination performed in Guam. Asylees are not required to submit this evidence until it is requested by U.S. CIS.

See Adjudications Appendix A for more information.

E. I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

- Section of law is Section 1 of Public Law 89-732, 11/2/66.

- The priority date is 30 months prior to filing the I-485 OR the date of last entry into the U.S., whichever is later.

- Applicant must have been inspected and admitted or paroled after 1/1/59, and have been physically present in the U.S. for at least one year. They do not have to maintain status and are not held to the "Penalty Fee" requirement.

- Relocate these filings to the Texas Service Center.

F. I am the husband, wife or minor unmarried child of a Cuban described in (E) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

- Section of law is Section 1 of Public Law 89-732, 11/2/66.

- The priority date is 30 months prior to filing the I-485 OR the date of last entry into the U.S., whichever is later.

- Applicant must have been inspected and admitted or paroled after 1/1/59, and have been physically present in the U.S. for at least one year. They do not have to maintain status and are not held to the "Penalty Fee" requirement.

- Relocate these filings to the Texas Service Center.

G. I have continuously resided in the U.S. since before January 1, 1972

- Section of law is 249.

- The priority date is the date of proper filing of the I-485.

- Relocate these filings to the District Office.

H. Diversity

- The Section of law is 245. The section on the I-485 indicating "Eligibility Under Sec. 245" must be annotated "Diversity" next to the "Other" block. Diversity immigrants are also referred to as "DVs" or "lottery winners."

- The priority date is the case number. This number is annotated on the I-485, worksheet and I-181.

- If you encounter a Diversity case, it should be put in the crate labeled "DV Lottery Cases" in the POC's office.

- I-485s filed by lottery winners will be supported by an approval notice from the DOS. The letter identifies the applicant's case number and classification. The classifications are as follows:

If admitted as... Then adjusted code is...

DV-1 DV-6 principal

DV-7 spouse

DV-8 children

AA-1 AA-6 principal

AA-7 spouse

AA-8 children

- To determine if a visa number is available, refer to the Diversity section of the Visa Bulletin. If the applicant's case number is BELOW the specified allocation cut-off number on the visa list for the applicant's country/region of chargeability, then a visa number IS available.

- DV Derivative applicants need not be listed on the DOS approval letter as long as they can establish their relationship as a spouse/child of the DV applicant.

H. (cont'd) Diversity, continued

- Section 212(e) is automatically waived.

- Relocate these filings to the District Office.

·

Lautenberg Parolees

- Section of law is 245. The applicant may indicate "Lautenberg Parolee" or "Public Interest Parolee" on line h of the I-485.

- The priority date is the date the applicant was paroled into U.S.

- The classification is LA-6 including spouse and children.

- The nonimmigrant classification on the I-181 is annotated "PIP."

- Eligibility:

- The applicant must be a national of the former Soviet Union, Vietnam, Laos, and Cambodia who has been inspected and paroled into the U.S.

- The applicant must have been physically present in the U.S. for one year as of the date of filing the I-485

·

- The applicant must have been denied refugee status. If the applicant was processed for parole in Moscow, we will assume he or she was denied refugee status. If the applicant is a Vietnamese National, the attached FAX sheet should be used to obtain

evidence that the applicant was in fact denied refugee status. Additionally there is a telephone number at HQ to be used to verify refugee denials [(202) 305-2662 or (202) 305-2757]. Beneficiaries of non-current visa petitions who were paroled into the country through the Orderly Departure Program were not denied refugee status and therefore are not eligible to adjust under this provision.

- 
- Relocate these filings to the District Office.

#### H. (cont'd) Haitian Refugee Immigration Fairness Act (HRIFA)

- See Section 10: Adjudications Appendices, Appendix B

#### Refugees

- No fee is required for the refugee I-485.
- 
- Because applicants adjust under section 209, the penalty fee under 245(i) does not apply.
- 
- Applicants must have evidence of refugee status.
- 
- Applicants must wait one year after admission to the US as a refugee before applying to permanently adjust his/her status to RE6, RE7 or RE8.
- 
- A refugee may file for the following to join dependents on Form I-730. If the beneficiary of the I-730 was in the United States at the time of approval of the I-730, s/he became a refugee as of the date of the approval of the I-730. If the beneficiary was abroad at the time of the I-730 approval, s/he did not become a refugee until the date of admission to the US.
- 
- Refugees are not required to submit an Affidavit of Support.
- 
- Refugees do not require Form I-693. The vaccination supplement, however, is required. The supplement must be completed by a designated civil surgeon, or by a state/local health department.
- 
- Refugees must not have had their admission terminated by the Attorney General.
- 
- Refugees must have been physically present in the United States for at least one year prior to filing for adjustment; or,
- 
- Applicants must have not otherwise obtained permanent resident status
- 
- Relocate refugee applications to the NSC.
- 
- See Section 10: Adjudications Appendices, Appendix A

H. (cont'd) Nicaraguan Adjustment and Central American Relief Act (NACARA)

- NACARA, a limited provision that provides relief in the form of lawful permanent residence to certain Nicaraguan and Cuban nationals, was signed into law on November 19, 1997, under section 202 of Public Law 105-100.

- NACARA applicants must be nationals of Nicaragua or Cuba.

- Applications must be filed on or before 3/31/00, applicants must have been in the U.S. since 12/1/95, and must be present in the U.S. at the time of filing.

- The priority date is the date of adjudication.

- No underlying petition is necessary.

- The penalty fee under 245(i) does not apply.

- Medical Form I-693 is required for NACARA applicants.

- NACARA family members (dependents) do not necessarily “age-out.” Some family members may qualify on their own (see Adjudication Appendix C for more information).

The following criteria do not apply to NACARA applicants:

- Outstanding OSC/NTA/WD (I-122)

- Visa availability

- INA Sec. 245(a) alien who was inspected and admitted or paroled into the U.S. may be adjusted by the Attorney General if (1) alien makes an application, (2) alien is eligible to receive immigrant visa and (3) immigrant visa is immediately available  
And 245(c) Subsection (a) shall not be applicable to (1) alien crewman; (2) alien who accepts unauthorized employment; (3) TWOV; (4) WT/WB; or (5) any alien with class of admission of “S.”

- 8 CFR 245.1

- INA Sec. 212(e) two year foreign residency requirement

- Rollback dates

Relocate NACARA applications to TSC.

H. (cont'd.) NACARA, continued

The following criterion does apply to NACARA applicants:

INA Sec. 212(a)(6)(D) Stowaways. Any alien who is a stowaway is inadmissible.

I am a native or citizen of Cuba and meet the description in (E), above.

OR

I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (F), above.

- Section of law is Section 2 of Public Law 89-732, 11/2/66.
  - The priority date is the date of arrival in the U.S. (not necessarily the date of adjustment) or 5/2/64, whichever is later.
  - These sections are requests for a roll back of adjustment dates for applicants who are already granted permanent resident status.
  - Applicant must have been granted permanent resident status prior to 11/6/66.
  - Relocate these filings to the District Office.
  -
- Section 13 of the 1957 Act - (Proof of previous A or G Status)
- See 8CFR 245.3. Relocate these filings to the District Office.

#### Discussion of Section 245 of the INA

**Overview** This chapter will discuss sections 245(k) and 245(i) of the INA, which allows certain aliens, otherwise ineligible to adjust under section 245(a) due to certain violations of their status (i.e., overstay, EWI, etc.), to adjust status.

**In This Chapter** This chapter discusses the following topics.

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General Information Regarding 245(a) Filings

245(a) Section 245(a) of the act is the section of law which permits an alien, who is the beneficiary of an immigrant visa, to adjust status to that of a lawful permanent resident, provided that the following requirements are met:

- The applicant was inspected, admitted or paroled into the U.S.;
- The alien has made an application for adjustment;
- The applicant is eligible to receive an immigrant visa;
- An immigrant visa is immediately available to the applicant at the time his application was filed;
- The applicant is admissible to the U.S. under section 212 of the Act or has any relevant grounds of inadmissibility waived.
- 
- Note: See Appendix D for Inadmissibility Overview

#### General Information Regarding 245(k) Filings

**In General** Section 245(k) is for those employment-based applicants who are ineligible to adjust status under section 245(a).

If it is determined that an applicant is ineligible to adjust status under section 245(a), the officer should first consider eligibility under section 245(k). If section 245(k) is inapplicable, section 245(i) should then be considered.

Applicants who meet the eligibility requirements of section 245(k) of the Act became entitled to its benefits as of November 26, 1997.

**Eligibility** Section 245(k) provides that certain aliens who:

- were lawfully admitted to the United States; and
- are eligible to receive an employment based immigrant visa under section 203(b) paragraphs (1), (2), or (3), or section 203(b)(4), in the case of a section 101(a)(27)(C) religious worker,

and became eligible to apply for adjustment of status under section 245(a); provided that subsequent to their admission they have not, for an aggregate period of more than 180 days:

- failed to continuously maintain a lawful status;
- engaged in unauthorized employment; or
- otherwise violated the terms and conditions of their admission.

Refer to the Quick Reference Guides provided at the end of this section, “Discussion of Section 245 of the INA,” to determine if 245(a), (i), or (k) applies.

**Filing Requirements** These applicants are not required to submit Form I-485 Supplement A or to pay the penalty fee as required in 245(i).

There may be some adjustment applicants who have erroneously submitted a Supplement A and the section 245(i) penalty fee between November 26, 1997 and April 30, 2001. If you encounter a case like this, you should return the Form I-485 Supplement A and refund the penalty fee. Otherwise, we will not refund unsolicited penalty fees.

To initiate a refund, attach the worksheet to the front of the file and route it according to local policy.

### General Information Regarding 245(i) Filings

**In General** Section 245(i) is for those applicants who are ineligible to adjust status under section 245(a) because of violations of status or entering without inspection.

**Eligibility** Section 245(i) is available to an alien physically present in the U.S. who:

- entered without inspection; or
- violated status (ineligible under 245(c));

AND

- is the beneficiary (including spouse or child of the principal alien) of an I-140, I-130, I-360 (religious worker only), or I-526 filed with U.S. CIS on or before 4/30/01; or an I-140 with underlying labor certification filed with Department of Labor on or before 4/30/01.

Adjustment of status under 245(i) was not available prior to October 1, 1994.

**NOTE:** The Legal Immigration Family Equity Amendments of 2000 add the new requirement that all aliens who seek to adjust on the basis of a visa petition or application for labor certification filed after January 14, 1998, must have been physically present in the United States on December 21, 2000. The physical presence requirement only applies to principal applicants. Dependent spouses and children do not need to demonstrate physical presence on December 21, 2000.

Refer to the Quick Reference Guides provided at the end of this section, “Discussion of Section 245 of the INA,” to determine if 245(a), (i), or (k) applies.

**Evidence of Physical Presence** Suggested documents that may provide evidence of physical presence include, but are not limited to, the following:

Primary evidence of physical presence on 12/21/2000:

Photocopy of a Federal, State, or local government document such as:

- State driver's license;
- County or municipal hospital records;
- Public college or public school transcript;
- Income tax records;
- A Federal, State or local government record which was created on or prior to 12/21/00;
- A private or religious school that is registered with, or approved or licensed by, appropriate state or local authorities.

Secondary evidence of physical presence on 12/21/00:

If there are no government-issued documents that demonstrate physical presence, the Service will accept and evaluate non-government issued documents. Such documents must:

- Bear the name of the applicant
- Be dated at the time of issuance
- Bear the seal or signature of the issuing authority
- Be issued on letterhead stationery or be otherwise authenticated

Acceptable secondary evidence of physical presence:

A personal affidavit attesting to physical presence on December 21, 2000 will not be accepted without additional evidence to validate the affidavit. Examples of acceptable evidence include:

- School records, rental receipts, utility bills, cancelled personal checks, employment records, or credit card statements.

Restrictions in 8 CFR 245.1(b) that are removed under 245(i) · The following restriction cited in 8 CFR 245.1(b) are removed under 245(i):

- 
- 1. Any alien admitted as a visitor under the visa waiver provisions of 8 CFR 212.1(e).
- 
- 2. Any alien admitted as a Visa Waiver Pilot Program visitor under section 217 other than an immediate relative as defined in section 201(b) of the Act.
- 

Restrictions in 8 CFR 245.1(b) that are removed under 245(i) (cont'd.) 3. Any alien who entered in transit without a visa (TWOV)

- 
- 4. Any alien who, upon arrival, was admitted as a crewman

- .  
5. Any alien who was not admitted or paroled following inspection  
.
- 6. Any alien, on or after 01/01/77, who has been employed in the US without authorization prior to the filing of the I-485 unless the alien is 1) an immediate relative; 2) a special immigrant as defined in 101(a)(27)(H), (J), or (K); 3) eligible for INRA of 1989 and files an I-485 on or before 10/17/91; or 4) eligible for INRA of 1989 and has not entered into or continued in unauthorized employment on or after 11/29/90.  
.
- 7. Any alien who, on or after 11/06/86, is not in legal immigration status on the date of filing of I-485 except an applicant who is an immediate relative or a special immigrant under section 101(a)(27)(H), (I), (J), or (K).  
.
- 8. Any alien who, on or after 11/06/86, who has failed (other than through no fault of his or her own or for technical reasons) to maintain continuously a legal status since entry into the US except an applicant who is an IR as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27)(H), (I), (J), or (K) of the Act.  
.
- 9. Any alien who seeks adjustment of status pursuant to an employment based immigrant visa petition under section 203(b) of the Act and who is not maintaining a lawful nonimmigrant status at the time he or she files an application for adjustment of status.  
.
- 10. Any alien who was ever employed in the United States without the authorization of the Service or who has otherwise at any time violated the terms of his or her admission to the United States as a nonimmigrant, except an alien who is an immediate relative as defined in section 201(b) of the Act or special immigrant as defined in section 101(a)(27)(H), (I), (J), or (K) of the Act. For purposes of this paragraph, an alien who meets the requirements of section 274.a12(c)(9) of this chapter shall not be deemed to have engaged in authorized employment during the pendency of his or her adjustment application.

Restrictions in 8 CFR 245.1(c) that remain even if the penalty fee is paid There are some restrictions that remain even if the section 245(i) penalty fee is paid. These restrictions are as follows:

- 1. Any nonpreference alien who is seeking or engaging in gainful employment in the US who is not the beneficiary of a valid individual or blanket labor certification issued by the Secretary of Labor or who is not exempt from certification requirements under section 212.8(b).  
.
- 2. Any alien who has or had status of J and who is subject to the foreign residence requirement of section 212(e) unless they have been granted a waiver of such requirement.

3. Any alien admitted as an A, E, or G unless the alien executes and submits the written waiver required in section 247(b) (waiver request filed on Form I-508).
4. Any 201(b), 203(a) or 203(b) alien unless the applicant is the beneficiary of an approved, valid, unexpired visa petition filed in accordance with part 204.
5. Any alien who is already a conditional resident alien pursuant to section 216 or 216A of the act regardless of other quota or non-quota immigrant visa classification for which the alien may be eligible.
6. Any alien admitted to the US as a K-1 unless the alien is applying for adjustment of status based upon a marriage, which was contracted within 90 days of entry with the USC who filed the I-129F.
7. Any alien who seeks to adjust based on a marriage, which occurred on or after 11/10/86 and while the alien was in deportation or exclusion proceedings or judicial proceedings relating thereto. (See 8 CFR 245.1(b) (14) for definitions regarding commencement and termination of proceedings). Exceptions are contained in 204(g).
8. A nonimmigrant classified pursuant to section 101(a)(15)(S) of the Act, unless the nonimmigrant is applying for adjustment of status pursuant to the request of a law enforcement authority, the provisions of section 101(a)(15)(S) of the Act, 8 CFR 245.11.
9. Any alien who is in removal proceedings pursuant to section 235(b)(1) or section 240 of the Act.

**Filing Requirements** Certain Requirements must be met in order to file under section 245(i). The applicant must submit the following:

- A completed Supplement A to Form I-485, regardless of age; and
- A payment of the penalty fee.

Note: The additional fee is not required for persons who are under 17 years of age, at the time of filing the I-485, or persons who have received benefits under section 301 (Family Unity Program). However, each applicant is required to amend his or her application by submitting the properly completed form Supplement A. The penalty fee may be submitted at the time of filing or solicited by the officer with an Intent to Deny letter (8 CFR 245.10).

**Penalty Fee** The correct penalty fee is to be determined as outlined in the chart below.

|  |        |
|--|--------|
| If the I-485 is filed... Then the penalty fee is...        |        |
| On or after October 1, 1994 and prior to December 29, 1996 | \$650  |
| On or after December 29, 1996                              | \$1000 |

Has the Penalty Fee Been Paid? There are several ways to determine if the penalty fee has been paid such as:

- The worksheet will be annotated in the appropriate block (“Y”);
- There will be a CLAIMS generated barcode on the Supplement A;
- There will be CLAIMS (LAN) remittance information;
- Some older filings may be found in CLAIMS Mainframe; and/or
- There will be a local office receipt.

NOTE: The officer is responsible for determining if the fee has been paid or needs to be solicited. If the penalty fee and/or Supplement A needs to be solicited, then the officer should prepare an Intent to Deny letter. A transfer out is not appropriate in this circumstance.

Use of Prior Payment Payment of the 245(i) penalty fee is NOT a one-time payment since it is considered as a part of the filing fee of the I-485. Therefore, if the I-485 has to be re-filed under section 245(i), the penalty fee must be repaid.

The only exception to this rule is when an applicant’s previous I-485, which was accompanied by payment of the penalty fee, was denied because a visa was not available at the time of filing and the applicant was not issued a refund of the penalty fee. If the previous amount paid was \$650, the remaining \$350 will be solicited to provide for the balance of the penalty fee. NOTE: If the applicant was issued a fee refund for the previous penalty fee, the file will contain a completed copy of Form G-266, Refund of Immigration and Naturalization Fees. The amount refunded as indicated on this form must be reviewed to determine if the penalty fee was returned to the applicant.

#### Grandfathering Under 245(i)

Introduction Public Law 105-119 amended section 245(i) of the Act to include only those applicants who are beneficiaries of an immigrant petition filed under section 204 on or before January 14, 1998.

The Legal Immigration Family Equity Act Amendments of 2000 extended this date to April 30, 2001.

Eligibility This Service has issued guidance which permits an applicant for adjustment of status under 245, based upon a post April 30, 2001 immigrant petition, to “grandfather” the benefit of 245(i) by way of a pre-April 30, 2001 immigrant family or employment petition or labor certification, filed on his or her behalf, provided that the following conditions apply:

- The petition has not been previously used for adjustment of status or as the basis for entry as an immigrant;
- The pre April 30, 2001 petition is determined to be “approvable when filed;”
- In the case of a labor certification, the labor certification was “properly filed” with the Secretary of Labor on or before April 30, 2001.

**Approvable When Filed** · In order to utilize a previously filed or approved immigrant visa petition, the visa petition must be “approvable when filed.” This means that the petition must meet all of the regulatory and documentary requirements for that filing in order to confer the applicant the benefit of grandfathering.

- Immigrant petitions or labor certifications that are deficient because they were submitted without fee or any basis in law or fact, or those that are fraudulent, should not be considered when grandfathering the alien for 245(i) purposes.

- The burden is upon the applicant to establish that he or she is eligible for the grandfathering benefit sought. While adjudicators should make a reasonable effort to verify an alien’s claim that he or she is eligible to adjust status under 245(i), the alien must ultimately provide proof that he or she is eligible for the grandfathering benefit. If a check of Service records and available files does not substantiate an alien’s claim to be grandfathered and the alien cannot establish this fact to the adjudicator’s satisfaction, then the applicant cannot be treated as a grandfathered alien for 245(i) purposes.

**Denied, Revoked and Withdrawn Petitions** When an immigrant visa petition has been denied and the alien claims that petition as the basis for grandfathering, the adjudicator must look at the reasons for the denial to determine whether the petition was “approvable when filed.”

Petitions that were denied, withdrawn or revoked based on a change in circumstances, which do not cast doubt on the statutory or regulatory basis of the petition, can be used as a vehicle for grandfathering the adjustment applicant under 245(i).

Pre-April 30, 2001 immigrant petitions or labor certifications which are deficient because they were submitted without fee, or submitted without any basis in law or fact, or those which are fraudulent should not be considered when grandfathering the alien for 245(i) purposes.

**Unadjudicated Petitions** Regarding unadjudicated immigrant petitions, the adjudicator shall review the petition to determine whether it meets the threshold of being “approvable when filed.”

In other words, the pre-April 30, 2001 filing must meet all of the statutory, regulatory and documentary requirements for that filing in order to confer the applicant beneficiary the benefit of grandfathering 245(i).

Petitions that are deficient because the Service requires additional information or evidence in which the petitioner would ordinarily be permitted to submit such information pursuant to 8 CFR 103.2(b)(8) are not sufficient for grandfathering 245(i), until the requested information or evidence is received.

Labor Certifications filed with the DOL When the claimed basis for grandfathering is an application for labor certification (Form ETA 750 Parts A and B) filed with, but not approved by, the Department of Labor (DOL) the beneficiary of that application must demonstrate that the application is “properly filed” with the Secretary of Labor.

It is the proper filing of the ETA 750, which begins the labor certification process and eventually establishes a priority date for a petition filed under section 203(b), if the labor certification is approved.

However, for the purposes of grandfathering 245(i), evidence that the labor certification was “properly filed” with the Department of Labor is all that is required. Secretary of Labor and Department of Labor both mean any office within the employment service system of the Department of Labor, to include State and Local offices. (See 8CFR 204.5 and 20CFR 656.21)

For the purposes of grandfathering 245(i), “properly filed” means that the ETA 750 Parts A and B were properly completed by the sponsoring employer and that the alien filed with the Secretary of Labor on or before April 30, 2001. The Department of Labor will indicate the filing date on the ETA 750.

Therefore, mere proof that the individual labor certification was mailed on or before April 30, 2001 is not sufficient for grandfathering 245(i).

Accompanying and Following to Join Dependents The spouse or child of a grandfathered alien accompanying or following to join the principal applicant is also grandfathered for 245(i) purposes, so long as the requisite relationship existed prior to the time the principal applicant adjusted status.

This means that the spouse or child is grandfathered for 245(i) purposes irrespective of whether the spouse or child adjusts with the principal alien, so long as they met the definition of spouse or child before the principal is ultimately granted an adjustment of status.

Dependent children who reach the age of 21 years prior to the principal applicant adjusting status may also be grandfathered for 245(i) purposes, although they are no longer eligible as an accompanying or following dependent.

**Other Concerns**        The grandfathering of 245(i) cannot occur by way of a previously filed Diversity Immigrant application filed with the Department of State.

The Grandfathering of the 245(i) benefit by way of the pre-April 30, 2001 filing DOES NOT accord the adjustment applicant the priority date of the pre-April 30, 2001 filing. The petition used as the vehicle for adjustment of status establishes the requirement for adjustment set forth in 245(a) of the act.

The rules for retention of priority dates for employment-based petitions are governed by Title 8 CFR 204.5(e).

**Documenting the I-485**        In order to properly document the record for adjustment of status purposes, a notation shall be made in the remarks section of the I-181 “245(i) Eligibility Grandfathered by way of Petition Number [list petition receipt number].”

In the case in which a properly filed ETA 750 is utilized, the petition number shall be substituted with “ETA 750” and the date that the labor certification was properly filed with the Department of Labor.

The I-485 Processing Worksheet shall also be properly annotated by the adjudicating officer to show that the applicant was eligible for the benefit of 245(i) by way of the grandfathering provision. The officer should annotate this information in the remarks section of the I-485 Processing Worksheet.

Note: Keep in mind that the physical presence requirement only applies to principal applicants. Dependent spouses and children do not need to demonstrate physical presence on December 21, 2000.

## FAMILY-BASED I-485 QUICK REFERENCE GUIDE

### FAMILY-BASED I-485

Classification of applicant    And the applicant entered the US...    And the priority date of the underlying visa petition is...    Then apply this section of law...

IR

Legally

Anytime        245(a)

As an EWI     On or before 4/30/01    245(i)

After 4/30/01 \*Ineligible to adjust  
Preference

|  |                       |        |
|--|-----------------------|--------|
| Legally and maintained status          | Anytime               | 245(a) |
| As an EWI and/or violated their status | On or before 4/30/01  | 245(i) |
| After 4/30/01                          | *Ineligible to adjust |        |

\*Ineligible Applicants      These applicants are ineligible to adjust status after 4/30/01 under 245(a) or 245(i):

#### IMMEDIATE RELATIVES

- who entered as a TWOV and crew members

#### PREFERENCE RELATIVES

- who entered as a TWOV and crew members
- who work without labor certification or authorization from U.S. CIS
- who have not maintained a valid nonimmigrant status
- who violated the terms of their admission
- who entered under the Visa Waiver Pilot Program

#### EMPLOYMENT-BASED I-485 QUICK REFERENCE GUIDE

#### EMPLOYMENT-BASED I-485

Applicant entered the U.S... And received the I-485... And the priority date of the underlying visa petition is... Then apply this section of law...

|  |                      |         |        |
|--|----------------------|---------|--------|
| Legally and maintained their status                    | Anytime              | Anytime | 245(a) |
| Legally but violated their status for 180 days or less | On or After 11/26/97 | Anytime | 245(k) |

#### NO PENALTY FEE REQUIRED

|  |                      |                      |        |
|--|----------------------|----------------------|--------|
| Legally but violated their status for more than 180 days | On or After 11/26/97 | On or before 4/30/01 | 245(i) |
|--|----------------------|----------------------|--------|

#### PENALTY FEE REQUIRED

AND

#### SUPPLEMENT A

|               |                      |                      |        |
|---------------|----------------------|----------------------|--------|
| After 4/30/01 | Ineligible to adjust |                      |        |
| As an EWI     | Anytime              | On or before 4/30/01 | 245(i) |

#### PENALTY FEE REQUIRED

AND  
SUPPLEMENT A

After 4/30/01 Ineligible to adjust

Adjudicating the I-485

**Overview** In this chapter we will discuss the initial evidence to be filed with each Form I-485 filing. Each type of evidence will be discussed so you can ascertain what is acceptable for immigration purposes, when further information is needed, when an I-485 can be adjudicated to completion at the Service Center or if the case should be relocated out of this office.

**In This Chapter** This chapter will discuss the following topics.

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## Inter-Agency Record Checks

**Introduction** There are several record checks that must be performed before an applicant for adjustment of status can be granted a benefit. A check performed within U.S. CIS is of the Interagency Border Inspection System (IBIS). Other record checks are performed by other government agencies in cooperation with U.S. CIS. The Central Intelligence Agency (CIA), the Department of State (DOS) and the Federal Bureau of Investigations (FBI) all perform specific background checks. Each specific background check is outlined below.

**IBIS Checks** A check of IBIS must be completed for all I-485 applicants (check all aliases in the file) before a final decision is rendered on the application, and the application must be notated to show the date and results of the IBIS check(s). If a check results in a positive hit, this must be resolved before the case can be adjudicated. (Reference memo HQOPS 70/23.9.) Additionally, if an applicant's name or date of birth is changed in CLAIMS at any time, a new IBIS check must be performed.

**CIA Records Checks** The CIA performs a record check on each I-485 applicant. The information utilized by the CIA is gathered from the field offices and service centers through the creation of records via the I-181 for field offices or receipting of the I-485 application into CLAIMS 3.

· Pursuant to a November 24, 1999 memorandum issued by the U.S. CIS Office of Field Operations, U.S. CIS field offices and service centers must continue to submit information on adjustment of status applicants to the CIA. However, field offices and service centers processing these applications are no longer required to wait for 1) a CIA response, or 2) release from Headquarters, before commencing final adjudication of the applications.

· The CIA will continue to send information on adjustment of status applicants to the National Security Unit (NSU) in the U.S. CIS Office of Field Operations at Headquarters. The NSU will review information sent by the CIA to determine if the information relates to an applicant's eligibility for adjustment of status. If so, the NSU has the authority to 1) suspend adjudication of the adjustment of status application(s); 2) initiate investigation of applicants; 3) recommend initiation of rescission proceedings when information is unclassified or declassified; and 4) recommend or institute removal proceedings. This procedure applies to newly filed adjustment of status applications as well as applications pending adjudication.

**NSEERS Checks** Certain temporary foreign visitors have a new requirement to register with U.S. CIS. This registration is part of the National Security Entry-Exit

Registration System (NSEERS), being implemented by the U.S. CIS to implement a comprehensive entry-exit program. Under this program, temporary foreign visitors (non-immigrant aliens) coming from certain countries or who meet a combination of intelligence-based criteria are identified as presenting elevated national security concerns. As a result, they are required to be registered under NSEERS, providing detailed information about their background and the purpose of their visit to the United States. Such individuals are also required to verify periodically their location and activities, as well as to confirm their departure from the United States. If applicable, follow appropriate NSEERS instructions.

**Consulate/ Embassy Records Checks**            The Department of State will also conduct a record check abroad if the G-325A is processed and forwarded to the consulate/embassy where the applicant last was granted a nonimmigrant visa. However, the G-325A is sent to the consulate only when the applicant was issued a nonimmigrant visa one year ago or less. This limitation is imposed because the Department of State generally destroys the nonimmigrant visa application when the date of issuance is one year old. In these instances, a copy of the G-325A will be sent to the appropriate consulate/embassy for a record check prior to the adjudicative process.

**FBI Name Check**            A name check with Division 4 of the FBI is initiated electronically by the CLAIMS 3 receipt of the I-485. For additional information on FBI Name checks, refer to the memo issued by The Office of the Executive Associate Commissioner titled “Responsibilities of Adjudicators” on November 13, 2002, HQISD 70.

**Expedited Name Check Procedure**    In rare cases an applicant may seek a benefit in less than 60 days from the date of receipt of the I-485 (e.g., age-out filings, DV filings). The Service may take the following steps to expedite the name check through the FBI.

- | Step | Action  |
|------|---|
| 1.1  | Initiate the name check with the FBI using the green copy of the G-325A. If the green copy is not legible, attach a legible copy to the green copy and send both to the FBI. This is an absolute requirement. |
| 1.2  | Annotate the bottom of the G-325A with the Service Center name.   |
| 1.3  | Place a coversheet on top of the G-325A that includes the following information:  |
| 9.   | “Expedite Requested”  |
| 10.  | 3 Letter code of the requesting office  |
| 11.  | Fax number of the requesting office where response should be sent   |
| 12.  | Date the benefit will expire  |
| 1.4  | FedEx or fax the copies to:   |

Field Coordinations Branch  
US Department of Justice

Immigration and Naturalization Service  
800 K Street, 10th Floor  
Washington, DC 20001  
Fax: (202) 514-0197.

1.5 Write "FBI NAME CHECK EXPEDITE" on the outside of the envelope.

**FBI Records Check** Fingerprints are a requirement for every applicant age 14 through 79 years old to determine if they have a criminal history. The U.S. CIS will send the applicant a notice to appear for fingerprinting at an Application Support Center (ASC) located within the jurisdiction of their residence.

Applicants who file prior to their 14th birthday do not require the fingerprint fee. However, if at the time of adjudication an applicant has reached the age of 14, he/she is required to pay the \$50 (effective February 19, 2002) fingerprint fee and must be scheduled for fingerprinting. If you encounter a case like this, the 14 year-old dependent filing should be separated from the rest of the family group for solicitation of the \$50 fee.

Once the fee has been requested, the file will be routed to the appropriate shelf until such time as the file is purged or the fee is received.

**FBI Fingerprint Response** At the time of adjudication, the file will contain a screen print of either FBI Query or the CLAIMS-based MRD Fingerprint Tracking System to indicate the present status of the fingerprint checks. The response is valid for 15 months from the date the FBI processed the fingerprints.

A definitive response from the FBI regarding fingerprint clearances is required before the application can be approved or transferred to the local office for interview. The chart below will assist you in determining how the case should be handled based on the response received from the FBI.

| IF the printout shows...                  | THEN...   |
|---|---|
| The FBI response description as NON-IDENT | Continue processing the I-485 as the fingerprints have cleared.   |
| The FBI response description as IDENT     | Relocate the file once all other evidence is contained in the record, as the applicant must be interviewed. A rap sheet must be included in the file before relocation. If not, send the file to the appropriate POC. |
| The FBI has REJECTED two sets of prints   | Relocate the file once all other evidence is contained in the record, as the District Office will have to adjudicate this case.   |

**Abandonment Denials for Fingerprints** Applicants who do not appear at the ASC for fingerprinting within the time frame allowed them will be denied as we consider this an abandonment of their application for failure to appear. If you encounter a case that

has been previously scheduled and 120 days have lapsed since the first day they were scheduled, you must prepare an abandonment denial.

### Required Initial Evidence

**Reviewing Evidence** The officer is responsible for reviewing all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted. This section lists the acceptable types of initial evidence required in the adjudication of Form I-485.

Regardless of whether the I-485 is to be adjudicated to completion at the Service Center or relocated to another office, the record of proceeding must be complete. If the evidence is missing, the officer must prepare a RFE.

Remember, each piece of evidence must meet the standard of acceptability as noted. If for any reason the evidence is deemed to be unacceptable, the officer must prepare an RFE for acceptable evidence.

The Adjudications portion of the I-485 processing worksheet must be completed by the adjudicating officer for every I-485 adjudicated.

**Record of Proceeding** The record of proceeding within the files should fall as noted below:

#### Left-Hand Side of File (Top to Bottom)

- A. Pending RFE notices and Intent to Deny notices (if applicable)
- B. Resolved RFE notices and Intent to Deny notices (if applicable)
- C. G-28, Notice of Appearance as Attorney or Accredited Representative, if acceptable
- D. I-485 Application
- E. I-485 Supplement A (245(i) cases only)
- D. G-325A, Biographical Information Form
- E. I-864, Affidavit of Support
- F. Evidence of lawful entry (e.g., I-94 card, passport stamp, etc.)
- G. Any supporting documentation
- H. I-693, Medical Examination Report (in sealed envelope)
- I. I-797, Notice of Action
- J. IV Petition
- K. Postmark and return address portion of original envelope

#### Right-Hand Side of File (Top to Bottom)

- A. I-485 Processing Worksheet
- B. G-28, if unacceptable
- C. I-89 (if submitted)
- D. Miscellaneous Correspondence

- Note: The FD-258 is no longer required, although it may be submitted with the application.

Two ADIT Photos      These photos must:

- have a white background, glossy, not retouched and not mounted; and
- show the entire face in 3/4 view showing the right ear and left eye.

The photos should be in a glassine envelope and stapled to the I-485 application.

\*Note: ADIT requirements dictate that ADIT photos be taken within 30 days of the date of filing of the application. Adjudicators should use discretion when determining the recentness of these photos.

Uncertified Health Care Workers      Section 343 of IIRIRA is codified in section 212(a)(5)(C) of the Act as a new ground of inadmissibility for health care workers. In general, grounds listed in section 212(a) are bars to admission to the United States that must be overcome when an alien applies for admission or adjustment of status.

There are several organizations authorized to issue certificates to certain health care professions in order to overcome this section of inadmissibility. Review the chart below to determine which organizations can issue certificates to specific occupations so that applicants meet the requirements spelled out in the interim rules published for health care workers.

There are no exceptions to this requirement. Health care workers who received their degree in the United States or are licensed to practice in the state in which they reside are not exempt from this requirement.

Also note that there are no exceptions to the requirement for all health care workers to obtain visa screen certificates. Even if the applicant received his/her degree from an institution in the United States, the applicant is still required to obtain the visa screen certificate.

#### Authorized Organizations

##### Occupations

Certificates issued after...

Commission on Graduates of Foreign Nursing Schools (CGFNS)      Nurses  
(Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.)

- Occupational Therapists
- Physical Therapists      10/14/98

- 6/29/99
- 6/29/99
- National Board of Certification in Occupational Therapy (NBCOT) ·
- Occupational Therapists · 10/14/98
- 
- Foreign Credentialing Commission on Physical Therapy (FCCPT) · Occupational Therapists
- Physical Therapists · 6/29/99
- 

On January 16, 2001, an interim rule was published in the Federal Register that amended the regulations of the U.S. CIS to enable CGFNS to issue certificates to aliens seeking adjustment of status based on the following occupations:

- Speech Language Pathologists and audiologists
- Medical Technologists
- Medical Technicians
- Physician Assistants
- 

· This rule is effective on March 19, 2001.

Form G-325A A G-325A, Biographical Information Form is required initial evidence for all applicants 14-79 years of age. This form provides additional biographical information to that on the I-485. A comparison of the information provided on the G-325A vs. that provided on the I-485 and in the record of proceeding can provide valuable information to the adjudications officer. Follow the steps below when reviewing the G-325A.

Step Action

- 2.1 Verify the G-325A is completed and properly signed by the I-485 applicant.
- 2.2 Verify the information on the G-325A corresponds with the I-485 and the information provided in the record.

IF there is... THEN...

No discrepancy Continue with your adjudication.

A discrepancy Prepare a RFE or Intent to Deny to sort out the discrepancy.

Evidence of Admission/ Status If the applicant is claiming admission to the U.S. the record must contain evidence of inspection and admission or parole. Such evidence may include, but is not limited to:

- I-94,

- Passport stamp,
- I-797 nonimmigrant approval notice,
- NIIS or other U.S. CIS record.

If the evidence is not contained in the record of proceeding, you may need to initiate a Request for Evidence [for eligibility under 245(k) or 245(a)] or an Intent to Deny [for eligibility under 245(i)] based upon the applicant's basis of eligibility. (See 245 of the INA in this SOP)

Public Charge Pursuant to section 212(a)(4) of the Act, a determination as to the likelihood of any applicant to become a public charge must be made in all cases. A "public charge" is defined as someone who cannot support him or herself, and may therefore become dependent on the adopted country (i.e., the United States).

Some applicants will file the I-864 even if they are not required to submit it. An employment-based applicant who is not required to file the I-864 must establish that s/he is capable of supporting him/herself without the assistance of a sponsor. An I-864 is not enforceable unless the applicant is required to file it.

Most adjustment of status applicants must be able to demonstrate that they will not become a public charge. Evidence to this effect may include, but is not limited to:

- Form I-864, Affidavit of Support (or Form I-134, Affidavit of Support);
- W-2 forms;
- Bank statements;
- Letters of employment.

Effective December 19, 1997, certain adjustment of status applicants must submit an I-864, Affidavit of Support, as part of their required initial evidence to demonstrate that they are not likely to become a "public charge." The I-864 is the document that indicates that the petitioner can financially support the family member that has filed an I-485.

- All applicants filing family-based I-485s must complete the I-864. Applicants filing employment-based I-485s for whom the petitioning employer is a relative or applicants of whom a relative owns a significant interest (5% or more) in the petitioning entity also must complete the I-864.

Asylees, refugees and self-petitioning widow/ers, battered spouses and children are exempt from the requirement to submit an I-864. The public charge grounds of inadmissibility do not apply to asylees or refugees. Applicants filing based on HRIFA are not required to submit the I-864 either.

- The adjudicator must determine from the I-864 guidelines whether the affidavit of support is acceptable. If the I-864 is acceptable, the I-485 can be processed as usual. If the I-864 is not acceptable the I-485 must be denied. For further guidance in reviewing the I-864, see Appendix E.

Evidence of Birth/ Birth Certificate The applicant must submit evidence of their place of birth for purposes of chargeability, identity and derivative relationship. The most common evidence is the birth certificate. The birth certificate must:

- be issued by a recognized civil authority from the applicant's country of birth,
- be timely registered,
- show date and place of birth, and
- show the names of both parents.

Note: If the document is written in another language, the applicant must include a certified English translation.

Verify the data on the I-485 with information from the birth certificate. If the name or date of birth is not complete or correct, you must make corrections to the I-485 with red ink and update CLAIMS with the correct data.

There is other acceptable evidence of the place of birth for an applicant. If you do not have, or cannot get, the applicant's birth certificate, the following documents may be acceptable as secondary evidence:

- the biographical data pages of the applicant's passport;
- baptismal certificates; or
- affidavits (these may be substituted for certain countries, see FAM when in question).

This evidence can establish chargeability, identity and derivative relationships for dependent spouse and children.

Form I-693 The Form I-693, Medical Examination for Aliens Seeking Adjustment of Status, must:

- Be received in a sealed envelope;
- Be in original form, completed and signed by a designated civil surgeon and the applicant; and
- Have been executed no more than one year prior to the date of filing the I-485. (In exceptional cases, where the adjustment application has been pending over one year, the I-693 may still be considered valid as long as no Class A or B condition is indicated.)

All applicants must submit this evidence, regardless of age. However, only an applicant age 2 and older must have the Tuberculin Skin Test conducted per 42 CFR 34.3(b)(2). Furthermore, only applicants that are age 15 and older must have the Serologic Tests for Syphilis and HIV.

If the filing is based upon residence in U.S. since 1/1/72 or the applicant is a K-1 nonimmigrant who is adjusting status, a new medical examination is not required, as long as a medical screening has been performed as part of the processing of their NIV. However, if the K-1/K-2 did not meet the vaccination requirements overseas, he/she will need to submit the supplement.

· A Form I-693 and supplement are not required if the applicant was medically examined prior to, and as a condition of, the issuance of the K non-immigrant visa. (8 CFR 245.5)

NIW Physicians do not submit the I-693 initially. It will be submitted with the second set of required documents.

#### Asylees/

Refugees Evidence Requirements Asylees are required to submit the Form I-693 and supplement per 8 CFR 209.2(d) except those applicants who had medical examinations in Guam. Adjusting asylees who are Iraqi Kurds processed through Guam in Operation Pacific Haven may submit a copy of the medical examination performed in Guam rather than Form I-693. Iraqi Kurds are required to submit the supplement to the I-693. Asylees are not required to submit this evidence until requested by U.S. CIS.

Adjusting refugees are not required to submit Form I-693, but they are required to submit vaccination supplements. The supplement must be completed by a designated civil surgeon, or by a state/local health department.

#### Determining

I-693 Acceptability There are four parts to the medical examination. The chart below takes you from top to bottom through the I-693. It will assist you in determining if the I-693 is acceptable.

#### Step Action

3.1 Has the physician annotated the block for “No apparent defect, disease, or disability?”

IF... THEN...

Yes Go to step 3.2.

No, and Class A condition is annotated The applicant may require a waiver, pursuant to 8 CFR 212(a)(1). Go to Step 3.2.

No, and Class B condition is annotated Be sure the condition will not affect the applicant’s ability to earn a living if the public charge issue applies, and no other means of support is demonstrated. If so, relocate to the District Office. If not, go to step 3.2.

The physician did not fill in the blank and no Class A or Class B condition is annotated Go to step 3.2.

Determining I-693 Acceptability, cont'd.

Step Action

3.2 Has the physician annotated that there was “no reaction” to the Tuberculin Skin Test?

IF... THEN...

The reaction was normal or <5 mm Go to step 3.3.

The reaction is >5mm, look for the results of the chest x-ray. Go to step 3.3, if the results are normal.

RFE for a chest x-ray and the results of this test.

Relocate the file to the District Office if the results are other than normal.

The physician did not fill in the blank You must RFE for evidence that this test was completed and for the results.

This test can be performed on a pregnant applicant. However, if the test is positive, the civil surgeon will not perform an x-ray. Therefore, you should hold the case for 60 days after the expected delivery date.

3.3 Has the physician annotated that the Serologic Test for Syphilis is “non-reactive?”

IF... THEN...

Yes Go to step 3.4.

No, reactive There must be evidence that the applicant has completed treatment. If not, relocate the file to the District Office.

The physician did not fill in the blank You must RFE for evidence that this test was completed and for the results.

Determining I-693 Acceptability, cont'd.

Step Action

3.4 Has the physician annotated that the Serologic Test for HIV Antibody is non-reactive?

IF... THEN...

Yes See the section regarding immunization requirements.

No, reactive A waiver is required. Relocate the case to the District Office.

The physician did not fill in the blank that this test was completed and for the results.

You must RFE for evidence

**Immunization Requirement** Immunizations are required for all applicants regardless of age. Under section 212(a)(1)(A)(ii) of the Act, the alien must present documentation of vaccination against mumps, measles, rubella, polio, tetanus, and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices (ACIP). Because ACIP guidelines also include the varicella, haemophilus influenza type B, and pneumococcal vaccines, they will be required in addition to those vaccines specifically named in the statute.

The documentary requirements differ depending on the date the I-693 was signed. The chart below will assist you in determining acceptability of the I-693. If the I-693 has been submitted but is not complete (for example a test has not been performed or the Supplement to the I-693 was not submitted), return the original I-693 to the applicant in a sealed envelope with a Request for Further Evidence to correct the deficiency.

**Immunization Requirement, cont'd.** If there is a problem with the I-693, the officer should leave it loose in the file and flag it so the clerk will make a copy of it before returning the original to the applicant.

IF the I-693 was signed... AND the physician indicated that the applicant is... THEN you must...

On or after 9/30/96 but prior to 5/1/97 . Either "current for recommended age-specific immunizations" or did not specify . Accept the I-693.

. "Not current for recommended age-specific immunizations"  
Request the Supplemental Form to I-693.

After 5/1/97

(The Supplemental Form to I-693 is always required. If the Supplemental Form is not included in the record, you must request it.) . Either "current" or "not" for "recommended age-specific immunizations" See guidelines for acceptability of the Supplemental Form to I-693.

**Supplemental Form to I-693 – Section 2** . Section 2 of the supplemental form is the "Immunization Record."

**Vaccine History Transferred From a Written Record.** A civil surgeon will use the four columns under this section to record the alien's vaccination history.

Vaccine Given. When the alien lacks a certain vaccine, a civil surgeon may administer that vaccine to the alien, or the alien may receive that vaccine from his or her own private physician. Civil surgeons will complete this “Vaccine Given” block to indicate the date the missing vaccine was administered.

Completed Series or Fully Immune (Check if YES or date of lab test if immune). Not every line will require an entry.

- For example, there are three lines for measles, mumps, and rubella. Sometimes one vaccination is given for measles and rubella together or for all three together. In this case, a single entry may be made for the combined vaccinations.

- If the answer for each vaccine requirement is “yes” or a date is written indicating the lab test if immune, the alien is in compliance and a civil surgeon will check the appropriate box in the “Results” section in item #3 of the supplement.

Blanket Waivers Under Section 212(g)(2)(A) and (B) of the Act Blanket waivers have been authorized under section 212(g)(2)(A) and (B) of the Act in case where;

- The alien presents documents for those vaccines that were initially lacking; or
- A civil surgeon or panel physician certifies that the vaccination would not be medically appropriate.

Neither a form nor a fee is required

In view of these procedures, Service officers are not likely to encounter many blanket waivers under section 212(g)(2)(A) of the Act. This is because a civil surgeon will endorse the Supplemental to Form I-693 to reflect that all vaccination records have been reviewed and that the alien:

- Is in full compliance; or
- Lacks certain vaccines because it is not medically appropriate to have them; or
- Has indicated that noncompliance is because of religious/moral reasons.

Missing Vaccination is Not Medically Appropriate CDC has determined that a particular vaccination would not be medically appropriate in the following four scenarios:

- The vaccine is not recommended by the ACIP for the alien’s specific age group;
- The vaccine is medically contraindicated (e.g., allergies to eggs, yeast, hypersensitivity to prior vaccines, and pregnancy, among other medical reasons);

- The alien has taken the initial vaccine but is unable to complete the entire series within a reasonable period of time (e.g., the recommended series of hepatitis vaccines may take as long as six month to complete);
- The medical examination is not being performed during the flu season [(this will only apply to influenza vaccine, as it is generally only given during the fall (flu season)].

Note: This guidance with respect to “not medically appropriate” applies only to medical exams performed by civil surgeons in the United States. CDC is providing separate instructions to panel physicians abroad, on the special situations encountered overseas.

The fourth column in section 2 of the Supplemental Form to I-693 is the “Waiver(s) To Be Requested From The U.S. CIS” section, which entitled “Blanket/ Not Medically Appropriate.” There are four separate columns in this block “ Not appropriate ages,” “Contraindication,” “ Insufficient time interval,” and “ Not fall (flu) season.”

If a civil surgeon checks any of these four columns, adjudicators may grant the alien a waiver for the applicable vaccination under section 212 (g)(2)(B) of the Act. Service adjudicators should note that a civil surgeon would also check the appropriate box in the “ Results” section in item #3 of the Supplemental Form to I-693. This waiver grant is recorded in the remarks section on copy 3 of the I-181 as “Waiver Granted 212(g)(2)(B).”

Supplemental Form to I-693 – Section 3 Civil surgeons must complete the “Results” section of the supplement. If a civil surgeon has medically cleared the alien for adjustment of status, the adjustment application may be approved if the alien is otherwise admissible.

If, however, a civil surgeon specifically notes on Form I-693 that the alien lacks the required vaccines, the alien would not be medically cleared for adjustment of status until all necessary vaccinations have been documented on a Supplemental Form to I-693.

Acceptability of the Supplemental Form I-693 The chart below will assist you in determining the acceptability of the Supplemental Form to I-693. This chart makes reference to Section #3 - Results on the Supplemental Form.

IF... THEN...

The first block is checked, The I-693 requirement has been met.

The second block is checked, Review for additional development and relocate I-485 if required.

The third block is checked, The I-693 requirement has been met.

The fourth block is checked, Review for additional development and relocate I-485 if required.

No blocks are checked and the rest of the Form is complete, meaning the civil surgeon has annotated each row of the form with a check mark or date, The I-693 requirement has been met.

No blocks are checked and the rest of the Form is not complete, You must RFE once to try and obtain a completed form before relocating the I-485 to the District Office.

Supplemental Form to the I-693 for Pregnant Applicants If the applicant is pregnant at the time you are adjudicating the I-485, see below:

IF... THEN...

The applicant's immunization requirements are waived by the physician, and the form is signed Proceed with adjudication

The applicant's immunization requirements are not waived, but the doctor has signed the supplement and indicated that the applicant is pregnant RFE to the applicant

The applicant's immunization requirements were not waived and the doctor has not signed the supplement RFE to the applicant to obtain a complete form

Form I-508 Form I-508, Waiver of Rights, Privileges, Exemptions, and Immunities, must be submitted for any applicant who was admitted as an A, E, or G nonimmigrant and has not changed status to another nonimmigrant classification. This form must be submitted regardless of whether the applicant continues to maintain A, E, or G status. The applicant must submit a complete original form that is properly signed.

Note: French nationals must submit an original I-508F that is completed and properly signed.

The four copies must be disseminated as follows:

I-508 Action

File copy Staple to the I-485 application

CO Index copy Send on a buck slip to "CO Index Section"

State Dept. copy Send to: Department of State Visa Office  
Washington, DC 20520

IRS copy Send to: Internal Revenue Service Center

P.O. Box 245

Bensalem, PA 19020

Form I-566 All applicants who are currently maintaining A or G status must submit a completed Form I-566 (Inter-Agency Record of Individual Requesting Change/Adjustment to, or from, A or G Status or Requesting A or G Dependent

Employment Authorization). The applicant must submit a complete original form that is properly signed.

Upon final adjudication of the I-485, the officer must complete Part G, Section one and two of the I-566 then route as follows:

Step Action

- 4.1 Write your CAO ID# in the Examiner's Name block.
- 4.2 Write the INFO phone number for the Service Center in the phone block.
- 4.3 Write "3 letter office code" in the U.S. CIS Office block.
- 4.4 Write the I-485 receipt number in the file block.
- 4.5 The second section of Part G must be completed.

IF the applicant was previously a/an... THEN check the block for...  
AND send copy 2 to the...

|                |          |                                    |
|----------------|----------|------------------------------------|
| A nonimmigrant | Protocol | DOS/Office of Protocol             |
| G nonimmigrant | USUN     | U.S. Mission To The United Nations |

- 4.6 Copy 1 should be put directly under the I-485 application.

Two Year Foreign Residence Requirement Any alien who has or had status of "J" and who is subject to the foreign residence requirement of section 212(e), may not adjust status unless he or she has fulfilled the two-year foreign residence requirement or has been granted a waiver of such requirement per Title 8 CFR Part 245.1(c)(2).

Pub. L. 103-416 & PL 104-208 and 8 CFR 212.7(c)(9):

- Any applicant who was admitted as a J-1 to participate in an exchange program of graduate medical education may apply for a waiver of the two-year foreign residency requirement based on a request for a waiver from an interested State Government Agency or Federal Agency (or its equivalent) for the purpose of practicing medicine. If granted, such a waiver shall be subject to the terms and conditions imposed under section 214(l) of the Act.

- The foreign medical school graduate must agree to commence employment for the health care facility specified in the waiver application within 90 days under PL 103-416/PL 104-208. The foreign medical school graduate may only fulfill the requisite 3-year employment contract as an H-1B nonimmigrant. An applicant who receives a waiver under this section of law, and changes his or her nonimmigrant classification from J-1 to H-1B may not apply for permanent residence unless he/she has fulfilled the 3-year employment contract with the health care facility in the specified HHS designated shortage area named in the waiver application. PL103-416 has a twenty per state limitation. There is no limitation on the number of waivers issued by Federal Agencies.

- A foreign medical school graduate who fails to meet the terms and conditions imposed on the waiver under section 214(l) of the Act will once again become subject to the 2-year requirement of section 212(e) of the Act.

Exceptions:

- 1) The Department of Veterans Affairs (VA): The VA can also make the request as an interested Federal Agency. If the VA requests the waiver in order for the applicant to practice medicine with the VA, the applicant must practice medicine for three years with the VA; however, he or she does not need to do so in a medical shortage area.
- 2) Extenuating Circumstances: Further, there may be extenuating circumstances whereby the alien may not be able to fulfill the 3-year contractual obligation; however, the alien will be required to serve the balance of the 3-year period with another qualifying health care facility or employer. Refer to the guidance in memorandum issued October 4, 1999, by the Office of Field Operations entitled Waiver of the Two-Year Foreign Residence Requirement under section 212(e) of the Immigration and Nationality Act (the Act).

Two Year Foreign Residence Requirement (cont'd.) Eligibility to File for Adjustment of Status:

- To be eligible to file Form I-485, these applicants must have served at least three years under the terms and conditions of the waiver request granted by the interested Federal agency or State Department of Public Health prior to the filing of the I-485. If the terms and conditions of the waiver are not fulfilled, the applicant again becomes subject to the restrictions of 212(e). [See 8 CFR 212.7(c)(9)(iv) and 8 CFR 245.1(c)(2)]

Effective Date:

- The IIRIRA amendments to section 212(e) of the Act became effective on September 30, 1996. The reasoning in Matter of Soraino compels the Service to adjudicate the waiver according to the law in effect at the time of adjudication. With this in mind, foreign medical school graduates who were granted a waiver of the 2-year foreign residency requirement of 212(e) by the Service under PL 103-416 or PL 104-208 on or after September 30, 1996, are subject to the restrictions of section 214(l) of the Act. This is regardless of the date that the waiver request was initiated by the interested Federal Agency or State Department of Public Health. [Refer to memorandum issued by the Office of Field Operations titled Waiver of the Two-Year Foreign Residence Requirement under section 212(e) of the Immigration and Nationality Act (the Act), October 4, 1999.]

- Waivers approved on or after September 30, 1996, for a foreign medical school graduate to provide medical care to an interested State or Federal government agency or the VA that do not state "PL 104-208" or "PL 103-416" will still carry the 214(l) restriction. The Form I-485 should be reviewed in terms of whether the 3-year medical service requirement was fulfilled prior to the date of filing. If the medical service requirement was not met, then a consultation with the Department of State Waiver Review office may be required before the application is denied. The applicant would not be eligible for adjustment of status unless the 3-year requirement was fulfilled before the I-485 was filed.

Two Year Foreign Residence Requirement (cont'd.) Exception – I-485 Applicants subject to 214(l) who are beneficiaries of a petition under section 203(b)(2)(B)(ii) of the Act:

- Service Centers are directed to accept the filing of an adjustment of status application from an alien physician who is the beneficiary of the approved Form I-140 with an approved NIW request under section 203(b)(2)(B)(ii) of the Act, even if the alien physician received a waiver of the Section 212(e) foreign residence requirement under section 214(l) of the Act and who is still fulfilling a three-year medical service requirement in H-1B status pursuant to section 214(l) of the Act. The Service Center may not approve the adjustment of status application, however, until the alien physician has fully complied with the service requirements for both the waiver under section 214(l) and the NIW under section 203(b)(2)(B)(ii). [Refer to the guidance in memorandum issued October 1, 2001, by the Office of Field Operations, National Interest Waivers for Second Preference Employment-Based Immigrant Physicians Serving in Medically Underserved Areas or at Veterans Affairs Facilities and Section 214(l)(2)(B) of the Act, HQ 70-6.1.3-P.]

Other 212(e) waiver provisions:

- If it is determined that the alien is subject to section 212(e), a request for evidence will be prepared requesting evidence that the applicant has fulfilled or received a waiver of this requirement as of the date the I-485 was filed. If the applicant cannot establish that the waiver was obtained as of the date of filing of the I-485, the I-485 must be denied.

- Form I-612 cannot be submitted concurrently with the I-485; however, if the USIA no objection letter is submitted, the Center will accept it and work it. If the I-485 is accompanied by an approval notice for Form I-612, the applicant has met the waiver requirement. If the evidence is not provided, prepare a RFE.

Note: Effective February 27, 2002, the U.S. Department of Agriculture (USDA) will no longer sponsor the issuance of H-1B and J-1 visas for foreign research scientists, nor will the USDA serve as an Interested Government Agency in submitting recommendations for waiver of the two-year foreign residence requirement for foreign physicians wishing to remain in the U.S. [Letter from USDA Deputy Secretary James R. Moseley to U.S. CIS Commissioner James W. Ziglar received February 27, 2002.]

**Approved Underlying Immigrant Visa Petition**      The underlying immigrant visa petition must be approved prior to adjustment of status. The file should contain the underlying approved visa petition (Form I-130, I-140, I-360 or I-526). The I-485 may be adjudicated based on the I-797 Approval Notice if the Service was unable to obtain the petition after a diligent search was made.

**Ability to Pay** Any petition filed by or for an employment-based immigrant who requires an offer of employment must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage. The petitioner must demonstrate this

ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. (See 8 CFR 204.5(g)(2))

For all E12, E13, E31, E32, and EW3 immigrants, an employer in the United States must be seeking the immigrant's services. This requirement also applies to E21 immigrants (except in national interest waiver cases). The prospective employer must establish that, at the time of filing the petition (or of filing the ETA-750, for individual labor certification cases), the petitioner had the ability to pay the immigrant the proffered salary or wage and that this ability to pay continues to exist up to the time that the immigrant acquires permanent residence. If the alien is using the portability provisions of AC21 106(c), the adjudicator must determine that both the ported labor certification and the ported I-140 are still valid under the current employer, especially in regards to the continual payment of the prevailing wage, similar occupation classification, and the employer's ability to pay the prevailing wage.

No job offer is required for E11 immigrants, or for E21 immigrants who obtain a national interest waiver. Ability to pay is not required in these cases. For more information on this topic, see "Ability to Pay" in Section 8: I-485 SOP Supplements.

Step    Action

5.1    Review for evidence of ability to pay.

5.2    Determine whether the petitioner has the ability to pay the proffered wage.

#### Interview Waiver Criteria

**General Information** Pursuant to 8CFR 245.6 each applicant for adjustment of status shall be interviewed by an immigration officer. This interview may be waived if the Service determines that an interview is unnecessary. The interview waiver criteria are standards set at the national level.

**Employment-based Criteria** The adjudicating officer must determine whether the employment-based I-485 meets waiver of interview criteria set forth below.

- Employment-based:

- The principal applicant is employed by the same petitioner who submitted the approved underlying employment-based visa petition.

- The principal applicant has been interviewed in the course of an investigation or field examination, and the adjudicating examiner determines that further interview of the applicant is unnecessary.

- The principal applicant has been approved as an alien of extraordinary ability or alien of exceptional ability and is otherwise eligible for adjustment of status.
- The principal applicant has been approved as an outstanding professor or researcher, or a multinational executive/manager and has a continuing offer of employment from the same petitioner who submitted the underlying approved petition.
- Adjustment applicants who received national interest waivers based on performing primary medical care to a medically under-served area must demonstrate that they intend to continue according to the terms and conditions of the underlying petition.
- Other:
- Sufficient evidence is contained in the record to support a denial of the adjustment of status application. For example, if an I-485 that should have been rejected at Visa Screening/U.S. CIS Review was accepted in error, a denial would be processed by the adjudicating officer.

Family-based Criteria·      Family-based:

- The applicant will be classified as an IR-7 or IR-0 (unmarried child/parent of USC).
- 
- If you receive a family group that contains an IR-1 and IR-2 filing, keep the cases together and relocate them to the District Office.

**Deviation From Interview Waiver Criteria** The above interview waiver criteria may be modified by individual officers in response to developing local circumstances and regional concerns, which would dictate the need for further restrictions.

On a case-by-case basis, an officer may choose to relocate an I-485 for interview if he/she deems it necessary. Applications require a relocation if the officer determines:

- A need for validation of identity;
- A need for validation of legal status;
- Questionable admissibility and/or qualifications;
- Apparent fraud;
- A second filing;
- An applicant with fingerprint rejected twice;
- An applicant with medical condition class A or B;
- The A-file cannot be located at the time of adjudication.

I-485 Processing Procedures

**Overview** Once you have made a decision about the I-485, you will need to process the application to completion. This chapter will take you through the process for each decision.

**In This Chapter** This chapter discusses the following topics.

**Topic Page**

|                               |        |
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| Processing Your Decision      | 7-4.3  |
| · Visa Hold                   | 7-4.3  |
| · I-485 Recommended Approval  | 7-4.3  |
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**Application Completion**

**In General** Regardless of the decision made on the I-485, the face of the application must have certain blocks filled out by the officer. These blocks must be filled out before the file is routed beyond the officer's desk.

**Sections to Complete on the I-485** At the time of initial review, the officer must complete the following blocks of the I-485. Follow the steps below.

**Step Action**

1.1 Verify Part 2. Application Type on the I-485 to ensure the applicant has chosen the correct type of filing. If he/she has chosen the wrong type of filing, make a correction to the I-485 using red ink and follow the steps below to update CLAIMS.

**Step Action**

- 1.1A Select “Adjudicate a Case.”
- 1.1B Find “Part 2” on the initial receipt screen and press <Insert> twice to view the option types.
- 1.1C Select the correct type of filing and hit “enter.”
- 1.1D Hit “F4” to save.

1.2 Locate the block labeled “Section of Law” and mark the appropriate block.

IF the applicant is filing as a/an... THEN mark the section of law labeled...

|                           |                                 |
|---------------------------|---------------------------------|
| Asylee/Refugee            | Sec. 209(a), INA – Refugee      |
| Sec. 209(b), INA – Asylee |                                 |
| Cubans/HRIFA              | Annotate appropriate Public Law |
| all other categories      | Sec. 245, INA                   |

1.3 Locate the block labeled “Country Chargeable” and write the country of the applicant’s birth.

\*\*See the rules regarding country of chargeability for further guidance when the visa is not available for the applicant.

1.4 Locate the block labeled “Eligibility Under Sec. 245.” Check the appropriate block.

1.5 Locate the block labeled “Preference” and write the applicant’s adjustment classification and priority date.

### Processing Your Decision

**In General** This section is a guide for processing the decision you make when adjudicating the I-485.

**Visa Hold** If the applicant of the I-485 meets interview waiver criteria and all of the required evidence is acceptable and present but the visa is no longer immediately available due to processing time between filing and adjudication of the application, the case will be placed in a processing hold. If you place a hold on a principal applicant, the same must be done for each dependent. To do this, follow the steps below.

### Step Action

- 2.1 Check off “N” under “Visa Availability Confirmed” in the “Adjudication” section of the I-485 Processing Worksheet and initial and date the same.
- 2.2 Update CLAIMS by accessing “Adjudicate a Case” and wand in the barcode of the I-485.

- 2.3 Hit “F10” and select “Case Review,” then “Place in Suspense” and lastly, “Processing Hold Placed.”
- 2.4 Hit “Esc” three times to exit this form.
- 2.5 Route the file(s) to the Visa Hold Shelf.

**I-485 Recommended Approval** If the applicant of the I-485 is immediately eligible for a visa, all the required evidence is acceptable and meets the interview waiver criteria, and you have the A-file, you may recommend approval.

\*Note: If the A-file cannot be located at the time of adjudication, the officer should make an additional attempt to locate the file. If the A-file cannot be located after one attempt, the file must be relocated to the district office and cannot be approved. (Cases cannot be adjudicated using T-files alone.)

IRs that are adjudicated to completion (IR-0 and IR-7), do not require that a visa number be allocated. Refugees and HRIFA applicants do not require a visa number either. Therefore, you should refer to the section regarding Approvals.

**I-485 Recommended Approval, cont’d.** To recommend approval on an I-485, follow the steps below.

- | Step | Action  |
|------|---|
| 3.1  | Annotate the I-485 Processing Worksheet by initialing and dating the “Recommend Approval” block.  |
| 3.2  | Drop off the file on the shelf labeled “Visa Requests” in the Workload Distribution sort area. (If U.S. CIS clerical or the contractor does not perform this function, the adjudicating officer can request the visa and continue on to the next step.) |

**Approval** After you have recommended approval and the visa has been allocated, the I-485 is ready to be approved. To do this, follow the steps below.

- | Step | Action  |
|------|---|
| 4.1  | Access “Adjudicate a Case” in CLAIMS and wand in the barcode of the I-485 with which you are working.   |
| 4.2  | Due to the electronic fingerprint scheduler, if the fingerprints have not been updated in CLAIMS, follow the steps below to remove the supervisory hold placed on the case. |

- | Step | Action   |
|------|--|
| 4.2A | Verify the FBI results are “Non-Ident.” If not, the case may not be able to be approved. |
| 4.2B | Press <F10> and select “Case Review.”  |
| 4.2C | Select “Lift Suspense” and then select “Remove Adjudication Hold.”                       |
| 4.2D | Remove Supervisory Hold.   |
- 4.3 Delete the “Expires on” date and the “Date of arrival,” if any, on the initial receipt screen and type in the date of approval in the “Date of arrival” field.

Approval (continued)

- | Step | Action  |
|------|---|
| 4.4  | Highlight the “I-89 provided?” field and hit “Enter” twice to complete the I-89 information. Complete the following fields: <ul style="list-style-type: none"> <li>· Mother’s/Father’s first name – type “unknown” if you are unsure</li> <li>· Date of this I-89 - date you are updating</li> <li>· POE - type “3 letter office code”</li> <li>· Card Type - should always be “A1”</li> <li>· Transaction Type - should always be “A1”</li> <li>· Class - type their adjustment classification</li> <li>· ADM/ADJ date - date you approved the application</li> <li>· CR EXP Date - delete this date if one is there</li> <li>· Sex – type “M” or “F”</li> <li>· Fingerprint waiver - (Y or N) Y for children under 14 years of age and adults 79 years of age older</li> <li>· Signature waiver - (Y or N) Y for children under 14 years of age and adults 79 years of age and older</li> <li>· LOC – “3 letter office code”</li> </ul> |
| 4.5  | Hit “F4” to save this information.  |
| 4.6  | Hit “F10” and select “Approve the Case” and then select “Approve - order notice” to access the approval screen.   |
| 4.7  | Select the appropriate approval phrase. Follow these guidelines to determine which phrase to use. (If the applicant is under 14 or over 79, proceed to the next step.)  |

IF the applicant is between the ages of 14 and 79 and... THEN...

An I-89 is not included in the file      Select “ADIT Process Required.”

There is an I-89 already included in the file      Select “No ADIT Process Required.”

## Approval (continued)

- | Step | Action  |
|------|---|
| 4.8  | Complete the following fields: <ul style="list-style-type: none"><li>· Section of Law – type “05,” or appropriate section</li><li>· Decision date – type the date the decision to approve as an immigrant was made</li><li>· Adm/Adj date</li><li>· Country Chargeable</li><li>· Class - type the adjustment classification</li><li>· Labor Certification (Y/N)</li><li>· Visa Allocated? (Y/N) – type “Y”</li><li>· Country of Citizenship</li><li>· Country of Last Residence - verify this from G-325A</li><li>· Priority - type the priority date</li><li>· Job Code</li><li>· Send to Clerical – always type “N”</li></ul> |
| 4.9  | Hit “F4” to save. You will be asked if you want to save your changes. Select “Yes.” Then you will be asked if you want to change case status. Select “Yes.”   |
| 4.10 | Hit “Esc” twice and exit this form.   |
| 4.11 | Annotate the Action block of the I-485 with the approval stamp and sign it with your full name.   |
| 4.12 | Remove the top, colored portion of the SWIP label to expose the transparent label below.  |
| 4.13 | Print I-181s (see Generating the I-181 below for instructions).   |
| 4.14 | If the I-89 is required, route the file to the “I-89 Hold” shelf.   |

**Generating the I-181** The I-181, Memorandum of Creation of Record of Lawful Permanent Residence, is the document you will create to serve three purposes:

- Creates a record of lawful permanent residence (copy 1)
- Initiates records checks (copy 2) \*not used at Service Centers, discard it
- Provides data to the ICPS staff to produce the I-551 (copy 3)

The I-181 will be printed only at the time of recommended relocation or final approval. Follow the steps below to generate the I-181.

NOTE: Due to resource constraints, I-181’s will be printed after data entry at NSC.

- | Step | Action                                       |
|------|--|
| 5.1  | Access “Claims Program Options” in CLAIMS.   |
| 5.2  | Select “Exams Options,” by pressing “Enter.” |

- 5.3 Select "I-181s," by pressing "Enter."
- 5.4 Wand in the receipt number of the I-485 with which you are working (several cases can be wanded at this point).
- 5.5 Hit "Alt+F3" to specify the copies you wish to print. After you make your selections and are ready to print, hit "Escape."

IF the I-485 is to be... THEN you will need...  
 Approved Copy 1  
 Recommended for relocation Copies 1 and 3 – discard copy 2

- 5.6 Hit "F4" to print the I-181(s).
- 5.7 Review the data on the Form I-181 for accuracy and make any necessary corrections. The data must be identical to that in CLAIMS and CIS.
- 5.8 Stamp and sign the file copy of the I-181 with your approval stamp, place it on top of the record of proceeding and place a pink cover sheet, Form M-175, on top. (Relocates are not stamped.)

Request for Evidence (RFE) There are three different updates in CLAIMS when requesting evidence:

- Initial evidence - required evidence that is missing at the time of the I-485 filing.
- Additional evidence - required evidence that does not meet acceptability standards.
- Initial and Additional evidence - a combination of both of the above.

Once you have decided that you need more evidence to support the I-485, you must prepare a request for evidence. To do this, follow the steps below.

Step Action

- 6.1 Initial and date the I-485 Processing Worksheet in the block next to "RFE."
- 6.2 On the reverse side of the worksheet, annotate the standard call-ups and/or text that the clerk must include in the notice to the applicant.

If you have prepared your own request for evidence on the LAN, indicate the name of the document to be retrieved on the reverse side of the worksheet.

NOTE: Some Centers may require supervisory review prior to referral for clerical processing.

NOTE: Officers may complete the notice themselves.

- 6.3 Access "Adjudicate a Case" in CLAIMS and update by following the steps below.

Step Action  
 6.3A Wand in the barcode on the file/application.  
 6.3B Hit "F10."  
 6.3C Select "Case Review."

- 6.3D Select "Place in Suspense."
- 6.3E Select appropriate phrase to indicate evidence ordered.
- 6.3F Hit "Esc" until you are asked to "Exit."

6.4 Route the file appropriately.

6.5 Once the RFE is completed, access batch case status update in CLAIMS to indicate that the notice was sent.

**Recommended Relocation** Once you have decided that the I-485 does not meet interview waiver criteria, you will need to relocate the file to the appropriate District Office. To do this, follow the steps below.

Note: If additional evidence is required, it will be requested at the district office.

However, if a RFE has already been issued, relocate the file once a response is received.

**Step Action**

7.1 Initial and date the I-485 Processing Worksheet next to "Relocate I-485 to \_\_\_\_\_" and fill in the blank with the appropriate 3 letter district office code.

7.2 Complete a "Case Relocation Memorandum" to related District Office indicating the reason for the relocation. (This memo has been attached as a separate document.)

Place the memo on the right side of the file, above the Processing Worksheet. Some Centers may require a supervisory review of these notices. Follow your Service Center's guidance, and, if necessary, forward to an SCAO for review before relocating the file.

7.3 Print the I-181's. (These I-181's are not stamped by the CAO.)

**Step Action**

7.3A Select the "Print I-181" option from the "Exams Options" menu in CLAIMS.

7.3B Wand in the barcode on the file(s) you are relocating.

7.3C Hit "F4" to print. Three copies of the I-181 will be generated.

Copies 1 and 3 should be left loose inside the file under the relocation worksheet filled out in Step 7.2 above. Copy 2 may be recycled.

7.4 Access "Relocate Update" in CLAIMS. (If this function is performed by the contractor, route the file appropriately.)

**Step Action: U.S. CIS/Contractor**

7.4A Select "Adjudicate a Case."

7.4B Case Movement: select "relocate out."

7.4C Choose the appropriate text: Transfer to local office for standard interview.

7.4D Supervisory override will appear. The CAO or SCAO will enter their override password.

7.4E Transfer notice will automatically be generated by CLAIMS.

7.4F RAFACS the file to Records for transfer.

7.5 Drop off the file in the crate labeled “Relocates.”

Denial Once you have decided that the I-485 must be denied, you must compose the denial. Then, you must follow the steps below.

Step Action

8.1 Initial and date the I-485 Processing Worksheet next to the “Denial” block.

8.2 On the reverse side of the worksheet, annotate the denial standard and standard call-ups and/or text that the clerk must include in the denial notice to the applicant. If you have prepared your own denial on the LAN, indicate the name of the document to be retrieved on the reverse side of the worksheet.

8.3 Access “Adjudicate a Case” in CLAIMS and update by following the steps below.

Step Action

8.3A Wand in the barcode on the file/application.

8.3B Hit “F10.”

8.3C Select “Deny the Case.”

8.3D Select “Order Denial Notice.”

8.3E The system will ask you if you want to “Change Case Status.”

Select “Yes.”

8.4 Once you have denied the case, the system automatically places a supervisory hold on it. Therefore you must lift that hold. To do this, follow the steps below.

Note: Some Centers require supervisory review of denials. Follow local guidelines.

Step Action

8.4A Hit “Alt+F8.”

8.4B Enter your User ID and password.

8.4C Hit “Alt+F4.”

8.4D Select “Confirm Action.”

8.4E Hit “Esc” to exit the form.

8.5 Annotate the Action Block of the I-485 by notating “Denied”, the date, and the officer number.

8.6 Drop off the file in the clerical sort area in the appropriate box.

8.7 Once the clerical notice is completed, access batch case status update in CLAIMS to indicate notice sent.

8.8 Once the denial letter is in the file, remove the top, colored portion of the SWIP label to expose the transparent label below.

Abandonment Denials The three instances when an Abandonment Denial would be initiated are listed below:

- 1) “No response” – the applicant failed to respond to a request for evidence
- 2) “Fingerprint No- Show” – the applicant failed to appear at the ASC for fingerprinting within the time frame allowed

3) “No Fee”- the applicant failed to submit the \$50 fingerprint fee (effective February 19, 2002)

Follow the steps below to process an Abandonment Denial.

Note: NIW Physicians are issued an Intent to Deny for noncompliance to a request for evidence rather than an Abandonment Denial.

Step Action

- 9.1 Initial and date the I-485 Processing Worksheet next to the “Denial” block.
- 9.2 On the reverse side of the worksheet, annotate the denial standard and standard call-ups.
- 9.3 Access “Adjudicate a Case” in CLAIMS and update by following the steps below.

Step Action

- 9.3A Wand in the barcode on the file/application.
- 9.3B Hit “F10.”
- 9.3C Select “Deny the Case.”
- 9.3D Select “Order Denial Notice.”

9.4 Once you have denied the case, the system automatically places a supervisory hold on it. Therefore you must lift that hold. To do this, follow the steps below.

Note: Some Centers require supervisory review of denials. Follow local guidelines.

Step Action

- 9.4A Hit “Alt+F8.”
- 9.4B Enter your User ID and password.
- 9.4C Hit “Alt+F4.”
- 9.4D Select “Confirm Action.”
- 9.4E Hit “Esc” to exit the form.

Abandonment Denials (continued)

Step Action

- 9.5 Annotate the Action Block of the I-485 by notating “Denied”, the date, and the officer number.
- 9.6 Select and print one of the five automatically CLAIMS generated abandonment denial notices.
- 9.7 Access batch case status update in CLAIMS to indicate notice sent.
- 9.8 Once the denial letter is in the file, remove the top, colored portion of the SWIP label to expose the transparent label below.

Intent to Deny Follow the steps below to process an Intent to Deny.

Step Action

10.1 Initial and date the I-485 Processing Worksheet next to the “Intent to Deny” block.

10.2 On the reverse side of the worksheet, annotate the intent standard and standard call-ups and/or text that the clerk must include in the intent notice to the applicant.

If you have prepared your own intent on the LAN, indicate the name of the document to be retrieved on the reverse side of the worksheet.

10.3 Access “Adjudicate a Case” in CLAIMS and update by following the steps below.

Step Action

10.3A Wand in the barcode on the file/application.

10.3B Hit “F10.”

10.3C Select “Case Review.”

10.3D Select “Place in Suspense.”

10.3E Select “Order Intent to Deny Notice.”

10.3F The system will ask you if you want to “Change Case Status.”

Select “Yes.”

10.4 Drop off the file in the clerical sort area in the appropriate box.

10.5 Once the notice is completed, access batch case status update in CLAIMS to indicate that the notice was sent.

**Motions** If a motion is submitted, the officer must determine if the motion meets the filing criteria set forth in 8 CFR 103. If these criteria are met, then consider the new evidence and process the I-485 accordingly.

Keep this in mind. If the principal applicant in a family group is denied then his/her dependents are denied. (Note: This does not apply to refugee/asylee dependents.) Therefore, if the principal files a motion with fee and we reopen the case, we will “Open on Service Motion” the dependents of this principal if they do not individually file a motion on their respective I-485. The only time this would not apply would be if the dependent was denied for cause as well as because the principal applicant was denied. The dependent in this case would require a motion to reopen along with the proper fee.

In instances where the I-485 will be relocated after the motion has been accepted, the officer must notify the applicant that the case is being reopened and forwarded to the district office.

If the filing criteria for the motion is not met but the Supplement A and penalty fee were received, you must initiate a refund through your supervisor to CRU.

**Rescissions** If derogatory information is received or a determination is made indicating that the applicant was ineligible to adjust at the time of the approval of the I-485, rescission proceedings may be initiated. The Service has 5 years from the date of approval of the I-485 to initiate such proceedings.

All rescissions are initiated at the District level. The I-485 should be relocated to the district office with a memo explaining the grounds for rescission. The Workload Distribution will update CLAIMS as relocated.

Follow the steps below when handling rescissions.

**Step Action**

- 11.1 Initiate the rescission memo.
- 11.2 Place any derogatory information on the non-record side of the file.
- 11.3 Send to Workload Distribution for relocation to appropriate office.

**Composing an Intent to Deny** It is important to write a notice so that it is clear what is exactly wrong with the submission and what must be submitted to overcome the problem. Because of this philosophy, this section is provided to assist you in formatting an Intent to Deny. This format may also be applied to any other notice you may compose.

**Format Description Example**

1st Identify what the applicant has claimed on the application. On your application you claim to have entered the United States as a B-2 visitor with admission valid until 3/12/97.

2nd Identify what the ROP and Service records establish or indicate. You have not submitted an endorsed I-94, Arrival/Departure record to support this claim, nor do Service records verify your arrival in the United States as a B-2 visitor for pleasure.

3rd State the basis for the intent. Therefore, the record does not establish that you have been admitted to the United States as a nonimmigrant in order to be eligible for adjustment of status. In addition, if you have been admitted for the period that you have identified on your application, you are no longer maintaining your lawful nonimmigrant status.

4th

State what needs to be submitted to overcome the basis of the intent to deny.  
Submit evidence of your admission to the United States, such as a copy of both sides of your I-94 and a complete copy of your passport. You must also submit evidence that your lawful admission to the United States has been extended beyond 3/12/97.

5th State that if the applicant cannot overcome the grounds for denial, he/she may be eligible under 245(i). If you are unable to establish that you have been admitted to the United States and are presently maintaining your status, you may still be eligible for adjustment of status under Section 245(i) of the Act by completing Supplement A and submitting the \$1000 penalty fee.

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## SECTION 8: POST-ADJUDICATIONS MODULE

**I-485 National SOP Introduction** This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis as training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.
- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.

- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

Introduction Once an adjudicator has made a decision on a case, the decision must be processed appropriately. There are several key decisions an adjudicator can make:

1. Recommended Approval
2. Approval
3. Non-approval:
  - RFEs and Intents to Deny (See Workload Distribution)
  - Relocation (See Adjudications)
  - Denial (See Adjudications)
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### Recommended Approvals

**Description** If an adjudicator finds that the I-485 application is ready for approval, he/she indicates that the case is "Recommended for Approval". The Department of State (DOS) must be contacted to verify that a visa is currently available using INSAMS procedures. Once DOS verifies that a visa is available, that case will be routed back to the adjudicator. The adjudicator will approve the case and send it back for card production activities. (The adjudicating officer may also request the visa through the INSAMS procedure.)

**Requirement** Once an I-485 application has been adjudicated and the adjudicator deems it ready for approval, complete the necessary steps to receive DOS verification that a visa is available.

**Standards** Complete the following standards to determine if the visa is available once you receive the files for the visa requests.

No. Standard

- 1.1 Request the visa through the Department of State.
- 1.2 Once responses are returned, copy the list and return it along with the files to the appropriate adjudicator.
- 1.3 Once approved and returned from the adjudicator, RAFACS and forward the files back to the adjudicator.

### Approvals

**Description** After the adjudicator has approved the case, U.S. CIS sends an approval notice to the applicant asking him/her to appear at the local office for I-89 ADIT processing. The completed I-89 card will be forwarded to the service center.

Requirement Once the I-89 card has been received, refer the file and I-89 for review and scanning.

Standards Follow the standards below to continue the approval processing of the case after the I-89 and the I-797 are received in the mailroom.

No. Standard

2.1 Verify that a fingerprint on the I-89 is present or waived.

If the fingerprint... THEN...

Is present and acceptable Continue processing.

Is not present and not waived Complete a letter for the applicant to return to the district office for completion of a new I-89 and go to Step 3.1.

2.2 Verify that a signature on the I-89 is present or waived and that it matches the signature on the I-485. If not, go to Step 3.1.

2.3 Identify the ADIT-style photos. At least one photo must be present to complete the processing.

If... THEN...

One photo is present Affix the photo to the appropriate box on the I-89 and review the I-89 for completion.

Two photos are present Place the extra photo in the glassine envelope.

No photos are present or the photos are found to be unacceptable

Complete a standard letter for the applicant to submit additional photographs and go to Step 3.1.

No. Standard

2.4 Review the following fields on the I-89 on the side of the card labeled "Transaction 1 - Initial Card" for completion.

· "2. Alien Number" --Alien Registration Number

IF... THEN...

No number is present Obtain it from the I-797

No I-797 is present Reject the I-89 card.

· "7. DOB (MM/DD/YY)" --Alien's Date of Birth

IF... THEN...

The applicant is 14 to 79 years of age Leave blank

The applicant is under 14 or over 79 years of age or older Initial this section.

There is a "Certification" block on both sides of the bottom of the I-89, which must be completed. The fields are:

- 26./ U. "Certification" --Officer's name printed in the block provided
- 27./ V. "Officer's Signature" --Officer's signature in the block provided.  
IF this box... THEN...  
Is signed by the district office Go to field 28  
Is not signed by the district office Go to Step 4.1 for procedures on returning the card to the District Office for completion.
  
- 28. "LOC Code" -- Follow the instruction in the table below.  
IF this box... THEN...  
Has not been filled out Write your Service Center's code (i.e., RECEIPT FILE).  
Has already been completed Leave as is
  
- 29. "Alien Number" --Alien Registration Number.

No. Standard

2.5 Retain the extra photo in the glassine envelope, if submitted, by stapling the envelope to the I-89 card.

2.6 Batch and forward the I-89 and I-797 approval notices to the File Room.

2.7 Associate the I-89 with the file. Update CLAIMS to show that the I-89 was received.

2.8 Route to U.S. CIS review to compare the I-89/I-485 photos for a confirmation of identity and then to send the batched I-89s to Data Entry for update and scanning.

I-89 Requests After Approval of the I-485 When I-89 card and photos are received at the Service Center, they do not always meet U.S. CIS standards for quality and it may not be possible to use them to produce the Permanent Resident Card. U.S. CIS will determine this upon review of the I-89.

Standards Follow the standards below when:

- The fingerprint is missing and not waived;
- The signature is missing and not waived;
- The signature does not match the signature on the I-485;
- The photos have been found to be unacceptable; and/or
- The I-89 card was not submitted at all.

No. Standard

- 3.1 Prepare the notice to request additional photos and/or a new I-89 card based upon the call-ups indicated by the adjudicator's notice.
- 3.2 Print two copies of the notice. Place one copy of the letter in the file and mail the other copy.
- 3.3 Update CLAIMS.  
Advice: Double click the "Case Status Update" icon. Select "Batch Off-System Notice Sent Update" and press <Enter>. Select "ADIT Notice Sent" and press <Enter>. Wand all I-485 receipt number(s).
- 3.4 RAFACS and route the file to the I-485 Approvals Awaiting I-89 Hold Shelf.

Returning I-89 Cards to the District If the I-89 card does not contain the District Officer's printed name and/or signature, the I-89 card must be sent back to the District Office for completion.

Standards Follow the standards below when the I-89 card is missing the officer's name and/or signature.

No. Standard

- 4.1 Prepare the notice to request that the District Officer complete the I-89 card.
- 4.2 Make a photocopy of the notice and place the copy of the letter in the file. Staple the letter to the I-89 card and supporting documents and follow outgoing mail procedures.
- 4.3 Update CLAIMS.  
Advice: Double click the "Case Status Update" icon. Select "Batch Off-System Notice Sent Update" and press <Enter>. Select "Adit Notice Sent" and press <Enter>. Wand all I-485 receipt number(s).
- 4.4 RAFACS and route the file to the I-89 Hold Shelf.

RFEs and Intents to Deny See Workload Distribution.

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## SECTION 9: I-485 SOP SUPPLEMENTS

I-485 National SOP Introduction This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis as training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.
- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases.

This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

Introduction This section contains information relevant to the processing of Form I-485, which is not specific to any one module in the I-485 SOP. It contains general information and explanations of terminology, as well as a glossary.

#### Section 9: Table of Contents

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##### General Information

Immigrant Visa Petition In order to be eligible to apply for adjustment of status, the applicant must have an approved underlying visa petition. This underlying petition is submitted for the applicant by a sponsor and, once approved, qualifies him or her to be able to apply for adjustment of status. There are two distinct forms of sponsorship: sponsorship by a business or sponsorship by a family member. Given these two distinct forms of sponsorship, I-485 applications can be classified as either Employment-based or Family-based applications.

The officer may rely upon an I-797 approval notice, local CLAIMS and/or CLAIMS Mainframe or the applicant's A-file to determine whether an immigrant visa petition has previously been approved.

Employment-Based Legal Permanent Residence      Employment-based I-485 applications are those applications with approved underlying visa petitions that have been submitted by a business or employer. These types of petitions include, but are not limited to:

- Form I-140, Immigrant Petition for an Alien Worker;
- Form I-526, Immigrant Petition for an Alien Entrepreneur; or
- Form I-360, Religious Workers.

Family-Based Legal Permanent Residence      Family-based I-485 applications are those applications with approved underlying visa petitions that have been submitted by a family member. Most often, a sponsor will submit Form I-130, Petition for Alien Relative. Vermont is the only Service Center currently accepting Family-based applications. This is a pilot program for Baltimore District cases only.

### Special Programs

In addition to being eligible via sponsorship from a business or family member, an applicant may also be eligible to apply for permanent residence through other programs (i.e., Cuban, Nicaraguan, refugee, asylee, lottery winner, or a Lautenberg parolee.). The applicant must meet special criteria to qualify under one of these programs. Because the eligibility requirements for these programs differ from normal Employment-based or Family-based cases, applications submitted under their criteria will undergo different review steps.

### Principal vs. Dependents Filing I-485 Applications

Each person seeking adjustment of status to that of a lawful permanent resident in the United States must file his/her own I-485 application. The principal applicant is the beneficiary of an approved immigrant visa petition or other underlying immigration benefit.

In certain situations, family members of that applicant may file an I-485 using the approved immigrant visa petition of the principal applicant. The family member is known as a dependent and is defined as the spouse and/or child of the principal applicant. The principal application must be approved prior to approval of the dependent application.

The following is a list of items to keep in mind when reviewing a dependent's application:

- Dependent 14 years of age or older must sign his/her own application;
- Dependent is a spouse or unmarried child under 21 years of age; and

- Dependents may file an I-485 at the same time, after or during the period of time when the principal's application is pending, so long as the relationship was established prior to or during the pendency of the principal applicant's adjustment application.

#### Family Packs

Two or more Form I-485 applications may be submitted together as a "family pack" (i.e., when family members submit their applications together as a package). These applications must remain together throughout the entire process.

#### Employment-based vs. Family-based Applications

For the most part, employment-based applications are subject to the same procedures as family-based applications. However, in some instances, the procedures differ. These differences will be clearly delineated throughout the SOP. In addition, while all service centers accept employment-based forms, Vermont is the only service center currently accepting family-based I-485 forms. Vermont is assisting the Baltimore District Office's pilot for direct mail and as such, accepts and processes all family-based applications received from Baltimore.

**Duplicate and Second Filings** · Duplicate Filings – I-485 applications submitted to a service center without a new fee, but with evidence that the original I-485 application is pending at another U.S. CIS office or Service Center. If the contractor encounters a filing like this, he/she should route it to U.S. CIS Review.

Second Filings – I-485 applications submitted to a service center with a new filing fee even though one may be pending at another U.S. CIS office. Second filings will be handled under the normal process.

**District Filings** On occasion, a district office may accept an I-485 filing and receipt the fee. These cases would then be forwarded to the service center with the proper jurisdiction. If the contractor encounters the following situations, the case should be routed to the designated U.S. CIS personnel for review:

- An I-485 within the Service Center's jurisdiction;
- An I-485 with an Immigrant Visa (IV) petition to be revoked by the Service Center;
- An I-485 within the Service Center's jurisdiction which was filed when the visa was not current; and/or
- An I-485 outside of Service Center's jurisdiction.

**Concurrent Filings** I-485s may be filed concurrently with other applications or forms. The acceptable forms/applications include, but are not limited to:

- Form I-140, Immigrant Petition for an Alien Worker;
- Form I-131, Application for Travel Document;

- Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile;
- Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal;
- Form I-130, Petition for an Alien Relative;
- Form I-360, Petition for Special Immigrant—Battered Spouses (if the visa is available. VSC has sole jurisdiction for these cases.);
- Form I-601, Application for Waiver of Grounds of Excludability;
- Form I-765, Application for Employment Authorization;
- Form I-824, Application for Action on an Approved Application or Petition; and
- Form I-864, Affidavit of Support.

Any forms submitted concurrently with the I-485 are to be processed in accordance with the SOP for that form type.

**Not Acceptable Concurrent Submission**      The following forms cannot be filed concurrent to the I-485 application:

- Form I-360, Petition for Special Immigrants, Religious Workers;
- Form I-612, Application for Waiver of Foreign Residence Requirements of Section 212(e) of the Immigration and Nationality Act (INA), as amended (unless it is accompanied by a "No Objection" letter); and
- Form I-526, Immigrant Petition for Alien Entrepreneur.

#### Multiple

**A-numbers**      Multiple A-number discrepancies will be handled by the Case Resolution Unit (CRU). Once CRU has resolved the discrepancies, the file will be forwarded to Data Entry for receipt of the I-485.

If multiple A-numbers have already been assigned to the applicant, annotate the processing worksheet. This worksheet identifies which A-number to use for the I-485 and alerts the File Maintenance Unit (FMU) to request the remaining relating A-numbers from the File Control Office (FCO) for consolidation purposes.

**Age-Outs**      U.S. CIS makes every effort to expedite the processing of the I-485 for dependent children who are within one year of reaching the age of 21. These filings are expedited through the process in order to be adjudicated prior to the applicant turning age 21.

Refugee and Asylee applicants do not age-out and therefore will not be expedited. (Asylee adjustment applicants should not be expedited due to cap considerations. They can receive asylum status “Nunc Pro Tunc” after 21, thereby allowing continued processing of their application.)

**DV Lottery Winners** The Diversity Visa (DV) Lottery Program creates a special category for immigrant visas, making visas available through a lottery to people who come from countries with low rates of immigration to the U.S. Petitions based on the DV category are only processed in the Vermont Service Center, pursuant to being filed in the Baltimore District Office. DV Lottery winners are also given priority.

#### Processing Worksheet

When each I-485 applicant file is assembled, a Processing Worksheet is attached to the file in Record of Proceeding order. The Processing Worksheet should be annotated on each line as appropriate. As possible rejects are identified during file set-up, the contractor will annotate the worksheet specifying the reason for the rejection. This worksheet should accompany the application through subsequent U.S. CIS review procedures to document the identified case deficiency. The worksheet has been attached to this SOP as a separate document.

**Jurisdiction** U.S. CIS Review is responsible for reviewing for proper jurisdiction as outlined in this SOP. A chart detailing jurisdiction based on geography follows:

#### Service Center Jurisdiction

California AZ, CA, Guam, HI, NV

Nebraska AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, OR, SD, UT, WA, WI, WY

Vermont CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VT, WV, VI

Texas AL, AR, FL, GA, KY, LA, MS, NM, NC, OK, SC, TN, TX

**Country of Chargeability** The officer must determine the country of chargeability of visa issuance. The country of chargeability is the country of the applicant's birth. Visas for the dependents will be first charged against the dependent's country of birth. If unavailable, the visa may be charged against the country of birth of the principal applicant. If the visa is unavailable for the principal applicant's country of birth, the visa may be charged to the country of birth of the principal applicant's spouse (but not the children). If the visa is unavailable for the principal applicant's spouse's country of birth, the visa may be charged to the country of birth of the principal applicant's parents. Note that a parent may not charge to the country of birth of his/her child. See section 202 of the INA for rules of chargeability.

#### Ability to Pay

**Introduction** The petitioner's ability to pay the proffered wage is key to the adjudication of the I-140 petition because it is the general method by which the Service evaluates the validity of the petitioner's job offer to the beneficiary. If the petitioner cannot

demonstrate the ability to pay the proffered wage, then the petitioner is not considered to be capable of making a permanent offer of employment to the beneficiary.

**Service Must Weigh the Merits of the Job Offer** It was found in *Matter of Great Wall*, 16 I&N Dec. 142 (Act. Reg. Comm. 1977), that in sixth preference visa petition proceedings the Service must consider the merits of the petitioner's job offer, so that a determination can be made as to whether the job offer is realistic and whether the wage can be met. The same reasoning may be applied to the adjudication of IMMACT 90 employment-based visa petitions where the petition requires an offer of employment.

**Regulatory Basis** Any petition filed by or for an employment-based immigrant, which requires an offer of employment, must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage.

[See 8 CFR 204.5(g)(2)]

**Ability to Pay Must be Demonstrated as of the Priority Date, Continuing until Visa Issuance** The petitioner must demonstrate the ability to pay the proffered wage at the time the priority date is established. In addition, the petitioner must continue to demonstrate the ability to pay the proffered wage until the beneficiary obtains Lawful Permanent Resident Status.

[See *Matter of Great Wall*, 16 I&N Dec. 142 (Act. Reg. Comm. 1977), *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989), 8 CFR 204.5(g)(2), 8 CFR 103.2(b)(1) and 8 CFR 103.2(b)(12)]

**Growing Concern** The Service has long held that the offer of employment for I-140 petitions must be for permanent full-time employment. Consequently, it is not reasonable to approve an immigrant petition for a beneficiary to seek permanent employment with a petitioner who will, in all likelihood, cease to exist prior to or immediately after the immigrant petition is approved.

While the burden is on the petitioner to simply establish that the petitioning organization can pay the proffered wage from the date that the priority date is established and up to the point of immigrant visa issuance, a petition should not be approved if it is questionable that the organization will not continue to be a "growing concern" into the foreseeable future, i.e. an organization actively engaged in the provision of goods and services.

For additional information on Ability to Pay, reference the I-140 SOP, Section 5: Adjudications, Addendum 2.

I-485 SOP Glossary

## Definitions

212(e) The section of the Act that pertains to the waiver of the 2-year foreign residency requirement.

A-file Alien file. The file containing all data and documentation relating to a given alien, identified by an A-number. All aliens with green cards have A-files, but nonimmigrant aliens usually do not.

ADIT Alien Documentation, Identification and Telecommunication System

Adjustment of Status The procedure allowing certain aliens already in the U.S. to apply for immigrant status.

Age-Out An application where a derivative child will reach the age of 21 prior to the expected date of adjudication.

AILA American Immigration Lawyers Association

AOS See "Adjustment of Status"

Application Support Center The office responsible for fingerprinting applicants.

ASC See "Application Support Center"

Asylee An alien in the United States or at a port of entry who is found to be unable or unwilling to return to his or her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. For persons with no nationality, the country of nationality is considered to be the country in which the alien last habitually resided. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States. These immigrants are limited to 10,000 adjustments per fiscal year.

CAO Center Adjudications Officer

CFR Code of Federal Regulations. U.S. CIS rules and regulations describing how the agency will implement the laws passed by Congress are published in Title 8 of the CFR.

CG Consulate General

CGFNS Commission on Graduates of Foreign Nursing Schools

CIA Central Intelligence Agency

CIS Central Index System. The national computer system containing information relating to A-files.

Civil Surgeon A physician authorized by the U.S. CIS to conduct medical examinations of applicants.

CLAIMS Computer Linked Application Information Management System. Case processing system in which petitions/applications are data-entered, receipted, and electronically updated.

COA Class of Admission

COTR Contracting Officer Technical Representative. A U.S. CIS representative that functions as a liaison between the contractor and U.S. CIS.

CRU Case Resolution Unit

CSC California Service Center

CSPA Chinese Student Protection Act

DACS Deportable Aliens Control System

DED Deferred Enforced Departure

DOL Department of Labor

DOS Department of State

DV Diversity Visa Lottery Program

EAD Employment Authorization Document

Employee ID# A two-letter, four-number identifier for a contract employee who works at one of the service centers.

EWI Entry without Inspection. The terms used to refer to aliens who enter the U.S. surreptitiously across land borders (EWI).

FAM Foreign Affairs Manual

FBI Federal Bureau of Investigation

FCCPT Foreign Credentialing Commission on Physical Therapy

FCO File Control Office

Fee Waiver Request A written request submitted by the applicant or attorney to be exempt from paying the filing fee. A decision on the request must be made by U.S. CIS staff prior to receipting the petition.

G-28 Notice of entry of appearance as attorney or representative. This form is used to provide notice that an attorney or representative is acting on behalf of the applicant or petitioner.

HBG Harrisonburg

HHS Health & Human Services

**HRIFA** Haitian Refugee Immigration Fairness Act. This is a limited provision that provides relief in the form of lawful permanent residence to certain Haitian nationals. For further information, see Adjudications Appendix B.

**IIRIRA** Illegal Immigration Reform and Immigrant Responsibility Act

**Immediate Relative** Certain immigrants who because of their close relationship to U.S. citizens are exempt from the numerical limitations imposed on immigration to the United States. Immediate relatives are: spouses of citizens, children (under 21 years of age and unmarried) of citizens, and parents of citizens 21 years of age or older. Orphans duly adopted by citizens qualify as immediate relatives.

**INA** Immigration & Nationality Act. The Act, which along with other immigration laws, treaties, and conventions of the U.S., relates to the immigration, temporary admission, naturalization, and removal of aliens (INA).

**IR** See “Immediate Relative”

**IRS** Internal Revenue Service

**IV** Immigrant Visa

**Labor Certification (ETA-750)** The form ETA-750 is the document used by the petitioner to demonstrate to the Department of Labor (DOL) that there are no qualified and available U.S. workers who are willing to accept the position offered to the beneficiary in the geographic location of the petitioner’s business.

**Legal Permanent Resident** The status of having been lawfully accorded the privilege of residing and working permanently in the U.S. as an immigrant in accordance with the immigration laws, such status not having changed.

LIN Lincoln (Nebraska)

LPR See “Legal Permanent Resident”

NACARA Nicaraguan Adjustment and Central American Relief Act. This is a limited provision that provides relief in the form of lawful permanent residence to certain Nicaraguan and Cuban nationals. For further information, see Adjudications Appendix C.

NAILS National Automated Immigration Lookout System

National Records Center NRC houses inactive A-files from all service centers and district offices.

NATO North Atlantic Treaty Organization

NBCOT National Board of Certification in Occupational Therapy

NIV Nonimmigrant Visa

NIW National Interest Waiver

NIW Physician National Interest Waiver Physician. Physicians seeking lawful permanent residence based on medical service in an under-served area of the United States or at a Veterans Affairs facility.

Nonimmigrant An alien who seeks temporary entry to the U.S. for a specific purpose.

NRC National Records Center

NSC Nebraska Service Center

NSU National Security Unit

NVC National Visa Center

Petitioner The person or company submitting a business or relative petition to the U.S. CIS.

PIP Public Interest Parole

PL Public Law

POC Point of Contact

POE Port of Entry

PRC Permanent Resident Card (a.k.a. Green Card or Lawful Permanent Resident Card)

**Preference Relative** Relatives whose preference in the adjudications process is based on their relationship to a USC or legal permanent resident other than as an immediate relative. Preference Relatives must adhere to the numerical limitations imposed on immigration to the U.S. and require a visa.

**RAFACS** Receipt and A-File Accountability and Control System. The system that reports a file's location and maintains a history of file movement.

**Receipt Date** The date that the application information is data-entered into CLAIMS (see definition). This date is NOT the filing date and is NOT used in determining the application's processing order.

**Received Date** The date the petition or application is physically received by the Service. For properly filed petitions or applications, this is the date that is used to determine the processing order, processing times, etc. For all legal purposes and statistics, this is the Service's date of record. The received date may also be referred to as the filing date.

**RFE** Request for Evidence

**ROP** Record of Proceeding. The order in which documents in a file are assembled for legal purposes.

**Representative** A person authorized to appear before the Service on behalf of someone else. The Service will not recognize the person unless the person has filed a form G-28 signed by the client.

**T-file** Temporary file. A temporary file is created when an applicant's A-file cannot be found after, at minimum, a diligent 90-day search of all U.S. CIS locations. A T-file is used if the permanent file is missing or temporarily if the A-file is located at another U.S. CIS service location.

TSC Texas Service Center

TWOV Transit without Visa

USC United States Citizen

**Unlawful Presence** An alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

USIA United States Information Agency

VA Veterans Affairs

VSC Vermont Service Center

WD Workload Distribution

Forms List

ETA 750 Application for Alien Employment Certification (DOL)

FD-258 Fingerprint Card

G-22 Statistical report for headquarters

G-28 Notice of Entry of Appearance as Attorney or Representative

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I-89 Card Data Collection

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 I-129F Petition for Alien Fiancé(e)  
 I-130 Petition for an Alien Relative  
 I-131 Application for Travel Document  
 I-134 Affidavit of Support  
 I-140 Immigrant Petition for Alien Worker. This form is used to petition for eligibility as an immigrant based on employment in the U.S.  
 I-181 Memorandum of Creation of Record of Lawful Permanent Residence  
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## SECTION 10: ADJUDICATION APPENDICES MODULE

I-485 National SOP Introduction This Standard Operating Procedure (SOP) has been created for the purpose of standardizing operational policies and procedures between all service centers in the processing of the I-485, Application to Register Permanent Residence or to Adjust Status. This SOP is in response to the processing differences that have developed at the service centers over time. To support the goal of standardizing procedures, this SOP seeks to improve the production efficiencies through the application of best practices from all service centers. While it is acknowledged that the centers may have different demands and physical layouts, a standard process will assist in ensuring that our customers receive consistent processing regardless of jurisdiction.

This SOP has been developed as a modular document. The Mailroom, U.S. CIS Review, Central Index System/G-325A Processing, Data Entry, File Room, Workload

Distribution, Adjudications, and Post-Adjudications sections are stand-alone documents that can be used individually on an as need basis for training and daily reference documents. Each module describes a stage in the processing of an I-485 application. Below is a brief description of each module:

- Mailroom- The process by which the service center receives I-485 applications, reviews them for acceptability and assembles them for data entry.
- U.S. CIS Review- The process by which U.S. CIS verifies all reasons for rejection cited by the contractor.
- Central Index System/G-325A Processing- The process by which CIS is searched, multiple A-numbers or A-number with violations are resolved, and G-325As are processed.
- Data Entry- The process by where fees are receipted and case information is keyed into CLAIMS.
- File Room- The process by which files are sorted and staged.
- Workload Distribution- The process of staging, routing and distributing files.
- Adjudications- The process by which an application is examined for determination of whether the application is approvable or deniable.
- Post-Adjudications-The procedure to be followed after an officer makes a determination on an I-485 case.

Recommendations for changes to this document should be sent to the Headquarters Office of Service Center Operations (HQSCO).

Important: This SOP is not intended to be, and should not be taken as, an authoritative statement of the rules of decision for Form I-485 adjustment of status application cases. This SOP is a guide for the consistent processing of Form I-485 adjustment of status application cases. The Service bases the actual decision in a particular case on the record of that particular case and on the Act, regulations, precedent administrative and judicial decisions, and general statements of Service policy relating to the case. Thus, nothing in this SOP creates any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

I-485 Table of Contents      The following is a table of contents, which serves as a guide for all modules of the I-485 SOP. Each module contains its own table of contents that will help to guide through the individual sections of the SOP.

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Note: This SOP establishes the required minimum standard for the operational procedures that all service centers should follow. However, this does not invalidate all local requirements and procedures. Local procedures that do not conflict with this SOP (i.e., procedures that are above and beyond the SOP) may still be required, as determined by management at each service center. Additionally, recommendations or advice in this SOP may become requirements at the service center at the discretion of each center's management.

Introduction "Adjudications" is the process by which an I-485 application is examined for determination of whether it requires additional information, is approvable, or is deniable. The appendices in this section assist in the adjudication of the I-485 application.

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APPENDIX A: Asylum/Refugee Filings

Overview Applicants may be eligible to apply for permanent residence through the Refugee or Asylee programs. Some of the review steps involved in the processing of refugee and asylum-based I-485 applications are different from the processing of other permanent residence applications, as they must meet special criteria in order to qualify. Nebraska Service Center has sole jurisdiction for applications filed under these programs.

In This Chapter This chapter discusses the following topics.

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Statutory Eligibility

General The I-485 must be reviewed to determine whether the applicant is statutorily eligible for adjustment. If the applicant is ineligible for adjustment of status and the ground(s) of ineligibility cannot be overcome, the I-485 must be denied.

**Asylum-based Applicants** Any alien who has been granted asylum or admitted to the United States as an asylee may apply for adjustment of status to permanent resident provided that the alien:

- Has been physically present in the United States for a period of one year after having been granted asylum;
- Continues to be a refugee within the meaning of section 101(a)(42) of the Act in his/her own right, or continues to be the spouse or child of a refugee and was granted asylum based upon that relationship.
- Has not been firmly resettled in any foreign country; and
- Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment **WITHOUT REGARD TO** the following paragraphs of section 212(a) of the Act:

- (4) (Public Charge),
- (5)(A) (Labor Certification),
- (5)(B) (Unqualified Physicians), and
- (7)(A)(I) (Documentation Requirements at the time of entry)

Therefore, if the applicant is inadmissible under any other paragraph of section 212(a) of the Act, he/she must have the grounds of inadmissibility waived.

Pursuant to section 208 of the Act, to be eligible to derive asylum status and, in turn to be granted adjustment of status, the applicant must still meet the definition of a "spouse" or "child" as defined in section 101(b)(1) of the Act. There is a special procedure set forth, however, for any alien granted derivative asylum as a "child" who turns 21 prior to the adjudication of an asylum-based Form I-485.

**REMINDER:** There is no requirement that an applicant who was admitted as a refugee must continue to be a refugee or dependent child or spouse of a principal refugee. Only asylees must continue to meet the definition of a refugee or be the dependent child or spouse of a principal that meets the definition of a refugee.

**Procedure for Asylum-based Derivative "Child" Turning 21** An alien granted derivative asylum, as a "child" is not eligible for adjustment if he reaches the age of 21 before the application for adjustment is adjudicated. However, an asylum application filed in his/her own right, based on a presumption of anticipated persecution because of a relationship to the principal asylee, may be favorably considered.

The following procedures will be used when an applicant that was a "child" turns 21 prior to the adjudication of an asylum-based Form I-485:

- Provide the son or daughter with an asylum application to be completed in his/her own right.

- Grant asylum, “Nunc Pro Tunc”, to the time that he/she received derivative asylum status.
- Proceed with the adjustment application.

The Form I-589, Application for Asylum, will be relocated to the asylum office with jurisdiction for adjudication.

Any applicant granted asylum as a derivative child who subsequently turns 21 prior to the adjudication of Form I-485, will be afforded the above opportunity and the Form I-485 will be held in abeyance until the Form I-589, Application for Asylum, filed in his/her own right has been granted.

Once the I-589 is granted, the date of the grant shall be the date that he/she was originally granted as a derivative child.

**Asylum-based Date of Adjustment** The date of adjustment for approved applications filed by asylees shall be one year prior to the date of approval.

**Refugee-based Applicants** The basic requirements that a refugee must meet in order to adjust status are that;

- The admission as a refugee has not been terminated by the Attorney General;
- He/she must have been physically present in the United States for at least one year prior to filing for adjustment; and
- Has not otherwise obtained permanent resident status.
- Not firmly resettled [pursuant to 8CFR 207.1(b)]

There is no requirement that an applicant who was admitted as a refugee must continue to be a refugee or dependent child or spouse of a principal refugee. Once a derivative alien has been admitted as a refugee, nothing in the law or regulation terminates eligibility of a derivative adjustment because the spousal relationship ends or the child marries or turn 21 years of age. As such, the derivative refugee may be adjusted even though the relationship to the principal has ceased to exist after admission

When a refugee has resided in the United States for periods which total one-year after admission as a refugee he/she may apply to adjust to lawful permanent residence pursuant to section 209 (a) of the INA. (Section 245 of the INA does not apply.)

**Refugee-based Date of Adjustment** The date of adjustment for approved applications filed by refugees shall be either:

- The date that the refugee entered the United States; or

· In the case of those persons that were in the United States at the time an I-730, Refugee/Asylee Relative Petition, was granted in their behalf pursuant to section 207 of the Act, the date the I-730 was granted conferring refugee status upon him/her.

## Numerical Limitations

Asylum-based Adjustments There is a maximum of 10,000 asylum-based adjustments that can be approved in any fiscal year. The Nebraska Service Center is responsible for tracking and allocation of asylum-based adjustments.

Exceptions: The numerical limitations of section 209(b) are removed in regard to the special class of:

· Iraqi asylees who were processed on Guam. Sec. 128 of Title I of Sec. 101(b) of Div. A of Pub. L. No. 105-277 of October 21, 1998, effective May 17, 2001

· Asylees who are Jewish nationals of Syria. Public Law No. 106-378 of October 27, 2000: Title 8 CFR is amended to add Section 245.20. This law is limited to a total of 2000

After completion of agency checks and final review of the I-485, a determination must be made as to whether there is a remaining “number” available from the 10,000-limit of approved asylum-based adjustment applications.

## IF... THEN...

A number is still available Approve the I-485. Stamp the I-485 and the I-181 with an approval stamp and properly note it. Update CLAIMS to indicate approval. Select the appropriate approval phrase indicating whether or not ADIT processing is required. (ADIT processing is required if there is no properly completed Form 1-89 in the file and/or if the biometrics have not been scanned and attached electronically to the application.)

The cap has been reached I-485 may not be approved until the beginning of the next fiscal year. These cases must be held until October 1 in a separate call-up area noted as “FY (specific year) OVER CAP.” On October 1 these cases can then be retrieved and, if no derogatory information has been received in the interim, approved with the approval date of October 1 of the current year.

Refugee-based Adjustments There is no numerical limitation for refugee-based adjustments.

## Fingerprint Checks

### Fingerprint Check Process for both

Asylum and Refugee-based Applications For cases with “IDENT” responses, if the rap sheet cannot be located in the file, the adjudicating officer will complete the “Mini File Room Worksheet” with a call-up date and file barcode.

- The call-up date should be a specific date approximately three weeks from the date sent to the Mini File Room.
- “IDENT-Request Rap Sheet” must be indicated on the Mini File Room worksheet.
- Place a copy of the FBI Query/FTRK Report screen print indicating IDENT on top of the file(s) needing a rap sheet.
- Place one Mini File Room Worksheet on top of a family group.

The file will be returned to the officer upon call-up, when the rap sheet is received, or when correspondence is received, whichever occurs first. Once the rap sheet has been interfiled, the adjudicating officer must annotate the processing worksheet and prepare a Case Relocation Memorandum.

Refer to the “File Connects” and “Purging” sections of File Maintenance, and the “Interagency Records Check” section of Adjudications for more information regarding fingerprints and the processing requirements.

**Adjudicating an IDENT Asylum-based Application** In most circumstances, cases with IDENT responses are adjudicated in the local office with jurisdiction. However, asylees with only immigration violations may be adjudicated at the Service Center with supervisory review.

### Medical Examination

**Medical Evidence Requirements for Asylees** For asylees, the adjustment of status application must include the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, issued by a civil surgeon in the United States and the vaccination Supplemental Form to I-693.

Refer to the “Required Initial Evidence” section of Adjudications for additional requirements and processing information.

### Medical Evidence Requirements for Refugees

For refugees, the adjustment of status record should include the:

- Medical examination report (OF 157, Medical Examination of Applicants For United States Visas) issued by the panel physician at the time of application for admission as a refugee (usually included with the refugee travel packet), and
- Supplemental Form to I-693 indicating the results of the vaccination assessment performed by a civil surgeon following admission to the United States.

A complete medical examination report Form I-693 is required for a refugee only if:

- There were medical grounds of inadmissibility noted at the time of arrival in the United States, or
- If an approved Form I-730 granted the refugee status to the alien in the U.S.

Service officers should not require refugees to repeat the entire medical exam if there were no medical grounds of inadmissibility that arose during the initial exam performed overseas.

In some cases, especially refugees from the 15 republics of the former Soviet Union, the medical examination is not with the refugee packet. The fact that the paperwork is stamped with a Public Health Service stamp may be accepted as proof that no medical grounds for inadmissibility existed at the time of entry as a refugee.

**Form OF 157 for Refugee-based Applications** In the case of refugees, the usual means of reporting the medical examination is the OF 157, Medical Examination of Applicants For United States Visas, found with the refugee travel packet. Each OF 157 must be reviewed as outlined for the I-693 in the "Required Initial Evidence" section of Adjudications to determine acceptability.

Review of the OF 157 is made only to the extent of determining if medical grounds of inadmissibility were present during the initial exam performed overseas and/or conditions requiring follow-up after admission have been completed.

A request for evidence must be prepared if the physician noted on OF 157 that a condition required follow-up at some point after admission and no evidence of the follow-up is with the record. When requesting evidence or follow-up examinations for refugees, the adjudicator must either send a photocopy of the OF 157 or make a notation of the underlying condition for the physician's reference. The original OF 157 for refugees is never sent to the applicant.

Medical Evidence Requirements for Asylum and Refugee-based Applications      If the physician has made no notations in the Class A & B section of Form I-693/OF 157, but has signed the form, the Service will consider the block "No apparent defect, disease, or disability" to have been marked and adjudicators may proceed to Step 2.

A request for evidence must be prepared under the following circumstances:

- A physician other than a designated civil surgeon completed the I-693. The applicant will be referred to the local office for a current listing of designated civil surgeons serving the applicant's area of residence.
  
- Form I-693 has not been signed.

If the I-693 was not received in a sealed envelope, it must be resubmitted in an envelope sealed by a civil surgeon that conducted the medical evaluation.

Medical Evidence Requirements for Asylum and Refugee-based Applications, Cont'd.

In any instance in which a request for evidence relating to Form I-693 is required, a photocopy of the I-693 is to be made and kept in the Record of Proceeding. The original I-693 is to be returned to the applicant or representative of record citing why the I-693 is unacceptable.

The notice will also include instructions that the I-693 must be returned to U.S. CIS in an unopened envelope that has been sealed by a civil surgeon once the medical evaluation has been completed.

Tuberculosis:

The physician must note the I-693/OF 157 with the results of a tuberculin skin test for applicants 2 years of age and older (15 years of age overseas) OR indicate the results of a chest X -ray.

HIV:

If the serologic test is positive, a waiver is required and the case should be relocated to the district after all other initial processing has been completed.

Refer to the "Required Initial Evidence" section of Adjudications for additional requirements and processing information.

Blanket Civil Surgeon Designation for Refugees      Only a civil surgeon designated by the U.S. CIS to conduct medical examinations may complete the Form I-693 and the vaccination supplement submitted with it. A civil surgeon is defined both under the Act and by regulation as a licensed physician with no less than four years of professional

experience. Both Medical Doctors (MD) and Doctors of Osteopathy (DO) are licensed physicians.

Headquarters designated all state and local health departments as civil surgeons for refugees applying for adjustment of status under section 209 of the Act.

Participation in this blanket civil surgeon designation is entirely voluntary and at the discretion of the individual health department. Not all state and local health departments have qualifying physicians and, therefore, do not participate.

**Blanket Civil Surgeon Designation for Refugees, Cont'd.** This blanket civil surgeon designation of state and local health departments covers only the vaccination supplement for those refugees applying for adjustment of status under section 209 of the Act. The small percentage of refugees who require the entire medical exam, as provided in 8 CFR 209 1(b), will need to visit a civil surgeon designated in accordance with the standard procedures described in 8CFR part 232.

- Health departments participating in the blanket civil surgeon designation will place either the official stamp or raised seal on the Supplemental to Form I-693.
- Attending health department physicians shall sign the Supplemental to Form I-693, and shall place it in a sealed envelope, in accordance with the standard procedures all civil surgeons are required to follow.
- Only physicians who meet the statutory and regulatory definition of “civil surgeon” will be authorized to sign the vaccination supplement. Adjudicators may accept an “original facsimile signature stamp” of a civil surgeon.
- The validity of the vaccination supplement will not be limited to one year.

**Blanket Civil Surgeon Designation for Asylees** Blanket civil surgeon designation of state and local health departments does not extend to asylees adjusting.

**Vaccination Supplement Requirement for Refugees and Asylees** When applying for adjustment of status under section 209 of the Act, both refugees and asylees must satisfy the vaccination requirements.

Refer to the “Required Initial Evidence” section of Adjudications for additional requirements and processing information.

**Evidentiary Requirements**

Form G-325A Biographic Information      The G-325A is used for informational purposes only. No hard copies are used for any processing purpose and all colored copies may be destroyed. Only the white legible copy should remain on the left (record) side of the file.

Refer to the “Required Initial Evidence” section of Adjudications for additional requirements and processing information.

Birth Certificates for Asylees A birth certificate is not necessarily needed in the adjudication of asylee adjustment applications under section 209 of the Act. The identity of the alien is generally established as part of the initial asylum application process before the asylum officer or in a hearing before the Immigration Judge.

Identification documents other than a birth certificate may be presented to confirm that the adjustment applicant is the same individual previously granted asylum status.

Birth Certificates for Refugees      Notwithstanding the “Required Initial Evidence” section of Adjudications, adjustment of status under Section 209 of the Act may be adjudicated without the submission of a birth certificate as long as either the applicant’s refugee packet or I-730 and supporting documents are in the file.

Because identity and relationships are already established in section 207 proceedings, the purpose for the requirement is already met. If the I-730 or refugee packet is available, it shall be considered acceptable alternative evidence to a birth certificate.

An applicant for admission as a permanent resident under section 209(a) will therefore not be routinely required to submit a birth certificate where the acceptable alternative evidence is already in the alien’s files. However, if the officer adjudicating the application requests its submission, or when neither the refugee packet nor the I-730 is available at the time of adjudication, the applicant must provide it. Other secondary evidence will be considered if the birth certificate cannot be obtained when requested.

#### I-730 Refugee and Asylum

Beneficiaries Adjudicators must verify that the adjustment applicant, who as an I-730 beneficiary, has applied in the appropriate classification: Refugee or Asylee. If the asylee applies as a refugee, the case should be sent to the problem resolution officer.

Only those spouses and children (including those who were in utero when the principal was admitted as a refugee) whose relationship to the principal applicant existed at the time the principal refugee was admitted to the United States as a refugee may benefit from the I-730 petition.

If the beneficiary of an approved I-730 is outside the United States, the alien number is issued abroad. However, the beneficiary does not become a refugee or asylee until the date admitted at a U.S. port of entry.

The approved I-730 is similar to an immediate relative I-130, in that it is based on the family relationship and the validity does not expire. It remains valid unless withdrawn by the principal or the beneficiary ceases to be the principal refugee's spouse or unmarried child under 21 years of age before the beneficiary enters the United States as a refugee.

Form I-643 Form I-643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status, is used to provide statistical data to the Department of Health and Human Services (DHHS) regarding refugees or asylees who wish to adjust to immigrant status in the U.S. When submitted, this form should be sent to DHHS at the address indicated in the instructions to the form.

#### Interview Case Referrals

Interview Case Referrals for Refugees and Asylees Most Section 209 adjustment applications submitted under the Direct Mail Program will be retained for adjudication at the NSC without an in-person interview.

Pursuant to 8CFR 209.2(e) the Service Director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview is necessary. The interview may be waived when the Service determines that an interview is unnecessary.

“Deviation From Interview Waiver Criteria” under the “Interview Waiver Criteria” section of Adjudications outlines case relocation circumstances. However, the NSC will additionally refer to local offices all applications, which can best be resolved through an interview, such as those involving:

- Higher risk or complex issues;
- Criminal charges; and
- Asylee applicants whose records indicate changes in the country conditions on which the original grant of asylum was based.

In addition, the Service Center may relocate any I-485 application for interview if the applicant's identity, admissibility and/or other eligibility qualifications are questionable.

In the circumstance of a Class B medical condition – as the public charge issue does not apply to refugees and asylees – the procedure in Step 1 of “Determining I-693 Eligibility” in the Adjudications section does not require the automatic relocation indicated under “Deviation from Interview Waiver Criteria.”

Local offices receiving section 209 case referrals from the NSC are to adjudicate the I-485 to completion.

**Asylum-based Interview Case Referrals** The case should be referred to the local office having jurisdiction over the applicant's place of residence for determination of whether asylee status is to be revoked if the adjudicating office develops evidence:

- That the original grant of asylum was obtained through fraud or misrepresentation; or
- That the applicant no longer qualifies as a refugee under section 101 (a)(42) of the Act.

The adjudicating officer must determine whether the asylum-based I-485 meets waiver of interview criteria set forth below:

- There have been no significant changes in the conditions of the country or situations in the foreign state where he or she feared persecution.
- The applicant or, if the applicant can still be considered as a dependent, the principal applicant has been interviewed in the course of an investigation or field examination, and the adjudicating examiner determines that further interview of the applicant is unnecessary.
- The applicant or, if the applicant can still be considered as a dependent, the principal applicant has been approved as an asylee AND is otherwise eligible for adjustment of status.
- The applicant is under the age of 14.
- Sufficient evidence is contained in the record to support a statutory denial of the adjustment of status application.

The above interview waiver criteria may be modified in response to developing circumstances and concerns, which would dictate the need for further restrictions.

#### Waivers of Inadmissibility

**Waivers** Any applicant, who is inadmissible to the United States under section 212(a) of the Act, may, under section 209 of the Act, have the grounds waived (except for those grounds under paragraphs (27), (29), (33), and so much of (23) as it relates to narcotics trafficking) for:

- (1) Humanitarian purposes,
- (2) To assure family unity, or
- (3) When it is otherwise in the public interest.

The burden of proof is on the refugee or asylee to establish by a preponderance of the evidence that the waiver should be granted. Where the I-485 is submitted with the request for waiver of inadmissibility, Form I-602, Application By Refugee for Waiver of Ground of Excludability, the service center will process the waiver before proceeding with the I-485 unless an interview is necessary.

All 212(g)(2) waivers must be recorded in the "Remarks" block on copy 3 of the Form I-181.

Refugees and asylees who meet the following criteria may benefit from the exercise of discretion under section 209(c) of the Act:

- (1) Did not initially submit proof of vaccination, against all the vaccine-preventable diseases named in the statutes, but who later present such proof; or
- (2) Whose medical exam report includes a certification from a civil surgeon - made in accordance with HHS regulations - that it would not be medically appropriate to receive one or more of the required vaccines;

Form I-602, Application by Refugee for Waiver on Grounds of Excludability, shall not be required.

Refugees and asylees, who state that compliance with the vaccination requirements would be contrary to their religious beliefs or moral convictions, must submit Form I-602 to request a waiver under section 212(g)(2)(C) of the Act. A fee, however, is not required.

Waivers, cont'd. To qualify for a waiver under section 212(g)(2)(C) of the Act, the alien must show that:

- (1) He or she is opposed to vaccinations in any form;
- (2) The objection is based on religious belief or moral convictions (whether or not as a member of a recognized religion); and
- (3) The religious belief or moral conviction (whether or not as part of a "mainstream" religion) is sincere.

An applicant who has had the status of an exchange alien nonimmigrant under section 101(a)(15)(J) of the Act, and who is subject to the foreign residence requirement of section 212(e) of the Act, shall be eligible for adjustment without regard to the foreign residence requirement.

Waivers for Refugees The waiver provisions for refugees adjusting under section 209 of the Act are broader than the general waiver provisions under section 212 (g)(2)(A), (B),

and (C) of the act. Section 209(c) of the Act gives the Attorney General the discretion to waive most grounds of inadmissibility, including all health grounds. Refugees adjusting under section 209 of the Act are eligible for the broader exercise of discretion.

A finding by a civil surgeon that one or more of the vaccinations would not be medically appropriate may be considered a humanitarian basis for granting the waiver for those vaccinations.

## Adjustment Codes

**Adjustment Codes for Refugees** A person who has been granted refugee status in his own right (RE-1, a principal) is adjusted using the adjustment code RE-6 (add 5 to the RE-1). The RE-6 code should not be used for the former spouse or child of the principal alien where that relationship ceased to exist after the derivative was admitted in refugee status.

This could be due to the termination of the marriage or the fact that the former child is now over 21 or married. (The “Nunc pro Tunc” procedure, which is mandatory for derivative asylee who age out or marry prior to age 21, is not required to preserve the right to adjustment in refugee cases.) The RE-6 code is reserved solely for the principal alien to ensure there is no confusion regarding the eligibility to file an I-730.

The refugee who is an applicant for adjustment of status and who qualified for refugee status as the spouse (RE-2) of the principal, and who is the spouse or former spouse of the principal at the time of adjustment is adjusted using the code RE-7.

Likewise, the applicant who was admitted as a refugee child (RE-3, unmarried and under 21 at the time of admission) of the principal and who is unmarried and under 21 or the former child of a principal refugee at the time of adjustment is adjusted using the code RE-8 (add 5 to the RE-3).

The RE-7 and RE-8 approvals are not delayed because the principal has not applied for adjustment, is deceased or cannot be granted adjustment for some reason.

## APPENDIX B: Haitian Refugee Immigration Fairness Act (HRIFA)

**Overview** Applicants may be eligible to apply for permanent residence through the Haitian Refugee Immigration Fairness Act (HRIFA). Some of the review steps involved in the processing of HRIFA-based applications are different from the processing of other permanent residence applications, as they must meet specific criteria in order to qualify. Nebraska Service Center (NSC) has sole jurisdiction for applications filed under this program.

In This Chapter      This chapter discusses the following topics.

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### Statutory Eligibility

**General**      The I-485 must be reviewed to determine whether the applicant is statutorily eligible for adjustment. If the applicant is ineligible for adjustment of status and the ground(s) of ineligibility cannot be overcome, the I-485 must be denied.

**HRIFA-based Applicants**      HRIFA (Pub. L. 105-277), a limited provision that provides relief in the form of lawful permanent residence to certain Haitian nationals, was signed into law on October 21, 1998. Regulations governing the filing and adjudication of applications for HRIFA adjustment are contained in 8 CFR 245.15, although the HRIFA statute is separate and apart from section 245 of the Act. The HRIFA program sunset March 31, 2000 for principal applicants, and their applications must have been properly filed at the NSC no later than that date. For qualifying dependent applicants, the application period for HRIFA adjustment remains open indefinitely.

**Grounds of Inadmissibility**      Several grounds of inadmissibility are inapplicable to HRIFA cases, while others may be waived. Those that are statutorily inapplicable include:

- 212(a)(4)-public charge
- 212(a)(5)-labor certification and qualifications for certain immigrants
- 212(a)(6)(A)-unlawful entry
- 212(a)(7)(A)-immigrant visa
- Section 212(a)(9)(B)-180/365 day unlawful presence

Waivers of other applicable grounds may be available on a case-by-case basis as otherwise provided in the INA and 8 CFR 212. If, upon review, it appears the applicant may be inadmissible, the file should be so noted to alert the adjudicator of the possibility.

## Receipting and Data Entering by Support Services Contractor Personnel

**General** Unless in deportation, removal, or exclusion proceedings that have not been administratively closed with the consent of the Service (or where a motion to reopen or reconsider has not been continued indefinitely with the consent of the Service), the applicant must file Form I-485 with the NSC, in accordance with the instructions contained on that form as modified by Form I-485 Supplement C. (An alien who is in proceedings should file the application with the immigration judge having jurisdiction over his or her case.) A separate I-485 application, including the fee specified in 8 CFR 103.7, is required for each applicant and dependent.

### Step Action

- 1.1 Date-stamp the application immediately upon receipt.
- 1.2 Ensure that the application has the correct fee and has been signed by the applicant.
- 1.3 Record the fee.
- 1.4 Endorse and forward the check (or other payment vehicle) to the fee account.
- 1.5 Place each new application in a bar-coded receipt file for delivery to the next stage of the process. Once this step is complete, the application has been received by the Service and can no longer be rejected without going through the process of refunding the fee.

### Step Action

- 1.6 Bundle the applications submitted by family groups to facilitate later processing.
- 1.7 Enter the data into CLAIMS.
- 1.8 If the fingerprint fee was submitted, the CLAIMS system will automatically generate a notice to the applicant advising him or her of the location of the ASC where he/she should report for fingerprinting and when. If the fingerprint fee was not submitted but is required, a billing notice will automatically be generated.
- 1.9 Enter the Classification Code under which the applicant is seeking adjustment of status.

Note: This additional requirement is the result of the statutory mandate contained in HRIFA that the Comptroller General of the United States (i.e., the GAO) report to Congress on a semi-annual basis regarding the number of HRIFA cases received and the number of HRIFA cases completed. The statute goes on to require that the report include a breakdown specifying the number of applicants by their basis of eligibility. In order for

the GAO to meet this statutory mandate, the CLAIMS system must be able to generate accurate reports containing such specificity.

1.10 Scan the photograph and signature for card production later.

1.11 Send out G-325A checks.

#### Preliminary Screening by U.S. CIS Support Personnel

**General** A preliminary review of the application after the initial receipting process is complete must be performed. The preliminary review ensures that all relevant questions on the form have been completed, that necessary supporting documents are attached, and that the case is ready for adjudication. If the application is lacking relevant answers or documents, these must be requested from the applicant through the RFE procedure once the application has been receipted. If such deficiencies can be identified prior to fee acceptance, a "rejection" notice may be used, rather than a request for additional information. The preliminary reviewer may annotate the application with information important to the adjudicator, taking care to always identify such notations as the work of the preliminary reviewer.

**Form I-485/ Application to Adjust Status** Block "h." should be checked and endorsed with one of the following classifications, as specified in the instructions:

- HRIFA principal - asylum applicant
- HRIFA principal - parolee
- HRIFA principal - child without parents
- HRIFA principal - orphaned child
- HRIFA principal - abandoned child
- HRIFA dependent - spouse
- HRIFA dependent - child under 21 years old
- HRIFA dependent - unmarried son or daughter

An application from a "HRIFA principal" must have been received prior to April 1, 2000. If an application is received after that date and the applicant claims to be a HRIFA principal, it must be sent to U.S. CIS Review prior to Data Entry. An application from a "HRIFA dependent" has no filing deadline.

**Verification of Haitian Nationality** The applicant must submit evidence to verify Haitian nationality. The most common evidence is the birth certificate; however, someone may submit other documentation, such as a baptismal certificate or a copy of his or her passport. It is also possible that an applicant who was not born in Haiti derived or acquired such nationality, and may submit evidence of such.

**Note:** In many cases, the applicant's birth record may be unavailable, especially considering the short time period during which a principal applicant may file an application. Accordingly, if the applicant is applying as either an alien who applied for

asylum prior to December 31, 1995, or as a parolee prior to December 31, 1995, and the record created at that time shows that the alien indicated Haitian nationality, the birth record requirement may be waived by the adjudicating officer during the interview. In such cases, annotate the applicant's file to indicate that the birth record was not submitted and that the interviewing officer must determine the issue of nationality.

**Reviewing Form I-485 for Completeness** In addition to reviewing Form I-485 for completeness, the following are also required:

- Form G-325A, Biographical Information Form
- Two ADIT-Style Photographs
- Local Police Clearances. Local police clearances are required for each jurisdiction in the U.S. where the applicant has resided for at least six months. However, if the applicant attempted to obtain local police clearances, but was unable to do so because of State or local policies, he/she may submit evidence of such in lieu of the local police clearances. The director of the NSC has the authority to waive the local police clearances requirement where the applicant is able to establish that he/she made a good faith effort to obtain them.

**Form I-693/ Medical Form** Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, is required initial evidence. The form should be completed and endorsed by a Service-approved physician and all vaccination requirements must be met.

**Commencement of Physical Presence Prior to 12/31/95** Ensure that the applicant has submitted evidence that he or she was present in the U.S. on December 13, 1995.

Evidence may consist of the following types of documentation:

- Copy of Form I-94, issued upon arrival on or prior to 12/31/95
- Copy of Form I-122, issued on or prior to 12/31/95
- Copy of Form I-221, issued on or prior to 12/31/95
- Evidence of an application for any other benefit under the INA: Copy of a filing receipt or other official correspondence establishing submission of any application by or on behalf of the applicant on or prior to 12/31/95, which establishes the applicant's presence in the U.S. on 12/31/95
- Other official evidence: Other documentation issued by, or filed with, a Federal, State, or local authority, which shows that the applicant was present in the U.S. on 12/31/95. Such documents must bear the official seal of the issuing authority (if normally present), be dated at the time of issuance or filing, and be dated no later than 12/31/95. Included in this group are items such as: motor vehicle record, driver's license or ID card, public hospital record, public school record, and income tax records
- Certain school records: For persons applying as children as described in section 902(b)(1)(C) of HRIFA, records of the private or religious school which the applicant

attended, provided that the private or religious school was registered, approved, or licensed by the appropriate State or local authorities, was accredited by the appropriate State or local accrediting body or private school association, or maintains enrollment records in accordance with State or local requirements or standards. If the adjudicating officer has doubts whether the private or religious school meets these standards, he or she should consult with the district's student school officer or Mr. Jack Klenk of the Office of Non-Public Education, U.S. Department of Education by telephone at 202-401-1365/0375 or by fax at 202-401-1368

Commencement of Physical Presence Prior to 12/31/95, continued Such evidence may relate to presence in the United States on a date prior to the "magic" date of December 31, 1995. Since people may not be able to document where they were on a particular date the regulations allow an applicant to submit evidence of presence in the United States on a date prior to December 31, 1995, so long as the adjudicating officer is satisfied that the alien did not leave the country between that prior date and December 31, 1995. The amount of material needed to satisfy the adjudicating officer will vary from case to case. In many, if not most, situations, the officer should be satisfied with the applicant's oral or written claim that he or she did not depart the United States between the two dates, especially if the gap between them is rather small. On the other hand, if there is some indication that the alien may have left the country, or if the gap between the dates is especially large, the officer can require additional evidence. In deciding whether to ask for additional evidence, the officer may be guided by logic and common sense, as much as by documentation. Furthermore, Service experience has shown that Haitians who arrived in the United States during the 1990's and fall within the five eligible classes below rarely, if ever, departed from the United States. Generally speaking, an applicant's verbal or written statement that he or she had not departed since arrival, coupled with the absence of any record of departure, may be accepted at face value.

Each of the forms of documentation of presence in the U.S. on or before December 31, 1995, listed above must establish that the relating event or action occurred on or prior to December 31, 1995, not simply claim that the alien was present prior to that date. For example, if presence is documented by the filing of an asylum application, the application itself must have been submitted on or before December 31, 1995. A mere statement in a later application claiming entry prior to that date is insufficient. If Social Security earnings statements are used, those must reflect earnings beginning on or before December 31, 1995. Secondary evidence, such as affidavits should normally not be submitted or accepted unless such claims can be verified in Service records. Where the documentation cannot be verified by Service records or differs from information contained in Service records, the file should be so noted. Evidence of entry on or before December 31, 1995 that is not verifiable from Service records shall be regarded as fraud-prone. All such cases, including all cases supported by Social Security records and all cases supported by documents issued by other (non-U.S. CIS) Federal, State or local agencies, must be referred for a personal interview.

**Continuity of Physical Presence Since 12/31/95** Ensure that the applicant has submitted evidence that he or she maintained continuing physical presence through the date the adjustment application is filed (not counting absences totaling 180 days or less). Evidence may consist of either governmental or non-governmental documentation, including lease agreements, copies of tax returns, regular bills showing account activity and the applicant's mailing address, canceled checks or bank records, employment records, etc. While there is no specific requirement establishing a number of documents which must be submitted (i.e., it is not necessary to submit a utility bill for every month since entry), ideally, documents will not leave unaccounted periods of more than 90 days. Furthermore, once an applicant has established the existence of an ongoing family unit, other members of that family unit can use documentation pertaining to one family member to establish continuity of presence. For example, a parent may use a grade school report card issued to his or her child. The credibility and volume of these documents will heavily influence the decision on whether or not an interview will be required. Affidavits executed after the fact attesting to the presence of an applicant are not acceptable. However, it may be necessary to use affidavits to clarify discrepancies such as employment under an assumed name, etc.

In addition to the above continuity of presence evidence, a separate statement is required explaining the duration and purpose of every absence from the United States since the last arrival on or before December 31, 1995.

The documentation of continuous physical presence may be considered less restrictively. In general, reliable, government-issued documents that strongly support a claim of continuous physical presence for the required period should be accepted without official verification. Other, less reliable documents, such as documents supported by affidavits purporting to explain a falsely assumed identity, should be routinely or at least randomly verified and the case referred for interview. Where the file or other information casts doubt on the continuing physical presence since entry, this should be so noted and the case referred for a personal interview. Refer to "Commencement of Physical Presence Prior to 12/31/95" regarding acceptance of verbal or written statements of non-departure at face value.

**Member of Eligible Class** A principal applicant must submit evidence to show that he or she falls within one of the five eligible classes below:

- Haitians who filed for asylum before December 31, 1995
- Haitians who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest
- Haitian children who arrived in the U.S. without parents and have remained without parents in the U.S. since arrival
- Haitian children who became orphaned subsequent to arrival in the United States

- Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since

For the last three of these classes, the applicant must have been a child at the time of arrival in the U.S. and on December 31, 1995, but not necessarily at the time of his or her adjustment of status. In other words, someone who turned 21 and/or married on or after January 1, 1996, could still adjust status under the provisions of HRIFA as a child. Furthermore, any otherwise-eligible Haitian dependents acquired through a marriage occurring on or after January 1, 1996, could apply for adjustment under the provisions of HRIFA section 902(d) relating to dependents.

**Service-Issued Documents** If an applicant is unable to produce a Service-issued document, but claims that such a document exists, Service records must be checked to verify the claim. If the claim is verified, attach a printout or other evidence from the Service record. If the claim cannot be verified, annotate the application “Unable to verify through U.S. CIS records” and add your initials and the date.

**Inadmissibility** If the applicant states that he or she is inadmissible to the United States, check to see that he or she:

- Filed a waiver application
- Paid the fee
- Properly completed the application

Applicants who are inadmissible (except under sections 212(a)(4), (5), (6)(A), (7) (A), and (9) (B), may concurrently submit an application for any waiver for which they claim eligibility.

**Evidence of Eligibility as a Dependent** Check for the following evidence of eligibility as a dependent, if the alien is applying as such.

- Evidence of Haitian Nationality
- Evidence of Relationship to Principal. A HRIFA dependent must submit evidence of the existence of the claimed relationship at the time of the principal beneficiary's adjustment of status, and that such relationship continued to exist at least through the time that the dependent is granted adjustment. Such evidence is the same as would be required for an I-130 petition (i.e., marriage certificate and evidence of termination of any prior marriages for a spouse, birth certificate for a child, etc.).
- Evidence of Presence, if applying as an unmarried son or daughter who is 21 years of age or older. The unmarried child of a HRIFA applicant must show evidence of continuous physical presence in the U.S. since December 31, 1995, as well as information regarding subsequent absences. A dependent son or daughter must also submit a statement regarding any and all absences since December 31, 1995, and provide evidence to document his or her continuous presence. Refer to “Verification of

Continuity of Physical Presence Since 12/31/95” for documentary requirements for proving continuity of presence.

· Evidence of Presence, if applying as a spouse or child under age 21. The spouse or child of a HRIFA principal must be physically present in the U.S. in order to apply but need not have been present on December 31, 1995, or during any particular period since that date, and need not submit a statement regarding subsequent absences or continuing presence.

Note: Claims of dependent eligibility are more likely to be supported by documents issued by authorities other than U.S. CIS. If a principal applicant's supporting documents are supported by Service records, but the dependents are supported by other sources, the adjudicating officer need not refer the case for interview, but may do so if there is any suspicion regarding the documentation submitted. For example, if a dependent claims to have been present in the United States at a time when the principal's previous asylum application shows that dependent was still residing in Haiti, the file should be so noted and the case referred for an interview at a local U.S. CIS office. An application by a dependent may be filed concurrently with or subsequent to the principal applicant's application but may not be approved until the principal applicant is granted permanent residence.

Secondary Evidence Other than as discussed in paragraphs “Commencement of Physical Presence Prior to 12/31/95” and “Continuity of Physical Presence Since 12/31/95,” an alien may submit secondary evidence in support of the application, if the alien establishes that the primary evidence is unavailable. For example, a baptismal record may be submitted for a birth certificate that cannot be obtained due to destruction of the records by fire or warfare. Refer to the Note to “Verification of Haitian Nationality” regarding evidence of nationality already on file.

Form I-94/ Arrival/ Departure Record If the applicant claims a lawful entry, check for an original or a copy of Form I-94, Arrival/Departure Record. However, the lack of such entry (or of the Form I-94, if the alien claims it was lost) does not affect the alien's eligibility for adjustment under HRIFA.

A-Files Files must immediately be requested, so it can be determined if there are one or more existing A-files relating to the applicant. If no A-file exists, create an A-file. If an existing A-file is located in another Service office, create a temporary A-file. It is critical that any and all existing files be identified and obtained prior to adjudication. Review supporting documents closely to determine existing file number(s).

Note: A certain number of A-files were created in Port-au-Prince prior to the closure of the U.S. CIS office in 1994 and were subsequently routed through El Paso to

Headquarters, Office of International Affairs, although CIS lists them as being located in Mexico City. If you are requesting a file on a Haitian national and CIS indicates the file is in Mexico City, contact Mr. Gil Jacobs of the Office of International Affairs.

**NSC Adjudication** If the application is to be adjudicated by an NSC adjudicator, place the case on hold pending the results of the records checks and fingerprint clearance. Once the checks have been completed, remove the hold and route the file to the adjudicator.

**Local Office Adjudication** If the application is being routed to a local office for interview and adjudication:

- At NSC, update CLAIMS and transfer the file to the appropriate local office. CLAIMS will generate a notice to the applicant advising him/her that the application has been transferred and then update CIS

### Adjudications Processing

**General** The adjudicative process involves both general and specific processing actions.

### General Processing Actions

**General Processing** The following general processing actions are required during the adjudicative process.

**Check Form I-485** If the application is from a principal applicant, verify that the I-485 was timely filed.

**Reviewing Existing Files** The review of existing files is mandatory, but may be waived if the electronic record supports the alien's claimed status and the file cannot be retrieved within 90 days. An interview is required when a file cannot be located, even if the electronic record supports the alien's claim. Review the file to determine if there is evidence of the required physical presence. The file may also contain evidence, such as an advance parole document, that the alien has been outside the United States for more than 180 days, or it may contain evidence of inadmissibility on other grounds. One of the

more critical items of information that must be obtained from the file is whether the alien is in exclusion, deportation or removal proceedings, since this relates directly to the issue of whether U.S. CIS or EOIR has jurisdiction.

**Determine Jurisdiction** In the event an adjustment applicant is in exclusion, deportation or removal proceedings that have not been administratively closed, refer the case to the appropriate Immigration Court. EOIR has authority to grant adjustment of status under HRIFA in any case that the alien is in proceedings. The Service has jurisdiction for HRIFA adjustment over:

- Aliens who have not been placed in proceedings
- Aliens under final orders of exclusion, deportation, or removal who had not filed a motion to reopen with EOIR before the date on which the HRIFA regulations were published (05/11/99)
- Aliens whose proceedings have been administratively closed
- Aliens whose motion to reopen or reconsider has been continued indefinitely with the consent of the Service

**Review Supporting Documents and Statements** Carefully review supporting documents and statements made on the application for completeness and for any indication that the applicant does not meet the requirements of HRIFA regarding admissibility, nationality, and physical presence (both commencement and continuity). The file should be appropriately noted and must be referred for a personal interview when:

- The documentation cannot be verified by Service records, including those cases supported by Social Security records and by documents issued by other (non-U.S. CIS) Federal, State or local agencies
- The documentation differs from information contained in Service records
- There is any doubt about physical presence requirements

**Ensure Background Checks are Complete** Ensure that background checks have been completed if the applicant is 14 years of age or older. If there is a positive response to any background check that indicates possible inadmissibility, refer the case for an interview at the local office.

**Review Local Police Clearances** Review local police clearances to ensure the requisite clearance has been submitted for each jurisdiction in the U.S. where the alien has resided for at least six months. In some cases, the alien may have attempted to obtain the required local police clearances, but was unable to do so due to local or State policies

prohibiting the issuance of such clearances. If the alien submits proof of both his/her attempt to obtain such clearances and of the local or State prohibitions, the Director of the NSC has the authority to waive the requirement that local police clearances be submitted.

**Ensure Fingerprint Checks are Complete** Ensure fingerprint checks have been properly completed. If the applicant fails to comply with the Service's instructions for obtaining fingerprints, the application for adjustment of status must be denied for failure to respond.

#### Review

Form I-693/

Medical Form A designated physician must sign the examination form. If there is any medical condition that would result in a finding of inadmissibility, determine if a waiver is available.

**Determine if Regulatory or Statutory Bars are Applicable** Determine if there is any regulatory or statutory bar that prohibits favorable consideration of the application or if a waiver is required.

Note: HRIFA adjustment cases are not subject to the limitations and requirements of section 245 of the Immigration and Nationality Act, such as the bars to adjustment of status for illegal entry or unlawful employment.

**Check for A or G Status** Form I-566 is required if a HRIFA applicant indicates he or she previously or currently held A or G non-immigrant status. Form I-508 will also be required if the State Department's response to the I-566 indicates that the applicant has diplomatic immunity.

**Ensure Continuous Physical Presence Requirement is Met** HRIFA permits an alien applying as a principal applicant or as an unmarried son or daughter (over 21 years of age) of a principal applicant to have been outside the United States for a maximum of 180 days in the aggregate since December 31, 1995. Any day on which the alien was present for at least part of the day should not be counted towards the 180-day cumulative total. If an absence commenced prior to December 31, 1995, count only the time beginning on that date.

## Special Processing Actions

**Special Processing** The following special processing actions relate to both NSC adjudication and local office interview and adjudication and are required during the adjudicative process. If there are no issues to be resolved by interview, approve or deny the case on its merits, and follow NSC guidelines for quality assurance and supervisory review.

**NSC Referral to Local Office** The service center adjudicator must provide in the file for the interviewing officer a case relocation memorandum explaining the discrepancies noted or other reasons for conducting the interview. The following types of cases must be referred to a local office for interview and adjudication:

- Any case where the adjudicator is not in possession of all A-files pertaining to the applicant
- Any case where the evidence presented does not fully support the claimed eligibility or where there is any discrepancy between documentation provided and the information contained in the Service file or other government record pertaining to the applicant
- Any case involving an inadmissible alien (other than those inadmissible under grounds that HRIFA specifically exempts)
- Any case involving a waiver of inadmissibility
- Any case involving a medical condition that would result in a finding of inadmissibility
- Any case where the evidence of presence in the U.S. on 12/31/95 is supported only by non-U.S. CIS documentation
- Any case in which there is any question as to the nationality of the applicant (e.g., where the applicant claims to have derived or acquired Haitian nationality, or where there is a question as to whether he or she may have lost such nationality)
- Any case in where there are doubts about the familial relationship between the principal applicant and one or more of the dependents
- Any case where the alien is applying as a Haitian national who applied for asylum prior to December 31, 1995, or as a Haitian national who was paroled into the United States prior to December 31, 1995, and who did not submit a birth record but is instead relying on a consistent prior claim to Haitian nationality made at the time of the parole or asylum application

**Local Office Special Processing Actions** Some special processing actions relating to local office interviews and adjudications are:

- Applications where a waiver of inadmissibility is not required
- Applicant who fails to appear for a required interview

· Applications where a waiver of inadmissibility is required. In adjudicating an application for adjustment of status filed by an alien who requires a waiver of inadmissibility, remember that while HRIFA does not give the Service discretionary authority to deny the application for adjustment itself, the Service does retain its discretionary authority when adjudicating any application for a waiver of inadmissibility. If the alien is statutorily ineligible for adjustment of status without a waiver, and his or her application for a waiver is denied as a matter of discretion, the adjustment application must also be denied. During the course of the interview in a case involving such waiver, the adjudicator should elicit all information, both favorable and unfavorable, which has a bearing on the exercise of administrative discretion regarding the waiver.

## Adjudication

Adjudicative Processing      The following steps are required for adjudication.

### Step    Action

2.1    Determine current case status. Because aliens affected by Pub. L. 105-277 were in a variety of lawful and unlawful immigration statuses at the time of passage, you may encounter applications that fall within the jurisdiction of the Immigration Court or the Board of Immigration Appeals. Some applicants will not be in any sort of removal proceedings, others may be in proceedings, and still others may have received a final order of removal that has not been executed.

## Adjudicative Processing (continued)

### Step    Action

2.2    Determine jurisdiction.

#### IF... THEN...

A case where an OSC or NTA has been served on the Court and no final order (or order administratively closing the case) has been issued    Jurisdiction rests with the Immigration Court (or BIA).

A motion to reopen filed on or before May 11, 1999 is pending with the Court or BIA    Jurisdiction rests with the Immigration Court (or BIA).

A final order has been issued    Jurisdiction rests with U.S. CIS.

The proceedings have been administratively closed    Jurisdiction rests with U.S. CIS.

Action on any pending motion to reopen or reconsider filed prior to May 11, 1999 has been continued indefinitely with the consent of the Service    Jurisdiction rests with U.S. CIS.

Any pending motion to reopen was filed on or after May 11, 1999  
Jurisdiction rests with U.S. CIS.\*

\*Since the implementing regulations provide that the Immigration Court only regains jurisdiction for HRIFA adjustment purposes if a motion to reopen proceedings is filed prior to the publication date of the regulation.

2.3 Transfer out any application where the jurisdiction does not lie with the Service and notify the applicant of the action.

2.4 Check for applicant's asylum application pending at an asylum office or other actions pending before the Service.

#### Adjudicative Processing (continued)

Step Action

2.5 Determine the disposition of the HRIFA application and take any actions required to conclude other Service adjudicative procedures. In the event the HRIFA application is denied, follow-up action may be required to reinitiate other pending matters.

2.6 Check that the HRIFA applicant or dependent is a national of Haiti. Normally, nationality is established by a birth certificate; however, other documentation, such as a passport, is secondary evidence and may be accepted if primary evidence is unavailable.

2.7 Check for evidence of dependent relationships, which must be established by birth or marriage certificates, divorce or adoption decrees, etc. Refer to AFM Appendix 23-3 regarding Haitian nationality law.

2.8 Check principal applicant's classification under HRIFA. Any alien applying as a principal applicant must establish that he or she falls within one of the categories described in section 902(b)(1) of HRIFA:

(i) For those adjustment applicants who claim to have applied for asylum before either the Service or EOIR prior to December 31, 1995, the U.S. CIS or EOIR records are definitive. Because locating the U.S. CIS or EOIR record may, in some cases, prove difficult, it is important that the applicant provide whatever information or document he or she can (such as a copy of the Form I-589 previously filed), especially in cases where the alien may have used a slightly different name.

#### Adjudicative Processing (continued)

Step Action

2.8

Cont'd Any alien applying as a principal applicant must establish that he or she falls within one of the categories described in section 902(b)(1) of HRIFA:

(ii) Likewise, for those adjustment applicants who claim to have been paroled into the United States prior to December 31, 1995, the Service record contained in the alien's file or in NIIS is definitive. As with cases based on asylum applications filed before December 31, 1995, any person claiming to have been paroled prior to December 31, 1995, should submit whatever documentation he or she has to that effect (such as a copy of the Form I-94) to assist the Service in locating the proper record. It is important to remember the distinction between being paroled into the United States under section 212(d)(5) of the Act, and being released from custody on a conditional parole under section 236(a)(2)(B) of the Act. As used in HRIFA section 902(b)(1)(B), the term "parole" refers only to those aliens were paroled under section 212(d)(5).

#### Adjudicative Processing (continued)

##### Step Action

2.8

Cont'd Any alien applying as a principal applicant must establish that he or she falls within one of the categories described in section 902(b)(1) of HRIFA:

(iii) For applicants seeking classification under one of the three categories for children, Service and EOIR records are unlikely to be definitive. In some cases, the Service record may show that the child was paroled into the United States as an unaccompanied minor and placed into appropriate foster care. In other cases, there may be no Service record of the child at all, let alone any record of his or her arrival as an unaccompanied minor or his or her being orphaned or abandoned. With regard to children, the statute does not require any prior interaction between the child and the Service. If the alien who is otherwise eligible under HRIFA can prove that he or she arrived in the United States (regardless of whether he or she was admitted, paroled, or entered without inspection) prior to December 31, 1995, that he or she was a child at the time of arrival and on December 31, 1995, and that he or she falls within one of the three subcategories for children set forth in section 902(b)(1)(C)(i) through (iii) of HRIFA, he or she may be granted adjustment. As in all such immigration proceedings, the burden of proof is on the applicant, but such burden can be met through the submission of satisfactory records from the appropriate Federal, State, or local court or child welfare agency. The records must have been created at the time the alleged event occurred and must be from a court or agency having jurisdiction over such matters where and when the alleged event occurred. With regard to orphaned and abandoned children, remember that the event must have occurred while the applicant was still a child (i.e., under 21 years of age and unmarried). Also remember that in the case of an abandoned child, the abandonment must have occurred prior to April 1, 1998, and that the child must have remained abandoned thereafter. However, an otherwise-eligible applicant could have either attained the age of 21 or married on or after January 1, 1996, or the date of orphanage or abandonment, whichever comes latest, and still qualify for adjustment as a child under HRIFA.

## Adjudicative Processing (continued)

### Step Action

2.9 Check for presence in the U.S. on 12/31/95 and check for continuity of physical presence until the date on which adjustment of status is approved for both principal aliens and each unmarried son or daughter over 21 years of age. Absences, with or without prior Service approval, totaling 180 days or less have no effect on eligibility. Furthermore, under certain circumstances, time outside the United States may be tolled and not counted toward the 180-day maximum. Accordingly, the implementing regulations provide that:

- Travel pursuant to an advance parole authorization granted by the Service, regardless of whether such travel exceeds 180 days, has no effect on eligibility.
- For an applicant who after December 31, 1998, departed from the United States without an advance parole, time spent outside the United States counts toward the 180-day cumulative time period.
- For an applicant who departed the United States between October 21, 1998, and December 31, 1998, time spent outside the United States on or after October 22, 1998, and prior to July 12, 1999, does not count toward the 180-day cumulative time period. This provision was included in the regulations in order to allow otherwise-eligible individuals who were required to depart prior to the date of the field guidance on advance parole an opportunity to seek parole authorization from the Director of the NSC.
- Time spent outside the United States after the alien has submitted a request for parole into the United States for the purpose of filing an adjustment application under HRIFA and before the alien is actually paroled for such purpose, does not count toward the 180-day cumulative total.

## Adjudicative Processing (continued)

### Step Action

2.9 Cont'd HRIFA applicants must produce documentation that is verifiable, through Service records, the records of other government agencies including public schools, or, if the applicant is applying as a child, the records of a private or religious school he or she attended. Affidavits and other secondary evidence may be accepted in unusual circumstances, if primary evidence is unavailable, only if such secondary evidence documents one or more of the specific actions enumerated in paragraph (c)(1) and which is conclusively verified by Service records. For example, an affidavit may be accepted which attests to the fact that an applicant was previously granted a U.S. CIS employment authorization provided that Service records corroborate the issuance of that document.

Documentation of continuous presence may be accepted from a wider range of sources than documentation of physical presence on 12/31/95.

IF... THEN...

An applicant has no prior Service record      An interview is required.

File review indicates possible unexplained absence from the U.S. Case should be referred to the appropriate local office for questioning and resolution.

Note: Departure from the United States after the filing of the application for adjustment constitutes an abandonment of the application for adjustment of status, unless the applicant applied for an advance parole prior to his or her departure, and the Service granted such advance parole request. Furthermore, the time spent outside the United States during an unauthorized absence counts toward the 180-day maximum allowed under the statute; this is likely to be significant if the alien either returns to the United States and files a new application for adjustment or files an I-131 seeking parole into the U.S. for the purpose of filing a new I-485.

2.10 Determine if application is inadmissible. The grounds of inadmissibility specified in the "Grounds of Inadmissibility" section are inapplicable. Other grounds may be waived, on a case-by-case basis, provided eligibility exists pursuant to other provisions of the Act.

#### Adjudicative Processing (continued)

Step    Action

2.11 Process waiver applications, with fee, concurrently with a HRIFA adjustment application.

2.12 Refer all waiver cases to the local office having jurisdiction over the applicant's residence for a personal interview.

2.13 Dependent's application for adjustment may not be approved until the adjustment application of the principal applicant has been approved. Dependents already present in the United States should be encouraged to submit their applications simultaneously with the principal applicant.

Note: If the dependent relationship is created after the principal's status is adjusted (e.g., through a marriage, birth or adoption which occurred subsequent to the adjustment), HRIFA dependent status is not permitted. In such situations, the principal would be required to submit an I-130 petition for his or her dependent, if the dependent is not able to qualify as a principal HRIFA applicant in his or her own right. Also note that unlike HRIFA principals, HRIFA dependents do not have a filing deadline.

#### Case Closing Actions

**Approvals** Endorse the approval block on the I-485. Sign Form I-181 and endorse it with the correct adjustment code, office information and date of action. Due to the extensive Congressional reporting requirements contained in the HRIFA statute, it was necessary for the Service to create a multiplicity of class codes in order to be able to capture the requisite information. It is extremely important that class of admission codes be applied properly and in accordance with the table of codes.

**Note:** In some cases, the applicant may have applied under one category, but the adjudicating officer may find that he or she is more appropriately classified under another. In such cases, the adjudicating officer should approve the application under the more appropriate classification. For example, a child who was paroled into the United States may have applied for adjustment of status claiming to be an orphan (classification HD-6), but be unable to provide evidence of the death of his or her parents. If the Service records clearly show that the parole took place before December 31, 1995, and the alien is otherwise eligible for adjustment under HRIFA, approve the application under classification HB-6. Furthermore, in some cases, the code that the adjudicating officer determines is appropriate will differ from the one that was indicated at the time of initial data entry. It is the responsibility of the adjudicating officer to ensure that the correct code is assigned at the time of case approval.

Follow the steps below to process an approval at the NSC.

**Step Action**

3.1 Update CLAIMS, thereby ordering the approval notices and production of the alien registration card (Form I-551) and entry of new data into the Central Index System.

**Step Action**

3.2 If the file contains an unadjudicated asylum application, offer the alien the opportunity to withdraw that application by sending him or her a letter of withdrawal which can be signed and brought to the local office when he or she appears for ADIT processing (the local office person handling the I-551 processing should place the resulting withdrawal letter in the file and notify the appropriate asylum office so that the RAPS record may be updated).

3.3 Continue processing.

**IF... THEN...**

There is no other Service action pending      Route the file to the file room for storage.

Other Service action is pending      Ensure that appropriate steps are taken.

**Denials** If a HRIFA adjustment application is denied, prepare a denial notice setting forth the specific basis for the adverse action. The denial notice may be served by personal service in accordance with 8 CFR 103.5a(a)(2). As with section 245 adjustment cases, HRIFA decisions cannot be appealed. The Immigration Court has jurisdiction to reconsider HRIFA eligibility during the course of a removal hearing. If the alien is:

- Already subject to a final order of removal, certify the case for review by the immigration judge, as described in “Appeals and Certifications”
- Not already in removal proceedings, but the application is denied and the alien is not maintaining status, institute removal proceedings
- In removal proceedings which were administratively closed, or if a motion to reopen or reconsider was continued indefinitely with the Service's consent, notify district counsel so that the removal proceedings may be calendared again or action on the motion may be reinstated

**Supervisory Review** HRIFA decisions are subject to the same review and quality assurance procedures as other adjustment of status cases. Follow local procedures for such review.

**Appeals and Certifications** If a HRIFA adjustment case is filed with, and denied by, the Service after the alien has been ordered removed by an immigration judge in proceedings in Immigration Court, certify the adverse decision for review to the Immigration Court which ordered the removal, in accordance with 8 CFR 245.15(r)(3). It is not necessary to certify denied cases where the alien has not been ordered removed, since the immigration judge has authority to reconsider HRIFA eligibility, along with other forms of relief, during the course of the removal proceedings. In the unlikely event that a HRIFA application is denied and the alien is maintaining valid non-immigrant status, certify the decision to the Administrative Appeals Office in accordance with 8 CFR 103.4(a)(4).

#### Ancillary Applications

**Waivers** Various immigrant waivers are available to HRIFA applicants on a case-by-case basis. Waivers may be filed concurrently with the application for adjustment or may be filed later, if an inadmissibility ground is identified subsequent to initial filing. Adjudication of a waiver should be completed in the local office at the time of the interview.

**Advance Parole: Alien Present in U.S. at Time of Request** The Director of the NSC is delegated authority to authorize advance parole of aliens whose properly filed applications for adjustment under HRIFA are pending at the NSC, except those cases in which a final order has been issued. In any case where the alien is determined to be in removal proceedings, do not adjudicate the parole request, transfer the HRIFA application to the appropriate Immigration Court and the parole request to the local office. If the alien is not in proceedings, adjudicate the parole request, granting parole for the amount of time required for any legitimate business or personal reason. If the alien is the subject of a final order, the local office should contact the Assistant Commissioner for International Affairs in Headquarters regarding any parole request.

**Parole Authorization: Alien Outside the U.S. at Time of Request** Parole authorization requests for the purpose of filing an application by aliens eligible for HRIFA adjustment may be filed by prospective applicants who are not physically present in the United States, provided they are otherwise qualified for HRIFA adjustment as a principal applicant. If otherwise eligible, principal aliens who have not been outside of the U.S. for more than 180 days in the aggregate after December 31, 1995 (not counting any time which may be tolled as discussed above), may submit an application for parole authorization together with a photocopy of a fully documented HRIFA adjustment application (except for the fee, fingerprints, medical examination and police clearances) to the NSC. A HRIFA dependent not physically present in the United States may not be granted parole authorization unless he or she otherwise meets all HRIFA requirements and the application for the principal applicant has been approved.

A parole authorization issued in such circumstances must be noted: "You must properly file an application for adjustment of status within 60 days of your parole into the United States, or March 31, 2000, if you are filing as a principal applicant, whichever comes first. Failure to do so may result in termination of parole and institution of removal proceedings."

If the I-131 is approved, the I-512 should be prepared by NSC and delivered to the alien through the American Embassy or American Consulate having jurisdiction over the alien's location, using normal procedures for transmission of documents to consular posts (e.g., DHL or similar courier service). Include a copy of the alien's application for parole (including the supporting documents) and an explanation that the parole authorization has been issued pursuant to 8 CFR 245.15(t)(2), and request that the consular personnel verify the alien's identity and review the case for possible fraud before issuing the document. In setting the expiration date for the I-512, the NSC should allow a reasonable amount of time for (a) the I-512 to reach the consulate, (b) the consulate to call in and interview the alien, and (c) the alien to make arrangements to travel to the United States. The I-512 should authorize a single-entry parole.

**Note:** In order to be adjudicated by the Director of the NSC pursuant to 8 CFR 245.15(t)(2), requests for advance parole must be filed and approved by March 31, 2000.

This applies to all HRIFA applicants and potential applicants who are outside the United States.

**Employment authorization** A HRIFA applicant may request an EAD concurrently with, or subsequent to, the filing of his or her HRIFA application. For principal applicants, if the adjustment application is supported by an U.S. CIS-issued or U.S. CIS-received document to establish presence in the United States on December 31, 1995, the EAD should be issued by the NSC as soon as the preliminary screener determines such (unless the applicant is clearly ineligible for adjustment under HRIFA, in which case the application should be routed for an expeditious denial). For dependent applicants, employment authorization may be issued as soon as the principal applicant case is so documented, provided the dependent applicant has submitted satisfactory evidence of the relationship. However, if the principal's application is supported by evidence of physical presence on December 31, 1995, consisting of non-U.S. CIS documentation, such immediate action should not be taken on either the principal or dependent's EAD request. However, because the statute requires that an EAD application must be approved if a HRIFA adjustment application has been pending for 180 days or longer, the office having jurisdiction over the case at that point must ensure that an EAD is issued by the 180th day.

Previously authorized employment by a HRIFA applicant based on some other employment eligibility (e.g., employment authorization issued as the result of a pending asylum application or the Deferred Enforced Departure (DED) program for Haitians initiated December 23, 1997) does not terminate because of the filing of a HRIFA adjustment application.

If the I-765 and I-485 are not filed concurrently, the Service is not bound by the statutory requirement that an EAD be issued if the application is pending for 180 days. In that case, the Service would have to adjudicate the I-765 within 90 days of its filing, or within 180 days of the filing of the I-485, whichever comes later.

Note: EADs, which were issued pursuant to the DED program, were automatically extended until December 22, 1999, even though the program itself was not extended.

## APPENDIX C: Nicaraguan Adjustment and Central American Relief Act (NACARA) Filings

**Overview** Applicants may be eligible to apply for permanent residence through the Nicaraguan Adjustment and Central American Relief Act (NACARA). Some of the review steps involved in the processing of NACARA-based applications are different from the processing of other permanent residence applications, as they must meet special criteria in order to qualify. Texas Service Center (TSC) has sole jurisdiction for applications filed under these programs.

In This Chapter      This chapter discusses the following topics.

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### Statutory Eligibility

**General**      The I-485 must be reviewed to determine whether the applicant is statutorily eligible for adjustment. If the applicant is ineligible for adjustment of status and the ground(s) of ineligibility cannot be overcome, the I-485 must be denied.

**NACARA-based Applications**      NACARA, a limited provision that provides relief in the form of lawful permanent residence to certain Nicaraguan and Cuban nationals, was signed into law on November 19, 1997. Regulations governing the filing and adjudication of applications for NACARA adjustment are contained in 8 CFR 245.13, although the NACARA statute is separate and apart from section 245 of the Act. The NACARA program sunset March 31, 2000. Application for benefits under this provision must be properly filed at the Texas Service Center on or before that date.

**Grounds of Inadmissibility**      Several grounds of inadmissibility are inapplicable to NACARA cases, while others may be waived. Those that are statutorily inapplicable include:

- 212(a)(4)-public charge
- 212(a)(5)-labor certification and qualifications for certain immigrants
- 212(a)(6)(A)-unlawful entry

- 212(a)(7)(A)-immigrant visa
- 212(a)(9)(B)-180/365 days of unlawful presence

Waivers of other applicable grounds may be available on a case-by-case basis as otherwise provided in the INA and 8 CFR 212.

### Evidentiary Requirements

**Reviewing Evidence** The officer is responsible for reviewing all initial evidence to determine if it meets the standard for acceptability and that each documentary requirement has been submitted. This section lists the acceptable types of initial evidence required in the adjudication of Form I-485 under NACARA, including:

- Form I-485, Application to Adjust Status
- Form G-325A, Biographical Information Form
- Form I-693, Medical Examination Form
- Police Letter
- Arrest Records
- Verification of Cuban or Nicaraguan Nationality
- Proof of Relationship to Principal
- ADIT Photographs

Refer to the “Required Initial Evidence” section of Adjudications for additional requirements and processing information.

### Form I-485/

**Application to Adjust Status** Under NACARA, the initial evidence requirements for the I-485, Application to Adjust Status, are as follows:

- Block “h.” is marked or any indication of NACARA eligibility
- Ensure application has fee and date stamp
- Verify applicant’s presence in the U.S. at the time of filing
- Verify adjustment applicant is not in exclusion, deportation or removal proceedings before the Immigration Judge

**Form G-325A/ Biographical Information Form** Form G-325A, Biographical Information Form, is required for applicants between the ages of 14-79.

**IF... THEN...**

The G-325A is required and a consulate is indicated Check to make sure the contractor forwarded the G-325A to the consulate indicated on the I-485.

The G-325A is required and no consulate is indicated      Send the G-325A to the consulate general in the capital city of the country of the applicant's last residence and note this on the worksheet with the date sent and the initials of the sender.

Form I-693/ Medical Form      Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, is required initial evidence.

Step      Action

1.1      Find the physician's name listed under the "Civil Surgeon Certification" section of the I-693.

1.2      Check the physician's name against the Civil Surgeon List.

IF...      THEN...

The physician's name does appear on the Civil Surgeon List      The I-693 is acceptable.

The physician's name does not appear on the Civil Surgeon List      The I-693 is not acceptable. Return the original I-693 to the applicant or representative of record with notification citing why the I-693 is unacceptable, copy the medical form, and keep the copy in the file.

Form I-693/ Medical Form (continued)

Step      Action

1.3      Review the I-693.

IF...      THEN...

The I-693 is signed by the designated civil surgeon on or after May 1, 1997      It must be accompanied by "Supplemental Form to I-693" and reviewed in accordance with Headquarters' Memorandum date April 10, 1997 entitled "New Vaccination Requirements."

The Tuberculosis skin test is reactive and the chest X-ray is abnormal

The applicant must have completed nine months of treatment. If applicant has not completed treatment, a waiver is required.

If the Syphilis test is reactive      The applicant must submit evident that he/she received treatment.

If the HIV serologic test is positive      A waiver is required and the case should be relocated.

1.4 If additional information is required, the original I-693 is to be returned to the applicant or representative of record with notification citing why the I-693 is unacceptable. A copy of the medical form is to be made and kept in the file.

**Police Letter** Applicants 14 years and older must submit a letter of clearance from the police department in every city in the United States where the applicant has resided for 6 months or longer. Letters from the Circuit Court Records are not acceptable. Refer to “Regulations for Final Ruling” on the clearance letters for 14-year-old applicants.

**Arrest Records** If the applicant has been arrested, the applicant must submit a copy of the arrest record, indictment, and a copy of the final court disposition for each arrest. These cases may contain a rap sheet from the FBI. The sheet may have immigration charges, such as Entered Without Inspection (EWI) or deportation proceedings.

**Verification of Cuban or Nicaraguan Nationality** The applicant must submit evidence to verify Cuban or Nicaraguan nationality. The most common evidence is the birth certificate. The birth certificate must:

- Be issued by a recognized civil authority from the applicant’s country of birth
- Be timely registered
- Show the date and place of birth
- Show the names of both parents
- Note: If the document is written in another language, the applicant must include a certified English translation. However, do not trust translations, always read the original document.

If a Cuban applicant does not have a birth certificate:

- The applicant can send a request to the Embassy of Switzerland to request one
- This form can be found at U:\Users\Common\Cubans\Switz
- Also include this form with any request for additional evidence when a birth certificate is needed

Note: Effective December 5, 1994, passports do not qualify as evidence of birth. Passports can be accepted as secondary evidence only after the applicant has submitted evidence that he or she attempted to obtain a birth certificate and was not able to do so.

An applicant who was not born in Cuba or Nicaragua may have derived or acquired such nationality and may submit evidence of such (i.e., passport).

An applicant may submit secondary evidence such as a baptismal certificate.

Note: Birth Certificate Fraud

Nacimiento (birth) - birth certificates from Leon are suspect

Reposicion (retroactive birth certificate) - possible fraud  
Rectificacion (rectification of birth certificate) - possible fraud  
Reconocimiento (date added later to birth certificate) - possible fraud

**Proof of Relationship to Principal** Applicants filing as dependents must submit proof of the relationship to the principal. This relationship must have existed on or before the date the principal's application was approved. Evidence for dependents filing as the child of principal includes a birth certificate. Evidence for dependents filing as the spouse of a principal includes a marriage certificate.

Note: If the document is written in another language, the applicant must include a certified English translation. However, do not trust translations, always read the original document.

**ADIT Photographs** Two ADIT-style photographs must be submitted as part of required evidence. These photos must:

- Have a white background, glossy, not retouched and not mounted
- Show the entire face in 3/4 view showing the right ear and left eye
- Be taken within 30 days of the date of filing of the application (Adjudicators should use discretion when determining the recentness of these photos)

The photos should be in a glassine envelope and stapled to the I-485 application.

**Evidence for Principal (and Unmarried Children Over 21) Only**

**General** Evidence for Principal (and unmarried son and/or daughter over 21 years of age) include:

- Commencement of physical presence prior to December 1, 1995
- Continuity of physical presence since December 1, 1995

**Commencement of Physical Presence Prior to 12/01/95** Applicant must prove one of the following:

- Applied for Asylum
- Issued an Order to Show Cause
- Issued an I-122 (Exclusion Proceedings)
- Applied for Adjustment of Status under Section 245
- Applied for Employment Authorization
- Worked (etc.) in U.S. as evidenced by Social Security Administration Records
- Applied for any other Immigration benefit under INA

- Statement listing the type and date of such evidence, which is already contained in the U.S. CIS file
- Issued a document authorized by any other Federal, State or Local government authority which bears the seal of such authority and the date of issuance is prior to 12/01/95, i.e., State driver's license, State identification card, county or municipal hospital records, college or public school transcripts or income tax records (private hospitals, college and schools are not acceptable)

Continuity of Physical Presence Since 12/01/95 By law the applicant is allowed absences from the U.S. totaling 180 days or less. The applicant must submit a statement regarding his or her absences from the U.S. For an applicant who departed from the U.S. without an advanced parole prior to December 31, 1997, time spent outside the U.S. during the period beginning November 19, 1997 (date of enactment) and ending on July 20, 1998, does not count toward the 180-day cumulative total. Normally, gaps of 3 months or less are not considered significant.

Applicant may submit:

- Rent receipts
- Utility bills
- School records
- Bank statement/Personal checks
- Employment Records
- Traffic tickets
- Credit card statements
- Other dated receipts
- Statement listing the type and dates of such evidence, which is already contained in the U.S. CIS file
- One document to cover the entire post-12/01/95 period (e.g., EAD cards showing employment authorization from 12/01/95 on or college transcripts showing attendance from Fall of 1995 on)

NACARA I-485 with I-566/I-508/I-601/I-212

General Although unlikely, if a NACARA applicant indicates he or she previously or currently held A or G nonimmigrant status, Form I-566 is required; however, the Department of State's endorsement is not required prior to adjudication of the I-485. If the State Department's response to the I-566 indicates that the applicant has diplomatic immunity, Form I-508 will also be required.

Form I-566 Once completed, Form I-566, Inter-Agency Record of Individual Requesting Change/Adjustment to, or from, A or G Status, or Requesting A, G, or NATO Dependent Employment Authorization, should be distributed accordingly.

Step Action

- 2.1 Place "Copy 1" directly under the I-485 application on the record side of the file.
- 2.2 Distribute "Copy 2" – A's to DOS, Office of Protocol.
- 2.3 Distribute "Copy 3" – G's to U.S. Mission to the United Nations (USUN).

Form I-508 Once completed, Form I-508, Waiver of Rights, Privileges, Exemptions, and Immunities, should be distributed accordingly.

Step Action

- 3.1 Place "File Copy" on the record side of the file.
- 3.2 Send "CO Index Copy" to "CO Index Section."
- 3.3 Send "State Dept. Copy" to "Dep. Of State Visa Office, Washington, DC 20520."
- 3.4 Send "IRS Copy" to "Internal Revenue Service Center, P.O. Box 245, Bensalem, PA 19020."

Form I-601 Form I-601, Application for Waiver of Grounds of Excludability, will not be adjudicated by the Service Center and must be relocated with the I-485 to the local office.

Form I-212 Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, may be filed concurrently with an I-485.

Step Action

- 4.1 Initially review I-485 for statutory eligibility and completeness.
- 4.2 I-212 must be adjudicated prior to the adjudication of the I-485.

Waiver of Interview

General The decision whether to require an interview is solely within the discretion of the Service. The Service may elect to waive the interview of the applicant.

## Relocation

**General** In any case being referred, the Service Center adjudicator must provide in the file for the interviewing officer, a case relocation memorandum explaining the discrepancies noted or other reasons for conducting the interview.

The following types of cases must be referred to a local office for interview:

- False claim to Nicaraguan or Cuban nationality
- Doubts about absences totaling more than 180 days
- Doubts about evidence of commencement of presence
- Doubts about evidence of continuity of presence
- Discrepancy between applicant's claim and U.S. CIS documents
- Any case involving an inadmissible alien (other than those inadmissible under grounds which NACARA specifically exempts)
- Any case involving waiver of inadmissibility
- Any cases involving a medical condition which would result in a finding of inadmissibility
- Doubts about the family relationship between the principal applicant and one or more of the dependents
- Any case in exclusion, deportation or removal proceedings before the Immigration Judge

**Update Relocated Files** In CLAIMS, update the relocated files.

### Step Action

- 5.1 Enter "Adjudicate a Case" from menu.
- 5.2 Wand in the SRC receipt number. If you want an SRC number already transferred out, you will get a message informing you that the SRC application has already been transferred out. To continue, press <ESC>.
- 5.3 Verify the address. If the address is different from application address, press <F2> to confirm that the address was changed after the receipt date.
- 5.4 Press <F10>.
- 5.5 Select "Case Movement – Relocate Out" and press <Enter>.
- 5.6 Select "Otherwise Transfer Case to Another Office" and press <Enter>.
- 5.7 Press <F4> and make note of the U.S. CIS Office Code that was displayed on the screen for later use.

Update Relocated Files (continued)

- | Step | Action   |
|------|--|
| 5.8  | At "Change Case Status" – select "Yes" and press <Enter>.  |
| 5.9  | Press <Esc> to exit.   |
| 5.10 | At the "Enter a Receipt or a Number" screen, repeat the above Steps 1-9 for any additional I-485's that are to be transferred out. |
| 5.11 | Press <F10>.   |
| 5.12 | When you have finished updating, press <Esc>.  |
| 5.13 | Select "Yes" to exit the form and return to CLAIMS Exams Menu.   |

RAFACS the I-485 "A/T" Files      RAFACS the I-485 "A/T" files to the file room.

- | Step | Action  |
|------|---|
| 6.1  | Enter "RAFACS."   |
| 6.2  | Select "RAFACS User."   |
| 6.3  | In the "Transaction Identifier" screen, type in "ZZCOSA000" and press <Enter>.  |
| 6.4  | In the "Transaction Identifier" screen, wand in the "A/T" file number.  |
| 6.5  | Attach a routing slip requesting that Records transfer the "A/T" files out in CIS to the office listed on the routing slip. |
| 6.6  | Count each file as Relocated on your G-22.  |
- NOTE: Headquarters requires a weekly statistical report. The NACARA Unit is responsible for tracking cases received, pending, remoted, approved and denied.

#### Request for Evidence (RFE)

**General**      If any initial evidence is missing or insufficient, a request for evidence (RFE) pursuant to Section 103 will be mailed to the applicant clearly identifying what evidence is missing. The applicant will be afforded a maximum of 12 weeks to respond.

- | Step | Action   |
|------|--|
| 7.1  | Prepare the RFE letter in Word.  |
| 7.2  | Attach photocopy or second copy of the RFE to the right side of the A-file in order to maintain RFE history.   |
| 7.3  | Prepare a gold return cover sheet.   |
| 7.4  | Place a call-up sticker on the back of the file jacket on the same end of the file as the "A" or "T" number. Make sure the call-up date is noted on the sticker. |
| 7.5  | Update CLAIMS to note that a request for additional evidence was sent.   |

Step    Action

- 7.5A Go to the CLAIMS Exams Menu.
- 7.5B Select “Batch Case Status Update.”
- 7.5C Select “Off System Notice Sent/Request for Additional Evidence Sent.”
- 7.5D Wand in the SRC receipt number for the applications that have been RFE’d.

7.6 RAFACS the file to Work Distribution (WD) Unit. The RAFACS code for WD is “ZZCOWDU.”

7.7 Place the original RFE and the gold cover sheet in a window envelope, making sure that the address is clearly visible. Place the envelop in the outgoing mail bucket.

7.8 Count each file as a Return on your G-22.

Note: Headquarters requires a weekly statistical report. The NACARA Unit is responsible for tracking cases received, pending, remoted, approved and denied.

### Approval

**General** In the event that the applicant is eligible to adjust, meets interview waiver criteria and there are no other issues to resolve, the officer recommends approval. The officer endorses the approval block of the I-485. If the case was approved at the service center without an interview, so note on the application.

Approval codes are as follows:

- NC6 for NACARA principals
- NC7 for NACARA spouses
- NC8 for NACARA children under 21
- NC9 for NACARA unmarried sons and daughters 21 years of age and older

**Update Approved Files** In CLAIMS, update the approved files.

**Step Action**

- 8.1 Enter “Adjudicate a Case” and wand in the SRC receipt number.
- 8.2 Verify information (i.e. personal data, A-number, address, etc.) and press <F4> to save any changes.
- 8.3 Verify block “h.” (other basis for adjustment) is marked in Part 2: Application Type.
- 8.4 Highlight 1-89 selection and press <Enter> twice.
  - Enter mother’s first name and father’s first name
  - At “POE” – enter “SRC”
  - At “Card type” – enter “1”
  - At “Transaction type” – enter “1”

- At "Class" – enter "NC6", "NC7", "NC8", or "NC9"
  - At "ADM/ADJ Date" – enter today's date
  - At "Sex" – enter "M" or "F"
- 8.5 Press <F4>.

#### Update Approved Files (continued)

- | Step | Action  |
|------|---|
| 8.6  | At "Save Changes" – select "Yes."   |
| 8.7  | Press <F10> to Adjudicate a Case and select "Approve the Cases."  |
| 8.8  | Select "Order Approval Notice."   |
| ·    | Select the appropriate approval phrase: (1) Select "ADIT Processing Required" if the I-89 is not in the file (2) Select "ADIT Processing Not Required" if the I-89 is in the file |
| ·    | "Section of Law" – Section 202 (Code-13)  |
| ·    | At "Class" – enter the correct class of admission   |
| ·    | At "Visa Allocated" – enter "Y"   |
| ·    | At "Country of Last Residence" – enter "Cuba" or "Nicaragua", unless otherwise established  |
| ·    | At "Priority Date" – enter today's date   |
| ·    | At "Occupation Code" – enter Job Code (Press <Insert>) by selecting the code that most resembles the occupation listed on the I-485   |
| ·    | At "Send to Clerical" – enter "No" (Must always be "No")  |
| 8.9  | Press <F4> to confirm.  |
| 8.10 | At "Change Case Status" – select "Yes" and press <Esc> to exit.   |

Print      Form I-181      In CLAIMS, print the I-181 Form.

- | Step | Action  |
|------|---|
| 9.1  | Select "Special Print Function."  |
| 9.2  | Select "Print I-181."   |
| 9.3  | Wand in the SRC receipt numbers (thirty is the limit) and press <F4>.   |
| 9.4  | Retrieve I-181s from your assigned CLAIMS printer.  |
| ·    | Place "File Copy" of the I-181 on the left side of the file on top of the I-485   |
| ·    | If there is no I-89 in the file, the "ADIT and Statistical Copy" of the I-181 should be fastened to the inside right of the file (for those cases where the person still requires ADIT processing, one photo must be stapled on the lower right hand corner of the I-181) |
| ·    | The "Master Copy" of the I-181 is not needed and should be shredded   |

· On the “File Copy” and “ADIT and Statistical Copy” of the I-181s, complete the following blocks: (1) City of Birth, (2) Remarks (write “w/o interview”), (3) Endorse Date of Action (stamp with approval stamp and sign full name)

RAFACS the I-485 “A” Files            RAFACS the I-485 “A” files to the file room.

- | Step | Action   |
|------|--|
| 10.1 | Enter “RAFACS.”  |
| 10.2 | Select “RAFACS User.”  |
| 10.3 | In the “Transaction Identifier” screen, type in “ZZCOSA000” and press <Enter>. |
| 10.4 | In the “Transaction Identifier” screen, wand in the “A” file number.           |
| 10.5 | Count each file as Approved on your G-22.                                      |

Note: Headquarters requires a weekly statistical report. The NACARA Unit is responsible for tracking cases received, pending, remoted, approved and denied.

## Denial

General            If the alien is clearly ineligible for the benefit, deny the case and prepare a denial notice setting forth the specific basis for the adverse action. As with Section 245 adjustment cases, NACARA decisions cannot be appealed. The Immigration Court has jurisdiction to reconsider NACARA eligibility during the course of a removal hearing.

The following types of cases should be denied:

- Not Nicaraguan or Cuban
- Not in U.S. prior to 12/1/95
- Out of U.S. for more than 180 days since 12/1/95 (make sure absences are not covered by I-512)
- Records show alien is an aggravated felon
- Stowaway

Note: Only the following cases are certified:

- To Immigration Court - An alien ordered removed by the Immigration Judge
- To Administrative Appeals Office - An alien maintaining a valid nonimmigrant status

In the case of an alien who (1) is not maintaining valid nonimmigrant status and (2) had not previously been placed in exclusion, deportation or removal proceedings, initiate removal proceedings (NTA).

Update Denied Cases In CLAIMS, update the denied cases.

- | Step | Action  |
|------|---|
| 11.1 | Enter “Adjudicate a Case” and wand in the SRC receipt number.   |
| 11.2 | Verify the information (i.e. personal data, A-number, address, etc.) and press <F4> if there are any changes/additions. |
| 11.3 | Press <F10> and select “Deny the Case.”   |
| 11.4 | Select “Order Denial Notice. ”  |
| 11.5 | At “Change Case Status” – select “Yes” and press <Enter>.   |
| 11.6 | Press <Esc> to exit.  |
| 11.7 | Remove Supervisory Hold.  |

Update Application In CLAIMS, update the application to note that a denial notice was sent.

- | Step | Action  |
|------|---|
| 12.1 | Enter “Batch Case Status Update.”                   |
| 12.2 | Select “Off System Notice Sent/Denial Notice Sent.” |
| 12.3 | Wand in the SRC Number and press <Esc> to exit.     |

RAFACS the I-485 “A/T” Files RAFACS the I-485 “A/T” files to the file room.

- | Step | Action  |
|------|---|
| 13.1 | Enter “RAFACS.”   |
| 13.2 | Select “RAFACS User.”   |
| 13.3 | In the “Transaction Identifier” screen, type in “ZZCOSA000” and press <Enter>.  |
| 13.4 | In the “Transaction Identifier” screen, wand in the “A/T” file number.  |
| 13.5 | Attach routing slip requesting that the File Room transfer the “A/T” files out in CIS to the office listed on the routing slip. |
| 13.6 | Count each file as Relocated on your G-22.  |

Note: Headquarters requires a weekly statistical report. The NACARA Unit is responsible for tracking cases received, pending, remoted, approved and denied.

Certification of I-485 NACARA Denial

General        The following is intended to assist the Center Adjudications Officer (CAO) with the certification of NACARA I-485 denials to the Immigration Court and the Administrative Appeals Office (AAO) in Washington, DC.

#### Deny the I-485

| Step | Action |
|------|--------|
|------|--------|

- |      |   |
|------|---|
| 14.1 | Write a denial or retrieve one from U:\users\common, making sure that it includes the I-290C Notice of Certification and an attachment discussing the grounds for the denial. |
| 14.2 | Update CLAIMS as “Denied: Order Denial and Certification Notice.”   |

#### Prepare the I-290C Cover Sheet

| Step | Action |
|------|--------|
|------|--------|

- |      |   |
|------|---|
| 15.1 | Print a copy of the I-290C Cover Sheet from U:\Users\Common\I485\I290C.CVR.   |
| 15.2 | Attach either a copy of the first page of the I-485 application or a printout of the first screen from CLAIMS LAN to the application. This page will contain the name, address, receipt number, etc. for the application. |
| 15.3 | On the I-290C Cover Sheet, fill in the A-number, SRC number, and your officer number in the appropriate blanks.   |
| 15.4 | Fill in the “Date to Data Entry” and initial.   |
| 15.5 | Place the I-290C Cover Sheet with attachments in the “I-290C Cover Sheet: To Data Entry for Stickers” bucket. This cover sheet will be returned to the CAO after data entry has created bar code stickers for the I-290C. |

Mail the Denial        A copy of the denial needs to be mailed to the applicant. Once completed, update CLAIMS in “Batch Case Status Update” as “Batch Off-System Notice Sent/Denial Sent.”

#### Bar Code Sticker Placement

Step Action

16.1 After the stickers have been returned to the CAO from data entry, place the I-290C bar code sticker on the back of the A-file underneath the I-485 receipt sticker.

16.2 On the front of the A-file, attach a red sticker stating "On Loan From SRC."

16.3 On the bottom half of the front of the A-file, staple a yellow I-725

"Administrative Appeal Control Card" with the appropriate information filled in the blanks (applicant's name, A-number, case type, region, FCO code, filing date, and decision date). Photocopies of the Administrative Appeal Control Card may also be used.

ROP Order for A-File The A-file should be arranged according to Service "Record of Proceeding Order," which generally mandates that the A-file contain the most recent application on the left-hand side, on top of all supporting material and evidence, and with all previous applications underneath.

If the A-file contains the denied I-485, then it should be arranged in the following order:

Left Side of A-file (items listed top to bottom) -

- I-290C Cover Sheet with attached bar code stickers and printout of CLAIMS
- LAN - Place SRC receipt number sticker on cover sheet
- Two redacted copies of the denial with all personal data marked out with a black permanent marker or grease pencil (for example A-numbers, names, addresses, criminal file numbers, etc., should not be readable)
- I-485 application (with G-28 on top)
- Supporting evidence for application (G-325A, birth certificate, police report, etc.)
- Any earlier applications or petitions contained in the A-file

Right Side of A-file (items listed top to bottom) -

- I-468 Appeal/Certification Processing Sheet filled out with A-file number and all questions answered
- Two copies of the denial (I-290C and Attachment)
- Any earlier Service documents already contained in the A-file

Note: This non-record information is not available to the public; therefore, do not transfer it to the left side.

## Update CLAIMS

Step Action

17.1 Enter "Adjudicate a Case," wand in the SRC receipt number, and press <F10>.

17.2 Select “Case Movement-Relocate Out.”

IF... THEN...  
Relocating to AAO Select “Transfer Appeal/Motion/Certification to  
AAU.”  
Relocating to Immigration Court Select “Otherwise Transfer Case to  
Another Office.”

17.3 Press <Esc> to exit.

17.4 Wand the I-290C SRC receipt number and press <F10>.

17.5 Select “Case Movement-Relocate Out.”

IF... THEN...  
Relocating to AAO Select “Transfer Appeal/Motion/Certification to  
AAU.”  
Relocating to Immigration Court Select “Otherwise Transfer Case to  
Another Office.”

17.6 Press <Esc> to exit.

RAFACS the I-485 “A/T” Files RAFACS the I-485 “A/T” files to the file room.

- | Step | Action  |
|------|---|
| 18.1 | Enter “RAFACS.”   |
| 18.2 | Select “RAFACS User.”   |
| 18.3 | In the “Transaction Identifier” screen, type in “ZZCOSA000” and press <Enter>.  |
| 18.4 | In the “Transaction Identifier” screen, wand in the “A/T” file number.  |
| 18.5 | Attach a routing slip requesting that the File Room transfer the “A/T” files out in CIS to the office listed on the routing slip. |
| 18.6 | Count each file as Relocated on your G-22.  |

Note: Headquarters requires a weekly statistical report. The NACARA Unit is responsible for tracking cases received, pending, remoted, approved and denied.

## APPENDIX D: Section 212(a) Inadmissibility Overview

Overview INA Sec. 212(a) discusses classes of aliens ineligible for visas or admission. The outline should serve as a guide to locating the necessary related information in the INA.

In This Chapter      This chapter outlines the INA Sec. 212(a) classes of aliens.

## Section 212(a) Inadmissibility Overview

### 1. Health-related grounds

Waiver - 212(g) spouse, unmarried son/daughter, parent of USC/LAPR  
Exception from immunization for adopted children 10 years of age or younger

### 2. Criminals

Idents (convictions of certain crimes, multiple convictions, specific crimes)  
Waiver - 212(h) spouse, parent, son/daughter of USC/LAPR; hardship

### 3. Security and related grounds

Terrorists  
Foreign Policy – Secretary of State’s determination of serious adverse foreign policy effects  
Communists  
Exceptions:  
    Involuntary membership  
    Past membership  
    Close family members (i.e., parent, spouse, son/daughter, sibling of USC; or spouse, son/daughter of LAPR)  
Participants in Nazi persecutions or genocide  
Association with Terrorist Organizations

### 4. Public charge

Filing Affidavit of Support (I-864) as per 8CFR 213a  
Employment petition filed by relative (spouse, parent, son/daughter, sibling)  
Relative owns 5%

### 5. Labor certification and qualifications

Professional athletes  
Long-delayed adjustment applications  
Physicians  
    Must pass parts I & II of National Board of Medical Examiners Examination  
    Must be competent in oral and written English  
    Must have completed 3 years as H-1B if changed from J-1 before being eligible to  
    apply for adjustment of status - 8 CFR 212.7(c)(9)(iii)  
Nurses  
    Certificate requirement

Health-care workers (memos under ADJ Guide)  
Physical therapist, occupational therapist, speech-language pathologist,  
medical tech  
& technician, physician's assistant

6. Illegal entrants and immigration violators

Failure to attend removal proceedings  
5-year bar from date of departure/removal  
Misrepresentation  
Waiver 212(i) - Spouse, son/daughter of USC/LAPR & hardship  
False claim to U.S. citizenship  
Stowaways  
Smugglers  
Waiver 212(d)(11) - if person smuggled was spouse, parent, son/daughter,  
no other  
Final order under 274C - civil violation  
Waiver 212(d)(12) for returning resident or committed solely to assist  
spouse/child  
Student visa abusers  
(Enters F-1 for private school and changes to public funded school)  
5-year bar from date of violation

7. Documentation requirements

Immigrants – Waiver 212(k)  
Nonimmigrant – General waiver authorized 212(d)(4); Guam visa waiver 212(l);  
Visa  
waiver program Sec. 217

8. Ineligible for citizenship

Draft evaders

9. Aliens previously removed

Arriving aliens (exclusion)  
5-year bar  
20-year bar (second removal or aggravated felon)  
Others (deportation)  
10-yr bar  
20-yr bar (2nd removal)  
Permanent bar (aggravated felon)  
Exceptions (Attorney General consents prior to application for entry – in the case  
of a  
'removed' Returning Resident)  
Minors, Asylees, Family unity, Battered women and children  
Unlawfully present - HQ memo  
Must make a departure (and reentry) after period of unlawful  
presence for

this to apply  
 >180 days <1 yr  
     3-year bar from date of departure  
 > 1 yr  
     10-year bar from date of departure  
 Definition  
     Expiration of authorized stay  
     Present without admission/parole  
 Tolling for good cause  
     Up to 120 days  
     Has filed non-frivolous application for change or extension of status  
     Lawful admission or parole  
     No unauthorized employment  
 Waiver 212(a)(9)(B)(v) – spouse, son/daughter, hardship

#### 10. Miscellaneous

Practicing polygamists  
 Guardian required to accompany helpless inadmissible alien  
 International child abductors  
 Unlawful voters  
 Renounced U.S. citizenship to avoid taxation  
 Subject to 212(e)-not waived

#### APPENDIX E: Affidavit Of Support

**Overview**      The Form I-864, Affidavit of Support, is initial evidence required for certain applicants who wish to adjust to lawful permanent resident status. The I-864 will be adjudicated only if the I-485 otherwise meets interview waiver criteria. For cases that do not meet interview waiver criteria, the I-864 will be considered as initial evidence and will be reviewed by the local office. This chapter will provide guidance in adjudicating the I-864 as it relates to the adjustment process.

**In This Chapter**      This chapter discusses the following topics.

#### Topic Page

General Information 10-5.2  
 Sponsor or Joint Sponsor Requirements 10-5.5  
 · Joint Sponsor 10-5.5  
 · Sponsor Eligibility 10-5.6

- Proof of Citizenship/ LPR Status 10-5.6
- Determination of Domicile 10-5.7
- Sponsoring Family Units 10-5.8
- Withdrawal of I-864 10-5.8
- Income and Assets 10-5.9
  - Federal Income Tax Returns 10-5.9
  - Determination of Income/ Assets 10-5.10
  - Sponsor's Assets and Liabilities 10-5.11
  - Foreign Income/Assets 10-5.12
  - Means-tested Public Benefits 10-5.12
- Adjudicating the I-864 10-5.13
  - Properly Filed I-864, Affidavit of Support 10-5.13
  - Record of Proceeding 10-5.13
  - Eligibility to Sponsor 10-5.14
  - Household Size 10-5.15
  - Determining if the I-864 Meets the Requirements 10-5.16
  - Request for Evidence (RFE) 10-5.18
  - Denials 10-5.18

## General Information

**In General** Effective December 19, 1997, certain adjustment of status applicants must submit an I-864, Affidavit of Support, as part of the documentary requirement. The officer adjudicating the I-485 must also review the I-864 and supporting documentation for acceptability.

**Purpose of the I-864** The I-864, Affidavit of Support is required to show that an intending immigrant has adequate means of financial support and is not likely to become a public charge.

**Purpose of the I-864A** The I-864A, Contract Between Sponsor and Household Member may also be submitted with the I-864. By signing this form, a household member, agrees to make his/her income and/or assets available to the sponsor to help support the immigrant(s) for whom the sponsor has filed an affidavit of support and to be responsible, along with the sponsor, to pay any debt incurred by the sponsor under the affidavit of support. A Household Member may be the sponsored immigrant as long as they are related to the sponsor by birth, marriage or adoption and have been living in the sponsor's residence for the previous 6 months, or if they are shown as a dependent on the sponsor's Federal income tax return for the most recent year.

**Acceptable Forms** The first edition of Form I-864 and I-864A was October 6, 1997. The Service subsequently made two minor corrections to the form and released that revision on January 21, 1998. Both versions of this form may be used.

**Expiration of the I-864/**

**I-864A** Once an I-864/I864A and supporting documents has been received, it will not expire, but it must be submitted within 6 months of the date on which the sponsor signed it before a notary public or an immigration officer. However, if more than 12 months have passed between the time an I-864/I-864A is submitted and the visa is issued or adjustment of status is approved, the officer should request updated supporting documentation (for example, current employment letter, most recent tax return(s), etc.).

If updated documentation is requested, the officer should note the “Agency Use” block with this information (e.g., “new employment letter attached.”)

**Who Must File** The following individuals seeking adjustment of status are required to submit at least one legally enforceable affidavit of support:

- immediate relatives, including orphans;
- family-based immigrants;
- employment-based immigrants, if the petitioning employer is a relative of the alien; and
- employment-based immigrants, if a relative of the alien has a significant ownership interest (5% or more) in the for-profit petitioning entity.

For purposes of this section, relative is defined as a spouse, parent, child, adult son or daughter, or sibling.

Accompanying spouses and children also need to submit I-864s. However, they can submit photocopies of the principal’s I-864. The original signature and notary seal are not required.

**I-134 Requirement** The I-134, Affidavit of Support is still required to be submitted by employment-based immigrants and their family members. However, a letter of employment may be substituted for this documentary requirement.

**Exempt Applicants** Asylees and self-petitioning widow(er)s, battered spouses and children, and those who have or can be credited with 40 quarters of Social Security coverage are exempt from the requirement to submit an I-864.

**Notations to the I-864** The I-864 is a legally binding contract; therefore, officers should not add, cross out or change information on the form once it is received at this office. The “Agency Use” block on the first page may be used for any required notations to be made. The officer must use red ink in the “Agency Use” block. Officer’s notes may also be attached to the I-864 using a separate sheet of paper.

**CLAIMS LAN** All I-864s are entered into CLAIMS for the purpose of tracking and enforcement. They are entered into CLAIMS attached to the I-485. However, because we do not have access to GUI, you cannot view this information through CLAIMS LAN. You can tell that an I-864 has been data entered into CLAIMS by the fact that Data Entry will affix one of the I-485 barcodes to the I-864 once it has been entered. If an applicant submits an I-864 in response to a request for evidence, it must be forwarded to Data Entry for entry into CLAIMS with instructions for it to be returned to the adjudicator when the entry is completed.

**CLAIMS Mainframe** Sponsor information can be viewed by accessing the CLAIMS Mainframe and choosing option 11, which is titled A Case Status Inquiry/I-864 Sponsor Inquiry. The system searches by the social security number of the sponsor and will allow you to view the total number of applicants that a particular person is sponsoring or has sponsored.

### Sponsor or Joint Sponsor Requirements

**Introduction** This section will explain to you the requirements of the sponsor or joint sponsor of an I-864, Affidavit of Support. You must ensure that the sponsor meets the established requirements in order to fulfill the criteria of the I-864.

**Definition** A Sponsor is...

- the petitioning relative;
- the relative (petitioner) with a significant ownership interest in the petitioning entity; or
- a person who is accepting joint liability with the sponsor.

The sponsor must complete and file the Affidavit of Support under Section 213A of the Act on behalf of a sponsored immigrant.

**Joint Sponsor** A petitioner who cannot demonstrate the means to maintain an income of at least 125% (or 100% when applicable) of the Federal poverty guidelines may have one or more joint sponsors. These joint sponsors must be willing to accept joint liability for the sponsored alien during the period in which the affidavit is enforceable.

When a joint sponsor is used, there will be at least two I-864s for each application. There may also be more than one joint sponsor, but each joint sponsor must individually meet the minimum income requirement. The joint sponsor must meet all eligibility requirements to be a sponsor, except that the joint sponsor is not the petitioner (or a relative with 5% or more ownership interest).

Multiple joint sponsors are permitted to allow several persons to assume legal responsibility for the support of an immigrant if they wish to do so. If there are multiple joint sponsors, only one of them may use the assets of the sponsored immigrant to qualify. Each must include the sponsored immigrant(s) in their household size.

The use of a joint sponsor does not relieve the petitioner of his or her full financial responsibility for any immigrant sponsored in the affidavit of support.

**Sponsor Eligibility** The SINGLE SPONSOR or JOINT SPONSOR must be:

- a person (a sponsor cannot be a corporation, organization or other entity)
- a citizen or national of the United States or an alien lawfully admitted to the United States for permanent residence (including conditional residence);
- at least 18 years of age;
- domiciled in the United States or its territories and possessions; and
- able to demonstrate the means to maintain an income of at least 125% of the Federal poverty guidelines (at the time of adjudication) for the sponsor's household size, including the immigrants being sponsored or previously sponsored.

**Proof of Citizenship/ LPR Status** In family-based filings the proof of a petitioner-sponsor's U.S. CIS status is demonstrated on Form I-130. However, this is not the case with joint sponsors since they did not file a petition. All sponsors, including joint sponsors must be U.S. citizens or nationals, or lawful permanent residents (LPR).

Therefore, joint sponsors are required to submit proof of status when they submit Form I-864. Such proof may include, but is not limited to, a passport, birth or naturalization certificate, or copies of both sides of an Alien Registration Card.

**Determination of Domicile** To qualify as a sponsor, a petitioner who is residing temporarily abroad must have a principal residence in the United States with the intent to maintain that residence as his/her domicile for the foreseeable future. LPR sponsors must further demonstrate that they have maintained their status. A U.S. citizen or LPR spouse or dependent that has maintained a residence in the United States and/or whose spouse/parent works in one of the categories listed below would also qualify as a sponsor.

- Many U.S. citizens and legal permanent residents reside outside the United States on a temporary basis. Temporary is a relative term and may cover an extended period residing abroad. The regulation provides that sponsors who can show that they have a domicile in the United States, but who are now living temporarily abroad because of certain types of employment, are considered to have retained their domicile in the United States. Sponsors are considered to be domiciled in the United States if they are:

- employed by the U.S. government, an American Institution of research recognized as such by the Attorney General, an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce with the United States or a subsidiary thereof, or a public international organization in which the United States participates by treaty or statute;

- authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States and stationed abroad pursuant to that calling; or

- engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States and stationed abroad pursuant to that calling.

**Determination of Domicile, cont'd.** There may be other circumstances in which a sponsor can show that his/her sojourn abroad is clearly of a temporary nature, so that the sponsor can be found still to have a domicile in the United States. For example, persons who are abroad temporarily to study, teach or engage in other activities that do not meet the requirements of Section 316(b), 317 or 319(b) of the INA, may satisfy the officer that they did not give up their domicile in the United States and establish a domicile abroad.

There is no minimum period of time required to establish residence, but a credible demonstration of an actual residence in the United States is required. A convincing

combination of several of the following types of action might be considered as an indication of residence: establishing an address; setting up a bank account; transferring funds to the U.S.; making investments; seeking employment; applying for a Social Security number; voting in a local, state or federal election; etc.

**Sponsoring Family Units** There may not be separate joint sponsors for any family members if they are accompanying the principal immigrant. For example, one joint sponsor may not sponsor one or more family members of a family unit, while a second joint sponsor accepts responsibility for the other family members. And each joint sponsor for a family unit must meet the minimum 125% income requirement for the indicated household size.

**Withdrawal of I-864** A sponsor or joint sponsor who has provided a signed I-864/I-864A to an intending immigrant may notify U.S. CIS that he/she no longer wishes to sponsor an immigrant if he/she does so before the adjustment of status is approved. In this instance, the applicant of the I-485 must be provided the opportunity to submit an adequate I-864. If the petitioner/sponsor withdraws his or her I-864, the case must be denied because in this instance, the applicant will never be able to provide an adequate I-864. Form I-864 from a joint sponsor may not be used in lieu of a Form I-864 that was withdrawn from the petitioner/sponsor.

## Income and Assets

**Introduction** This section will discuss what to look for as evidence of income or assets to enable the sponsor and/or joint sponsor to meet the minimum income requirements of Section 213A.

**Federal Income Tax Returns** Most U.S. citizens and lawful permanent residents (LPRs) with incomes sufficient to qualify as sponsors are required to file income tax returns, although there may be years in which a sponsor was not employed or earned income that was below the dollar amount required to file with the IRS. U.S. citizens and LPRs who are working abroad are required to file a tax return even if that overseas income is excluded from U.S. taxes. It is up to the sponsor to provide a copy of the relevant provision or instruction from an IRS publication demonstrating that he or she was not obligated to file a Federal income tax return.

It is a statutory requirement that the sponsor must submit tax returns for each of the most recent three tax years in which he/she was obligated to file. If the sponsor did not file an income tax return for a year when he/she was obligated to do so, he/she may file a late or

amended tax return to the IRS and submit a copy of such return(s) for the year(s). Until the late or amended return has been filed and a copy submitted, the I-864 will be considered incomplete and cannot be considered sufficient.

Generally speaking, you will be determining the sponsor's income on the Federal tax return by using the "adjusted gross income" reported on the tax return. However, you may also want to consider the "Taxable Interest" reported on the tax return as well. When a person reports a considerable amount of taxable interest that usually means they have investments, which generate this interest income.

**Determination of Income/ Assets** If a sponsor did not have sufficient income listed on his/her tax returns for the most recent three years to be a sponsor, but now is employed with an income sufficient to be a sponsor, the income from employment may be used. For example, a law student who earned no income for the most recent three tax years but in June began earning an annual salary of \$50,000 would probably meet the income requirements. Conversely, a potential sponsor who showed an income for the most recent three years but who is now unemployed would not meet the requirements based on income.

A sponsor may include non-taxable income, such as a housing allowance for clergy or military personnel, as well as taxable income. The sponsor would bear the burden of proving the nature and amount of any such income on which he/she relies. Evidence of non-taxable income can be shown through notations on the W-2 Form (such as box 13, for military allowances), Form 1099, or other documents that substantiate the claimed income.

Taxes owed the IRS should not be subtracted from gross income in determining the sponsor's income.

In the case of jointly owned assets, a sponsor may use 100% of the value of such assets as his/her own assets on the I-864. The sponsor's spouse does not need to complete a Form I-864A in this instance.

Offers of employment for the principal immigrant or his/her accompanying family members may not be considered in lieu of or to supplement the income requirement for the I-864. The offer of employment may be taken into account, however, in assessing whether the applicant could overcome the factors in 212(a)(4)(B)(i).

**Sponsor's Assets and Liabilities** If the sponsor cannot meet the poverty line requirement based on income, he or she may show evidence of assets owned by the sponsor, or members of the sponsor's household, that are available for the support of the sponsored immigrant(s) and can be readily converted into cash within one year.

Evidence of such assets includes, but is not limited to:

- bank statements covering the last 12 months, or statements from an officer of a financial institution in which the sponsor has deposits, including the deposit/withdrawal history for the last 12 months and the current balance.
- evidence of ownership, value, and acquisition dates of stocks, bonds, and certificates of deposit.
- evidence of ownership, value, and acquisition dates of other personal property.
- evidence of ownership, value, and acquisition dates of any real estate.

In order to qualify using assets, the total cash value of all assets must equal at least five times the difference between the sponsor's total household income and the minimum income requirement for the current year.

For example, say a petitioner/sponsor has an income of \$9,000, however, the income requirement for his household size is \$24,000. The difference between his actual income and the poverty guideline is \$15,000. To meet the requirements of Section 213A the petitioner/sponsor would then have to meet the requirements through assets, by including income of a household member, or through the assistance of a joint sponsor. If the sponsor/petitioner chose to meet the requirements through assets, the assets would have to be worth 5 times \$15,000 (or \$75,000) in order to meet the requirements of Section 213A.

**Foreign Income/Assets** Foreign income, such as income from property or a business, may be included on the I-864 if the sponsor or applicant (who meets the residency requirements) can demonstrate that this source of income is likely to continue in the foreseeable future.

A sponsor or applicant may include assets owned outside the United States, such as real estate or personal property, on the I-864 as long as they are readily convertible to cash within 12 months and the applicant can demonstrate the ability to take the money or assets out of the country where they are located. Many countries have strict regulations that severely limit the amount of cash or liquid assets an individual may take or send abroad.

**Means-tested Public Benefits** If the sponsor indicated that he/she or a member of the sponsor's household received means-tested public benefits in the last three years, the officer's review of the evidence remains the same. The sponsor is still required to maintain a sponsored immigrant at an annual income that is not less than 125% of the

Federal poverty line. If the sponsor does not meet that requirement, they may require a joint sponsor.

Keep in mind that some programs provide non-cash means-tested benefits to families with incomes that are higher than 125% of the poverty line. For example, Medicaid for pregnant women and their children up to age 6 is available to persons with incomes up to 188% of the poverty line in some States, and food stamps are available to households with income up to 135% of the poverty line in some situations. In this circumstance, a joint sponsor would not be required.

### Adjudicating the I-864

**Introduction** The officer is responsible for reviewing all initial evidence to determine if it meets the standard for acceptability and that each requirement as it relates to the initial evidence has been met. This section will take you through the process of determining if the I-864, Affidavit of Support, meets the acceptability requirements set forth in Section 213A.

**Properly Filed I-864, Affidavit of Support** A sponsor and/or joint sponsor must provide Form I-864/Form I-864A to the applicant of the I-485. The applicant must submit the I-864/I-864A with original signatures and notary information for the principal sponsored immigrant. A foreign notary may not witness signatures on the I-864/I-864A.

Accompanying spouse and children also need to submit I-864s. However, they can submit photocopies of the principal's I-864. The original signature and notary seal are not required.

**Record of Proceeding** The Service has provided guidance on the order in which it would like to have aliens package the I-864 and supporting documentation. The documentation and ROP for the I-864 is as follows (from top to bottom):

- applicant's I-864 with original notarized signature (foreign notary cannot be used)
- proof of citizenship or lawful permanent residence status (if applicable)
- copies of the sponsor's Federal tax returns for the 3 most recent tax years
- evidence of the sponsor's employment (pay stubs, letter from employer indicating type of work performed, salary/wages, date employment began)
- evidence of the sponsor's assets (if used to qualify)
- any forms I-864A, submitted by household members with original notarized signature
- household members' Federal tax returns for 3 most recent tax years
- evidence of household members' employment

- evidence of household members' assets (if used to qualify)
- a photocopy of Form I-864, without supporting documentation, for each accompanying spouse or child.

Documentation for any joint sponsor(s) should follow subsequently in the same order as provided above for the principal sponsor.

**Record of Proceeding for Accompanying Family Members** The sponsor must submit a photocopy of the principal's I-864 for each accompanying spouse or child. However, to avoid unnecessary paperwork for the sponsor, the sponsored immigrant and the Government, the sponsor needs to submit only one copy of the required supporting documentation even if there are accompanying family members. In those cases where there are accompanying family members, the adjudicating officer must write the A-number of the principal applicant in the "agency use" block of the Form I-864 for each family member to permit retrieval of the documentary evidence from the principal applicant's A-file, should it be necessary. Note that a separate and complete I-864 and supporting documentation is required for immediate relatives.

**Eligibility to Sponsor** The determination of the individual sponsor's ability to serve as a sponsor is based upon his or her ability to maintain an annual income at or above 125% of the Federal poverty line (100% if the sponsor is on active duty in the U.S. Armed Forces and is petitioning for his/her spouse and/or children). See the chart below for the minimum income requirements to qualify as a sponsor:

2001 Poverty Guidelines\*

| Sponsor's Household Size | 48 Contiguous States, District of Columbia, Puerto Rico, U.S. Virgin Islands, and Guam |                      | Alaska Hawaii        |                      |
|--------------------------|--|----------------------|----------------------|----------------------|
|                          | 100% of Poverty Line   | 125% of Poverty Line | 100% of Poverty Line | 125% of Poverty Line |
| 2                        | \$11,610<br>\$16,700   | \$14,512             | \$14,510             | \$18,137<br>\$13,360 |
| 3                        | \$14,630<br>\$21,037   | \$18,287             | \$18,290             | \$22,862<br>\$16,830 |
| 4                        | \$17,650<br>\$25,375   | \$22,062             | \$22,070             | \$27,587<br>\$20,300 |
| 5                        | \$20,670<br>\$29,712   | \$25,837             | \$25,850             | \$32,312<br>\$23,770 |
| 6                        | \$23,690<br>\$34,050   | \$29,612             | \$29,630             | \$37,037<br>\$27,240 |

|                                 |                      |          |          |          |          |         |         |         |
|---------------------------------|----------------------|----------|----------|----------|----------|---------|---------|---------|
| 7                               | \$26,710<br>\$38,387 | \$33,387 | \$33,410 | \$41,762 | \$30,710 |         |         |         |
| 8                               | \$29,730<br>\$42,725 | \$37,162 | \$37,190 | \$46,487 | \$34,180 |         |         |         |
| Add for each additional person: |                      |          | \$3,020  | \$3,775  | \$3,780  | \$4,725 | \$3,470 | \$4,337 |

\*Note: To ensure that you are using up-to-date information, you may want to access the most current version of this chart by selecting the I-864P link on the “Forms and Fees” page of the U.S. CIS website. The link follows:  
<http://www.immigration.gov/graphics/formsfee/forms/i-864P.htm>

Eligibility to Sponsor, Cont’d. The sponsor may demonstrate the means to maintain the sponsored immigrant at the required income level by using:

- the income of the sponsor or of any relative of the sponsor who has either been living in the sponsor’s household for the previous 6 months, or is listed as a dependent on the sponsor’s federal income tax return for the most recent tax year;
- the assets of the sponsors or of any relative of the sponsor who has either been living in the sponsor’s household for the previous 6 months, or is listed as a dependent on the sponsor’s most recent tax return;
- the assets of the sponsored immigrant(s); or
- the income or assets of a joint sponsor.

The sponsor must provide evidence of any income or assets used to qualify. Evidence of six months of residency for any relative in the household whose income is used should also be provided. This would require the filing of an I-864A.

Household Size The total household size will be used to determine the correct Federal poverty guideline for the current year. For purposes of the I-864, this includes the total of the following groups of individuals:

- the sponsor and the number of persons related to the sponsor by birth, marriage or adoption living in the sponsor’s household;
- the number of persons being sponsored in this I-864;
- the number of persons NOT living in the sponsor’s household for whom the sponsor has previously submitted an I-864, if the obligation has not been terminated; and

- the number of persons not included in any of the above categories who are otherwise dependent on the sponsor, notwithstanding where they reside, if the sponsor lawfully claimed them as dependents on the sponsor's income tax returns for the most recent year.

Household Size, Cont'd. Keep in mind, a divorced parent's dependent children are considered members of his/her household even if they live part of the time with a former spouse. If the parent has a legal obligation to support his/her children, they must be claimed as members of the household even if the parent does not claim them as dependent(s) on his/her tax return.

Determining if the I-864 Meets the Requirements Follow the steps below to determine if the I-864, Affidavit of Support, meets the standards of acceptability:

- | Step | Action   |
|------|--|
| 1.1  | Verify the I-864 has been signed, dated and notarized on page 6.   |
| 1.2  | Verify the citizenship, age and domicile of the sponsor on page 1.   |
| 1.3  | Verify the applicant(s) of the I-485(s) is(are) listed in Part 3 of the I-864.   |
| 1.4  | Check the ROP for the required evidence for the I-864: <ul style="list-style-type: none"> <li>- three most recent tax returns of the sponsor</li> <li>- evidence of sponsor's employment</li> <li>- evidence of sponsor's assets, if applicable</li> <li>- evidence of I-864A submitted by household member with supporting documentation</li> <li>- evidence of I-864 for joint sponsor with supporting documentation, if applicable</li> </ul> |
| 1.5  | Verify the sponsor's household size in Part 4, C. of the I-864.  |
| 1.6  | Verify the sponsor's annual household income in Part 4, D. of the I-864 with the income reported on the most recent Federal tax return (usually this is reported as "adjusted gross income"). If this figure includes combined income from a household member, an I-864A should be included in the ROP of the I-864.   |

Determining if the I-864 Meets the Requirements, cont'd.

- | Step | Action |
|------|--------|
|------|--------|

1.7 Determine the poverty guideline to which the sponsor will be held in determining the minimum income requirement.

IF the sponsor is... THEN apply the household income at...  
Not on active duty 125% of the poverty guidelines for the specified household size.

On active duty in the Armed Forces 100% of the poverty guidelines for the specified household size.

1.8 Determine if the sponsor has met the minimum income requirement.

IF the sponsor has an income... THEN...  
= to or > than the minimum income noted for his/her specified household size He/she has met the I-864 requirement and the officer must check the “meets” option, initial, date and note “3 letter office code” in the “For Agency Use Only” block on the first page of the I-864.

< than the minimum income noted for his/her specified household size  
You must send a RFE to the applicant of the I-485 to give the sponsor the opportunity to provide evidence of other income or to give the applicant a chance to obtain a joint sponsor.

**Request for Evidence (RFE)** Once you have decided that you need more evidence to support the I-864, you must prepare a request for evidence. To do this, follow the steps in Section 7-4, Adjudications: I-485 Processing Procedures, under “Requests for Evidence.” All requests for additional information should be addressed to the applicant of the I-485 and not to the sponsor and/or joint sponsor of the I-864. If the I-864 is not included in the ROP, you will update CLAIMS to show “Initial Evidence Requested.” However, if the I-864 is included in the ROP but you need further documentation, you will update CLAIMS to show “Additional Evidence Requested.”

**Denials** If the I-864 is clearly insufficient after you have exhausted efforts to obtain additional evidence, the entire adjustment of status application should be denied because the intending immigrant is inadmissible on public charge grounds, as well as, for any other reason there may be for denying the I-485. Details of personal finance matters of the sponsor should not be revealed in the denial letter to the adjustment applicant unless they are relevant to the denial.

When adjustment cases requiring Form I-864 are denied due to an insufficient I-864, a photocopy of the I-864 and all supporting documentation as well as a photocopy of the denial notice sent to the applicant must be sent to the Nebraska Service Center for

tracking. Therefore, for these denials you will need to leave the I-864 and supporting documents loose in the file before forwarding them to clerical for preparation of the denial. This will allow the clerk to identify those cases that require that this process be completed after denial.