ADJUSTMENT OF STATUS ELIGIBILITY:

How to meet the threshold requirement of having been "inspected and admitted or paroled" for Adjustment of Status under INA § 245(a).

By Veronica Garcia

Noncitizens who are seeking to obtain Lawful Permanent Residence via family members can do so using two processes—consular processing at a United States consulate or embassy in the person's home country,[1] or through adjustment of status at a United States Citizenship and Immigration Services ("USCIS") office in the United States. For those already in the United States, adjustment of status is preferable because they do not have to worry about traveling abroad, triggering the unlawful presence inadmissibility grounds that are triggered by a departure, separating from their family, and are able to benefit from an appeal or review process not available to consular processing cases. Often individuals present in the United States who have a family member who can submit a family-based petition for them, are prevented from adjusting status because of the manner they entered.

This practice advisory will focus on the various ways someone can meet the threshold requirement of having been "inspected and admitted or paroled" under Immigration and Nationality Act ("INA") § 245(a). It is important to note that for an individual to be eligible to adjust status, they must meet all the requirements listed in the provision they are adjusting under. A person with other forms of status, such as U and T nonimmigrant, asylee, refugee, and special immigrant juvenile status, have their own separate processes for applying for adjustment of status.[2] This practice advisory will not discuss these other adjustment of status processes. Similarly, this practice advisory will not discuss adjustment of status under INA 245(i).[3]

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[1] INA §221, 222.

[2] See INA § 245(m) for U nonimmigrant adjustment of status; see INA § 245(l) for T nonimmigrant adjustment of status; see INA § 209(b) for asylee adjustment and INA § 209(a) for refugee adjustment of status; and see INA § 245(h) for special immigrant juvenile status adjustment of status.

[3] Some individuals may benefit from adjustment of status under INA § 245(i) which allows some people who entered without authorization to apply for permanent residence within the United States. This practice advisory will not discuss adjustment under INA § 245(i). For an in-depth discussion of INA § 245(i) and the legal requirements to adjust under that section or how a person can use INA § 245(i) to be able to adjust under INA § 245(a), please see ILRC's practice advisory, *245(i): Everything You Always Wanted to Know but Were Afraid to* Ask, available at: https://www.ilrc.org/resources/245i-everything-you-always-wanted-know-were-afraid-ask.

For a more in-depth guide on family-based adjustment, please see the ILRC's *Family & Immigration: Practical Guide* (ILRC 2021).[4]

I. Adjustment of Status Under INA § 245(a)

Under section 245(a) of the INA, a noncitizen is eligible for adjustment of status if they:

- Have been inspected and admitted or paroled upon entry to the United States;
- Have an immigrant visa immediately available to them at the time the adjustment application is filed and approved;
- Are not otherwise barred under INA § 245(c) bars; and
- Are admissible or qualify for a waiver of inadmissibility.

Applicants will need to show they meet each of these requirements. A detailed analysis of how an applicant can meet each of these requirements is beyond the scope of this practice advisory. Below we discuss a few ways that those who are present in the United States, can meet the threshold requirement of having "been inspected and admitted or paroled" which is the focus of this practice advisory.

Note on VAWA Self-Petitions: Any victim of domestic violence can submit a VAWA self-petition, regardless of gender, through a process that mirrors the family-based petition process so long as they meet certain requirements. VAWA-self petitioners are individuals who have been abused by a United States citizen ("USC") or lawful permanent resident ("LPR") spouse, parent or child. The VAWA self-petition process allows the victim of domestic violence to gain LPR status without relying on a petition by their abusive LPR or USC relative and is beyond the scope of this advisory. Please see ILRC's The VAWA Manual: Immigration Relief for Abused Immigrants available at https://www.ilrc.org/vawa-manual for an in-depth discussion of this process.

A. "Inspected and Admitted or Paroled"

1. Inspected and admitted:

The INA defines "admission" as the "lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer."[5] There are multiple ways that an individual can meet this requirement, as outlined below.

Entry with a visa or other status[6]: Those admitted into the United States with a valid visa, whether with a tourist visa (B-2), student visa (F-1), or other eligible nonimmigrant visa, meet the requirement of having been "inspected and admitted." To meet this requirement, the last

[4] Available at https://www.ilrc.org/family-manual.
[5] INA §101(a)(13).
[6] Note that some applicants of Legalization at INA § 245A might be able to use a trip using their temporary status to count as an admission for § 245(a) purposes. If a client attempted to obtain lawful permanent residence under "1986 Amnesty" it might be worth checking if they ever traveled abroad while on temporary permanent residence despite having failed to obtain their lawful permanent residency. *See* INA § 245A(b)(3)(A) & 8 CFR § 245A for more detail.

entry must have been with their valid visa, even if they had previous entries without inspection,[7] and even if they stayed beyond the expiration of their visa ("overstay").

Practice Alert: Fake Green Card & False Claim to USC. Historically, if a noncitizen met the procedural requirements of an admission, they were held to have met the "inspected and admitted" threshold requirement for adjustment of status. For example, if someone entered with a green card belonging to someone else, USCIS historically held that they had nonetheless met the requirements of having been "inspected and admitted." Recently, however, an update to the USCIS policy manual has stated the opposite. Aligning with those who make a false claim to being a United States citizen (USC) – where USCIS has held that those who made a false claim to USC and were allowed to enter are nonetheless considered to have entered without inspection since USCs arriving at a port of entry are not subject to inspection) [8]—USCIS has extended this reasoning to individuals who enter with a fake green card, or present themselves to be LPRs when they are not. USCIS states that "a noncitizen who entered the United States after falsely claiming to be a returning LPR is not considered to have been procedurally inspected and admitted because a returning LPR generally is not an applicant for admission."[9]

There are different provisions for those that were admitted as nationals of a designated country of the visa waiver program.[10] Individuals who entered as part of the visa waiver program are ineligible to change their nonimmigrant status and are barred under INA § 245(c) from adjustment unless they are immediate relatives of a USC.[11]

TPS travel document: Temporary Protected Status (TPS) is a form of temporary immigration relief available to people from specific countries designated by the Department of Homeland Security ("DHS"). By statute, TPS holders are eligible to request a travel document. On July 1, 2024, USCIS announced a new travel policy, and corresponding travel authorization document for TPS holders, the I-512T travel document. Individuals with TPS request this travel document and upon their return to the United States, are "admitted" back into TPS status.[12] This admission enables TPS recipients to meet the threshold requirement for adjustment of status under INA § 245(a) because upon returning with the new I-512T travel document, TPS holders

[7] Previous unlawful entries, however, may raise inadmissibility issues such as unlawful presence and misrepresentation (if they may not have been fully forthright in later obtaining the visa).
[8] 7 USCIS-PM B.2(A)(2).
[9] See INA 101(a)(13)(C). See generally *Matter of Collado-Munoz*, 21 I&N Dec. 1061 (BIA 1997). The noncitizen who enters by making a false claim to LPR status at a port of entry and who is permitted to enter is inadmissible for presence without admission or parole (INA 212(a)(6)(A)(i)) and fraud and misrepresentation (INA 212(a)(6)(C)(i)). The noncitizen may also be inadmissible for unlawful presence after previous immigration violations. See INA 212(a)(9)(C).
[10] INA §217.
[11] USCIS, *Policy Memorandum: Adjudication of Adjustment of Status Applicants for Individuals Admitted to the United States Under the Visa Waiver Program* (November 18, 2013), https://www.uscis.gov/sites/default/files/files/nativedocuments/2013-1114_AOS_VWP_Entrants_PM_Effective.pdf.
[12] *See* USCIS, *Policy Memorandum: Rescission of Matter of Z-R-Z-C- as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries*, (July 1, 2022), https://www.uscis.gov/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-RZ-C-.pdf; USCIS, *Policy Alert: Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act*, (July 1, 2022).

will be inspected and admitted into TPS under MTINA.[13] Accordingly, all TPS recipients who travel after July 1, 2024 will be "admitted" upon their return under this new policy.

Practice Alert: Prior to this new policy, TPS holders were able to travel by requesting Advance Parole. Applicants who were granted advance parole and traveled, were then "paroled" back into the United States. They too were able to use that "parole" entry to meet the threshold adjustment requirement. TPS holders who traveled with advance parole documentation prior to August 20, 2020, were considered paroled upon their return. Those who traveled between August 20, 2020, and July 1, 2022 (when *Matter of Z-R-Z-C-*[14] was in effect) will also be considered to have been paroled, now that *Matter of Z-R-Z-C-* has been rescinded.[15]

"Wave through" by immigration officials: In some instances, a person presents themselves at a port of entry and is allowed into the United States by an immigration officer, despite not having a valid visa or entry document. This is known as a "wave through" by an immigration official. In *Matter of Quilantan*, the Board of Immigration Appeals (BIA) found that a person who is "waved through" by an immigration official meets the "**inspected and admitted**" requirement under INA § 245(a).[16] Noncitizens who present themselves for inspection at a port of entry and are allowed to enter, even if they were not questioned by immigration agents or in possession of valid entry documents, are considered lawfully admitted so long as they did not claim to be USC[17] or falsely claim to be a returning LPR.[18]

Applicants who claim a "wave through" admission bear the burden of proving this entry. Some ideas for how to prove a "wave through":

- Detailed declaration describing the "wave through" entry, including details like approximately when and where the entry occurred, what, if any, questions were asked of them, who, if anyone, was traveling with them, form of transportation (car, by foot, etc.), what documentation if any they provided to the officer, and other details such as the weather, time of day or other details about the context;
- Detailed declaration from others who were witness to the "wave through." These should only come from individuals who have status themselves;
- Travel documents, such as tickets, receipts or itineraries, from that time;
- Evidence of physical presence in the United States on and around the day of entry, including declarations by individuals who can attest to the individual's arrival or presence;
- Other primary corroborating evidence.[19]

[13] Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), PL 102-232, 105 Stat. 1733, § 304(c).
[14] *Matter of Z-R-Z-C-* (AAO Aug. 20, 2020).
[15] *Id.* 12
[16] *Matter of Quilantan,* 25 I&N Dec. 285 (BIA 2010); *see also Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980).
[17] *Reid* v. *INS*, 420 U.S. 619, 624 (1975) (Someone who is permitted to enter the United States by falsely claiming to be a USC is deemed to have made an entry without inspection).
[18] See footnote 2, above.
[19] 7 USCIS-PM B.2(A)(7).

U nonimmigrant status grantees: In an unpublished case, *Alejandro Garnica Silva*, the Board of Immigration Appeals (BIA) held that a grant of U nonimmigrant status qualifies as an "admission."[20] In that case, a U nonimmigrant was placed in removal proceedings for having committed a crime involving moral turpitude within five years after the date of "admission." The immigration judge and BIA agreed that the conviction made them deportable because he was "admitted" when he was granted U nonimmigrant status.

Based on this unpublished BIA decision, for at least the last several years, a grant of U nonimmigrant status has been treated as an "admission" for adjustment purposes under INA § 245(a). Individuals who have been granted U status may be eligible to adjust under INA § 245(a) so long as they meet the other adjustment requirements. This could mean that individuals in U status who are eligible to adjust status through a family petition could apply for adjustment sooner than having to wait to be eligible for adjustment under INA§ 245(m), the U-specific adjustment provision which requires the applicant to have had U nonimmigrant status for a minimum of three years first, among other requirements.[21] While countless adjustments have been filed and approved using this reasoning, recent dicta in the United States Supreme Court decision *Sanchez v. Mayorkas* has called into question whether a grant of U status is an "admission" for adjustment purposes.[22] Despite this, there have been reports of approvals in these types of cases.

2. Paroled:

The Attorney General has discretion to grant "parole" to certain noncitizens, allowing them to enter or remain in the United States without having been legally "admitted."[23] Generally, a noncitizen is paroled if they are: (1) seeking admission to the United States and (2) an immigration officer inspected them and permitted them to "enter" the United States.[24] Individuals who are "paroled" under INA § 212(d)(5)(A) are eligible to meet the threshold requirement of having been "inspected and admitted ***or paroled***" under INA § 245(a).

There are various types of paroles that individuals can have that will satisfy this threshold requirement of INA § 245(a) such as: deferred inspection by Custom and Border Patrol (CBP), Urgent Humanitarian Reasons or Significant Public Benefit, Parole in Place for individuals already present in the United States without admission or parole, and advance parole. Below are ways that those who are already present in the United States can seek parole. For a more complete list and analysis of the types of parole see ILRC's *Parole in Immigration Law* manual (2023).[25]

[20] *Alejandro Garnica Silva,* A098 269 615 (BIA June 29, 2017).
[21] It is also important to note, however, that U applicants applying to adjust under § 245(a) rather than § 245(m) are subject to all the grounds of inadmissibility, rather than just § 212(a)(3)(E), and thus adjusting under the general adjustment of status provision may not be the best option for those with other inadmissibility issues, especially ones for which no waiver is available.
[22] See *Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1814 (2021).
[23] INA § 212(d)(5).
[24] *Id.*
[25] ILRC *Parole in Immigration Law* available at https://store.ilrc.org/publications/parole-immigration-law-0.

Parole in Place for Military Family Members: Individuals with a parent, spouse, or child in the United States military may be eligible for parole in place ("military PIP") at the discretion of USCIS[26] Military PIP is available to certain family members of USCs or LPRs who are active duty members of the United States Armed Services, the Selective Reserve of the Ready Reserve, and veterans whether living or deceased, who were not dishonorably discharged.[27] Family members include spouses, children under 21, adult sons and daughters whether married or not, and parents.[28]

Applicants are eligible for Military PIP if they are:

- The spouse, widow(er), parent, son, or daughter of an active duty or ready reserve member of the United States armed forces, or of an individual who previously served on active duty or in the Selected Reserve of the Ready Reserve and was not dishonorably discharged (whether living or deceased);
- Physically present in the United States;
- Have not previously been "admitted" or "paroled"; and
- Do not have a criminal conviction[29] or other serious adverse factor. [30]

A grant of Military PIP cures the previous entry without inspection ("EWI")[31] by giving parole to a beneficiary and this parole may allow those who otherwise satisfy the requirements for adjustment of status to pursue adjustment of status, thereby avoiding the need to consular process.

It is important to note that an individual does not have to immigrate through the same family member who makes them parole-eligible. In other words, a different USC or LPR family member can submit the military parole in place request for them and the person can then adjust status through another family member once the Military PIP has been granted.

Keeping Families Together Parole in Place: On June 18, 2024, the Biden Administration announced the Keeping Families Together Parole in Place (KFT PIP) process for certain spouses and stepchildren of USCs. As of the time of this writing, there is an administrative stay in place preventing USCIS from granting KFT PIP applications. USCIS continues to accept applications but cannot grant any KFT PIP applications. For more information on how this ligation is unfolding, visit: https://www.ilrc.org/resources/latest-on-parole-in-place.

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[26] *See* USCIS Memo on November 15, 2013, *Parole-in-Place for Spouses, Children, and Parents of Members of the Military*, at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf.
[27] USCIS, *Policy Memorandum: Discretionary Options for Designated Spouses, Parents, and Sons and Daughters of Certain Military Personnel, Veterans, and Enlistees* (November 23, 2016), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/PIP-DA_Military_Final_112316.pdf.
[28] *Id*.
[29] While USCIS indicates that Military PIP is available to those without criminal convictions, in practice, it has granted Military PIP where the applicant has had a prior conviction, such as a misdemeanor driving under the influence conviction. If an applicant has a criminal conviction, their Military PIP application should include evidence of positive equities and the criminal court disposition.
[30] USCIS, *Policy Memorandum: Parole-in-Place for Spouses, Children, and Parents of Members of the Military* (November 15, 2013), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf and USCIS November 23, 2016.
[31] INA § 212(a)(6)(A)(i).

The initial administrative stay was issued on August 26, 2024, a week after USCIS began to receive and approve applications under this process. The limited number of applicants who were approved during the week that the process was fully in effect were granted parole for 3-years and if otherwise eligible, may pursue adjustment of status.

Applicants are eligible for this process if they:

Are the noncitizen spouse of a USC and:[32]

- Entered the United States without permission;
- Married their USC spouse by June 17, 2024;
- Have lived in the United States for at least 10 years as of June 17, 2024, and up to the time they file their application; and
- Meet other requirements related to criminal and immigration history.
    - A felony conviction, pending criminal charges, and other disqualifying crimes make an applicant ineligible for this process.[33]

Are the noncitizen stepchild of a USC: Undocumented stepchildren of USCs only need to show physical presence in the United States from June 17, 2024 to the time they file their application. They also have to have entered the United States without permission and meet the same criminal and immigration requirements as spouses.

Advocates should do a risk assessment with any individual who is interested in applying for PIP, despite the administrative stay, before submitting a KFT PIP application. It is important to review the benefits with clients, like obtaining protection from deportation for up to three years, work authorization eligibility, as well as helping to meet the threshold requirement of INA § 245(a) for adjustment purposes *AND* review the risks of applying, like giving the government information they might not have that could be used for enforcement purposes under a different administration or losing the $580 filing fee if the process cease to exist and USCIS does not refund application fees. For a complete risk assessment considerations, visit: https://www.ilrc.org/resources/documenting-eligibility-and-risk-assessment-parole-place-spouses-us-citizens.

DACA Advance Parole: Advance parole is way for certain immigrants with temporary status or protection to travel outside the United States with authorization to re-enter (i.e., to be "paroled") upon their return to the United States.[34] Advance parole is only available to

[32] *See* USCIS' *Keeping Families Together* page available at https://www.uscis.gov/keepingfamiliestogether and Federal Register Notice of Implementation at https://www.federalregister.gov/documents/2024/08/20/2024-18725/implementation-of-keeping-families-together, for more information of process requirements.
[33] For more information on the Keeping Families Together Parole in Place process and eligibility see ILRC's Practice Advisory *Overview, Tips, and Considerations When Applying for Keeping Families Together Parole in Place for Spouses and Stepchildren of U.S. Citizens* available at https://www.ilrc.org/resources/overview-tips-and-considerations-when-applying-keeping-families-together-parole-place.
[34] USCIS Adjudicator's Field Manual, § 54.1. *See also*, USCIS's definition of "Parolee" and "Advance Parole," stating that advance parole "may be issued to [noncitizens] residing in the United States other than lawful permanent resident status who have an unexpected need to travel and return, and whose conditions of stay do not otherwise allow for their readmission to the United States if they depart," http://www.dhs.gov/definition-terms#parolee.

noncitizens who have an underlying status that provides them an option to request parole[35], such as Deferred Action for Childhood Arrivals (DACA) recipients. An individual who travels abroad on advance parole and re-enters is considered to have been "paroled" for adjustment of status at INA §245(a). This is particularly significant for those who entered the United States without inspection, like certain DACA recipients.

Advance parole is also significant because it allows a person who has no other lawful basis for re-entering the country to seek permission to leave and re-enter *without triggering unlawful presence bars* under INA § 212(a)(9)(B).[36] Even though travel on advance parole does not trigger the three- or ten-year unlawful presence bars, it does not cure any of the unlawful presence bars that might have been triggered by a previous departure or prior triggers of the "permanent bar" at INA § 212(a)(9)(C).[37] Advocates should be particularly careful to screen for the permanent bar since minors accrue unlawful presence for purposes of the permanent bar, but not for the three- and ten-year bars.[38]

For DACA recipients, advance parole requests are being granted if the applicant is under a valid period of deferred action under DACA (i.e. their DACA grant has not expired). A DACA recipient must request and receive advance parole approval before traveling outside of the United States and if they travel outside of the time granted or without first requesting advance parole, their deferred action will automatically be terminated.[39]

USCIS is currently granting advance parole to DACA recipients if the travel abroad is needed for:

- **Humanitarian purposes**, which can include travel to obtain medical treatment, attending funeral services for a family member, or visiting an ailing relative;
- **Educational purposes**, such as semester-abroad programs and academic research; or
- **Employment purposes** such as overseas assignments, interviews, conferences, training, or meetings with clients overseas.[40]

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[35] As noted above, TPS recipients, prior to July 1, 2024, were eligible to travel using Advance Parole. This travel, would then allow them to be "paroled" in and meet that threshold requirement under INA § 245(a), similar to DACA recipients. For more information on this change of policy, see ILRC's Practice Advisory on *New Policy on TPS and Travel* available at https://www.ilrc.org/resources/new-policy-tps-and-travel.

[36] *Matter of Arrabally Yerrabelly*, 25 I&N Dec. 771 (BIA 2012) (stating that travel on advance parole is not a "departure" for purposes of inadmissibility under 212(a)(9)(B)(i)). *Matter of Arrabally and Yerrabelly* has since been applied to TPS and DACA recipients who traveled on advance parole and then sought adjustment of status. They were able to adjust status because they had not triggered the three- or ten-year unlawful presence bars when they left and returned under advance parole.

[37] INA § 212(a)(9)(C), a person who reenters the United States without authorization after being deported or reenters unlawfully after having spent more than one year of unlawful status is subject to the "permanent bar." This can only be waived after the individual has been outside the United States for 10 years. This provision applies to minors, unlike the unlawful presence bars.

[38] For more information on unlawful presence inadmissibility grounds, see ILRC's practice advisory *Understanding Unlawful Presence Under INA § 212(A)(9)(B)* available at https://www.ilrc.org/resources/understanding-unlawful-presence-under-%C2%A7-212a9b-and-unlawful-presence-waivers-i-601-and-i.

[39] USCIS FAQ #57 explains that a DACA recipient will be permitted to travel outside of the United States only if she applies for and receives advance parole from USCIS, available at https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions.

[40] Id.

Travel for purely vacation purposes is not a valid basis for advance parole for DACA recipients. Individuals who seek DACA AP will need to submit evidence that supports their reason to travel and may be asked about their reason for travelling upon their return to the United States.

Traveling outside the United States, even with advance parole, always carries a risk. Although the risk tends to be small, cases must be evaluated thoroughly, on a case-by-case basis. Advance parole permits a person to request permission to reenter the country physically, unlike regular parole where the person is allowed to come into the United States and parole in place where the applicant is already in the United States and is paroled without needing to depart and reenter the country. Individuals who travel on advance parole remain "applicants for admission"[41] and CBP will still screen travelers for admissibility. Therefore, it is essential to determine if there are any risk factors present in an individual's case prior to their departure from the United States.

B. Other AOS Requirements Under INA § 245(a)

Even if an applicant is able to meet the "inspected and admitted or paroled" threshold requirement under INA § 245(a), they will still need to show they meet all other requirements to be eligible to adjust status. Meeting the threshold requirements of having been "inspected and admitted or paroled" will not cure any of the other requirements that have not been met or have been triggered to make someone ineligible. Below are a few things to note for some of the requirements. For a more in-depth analysis, please see ILRC's Family Manual.

1. Be admissible:

Individuals will need to prove they are admissible under all applicable grounds listed in INA § 212(a). Some grounds of inadmissibility have waivers, which if granted as a matter of discretion, can allow an applicant to overcome that particular ground of inadmissibility. Advocates should ensure that their clients do not come within any of the inadmissibility grounds, or if they do, that there is a waiver available under INA § 212 and that the client is eligible for the waiver. Please see the ILRC's *Inadmissibility and Deportability* (ILRC 2021)[42] manual for a complete discussion of the grounds of inadmissibility that can affect applicants.

2. Visa Immediately Available:

Another requirement to adjust status under § 245(a) is that an immigrant visa is immediately available. Immediate relatives - a spouse, parent, or child[43] of a USC - will always be able to meet this requirement because an immigrant visa is always available for immediate relatives, without any limit or wait-list. Other family beneficiaries—preference beneficiaries—cannot adjust until their priority date is current according to the "Final Action Dates" chart in the State

[41] INA § 212(d)(5)(A).
[42] Available at https://www.ilrc.org/publications/inadmissibility-deportability.
[43] A child is "an unmarried person under twenty-one years of age." INA § 101(b)(1).

Department Visa Bulletin.[44] Those in a preference category should not file for adjustment until the Visa Bulletin indicates they are eligible to do so.[45]

3. Adjustment bars at INA § 245(c):

An adjustment applicant must not fall under any of the bars to adjustment at INA §§ 245(c)-(e). Section 245(c) applies to all adjustment applicants, whereas subsections (d) through (e) only apply to narrow subsets of adjustment applicants, such as K-1 fiancé(e)s and individuals immigrating based on a marriage that occurred during the pendency of removal proceedings. The bars at INA § 245(c) prohibit adjustment of status under § 245(a) if the person falls within certain categories, like those that failed to maintain lawful status, worked without authorization, or certain other categories.[46] These bars do not apply to immediate relatives.[47]

Individuals in a preference category, on the other hand, are subject to the bars at § 245(c) and cannot adjust under INA § 245(a) if they have fallen out of status (or never had lawful status) or have worked without authorization.[48] This means that most preference category immigrants, even after meeting the threshold requirement of having been "inspected and admitted or paroled" will still be unable to adjust status in the United States.

In addition to immediate relatives, the § 245(c) bars do not apply to VAWA self-petitioners or individuals adjusting status through § 245(i).[49]

4. Warrant a favorable exercise of discretion:

Ultimately, adjustment of status is discretionary. Generally, though, unless the applicant has serious negative factors, no special showing is required to prove an adjustment applicant warrants a favorable exercise of discretion. Therefore, unless your client has some type of criminal or immigration history that does not render them inadmissible but still reflects poorly on them, you do not need to submit anything extra to argue in favor of adjustment eligibility. If, however, your client has a history of DUIs for example, you may want to submit proof of positive equities to show that the positive factors outweigh the negative. Positive equities include rehabilitation (if applicable), family and community ties in the United States, employment history, volunteering or donating to charities, and any other facts that show the

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[44] To access the Visa Bulletin, which is issued monthly, go to https://travel.state.gov/content/travel/en/lega/visa-law0/visa-bulletin.html.

[45] Sometimes, USCIS uses the "Dates for Filing" chart in the Visa Bulletin if it determines that there are fewer adjustment applicants than predicted. The Dates for Filing chart allows applicants to file their adjustment applications a little earlier than the Final Action Dates chart. Each month, USCIS announces which chart it will be using for the following month through a website created for this purpose: https://www.uscis.gov/visabulletininfo.

[46] *See* INA § 245(c) for a complete list of individuals subject to the bar. Groups include crewmen, noncitizens admitted on transit without a visa under INA §212(d)(4)(c), nonimmigrants who violated the terms of their nonimmigrant visa, and S nonimmigrants, to name a few.

[47] Widows and widowers of USCs may also be treated as immediate relatives if the USC filed a petition before their death or if the widow(er) files a petition within 2 years of the citizen's death. INA § 201(b)(A)(i).

[48] INA § 245(c).

[49] INA § 245(i) permits adjustment for certain noncitizens in the United States who normally would not qualify for adjustment of status if they pay a "penalty fee" and meet certain requirements. In order for an individual to qualify for 245(i), they must have been the beneficiary of a family petition or labor certification that was properly filed on or before April 30, 2001. For more information see ILRC, *Practice Advisory: 245(i): Everything You Always Wanted to Know but Were Afraid to Ask* at https://www.ilrc.org/sites/default/files/resources/245i_everything_you_want_to_know-20180628.pdf.

applicant to be a “good” person or that people in their life will be negatively affected if they are not granted permanent immigration status.

II. Conclusion

Family-based immigration remains a key option for many immigrants seeking permanent status. While many immigrants may have a family member who can petition them, not all of them will be eligible for adjustment of status. Although there are a limited number of ways that an individual can apply for permanent residence through a family member, it is important to screen individuals thoroughly about their adjustment options. Adjustment of status before USCIS is preferable to consular processing thus making it important to explore all adjustment options carefully. Before moving forward with any adjustment application, advocates should ensure that clients will meet all of requirements for adjustment, including whether a waiver is available and needed.

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About the Immigrant Legal Resource Center
The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC’s mission is to protect and defend the fundamental rights of immigrant families and communities.