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Employment and Travel Permit While Green Card Application Is Pending

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Unauthorized employment after an adjustment of status application is filed is not a basis for a denial of the application. However, aliens must realize that working without a valid work permit may jeopardize their employer who may be subjected to fines in violation of the employer sanctions provisions of the 1986 Immigration law.

This is especially true with nonimmigrants other than those in E, H or L status. Once they file the application, they are considered to lose their nonimmigrant status.

To avoid having to put an employer in a spot, adjustment applicants must file for employment authorization with their application. In the case of H, E or L visa holders, if they foresee that their visa may expire before their applications are actually approved, they must apply for INS employment authorization in advance of the expiration of their visa.

Aliens under the E, H and L status are entitled to the INS dual intent policy which recognizes their lawful nonimmigrant status, and at the same time allows them to pursue permanent resident status, provided their visa has not expired at the time of adjustment application. The policy allows them to maintain their dual intent to remain nonimmigrants while also choosing to pursue permanent resident status.

Other aliens however are not covered by this dual intent policy. B, J, and F nonimmigrants, for instance, must always submit their Form I-765 request for employment authorization concurrently with their application to adjust status.

Adjustment applicants may travel outside of the country and return to the US on the strength of their valid E, H and L visa. But like other aliens in other visa categories, leaving the country is considered abandonment of the adjustment application, unless an advance parole is obtained before leaving. Be warned though that once an advance parole is used to re-enter the US, the aliens' status becomes that of a parolee and thus lose their E, H or L status.

Losing their valid nonimmigrant status on the basis of their new status as a parolee, automatically terminates their employment authorization which they obtained as E, H or L aliens. To prevent employers from being subjected to penalties, the best action therefore that E, H, or L aliens may take if they must travel abroad is to file their application for advance parole and employment authorization at the same time.