

# THE FILIPINO **EXPRESS**

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## **Travel Backlash When Green Card Petition is Pending**

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When a nonimmigrant worker under the E, H or L category files for an adjustment of status to that of a permanent resident, he should understand certain INS rules, which if ignored, may adversely affect his nonimmigrant status or his adjustment application. The applicant must seek counsel before he initiates certain moves out of personal or business necessity.

One of the most common mistakes committed by an adjustment applicant is travelling outside the United States without understanding the consequences on his status. An alien under an E, H or L visa whose adjustment application is pending, may still travel outside of the US and return with his nonimmigrant status intact; however, his adjustment application is considered abandoned.

To avoid reapplying for his adjustment of status, the applicant must obtain for an advance parole to be able to reenter the US. But upon his return to the US, he is now considered as a parolee and his E, H, L status is thus terminated. Though he loses his nonimmigrant status, and becomes a parolee, he is returned to the status of an adjustment applicant.

Because a parolee loses his E, H or L status upon return to the US, he is required to obtain employment authorization before he resumes work with his employer. Failure to do so would subject his employer to an IRCA violation. To avoid a discontinuance of his employment upon his return to the US as a parolee, it is often the case that when an applicant is aware of imminent travel at the time of his application for adjustment of status, the applicant also files an advance parole and employment authorization at the same time concurrent with his filing for his adjustment of status.

An applicant must keep in mind that the INS does not routinely grant parole visas. They require compelling reasons for such requests such as death or illness in the family or in the case of business reasons, the alien must provide evidence that the alien is being sent by his company with regard to a business that cannot be postponed and for which no other employee but the alien can reasonably fulfill the purpose of his business trip. It must be shown that failure to leave will result in financial loss for the company.

In the former case where there is a family emergency, documentation includes a telegram or telex from an attending physician indicating immediate relative's illness or death, and confirmation from member of the family. A revised Form I-131 is now being used as the document for the application for advance parole.

Documentation for a business trip consists of an employer's letter specifying reasons for the trip, and justification of alien's need to take the trip instead of another employee. It will help to provide indications of possible loss to the company should the trip not be made. An itinerary for the trip is also required.

Applicants for advance parole who have had approved adjustment application and are only currently waiting for immigrant visas may experience more leniency from the INS in obtaining their parole. In this case, there is hardly need to show extreme need to travel. Whatever the reasons, extreme or not, these applicants who need to travel outside of the US are still required to apply for advance parole.