

Traveling While Adjustment of Status is Pending

By Reuben S. Seguritan

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After an adjustment of status interview, an applicant normally waits for a period of sixty days, and sometimes as long as one year for the processing of his adjustment of status case to be completed.

Because the applicant's nonimmigrant visa is cancelled at the time of the interview, the alien has no proper visa and thus finds himself in an "in-between status." It is at this stage that those whose adjustment of status case is pending should not travel lest they risk their case to be considered abandoned by the INS.

When an applicant applies for an adjustment of status, he expresses explicitly his desire to remain permanently in the US. As such, when he leaves and attempts to re-enter the US, he cannot be properly given a nonimmigrant status which in its essence requires alien's explicit intention to stay in the US temporarily.

An alien whose adjustment of status case is pending has therefore no basis to re-enter the US.

When an alien leaves the US and his adjustment of status case is not allowed to the US, he will have to remain outside of the US until he obtains an immigrant visa at the US consulate abroad.

There are cases however, that merits INS permission for alien to travel. Form I-131 which is an application for re-entry permit may be submitted by those who need to travel outside of the US because of an emergency for personal or business reasons. Personal reasons include illness or death within alien's immediate family. An applicant who files for re-entry permit for business emergency must also justify that he is needed by his company for no other person can reasonably be sent and that failure to do so will result in financial loss to the company. A letter from the alien's employer detailing the company's need for his services should be documented.

An applicant needs to produce telegrams from a family member as well as from a doctor attesting to fact and nature of the illness or a family member's death.

On the other hand, some aliens who have had approved adjustment of status applications but have not yet received their immigrant visa because their numbers have retrogressed, may be granted permission to travel under less urgent reasons. INS may grant them "advance parole" without an alien proving extreme need to travel. The need to attend a business function abroad may also suffice in case of those who need to travel for business reasons.