§ 245.21


(a) Eligibility. USCIS may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States before October 1, 1997;

(2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(3) Was physically present in the United States prior to and on October 1, 1997; and

(4) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) Application. An applicant must submit an application on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions. Applicants who are 14 through 79 years of age must also submit the biometrics service fee described in 8 CFR 103.17.

(c) Applications from aliens in immigration proceedings. An alien in pending immigration proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to USCIS in accordance with paragraph (b) of this section. An immigration judge or the Board of Immigration Appeals may not adjudicate applications for adjustment of status under this section. An alien who is currently in immigration proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106–429 may contact USCIS counsel after filing an application to

§ 245.20 [Reserved]

§ 245.21 [Reserved]
§245.21 Request the consent of USCIS to the filing of a joint motion for administrative closure. Unless USCIS consents to such a motion, the immigration judge or the Board may not defer or dismiss the proceeding in connection with section 586 of Public Law 106–429.

(d) Applications from aliens with final orders of removal, deportation, or exclusion. An alien with a final order of removal, deportation, or exclusion who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to USCIS in accordance with paragraph (b) of this section.

(1) An application under this section does not automatically stay the order of removal, deportation, or exclusion. An alien who is eligible for adjustment of status under section 586 of Public Law 106–429 may request a stay of removal during the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6.

(2) DHS will exercise its discretion not to grant a stay of removal, deportation, or exclusion with respect to an alien who is inadmissible on any of the grounds specified in paragraph (m)(3) of this section, unless there is substantial reason to believe that USCIS will grant the necessary waivers of inadmissibility.

(3) An immigration judge or the Board may not grant a motion to reopen or stay in connection with an application under this section.

(4) If USCIS approves the application, the approval will constitute the automatic re-opening of the alien’s immigration proceedings, vacating of the final order of removal, deportation, or exclusion, and termination of the reopened proceedings.

(e) Grounds of inadmissibility that do not apply. In making a determination of whether an applicant is otherwise eligible for admission to the United States for lawful permanent residence under the provisions of section 586 of Public Law 106–429, the grounds of inadmissibility under sections 212(a)(4), (a)(5), (a)(7)(A), and (a)(9) of the Act shall not apply.

(f) Waiver of grounds of inadmissibility. In connection with an application for adjustment of status under this section, the alien may apply for a waiver of the grounds of inadmissibility under sections 212(a)(1), (a)(6)(B), (a)(6)(C), (a)(6)(F), (a)(8)(A), (a)(10)(B), and (a)(10)(D) of the Act as provided in section 586(c) of Public Law 106–429, if the alien demonstrates that a waiver is necessary to prevent extreme hardship to the alien, or to the alien’s spouse, parent, son or daughter who is a U.S. citizen or an alien lawfully admitted for permanent residence. In addition, the alien may apply for any other waiver of inadmissibility under section 212 of the Act, if eligible. In order to obtain a waiver for any of these grounds, the applicant must submit an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(g) Evidence. Applicants must submit evidence that demonstrates they are eligible for adjustment of status under section 586 of Public Law 106–429. Such evidence shall include the following:

(1) A birth certificate or other record of birth;

(2) Documentation to establish that the alien was physically present in the United States on October 1, 1997, under the standards set forth in §245.22 of this chapter.

(3) A copy of the applicant’s Arrival-Departure Record (Form I–94) or other evidence that the alien was inspected or paroled into the United States prior to October 1, 1997, from one of the three programs listed in paragraph (a)(2) of this section. Subject to verification, documentation pertaining to paragraph (a)(2) of this section is already contained in USCIS files and the applicant may submit an affidavit to that effect in lieu of actual documentation.

(h) Employment authorization. Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may apply on the form specified by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(1) Travel while an application to adjust status is pending. An applicant who wishes to travel outside the United States while the application is pending must obtain advance permission by filing the application specified by USCIS with the fee prescribed in 8 CFR
§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.

(a) Evidence. Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where a more specific regulation relating to a particular adjustment of status provision has been issued in the 8 CFR, such regulation is controlling to the extent that it conflicts with this section.

(b) The number of documents. If no one document establishes the alien's physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to and after that date.

(c) DHS-issued documentation. An applicant for permanent residence may demonstrate physical presence by submitting DHS-issued (or predecessor agency-issued) documentation such as an arrival-departure form or notice to appear in immigration proceedings.

(d) Government-issued documentation. To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

1. A state driver’s license;
2. A state identification card;
3. A county or municipal hospital record;
4. A public college or public school transcript;
5. Income tax records;
6. A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant’s behalf, a benefit from the Federal, State, or local governmental agency keeping such record;
7. A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or
8. A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private...