

CAN I APPLY FOR ADJUSTMENT OF STATUS?
A SIMPLE QUESTION AND A NOT-SO-SIMPLE ANSWER



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An Overview of Sections 245(a), 245(c), 245(i) and 245(k)
of the Immigration and Nationality Act

The process of applying for an immigrant visa or “green card” while in the United States is known as “adjustment of status”. For a variety of reasons, most would-be immigrants prefer filing in the United States as opposed to having to return to their home country in order to complete the green card process. For example, many foreign nationals prefer to file in the United States in order to avoid the cost and inconvenience of having to travel back to their home country and wait for the green card process to be completed. For others who may have overstayed their authorized period of stay, if they have to travel back to their home country in order to file for the immigrant visa, they may be faced with up to a 10-year bar from returning to the United States. Regardless of the reason, the preferred place of filing for the green card is usually the United States.

While most foreign nationals know that they want to file in the United States, most do not know or fully understand the complex set of rules and regulations which govern the adjustment of status process.

The general eligibility requirements for adjustment of status are listed at INA Section 245(a). INA Section 245(c) provides that, even if a foreign national meets the general eligibility requirements under INA Section 245(a), he can be barred from adjustment of status in certain situations. INA Section 245(i) provides that a foreign national barred from adjustment of status under INA 245(a) or 245(c), may still be eligible for adjustment if he meets certain very specific requirements found in INA Section 245(i). Finally, INA Section 245(k) provides that certain disqualifying factors under INA Section 245(c) can be overcome if the foreign national meets the requirements of INA Section 245(k). Confused? You should be. These statutes are very complex and require a thorough understanding of how they relate to one another before a determination of whether a foreign national can or should apply for adjustment of status.

This article is Part 1 of 4-Part Series. This article focuses on INA Section 245(a). Part 2 will focus on INA Section 245(c). Part 3 will focus on INA Section 245(i). Part 4 will focus on INA Section 245(k). Each of these articles will appear on our law firm’s website at www.longchangonline.com. In addition, these articles will be included in our firm’s immigration newsletter which is published on our website and which is emailed

directly to subscribers to our immigration newsletter. If you would like to subscribe to Long, Chang & Associates, L.L.P.'s free immigration newsletter, visit our website at www.longchangonline.com and click on "Immigration Newsletter".

INA Section 245(a)

The general rule is that, in order to apply for the green card in the United States ("adjustment of status"), the foreign national must meet certain statutory requirements listed at Section 245(a) of the Immigration and Nationality Act. The five (5) main requirements are:

- (1) **The foreign national must be inspected and admitted or paroled into the United States:** The general rule requires that the foreign national be able to prove that he was inspected by an immigration officer at a port of entry (for example, upon arrival at a U.S. airport by a Customs and Border Protection official) and that the officer admitted the foreign national to the United States. A Form I-94 stamped by the immigration officer is evidence of this inspection and admission to the United States.
- (2) **The foreign national must file an application for adjustment of status:** An application for adjustment of status is filed on Form I-485. There are various other immigration forms and documents (as well as a basic application fee and fingerprinting fee of \$1,010.00) which must be filed along with the Form I-485.
- (3) **The foreign national must be eligible to receive the immigrant visa:** Eligibility for an immigrant visa ("green card") is commonly based on a petition filed by either an employer (in one of the five employment-based green card categories) or through a family member (such as a spouse, parent, son, daughter, brother or sister). The underlying petition which forms the basis for the Form I-485 green card application must remain valid. For instance, if the employer which filed for the foreign national has gone out of business or if the family relationship no longer exists (as a result of death or divorce), then the foreign national usually is no longer eligible for the immigrant visa.
- (4) **The foreign national must be admissible to the United States:** Section 212(a) of the INA lists various grounds of inadmissibility. If one of the grounds of inadmissibility listed in INA Section 212(a) applies to the foreign national, he is not eligible for adjustment of status. The most common grounds of inadmissibility relate to certain crimes and to acts involving fraud or misrepresentation. Certain grounds of inadmissibility can be waived or excused in certain circumstances.
- (5) **An immigrant visa must be available to the foreign national:** There are statutory limits to the number of immigrant visas ("green cards") which can be issued in each year. Even if the U.S. Citizenship and Immigration Services wanted to and had the resources to do so, they cannot approve an unlimited

number of green cards each year. Since the demand for green cards (the number of foreign nationals filing for green cards) far exceeds the available supply (the number of immigrant visas authorized by the U.S. immigration laws) to be issued each year, most immigrant visa categories have long backlogs or delays. Each month, the U.S. Department of State publishes the “Visa Bulletin” which essentially provides a “cutoff date” in most family-based and employment-based green card categories. If the foreign national’s “priority date” is earlier than the “cutoff date”, an immigrant visa is considered to be available to the foreign national during that particular month. If the foreign national’s “priority date” is later than the “cutoff date” listed in that month’s Visa Bulletin, then an immigrant visa is not available to the foreign national during that month. As a result he must continue to wait before he can apply for the immigrant visa.

Each of these five (5) requirements of INA Section 245(a) are what I consider “threshold requirements”, meaning that a foreign national generally (although not always) must meet each of these five (5) requirements before he can even consider filing for a green card in the United States. Unfortunately, however, meeting each of these five requirements does not guarantee that the foreign national will be eligible for adjustment of status. This is because INA Section 245(c) provides that INA Section 245(a) does not apply to certain foreign nationals. Part 2 of this series of articles will focus on INA Section 245(c) and how it can bar certain foreign nationals from adjustment of status even if they meet each of the five (5) general requirements of INA Section 245(a). Part 2 will be published online at www.longchangonline.com and will be included in an upcoming issue of our firm’s immigration newsletter. Not yet a subscriber? Visit www.longchangonline.com and click on “Immigration Newsletter” in order to receive our firm’s free immigration newsletter delivered right to your inbox!

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