

H and L Visa Holders Travel Easier

The U.S. Citizenship and Immigration Service (USCIS) recently made it easier for certain H and L non-immigrant visa holders to travel without fear that their I-485 adjustment of status applications may be jeopardized. Previously, such H and L visa holders returning to the U.S. following a trip abroad were required to present a receipt notice for their adjustment of status applications, to avoid having such applications deemed abandoned. The purpose of this new law change is to remove an unnecessary documentation requirement from the regulations that the Department of Homeland Security ("DHS"), that causes an undue burden on such H and L visa holders. The effective date of this regulation change is November 1, 2007.

Travel outside the U.S. for an alien who has filed an I-485 application to obtain U.S. lawful permanent resident status, may adversely affect that application unless the alien takes certain steps before the trip. Most applicants must obtain permission from USCIS to travel prior to the trip, a process referred to as "advance parole." For these applicants, departing the U.S. without advance parole, while their adjustment of status applications are pending, results in automatic abandonment of these applications, and constitutes grounds for denial. However, some applicants do not need to obtain advance parole prior to departing from the U.S. These are applicants who are permitted by statute to maintain a non-immigrant status while they seek to obtain U.S. permanent resident status – for example, certain H and L visa holders.

Both the H and L non-immigrant visa classifications are employment-based. Under current regulations, adjustment of status applicants maintaining H or L nonimmigrant status who depart the U.S. will not be deemed to have abandoned their applications, if they did not obtain advance parole prior to departure. However, prior to November 1, 2007, upon return to the U.S., they were required to demonstrate to the immigration officer at the port of entry they: 1. remained eligible for H-1/H-4 or L-1/L-2 visa status; 2. would resume employment with the same employer for which they had previously been authorized to work as an H-1 or L-1 employee (not applicable to H-4 or L-2 visa holders); 3. held in their possession a valid H-1/H-4 or L-1/L-2 visa (if a visa was required); and 4. held in their possession the original receipt notice for the application for adjustment of status, Form I-797, "Notice of Action" (issued by USCIS).

Because of its varying workload, USCIS recognizes that it is not always able to ensure immediate issuance and mailing of Form I-797 receipt notices upon receipt of an adjustment of status application. At times, USCIS may experience week-long, or even month-long, delays in processing and issuing the receipt.

This situation places H-1B/H-4 or L-1/L-2 visa holders awaiting a Form I-797 receipt notice, but wishing to travel outside the U.S. while their adjustment of status application is pending, in the difficult position of having to decide whether to cancel a planned trip, or risk denial of the adjustment application as a result of the departure. Either option would result in hardship to the alien and his or her dependents that the DHS finds is unduly burdensome and unnecessary.

This is because it renders otherwise qualifying adjustment applications abandoned notwithstanding the fact that the information provided by presentation of the receipt (evidence of filing of an adjustment application) is already available to DHS. An alien whose adjustment of status application is deemed abandoned for failing to present a Form I-797 receipt notice upon readmission to the U.S., resulting in a denial of the application would be forced to incur the time and expense involved in filing a new adjustment application.

In any case, such aliens must establish eligibility for admission, before DHS permits them to reenter the U.S. In addition, DHS creates a record of its inspection of the alien, including the alien's application for admission. Specifically, the above aforementioned requirement nos. 1 through 3, must still be satisfied by such H and L visa holders seeking reentry into the U.S. But this law change removes an unnecessary and undue burden upon aliens who often already have a head full of issues to recall and a bag full of documents to carry. [Portions of this article are taken from the U.S. Federal Register.]

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