

INTERIM MEMO FOR COMMENT

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This memo is in effect until further notice.

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Office of the Director (MS 2000)

Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

August 5, 2011

PM-602-0044

Policy Memorandum

SUBJECT: Transfer of Final Adjudication Authority to the National Benefits Center for Adjustment of Status Cases Filed Pursuant to Section 13 of Public Law 85-316 of 9/11/1957; Revision to *Adjudicator's Field Manual* (AFM) Chapter 23.10 (*AFM* Update AD 11-04)

Purpose

This memorandum transfers final adjudication authority to the Director of the National Benefits Center (NBC) for Form I-485, Application to Register Permanent Residence or Adjust Status, filed pursuant to Section 13 of Public Law 85-316 of 9/11/1957 and revises *Adjudicator's Field Manual* Chapter 23.10.

Scope

Unless specifically exempted herein, this memorandum applies to and is binding on all USCIS employees.

Authority

Section 13 of Pub. L. No. 85-316, 71 Stat. 642, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, 8 U.S.C. § 1255b ("Section 13"); Sections 101(a)(15)(A)(i), (A)(ii), (G)(i) and (G)(ii) of the Immigration and Nationality Act (INA); Title 8, Code of Federal Regulations (8 CFR) Part 245.3.

Background

Adjustment of Status under Section 13 requires:

- Admission to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant;
- Performance of work which is diplomatic or semi-diplomatic in nature (or having been an immediate family member of a principal alien who performed diplomatic or semi-diplomatic duties);
- Failure to maintain diplomatic status;
- Compelling reasons for an inability to return to the country which accredited the alien (or being the immediate family member of a principal alien who has demonstrated such compelling reasons for an inability to return to the country which accredited him);
- Good moral character;
- Admissibility to the United States; and
- A finding that adjustment is in the national interest of the United States and not contrary

to the national welfare, safety, or security.

The statute further requires that USCIS consult with the U.S. Department of State (DOS) before issuing a decision. The principal alien's immediate family members are also eligible to adjust status as dependents under Section 13. Each dependent must demonstrate that he or she has good moral character, that he or she is admissible, and that the adjustment of status would be in the national interest and not contrary to the national welfare, safety, or security.

This class of admission is limited to 50 approvals per fiscal year, including both principals and dependents. In the past, the Director of the Washington District Office had sole jurisdiction over the final adjudication of a Form I-485 filed pursuant to Section 13.

Policy

Effective immediately, the Director of the National Benefits Center will have sole jurisdiction over the final adjudication of any Form I-485 filed pursuant to Section 13. After completing the interview and resolving adjudicative and compliance issues, a USCIS field office must return the entire A-file to the NBC for final adjudication. The A-file must contain the following items at the time of transfer:

- Completed Form I-566, Interagency Record of Request -- A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status;
- Completed Form I-508, Waiver of Rights, Privileges, Exemptions and Immunities under Section 247(b) of the INA; and
- Copy of Sworn Statement and any other relevant evidence submitted.

The NBC will submit these documents to the DOS Office of Public and Diplomatic Services and obtain a consultation.

As part of the consultation process, DOS will review the alien's:

- Admission to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant;
- Performance of work which is diplomatic or semi-diplomatic in nature (or having been an immediate family member of a principal alien who performed diplomatic or semi-diplomatic duties);
- Failure to maintain diplomatic status;
- Compelling reasons for an inability to return to the country which accredited the alien (or being an immediate family member of a principal alien who has demonstrated such compelling reasons for an inability to return to the country which accredited him); and
- Circumstances related to whether adjustment is in the national interest of the United States and not contrary to the national welfare, safety, or security.

When DOS returns the consultation to the NBC with its recommendation, NBC should proceed to adjudicate the case and render a final decision on the matter. NBC is not bound by the results of the consultation by DOS and may make an independent determination. Before NBC can

approve a Section 13 case, it must ensure that the annual numerical limitation for Section 13 cases has not been exceeded.

If a case is approvable, when a number is readily available, NBC will assign a fiscal year charge number(s) to the principal's case as well as a separate fiscal year charge number to each associated dependent cases. The NBC should then proceed with approval of the case(s) and must update the appropriate case management system in order to generate the Form I-551, Permanent Resident Card. NBC must send a copy of the approval decision (e.g., an automatically-generated system notice) to each applicant.

Note: If a case appears approvable, but a number is not readily available, then the case must be held for number availability in the upcoming fiscal year(s).

If a case is denied, NBC will notify the applicant of the decision and of the right to appeal under 8 CFR 103. If the decision is appealed, NBC will forward the appeal to the Administrative Appeals Office (AAO) in accordance with established procedures. If no appeal is received within the time limit prescribed for appeal, the case will be processed at NBC for issuance of a Form I-862, Notice to Appear, if needed.

For adjudication processing information, USCIS field offices should refer to the Adjudicator's Field Manual and the Section 13 Standard Operating Procedures, which can be found in the Adjudicator's Toolbox.

Reporting Requirements

NBC will be responsible for tracking all Section 13 approvals and denials. In reference to approvals, NBC will also be responsible for the creation of the Report to Congress required by Section 13(c) and e-mailing it to the Field Operations Directorate (FOD) AOS & Legalization Branch mailbox (OFO AOS & Legalization), on the last day of each month. The FOD Adjustment of Status Branch will be responsible for submitting the report to the USCIS Office of the Executive Secretariat for Headquarters review, approval, and transmission to DHS.

Implementation

1. Chapter 23.10 of the AFM is revised to read as follows:

23.10 Adjustment of Status under Section 13 of Public Law 85-316 of 9/11/1957 (8 U.S.C. 1255b).

(a) General. Any nonimmigrant admitted to the United States under paragraph (A)(i), (A)(ii), (G)(i) or (G)(ii) of section 101(a)(15) of the Act may apply for adjustment of status to that of an alien lawfully admitted for permanent residence under Section 13 of Public Law 85-316 of 9/11/1957 (which is codified at 8 U.S.C. 1255b and commonly referred to simply as "Section 13") and 8 CFR 245.3.

Adjustment of Status under Section 13 requires:

- Admission to the United States as an A-1, A-2, G-1, or G-2 nonimmigrant;
- Performance of work which is diplomatic or semi-diplomatic in nature (or having been an immediate family member of a principal alien who performed diplomatic or semi-diplomatic duties);
- Failure to maintain diplomatic status;
- Compelling reasons for an inability to return to the country which accredited the alien (or being the immediate family member of a principal alien who has demonstrated such compelling reasons for an inability to return to the country which accredited him);
- Good moral character;
- Admissibility to the United States; and
- A finding that adjustment is in the national interest of the United States and not contrary to the national welfare, safety, or security.

(b) Filing. The Form I-485 must be filed at the Lockbox address according to the instructions on the application. (**Note:** DOS's definition of immediate family member is broader for A and G nonimmigrants than it is for other nonimmigrant categories such that the A-1, A-2, G-1 and G-2 classifications include dependent aliens over age 21. See [22 CFR 41.21\(a\)\(3\)](#)).

Each application package must include:

- Form [I-485](#) (Application to Register Permanent Residence or Adjust Status);
- Form [I-693](#) (Report of Medical Examination and Vaccination Record);
- Form [G-325](#) (Biographic Information);
- Evidence of lawful entry into the United States;
- A copy of the applicant's birth certificate;
- Evidence of employment or income;
- Evidence that applicant held A-1, A-2, G-1, or G-2 nonimmigrant status;
- Form [I-566](#) Interagency Record of Request – A,G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status; and
- Form [I-508](#), Waiver of Rights, Privileges, Exemptions and Immunities under Section 247(b) of the INA, or Form [I-508F](#), [Waiver of Rights, Privileges, Exemptions, and Immunities](#) (French Nationals only).

After receipting the application, the Lockbox will forward the application to the National Benefits Center ("NBC").

(c) Staging. NBC will obtain or create the A-file for the principal applicant and all dependents, assemble the file, initiate the requisite record checks, and forward the

entire A-file(s) to the local office with jurisdiction over the principal applicant's place of residence for an interview.

(d) Interview. A USCIS officer must interview all applicants, other than minor children. As part of the Section 13 interview, an officer must:

- Place the applicant(s) under oath;
- Review the application(s) and all supporting documents for completeness and authenticity; and
- Take a sworn statement from the principal applicant only (unless there is reason to believe the circumstances of the immediate family member may be materially different) regarding the eligibility criteria. A sample copy of suggested basic questions used in taking the sworn statement is contained in [Appendix 23-5](#) of this field manual. The interviewing officer may ask any other questions that he or she believes will help determine eligibility for adjustment (e.g., questions relating to the applicant's possible adjustment under another section of law, good moral character, and admissibility).

Note: In view of the annual limitation of 50 on the number of aliens whose status may be adjusted under Section 13, any alien who at the time of the interview appears to be prima facie eligible for adjustment of status to that of a lawful permanent resident under another provision of law shall be advised to apply for adjustment under that other provision ([8 CFR 245.3](#)).

After completing the interview, the USCIS Field Office will forward the entire A-file to NBC for final adjudication. The A-file must contain the following items:

- Completed Form I-485, Application to Register Permanent Residence or Adjust Status;
- Completed Form I-566, Interagency Record of Request -- A, G or NATO Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status;
- Completed Form I-508 (or Form I-508F in the case of a French national), Waiver of Rights, Privileges, Exemptions and Immunities under Section 247(b) of the INA;
- Copy of the sworn statement taken by the interviewing officer; and
- Any other relevant evidence submitted by the applicant.

(e) Consultation. NBC will submit the packet containing the Form [I-566](#), Form I-508 (or Form I-508F), and a copy of sworn statement and/or other relevant evidence to DOS's Office of Public and Diplomatic Services for consultation. Upon receipt of DOS's response, NBC must review the application and all supporting documentation to prepare a final decision for the case. USCIS is not bound by DOS's recommendation and may

make an independent determination. This decision must be communicated in writing to the applicant and any authorized representative.

(f) Adjudication.

(1) Merits Review. NBC will review the case to determine whether it meets the statutory and regulatory requirements for approval.

(2) Numerical Control. NBC must ensure that USCIS does not exceed the annual numerical limitation for Section 13 cases (50 cases, including dependents). Accordingly, NBC will assign a separate fiscal year charge number to:

- The principal's case; and
- Each associated dependent case.

Once 50 charged numbers have been issued in a fiscal year, no more Section 13 cases may be approved until the following fiscal year, even if part of a family unit must wait as a result. For example, if 47 numbers have already been assigned in a fiscal year and the cases of a family of six (principal, spouse, and four children) have passed the merits review, only the cases of the principal, the spouse and the eldest child may be approved. The cases of the three youngest children must wait until the beginning of the next fiscal year to be approved.

(3) Approval Decision. If all requirements are met, NBC can approve the case and update the appropriate case management system to generate the Form I-551, Permanent Resident Card. NBC must send a copy of the approval decision (e.g., an automatically generated system notice) to each applicant.

(4) Denial Decision. If a case is denied, NBC will notify the applicant of the decision and of the right to appeal under 8 CFR 103. If the decision is appealed, NBC will forward the appeal to the Administrative Appeals Office (AAO) in accordance with established procedures. If no appeal is received within the prescribed time limit, the case will be processed for issuance of a Form I-862, Notice to Appear, if needed.

(g) Reporting Requirements. NBC is responsible for tracking all Section 13 approvals and denials. In reference to approvals, NBC is also responsible for preparing the monthly report to Congress required by Section 13(c) and e-mailing it to the Field Operations Directorate (FOD) AOS & Legalization Branch mailbox (*OFO AOS & Legalization*), on the last day of each month. The FOD Adjustment of Status Branch is responsible for submitting the report to the USCIS Office of the Executive Secretariat for Headquarters review, approval, and transmission to DHS.

2. The *AFM Transmittal Memoranda* button is revised by adding a new entry, in numerical order, to read as follows:

AD 11-04 [08/05/2011]	Chapter 23.10	Revised guidance on adjudication of Adjustment of Status applications filed under Section 13 of Public Law 85-316 of 9/11/1957
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Use

This memorandum is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this memorandum should be addressed through appropriate channels to Field Operations Directorate.

Attachment

Standard Operations Procedure for Processing Form I-485, Under Section 13 of Public Law 85-316 of 9/11/1957