

Travel and Work by Adjustment of Status Applicants

Applicants for adjustment of status to permanent residence have restricted ability to travel outside of the United States until they are approved for permanent residence. Most applicants have no choice—if they want to travel internationally, they must apply for and obtain an advance parole travel document. Applicants for permanent residence who maintain valid H-1B, L-1, H-4 or L-2 status do have a choice: they may either travel on their valid H or L visas, or they may obtain advance parole travel documents and employment authorization documents. The purpose of this analysis is to compare the relative advantages and disadvantages of advance parole travel and travel with H or L visas, as well as working in H or L status versus working with an employment authorization document. Some adjustment of status applicants may well conclude that they wish to both maintain H or L status and obtain advance parole and employment authorization.

Note: This analysis is only for use by adjustment of status applicants maintaining valid H or L status.

Advantages of Obtaining Advance Parole and Employment Authorization

- The advance parole travel document eliminates the need to obtain a visa while the applicant is traveling outside of the United States. This is an even more important advantage during times of lengthy delays in visa processing while awaiting the completion of security clearances.
- Unlike the H-1B or L-1 alien, an applicant with advance parole and an employment authorization document is able to work for any employer (or multiple employers).
- With advance parole and employment authorization, it is not necessary to extend H or L status, which can save significant fees.
- Foreign nationals are limited to a period of five to seven years in the United States (depending upon whether they are H-1B, L-1A or L-1B) in H or L status. If the alien decides to work with employment authorization and relinquish H or L status, any remaining time in H or L status is not lost in the event there are problems in completing the permanent residence process.
- The applicant maintaining H or L status may need to prove that he or she has maintained valid H or L status during the pendency of the adjustment of status process. This requirement is eliminated for the applicant with employment authorization.

There is good reason to obtain advance parole and employment authorization so that the applicant has it in case he needs it. Obtaining advance parole and employment authorization does not preclude the foreign national from traveling with the H or L visa and obtaining some of the advantages that relate to such travel. Following are some of those advantages.

Advantages of Maintaining H or L Status for Work and Travel

- Upon arrival at an airport or land port of entry, foreign nationals traveling with advance parole are usually referred to a second port-of-entry inspector for a more careful review of their documents. This is far less likely to happen to the applicant with a valid H or L visa.
- If the adjustment of status application is denied or for some reason abandoned, the applicant who maintains H or L status continues to have legal status following the denial or abandonment. Other applicants are subject to removal from the United States.
- There are delays and expenses involved in applying for advance parole and employment authorization.
- An applicant maintaining H or L status is able to extend status while the adjustment application is pending. In addition, he is able to work during the pendency of the extension application. An adjustment applicant whose employment authorization document expires is not able to work during the pendency of the extension application. She must wait until the new employment authorization document is approved.
- The applicant maintaining H or L status is able to travel immediately after the filing of the adjustment application. Advance parole applications may be delayed two or three months, during which time the applicant is unable to travel internationally.
- Employment authorization and advance parole must be renewed annually, months in advance of expiration.
- In some states, a driver's license applicant must prove legal status for more than one year. This is not possible with an employment authorization document.

Travel by Spouses and Children

- If a spouse or child is overseas at the time the principal applicant files for adjustment of status, the spouse or child should be able to obtain an H-4 or L-2 visa to enter the United States and ultimately apply for adjustment of status either concurrently with the principal applicant or as a following to join family member. This may not be possible if the applicant has failed to maintain H or L status.
- If the spouse and child are not working, they can enter on their visas or with advance parole.

- If the H-1 or L-1 principal is working for an employer in addition to or other than the H or L petitioning employer, the spouse should obtain advance parole. If the principal is in valid H-1 or L-1 status but entered with advance parole, the spouse can still enter with the H-4 or L-2 visa and does not need to obtain advance parole.
- If the L-2 is working in the United States, he can enter on the L-2 visa (assuming he has an employment authorization document) or with advance parole and employment authorization. If the H-4 is working in the United States, she should have an employment authorization document and enter on advance parole.