

LEGAL SPECIAL

Tips for Surviving Long Pending Adjustment of Status Applications

By Dan Maranci

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It is a sad fact that unless Congress passes legislation to allow recapture of unused employment-based visa numbers, or comes up with another solution, many foreign nationals will continue to be stuck in adjustment of status limbo. As of February 2010, The EB-3 category is backlogged to 2002 (2001 for Indian nationals) and EB-2 is stuck at 2005 for India and China

nationals.

Here are some tips (and resources) for those waiting for their priority dates to become current:

“Free” I-765 and I-131 renewals. If you paid \$1010 (or \$930 for a child under 14 filing separately, or \$600 together with the parent) for your adjustment of status filing fee, there is no fee for extensions on your I-765, and I-131. In order to ensure you are not charged this fee, include a copy of your I-485 receipt notice showing that you

paid the fee, also proving the case was filed on or after 7/30/2007. Note that you will have to “paper file” this, as e-filing requires payment of the \$340 fee. See the “Renewal” note on page 7 of the USCIS instructions to form I-765 here: <http://www.uscis.gov/files/form/i-765instr.pdf>

Two Year EADs. USCIS should issue your EAD extension for two years, when your priority date is not current as of filing the extension application, and your I-140 has been approved. For more details from USCIS on two year EAD extensions, see: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=62ae15d3ffd7a110VgnVCM1000004718190aRCRD&vgnnextchanne1=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

Protection for Aging Out Children. One great concern for those interminably waiting for their adjustment of status applications to be approved is the status of their children, and ensuring that they do not fall out of status. Congress enacted the Child Status Protection Act (“CSPA”) in recognition of the fact that long waits for priority dates caused children to age out, and consequently forced families to make painful decisions about splitting up, and relocating. For those

whose children will turn 21 while their adjustments are pending, the CSPA provides some protection to their statuses, and “freezes” their age, if certain timeframes and conditions are met.

Basically, for an employment-based adjustment of status case, the CSPA freezes children’s ages on the date the priority date first becomes current. Then, the time between filing and approval of the I-140 may be subtracted from their age. This protection only applies if the child seeks LPR status (files an I-485 or begins consular processing) within one year of the visa availability date (which is generally the priority date on the principal’s petition). For more details on generally applying the CSPA formula, see http://travel.state.gov/visa/laws/telegrams/telegrams_1369.html

For those employment-based dependent children who do not meet this criteria, and who do age out according to the formula, there is an automatic conversion provision, which automatically converts the child to the appropriate 2nd preference family-based category, retaining the principal’s original priority date. For more details on the mechanics of the CSPA, see: http://www.legalactioncenter.org/sites/default/files/pa-cspa_0.pdf

Changing Employers While Adjustment is Pending. Many foreign nationals waiting for adjudication of their adjustments have already taken advantage of the American Competitiveness in the Twenty-First Century Act of 2000 (“AC21”) “job flexibility” provision (also known as “permanent portability”). This law allows for

ultimate approval of adjustment of status in cases where foreign nationals change jobs. The conditions are:

- The I-485 has been filed and remained un-adjudicated for 180 days or more;
- The new job is in the same or similar occupational classification as the job for which the petition was filed; and,
- The I-140 for the initial employer is ultimately approved. You should be sure to analyze the position description set forth in the original I-140, and compare it with the “new” position. If you can document that the two jobs fall under the same Dictionary of Occupational Titles or O*Net position, the “same or similar” test should be met.

There are differing opinions on whether CIS must be notified of the change, or whether one should wait for an RFE requesting details on the similarity of the jobs. You should more strongly consider addressing the issue up front should an employment change involve changing home addresses (in addition to filing AR-11s for the entire family, and separately notifying USCIS on each I-485 and related case). Whether you choose to file at the time you change jobs, or wait for an RFE, a carefully documented analysis prior to taking the new position is the best protection. See the following USCIS AC21 guidance for more details: <http://www.uscis.gov/files/pressrelease/AC21Intrm122705.pdf>

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Urgent Appeal to support Earthquake Victims in Port-au-Prince, Haiti

SEWA INTERNATIONAL USA [IRS Tax-exempt 501(c)(3) charity organization]

Thousands of people are dead in Port-au-Prince, Haiti after a disastrous earthquake of 7.0 magnitude struck on Tuesday January 12, razing major infrastructure in the capital including many neighborhoods, the Parliamentary building, Presidential Palace, the main cathedral, the main prison, the UN building among others. With many hospitals in ruins (Doctors without Borders lost three hospitals) in this poor Caribbean country, the earthquake has affected 3 million people - a third of the country. Disaster relief has just begun in this poorest country in the western hemisphere with 80% of the people below the poverty line and 54% in abject poverty. Two thirds of the labor force has no formal jobs.



Immediate relief is needed. Many hundreds are trapped and rescuers are working very hard. Medical supplies are in shortage.

SEWA INTERNATIONAL IS WORKING WITH ITS PARTNER NGO “CHAI-Haiti”
(www.chaihaiti.org) TOWARDS HAITI EARTHQUAKE RELIEF



SEWA is soliciting your tax-deductible contribution for the support of these victims. Your support will help reduce the sufferings of poor people.

Donate online at <http://www.sewausea.org> or make check payable to ‘SEWA’ & mention ‘Haiti Earthquake’ Box 14622 Fremont, CA 94539
Contact: info@sewausea.org, (440) 941-2525.