**ADJUSTMENT OF STATUS**

**ADVANCE PAROLE AND H/L OVERVIEW**

Dear Applicant,

An adjustment of status (hereinafter “AOS”) applicant has the option to file for two ancillary benefits for themselves and any dependents either at the time of filing the AOS or any time after the AOS has been filed. These ancillary benefits include the Advance Parole (hereinafter “AP” or travel document) and the Employment Authorization Document (hereinafter “EAD” or work authorization.) These benefits are optional, the applicant does not have to file for these benefits. The beneficiary can remain on H/L nonimmigrant status while the AOS is pending and can travel and work (H1B/L1) based on these nonimmigrant visas. Below is an overview of each category and certain issues/questions that arise from choosing one option over the other.

**H/L NONIMMIGRANT VISA**

A beneficiary can choose to remain on a valid H/L nonimmigrant visa (including H4/L2) while the AOS is pending. In doing so, the beneficiary must maintain the H/L nonimmigrant status to work and not violate any of the corresponding nonimmigrant visa requirements (i.e. prevailing wage requirements of the H, job location, etc.) To travel, the H/L must be on valid H/L nonimmigrant status upon departure, must have a valid visa stamp in their passport and must be returning to the US to resume employment with the same employer.

However, a beneficiary on H/L status can also travel on an approved AP and still remain on H/L status. The beneficiary can re-enter the US on AP and resume working on the H/L visa. Even after the beneficiary “Paroles” into the US on an AP, they can file for an H/L extension.

**ADVANCE PAROLE**

Except for the above two H/L nonimmigrant categories, all other AOS applicants must have an approved AP prior to travel. If an AOS applicant in any other status besides H/L leaves the US without an approved AP, the AOS is considered abandoned. In order to use an AP for travel, an applicant must be in the US at the time of filing the AP application and the AP must be approved prior to travel (it cannot simply be filed/pending.) The AP is only valid for one or two year increments, but can be used for multiple trips outside the US. As the AP is optional, if there are no plans to travel, it is not required. However, if the beneficiary does not have the H/L travel option above (i.e. working on EAD), an approved AP can take 2-3 months for approval. And although you can get an emergency AP at the local office, this is not guaranteed. In case of an emergency in your home country, we advise having an approved AP at the beneficiary’s disposal at all times even if H/L visas are an option.

To travel using an approved AP document you will need to carry the original and valid AP document, a valid passport and a copy of the I-485 receipt notice.  You will relinquish your most recent I-94 upon departure and present the above documents upon re-entry into the US.

**EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)**

The Employment Authorization Document or EAD allows a beneficiary to work while an AOS is pending. This work authorization is valid for one or two year increments and has no restrictions. The EAD allows the beneficiary to work for any or multiple employers, including themselves. If the beneficiary does not have the H/L option above, a beneficiary must have a valid EAD to work while the AOS is pending. However a beneficiary may apply for an EAD and continue working on H/L. The beneficiary does not “activate” the EAD until they work for an employer besides the H/L employer. It is beneficial to have an EAD as backup, in case there is any violation of the H/L nonimmigrant visa, however again it is not required.

**CRITICAL POINTS TO REMEMBER**

* If the AOS is ultimately denied and the beneficiary and dependents have maintained their H/L nonimmigrant status they may be able to remain in the US in this status and possibly re-file the AOS. In general, if the beneficiary or dependents have let the H/L lapse or worked on an EAD and the AOS is denied they will not have status to remain in the US. It is advised to stay on H/L visa as long as possible and at minimum until the I-140 is approved and the I-485 has been pending for more than six months. However, if the AOS will be pending for many years because of the retrogression of priority dates, and the beneficiary or dependents want to work on EAD this is an option.
* H/L visas are generally issued for multiple years, so this may be easier/less expensive than multiple EAD/AP if the beneficiary will be with the same employer.
* If the beneficiary remains on H/L while the AOS is pending, they must never violate any of the H/L legal requirements even after the AOS is filed and pending or risk possible denial of the AOS.
* The beneficiary can remain on H/L and have a valid EAD and AP at the same time. The H/L would be “invalidated” if the beneficiary begins work for an employer other than H/L using the EAD. There is no form or procedure to switch from an H/L to an EAD and generally no requirement to inform the USCIS. Generally a beneficiary will complete the I-9 form using the EAD as evidence of work authorization.
* Applying for a social security number does not invalidate an H4/L2 visa. Beginning work on an EAD would invalidate the H4/L2 visa.
* Once a beneficiary begins work on an EAD filed under an AOS, they cannot switch status back to an H/L in the US. Therefore, once a beneficiary begins work using the EAD they MUST have an approved AP to travel. There is generally no option for H/L travel.
* An emergency or expedite AP can be requested either at the service center or at a local office. However these are difficult to get and the burden is on the beneficiary to prove it is a true emergency. Independent evidence will be required proving that it is an emergency.
* Anytime a beneficiary wants to travel and/or change work authorization, please contact our office and we can discuss any potential issues.
* **Our office does not monitor the expiration dates of EAD or AP documents.** You are required to monitor this and if a renewal is desired please contact our office 120 days before the documents expire.
* **We advise consulting our office before any travel or change of work authorization**.

We hope this overview has been helpful, especially since this is a very confusing area of immigration. Should you need any further clarifications please do not hesitate to contact our office.

Sincerely,

Dana Ritter

Attorney