

Good News Is on the Horizon for Green Card Applicants

Labor & Employment Law Update

By Jacqueline Lentini McCullough on June 21, 2023

AOS Filers Cannot Travel without Advance Parole

The final phase of the green card application involves an Adjustment of Status (AOS). While their AOS is pending, applicants cannot leave the US without permission, a document called Advance Parole.

If they do leave, US Citizenship and Immigration Services (USCIS) will consider their application abandoned. Years of effort and significant fees would be lost. The AOS filing fee alone is currently \$1,225. Worse, they would need to go through the green card process from the beginning again.

Advance parole can be difficult to obtain. The Trump Administration instituted the requirement and lifted a rule requiring petitions to be processed within 90 days. Waits have lengthened to 9, 10, 24+ months or more for some green card applicants.

When AOS-applicant clients have asked if they can travel to their home country or out of the US, I've had to say no if their advance parole has not come through. At best, this is to counsel against a desired vacation. At worst, clients may not be able to visit a dying relative or attend their father's funeral. Those were heart-wrenching conversations and awful decisions my clients had to make. Now there's hope that new proposed rules will make those conversations and my clients' suffering a thing of the past.

DHS Aims to Eliminate Advance Parole

The advance parole requirement never made sense to me. Why would international travel signal an abandonment of a green card application?

It seems the Department of Homeland Security (DHS) has finally realized the futility of this policy. DHS has proposed a new rule to eliminate the advance parole requirement for individuals with pending AOS and to abolish the automatic AOS abandonment for international travel for all applicants not under exclusion, deportation, or removal proceedings.

The USCIS Ombudsman recommended this change in their 2022 report to reduce improper results and frustration and to improve USCIS's efficiency. Removing the need to process advance parole requests will reduce their workload.

If this rule goes into effect, clients will not have to face the horrible choice between traveling home to see a sick relative and not visiting to maintain their AOS status.

DHS Proposes to Reinstate 90-day Processing for Advance Parole and EAD

If complete elimination of advance parole for most green card applicants does not win approval, DHS has proposed at least reinstating the 90-day processing guideline. Another proposed rule would apply the 90-day processing requirement to employment authorization cards (EADs) as well.

In the past, USCIS issued a single card to reflect the dual advance parole and EAD approvals. When the federal government ended the COVID-19 Public Health Emergency on May 11, 2023, they stopped issuing the joint card. While the proposed rules would speed up advance parole and EADs processing, please know you now need a separate card for each one as proof of approval.

Proposed Rule to Allow Concurrent Religious Worker Petitions

Religious workers applying for permanent residence got promising news too. DHS has proposed allowing them to file their AOS applications at the same time their employers file their I-360 visa petitions.

Currently religious workers are required to wait for their visas before applying for AOS. Given the long processing times – often 10-12 months, 24 months in one case I handled – circumstances were jeopardizing religious workers' status.

The waits were also forcing religious workers to remain with the institution that filed their I-360, even when they saw greater opportunities to help elsewhere. Each of these proposed rules is reasonable and would eliminate much needless suffering.

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