

International Travel Requirements and Advisories*

Advisory: This is general information. Anyone with specific questions or concerns should contact their attorney, in advance of departure from the U.S., and in advance of purchasing non-refundable tickets.

INDIVIDUALS AT THE LAST STAGE OF THE GREEN CARD PROCESS, WHO HAVE FILED AN I-485 APPLICATION FOR ADJUSTMENT OF STATUS

For individuals in H or L status, there are travel restrictions **only** for those who have filed an I-485. Individuals in H or L status who are in the earlier stages of the green card process (labor certification or immigrant visa petition), or those who elected to proceed with consular processing of the immigrant visa, have no special travel restriction. These individuals travel in the usual manner with their nonimmigrant documents.

Individuals in other nonimmigrant statuses (for example, B, F, J, TN) may be travel restricted earlier in the green card process. If they have not already done so, these individuals should discuss international travel with an attorney.

Adjustment of status (I-485) applicants who are maintaining H or L status

Generally, an applicant for adjustment of status must have a valid passport and advance parole document prior to departure from the U.S. Failure to travel with an advance parole will result in the automatic abandonment of the adjustment application.

However, there has been an **exception to the advance parole requirement for those maintaining H or L status** (H-1B, H-4, L-1A, L-1B, L-2). Individuals who:

1. Are maintaining H or L status;
2. Will resume employment with the same H or L employer;
3. Are in possession of a valid H or L approval notice;
4. Are in possession of a valid nonimmigrant visa (if required); **and**
5. Are in possession of the original I-485 adjustment of status receipt notice (Form I-797)

Do **not** need an advance parole document in order to travel.

In short, the above individuals had two options for travel documentation:

Option 1: Travel with a valid passport and valid advance parole document; **or**

Option 2: Travel with a valid passport, valid nonimmigrant visa, valid original nonimmigrant petition approval notice (Form I-797), and original I-485 receipt notice.

Regulatory Change effective 11/1/07: Tomorrow USCIS will publish an amendment to the regulations which states that possession of the original I-485 receipt notice is no longer required. USCIS recognizes that there have been delays in issuance of the receipts; that the individual's status can be verified electronically; and that the receipt notice requirement has created an unnecessary burden on the traveler. Therefore, they have decided to remove this requirement from the regulations, effective November 1, 2007.

Therefore, effective 11/1/07, individuals maintaining H or L status have the following two options for travel documentation:

Option 1: Travel with a valid passport and valid advance parole document; or

Option 2: Travel with a valid passport, valid nonimmigrant visa, and valid original nonimmigrant petition approval notice (Form I-797).

Advisory: If an individual in H or L status uses an Employment Authorization Document (EAD) to work, they will violate their H or L status, and will be required to have an advance parole document in order to travel. Mere possession of the EAD does not trigger this requirement; only use of the EAD to work will impact the individual's H or L status.

Advisory: Please note that an adjustment applicant must still be physically present in the United States at the time USCIS receives their I-485 application. Therefore, although the individual need not wait for the official receipt notice prior to departing the U.S., they must still wait until USCIS actually receives the I-485 application. LMAC e-mails the applicant when the I-485 is filed with USCIS. The application is filed via FedEx, so the receipt date at USCIS will be the business day following our e-mail.

Impact on work authorization if an adjustment applicant in valid H or L nonimmigrant status uses an advance parole to re-enter the U.S:

If an adjustment applicant in H or L status chooses to travel using Option 1 (uses an Advance Parole to re-enter the U.S.), the individual may continue employment pursuant to his/her H or L status as long as the individual has continuously maintained nonimmigrant status. Therefore, if an individual currently in valid H-1B, H-4, L-1 or L-2 status travels internationally, the individual can re-enter the U.S. with an advance parole and remain in valid H or L nonimmigrant status. The individual is not required to have an H or L visa when re-entering the U.S. if he/she has an advance parole.

Adjustment of status (I-485) applicants in nonimmigrant statuses other than H or L (for example, TN, E, O)

These individuals MUST have a valid advance parole document prior to departure. International travel without this document will result in the automatic abandonment of the pending adjustment of status application.

In addition, **EXCEPT for those in H or L status, if the individual is re-admitted using an advance parole, they must use an EAD to work;** they may no longer work pursuant to the nonimmigrant status they held prior to departure.

Individuals subject to NSEERS (National Security Entry and Exit Registration System) must depart the U.S. through a designated port of departure.

* Courtesy Advisory of:

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