PERMISSION TO WORK AND TRAVEL WHILE AN ADJUSTMENT OF STATUS APPLICATION IS PENDING

* DISCLAIMER: The International Scholars Office (ISchO) provides the following information as a courtesy to its applicants for employment-based permanent residence sponsored by the Massachusetts Institute of Technology (MIT) only. It is not intended for use by other individuals.

This information does not constitute legal advice. The work authorization application is a personal one. It must be prepared by you or your immigration attorney and not by MIT. It is your personal choice whether or not to retain an immigration attorney for help with this process. The ISchO is able to tell you how to locate qualified immigration attorneys, if desired. U.S. Citizenship and Immigration Services (USCIS) forms and fees are subject to change without notice. Contact your attorney if you have any questions or encounter a problem with any of these application forms.

OVERVIEW

While your adjustment of status is pending, you and your dependent family members are considered “applicants for adjustment of status.” It is important to maintain legal permission to work at MIT and to travel outside the United States while your application is pending. This handout contains separate instructions for permission to work (EAD) and permission to travel (Advance Parole).

A person who has applied for adjustment of status under Section 245 of the Immigration and Nationality Act is considered to have abandoned the application if he/she leaves the U.S. (including travel to Canada) while the application is pending. Unless you and your dependents are in H nonimmigrant status, you and each family member must obtain Advance Parole prior to travel outside the U.S. while your adjustment of status is pending. Discuss your particular situation with your lawyer. You may apply for Advance Parole when you apply for adjustment or you may apply at a later date. See “Note” below about the exception for H-1Bs and H-4s.

Note: If you and your family members are in H-1B or H-4 status, you may have the option not to obtain Advance Parole and EAD prior to travel outside the U.S. Per an INS interim rule (published 6/1/99), you may travel instead with your valid passport(s) and H-1B/H-4 visa stamps without being considered to have abandoned your adjustment application as long as the following is true for each person who will travel:

1) You have an I-797 receipt notice from USCIS for your Form I-485, application for adjustment of status.
2) You already have a valid, unexpired H-1B/H-4 visa stamp, or will obtain one prior to your reentry to the U.S.
3) You have a valid I-797 notice of H-1B/H-4 approval, consistent with your employment at MIT.

If this exception applies to you, consider whether you should maintain H-1B status or obtain an EAD. See below.

Advantages of maintaining H-1B status
- An H-1B valid for several years means a visa can be issued by a U.S. Consulate for a multiple year period.
- If, in the unlikely event your adjustment of status application is denied, you can still continue living in the U.S. and working at MIT on the basis of your H-1B status.

Disadvantages of maintaining H-1B or H-4 status
- You may work only for MIT. Any other employer who wishes to employ you must apply for and receive approval of a concurrent H-1B petition on your behalf.
- Your H-4 spouse cannot work. In order to work, your H-4 spouse would have to obtain an EAD card (and Advance Parole for any travel).
If, at any point before the approval of your adjustment of status application, your H-1B expires (as indicated by the end date of your Form I-797 H-1B approval notice), you must seek either an EAD (and Advance Parole for travel) or H-1B extension through your department and the ISchO. Such applications should be started at least 3-4 months before the current H-1B expiration date.

Advantage of obtaining an EAD
You may consult or work outside of MIT, provided you follow MIT guidelines regarding consulting privileges, and you maintain all of the terms of full-time MIT employment that were represented in the permanent residence petition filed on your behalf by MIT.

Advantage of obtaining Advance Parole
You no longer need a visa stamp from a U.S. consulate in your passport for travel. The Advance Parole takes the place of a visa.

APPLYING FOR AN EMPLOYMENT AUTHORIZATION DOCUMENT

This information is for an applicant for adjustment to permanent resident who needs employment authorization while the adjustment of status application is pending. The employment authorization document (EAD) is issued by U.S. Citizenship and Immigration Services (USCIS).

APPLYING FOR AN EAD THROUGH USCIS

The EAD application is Form I-765, Application for Employment Authorization. A separate application form is required for yourself and each family member who needs employment authorization. You are not required to provide a fingerprint. USCIS will mail you the EAD card, generally within 3 to 4 months. The EAD will typically be valid for one year from the date of issue, unless you specifically request a longer period (recommended). You may apply for employment authorization simultaneously with your application for adjustment of status. Or, you may file for employment authorization at a later time.

You must apply for an extension EAD if your adjustment of status application is still not approved by the expiration date of the original EAD, so plan ahead because the extension could take several months.

Each applicant must submit the following:

- In item #16 complete the code for your category, which is “c (9)”
- Write across the top of the form in bold or red letters: “Fee included in Adjustment of Status fee check”
- Cover letter requesting work authorization for 24 months, or maximum allowable period
- Two photographs which meet the specifications at http://travel.state.gov/content/passports/en/passports/photos/photos.html
- If you are applying for the EAD after having filed the adjustment of status application, you must enclose a copy of the USCIS receipt notice for the adjustment application (Form I-797 Notice of Action).
- Any additional documentation recommended by your attorney

There is no separate fee required for the EAD application (I-765). The cost is included in your $1,070 adjustment of status processing fee. Make a copy of your entire application for your records. Send the original to:

USCIS Dallas Lockbox
P.O. Box 660867
Dallas, TX 75266

***Please give the ISchO a clear, legible copy of your EAD once it is granted.***
Advance Parole may be granted by U.S. Citizenship and Immigration Services to **applicants for adjustment to permanent residence** who need to travel temporarily outside of the U.S.

If an applicant applies for both employment authorization (Form I-765) and travel permission (Form I-131), concurrently with or after filing Form I-485, and USCIS approves both applications, USCIS will typically issue one card that serves as both an Employment Authorization Document (EAD card) and an Advance Parole document (Form I-512). This card, together with your valid passport, must be presented to airline officials and to immigration inspectors upon entry to the U.S. It should be presented instead of other visa-related documents (such as an H-1B approval notice or visa stamp.) Please contact your immigration attorney with questions.

**APPLYING FOR ADVANCE PAROLE THROUGH USCIS**

The Advance Parole application is made on Form I-131, Application for Travel Document. A separate application is required for yourself and each family member who is an adjustment applicant and needs to travel.

Each applicant must submit the following:

  - There is no separate fee required for the Advance Parole application (Form I-131). The cost is included in your adjustment of status processing fee. Write across the top of the form in bold or red letters: “Fee included in Adjustment of Status fee check”
  - For maximum flexibility, check “More than one trip” in Part 7
- Two photographs which meet the specifications at [http://travel.state.gov/content/passports/en/passports/photos/photos.html](http://travel.state.gov/content/passports/en/passports/photos/photos.html)
- Photocopy of the identity and validity page(s) of your passport, and any pages containing visa stamps or other notations.
- **Photocopy of most recent I-94 admission record** (download from [https://i94.cbp.dhs.gov/I94/](https://i94.cbp.dhs.gov/I94/)) or paper Form I-94, if applicable (front and back even if the back is blank).
- Photocopy of your current visa-related document such as Form I-797, H-1B or O-1 Approval Notice.
- If you mail Form I-131 at a later date (*after* the adjustment of status application), you must include a photocopy of the USCIS receipt Form I-797 Notice of Action, acknowledging receipt of your I-485.
- Any additional documentation recommended by your attorney

**Make a copy of your entire application for your records.** Send the original to:

USCIS Dallas Lockbox
P.O. Box 660867
Dallas, TX 75266