

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

* **DISCLAIMER:** The International Scholars Office (ISO) 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 ISO 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 United States 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 (acknowledging receipt of your I-485, application for adjustment).
- 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.

Does this exception apply to you? If so, please consider whether you should maintain H-1B status or obtain an EAD. See below.

Advantages of maintaining H-1B status

You will not spend money applying for Advance Parole and an EAD.

An H-1B valid for several years means a visa can be issued by a US 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 at 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. He/she would have to obtain an EAD card (and Advance Parole for any travel).

If, at any point prior to the approval of your adjustment of status application, your H-1B expires (as indicated by the end date of your Form I-797 approval notice), you must seek either an EAD (and Advance Parole for travel) or H-1B extension through your department and the ISO. Such applications should be started three-four months before the current H expiration date.

Advantages 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 US consulate in your passport for travel. The advance parole takes the place of a visa.

SEE DETAILED INSTRUCTIONS ON THE FOLLOWING PAGES→

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 USICS

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:

- Form I-765, completed and signed.

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 the government's web site

http://travel.state.gov/passport/pptphotos/composition_checklist.html

-If you are applying for the EAD *after* having filed the adjustment of status application, you must enclose a copy of your receipt for the adjustment application (Form I-797 Notice of Action).

-Any additional documentation recommended by your attorney

There is no longer a separate fee required for the EAD application (I-765). The cost is included in your \$930 adjustment of status processing fee.

*Make a copy of your entire application for your records.

Send the original to:

USCIS Texas Service Center
P.O. Box 852135
Mesquite, TX 75185

*****PLEASE GIVE THE INTERNATIONAL SCHOLARS OFFICE A COPY OF YOUR EAD ONCE IT IS GRANTED. MAKE SURE THE COPY IS & AS CLEAR AS POSSIBLE.**

APPLYING FOR ADVANCE PAROLE

Advance Parole may be granted by U.S. Citizenship and Immigration Services to **applicants for adjustment to permanent residency** who need to travel temporarily outside of the U.S. Advance Parole is usually issued for “multiple” entries into the United States, and is valid for a one-year period. USCIS reserves the right to change these procedures without prior notice. The Advance Parole document, 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 USICS

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. USCIS will mail you the Advance Parole on Form I-512, in multiple copies, generally within 1-4 months. You must travel with all copies. All but one copy will be taken from you on your first trip. You will be left with one original which you will use for all subsequent travel.

Each applicant must submit the following:

- Form I-131, completed and signed. (<http://uscis.gov/graphics/formsfee/forms/i-131.htm>)
 - For maximum flexibility, check “More than one trip” in Part 7
 - Write across the top of the form in bold or red letters: “Fee included in Adjustment of Status fee check”
- Two photographs which meet the specifications at the government’s web site
http://travel.state.gov/passport/pptphotos/composition_checklist.html
- Copy of the identity and validity page of your passport, and any pages containing visa stamps or other notations.
- Copy of your current I-94 card
- Copy of your current visa-related document such as your I-797, Notice of Approval of H-1B or O-1 status. If you mail it 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
- If you are applying for advance parole *after* having filed the adjustment of status application, you must enclose a copy of your receipt for the adjustment application (Form I-797 Notice of Action).
- Any additional documentation recommended by your attorney

There is no longer a separate fee required for the advance parole application (I-131). The cost is included in your \$930 adjustment of status processing fee.

*Make a copy of your entire application for your records.

Send the original to:
USCIS Texas Service Center
P.O. Box 852135
Mesquite, TX 75185