



Follow Up Questions and Answers

The CIS Ombudsman's Webinar Series: USCIS' Backlog Reduction Efforts June 22, 2022, 1 - 2 p.m. EDT

U.S. Citizenship and Immigration Services (USCIS) provided these answers to stakeholder questions gathered from the webinar.

Visa Availability and Usage

Q1. Why can't USCIS issue conditional permanent residency to all applicants for adjustment of status in the employment-based categories?

A1. Under current law, conditional permanent resident (CPR) status is only provided to a noncitizen who obtained an immigrant visa or adjustment of status based on a marriage of less than two years to a U.S. citizen or lawful permanent resident or who is an investor under the EB-5 program. These individuals noncitizens are issued a two-year conditional permanent resident card. Congress recently authorized USCIS to also provide CPR status to Afghan nationals admitted on special immigrant visas and who are required to complete an immigration medical examination within 30 days of admission to remove conditions on their permanent resident status. There are no other provisions in immigration law that authorize USCIS to issue CPR status to other immigration categories.

Q2. Were all of the family-sponsored visas used in fiscal year (FY) 2022? Is there a possibility of unused visa spillover from the family-based quota to the employment-based quota after the end of this FY? If yes, what is the expected number?

A2. The Department of State (DOS) and USCIS did not use all of the available family-sponsored visas in FY 2022. Under section 201(d) of the Immigration and Nationality Act (INA), the difference between the maximum number of family-sponsored visas available in FY 2022 and the number of family-sponsored visas issued in FY 2022 will be added to the FY 2023 employment-based limit. DOS currently estimates that approximately 57,000 unused family-sponsored visa numbers from FY 2022 have been added to the employment-based limit for FY 2023. This estimate is preliminary and subject to change.

Visa Recapture

Q3. Can USCIS and the Department of State (DOS) recapture unused visas from previous fiscal years without Congress' intervention/approval?

A3. The annual limit for employment-based visa use in FY 2021 was 262,288, nearly double the typical annual total. DOS publishes the official figures for visa use in their [Report of the Visa Office](#). Overall, the two agencies combined to use 195,507 employment-based immigrant visas in FY 2021. DOS issued 19,779 employment-based immigrant visas, and USCIS used 175,728 employment-based immigrant visas through adjustment of status, more than 52% higher than the average before the pandemic. Despite USCIS' best efforts, 66,781 visas went unused at the end of FY 2021. In FY 2020, the first year affected by the pandemic, 9,100 employment-based visas went unused out of an annual limit of 156,253. However, in FY 2022, preliminary estimates show that the two agencies successfully used all of the 281,507 available employment-based visas, apart from 6,396 EB-5 visas that Congress has allowed to carry over to the next fiscal year.

In the past, Congress has passed legislation that “recaptures” these lost visas and makes them available for use in future fiscal years. Congress is currently considering several proposals that would recapture unused visas, and USCIS strongly supports these efforts.

The recapture of unused visas, accompanied by changes to the statute to avoid the loss of visas in the future, would best redress the unintended loss of visas due to processing challenges over the past three decades and prevent such unintended consequences in the future.

Automatic Extension of Employment Authorization

Q4. To which applicants does the 540-day automatic extension apply? Is it for those whose applications are already in?

A4. In May 2022, USCIS [announced a Temporary Final Rule](#) that increases the automatic extension period for employment authorization and Employment Authorization Documents (EADs) for up to 540 days for certain EAD renewal applicants.

This extension may apply where:

- 1) An applicant has properly filed a [Form I-765, Application for Employment Authorization](#) to renew employment authorization and/or an EAD before the current EAD expired,
- 2) The applicant's renewal category is one of those eligible for automatic extension, and
- 3) The category on the applicant's current EAD matches the “Class Requested” on the receipt notice (Form I-797C, *Notice of Action*) for the renewal EAD. (Note: If you are a Temporary Protected Status (TPS) beneficiary or pending applicant, your EAD and the receipt notice must contain either the A12 or C19 category, but the categories do not need to match each other.)

The categories which are [eligible for automatic extension](#) are the following:

- (a)(3)
- (a)(5)
- (a)(7)
- (a)(8)
- (a)(10)
- (a)(12)

- (a)(17)
- (a)(18)
- (c)(8)
- (c)(9)
- (c)(10)
- (c)(16)
- (c)(19)
- (c)(20)
- (c)(22)
- (c)(24)
- (c)(26)
- (c)(31)

If an applicant has met the above requirements, the up to 540-day automatic extension applies to those individuals who have a pending Form I-765 renewal application which was filed:

- 1) Before May 4, 2022, and the automatic 180-day extension has since expired, or
- 2) Before May 4, 2022, and the 180-day automatic extension has not yet expired, or
- 3) Between May 4, 2022, and October 26, 2023.

Transfer of Underlying Basis

Q5. What is the process for transferring the underlying basis for employment-based petitions after the Form I-485 Supplement J has been issued?

A5. For transfer requests accompanied by a Supplement J submitted to the new address at the Western Forms Center, USCIS scans the documents, uploads the Supplement J information into its systems (generating a receipt notice), and notifies the office or service center that currently holds the related adjustment of status application that the scanned request is available in its electronic systems. For more information about transfers of underlying basis, please see USCIS' [Employment-Based Adjustment of Status FAQs](#).

Processing Employment-Based Form I-485

Q6. My application is at the Texas Service Center (TSC) or Nebraska Service Center (NSC). What action is USCIS taking to adjudicate my application?

A6. Since January 25, 2022, USCIS' Service Center Operations Directorate (SCOPS) has shipped more than 171,000 [Forms I-485, Application to Register Permanent Residence or Adjust Status](#) to USCIS' National Benefits Center (NBC). SCOPS has now begun transferring all visa unavailable applications in anticipation of the NBC being more readily available to ship cases to USCIS field offices as visas become available. SCOPS has transferred 15,703 visa unavailable cases to the NBC since October 3, 2022. For FY 2023, SCOPS intends to transfer adjustment of status applications in the first three employment-based preference categories from the TSC and the NSC to the NBC after the approval of the [Form I-140, Immigrant Petition for Alien Workers](#). The field offices will adjudicate the Form I-485.

Q7. Does USCIS prioritize applications with a transfer of underlying basis request differently from applications without such a request?

A7. No.

Form I-693, Report of Medical Examination and Vaccination Record

Q8. For I-485 medicals, we are having a hard time to send it without a request for evidence (RFE) and USCIS takes forever to pick individual cases and send them an RFE, and the applicant has to send it. This takes a lot of work and is a time-consuming process.

A8. Noncitizens with a pending Form I-485 should not send an unsolicited Form I-693 to USCIS. Given the rapid movement of files between offices as USCIS strives to optimize resources across the agency, it would be difficult to match an unsolicited Form I-693 with the related Form I-485 in a timely and efficient manner. Sending an unsolicited Form I-693 could delay the adjudication of the Form I-485 while the Form I-693 is matched up to it. Please know that USCIS is proactively identifying employment-based adjustment of status applications with available immigrant visas that lack a valid Form I-693 and contacting applicants directly to request that they submit a Form I-693.

If a Form I-485 applicant has an immigrant visa available but knows that they do not have a valid Form I-693, it will help USCIS complete adjudication of their adjustment application if they visit a civil surgeon and have a valid Form I-693 on hand when USCIS issues an RFE for the Form I-693. Please note that the “60-day rule,” which requires that the civil surgeon sign the Form I-693 no more than 60 days before the applicant files the application for the underlying immigration benefit, has been temporarily waived through March 31, 2023, and does not apply to Form I-693 signed by the civil surgeon after the applicant filed Form I-485. For more information, please see USCIS’ [Employment-Based Adjustment of Status FAQs](#).

Q9. Can USCIS issue a blanket RFE to all the applications without medicals?

A9. USCIS systems cannot, at this time, indicate whether a Form I-485 lacks a valid Form I-693. As a result, only a manual review of an applicant’s administrative file can indicate whether an RFE for a Form I-693 is required. A blanket RFE would not distinguish between those who have a valid Form I-693 and those who do not, which would mean those with a valid Form I-693 would receive an RFE when one was not necessary. Also, because Forms I-485 are moved between service centers and field offices, a blanket RFE for all pending Forms I-485 would cause delays in moving files because of the waiting period of an RFE.

Q10. When filing for adjustment of status, the doctor’s signature on the medicals can’t be more than 60 days old. If you get your Form I-693 done 60 days before it is RFE’d, will it still be accepted?

A10. USCIS has [temporarily waived](#) the “60-day rule” through March 31, 2023. However, even when the 60-day rule is in effect, it only requires the civil surgeon to sign the Form I-693 no more than 60 days before the applicant files the application for the underlying immigration benefit, including a Form I-485. If an applicant submits a Form I-693 after filing Form I-485, the 60-day rule will not impact such a Form I-693.

H-1B and H-4 Processing

Q11. Please can USCIS address the plans for the processing of backlogs for H-4 dependent visas and issuing them new EADs, which has been taking up to 18 months plus to process. At times, these may be going beyond the timelines of the primary petitioner's H-1B visa.

A11. As of October 19, 2022, the USCIS processing times online indicate that Form I-765 (c)(26) applications are processed between 5.5 and 9 months, not 18 months plus. Forms I-539 change of status applications for H-4 (filed with the Form I-765) are being processed between 5.5 and 8 months. For H-4 extension of status applications (filed with the Form I-765), the processing times are running between 5 and 7.5 months. Form I-539 processing times have dropped significantly, partly as a result of USCIS using overtime to adjudicate these and other priority caseloads.

The (c)(26) EAD category also benefits from the Temporary Final Rule allowing an auto-extension of their EAD of up to 540-days if the applicant has an unexpired I-94. The (c)(26) applicants with an expired I-94 are not eligible for the auto-extension. That said, the initiatives have resulted in the reduction from the much longer processing times seen in the recent past for both initial and renewal (c)(26) applications. USCIS continues to work towards reducing the processing times for H-4 filings.

Form I-129F Adjudications

Q12. Since the [Form I-129F, Petition for Alien Fiancé\(e\)](#) is now taking as long as the Form I-130 for spouses of U.S. citizens without the benefit of a Green Card (and without us being aware it would take as long when we filed in 2021), have you considered speeding up the fiancé(e)s' work permits and Green Cards when they enter the U.S. and file for adjustment of status to compensate for this lost time? Perhaps an automatic expedite for these filers? The I-129F is more costly than the I-130, and another fast income would be helpful for many, rather than another year of waiting.

A12. An individual admitted as a K-1 fiancé(e) may request an employment authorization document (EAD) under category (a)(6), and the EAD is only valid for the 90-day period of admission. An individual admitted as a K-3 spouse of a U.S. citizen may request an EAD under category (a)(9). USCIS receives a very small volume of requests for EADs from these groups of applicants and will research process improvements for this workload. A fiancé(e) who marries the U.S. citizen petitioner and files a Form I-485, *Application to Register Permanent Residence or Adjust Status*, may apply for an EAD under category (c)(9). USCIS is working to streamline many EAD processes, including processing of (c)(9) applications for spouses with pending adjustment of status applications.

Humanitarian Immigration Benefits Processing

Q13. How can asylum seekers (category (c)(8)) who submit initial work permit applications to the Texas Service Center (TSC) flag delays in processing? Right now, the e-Request

form says “USCIS is temporarily removing the processing times for Form I-765s in the (c)(8) category” so no avenue is available to flag delays. When will the times be posted?

A13. USCIS has restored the [case processing times](#) for the (c)(8) category of Form I-765 applications to provide accurate figures. Please visit USCIS’ [Important Information About Form I-765, Application for Employment Authorization](#) page and [Check Case Processing Times](#) page for more information and case processing times.

Q14. Several U visa applicants who adjust their status and file Form I-765 in category C09 are experiencing issues with EAD auto-extensions. Departments of motor vehicles (DMVs) and business owners will not accept the extension on the Form I-765 receipt because the previous code in their EAD is A19. What can we do?

A14. The A19 I-765 category is not one that is eligible for an automatic extension. [USCIS guidance](#) indicates that while the Form I-485 is pending, the applicant is authorized to work. The Form I-797, *Notice of Action*, that indicates an extension of status can be used to verify the employment authorization of individuals on a Form I-9 for one year from the expiration date of the applicant’s previous period of U nonimmigrant status, unless the Form I-485 is denied or withdrawn, whichever is earlier. Stakeholders have provided feedback that this one-year extension is impacted by processing delays for adjustment of status. USCIS thanks stakeholders for raising these concerns and understands the impact the processing delays has on applicants. USCIS is committed to improving policy practices and procedures to effectively address stakeholder concerns.

Note that if a U nonimmigrant has filed a Form I-485, *Application to Register Permanent Residence or Adjust Status*, they should also file a Form I-765 for consideration under the C9 category, which is a category eligible for the automatic extension.

After receiving an initial EAD based on the I-765 (c)(9) application, the U nonimmigrant may seek a renewal EAD if the initial EAD is nearing expiration and their adjustment application is still pending. To obtain a renewal EAD, the U nonimmigrant with a pending I-485 must file a Form I-765 renewal application in the (c)(9) category. The U nonimmigrant’s initial EAD based on (c)(9) may be automatically extended while the Form I-765 renewal application is pending, provided the applicant meets specific criteria found at www.uscis.gov/eadautoextend. If filing on or after May 4, 2022, the applicant will receive a receipt notice that has information regarding the up to 540-day automatic extension. If the applicant is eligible for the automatic extension, this receipt notice, together with their expired EAD, will serve as acceptable proof of employment authorization and/or EAD validity during the up to 540-day automatic extension period.

Q15. What is USCIS doing to process the 42,000+ humanitarian parole (I-131) applications filed on behalf of at-risk Afghans that have been pending with the agency for months and ensuring there is equity between Afghan and Ukrainians seeking parole?

A15. USCIS is working quickly to increase processing of all Form I-131 parole requests for urgent humanitarian and significant public benefit reasons, given the unprecedented number of requests received by USCIS over the last year. Between July 1, 2021, and June 30, 2022, USCIS accepted almost 56,000 Form I-131 parole filings for all nationalities for consideration,

approximately 48,000 of which were filed on behalf of Afghan nationals. In comparison, USCIS generally receives between 1,500 and 2,000 parole filings from all nationalities in an average year. These Form I-131 parole filings on behalf of Afghan nationals are separate from the process where U.S. Customs and Border Protection paroled Afghan nationals into the United States under Operation Allies Welcome.

USCIS has significantly increased the number of staff working on parole cases, assigning approximately 75 to 100 additional staff from other parts of USCIS to assist with processing this surge in parole requests throughout FY 2022. The vast majority of these employees were diverted from other USCIS workloads to assist with parole, and all staff receive specialized training on parole before adjudicating parole cases. With the assistance of this additional staff, in addition to identifying and implementing efficiencies in processing, USCIS has increased production to complete over 12,000 parole cases as of July 20, 2022. This represents more parole request completions than in the last 6 years combined.

Normally, USCIS adjudicates most parole requests within 90 days of receipt. However, due to the unprecedented number of parole requests it has received over the last year, petitioners should expect to wait significantly longer than 90 days for USCIS to process their parole requests. USCIS remains committed to addressing the backlog of parole requests and will continue to divert staff from other USCIS workloads to assist with parole. However, it will take some time to return to its normal processing times.

Form I-131 Processing

Q16. Form I-131 processing times are way too long (14 to 16 months). USCIS stopped issuing combination cards, and USCIS is also denying expedite requests saying they don't meet the expedite criteria. It has been so painful for us to not visit elderly/sick parents. Do you have any plan to address this issue?

A16. USCIS understands the concern for current Form I-131 processing times. Its service centers are monitoring the Form I-131 workload to identify, pull, and adjudicate cases to ensure first in, first out processing of these applications. Some centers have also authorized use of overtime to adjudicate Form I-131. Additionally, USCIS continues to explore ways to balance its workloads, optimize its adjudication processes, and ensure that it improve its processing times.

Those individuals who need to travel immediately but whose Form I-131 is still pending can visit USCIS' [Emergency Travel](#) page for further information, including possible options like requesting expedited processing of the pending Form I-131 or requesting an Emergency Advance Parole Document in extremely urgent situations. Expedite requests are adjudicated on a case-by-case basis. USCIS weighs the urgency and merit of each expedite request and may require additional documentation to support such a request.

Online Filing

Q17. When is USCIS going to digitize ALL FORMS, including Form I-129F and Form I-765? This is an obvious way to speed up processing and enable rapid distribution of cases between service centers.

A17. Moving to an end-to-end electronic environment is a priority for USCIS. Filing electronically makes applying for immigration benefits easier, less error-prone, and increases operational efficiencies by eliminating manual processes. USCIS has made significant progress toward establishing fully electronic filing and digital processing capabilities. Currently USCIS has the capacity to intake up to 44 percent of its annual workload through online filing.

To continue this momentum and comply with Section 4103 of the Emergency Stopgap USCIS Stabilization Act, USCIS has a goal of enabling electronic processing for all forms by FY 2026. USCIS is aggressively exploring strategies to meet this goal including digitizing its workloads both externally (online filing) and internally by digitizing paper at its lockbox operations so that USCIS' adjudicators are working in a completely paperless environment.

The Form I-765 categories listed below are currently available for online filing. Category (c)(8) for pending asylum applicants will be added in early FY23. USCIS does not have a date yet for when the Form I-129F or remaining I-765 categories will be available for online filing.

- (a)(12) – Temporary Protected Status (based on an approved Form I-821)
- (c)(3)(A) – F-1 student, pre-completion OPT;
- (c)(3)(B) – F-1 student, post-completion OPT;
- (c)(3)(C) – F-1 student, 24-month extension for STEM students (students holding a degree in science, technology, engineering, or mathematics);
- (c)(11) – Parole;
- (c)(19) – Temporary Protected Status (based on a pending Form I-821); or
- (c)(33) – Consideration of Deferred Action for Childhood Arrivals (DACA).

More information on future improvements will be released as soon as it becomes available.

Data

Q18. USCIS used to publish the employment-based Form I-485 inventory/backlog by priority date and country. This stopped sometime in 2018. Can USCIS restart publishing this extremely important data for transparency?

A18. USCIS is committed to data transparency and is currently working on developing a public-facing comprehensive employment-based Form I-485 pending inventory report (by preference category and country) for publication in FY 2023.

Receipt Notices with “IOE”

Q19. How can people check processing times for IOE receipt numbers?

A19. Applicants can check case processing times using USCIS' [Check Case Processing Times](#) page. Case processing times are listed by form and field office or service center. For those with IOE receipt numbers, refer to the office listed in the lower left-hand corner of their receipt notice. If the office is the National Benefits Center (NBC), the case will be adjudicated either at the NBC or the applicant's local field office. Field offices typically adjudicate the following forms

(when there is an IOE receipt number and the office listed is the NBC): Form I-130, Form I-485, Form N-336, Form N-400, Form N-600, and Form N-600K.