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Issues in Adjustment of Status and Consular Processing

***Who Would Ever Apply for an Immigrant Visa at a US
Consulate?**

***Application for Immigrant Visa at US Consulate**

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Who Would Ever Apply for an Immigrant Visa at a US Consulate?

Many, many people have NO choice but to apply for an immigrant visa outside of the United States. In the fall of 2020 due to executive orders and proclamations, coupled with worldwide limitations on consular staffing due to COVID, many individuals are not even able to have an immigrant visa interview. This paper provides information on the consular processing of immigrant visas which may resume in 2021 or at some time in the future.

Rarely are any two immigrant visa cases alike. Always consider the facts in each case and review them on more than one occasion. Generally speaking, an applicant for permanent resident status has more options than an applicant for an immigrant visa. First, she can be represented by counsel at her USCIS interview. Second, she can file a motion to reopen or reconsider if her application is denied. Third, she may anticipate applying for an immigrant visa and be able to apply for permanent resident status with USCIS due to changes in the law.

Determine the scope of your representation. And determine who you represent, including the tricky dual representation of an employer and an employee, the sibling petitioner and the overseas siblings, the parent of the US citizen petitioner and the petitioner. As set out below, some individuals may have a choice about having an immigrant visa interview at a US Consulate. Other individuals have no choice and must apply at the US Consulate.

SO consider these scenarios:

****Person who has a case pending with NVC that is complete awaiting the priority date to be reached or the US Consulate to be open for immigrant visa interviews:** She receives an immigrant visa appointment abroad getting notice a month before the actual appointment. Her immigrant visa is an Employment based one, and the USCIS is only accepting adjustment of status applications in the month when her priority date is reached. Filing then with USCIS means she would have to wait months (or longer) for adjudication of the permanent resident application. Her application might be approved without a USCIS interview but it might also be held for such an interview. She would have to pay over a thousand dollars for the filing fee along with separate filing fees for employment authorization and advance parole travel. VERSUS

She has a CLEAN case and decides she will go to the Consul appointment. She likely will be back in the US by the end of the month when her priority date is reached and the immigrant visa appointment is scheduled. Had she applied for adjustment of status, she likely would wait up to a year before obtaining approval. NOTE: The presidential proclamations would eliminate this cheerful consul processing option through December 31, 2020 (and beyond if there is no change in the executive branch through an election).

****Person can have his immigrant visa case processed in a low volume Consulate.** E.g., Argentina versus Mexico; New Zealand versus Manila, Belgium versus London. There can be considerable delays in obtaining an interview at a high volume post.

****Person(s) who wants to become permanent resident and who needs to travel internationally with frequency.** Unless the person has an H or L visa, she will not be able to travel for 2 - 5+ months after applying for permanent resident status and only after being issued an advance parole travel document. Persons who dislike being sent to Secondary Inspection because they have an advance parole travel document may prefer consul processing.

****Person applied for adjustment of status when not eligible to do so and USCIS denies and issues NTA—will not be in quota for years and has no qualifying relatives or requisite time for cancellation of removal relief; takes voluntary departure and leaves without an order of removal.** Will have to apply for immigrant visa abroad when in quota; may or may not need 601 waiver by that time (if the only ground of ineligibility is unlawful presence). IF person is able to obtain a 212d5 waiver and returns legally to the United States in nonimmigrant status, may be able to apply for adjustment of status in future. Note that it is rare that this waiver will be issued unless considerable time has passed since the applicant's departure from the United States.

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