



IMMIGRATION ALERT!

INS ALLOWS CONCURRENT FILING OF FORM I-140, IMMIGRANT VISA PETITION, AND FORM I-485, APPLICATION TO ADJUST STATUS

On July 31, 2002, the INS published an interim rule in the *Federal Register*, which allows for the concurrent filing of an employment-based I-140 Immigrant Visa Petition and an I-485 Adjustment of Status application. Effective immediately, the beneficiary of an employment-based visa petition may elect to file Forms I-140 and I-485 concurrently if an immigrant visa number is immediately available to the beneficiary. The interim rule also provides for pending I-140 petitions to be converted to concurrent filings and for the immediate filing of applications for employment authorization and advance parole travel authorization.

Q: *Does this interim rule change the substantive requirements for the visa petition or permanent residence applications?*

A: No. This interim rule does *not* change the substantive requirements that currently govern eligibility for approval of I-140 or I-485 applications.

Q: *Who is eligible to file Forms I-140 and I-485 concurrently?*

A: Forms I-140 and I-485 may be filed concurrently by beneficiaries of employment-based petitions when an immigrant visa number is immediately available. Presently, an immigrant visa number is immediately available to *all* employment-based beneficiaries.

Q: *Can the beneficiary file an I-485 application if a previously filed I-140 petition is still pending?*

A: Yes. Upon issuance of this rule, a beneficiary with a pending I-140 visa petition may file Form I-485. At that time, the beneficiary will be required to attach a copy of the INS Notice of Receipt for the I-140 petition.

Q: If a visa number was not immediately available at the time a Form I-140 visa petition was filed and then becomes available, can the beneficiary file Form I-485?

A: Yes. Upon issuance of this rule, if a visa number has become available since filing Form I-140, the beneficiary may file Form I-485.

Q: How will this rule benefit foreign nationals?

A: This interim rule allows foreign nationals to eliminate the delay in filing an I-485 application. This in turn means that the INS may issue employment authorization documentation (EAD) and advance parole travel authorization to foreign workers and their immediate family members more quickly than under the current system. As a result, there is less likelihood that nonimmigrant visa holders will run out of time in their nonimmigrant visa status and less likelihood that they will accrue periods of unlawful presence in the United States.

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