

ADVISING STUDENTS WHO ARE PROCESSING TOWARD LAWFUL PERMANENT RESIDENCE

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Presentation Outline

- Overview of permanent residence
 - Categories
 - Processes
- General advice for Fs and Js
- School approaches to advising Fs and Js
- Advising Considerations and Tips

Lawful Permanent Residence

- What is it?
 - Authorization to live and work permanently in the U.S.
 - Authorization to enter U.S. with “green card” and passport (no visa necessary)
 - A “green card”
- What is it NOT?
 - Citizenship
 - Can apply for citizenship after being an LPR for a certain period (“naturalization”)
 - Additional rights/benefits for citizens

- Who can become a permanent resident?
 - Not just anyone
 - The law provides certain categories of eligibility for LPR
 - Family-based: relationship to U.S. person
 - Employment-based: benefit to a U.S. employer
 - Public policy-based: (asylum/“lottery”) to “avoid chaos” and to balance the sources of immigration to the U.S.
 - Total number of LPR “visas” is limited
 - Allotments each year, queues develop, so depending on home country and category, can be a long process
 - Petition approval places people in queue for the visa until their category/country allotment is available again
 - Certain people are ineligible
 - Felons, people who entered U.S. illegally, who have certain health conditions (HIV, mental disorder), or are likely to become a “public charge,” etc.
 - Waivers available for some grounds of inadmissibility

- How it is obtained, generally
 - Pursuant to complicated laws, regulations, policies, procedures of three agencies
 - U.S. Citizenship & Immigration Services (USCIS)
 - U.S. Department of State (DOS)
 - U.S. Department of Labor (DOL) – *some EB processes*
 - Petition
 - Filed with U.S. Citizenship & Immigration Services
 - On behalf of the one who wants LPR, or
 - By the one who wants LPR
 - Petition approval assigns right to a “green card”
 - Immigrant visa/status or “green card” is obtained by
 - Applying for adjustment of status to LPR in the U.S., or
 - Applying for the visa at U.S. consulate in home country
 - IMPORTANT: Filing petition and even approval of petition gives beneficiary no right to remain in U.S., work, etc. -- only filing of adjustment application gives right to remain in U.S.
 - Must wait to file if queue/backlog for the country and category

- The Main Routes to LPR, more specifically:
 - Asylum
 - Self-petition
 - Must prove likelihood of persecution if you return home
 - Diversity Visa Lottery
 - No petition -- apply on Dept. of State web site
 - Must be from country with low immigration to U.S.
 - DOS chooses 50,000 per year
 - Family relationship to U.S. Citizen/L.P.R.
 - U.S. citizen/LPR relative files petition
 - Preferences and queues
 - Employment
 - Usually employer offering full-time permanent job files petition, but ***some exceptions allow self-petition***
 - Preferences and queues
 - There are a few other very narrow special routes
 - Violence against women act, Cuban adjustment act, withholding of removal, Convention against torture, etc.

Family-Based LPR

Some Key Concepts

– With a few exceptions:

- USC or LPR petitions USCIS to obtain permanent residence for family member
 - So it's not FN who files the petition, it's the USC or LPR
 - Petition filing date establishes "priority date" (place in queue)
 - Once petition approved and "priority date" current, FN may consular process immigrant visa or apply for adjustment of status in U.S.
 - » "Concurrent filing" of petition and adjustment application possible for "immediate relatives" and others not facing visa backlogs
- Pending or approved petition **DOES NOT** provide any authorization to remain in U.S., work, etc.
- Quotas for some categories of family relationships
 - Can result in very long queues and delays

FB Preferences, Queues, Delays

- **Immediate relatives of USCs** (no quota)
 - Spouses, children, parents of USC over 21
- Each year 480,000 places allocated among four categories, called "preferences" (and countries)
 - First Preference—Unmarried sons and daughters of USCs (over 21)
 - Second Preference—Spouses and unmarried children and sons and daughters of LPRs
 - 2A—spouses and unmarried children (under 21) of LPRs
 - 2B—unmarried sons and daughters (over 21) of LPRs
 - Third Preference—married sons and daughters of USCs
 - Fourth Preference—brothers and sisters of USCs
- Per country limit 7% within each preference
- So, when more I-130s are filed than there are "visas," categories/countries get "oversubscribed" and queues develop
- Visa bulletin answers question "when can I file I-485 or consular process immigrant visa?"

November Visa Bulletin Excerpt

http://travel.state.gov/visa/frvi/bulletin/bulletin_4371.html

Family Based	All Charge-ability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	01MAY02	01MAY02	01MAY02	15SEP92	01MAY93
2A	08FEB04	08FEB04	08FEB04	15JUL01	08FEB04
2B	15JAN00	15JAN00	15JAN00	22APR92	15JUN97
3rd	01JUL00	01JUL00	01JUL00	15SEP92	08MAY91
4th	15NOV97	08JUN97	22JUL97	22JAN95	22MAR86

- **EXAMPLE:** When student says "I'm getting my 'green card' through a family member," he/she might be facing a six-month process or a two-decade process!
 - F-1 student marries USC
 - USC files I-130 imm. petition, student can concurrently file I-485 adjustment of status, EAD, and advance parole applications
 - Once I-485 is filed, spouse has the right to remain in the U.S., and EAD and Advance Parole should be issued in about 90 days
 - Within about a year, interview will likely be scheduled and "green card" may be issued (as fast as six months in some districts)
 - F-1 student from Philippines is "sponsored" by USC brother
 - USC brother files I-130, establishing student's "priority date," but there's a long queue to go through before student can file I-485
 - Student falls into F4 category on visa bulletin -- current through 03/22/1986 (so may be as long as 22 years before can apply for adjustment)
 - Remember, pending and even APPROVED I-130 provides no right to remain in U.S., work, etc. and can complicate travel as F-1
- *So, best advice to student, especially regarding maintaining F-1 status, depends partly on which process is pursued, backlogs,...*

Employment-Based LPR

Some Key Concepts

- With a few exceptions:
 - Employer petitions USCIS to obtain permanent residence for Employee
 - Full-time, permanent job required (generally)
 - Two-step or three-step process, depending on classification sought
 - Employer files the petition and labor cert. (if required), not the employee
 - First step (filing LC or I-140) established priority date
 - Once petition is approved and “priority date” is current, FN may consular process immigrant visa or apply for adjustment of status in the U.S.
 - » “Concurrent filing” of petition and adjustment application possible for those with current priority date
 - Derivative spouse/children get same priority date as principle and may process with principal
 - Pending or approved petition DOES NOT provide authorization to remain/work in U.S.
 - Quotas for all employment-based categories
 - Can result in very long delays

EB Preferences, Queues, Delays

- Each year 140,000 places allocated among five categories, called “preferences” and countries
 - First Preference (EB-1)
 - Aliens with extraordinary ability
 - Outstanding professors and researchers
 - Certain multinational executives and managers
 - Second Preference (EB-2)
 - Members of the professions holding advanced degrees
 - Aliens of exceptional ability
 - Third Preference (EB-3)
 - Professionals and skilled workers
 - Other workers
 - Fourth Preference (EB-4): Certain special immigrants
 - Fifth Preference (EB-5): Investors in commercial enterprises
- Per country limit 7%

November Visa Bulletin Excerpt

http://travel.state.gov/visa/frvi/bulletin/bulletin_4371.html

Emp-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01JUN04	01JUN03	C	C
3rd	01MAY05	01FEB02	01OCT01	01SEP02	01MAY05
Other Workers	15JAN03	15JAN03	15JAN03	15JAN03	15JAN03
4th	C	C	C	C	C
Certain Religious Workers	U	U	U	U	U
5th	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

- **EXAMPLE:** When student says "my mother is getting her 'green card' and mine through her job," it might be quick and simple or long and complicated!
 - F-1 student's mother pursues LPR as an "outstanding researcher" (EB-1)
 - Employer files I-140 immigrant petition, mother and child (unmarried, under 21) can concurrently file I-485 AOS applications and applications for EAD and advance parole
 - Student has right to remain in the U.S. once I-485 filed, rcv. EAD and AP in 90 days
 - F-1 student's father from India pursues LPR as a computer programmer (EB-3)
 - Employer files labor certification application (establishing "priority date") and I-140 immigrant petition, but EB-3s from India face visa queue -- current through 10/01/01
 - In about 7 years student can file I-485 and gain right to remain in the U.S., obtain EAD and AP
 - F-1 student from China "aged out" before parent started EB immigration process and so could not obtain LPR as "derivative"
 - Once an LPR, parent must file I-130, and that establishes student's "priority date," but there's a long queue to go through before student can file I-485
 - Student falls into F2B visa bulletin category -- current through 1/15/00, so may be 8 years before can apply for adjustment
 - » If unmarried, moves into somewhat shorter queue when parent becomes USC
 - Approved I-130 provides no right to stay/work in U.S., may complicate travel as F-1
- So, the best advice to the student, and especially re. maintaining F-1 status, depends on specifics of the situation and LPR process that is pursued

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

THE UNITED STATES OF AMERICA

RECEIVED SECTION 1, 2007		SECTION 1115 CONJOINT PETITION FOR RELATIVE, FINANCIAL, OR CRIMINAL	
NOTICE DATE JANUARY 11, 2008		RECEIVED DATE JANUARY 11, 2008	
DAVID A. WARR 3950 N CAUSWAY RD UNIT 1115 DALLAS TX 75245		Notice Type: Adjustment of Status Section: Husband of wife of U.S. Citizenship, 201.1(b) (A)	

Please see the additional information on the back. You will be notified separately about any other cases you filed.

USCIS, DHS
P.O. BOX 8548004
LEWIS CORBIT CC 64054
Customer Service Telephone: (800) 375-5283

Form I-797 (Rev. 01/2008)

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

RECEIVED SECTION 1, 2007		SECTION 1485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS	
NOTICE DATE December 8, 2006		RECEIVED DATE JANUARY 11, 2008	
DAVID A. WARR 3950 N CAUSWAY RD UNIT 1115 DALLAS TX 75245		Notice Type: Receipt notice Amount received: \$ 295.00 Section: Derivative adjustment	

Please see the additional information on the back. You will be notified separately about any other cases you filed.

USCIS, DHS
P.O. BOX 8548004
LEWIS CORBIT CC 64054
Customer Service Telephone: (800) 375-5283

Form I-797C (Rev. 01/2008)

U.S. DEPARTMENT OF HOMELAND SECURITY, U. S. Citizenship and Immigration Services

EMPLOYMENT AUTHORIZATION CARD

The person identified is authorized to work in the U.S. for the validity of this card.

NAME Orlans, Iline

A# [Redacted]

CARD # [Redacted]

Birthdate 01/06/74 Category C09 Sex M

Country of Birth China, People's Republic of

Terms and Conditions None

fingerprint not available

NOT VALID FOR REENTRY TO U.S.

CARD VALID FROM 08/14/07 EXPIRES 08/13/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-512L, Authorization for Parole of an Alien into the United States

(Family Name) (Given Name) (Middle Initial) Date Issued August 14, 2007

NIE [Redacted] A# [Redacted] 0750816

Date of Birth 01/06/1974 Country of Birth (City or Town) (State or Province) CHINA, PEOPLE'S REPUBLIC OF

U.S. Address (Appt number and/or in care of) (Client Number and Name) (City) (State or Province) (Zip/Postal Code)
104 7TH AVE SE APT B, MINNEAPOLIS, MN 55414

TRAVEL AUTHORIZATION: Possession of the original of this document authorizes transportation here to accept the named holder on board for travel to the United States without liability under section 273 of the Immigration and Nationality Act (Act) for bringing on plan who does not have a visa.

PARTIAL: The named holder of this authorization is an applicant for adjustment of status under the Act. The holder departed the United States temporarily and intends to return to the United States to resume processing of the adjustment of status application. Possession of the original of this document prior to departure from the United States is required for the holder to be eligible for adjustment of status. If the holder departs the United States without this document, the holder will be subject to removal proceedings as an inadmissible alien under 235(b)(1) or 240 of the Act.

TRAVEL WARNING: If you have been lawfully present in the United States, you may want to ask an immigration attorney or a representative of an immigration assistance organization accredited by the Board of Immigration Appeals (BIA) whether leaving the United States would make you inadmissible and therefore ineligible for adjustment of status. Under section 235(b)(1) of the Act, those who depart the United States after being unlawfully present in the United States for more than 180 days after April 1, 1997, may be found inadmissible when you return to the United States. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you return to the United States. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you return to the United States. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you return to the United States. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you return to the United States.

Inadmissibility is general: If you have concerns about admissibility and waiver you should contact an immigration attorney or an immigration assistance organization accredited by the BIA before making foreign travel plans.

☒ Approved

☐ Conditional comments

NOTICE: READ BEFORE YOU TRAVEL ABROAD

Parole is not admission into the United States. Possession of this authorization will allow a CBP Inspector at a port-of-entry to parole you into the United States, which will allow you to resume your application for adjustment of status. Parole is not an "admission," as even after your parole you will remain an applicant for admission. If you are found inadmissible, you will need to apply and qualify for a waiver of inadmissibility. If your adjustment application is denied, you may be subject to removal proceedings as an inadmissible alien under 235(b)(1) or 240 of the Act.

Parole does not confer United States citizenship. In all cases, you are not entitled to citizenship, regardless of a port-of-entry or domestic whether you are eligible to return into the United States via the terms of this document. Even if you have previously been granted parole, the Department of Homeland Security retains discretion as to how you parole if the Department determines approving your parole application would not serve the public interest of the United States.

Travel Warning Regarding Conditional Presence: If you have been unlawfully present in the United States, you may want to ask an immigration attorney or a representative of an immigration assistance organization accredited by the Board of Immigration Appeals (BIA) whether leaving the United States would make you inadmissible and therefore ineligible for adjustment of status. Under section 235(b)(1) of the Act, those who depart the United States after being unlawfully present in the United States for more than 180 days after April 1, 1997, may be found inadmissible when you return to the United States. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you return to the United States. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you return to the United States. If you were unlawfully present in the United States for more than 180 days after April 1, 1997, you may be found inadmissible when you return to the United States.

Inadmissibility is general: If you have concerns about admissibility and waiver you should contact an immigration attorney or an immigration assistance organization accredited by the BIA before making foreign travel plans.

Substantive Service Center
400 S. Street
Lincoln, NE 68516
(Authorizing Office)
Parole Stamp

APPROVED FOR PAROLE TO RE-ENTER THE U.S. OF THE ANGELES PAROLEE UNIT C1012007
AOS
ONE CHINA REP
Date Stamp

Form I-512L (Rev. 08/01/2007)

Departure Number		OMB No. 1651-0111	
<div style="border: 1px solid black; width: 150px; height: 20px; margin-bottom: 5px;"></div> <div style="border-top: 1px solid black; width: 150px; height: 10px; display: flex; justify-content: space-between;"> 17 </div>		PAROLED PURSUANT TO SEC 212 (d) (5) OF THE I&N ACT. PAROLED until <u>01/01/2009</u> Purpose: <u>AOS</u> <u>C-1-E 01/02/2008 795</u> <small>(Port) (Date) (Office)</small>	
I-94 Departure Record			
14. Family Name		16. Birth Date (Day/Mo/Yr)	
<div style="border: 1px solid black; width: 100px; height: 20px; margin-bottom: 5px;"></div> <div style="border-top: 1px solid black; width: 100px; height: 10px; display: flex; justify-content: space-between;"> </div>		<div style="border-top: 1px solid black; width: 100px; height: 10px; display: flex; justify-content: space-between;"> </div>	
15. First (Given) Name		17. Country of Citizenship	
<div style="border: 1px solid black; width: 100px; height: 20px; margin-bottom: 5px;"></div> <div style="border-top: 1px solid black; width: 100px; height: 10px; display: flex; justify-content: space-between;"> </div>		<div style="border-top: 1px solid black; width: 100px; height: 10px; display: flex; justify-content: space-between;"> </div>	
C-1-E 01/02/2008 795		01/01/2009	
See Other Side		CBP Form I-94 (10/04) STAPLE HERE	

Effect of LPR Process on NIV Applications and Status

- In short, it's a murky area
- Very different for Hs than for Fs and Js ("my friend" never understands this)
- Scant law or regulation
- No coherent guidance from INS or DHS
- Conflicting answers in various liaison settings
- Travel issues can be quite different from status issues
- How to report in SEVIS is a relatively new and unsettled issue
- In most cases, the best advice for the student or scholar (at least Js) will be to seek advice from a qualified immigration lawyer
- But, in practice, you'll be asked for general information and guidance
- *You'll have only a second-hand report of the attorney's advice, so retain a healthy skepticism*

Effect of LPR Process, ctd.

- Why is it so murky?
 - Filing LPR petition may have serious implications on travel and may effect eligibility for extensions, changes of status, and requests for benefits for some (Fs and Js, not Hs), but **does not** result in abandonment of NIV status
 - Filing AOS application definitely has serious implications and may effect eligibility for extensions, changes of status, and requests for benefits for some (Fs and Js, not Hs), but also **does not** result in abandonment of NIV status
 - Confusion surrounds effects of Adjustment of Status process (not petition process)
 - Some background
 - 1952 INA provided termination of NIV status upon filing of AOS, amendment to INA in 1958 eliminated this
 - BIA in 1993 case *Matter of Hosseinpour* held that NIV status could be maintained while AOS pending
 - Occasionally DHS officials state that filing AOS terminates NIV status, and sometimes they say that someone must maintain NIV status while AOS is pending in order to be eligible for AOS (both statements are wrong)
 - While common sense suggests that someone who has filed AOS application may remain in the U.S., and this is **implied** in INA and has long been DHS policy, the specific legal authority is just one INS Operating Instruction that provides for a deferral of removal proceedings if AOS is pending (OI 212a(23))

VERY General Guidance for Fs and Js

- **Status**
 - Neither the filing of the immigrant petition or adjustment of status application should be presumed to “void” F or J status
- **Travel**
 - Any step toward LPR will complicate or make impossible F or J travel/re-entry
 - INA 214(b): “Every alien . . . shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer . . . that is entitled to a nonimmigrant status . . .”
 - “DS-156, Q. 36: *“Has anyone ever filed an immigrant visa petition on your behalf?”*”
 - Common visa interview topic is whether LPR has been pursued
 - Recent DOS guidance encourages COs to distinguish **immediate intent** from speculative **long-term plans** to immigrate, and this may facilitate F or J visa even if immigrant petition has been filed (especially in a long-delayed category)
 - Intent issue may arise at POE, and officers may have access to USCIS records
 - Pending adjustment of status application will certainly cause visa denial
 - NOTE, Fs and Js without advance parole abandon AOS when they leave U.S.

- **Best general guidance to offer**

- SEEK LEGAL ADVICE (advisor should avoid unauthorized practice of law)
- BUT, advisor can provide general information:
 - Usually simplest and most cautious approach for Fs and Js pursuing LPR is:
 - **obtain AP but don't leave the U.S. until LPR process is completed**
 - **don't apply for an EAD (or obtain but don't use it unless emergency)**
 - **continue to obey all F and J regulations until AOS granted**
 - USCIS could consider entering the U.S. on advance parole to terminate F or J status and may end chances of returning to F or J status (at least in the near term)
 - Using an EAD may/may not be a violation/abandonment of F or J status (no consistent USCIS guidance), but safest assumption is that any action not consistent with F or J status—like using EAD (except for J-2s)—might be abandonment of F or J status
 - If LPR process goes badly, it MAY be possible for F or J to withdraw AOS application and continue in F or J status, and the same MAY be true for F or J who is denied AOS (murky area – needs careful handling with attorney)
 - This is very general advice, though, and each situation requires specific advice, so refer to attorney
 - **For example, AOS applicant must be advised differently than someone with an immigrant petition pending in a category with an 8 year backlog**
- Advisor must characterize this as VERY general information and strongly encourage student/scholar to seek advice from attorney who can analyze the situation, assess risks/needs, and advise about options

MFS this applies to Hs, too

- **WRONG!** (as usual, MF is confused – doesn't know about “dual intent”)
- Travel
 - Since H status allows “dual intent,” Hs with pending LPR application can request admission using an Advance Parole document or an H-1B visa stamp + H-1B documents
- Status
 - Hs entering with Advance Parole are “paroled” into U.S., remain eligible for extensions of H status
 - Strange and helpful legal fiction: not in H status but ask for “re-admission as H” in extension petition/application
 - H-4s who use EAD to work probably abandon H status, and should use AP to travel
 - Advising H-1Bs who work for your employer is not Unauthorized Practice of Law, though you may want to avoid advising extensively about AOS as it is a personal application (not your employer's)
 - Always let H-1B employees know that they may seek legal advice about AOS (encourage if criminal/immigration problems of any kind for the employee or family members)
 - Best GENERAL guidance:
 - Obtain AP but use H-1B visa for travel (enter as H rather than parolee) if at all possible
 - Don't apply for an EAD (or obtain but don't use)
 - Make every effort to maintain H status until AOS granted
 - » H status is a useful “safety net” in the event that LPR process goes badly, especially in light of extreme “security check” delays
 - » H-1Bs with EAD often let H-1B status expire, and later EAD expires and you'll be asked to premium process an “extension” petition” (may require consular processing)
 - » Entering as H-1B restarts “245(k) clock” but entering as parolee does not



SEVIS Termination

- Three approaches seem common among most informed schools:
 - Terminate when student enters the U.S. as a “parolee” using advance parole
 - PRO: Student who enters as parolee is no longer in F/J status, and it is unclear whether such a student should have an active SEVIS record
 - CON: parole is, in the law, explicitly NOT a status, and the policy is probably based on the idea that it is a status (recent informal SEVIS guidance)
 - Terminate when the student uses I-485 EAD to work off-campus
 - PRO: F/J status would not allow the employment authorized by the I-485 EAD so this is a violation of F/J status
 - CON: this is not unauthorized employment – rather it is authorized employment since the student has EAD and explicit authorization from USCIS
 - Terminate only when the student fails to meet the requirements stated in the F-1 regulations (i.e., when the student drops out or below a full course of study)
 - PRO: Given the lack of law, regulation, or guidance on the subject and the remaining confusion over terminated SEVIS records, most reasonable and beneficial policy
 - CON: no clear guidance from DHS about student’s status, so many questions arise
 - *And, of course, terminate when LPR is approved*
- Most schools who terminate when I-485 (or, worse, I-130) is filed probably haven’t thought about it much

– SEVIS considerations –

- Student can continue indefinitely in F/J status with pending immigrant petition or AOS application
- Student may prefer to discontinue F/J status and remain in U.S. as “AOS applicant”
 - Get this request in writing, document your file
 - Suggested reasons for termination: “other” or “authorized early withdrawal” and state in remarks area student wished to remain in U.S. as AOS applicant
- AOS applicants are not prohibited from applying for OPT (USCIS can’t provide coherent statement on this), and advisor should discourage but not prohibit applications, but I-765 may be “re-characterized” from “(c)(3)(i)” to “(c)(9)”
 - *CU Boulder student with I-485 “(c)(9)” EAD applied for OPT and received second EAD for OPT*
- If student’s I-765 for OPT is approved as (c)(9) AOS EAD, does the F status automatically complete?
- Once student is granted LPR (I-485 approved), school should terminate and use reason “change of status approved”

Advising Considerations

- There are many considerations
 - Most advisors are not experts on AOS eligibility or process
- Except for advising institution’s employees on routine matters, LPR/AOS advising probably beyond scope of advisor’s duties (including advising students about LPR)
- Each LPR process is different, many quirks (ex: adopted children, DUI’s, accepting public benefits)
- Murky area of the law, almost impossible to be an expert on effect of LPR/AOS on non-immigrant status, and hard to provide certainty
- USCIS would have you think that you don’t need to be an expert to properly negotiate the immigrant petition and adjustment of status process – but many DIY cases are botched, with dire consequences

Advising Considerations, ctd.

- Students and scholars are often incorrectly advised by “friends”
 - They hear that the filing of an immigrant petition provides authority to remain in U.S.
 - Many don’t understand the visa bulletin and extreme delays in some categories
 - They hear that filing AOS makes travel impossible (not true for Hs or for Fs and Js with AP)
- Abandonment of NIV status may be very risky for some and not so risky (perhaps outweighed by benefits of AP travel or EAD work) for others – highly situational
- You’ll never know exactly how an attorney has advised a student or scholar, and will have to rely on student’s or scholar’s memory, accuracy, veracity etc. in describing the advice to you (and, remember, there may be factors student or scholar has not disclosed to you)

Tips to Consider

- Create office policy on what/what not to advise about and stick to it and be consistent (individually, and as an office)
 - *CU Boulder’s Office Policy: Let student decide if they want to maintain their F/J status or not. Refer student to immigration attorney if they are unsure. Emphasize need for EAD/AP for work/travel purposes if they do not want to maintain their F/J status.*
- Create office policy concerning handling of students’ and scholars’ SEVIS records through the AOS process
 - *CU-Boulder’s Handling of SEVIS records: ISSS always gets a copy of the I-485 receipt notice before terminating. Student signs a form indicating their decision to have the record terminated.*
- Create policy concerning when and how to refer to immigration counsel
 - *CU Boulder: ISSS advises on F/J status only, refers student to attorney otherwise. Students are given a handout about “How to Choose an Immigration Attorney” (compilations of various websites on the topic) and referred to the Colorado AILA website.*

Tips to Consider, ctd.

- Create **broadly** written FAQs to provide to persons in F, J and H status who will apply for LPR status
 - CU Boulder: ISSS has a handout about “Marriage to A US Citizen”, a common reason why they have a green card pending. The handout is ‘stolen’ from Indiana University, and the University of Colorado-Denver Health Science Center. This FAQ has helped answer common questions students have so ISSS does not have to ‘advise’ on this matter.
- Stay abreast of new agency interpretations (NAFSA web site and discussion forum and other reliable web sources)
- Decide how you’ll treat new students, coordinate with other offices
 - CU Boulder: Admissions end -- Students who apply at CU-Boulder and have evidence of filing an I-485 are treated as AOS applicants unless they specify they want an I-20 (or DS2019) for F or J status.
- Treat and advise students consistently
 - CU Boulder: Students who are already enrolled and notify ISSS that they have filed an I-485 are asked if they would like to maintain their F/J status until they get the green card, in which case they have to follow all the relevant rules for maintaining that F/J status and we continue reporting their activities in SEVIS. They are usually advised to confer with an immigration attorney about this decision.

- We terminate when:
 - Student informs us that they do not wish to maintain their F/J status
 - Student wants to use their EAD to work based on a pending green card application
 - Student Fails to Maintain their F/J Status (works more than 20hrs/week, under-enrolled, etc.)
 - Student informs us that their green card was approved (and they provide us a copy of the card).
- Typically, before terminating, we ask for a copy of the I-485 receipt notice. We make sure the student understands that they have to have an EAD to work, and AP to travel. We indicate that the student has a green card pending when we terminate in SEVIS and notate the A# in the comments section.

REQUEST FOR ISSS TO TERMINATE SEVIS RECORD BASED ON PENDING PERMANENT RESIDENCY APPLICATION.

I am submitting a copy of my I-485 receipt to ISSS as evidence that I have filed an application for permanent residency. At this time, I no longer wish to maintain my F/J status and request that ISSS terminate my SEVIS record. I understand that if my F/J status is terminated, I can no longer apply for F/J benefits, like CPT, OPT or Academic Training and that ISSS will no longer report or update my information in SEVIS.

I am aware that I am not a permanent resident until this application is approved. I know that I will need to have a valid Employment Authorization Document (EAD) to work legally in the U.S., and an Advanced Parole document to travel outside the U.S. and return.

I realize that ISSS advisers cannot give me any immigration advice related to my status as a pending permanent resident. I will consult an immigration attorney with any questions related to my status as a pending permanent resident.

Name

Signature

SEVIS ID

Date