

**U.S. Department of Justice
Immigration and Naturalization Service**

HQ70/23.1P
Office of the Executive Associate Commissioner
425 I Street NW
Washington, DC. 20536

August 8, 2000

MEMORANDUM FOR:

All Regional Directors
All Service Center Directors
All District Directors
All Officers In Charge
All Training Academies

FROM:

Michael Cronin [signed by Thomas Cook for Michael Cronin]
Acting Executive Associate Commissioner
Office of Programs

SUBJECT:

Prohibition on Concurrent Pursuit of Adjustment of Status and Consular Processing (AD00-15)

Chapter 23.2 of the *Adjudicator's Field Manual* provides guidance on general adjustment of status issues. This memorandum addresses instances where a beneficiary seeks to pursue both adjustment of status and consular processing in order to ensure availability of a visa number.

In Chapter 23 of the *Adjudicator's Field Manual*, a new section 23.2(1) is added to read as follows:

23.2 General Adjustment of Status Issues.

Concurrent pursuit of adjustment of status and consular processing.

(1) Background. In 1999, the Service issued policy guidance on when the filing of a Form I-824, Request for Action on an Approved Application or Petition, was appropriate. That guidance advised that a Form I-824 should be filed when the petitioner requests a change in the initial manner of processing noted on the visa petition. It has come to the Service's attention that applicants for Adjustment of Status are also using the Form I-824, or in some cases submitting a duplicate visa petition, to request concurrent consular processing.

The Office of Field Operations and the Office of Programs have reviewed the issue of concurrent pursuit of adjustment of status and consular processing and determined that concurrent pursuit would not be an efficient and effective use of the Service's resources. Further, the pursuit of concurrent filing for adjustment of status and overseas visa processing runs the risk of allocating more than one visa number to the same immigrant.

(2) Guidelines. When an alien with a pending I-485 files a Form I-824 requesting that the visa petition be forwarded to a consulate the alien or the attorney of record will be notified that the I-824 will be treated as a request to withdraw the I-485. In accordance with 8 CFR 103.2(b)(8) the notice will provide the alien a response time in which to advise the Service on how they wish to proceed. The I-485 is to be terminated by written notice if the alien chooses to pursue consular processing or fails to respond within the time granted. This notice will also advise the alien of the termination of any employment authorization granted under 8 CFR 274a.12(c)(9). The I-824 is then to be approved, and the visa petition forwarded to the National Visa Center (NVC) for processing.

Likewise, if the Service receives a "duplicate" immigrant visa petition requesting consular processing, and the alien has a pending I-485, the Service will notify the alien or the attorney of record that the duplicate petition will be treated as a request to withdraw the I-485, as above, provide a response time in which to advise the Service on how they wish to proceed. The I-485 is to be terminated by written notice if the alien wishes to pursue consular processing or fails to timely respond. This notice will advise the alien of the termination of any employment authorization granted under 8 CFR 274a.12(c)(9). The visa petition along with the duplicate is then to be forwarded to the NVC for processing.