STATE OF MINNESOTA

IN SUPREME COURT

A21-0338

Original Jurisdiction

In re Petition for Disciplinary Action
against Herbert Azubuike Igbanugo, a Minnesota Attorney, Registration No. 0191139

Filed: April 26, 2023
Office of Appellate Courts

Susan M. Humiston, Director, Timothy M. Burke, Senior Assistant Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Herbert A. Igbanugo, Minneapolis, Minnesota, pro se.

S Y L L A B U S

1. The referee's findings and conclusions that the attorney committed misconduct in seven matters by neglect, failing to notify clients, failing to explain legal issues, collecting unreasonable fees, collecting improper availability fees, failing to issue or to promptly issue refunds of unearned fees, failing to have measures to ensure lawyers and non-lawyers at his firm conformed with professional obligations, and providing false and misleading information were not clearly erroneous.

2. The referee's evidentiary decisions were not an abuse of discretion.

3. The attorney failed to establish that the disciplinary process violated his constitutional rights.

4. An indefinite suspension with no right to petition for reinstatement for 10 months is the appropriate discipline for the attorney's misconduct.

Suspended.

O P I N I O N

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (the Director) petitioned for disciplinary action against respondent-attorney Herbert Azubuike Igbanugo, alleging 54 violations of the Minnesota Rules of Professional Conduct. After conducting an evidentiary hearing, the referee's factual findings concluded that Igbanugo committed 50 rule violations across 7 client matters. These violations included failing to act with diligence, failing to notify clients of important updates, failing to properly explain legal issues to clients, collecting unreasonable fees (including availability fees when he was already retained to perform legal services), failing to issue prompt refunds of unearned advanced fees, failing to refund unearned advanced fees, failing to take reasonable steps to make sure the firm had measures to ensure all lawyers and non-lawyers complied with professional obligations, and providing false and misleading information. The referee found five aggravating factors, no mitigating factors, and determined Igbanugo's constitutional rights were not violated during the disciplinary process. The referee recommended that Igbanugo be suspended from the practice of law for 10 months.

Igbanugo challenges the referee's findings, conclusions, and evidentiary decisions and argues the proceedings and investigation violated his constitutional rights. The Director contends that the recommended discipline is too lenient and asks us to suspend

Igbanugo for a minimum of 1 year. We conclude that the referee's findings and conclusions were not clearly erroneous, the referee's evidentiary decisions were not an abuse of discretion, and Igbanugo's constitutional rights were not violated. We also conclude the appropriate discipline given Igbanugo's misconduct is an indefinite suspension with no right to petition for reinstatement for 10 months.

FACTS

Igbanugo was admitted to practice law in July 1988 and has primarily practiced in immigration law. In 2006, Igbanugo started his own firm, Igbanugo Partners International Law Firm. Igbanugo hired Jason Nielson as an associate attorney in 2013, and Nielson became a junior partner in 2014.[1] The misconduct in this case occurred in seven client matters between 2011 and 2019. We begin by briefly summarizing Igbanugo's misconduct.

A.C-G., M.D., and O.O.C. Matters

We address the A.C-G, M.D., and O.O.C. matters together because the facts and Igbanugo's actions in each case are similar. A.C-G., M.D., and O.O.C. are Mexican nationals who entered the United States without inspection. They each have U.S.-citizen children. The clients told Igbanugo they did not have legal status but wanted legal residency. Igbanugo told the clients they could obtain legal residency through their U.S.-citizen children.

[1] The Director petitioned for disciplinary action against Nielson based, in part, on two client matters that are also included here. We suspended Nielson for a minimum of 30 days in July 2022. *In re Nielson*, 977 N.W.2d 599, 614–15 (Minn. 2022).

Each client entered a retainer agreement with Igbanugo's firm that contemplated form I-130 petitions and form I-601A waivers.[2] Each retainer agreement called for availability-retainer fees. Igbanugo or his employees falsely told each client that their U.S.-citizen children were qualifying relatives for the purposes of the I-601A waiver.[3] Igbanugo filed a form I-130 with United States Citizenship and Immigration Services (USCIS) for each client and USCIS approved the forms.

After form I-130 approval, Igbanugo or his employees reiterated, falsely, that the clients' U.S.-citizen children were qualifying relatives for an I-601A waiver. After collecting necessary materials from the clients for the I-601A waivers, Igbanugo notified each client that their children were not qualifying relatives, and as a result they were ineligible for an I-601A waiver.

Each client paid Igbanugo large sums of money for services he did not complete; Igbanugo did not refund the unearned retainer money to these clients. In M.D.'s case, the National Visa Center (NVC) invoiced Igbanugo's firm because more than a year passed without any action on M.D.'s I-130 petition. Because of the inaction, the forms and fees associated with M.D.'s I-130 had to be resubmitted to NVC; Igbanugo never notified M.D.

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[2] We explained these forms in more detail in *Nielson*, 977 N.W.2d at 604. An I-130 Petition for Alien Relative Form is filed with United States Citizenship and Immigration Services (USCIS) "to establish a qualifying family relationship with a relative (foreign national)." *Id.* An I-601A Application for Provisional Unlawful Pretense Waiver is used to request a waiver of unlawful presence in the United States based on a substantial hardship to a qualifying relative (I-601A waiver). *Id.*

[3] A "qualifying relative must be a U.S. Citizen or lawful permanent resident who is a *parent or spouse* of the foreign national. A child may not be a qualifying relative." *Nielson*, 977 N.W.2d at 604–05 (footnote omitted).

of this invoice. Igbanugo also admitted to O.O.C. that he mistakenly told her she was eligible for an I-601A waiver.

In May 2016, A.C-G., M.D., and O.O.C. sued Igbanugo and his firm (joint litigation). The jury found Igbanugo liable for breach of contract, violations of the Minnesota Consumer Fraud Act, and legal malpractice. The district court awarded each client cumulative damages. Igbanugo appealed, the court of appeals affirmed, and we denied review.

I.A.D. and D.E.F.L. Matter

In the I.A.D. and D.E.F.L. matter, I.A.D and D.E.F.L. retained Igbanugo in February 2018 because they lacked legal status but wanted to become legal residents. Igbanugo falsely told the couple they could gain permanent residency through their U.S.-citizen child. The couple entered a retainer agreement that called for two I-130/I-485 one-step adjustments based on their child, I-601 forms if necessary, and general immigration counseling.[4] Less than a month after retaining Igbanugo, the couple hired new counsel,

[4] Form I-485 is an application to register a permanent resident or adjust status, but foreign nationals must establish they were admitted or paroled, or into the United States to be eligible. U.S. Dep't Homeland Sec., U.S. Citizenship & Immigr. Servs., OMB No. 1615-0023, Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status 11 (2023). Being "waved through" means the inspecting immigration officer allowed the foreign national to enter the United States without providing documentation; the foreign national must prove the facts of the wave through to show they were admitted lawfully. Policy Manual, *Chapter 2 – Eligibility Requirements*, U.S. Citizenship & Immigr. Servs. (last visited Dec. 13, 2022), https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-2 [opinion attachment]. An I-601 waiver can be completed to request waiver of inadmissibility grounds if a foreign national is inadmissible because they previously sought immigration benefits through fraud or misrepresentation. U.S. Dep't Homeland Sec., U.S. Citizenship & Immigr. Servs., OMB No. 1615-0029, Form I-601,

terminated Igbanugo's representation, and requested a full refund. Igbanugo agreed to refund the couple some money within 60 days, but his refund calculation included work the firm performed after the couple terminated his representation.

Na E.S. Matter

In the Na E.S. matter, Na E.S.'s father (A.E.S.) contracted with Igbanugo in March 2016 on Na E.S.'s behalf for an adjustment of status. In July 2016, Igbanugo met with Na E.S. and told her it would take years for her visa to process. By this time, she had paid Igbanugo over half the contract price. Igbanugo issued Na E.S. a partial refund in September 2016. In a 2018 e-mail exchange with A.E.S., Igbanugo claimed he was not obligated to refund the family *any* money on Na E.S.'s contract, even though rules of professional conduct require unearned fees to be refunded at the end of representation.

Nl E.S. Matter

Na E.S. (the subject of the previous matter) and Nl E.S (the subject of this matter) are siblings; A.E.S. is also Nl E.S.'s father. During the same March 2016 meeting discussed above between A.E.S. and Igbanugo, the two also discussed Nl E.S.'s immigration status. A.E.S. emphasized that Nl E.S. would turn 21 in June 2016, so they wanted to act quickly to get Nl E.S.'s visa application approved before Nl E.S.'s birthday. A.E.S. also informed Igbanugo that Nl E.S.'s passport was expired. Igbanugo indicated he could adjust Nl E.S.'s status before his birthday, and they entered into a retainer agreement

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Instructions for Application for Waiver of Grounds of Inadmissibility 1, 11 (2022) [hereinafter OMB No. 1615-0029]. The applicant must show that refusing their admission to the United States will cause extreme hardship to a qualifying relative. OMB No. 1615-0029, at 7.

that called for an advanced parole form I-131 (a visa application), and consular processing or adjustment of status, if eligible. The family knew that Nl E.S. needed to renew his Egyptian passport before the visa application could be submitted. Nl E.S aged out of the preferred visa category in June 2016, but Igbanugo did not notify the family. Igbanugo instead continued to compile information for the visa application for which Nl E.S. was now ineligible. In October 2018, Igbanugo's firm submitted Nl E.S.'s visa application under the category for which Nl-E.S. was ineligible, and the embassy e-mailed the family explaining that Nl E.S. aged out of that category.

In November 2018, A.E.S terminated Igbanugo's representation and requested a full refund. Igbanugo admitted his firm made a mistake in processing the visa application, explained the documentation gathered would still be useful for a different visa category, informed A.E.S. he was not due any refund, and offered to complete consular processing once Nl E.S's visa became current. In January 2020, after consulting with the Office of Lawyers Professional Responsibility, Igbanugo issued the family a partial refund, but the money order was mailed to an outdated address and never reached the family.

M.G. and S.M. Matter

M.G. and S.M. are Mexican nationals and most recently entered the United States in 1996. The couple has three U.S.-citizen children. When M.G. entered the country at a border checkpoint, an immigration agent stopped the vehicle and asked if they were citizens. The driver said yes, M.G. nodded her head affirmatively, and the agent let them enter the United States. S.M. crossed the border through a river and did not pass through a border checkpoint.

In 2012, S.M. received a notice to appear from the Department of Homeland Security claiming that S.M. was in the country illegally. M.G. and her adult child consulted with Nielson in January 2017 and gave him S.M.'s notice to appear letter. Nielson told them he could help them obtain legal status. After the initial meeting, the couple met with Igbanugo, explained how they entered the country, and Igbanugo told them he could help them obtain legal status. The couple entered a contract with Igbanugo for I-130 petitions/I-485 application for wave-through entries, and a birth certificate issue.

M.G. terminated Igbanugo's representation in August 2019 and requested a full refund. Igbanugo had not filed any forms in the couple's case. Igbanugo replied, explaining that his firm had billed over half of the contract fee, so he would refund the couple the remainder of the contract fee after deducting the firm's billed hours. Igbanugo stated he would issue the partial refund within 60 days, but the couple did not receive a refund for about 4 months.

Disciplinary Proceedings

The Director filed a petition for disciplinary action against Igbanugo in March 2021 related to the matters above. Igbanugo filed an answer to the petition and we appointed a referee. Igbanugo moved to exclude all evidence from the joint litigation and argued the Director was estopped from raising any identical issues that were litigated during Nielson's disciplinary hearings (Nielson matter). Igbanugo moved to dismiss the disciplinary petition, alleging that his constitutional due process, equal protection, free speech, and Fourth Amendment rights were violated. In a prehearing order, the referee determined that both the joint litigation and the Nielson matter would be admitted, that he would

independently review those matters, and that he would rule on Igbanugo's constitutional claims after the evidentiary hearing.

The referee held a 2-week evidentiary hearing. The referee heard testimony from Igbanugo's former clients and their family members, as well as from Igbanugo and Nielson. The referee also heard from four expert witnesses—one called by the Director and three by Igbanugo. The parties admitted hundreds of exhibits.

The referee issued findings of fact, conclusions of law, and a recommendation for discipline that was 55 pages long and included a 15-page memorandum. The referee found Igbanugo's and Nielson's testimony not credible. The referee concluded Igbanugo violated multiple rules of professional conduct in each client matter.[5] The referee found no mitigating factors and five aggravating factors: (1) lack of remorse, (2) indifference about restitution, (3) the clients' vulnerability, (4) substantial experience practicing law, and (5) prior discipline. The referee recommended an indefinite suspension with no right to petition for reinstatement for 10 months.

The referee also found Igbanugo "offered no specific evidence to support any of [the constitutional] claims." The referee explained that Igbanugo did not offer "any evidence to support" his due process and equal protections claims of selective enforcement,

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[5] Specifically, the referee found Igbanugo committed 50 rule violations, including: Minn. R. Prof. Conduct 1.3 in five matters, Minn. R. Prof. Conduct 1.4(a)(3) in two matters, Minn. R. Prof. Conduct 1.4(b) in four matters, Minn. R. Prof. Conduct 1.5(a) in seven matters, Minn. R. Prof. Conduct 1.5(b)(2) in seven matters, Minn. R. Prof. Conduct 1.15(c)(4) in six matters, Minn. R. Prof. Conduct 1.16(d) in three matters, Minn. R. Prof. Conduct 5.1(a) in three matters, Minn. R. Prof. Conduct 5.3(a) in three matters, Minn. R. Prof. Conduct 5.3(b) in three matters, and Minn. R. Prof. Conduct 8.4(c) in seven matters.

failed to show the Director's petition was based on protected speech, failed to prove a Fourth Amendment claim, and failed to allege due process violations that the Director's petition was not sufficiently clear or specific or that the Director fabricated evidence to frame him.

Igbanugo challenges many of the referee's findings and conclusions, challenges some of the referee's evidentiary rulings, and argues that the disciplinary process violated his constitutional equal protection, due process, and First Amendment rights. Both Igbanugo and the Director challenge the recommended discipline. Igbanugo contends no discipline is warranted, and the Director asks us to suspend Igbanugo for at least 1 year.

ANALYSIS

I.

Igbanugo timely ordered a transcript, so the referee's findings of fact and conclusions are not binding. Rule 14(e), Rules on Lawyers Professional Responsibility (RLPR). We nevertheless extend "great deference" to the referee's findings and conclusions. *In re MacDonald*, 906 N.W.2d 238, 243 (Minn. 2018) (citation omitted) (internal quotation marks omitted). "We review the referee's findings of fact and application of the Minnesota Rules of Professional Conduct to the facts of the case for clear error." *In re Nielson*, 977 N.W.2d 599, 608 (Minn. 2022). "A referee's findings are clearly erroneous when they leave us with the definite and firm conviction that a mistake has been made." *Id.* (citation omitted) (internal quotation marks omitted).

Igbanugo's challenges to the referee's findings and conclusions are voluminous. Despite their length and breadth, we reject the majority of Igbanugo's challenges for the

same three reasons. First, many of these challenges are forfeited because they are conclusory statements that Igbanugo did not support with legal citation or record evidence.[6] *In re McCloud*, 955 N.W.2d 270, 280 n.12 (Minn. 2021) (deeming an argument forfeited because the attorney provided "no argument or citation to authority supporting this conclusion"). Second, while Igbanugo attempts to support some of his arguments with record evidence, the evidence he cites either does not support his argument or does not comport with what Igbanugo claims, rendering the arguments unsupported. Third, Igbanugo bases several of his arguments on his or Nielson's testimony. The referee, however, determined their testimony was not credible, and we defer to the referee's findings on credibility. *In re Kennedy*, 946 N.W.2d 568, 578 (Minn. 2020) ("[W]e defer to the referee's findings when the referee's findings rest on disputed testimony or in part on credibility, demeanor, and sincerity." (citation omitted) (internal quotation marks omitted)); *see also In re Farley*, 771 N.W.2d 857, 863 (Minn. 2009) (holding that a referee may reject testimony).

The remainder of Igbanugo's arguments are challenges to the referee's findings about (A) immigration law, (B) Igbanugo's admissions of wrongdoing, and (C) the availability of retainer fees. We will address each of these categories in turn.

A.

We begin with the referee's findings and conclusions about immigration law. Igbanugo argues the referee's findings and conclusions are based on a misunderstanding

[6] We have identified at least 18 challenges that fall into this category.

and misstatements of immigration law. Igbanugo makes four arguments that fall into this category: (1) because a form I-130 cannot be revoked, any instances of misconduct based on that contention are erroneous; (2) the referee conflated adjustment of status and consular processing; (3) adjustment of status was available to I.A.D. and D.E.F.L.; and (4) Igbanugo did not fail to act with diligence and promptness on Nl E.S.'s case.

1.

The referee concluded Igbanugo failed to act with diligence and promptness by allowing M.D.'s and O.O.C.'s I-130 forms to be revoked or rescinded and that he failed to tell these clients that the forms would need to be refiled. Igbanugo argues these findings are erroneous because NVC cannot revoke a form I-130. Igbanugo agrees that noncitizens must resubmit their forms to NVC after a year of inaction but claims this is not the same as being required to submit new forms for approval to USCIS.

We recently discussed the same I-130 process in *Nielson*, 977 N.W.2d at 604 n.1. We explained how and when NVC terminates registration I-130 petitions:

> To maintain visa availability when [NVC] receives an approved I-130 petition, the Immigration and Nationality Act (INA) § 203(g) has a 1-year contact requirement, providing that the beneficiary and/or counsel must communicate intent to be lawfully admitted to the U.S. with [NVC] yearly. Failure to communicate within 1 year after the I-130 petition is approved means risk of termination of the petition and the beneficiary would lose its benefits, such as a priority date. A beneficiary notified of possible termination may state the preference to continue pursuing the immigrant visa application with the understanding that the beneficiary must resubmit all required fees and documents to continue with immigrant visa processing.

Id.[7] Accordingly, NVC terminates registration of approved I-130 petitions if they are inactive for over a year, and this termination has consequences for the beneficiaries, like the loss of priority dates. *Id.*; *see also Immigrant Visa Processing: Step 2 NVC Processing*, Bureau of Consular Affairs, U.S. Dep't of State, https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/step-2-begin-nvc-processing.html (last visited Mar. 2, 2023) [opinion attachment]. Igbanugo does not point to evidence that supports his contention the NVC does not terminate I-130s. Accordingly, the referee's findings that clients' I-130s were revoked or terminated by NVC and any conclusions based on those findings, are not clearly erroneous.

2.

The referee, relying on expert testimony and reports, made detailed findings about the immigration processes involved in this case. The referee explained that "adjusting a person's status as a qualifying relative in an immigration proceeding involves a three-step process." The referee stated the first step is filing a form I-130, a petition for alien relative, to show that the client has a citizen relative and that "[a]n approved I-130 simply documents the foreign national's relationship to a U.S. citizen or lawful permanent

[7] We referenced a number of websites in *Nielson* that discuss "[t]he full breadth of requirements" for I-130 petitions. 977 N.W.2d at 604 n.1. These websites include: U.S. Citizenship and Immigration Services, https://www.uscis.gov/i-130 (last visited Mar. 2, 2023); U.S. Department of State, Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center/nvc-contact-information.html (last visited Mar. 2, 2023); Foreign Affairs Manual, 9 FAM 504.13-2(B), available at https://fam.state.gov/fam/09FAM/09FAM050413.html (last visited Mar. 2, 2023). Copies of these websites are attached to the *Nielson* opinion.

resident." The second step, the referee noted, is filing an I-601A waiver to request that the government waive grounds of inadmissibility or removal because it will create substantial hardship to a qualifying relative—a citizen parent or spouse of the immigrant. After the I-130 petition and I-601A waiver are approved, the referee found the immigrant completes the third step, consular processing, which requires them to leave the country and apply "at the local U.S. consulate for a visa or a green card, and hav[e] an interview." The referee also separately described that the form I-485, an application to register permanent residence or adjust status, is a one-step adjustment form that a foreign national can pursue if they reside in the United States and hold legal status, but an opening for the foreign national to become a permanent resident must be currently available.

Igbanugo claims that the referee conflated adjustment of status and consular processing because the referee labels adjustment of status as a three-step process, rather than a one-step process. Igbanugo's argument lacks merit. The referee specifically referred to the three-step process as "adjusting a person's status as a qualifying relative," which is distinct from the referee's later description of the form I-485 "one-step adjustment." The Director's expert's testimony and report support the referee's findings describing the three-step adjustment of status through a relative and one-step permanent resident adjustment of status processes. The referee's description of the three-step adjustment of status process is consistent with how we described this same process in *Nielson*, 977 N.W.2d at 604. Given the record support and the lack of any evidence from Igbanugo that these explanations are inaccurate, the referee's findings based on these processes are not erroneous.

3.

When discussing I.A.D. and D.E.F.L.'s case, the referee explained the I-601 waiver process. Specifically, if a foreign national is inadmissible for permanent residency because they previously sought an immigration benefit through fraud or misrepresentation, they can complete an I-601 waiver to request a waiver of the grounds for their inadmissibility. U.S. Dep't Homeland Sec., U.S. Citizenship & Immigr. Servs., OMB No. 1615-0029, Instructions for Application for Waiver of Grounds of Inadmissibility 1, 11 (2022) [hereinafter OMB No. 1615 0029], https://www.uscis.gov/sites/default/files/document/forms/i-601instr-pc.pdf [opinion attachment]. The referee explained that the applicant must demonstrate that a refusal of admission would "cause extreme hardship to the applicant's U.S.-citizen spouse or parent," which "is the same definition as the definition for the I-601A provisional waiver." Consequently, the referee concluded that a U.S.-citizen "child will not be considered a qualifying relative for purposes of the I-601." Based on these findings, the referee concluded that neither I.A.D. nor D.E.F.L. had a qualifying relative for an I-601 waiver and that Igbanugo violated Minn. R. Prof. Conduct 1.5(a) (requiring fees to be reasonable) and 8.4(c) (prohibiting conduct involving dishonesty or misrepresentation) by charging the couple to pursue relief "that was unavailable as a matter of law." Igbanugo argues these findings and conclusions are erroneous because I.A.D. and D.E.F.L. could adjust their status another way under 8 U.S.C. § 1255(i).

Igbanugo's argument fails for two reasons. First, Igbanugo did not explain how 8 U.S.C. § 1255(i) would support I.A.D. and D.E.F.L.'s eligibility to adjust status. Second,

whether the couple was eligible under 8 U.S.C. § 1255(i) is irrelevant because their contract with Igbanugo did not cover this route to adjust status and the record does not reflect that Igbanugo discussed this process with them. Instead, I-601 waivers (the route to adjust status that the retainer agreement contemplated) were not available to the couple because they were ineligible. The Director's expert testimony and report mirror the referee's findings about the I-601 waiver request, and who can be a qualifying relative. The expert testified that both an I-601 and I-601A require a U.S.-citizen parent or spouse—not a child—to be a qualifying relative. The couple testified that Igbanugo told them they could adjust status through their U.S.-citizen child without any conditions; the couple also testified that they did not have U.S.-citizen parents or spouses. The evidence, therefore, shows that Igbanugo's contract pursued relief that the couple was ineligible for because they did not have a qualifying relative, and Igbanugo collected payment for these services. Accordingly, the referee's findings and conclusion that Igbanugo committed misconduct by charging the couple to pursue relief "that was unavailable as a matter of law," are not clearly erroneous.

4.

The referee concluded Igbanugo violated Minn. R. Prof. Conduct 1.3 (failing to act with reasonable diligence and promptness) because his firm represented Nl E.S. for "over two years," and the representation resulted only in the filing of a visa application for a visa category that Nl E.S. aged out of 3 months after retaining Igbanugo. Igbanugo argues this conclusion is erroneous and misleading because Nl E.S.'s father was responsible for

getting Nl E.S. a passport, which was a requirement to get an F2A visa, and it was the family's tardiness in obtaining a passport that caused the delay.

There are two visa application categories relevant here: F2A and F2B. F2A is the preference category for unmarried children under 21 who have a parent that is a lawful citizen or resident; F2B is a lower preference category for unmarried children over 21 who have a parent that is a lawful citizen or resident. *See Green Card for Family Preference Immigrants*, U.S. Citizenship & Immigr. Servs. (last visited April 18, 2023) https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-family-preference-immigrants [opinion attachment].

Igbanugo's argument is unpersuasive. The family sought Igbanugo's services 3 months before Nl E.S.'s birthday, emphasized that Igbanugo must act quickly to request a visa before Nl E.S.'s birthday, and told Igbanugo that Nl E.S.'s passport had expired. Nl E.S.'s older brother confirmed that the family was tasked with obtaining a new passport. Even knowing Nl E.S. did not have a valid passport, Igbanugo still promised the family that he would adjust Nl E.S.'s status before his birthday.

Igbanugo, however, did not file any paperwork or take formal action in the case before Nl E.S.'s 21st birthday. Instead, the firm compiled documentation for the F2A visa application until July 2018—over 2 years after Nl E.S. lost eligibility for the preferred visa category—and then submitted the F2A application in October 2018 even though Nl E.S. was clearly ineligible. Igbanugo, therefore, did not take any formal action in Nl E.S.'s case for over 2 years despite promising the family he would act quickly. Given this record

evidence, the referee's conclusion that Igbanugo failed to act with reasonable diligence is not clearly erroneous.

B.

We turn now to Igbanugo's challenge regarding his admissions of wrongdoing. Igbanugo admitted in writing to two clients that he or his firm made a mistake in handling their cases.[8] The referee described these communications and "found it troubling" that Igbanugo made these admissions to the clients and then "attempted to retract the admission[s] at the [disciplinary] hearing." The referee found Igbanugo's testimony at the disciplinary hearing "untruthful," "evasive and misleading," "self-serving and not credible." Igbanugo argues the findings about his admissions of wrongdoing are clearly erroneous given his testimony in the Nielson matter.

Igbanugo's testimony about his admissions of wrongdoing at his own evidentiary hearing was similar to the testimony he provided in the Nielson matter. At his own hearing, Igbanugo testified that his admission of wrongdoing to one client occurred because he was "parroting what she said to [him]"; his other admission of wrongdoing was "bedside manner," and he was trying to "appease the client" by accepting fault. The referee received Igbanugo's testimony in the Nielson matter as an exhibit in this case and considered it before issuing findings and conclusions. We defer to the referee's credibility determination

[8] To O.O.C., Igbanugo wrote, "It is true that we made a mistake in bringing you in after the form I-130 was approved and stating that you were eligible for an I-601A waiver/consular processing." To Nl E.S., Igbanugo wrote, "Due to the change of case managers over a lengthy period of time . . . it was lost that the visa category changed from F2A to F2B when [Nl E.S.] turned 21."

regarding Igbanugo's testimony, especially in cases like this, "where the referee's findings rest on disputed testimony or in part on respondent's credibility, demeanor, or sincerity." *See Kennedy*, 946 N.W.2d at 576 (citation omitted) (internal quotation marks omitted). Given Igbanugo's admissions of wrongdoing and our deference to the referee's credibility determination, the referee's findings are not clearly erroneous.

C.

Finally, we address Igbanugo's challenges related to his fee agreements. In each of the client matters, the referee found Igbanugo violated Minn. R. Prof. Conduct 1.5(b)(2) (addressing availability fees) and 1.5(a) (requiring fees to be reasonable) by collecting advanced fees from the clients as an "availability fee" when he was already obligated to be available because he was already retained to perform legal services. Igbanugo argues these conclusions are erroneous because none of the clients actually agreed to an availability fee, and regardless of the contract language, the fee was immediately orally modified to a down payment, which is permissible.[9] Igbanugo supports his argument by claiming that the clients testified that their initial payments were down payments, that the fee was due immediately or very shortly after signing, and that the referee called these fees "advanced fees," which he posits is another term for down payment.

[9] The Minnesota Rules of Professional Conduct do not use the phrase "down payment" when addressing attorney fees. Those rules, however, do allow lawyers to receive a payment for their legal services in advance of performing those services. *See* Minn. R. Prof. Conduct 1.5(b), 1.15(c)(5). Presumably, that is what Igbanugo means when he refers to a "down payment."

Igbanugo's argument is unpersuasive. First, as the Director points out, all the contracts at issue reference an "availability retainer fee" and do not indicate that the fee is understood as a down payment or as anything other than an availability fee. Second, Nielson testified that there is no writing that confirms the parties modified the contracts. Lastly, Igbanugo's references to the record mischaracterize his clients' testimony. While some clients referenced the initial payment they made as a down payment, none of the clients testified that they orally modified the contracts or agreed that the availability fee would be a down payment. Accordingly, the referee's findings regarding these fee agreements are not clearly erroneous.

II.

We move now to Igbanugo's arguments regarding the referee's evidentiary decisions. "A referee's evidentiary rulings will only be reversed for an abuse of discretion." *In re Butler*, 960 N.W.2d 540, 547 (Minn. 2021). "A court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Thomas*, 891 N.W.2d 612, 618 (Minn. 2017) (citation omitted) (internal quotation marks omitted).

Igbanugo argues the referee abused his discretion by (A) not properly reviewing the joint litigation and Nielson matter independently, and (B) admitting evidence about Igbanugo's finances and refusing Igbanugo's offer of rebuttal evidence on this topic. The Director argues none of these decisions were an abuse of the referee's discretion. We consider each claim in turn.

A.

We first address Igbanugo's argument about the joint litigation and Nielson matter. Relying on *In re Morris*, 408 N.W.2d 859, 863 (Minn. 1987) and *In re Murrin*, 821 N.W.2d 195, 205 (Minn. 2012), Igbanugo contends that the referee had to independently consider these matters because they concern clients and contracts that are also at issue in his case. Igbanugo claims the referee committed "a manifest error and abuse of discretion" by "ignor[ing] every shred of favorable testimony and evidence" from the Nielson matter, while clearly relying on the joint litigation to make his determination. As support, Igbanugo notes the referee did not quote from or cite to the exhibits from the Nielson matter in the order. The Director argues Igbanugo's argument "is meritless" because Igbanugo cites no authority (and no authority exists) to support the assertion that the referee ignored the Nielson matter just because the referee did not cite to the exhibits.

Murrin and *Morris* relate to collateral estoppel in disciplinary matters. "Collateral estoppel is the binding effect of a judgment [on] matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based." *Murrin*, 821 N.W.2d at 205 (citation omitted) (internal quotation marks omitted). When a plaintiff asserts collateral estoppel to prevent a defendant from relitigating an issue, it is offensive collateral estoppel. *Id.* In *Morris*, we held that offensive collateral estoppel is improper in disciplinary proceedings; the Director cannot use collateral estoppel offensively to preclude the attorney who is subject to discipline from relitigating issues. 408 N.W.2d at 862–63. We do, however,

permit "a referee to independently consider the transcripts and other documentation from prior proceedings involving the attorney misconduct." *Murrin*, 821 N.W.2d at 205.

In *Murrin*, the referee did not give collateral-estoppel effect to judges' conclusions that Murrin had violated certain rules and court orders in cases they presided over, but agreed to independently review documents related to these proceedings. *Id.* Murrin litigated the relevant conclusions and contested the admonishments contained in the judicial orders at his disciplinary hearing. *Id.* ("The hearing transcript is replete with Murrin's explanations as to why his conduct was proper in the cases giving rise to those orders."). We concluded that even though the referee cited to "excerpts from the court orders in his findings of fact, there [was] no indication in the record that the referee failed to independently review the facts of [those] cases and the facts presented during the hearing." *Id.*

Here, the referee issued a pretrial order concluding that because there was no final decision on the merits in the Nielson matter at the time, the elements of collateral estoppel were not met. The referee concluded that based on *Morris*, Igbanugo could introduce the transcripts and other evidence from the Nielson matter, and the referee would independently review the underlying facts. The referee noted during the hearing that the determinations in the Nielson matter were not binding. The referee admitted the transcripts from the Nielson matter into evidence. Igbanugo points to no evidence, other than the referee's lack of citation to the Nielson matter, to support his contention that the referee

failed to review the matter independently.[10] As there is no evidence that the referee did not properly and independently consider the Nielson matter, the referee did not abuse his discretion.

B.

Next, Igbanugo claims the referee improperly admitted irrelevant financial evidence about Igbanugo's post-2013 tax liens and a 2014 contract for deed regarding his home. Igbanugo also argues that because this evidence was not disclosed to him before the hearing, he "lacked time or reasonable opportunity" to rebut the evidence.

Igbanugo's argument is not persuasive. Igbanugo claimed during the evidentiary hearing that he lacked financial motive to be dishonest and charge unreasonable fees of his clients, and the Director offered this contested financial evidence to counter Igbanugo's assertion. Relevant evidence is evidence with a "tendency to make the existence of any fact that is of consequence" more or less probable than it would be without the evidence. Minn. R. Evid. 401. Given that Igbanugo stated he did not have a financial motivation to keep unearned fees, and the financial evidence admitted spanned time that overlapped with the misconduct at issue, the evidence was relevant. And Igbanugo was able to rebut this evidence. In his redirect testimony at the hearing, Igbanugo discussed his finances and gave the referee explanations for the financial evidence submitted by the Director.

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[10] Notably, the referee found that Igbanugo's testimony in this case lacked credibility. Igbanugo's testimony in the Nielson matter was similar to his testimony in this case. It is unsurprising, therefore, that the referee may not have been persuaded by Igbanugo's testimony in the Nielson matter. Furthermore, if the referee did not find the evidence persuasive or relevant, he would have no reason to cite to the evidence in his findings and conclusions.

After the hearing, Igbanugo moved to file additional rebuttal evidence, but the referee denied Igbanugo's request. Igbanugo also claims this denial was an error. Igbanugo does not explain how the referee's conclusion was against logic and the facts in the record or was based on an erroneous view of the law. As the referee detailed in his robust analysis, Igbanugo's motion was untimely and did not reasonably explain why the evidence was not submitted at the hearing, and the evidence was relevant only to the collateral issue of motive and allowing the evidence would have been prejudicial to the Director. Accordingly, the referee's decisions to admit financial evidence and deny Igbanugo's untimely request to submit additional rebuttal evidence were not an abuse of discretion.

III.

We next consider Igbanugo's claim that his constitutional rights were violated throughout the discipline process.[11] The only argument that is not forfeited is Igbanugo's

[11] Igbanugo claims that the referee improperly prejudged his constitutional claims at the start of the evidentiary hearing and excluded all evidence related to these claims, resulting in Igbanugo being unable to make his constitutional arguments before the referee. The record does not support these claims. Igbanugo submitted an 89-page brief on his constitutional claims before the hearing. The referee provided only his "preliminary thoughts" on the constitutional arguments during the hearing. Igbanugo answered questions about these claims at the hearing. Igbanugo admitted that he could not point to any facts showing racial discrimination to the extent his constitutional arguments were grounded in that allegation. In his findings and conclusions, the referee determined that the constitutional claims were meritless after thoroughly analyzing each claim. Igbanugo therefore had an adequate opportunity to develop his constitutional arguments.

claim that his due process rights were violated.[12] Specifically, Igbanugo claims the charges against him "were not sufficiently and clearly specific to afford him proper notice" because the Director's petition is "a potpourri of false and misleading statements" of fact and immigration law.[13] Igbanugo further asserts some of the allegations in the petition were too vague.

"When we exercise disciplinary jurisdiction, the action . . . is neither criminal nor civil; rather, it is an inquiry . . . to determine if sanctions should be imposed." *In re Garcia*, 792 N.W.2d 434, 441 (Minn. 2010). "While disciplinary proceedings are not encumbered by technical rules and formal requirements, this court observes due process in exercising disciplinary jurisdiction." *In re Gherity*, 673 N.W.2d 474, 478 (Minn. 2004). The disciplinary charges must "be sufficiently clear and specific and the attorney must be

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[12] Igbanugo also argues the Director violated his equal protection and First Amendment rights through her selective prosecution of Igbanugo and her failure to prosecute the opposing counsel in the joint litigation. We have never held that an attorney may raise an equal protection or other constitutional defense based on selective prosecution in a disciplinary proceeding and we need not decide that issue here because Igbanugo failed to support his argument with any legal citation or analysis, other than a general reference to the United States Constitution. Accordingly, this argument is forfeited, and we decline to address it. *See McCloud*, 955 N.W.2d at 280 n.12 (deeming an argument forfeited because the attorney provided "no argument or citation to authority supporting this conclusion").

[13] Igbanugo argues in his reply brief that the petition did not charge him with intentionally providing false information to clients for financial gain and that this charge was improperly added during the evidentiary hearing. Because Igbanugo did not raise this argument in his principal brief, it is forfeited. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010) (holding that issues not raised or argued in a principal brief cannot be raised in a reply brief). Moreover, the petition clearly alleged violations of Minn. R. Prof. Conduct 8.4(c) (engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation") in each client matter.

afforded an opportunity to anticipate, prepare and present a defense" at the disciplinary hearing. *Id.*

The disciplinary charges against Igbanugo were thorough and specific: the 52-page petition identifies the specific rules Igbanugo allegedly violated and the facts supporting those allegations, and Igbanugo filed a 160-page answer. *See Nielson*, 977 N.W.2d at 611 (determining an attorney received due process when a specific and factually-supported 17-page petition was filed, and the attorney filed an answer). Additionally, Igbanugo filed numerous prehearing motions and received a 2-week-long evidentiary hearing, during which Igbanugo offered many exhibits, testified on his own behalf, and called several of his own witnesses. *See id.* (determining that an attorney received due process when he "had the benefit of an evidentiary hearing before a neutral fact-finder," "presented witnesses on his own behalf, cross-examined witnesses testifying against him, and admitted exhibits into evidence"). Accordingly, Igbanugo's procedural due process rights were not violated.[14]

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[14] Igbanugo also makes a substantive due process argument, though the argument is difficult to decipher. Igbanugo makes arguments that we addressed in the evidentiary section. Because Igbanugo provides no legal citation supporting his contention that these evidentiary decisions amounted to separate, constitutional violations, his substantive due process arguments related to these rulings are forfeited. *See McCloud*, 955 N.W.2d at 280 n.12 (deeming an argument forfeited because the attorney provided "no argument or citation to authority supporting this conclusion").

Igbanugo also claims that when prosecutors misstate the law, it is unfair and violates due process, so the Director's numerous purportedly false statements about immigration law violated Igbanugo's substantive due process rights. While Igbanugo does support this argument by citing to federal case law, Igbanugo failed to raise this argument in his principal brief, so the argument is forfeited. *See Anda*, 789 N.W.2d at 887 (holding that issues not raised or argued in a principal brief cannot be raised in a reply brief). Consequently, both of Igbanugo's substantive due process arguments are forfeited.

IV.

Finally, we consider the appropriate discipline for Igbanugo's misconduct. The referee recommended an indefinite suspension with no right to petition for reinstatement for 10 months. Igbanugo argued during oral argument that no discipline is warranted. The Director argues an indefinite suspension of at least 12 months is warranted given the nature of the misconduct, the vulnerability of the clients, and the presence of multiple aggravating factors.

Although we give great weight to the referee's recommendation for discipline, we retain the "ultimate responsibility for determining appropriate discipline." *In re Montez*, 812 N.W.2d 58, 66 (Minn. 2012). The purpose of disciplinary sanctions is to protect the public and judicial system and to deter future misconduct by attorneys—not to punish the attorney. *In re Vaught*, 693 N.W.2d 886, 890 (Minn. 2005). We consider four factors when imposing discipline: (1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violation; (3) the harm to the public; and (4) the harm to the legal profession. *Butler*, 960 N.W.2d at 552. We also consider aggravating and mitigating factors. *Id.* Additionally, we consult similar cases and attempt to impose consistent discipline, but the proper discipline is ultimately determined "based on the unique facts and circumstances of each case." *In re Matson*, 889 N.W.2d 17, 25 (Minn. 2017) (citation omitted) (internal quotation marks omitted).

A.

We begin with the nature of Igbanugo's misconduct. Igbanugo's misconduct involves his representation of clients in immigration matters. We have held that such

misconduct has "potentially grave consequences" and can put clients at "risk for deportation or removal." *In re Fru*, 829 N.W.2d 379, 388–89 (Minn. 2013). We have suspended and disbarred lawyers for such misconduct. *Id.* at 388–89. Igbanugo's misconduct also includes numerous false statements to clients, which "is misconduct of the highest order and warrants severe discipline." *See In re Ruffenach*, 486 N.W.2d 387, 391 (Minn. 1992) ("Honesty and integrity are chief among the virtues the public has a right to expect of lawyers."). Igbanugo also failed to perform work on client matters and failed to communicate with clients, which constitutes client neglect and "independently warrants discipline." *In re Capistrant*, 905 N.W.2d 617, 620–21 (Minn. 2018); *see also In re Rymanowski*, 809 N.W.2d 217, 224 (Minn. 2012) ("Depending on the severity, client neglect alone may also warrant indefinite suspension or disbarment."). "We have also recognized that the failure to communicate with clients can be serious misconduct." *Nielson*, 977 N.W.2d at 612.

B.

We next consider the cumulative weight of Igbanugo's disciplinary violations. We distinguish between "a brief lapse in judgment or a single, isolated incident and multiple instances of misconduct occurring over a substantial amount of time." *In re Pearson*, 888 N.W.2d 319, 322 (Minn. 2016) (citation omitted) (internal quotation marks omitted). The referee found Igbanugo committed 50 rule violations between 2011 and 2018. Igbanugo's actions, spanning multiple years and multiple client matters, clearly involve multiple instances of misconduct over a substantial amount of time. *See Capistrant*, 905 N.W.2d at 621 (concluding that while misappropriation only occurred once, the

misconduct was neither a "brief lapse in judgment" nor a "single, isolated incident" because other misconduct spanned 2 years).

C.

Next, we evaluate the harm that Igbanugo's misconduct caused to the public and to the legal profession. In assessing harm, we consider how many and to what extent clients were harmed. *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011). The Director contends that Igbanugo's clients paid large sums of money, suffered hardships to make payments, and suffered emotional turmoil based on Igbanugo's actions. Igbanugo argues that the narrative that his clients suffered financial hardship to pay his fees is not true, and that they would have been required to make these sacrifices regardless of who they obtained as an attorney. Additionally, Igbanugo seems to suggest he did not harm his clients because he did not "afflict false hope"; rather, he gave them the requisite hope given that he is "successful [in] upwards of 90%" of his actions.

Igbanugo's actions resulted in significant harm to his clients. Someone from each client's family testified about the financial impact Igbanugo's actions caused on these families, and his clients testified about the emotional distress and turmoil Igbanugo caused them. For example, O.O.C. testified that her family made sacrifices to pay Igbanugo: they never went out to eat, they had to get rid of utilities like cable, and they fell behind on rent payments. O.O.C. also testified that she was shocked when Igbanugo told her she could not adjust her status—she thought she was misunderstanding him and felt "like the building was falling apart and that all [her] hope and all the happiness that [she] had" just dropped

away. O.O.C. explained she felt "[g]uilt, sadness, [and] rage," and it was a "pretty stressful" experience for her entire family.

Igbanugo's misconduct was also detrimental to the public's respect for the legal profession and the judicial system as a whole. *In re Jaeger*, 834 N.W.2d 705, 710–11 (Minn. 2013). Igbanugo made numerous false statements to his clients. *See In re Sea*, 932 N.W.2d 28, 36 (Minn. 2019) (holding that an attorney's false statements to the court and others undermined public confidence in the judicial system). Additionally, Igbanugo lacked diligence and promptness. Neglect undermines the public's "confidence in the legal profession, which harms the public, the legal profession and the justice system." *In re Paul*, 809 N.W.2d 693, 705 (citation omitted) (internal quotation marks omitted). Consequently, harm to Igbanugo's clients and the legal profession favors more significant discipline.

D.

To determine the appropriate discipline, we also must examine any mitigating and aggravating factors. The referee found no mitigating factors and Igbanugo does not make any arguments about mitigating factors.

The referee found five aggravating factors: (1) lack of remorse, (2) indifference to restitution, (3) client vulnerability, (4) substantial experience in the area of law, and (5) prior discipline. Igbanugo challenges only one of them—lack of remorse.[15]

[15] Given that Igbanugo only addresses one aggravating factor, we likely need not consider the remaining factors. Even so, we briefly address them. "[I]ndifference or unwillingness to make restitution" is an aggravating factor, and the referee made multiple

We consider an attorney's lack of remorse to be an aggravating factor. *In re Winter*, 770 N.W.2d 463, 468 (Minn. 2009). Igbanugo claims that he apologized to his clients, but the only "evidence" he points to are his apologies to clients during his cross-examination of witnesses at the evidentiary hearing. Igbanugo's statements, however, were not enough to be sincere or to prove that the referee's finding of this aggravating factor was erroneous. Moreover, Igbanugo's clients testified that he never apologized to them. The referee's finding that Igbanugo lacked remorse therefore is not clearly erroneous.

E.

Finally, we consider similar cases "to ensure that our disciplinary decision is consistent with prior sanctions." *In re Nathanson*, 812 N.W.2d 70, 80 (Minn. 2012). Many cases provide insight in determining the appropriate discipline for Igbanugo.

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findings that Igbanugo failed to refund his clients promptly or accurately after termination of representation. *In re Udeani*, 945 N.W.2d 389, 398–99 (Minn. 2020).

We have held that the vulnerability of immigration clients is an aggravating factor. *See Fru*, 829 N.W.2d at 390 (explaining that "[w]e are particularly troubled by the fact that Fru's misconduct threatened the immigration status of many of his clients," and that those "clients were vulnerable and depended on him to guide them through the complex—and often punitive—maze of federal immigration law" (citation omitted) (internal quotation marks omitted)).

Substantial experience practicing law is also an aggravating factor. *In re Tigue*, 900 N.W.2d 424, 432 (Minn. 2017). Igbanugo's 34-years of experience as an attorney is substantial and particularly noteworthy because much of his experience was practicing immigration law. *See In re Ulanowski*, 800 N.W.2d 785, 802 (Minn. 2011) (finding 6 years after admission to practice law and 2 years of full-time practice at the time of his first act of misconduct was an aggravating factor); *In re Kaszynski*, 620 N.W.2d 708, 713 (Minn. 2001) (holding that 15 years of practice aggravated the sanction).

Finally, prior discipline is an aggravating factor. *See*, *e.g.*, *Capistrant*, 905 N.W.2d at 622 (finding that previous discipline "weighs heavily" because it was for similar conduct). Igbanugo has four instances of prior discipline.

In *Fru*, an immigration attorney committed misconduct across eight client matters by engaging in a pattern of neglect, incompetence, and noncommunication; lying to several clients and the court; disobeying court rules; failing to properly handle client funds; engaging in the unauthorized practice of law; and failing to cooperate with discipline investigations. 829 N.W.2d at 381–87, 389. The selfish nature of the misconduct, the attorney's lack of remorse, and the vulnerability of clients aggravated the misconduct. *Id.* at 389–90. We imposed a 2-year suspension. *Id.* at 391. Igbanugo's misconduct spanned a similar amount of client matters and encompassed some of the same forms of misconduct. Igbanugo, however, did not disobey court rules, fail to properly handle client funds, engage in the unauthorized practice of law, nor fail to cooperate with discipline investigations.

In *In re Walsh*, the attorney committed misconduct in five client matters over the span of 8 years by lacking diligence, acting in bad faith, chronically violating court orders and rules, and making a false statement to opposing counsel. 872 N.W.2d 741, 749–50 (Minn. 2015). The attorney's continued misconduct during disciplinary proceedings, lack of remorse, and substantial experience aggravated the misconduct. *Id.* We imposed a 6-month suspension. *Id.* Igbanugo's actions affected a similar number of clients over a similar course of years, but Igbanugo's rule violations are more voluminous, and Igbanugo's case involves more aggravating factors.

In *Udeani*, an immigration attorney committed various forms of misconduct across 16 client matters by providing incompetent representation, neglecting clients, failing to communicate with clients, failing to return unearned fees, failing to properly supervise nonlawyers, failing to safeguard funds and maintain trust-account related records, ignoring

a conflict of interest, and failing to cooperate in disciplinary investigations. 945 N.W.2d at 396–97. The attorney's misconduct was aggravated by his history of prior discipline, the similarity of current and prior misconduct, committing misconduct while on probation, the vulnerability of clients, a lack of remorse, and failure to cooperate with disciplinary proceedings. *Id*. at 398. We imposed a 3-year suspension. *Id.* at 399–400. Igbanugo's actions did not rise to the level of this case; Igbanugo's case involves fewer clients, fewer rule violations, and fewer aggravating factors.

In *Nielson*, a lawyer from Igbanugo's firm committed multiple rule violations in two client matters by failing to keep the clients informed, failing to explain matters to clients, failing to ensure non-lawyers acted in a manner compatible with professional obligations, and giving clients false and misleading information. 977 N.W.2d at 607. The attorney's misconduct was aggravated by the clients' particular vulnerability and a lack of remorse. *Id.* at 613. We imposed a 30–day suspension. *Id.* at 614. Igbanugo's case is more severe than *Nielson*; Igbanugo committed many more rule violations across more client matters, and Igbanugo's case involves more aggravating factors.

We believe that a suspension is appropriate based on the facts and circumstances of this case. In addition, significant aggravating factors are present and there are no mitigating factors. We therefore agree with the referee that the appropriate discipline is an indefinite suspension with no right to petition for reinstatement for 10 months.

Accordingly, we order that:

1. Respondent Herbert Azubuike Igbanugo is suspended from the practice of law, effective 14 days from the date of this opinion, with no right to petition for reinstatement for 10 months.

2. Respondent may petition for reinstatement pursuant to Rule 18(a)–(d), RLPR. Reinstatement is conditioned on successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility, *see* Rule 18(e)(2), RLPR; Rule 4.A.(5), Rules for Admission to the Bar (requiring evidence that an applicant has successfully completed the Multistate Professional Responsibility Examination), and satisfaction of continuing legal education requirements, *see* Rule 18(e)(4), RLPR.

3. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals), and shall pay $900 in costs pursuant to Rule 24, RLPR.

Suspended.

Chapter 2 - Eligibility Requirements

A noncitizen must meet certain eligibility requirements to adjust status to that of a lawful permanent resident (LPR).

INA 245(a) Adjustment of Status Eligibility Requirements
The applicant must have been: • Inspected and admitted into the United States; or • Inspected and paroled into the United States.
The applicant must properly file an adjustment of status application.
The applicant must be physically present in the United States.
The applicant must be eligible to receive an immigrant visa.
An immigrant visa must be immediately available when the applicant files the adjustment of status application[1] and at the time of final adjudication.[2]
The applicant must be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.

INA 245(a) Adjustment of Status Eligibility Requirements
The applicant merits the favorable exercise of discretion.[3]

A. “Inspected and Admitted” or “Inspected and Paroled”

In 1960, Congress amended INA 245(a) and made adjustment of status available to any otherwise eligible applicant who has been “inspected and admitted or paroled” into the United States.[4] Since 1960, the courts, legacy Immigration and Naturalization Service, and USCIS have read the statutory language “inspected and admitted or paroled” as:

- Inspected and admitted into the United States; or
- Inspected and paroled into the United States.

This requirement must be satisfied before the noncitizen applies for adjustment of status.[5] If an applicant has not been inspected and admitted or inspected and paroled before filing an adjustment application, the officer must deny the adjustment application.[6]

The inspected and admitted or inspected and paroled requirement does not apply to the following noncitizens seeking adjustment of status:

- INA 245(i) applicants; and
- Violence Against Women Act (VAWA) applicants.[7]

Special immigrant juveniles (SIJ) and other special immigrants are not exempt from this requirement. However, statutory provisions expressly state that these special immigrants are considered paroled for adjustment eligibility purposes. Accordingly, the beneficiaries of approved SIJ petitions meet the inspected and admitted or inspected and paroled requirement, regardless of their manner of arrival in the United States. [8] Certain special immigrants also meet this requirement.[9]

1. Inspection

Authority

Per delegation by the Secretary of Homeland Security, U.S. Customs and Border Protection (CBP) has jurisdiction over and exclusive inspection authority at ports-of-entry.[10]

Definition and Scope

Inspection is the formal process of determining whether a noncitizen may lawfully enter the United States. Immigration laws as early as 1875 specified that inspection must occur prior to a noncitizen’s landing in or entering the United States and that prohibited noncitizens were to be returned to the country from which they came at no cost or penalty to the conveyor or vessel.[11] Inspections for air, sea, and land arrivals are now codified in the Immigration and Nationality Act (INA), including criminal penalties for illegal entry.[12]

To lawfully enter the United States, a noncitizen must apply and present himself or herself in person to an immigration officer at a U.S. port of entry when the port is open for inspection.[13] A noncitizen who arrives at a port of entry and presents himself or herself for inspection is an applicant for admission. Through the inspection process, an immigration officer determines whether the noncitizen is admissible and may enter the United States under all the applicable provisions of immigration laws.

As part of the inspection, the noncitizen must:

- Present any and all required documentation, including fingerprints, photographs, other biometric identifiers, documentation of status in the United States, and any other requested evidence to determine the noncitizen's identity and admissibility; and
- Establish that he or she is not subject to removal under immigration laws, Executive Orders, or Presidential Proclamations.[14]

In general, if the noncitizen presents himself or herself for questioning in person, the inspection requirement is met.[15] Nonetheless, if the noncitizen enters the United States by falsely claiming U.S. citizenship, the noncitizen is not considered to have been inspected by an immigration officer. In addition, the entry is not considered an admission for immigration purposes.[16]

Inspection Outcomes

Upon inspection, the officer at the port of entry typically decides one of the following outcomes for the noncitizen:

- The officer admits them;
- The officer paroles them;
- The officer allows them to withdraw his or her application for admission and depart immediately from the United States;[17]
- The officer denies them admission into the United States; or
- The officer defers the inspection to a later time at either the same or another CBP office or a port of entry.[18]

2. Admission[19]

A noncitizen is admitted if the following conditions are met: [20]

- The noncitizen applied for admission as an "alien" at a port of entry; and
- An immigration officer inspected the applicant for admission as an "alien" and authorized him or her to enter the United States in accordance with the procedures for admission.[21]

A noncitizen who meets these two requirements is admitted, even if the person obtained the admission by fraud.[22] Likewise, the noncitizen is admitted, even if the CBP officer performed a cursory inspection.

As long as the noncitizen meets the procedural requirements for admission, the noncitizen meets the inspected and admitted requirement for adjustment of status.[23] Any type of admission can meet the

inspected and admitted requirement, which includes, but is not limited to, admission as a nonimmigrant, an immigrant, or a refugee.

Notwithstanding, if the noncitizen makes a false claim to U.S. citizenship or to U.S. nationality at the port of entry and an immigration officer permits the noncitizen to enter the United States, the noncitizen has not been admitted.[24] A U.S. citizen arriving at a port of entry is not subject to inspection; therefore, a noncitizen who makes a false claim to U.S. citizenship is considered to have entered without inspection.[25]

Similarly, a noncitizen who entered the United States after falsely claiming to be a returning LPR is not considered to have been procedurally inspected and admitted because a returning LPR generally is not an applicant for admission.[26] An LPR returning from a temporary trip abroad would only be considered to be seeking admission or readmission to the United States if any of the following factors applies:

- The LPR has abandoned or relinquished his or her LPR status;
- The LPR has been absent from the United States for a continuous period in excess of 180 days;
- The LPR has engaged in illegal activity after having departed the United States;
- The LPR has departed from the United States while under legal process seeking his or her removal from the United States, including removal proceedings under the INA and extradition proceedings;
- The LPR has committed an offense described in the criminal-related inadmissibility grounds, unless the LPR has been granted relief for the offense;[27] or
- The LPR is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.[28]

Evidence of Admission

An Arrival/Departure Record (Form I-94), including a replacement,[29] when appropriate, is the most common document evidencing a noncitizen's admission.[30] The following are other types of documentation that may be accepted as proof of admission into the United States:

- Admission stamp in passport, which may be verified using DHS systems;
- Employment Authorization Card (Form I-688A), for special agricultural worker applicants, provided it was valid during the last claimed date of entry on the adjustment application;
- Temporary Resident Card (Form I-688), for special agricultural workers or legalization applicants granted temporary residence, provided it was valid during the last claimed date of entry on the adjustment application; and
- Border Crossing Card (Form I-586 or Form DSP-150[31]), provided it was valid on the date of last claimed entry.

When inspected and admitted to the United States, the following nonimmigrants are exempt from the issuance of an Arrival/Departure Record:[32]

- A Canadian citizen admitted as a visitor for business, visitor for pleasure, or who was permitted to directly transit through the United States;
- A nonimmigrant residing in the British Virgin Islands who was admitted only to the United States Virgin Islands as a visitor for business or pleasure;[33]
- A Mexican national admitted with a B-1/B-2 Visa and Border Crossing Card (Form DSP-150) at a land or sea port of entry as a visitor for business or pleasure for a period of 30 days to travel within 25 miles of the border; and
- A Mexican national in possession of a Mexican diplomatic or official passport.[34]

In these situations, an applicant should submit alternate evidence to prove his or her inspection and admission to the United States. This may include a Border Crossing Card, plane tickets evidencing travel to the United States, or other corroborating evidence.

3. Parole

Authority

The Secretary of Homeland Security delegated parole authority to USCIS, CBP, and U.S. Immigration and Customs Enforcement (ICE).[35]

Definition and Scope

A noncitizen is paroled if the following conditions are met:

- They are seeking admission to the United States at a port of entry; and
- An immigration officer inspected them as an "alien" and permitted them to enter the United States without determining whether they may be admitted into the United States.[36]

A grant of parole is a temporary and discretionary act exercised on a case-by-case basis. Parole, by definition, is not an admission.[37]

Paroled for Deferred Inspection[38]

On occasion, CBP grants deferred inspection to arriving aliens found inadmissible during a preliminary inspection at a port of entry. Deferred inspection is generally granted only after CBP:

- Verifies the person's identity and nationality;
- Determines that the person would likely be able to overcome the identified inadmissibility by obtaining a waiver or additional evidence; and
- Determines that the person does not present a national security risk to the United States.

The decision to defer inspection is at the CBP officer's discretion.

If granted deferred inspection, CBP paroles the person into the United States and defers completion of the inspection to a later time. A person paroled for a deferred inspection typically reports for completion of

inspection within 30 days of the deferral[39] to a CBP office with jurisdiction over the area where the person will be staying or residing in the United States.[40]

The grant of parole for a deferred inspection satisfies the "inspected and paroled" requirement for purposes of adjustment eligibility.[41]

Urgent Humanitarian Reasons or Significant Public Benefit

DHS may parole a noncitizen based on urgent humanitarian or significant public benefit reasons.[42] DHS may grant urgent humanitarian or significant public benefit parole only on a case-by-case basis.[43] Any type of urgent humanitarian, significant public benefit, or deferred inspection-directed parole meets the "paroled into the United States" requirement.[44]

Parole in Place: Parole of Certain Noncitizens Present Without Admission or Parole

A noncitizen who is present in the United States without inspection and admission or inspection and parole is an applicant for admission.[45] DHS can exercise its discretion to parole such a person into the United States.[46] In general, USCIS grants parole in place only sparingly.

The fact that a person is a spouse, child, or parent of an active duty member of the U.S. armed forces, a member in the Selected Reserve of the Ready Reserve, or someone who previously served in the U.S. armed forces or the Selected Reserve of the Ready Reserve ordinarily weighs heavily in favor of parole in place. Absent a criminal conviction or other serious adverse factors, parole in place would generally be an appropriate exercise of discretion for such a person.

If DHS grants parole before a person files an adjustment application, the applicant meets the "inspected and paroled" requirement for adjustment. Parole in place does not permit approval of an adjustment application that was filed before the grant of parole.[47]

Parole in place does not relieve the applicant of the need to meet all other eligibility requirements for adjustment of status and the favorable exercise of discretion.[48] For example, except for immediate relatives and certain other immigrants, an applicant must have continuously maintained a lawful status since entry into the United States.[49]

Conditional Parole

Conditional parole is also known as release from custody. This is a separate and distinct process from parole and does not meet the "inspected and paroled" requirement for adjustment eligibility.[50]

Evidence of Parole

Evidence of parole includes:

- A parole stamp on an advance parole document;[51]
- A parole stamp in a passport; or
- An Arrival/Departure Record (Form I-94) endorsed with a parole stamp.[52]

4. Commonwealth of the Northern Mariana Islands

A Commonwealth of the Northern Mariana Islands (CNMI) applicant who is granted parole meets the inspected and paroled requirement. On May 8, 2008, the Consolidated Natural Resources Act was signed into law, which replaced the CNMI's prior immigration laws and extended most U.S. immigration law provisions to the CNMI for the first time in history.[53] The transition period for implementation of U.S. immigration law in the CNMI began on November 28, 2009.

As of that date, all noncitizens present in the CNMI (other than LPRs) became present in the United States by operation of law without admission or parole. In recognition of the unique situation caused by the extension of U.S. immigration laws to the CNMI, all noncitizens present in the CNMI on or after that date who apply for adjustment of status are considered applicants for admission[54] to the United States and are eligible for parole.

Because of these unique circumstances, USCIS grants parole to applicants otherwise eligible to adjust status to serve as both an inspection and parole for purposes of meeting the requirements for adjustment. Under this policy, the USCIS Guam Field Office or the USCIS Saipan Application Support Center grants parole to an applicant otherwise eligible for parole and adjustment immediately prior to approving the adjustment of status application.

5. Temporary Protected Status

A grant of temporary protected status (TPS)[55] is not, in itself, an admission for purposes of adjustment under INA 245(a).[56]

Therefore, a noncitizen who entered the United States without having been inspected and admitted or inspected and paroled, and who is subsequently granted TPS, does not meet the inspected and admitted or inspected and paroled requirement under INA 245(a) for adjustment.[57] However, a grant of TPS does not prevent a noncitizen from demonstrating eligibility for INA 245(a) adjustment if the noncitizen was inspected and admitted or inspected and paroled when last entering the United States.

For purposes of adjustment of status under INA 245, a noncitizen with TPS is considered as being in and maintaining lawful status as a nonimmigrant only during the period that TPS is in effect.[58] TPS does not cure any previous failure to maintain continuously a lawful status in the United States.[59]

Admission Following Travel Abroad with Prior Consent

TPS beneficiaries may travel abroad temporarily with the prior consent of DHS under INA 244(f)(3).[60] When DHS provides prior consent to a TPS beneficiary to travel abroad, it documents that consent by issuing a TPS travel authorization document to the beneficiary.[61] Upon returning to the United States in accordance with the terms of DHS's prior authorization, a TPS beneficiary must be inspected and admitted into TPS, with certain exceptions.[62] TPS beneficiaries whom DHS has inspected and admitted into TPS after such authorized travel are "inspected and admitted" for purposes of adjustment of status under INA 245(a).[63] This is true even if the TPS beneficiary was present without admission or parole when initially granted TPS.[64] However, travel with TPS authorization does not execute an outstanding removal order.[65]

Past Treatment of Travel Abroad with Prior Consent

Previously, USCIS issued TPS beneficiaries advance parole documents under 8 CFR 244.15, which references the advance parole provisions as the procedure to authorize travel. Upon returning from abroad, TPS beneficiaries with advance parole documents were inspected and, if eligible, paroled into the

United States. The treatment of such parole for purposes of INA 245(a) varied over the years, as summarized in the table below.

Effect of Authorized Travel on TPS Beneficiaries Under Applicable Policy

Date of Departure	Did Parole or Admission Upon Return Satisfy INA 245(a)?
From December 12, 1991, until February 25, 2016	While there was no stated agency policy, noncitizens were generally considered paroled for the purpose of INA 245(a) (regardless of whether the beneficiary had been admitted or paroled before departing).
From February 25, 2016, until August 20, 2020	Yes, regardless of whether the beneficiary had been admitted or paroled before departing.[66]
After August 20, 2020, until July 1, 2022	No, the beneficiary's status as admitted or paroled for INA 245(a) was unchanged by travel.[67]
On or after July 1, 2022	Yes, regardless of whether the beneficiary had been admitted or paroled before departing.[68]

Retroactive Application of Current Policy

In some cases, explained below, USCIS applies the current policy retroactively and considers past travel to have resulted in an inspection and admission for purposes of INA 245(a), even if the policy or practice in place at the time the travel occurred instructed otherwise.

Past travel must meet each of the following requirements to be considered for retroactive application of current guidance:

- The noncitizen obtained prior authorization to travel abroad temporarily on the basis of being a TPS beneficiary;[69]
- The noncitizen's TPS was not withdrawn, or the designation for their foreign state (or part of a foreign state) was not terminated or did not expire during their travel;[70]
- The noncitizen returned to the United States in accordance with the authorization to travel; and
- Upon return, the noncitizen was inspected by INS or DHS at a designated port of entry and paroled or otherwise permitted to pass into the territorial boundaries of the United States in accordance with the TPS-based travel authorization.[71]

If the past travel does not meet each of these requirements, USCIS applies the policy that was in effect at the time of departure.[72] If the past travel does meet each of these requirements, USCIS will consider retroactive application of the current guidance.

In cases arising in the Fifth Circuit, USCIS treats the authorized reentry after any qualifying prior travel as an inspection and admission, regardless of the procedure used when the TPS beneficiary was permitted to reenter the United States and regardless of whether the travel documentation refers to advance parole.[73]

Elsewhere, USCIS determines on a case-by-case basis whether a noncitizen who was paroled or otherwise permitted to enter after TPS-authorized travel under prior guidance should be treated as inspected and admitted for purposes of a given adjudication. USCIS makes the determination to apply this guidance retroactively based on the circumstances of the individual case, with consideration of any reliance on the prior policy, applicable law, and any other factors relevant to the individual application.

In cases arising outside of the Fifth Circuit, the officer first considers whether treating qualifying prior travel as an admission, rather than parole, is necessary for the approval of the application. In most cases, whether the prior entry is treated as an admission or a parole does not affect the outcome of an application for adjustment of status under INA 245(a).[74] If the distinction between admission and parole does not affect the outcome, the officer does not make a retroactivity determination.

Where the distinction between admission and parole is critical to the outcome of the adjudication, the officer assesses the individual case to determine whether to consider a prior return from TPS-authorized travel as an admission. In most instances, when the officer determines that an applicant meets all other eligibility requirements and merits adjustment of status in the exercise of discretion, it would be appropriate for the officer, on a case-by-case basis, to deem the prior parole to be an admission under the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA).[75]

Five-Factor Test for Retroactivity Determination (Retail Union Test)

The officer must apply the following five-factor test in any retroactivity determination for adjustment of status applications arising outside of the Fifth Circuit:[76]

- Factor 1: Whether the effect of TPS-authorized travel has previously been considered;
- Factor 2: Whether the new policy regarding the effect of TPS-authorized travel represents an abrupt departure from well-established practice or merely attempts to clarify an unsettled area of law;
- Factor 3: The extent to which the adjustment of status applicant to whom the new policy would apply relied on the former rule;[77]
- Factor 4: The burden (if any) that retroactive application of the policy would impose on the adjustment of status applicant; and
- Factor 5: The statutory interest in applying the new policy despite the applicant's reliance on the old policy.[78]

In the context of an adjustment of status application involving prior TPS-authorized travel, consideration of factors 1, 2, and 5 should be consistent across most cases:

- The effect of TPS-authorized travel under MTINA is not a question of first impression, as USCIS and INS had prior policy and practice on the question (factor 1);
- USCIS' adoption of the interpretation described in this guidance is a change from USCIS' prior practice and guidance (factor 2); and

- There is a strong statutory interest in applying the best interpretation of the statute (factor 5).

While factors 1 and 2 may weigh against retroactive application of this policy change, factor 5 generally weighs in favor of retroactive application.

The officer also considers whether a particular applicant relied on either *Matter of Z-R-Z-C-* or DHS's prior use of advance parole to implement TPS travel (factor 3).[79] If the applicant did rely on past policy or practice, the officer considers whether retroactive application of the new policy would negatively affect or otherwise burden the applicant due to such reliance (factor 4).

Accordingly, retroactivity determinations usually center on factors 3 and 4. In most cases the change in interpretation does not create a significant burden on the applicant but is instead favorable to the applicant, and the officer may deem a prior parole an admission for purposes of the adjustment of status application.

In the rare event that a TPS beneficiary relied on being paroled into the United States, rather than being inspected and admitted, in a way that negatively impacts eligibility for adjustment of status, the officer weighs the negative impact against the other factors in the *Retail Union* test on a case-by-case basis.[80] In this assessment, the negative impact carries significant weight, and because factors 1 and 2 also weigh against retroactivity, officers should generally avoid retroactive application if the applicant would be harmed.[81] However, if the harm in a particular case is outweighed by the other factors, then the officer may deem a prior parole an admission in that case.

USCIS expects that, under the *Retail Union* test, retroactive application of the current policy is appropriate in most adjustment of status applications and favorable to the applicants.

6. Asylum[82]

An asylee whose adjustment application is based on his or her asylee status adjusts under INA 209(b).[83] An asylee, however, may seek to adjust under INA 245(a) if the asylee prefers to adjust on a basis other than the asylee's status. This may arise in cases where, for example, an asylee marries a U.S. citizen and subsequently seeks to adjust status as an immediate relative of a U.S. citizen rather than under the asylee provision. In order to adjust under INA 245(a), however, the asylee must meet the eligibility requirements that apply under that provision.

There may be circumstances where asylees are not able to meet certain requirements for adjustment under INA 245(a). For instance, a noncitizen who enters without inspection and is subsequently granted asylum does not satisfy the inspected and admitted or inspected and paroled requirement.[84] On the other hand, an asylee who departs the United States and is admitted or granted parole upon return to a port of entry meets the inspected and admitted or inspected and paroled requirement.

7. Waved Through at Port-of-Entry

In some cases, a noncitizen may claim that he or she arrived at a port of entry and presented himself or herself for inspection as a noncitizen, but the inspector waved (allowed to pass) him or her through the port of entry without asking any questions.

Where a noncitizen physically presents himself or herself for questioning and makes no knowing false claim to U.S. citizenship, the noncitizen is considered to have been inspected even though he or she

volunteers no information and is asked no questions by the immigration authorities. Such a noncitizen satisfies the inspected and admitted requirement of INA 245(a), as long as the noncitizen sufficiently proves that he or she was indeed waved through by an immigration official at a port of entry.[85]

An officer may find that an adjustment applicant satisfies the inspected and admitted requirement based on a claim that he or she was waved through at a port of entry if:

- The applicant submits evidence to support the claim, such as third-party affidavits from those with personal knowledge of the facts stated in the affidavits and corroborating documentation; and
- The officer determines that the claim is credible.[86]

The burden of proof is on the applicant to establish eligibility for adjustment of status.[87] Accordingly, the applicant must support and sufficiently establish the claim that he or she was admitted as a noncitizen and not as a presumed U.S. citizen. For example, if the applicant was in a car with U.S. license plates and with U.S. citizens onboard, the applicant should submit persuasive evidence to establish he or she physically presented himself or herself to the inspector and was admitted as a noncitizen.[88]

B. Properly Filing an Adjustment Application

To adjust status, a noncitizen must file an Application to Register Permanent Residence or Adjust Status (Form I-485) in accordance with the form instructions. The adjustment application must be properly signed and accompanied by the appropriate fee.[89] The application must be filed at the correct filing location, as specified in the form instructions. USCIS rejects adjustment applications if the application is:

- Filed at an incorrect location;
- Not filed with the correct fee, unless granted a fee waiver;
- Not properly signed; or
- Filed when an immigrant visa is unavailable.[90]

C. Eligible to Receive an Immigrant Visa

1. General Eligibility for an Immigrant Visa

An adjustment applicant must be eligible to receive an immigrant visa. An applicant typically establishes eligibility for an immigrant visa through an immigrant petition in one of the categories listed in the table below.

Eligibility to Receive an Immigrant Visa

Immigrant Category	Petition	Who May Qualify

Immigrant Category	Petition	Who May Qualify
Family-Based	Petition for Alien Relative (Form I-130)	• Immediate relatives of U.S. citizens[91] • Unmarried sons and daughters of U.S. citizens (21 years of age and older) • Spouses and unmarried children (under 21 years of age) of LPRs • Unmarried sons and daughters of LPRs • Married sons and daughters of U.S. citizens • Brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age or older)
Family-Based	Petition for Alien Fiancé(e) (Form I-129F)	• Fiancé(e) of a U.S. citizen
Family-Based	Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)	• Widow or widower of a U.S. citizen • VAWA self-petitioners
Employment-Based	Immigrant Petition for Alien Worker (Form I-140)	• Priority workers • Members of the professions holding an advanced degree or persons of exceptional ability • Skilled workers, professionals, and other workers
Employment-Based	Immigrant Petition by Standalone Investor (Form I-526)	• Standalone Investors
Employment-Based	Immigrant Petition by Regional Center Investor (Form I-526E)	• Regional Center Investors

Immigrant Category	Petition	Who May Qualify
Special Immigrants	Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)	• Religious workers • Certain international employees • Panama Canal Zone employees • Certain physicians • International organization officers and employees • Special immigrant juveniles • Certain U.S. armed forces members • Certain broadcasters • Certain Afghanistan and Iraq nationals
Diversity Immigrant Visa[92]	Not applicable (Diversity visas do not require a USCIS-filed petition)	• Diversity immigrants

2. Dependents

The spouse and children of certain family-based, employment-based, and Diversity Immigrant Visa adjustment applicants may also obtain LPR status through their relationship with the principal applicant. Because the spouse and children do not have an independent basis to adjust status apart from their relationship to the principal immigrant, they are "dependents" of the principal for purpose of eligibility for adjustment of status.

Dependents do not have their own underlying immigrant petition and may only adjust based on the principal's adjustment of status. In general, dependent applicants must have the requisite relationship to the principal both at the time of filing the adjustment application and at the time of final adjudication.[93]

3. Concurrent Filing

The immigrant petition establishing the underlying basis to adjust is typically filed before the noncitizen files the adjustment application. In some instances, the applicant may file the adjustment application at the same time the immigrant petition is filed.[94]

D. Immigrant Visa Immediately Available at Time of Filing and at Time of Approval

In general, an immigrant visa must be available before a noncitizen can apply for adjustment of status.[95] An immigrant visa is always available to applicants seeking adjustment as immediate relatives. Visas are numerically limited for most other immigrant categories eligible to adjust; applicants in these numerically limited categories may need to wait until a visa is available before they can file an adjustment application. Furthermore, an immigrant visa must be available for issuance on the date USCIS approves any adjustment application.[96]

E. Admissible to the United States

An adjustment of status applicant must be admissible to the United States.[97] An applicant who is inadmissible may apply for a waiver of the ground of inadmissibility, if a waiver is available, or another form of relief. The applicable grounds of inadmissibility and any available waivers depend on the immigrant category under which the applicant is applying.[98]

F. Bars to Adjustment of Status

An applicant may not be eligible to apply for adjustment of status if one or more bars to adjustment applies.[99] The bars to adjustment of status may apply to applicants who either entered the United States in a particular status or manner, or committed a particular act or violation of immigration law.[100] The table below refers to noncitizens ineligible to apply for adjustment of status, unless otherwise exempt.[101]

Noncitizens Barred from Adjustment of Status

Noncitizen	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
Crewman[102]	245(c)(1)	Only most recent permission to land, or admission prior to filing for adjustment	VAWA-based applicants

Noncitizen	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
In Unlawful Immigration Status on the Date the Adjustment Application is Filed OR Who Failed to Continuously Maintain Lawful Status Since Entry into United States[103] OR Who Continues in, or Accepts, Unauthorized Employment Prior to Filing for Adjustment	245(c)(2)[104]	All entries and time periods spent in the United States (departure and return does not remove the ineligibility)[105]	VAWA-based applicants Immediate relatives[106] Certain special immigrants[107] 245(k) eligible[108]
Admitted in Transit Without a Visa (TWOV)	245(c)(3)	Only most recent admission prior to filing for adjustment	VAWA-based applicants
Admitted as a Nonimmigrant Without a Visa under a Visa Waiver Program[109]	245(c)(4)	Only most recent admission prior to filing for adjustment	VAWA-based applicants Immediate relatives
Admitted as Witness or Informant[110]	245(c)(5)	Only most recent admission prior to filing for adjustment	VAWA-based applicants
Who is Deportable Due to Involvement in Terrorist Activity or Group[111]	245(c)(6)	All entries and time periods spent in the United States	VAWA-based applicant[112]

Noncitizen	INA Section	Entries and Periods of Stay to Consider	Exempt from Bar
Seeking Adjustment in an Employment-based Immigrant Category and Not in a Lawful Nonimmigrant Status	245(c)(7).	Only most recent admission prior to filing for adjustment	VAWA-based applicants Immediate relatives and other family-based applicants Special immigrant juveniles[113] 245(k) eligible[114]
Who has Otherwise Violated the Terms of a Nonimmigrant Visa[115] OR Who has Ever Engaged in Unauthorized Employment[116]	245(c)(8)[117]	All entries and time periods spent in the United States (departure and return does not remove the ineligibility)[118]	VAWA-based applicants Immediate relatives[119] Certain special immigrants 245(k) eligible[120]

In all cases, the applicant is subject to any and all applicable grounds of inadmissibility even if the applicant is not subject to any bar to adjustment, or is exempt from any or all the bars to adjustment.

1. Overlapping Bars

Some bars to adjustment may overlap in their application, despite their basis in separate sections of the law.[121] For example, an applicant admitted under the Visa Waiver Program who overstays the admission is barred by both INA 245(c)(2) and INA 245(c)(4). Because some bars overlap, more than one bar can apply to an applicant for the same act or violation. In such cases, the officer should address each applicable adjustment bar in the denial notice.

2. Exemptions from the Bars[122]

Congress has provided relief from particular adjustment bars to certain categories of immigrants such as VAWA-based adjustment applicants, immediate relatives, and designated special immigrants.

Furthermore, INA 245(k) exempts eligible applicants under the employment-based 1st, 2nd, 3rd and certain 4th preference[123] categories from the INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8) bars. Specifically, an eligible employment-based adjustment applicant may qualify for this exemption if the applicant failed to maintain a lawful status, engaged in unauthorized employment, or violated the terms

of his or her nonimmigrant status (admission under a nonimmigrant visa) for 180 days or less since his or her most recent lawful admission.[124]

Footnotes

[^ 1] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed [7 USCIS-PM A.3(B)].

[^ 2] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 3] See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^ 4] As originally enacted, INA 245(a) made adjustment available only to a noncitizen who "was lawfully admitted…as a bona fide nonimmigrant and who is continuing to maintain that status." See Immigration and Nationality Act of 1952, Pub. L. 82-414 (PDF), 66 Stat. 163, 217 (June 27, 1952). Admission as a bona fide nonimmigrant remained a requirement until 1960. See Pub. L. 86-648 (PDF) (July 14, 1960). Congress amended that threshold requirement several times. The 1960 amendment removed the requirement of admission as a bona fide nonimmigrant.

[^ 5] See 8 CFR 245.1(b)(3).

[^ 6] See legacy Immigration and Naturalization Service (INS) General Counsel Opinion 94-28, 1994 WL 1753132 ("Congress enacted INA 245 in such a manner that persons who entered the U.S. without inspection are ineligible to adjust"). See S. Rep. 86-1651, 1960 U.S.C.C.A.N. 3124, 3136 ("This legislation will not benefit the alien who has entered the United States in violation of the law") and 3137 ("The wording of the amendments is such as not to grant eligibility for adjustment of status to alien crewmen and to aliens who entered the United States surreptitiously"). See *Matter of Robles* (PDF), 15 I&N Dec. 734 (BIA 1976) (explaining that entry into the United States after intentionally evading inspection is a ground for deportation under (then) INA 241(a)(2)).

[^ 7] See INA 245(a).

[^ 8] See INA 245(h)(1), which states that SIJ-based applicants are considered paroled into the United States for purposes of INA 245(a).

[^ 9] See INA 245(g), which holds that certain special immigrants, as defined under INA 101(a)(27)(k), are considered paroled into the United States for purposes of INA 245(a).

[^ 10] See Delegation of Authority to the Commissioner of U.S. Customs and Border Protection, Department of Homeland Security (DHS) Delegation No. 7010.3.

[^ 11] See Section 5 of the Act of March 3, 1875, 18 Stat. 477. See Sections 6, 8, 10, and 11 of the Act of March 3, 1891, 26 Stat. 1084. See Sections 8, 12, 16, and 18 of the Act of February 20, 1907, 34 Stat. 898. See Sections 10, 15, and 16 of the Immigration Act of 1917, Pub. L. 301 (February 5, 1917).

[^ 12] See INA 231-235 and INA 275. See *Matter of Robles* (PDF), 15 I&N Dec. 734 (BIA 1976) (holding that entry into the United States after intentionally evading inspection is a ground for deportation under (then) INA 241(a)(2)).

[^ 13] See 8 CFR 235.1(a). See *Matter of S-* (PDF), 9 I&N Dec. 599 (BIA 1962) (inspection is the process that determines a noncitizen's initial right to enter the United States upon presenting himself or herself for inspection at a port of entry). See *Ex Parte Saadi*, 23 F.2d 334 (S.D. Cal. 1927).

[^ 14] See INA 235(d). See 8 CFR 235.1(f)(1).

[^ 15] See *Matter of Areguillin* (PDF), 17 I&N Dec. 308 (BIA 1980), and *Matter of Quilantan* (PDF), 25 I&N Dec. 285 (BIA 2010), which held that a noncitizen who had physically presented himself or herself for questioning and made no knowing false claim of citizenship had satisfied the inspected and admitted requirement of INA 245(a); alternatively, a noncitizen who gains admission to the U.S. upon a knowing false claim to U.S. citizenship cannot be deemed to have been inspected and admitted. See *Matter of Pinzon* (PDF), 26 I&N Dec. 189 (BIA 2013).

[^ 16] See *Reid v. INS*, 420 U.S. 619, 624 (1975) (a noncitizen who enters the United States based on a false claim to U.S. citizenship is excludable under former INA 212(a)(19), or INA 212(a)(6)(C) today, and considered to have entered without inspection).

[^ 17] See INA 235(a)(4).

[^ 18] Deferred inspection is a form of parole. A noncitizen who is deferred inspection is paroled into the United States for the period of time necessary to complete the inspection. See 8 CFR 235.2(c). For more information on deferred inspection, see Subsection 3, Parole [7 USCIS-PM B.2(A)(3)].

[^ 19] See INA 101(a)(13)(A). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended the statute by changing the concept of "entry" to "admission" and "admitted." See Section 301(a) of IIRIRA, Division C of Pub. L. 104-208 (PDF), 110 Stat. 3009, 3009-575 (September 30, 1996). INA 101(a)(13)(B) clarifies that parole is not admission.

[^ 20] See INA 101(a)(13)(A) ("The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer."). Legislative history does not elaborate on the meaning of "lawful."

[^ 21] See 8 CFR 235.1(f)(1).

[^ 22] See *Matter of Areguilin* (PDF), 17 I&N Dec. 308 (BIA 1980). See INA 291 (burden of proof). See *Emokah v. Mukasey*, 523 F.3d 110 (2nd Cir 2008). While it is an "admission," procuring admission by fraud or willful misrepresentation is illegal and has several consequences. For example, the noncitizen may be inadmissible and removable. See INA 212(a)(6)(C) and INA 237(a)(1)(A).

[^ 23] See *Matter of Quilantan* (PDF), 25 I&N Dec. 289, 290 (BIA 2010). See *Matter of Areguilin* (PDF), 17 I&N Dec. 308 (BIA 1980). See INA 245(a). The noncitizen is not inadmissible as an illegal entrant under INA 212(a)(6)(A)(i). For more information on admissibility, see Volume 8, Admissibility [8 USCIS-PM].

[^ 24] See *Matter of Pinzon* (PDF), 26 I&N Dec. 189 (BIA 2013) (a noncitizen who enters the United States by falsely claiming U.S. citizenship is not deemed to have been inspected by an immigration officer, so the entry is not an "admission" under INA 101(a)(13)(A)).

[^ 25] See *Reid v. INS*, 420 U.S. 619, 624 (1975). See *Matter of S-* (PDF), 9 I&N Dec. 599 (BIA 1962). A noncitizen who makes a false claim to U.S. citizenship is inadmissible for making the claim (INA 212(a)(6)(C)(ii)). The noncitizen may also be inadmissible for presence without admission or parole (INA 212(a)(6)(A)(i)) and unlawful presence after previous immigration violations (INA 212(a)(9)(C)).

[^ 26] Such noncitizens are inadmissible for presence without admission or parole and may be inadmissible for unlawful presence after previous immigration violations. See INA 212(a)(6)(A)(i) and INA 212(a)(9)(C).

[^ 27] See INA 212(a)(2). See INA 212(h) and INA 240A(a).

[^ 28] See INA 101(a)(13)(C). See generally *Matter of Collado-Munoz*, 21 I&N Dec. 1061 (BIA 1997). The noncitizen who enters by making a false claim to LPR status at a port of entry and who is permitted to enter is inadmissible for presence without admission or parole (INA 212(a)(6)(A)(i)) and fraud and misrepresentation (INA 212(a)(6)(C)(i)). The noncitizen may also be inadmissible for unlawful presence after previous immigration violations. See INA 212(a)(9)(C).

[^ 29] This will typically be documented by an approved Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I-102).

[^ 30] CBP or USCIS can issue an Arrival/Departure Record (Form I-94). If admitted to the United States by CBP at an airport or seaport after April 30, 2013, CBP may have issued an electronic Form I-94 to the applicant instead of a paper Form I-94. To obtain a paper version of an electronic Form I-94, visit the CBP website. CBP does not charge a fee for this service. Some travelers admitted to the United States at a land border, airport, or seaport, after April 30, 2013, with a passport or travel document and who were issued a paper Form I-94 by CBP may also be able to obtain a replacement Form I-94 from the CBP website without charge. Applicants may also obtain Form I-94 by filing an Application for Replacement/Initial Nonimmigrant Arrival-Departure Record (Form I-102), with USCIS. USCIS charges a fee for this service.

[^ 31] U.S. Department of State Form DSP-150.

[^ 32] See 8 CFR 235.1(h)(1)(i)-(v).

[^ 33] See 8 CFR 212.1(b).

[^ 34] See 8 CFR 212.1(c).

[^ 35] See Delegation to the Bureau of Citizenship and Immigration Services, DHS Delegation No. 0150.1; Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement, DHS Delegation No. 7030.2; Delegation of Authority to the Commissioner of U.S. Customs and Border Protection, DHS Delegation No. 7010.3.

[^ 36] See INA 212(d)(5)(A).

[^ 37] See INA 101(a)(13)(B) and 212(d)(5)(A).

[^ 38] See 8 CFR 235.2.

[^ 39] CBP generally issues a Notice to Appear 30 days after a person's non-appearance for the deferred inspection, so an officer should review the relevant case and lookout systems for any entries related to CBP.

[^ 40] CBP generally creates either an A-file or T-file to document the deferred inspection.

[^ 41] See legacy Immigration and Naturalization Service (INS) General Counsel Opinion 94-28, 1994 WL 1753132 (whether deferred inspection constitutes parole for purposes of adjustment of status under INA 245).

[^ 42] See INA 212(d)(5).

[^ 43] See INA 212(d)(5).

[^ 44] Only parole under INA 212(d)(5)(A) meets this requirement.

[^ 45] See INA 235(a).

[^ 46] See legacy INS General Counsel Opinion 98-10, 1998 WL 1806685.

[^ 47] As with any immigration benefit request, eligibility for adjustment must exist when the application is filed and continue through adjudication. See 8 CFR 103.2(b)(1).

[^ 48] For example, parole does not erase any periods of prior unlawful status. Therefore, a noncitizen who entered without inspection will remain ineligible for adjustment of status, even after a grant of parole, unless he or she is an immediate relative or falls within one of the other designated exceptions to INA 245(c)(2) or INA 245(c)(8).

[^ 49] See INA 245(c)(2). See Chapter 4, Status and Nonimmigrant Visa Violations (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM B.4].

[^ 50] See INA 236(a)(2)(B). Neither the statute nor regulations deem a release on conditional parole equal to a parole under INA 212(d)(5)(A). Several circuits and the BIA have opined on this and rejected the argument that the two concepts are equivalent processes. See *Ortega-Cervantes v. Gonzales* (PDF), 501 F.3d 1111 (9th Cir. 2007). See *Matter of Castillo-Padilla* (PDF), 25 I&N Dec. 257 (BIA 2010). See *Delgado-Sobalvarro v. Atty. Gen.* (PDF), 625 F.3d 782 (3rd Cir. 2010). See *Cruz Miguel v. Holder*, 650 F.3d 189 (2nd Cir. 2011).

[^ 51] See Authorization for Parole of an Alien into the United States (Form I-512 or I-512L).

[^ 52] See 8 CFR 235.1(h)(2). If a noncitizen was admitted to the United States by CBP at an airport or seaport after April 30, 2012, the noncitizen may have been issued an electronic Form I-94 by CBP, instead of a paper Form I-94. For more information, see the CBP website.

[^ 53] See Consolidated Natural Resources Act of 2008, Pub. L. 110-229 (PDF) (May 8, 2008).

[^ 54] See INA 235(a)(1).

[^ 55] See INA 244. See 8 CFR 244.

[^ 56] On June 7, 2021, the Supreme Court held that a grant of TPS is not an admission, stating that where a noncitizen was not lawfully admitted or paroled, "TPS does not alter that fact." See *Sanchez v. Mayorkas (PDF)*, 141 S.Ct. 1809 (2021). Before this decision, the U.S. Courts of Appeals in the Sixth Circuit, Eighth Circuit, and Ninth Circuit had ruled that a noncitizen who enters the United States without inspection and who is subsequently granted TPS meets the inspected and admitted or inspected and paroled requirement under INA 245(a). USCIS applied these rulings only to applications for adjustment of status filed by applicants residing within these respective jurisdictions. The Supreme Court decision in *Sanchez* overrules the rulings of the Sixth, Eighth, and Ninth Circuits; therefore, on or after June 7, 2021, a grant of TPS is no longer an admission for adjustment of status purposes in any circuit. However, USCIS deems applicants who became lawful permanent residents under the Sixth, Eighth, or Ninth Circuit Court precedents before June 7, 2021, to have been lawfully admitted for permanent residence. See *Flores v.*

USCIS (PDF), 718 F.3d 548 (6th Cir. 2013). See *Velasquez v. Barr (PDF)*, 979 F.3d 572 (8th Cir. 2020). See *Ramirez v. Brown (PDF)*, 852 F.3d 954 (9th Cir. 2017).

[^ 57] See *Sanchez v. Mayorkas (PDF)*, 141 S.Ct. 1809 (2021). See *Matter of H-G-G-*, 27 I&N Dec. 617 (AAO 2019).

[^ 58] See INA 244(f)(4). See 8 CFR 244.10(f)(2)(iv).

[^ 59] See *Matter of H-G-G-*, 27 I&N Dec. 617 (AAO 2019).

[^ 60] See INA 244(f)(3). See 8 CFR 244.10(f)(2)(iii).

[^ 61] See 8 CFR 244.15(a). Although 8 CFR 244.15 provides that permission to travel abroad is sought and provided "pursuant to the Service's advance parole provisions," the regulation was issued in 1991 before enactment of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. 102-232 (PDF) (December 12, 1991), as amended, and, consequently, the reference in 8 CFR 244.15 to advance parole was overruled by Section 304(c) of that statute, which required that eligible TPS beneficiaries "shall be inspected and admitted" upon return from qualifying authorized travel. See DHS Office of General Counsel, Immigration Consequences of Authorized Travel and Return to the United States by Individuals Holding Temporary Protected Status (PDF, 3.36 MB), Attachment p. 28, issued April 6, 2022. Until 8 CFR 244.15 is amended in accordance with MTINA, and corresponding changes are made to related forms and other documentation, USCIS considers the reference to advance parole in 8 CFR 244.15 to encompass any advance discretionary authorization to travel under INA 244(f)(3). See Rescission of *Matter of Z-R-Z-C-* as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries (PDF, 3.36 MB), PM-602-0188, issued July 1, 2022. Related forms and documentation include the Application for Temporary Protected Status (Form I-821) and Application for Travel Document (Form I-131).

[^ 62] See Section 304(c) of MTINA, Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended. TPS beneficiaries subject to certain criminal, national security, and related grounds of inadmissibility as described in INA 244(c)(2)(A)(iii) may not be eligible for admission into TPS when returning from travel authorized under INA 244(f)(3).

[^ 63] Inspection and admission after TPS-authorized travel also satisfies the admission requirement of INA 245(k). However, admission into TPS does not mean that the TPS beneficiary is "admissible" as required by INA 245(a)(2), as MTINA specifies that only certain inadmissibility grounds apply to beneficiaries returning to the United States after TPS-authorized travel. See Section 304(c) of MTINA, Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended.

[^ 64] See DHS Office of General Counsel, Immigration Consequences of Authorized Travel and Return to the United States by Individuals Holding Temporary Protected Status (PDF, 3.36 MB), Attachment p. 28, issued April 6, 2022.

[^ 65] See *Duarte v. Mayorkas*, 27 F.4th 1044 (5th Cir. 2022). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdiction [7 USCIS-PM A.3(D)]. Additionally, USCIS applies the holding of *Matter of Arrabally and Yerrabelly (PDF)*, 25 I&N Dec. 771 (BIA 2012)—that a noncitizen who leaves the United States temporarily with advance parole does not make a departure from the United States within the meaning of INA 212(a)(9)(B)(i)(II).—to noncitizens who leave the United States with authorization under INA 244(f)(3), as the Board's reasoning is equally applicable to TPS-authorized travel and return under MTINA.

[^ 66] See General Adjustment of Status Policies and Section 245(a) of the Immigration and Nationality Act (PDF, 171.82 KB), PA-2016-001, issued February 25, 2016.

[^ 67] See *Matter of Z-R-Z-C-*, Adopted Decision 2020-02 (AAO Aug. 20, 2020) (PDF, 268.36 KB), PM-602-0179, issued August 20, 2020, rescinded July 1, 2022.

[^ 68] See Rescission of *Matter of Z-R-Z-C-* as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries (PDF, 3.36 MB), PM-602-0188, issued July 1, 2022.

[^ 69] TPS beneficiaries are noncitizens granted TPS in accordance with INA 244(a)(1)(A).

[^ 70] See INA 244(c)(3). See INA 244(b)(3).

[^ 71] See Section 304(c) of MTINA, Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended.

[^ 72] These TPS beneficiaries do not meet the requirements specified in Section 304(c) of MTINA, Pub. L. 102-232 (PDF), 105 Stat. 1733, 1749 (December 12, 1991), as amended.

[^ 73] See *Duarte v. Mayorkas*, 27 F.4th 1044, 1061 (5th Cir. 2022) (concluding that "USCIS was … not authorized to grant the Appellants the advance parole that the 512L form it issued them purported to allow" and that as a result they "were admitted and not paroled into the country").

[^ 74] Determining whether a prior entry was an admission or parole may be necessary, for example, in employment-based adjustment of status applications by noncitizens seeking an exception to the bars to adjustment in INA 245(c)(2), (7), and (8). The exception at INA 245(k) requires, in part, that the applicant be present in the United States "pursuant to a lawful admission." In such cases, USCIS conducts the individualized assessment described above.

[^ 75] See Pub. L. 102-232 (PDF) (December 12, 1991), as amended.

[^ 76] The five-factor test formulated by the D.C. Circuit entails consideration of whether the particular case is one of first impression, whether the new rule represents an abrupt departure from well-established practice or merely attempts to fill a void in an unsettled area of law, the extent to which the party against whom the new rule is applied relied on the former rule, the degree of the burden which a retroactive order imposes on a party, and the statutory interest in applying a new rule despite the reliance of a party on the old standard. See *Retail, Wholesale and Department Store Union AFL-CIO v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972). See *Montgomery Ward & Co. v. FTC*, 691 F.2d 1322 (9th Cir. 1982). See *Matter of Cordero-Garcia*, 27 I&N Dec. 652, 657 (BIA 2019) (adopting the test in the immigration context).

[^ 77] "The former rule" meaning prior USCIS or INS legal interpretation, policy, or practice regarding the effect of TPS-authorized travel.

[^ 78] See *Retail, Wholesale and Department Store Union AFL-CIO v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972).

[^ 79] See the table, Effect of Authorized Travel on TPS Beneficiaries Under Applicable Policy, above.

[^ 80] See *Retail, Wholesale and Department Store Union AFL-CIO v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972). Because USCIS applies the holding of *Matter of Arrabally and Yerrabelly (PDF)*, 25 I&N Dec. 771 (BIA 2012) to travel authorized under INA 244(f)(3) followed by admission to the United States into TPS, a noncitizen who leaves the United States temporarily on TPS-authorized travel does not make a departure from the

United States within the meaning of INA 212(a)(9)(B)(i)(II). Therefore, whether or not USCIS considers travel under MTINA as an admission after authorized travel or a parole after advance parole will not adversely affect noncitizens with respect to reliance upon *Matter of Arrabally*.

[^ 81] See *Retail, Wholesale and Department Store Union AFL-CIO v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972) (citing *SEC v. Chenery Corp.*, 332 U.S. 194 (1947)) (explaining that courts must assess whether retroactivity would produce more "mischief" than the ill effects of continuing to enforce a rule which is "contrary to statutory design or legal and equitable principles").

[^ 82] See 8 CFR 209.2. For more information on asylee adjustment, see Part M, Asylee Adjustment [7 USCIS-PM M].

[^ 83] Due to the different statutory bases, different eligibility requirements, exceptions, and waivers apply to applicants seeking adjustment based on their asylum status compared to those seeking adjustment under INA 245(a).

[^ 84] The grant of asylum is not an admission contemplated under INA 101(a)(13)(A). See *Matter of V-X-* (PDF), 26 I&N Dec. 147 (BIA 2013). See legacy INS General Counsel Opinion, expressed by INS Central Office, Deputy Asst. Commissioner, Adjudications, R. Michael Miller, in letter dated September 4, 1986, reprinted in Interpreter Releases, Vol. 63, No. 40, October 10, 1986, pp. 891-892.

[^ 85] See *Matter of Quilantan* (PDF), 25 I&N Dec. 285, 291-92 (BIA 2010). See *Matter of Areguillin* (PDF), 17 I&N Dec. 308 (BIA 1980). See 8 CFR 103.2(b).

[^ 86] Any documentary evidence of admission should be consistent with entry information provided in the adjustment application or in oral testimony and should not contradict any other admission or departure evidence in DHS records. For example, when there is no Arrival/Departure Record or passport with an admission stamp, an officer may rely on information in DHS records, information in the applicant's file, and the applicant's testimony to make a determination on whether the applicant was inspected and admitted or inspected and paroled into the United States.

[^ 87] See 8 CFR 103.2(b). See Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^ 88] For more information, see Subsection 2, Admission [7 USCIS-PM B.2(A)(2)].

[^ 89] See 8 CFR 103.2(a) and 8 CFR 103.2(b). See 8 CFR 103.2(a)(2). See 8 CFR 103.7(b) and 8 CFR 103.7(c). The applicant may submit a fee waiver request. See Request for Fee Waiver (Form I-912).

[^ 90] See 8 CFR 103.2(a)(7) and 8 CFR 245.2(a)(2)(i). In addition, USCIS should process a fee refund when an adjustment application is accepted in error because a visa was unavailable at the time of filing and the error is recognized before interview or adjudication. For more information on the definition of "properly filed" and fee refunds, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions [7 USCIS-PM A.3].

[^ 91] See INA 201(b). Immediate relatives of a U.S. citizen include the U.S. citizen's spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and noncitizens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.

[^ 92] Diversity visas do not rely on a USCIS-filed petition to obtain a visa. The diversity visa lottery is conducted by the U.S. Department of State.

[^ 93] See 8 CFR 103.2(b)(1).

[^ 94] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section C, Concurrent Filings [7 USCIS-PM A.3(C)].

[^ 95] See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of "Properly Filed," Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)] and Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 96] See INA 245(a)(3). See 8 CFR 245.1(g)(1), 8 CFR 245.2(a)(5)(ii), and 8 CFR 103.2(b)(1). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 97] If one or more of the grounds listed in INA 212 applies to an applicant then the applicant may be inadmissible. For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

[^ 98] See Volume 9, Waivers and Other Forms of Relief [9 USCIS-PM].

[^ 99] See INA 245(c).

[^ 100] Even if noncitizens are barred from adjusting under INA 245(a), they may still adjust under another statutory basis as long as they meet the applicable eligibility requirements.

[^ 101] An immigrant category may exempt an applicant or make an applicant eligible for a waiver of certain adjustment bars and grounds of inadmissibility. Even if an exemption applies to an applicant who would otherwise be barred from adjustment of status, the applicant may still be denied adjustment as a matter of discretion. For more information on discretion, see Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[^ 102] It is service as a crewman that triggers the bar to adjustment, not the actual nonimmigrant status. This bar applies if the noncitizen was actually permitted to land under the D-1 or D-2 visa category. The bar also applies if the noncitizen was a crewman admitted as a C-1 to join a crew, or as a B-2 if serving on a crew.

[^ 103] This does not apply to noncitizens who failed to maintain lawful status through no fault of their own or solely for technical reasons, as defined in 8 CFR 245.1(d)(2).

[^ 104] The INA 245(c)(2) bar addresses three distinct types of immigration violations.

[^ 105] See 8 CFR 245.1(d)(3).

[^ 106] See INA 201(b). Immediate relatives of a U.S. citizen include the U.S. citizen's spouse, children (unmarried and under 21 years of age), and parents (if the U.S. citizen is 21 years of age or older). Widow(er)s of U.S. citizens and noncitizens admitted to the United States as a fiancé(e) or child of a fiancé(e) of a U.S. citizen may also be considered immediate relatives if they meet certain conditions.

[^ 107] See special immigrants described in INA 101(a)(27)(H)-(K).

[^ 108] If an adjustment applicant is eligible for the 245(k) exemption, then he or she is exempted from the INA 245(c)(2) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^ 109] See INA 212(l) and INA 217.

[^ 110] See INA 101(a)(15)(S) and INA 245(j). The applicants are beneficiaries of a request by a law enforcement agency to adjust status (Inter-Agency Alien Witness and Informant Record (Form I-854)).

[^ 111] See INA 237(a)(4)(B).

[^ 112] Although VAWA-based applicants are exempt from all INA 245(c) bars per statute, a VAWA-based applicant may still be determined to be removable (INA 237(a)(4)(B)) or inadmissible (INA 212(a)(3)) due to egregious public safety risk and on security and related grounds.

[^ 113] INA 245(c)(7) does not apply to VAWA-based applicants, immediate relatives, family-based applicants, or special immigrant juveniles because these noncitizens are not seeking adjustment as employment-based applicants. See 8 CFR 245.1(b)(9).

[^ 114] If an employment-based adjustment applicant is eligible for the INA 245(k) exemption, then he or she is exempted from the INA 245(c)(7) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^ 115] This is also referred to as a noncitizen who has violated the terms of his or her nonimmigrant status.

[^ 116] There are no time restrictions on when such a violation must have occurred while physically present in the United States. Violations either before or after the filing of Form I-485 will render a noncitizen ineligible to adjust status under INA 245(a). A noncitizen seeking employment during the pendency of his or her adjustment applicant must fully comply with the requirements of INA 274A and 8 CFR 274a. See 62 FR 39417 (PDF) (Jul. 23, 1997).

[^ 117] The INA 245(c)(8) bar addresses two distinct types of immigration violations.

[^ 118] See 8 CFR 245.1(d)(3).

[^ 119] USCIS interprets the exemption listed in INA 245(c)(2) for immediate relatives and certain special immigrants as applying to the 245(c)(8) bar in addition to the 245(c)(2) bar. See 62 FR 39417 (PDF) (Jul. 23, 1997).

[^ 120] If an adjustment applicant is eligible for the 245(k) exemption, then he or she is exempted from the INA 245(c)(8) bar to adjustment. See Chapter 8, Inapplicability of Bars to Adjustment, Section E, Employment-Based Exemption under INA 245(k) [7 USCIS-PM B.8(E)].

[^ 121] See INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8).

[^ 122] See Chapter 8, Inapplicability of Bars to Adjustment [7 USCIS-PM B.8].

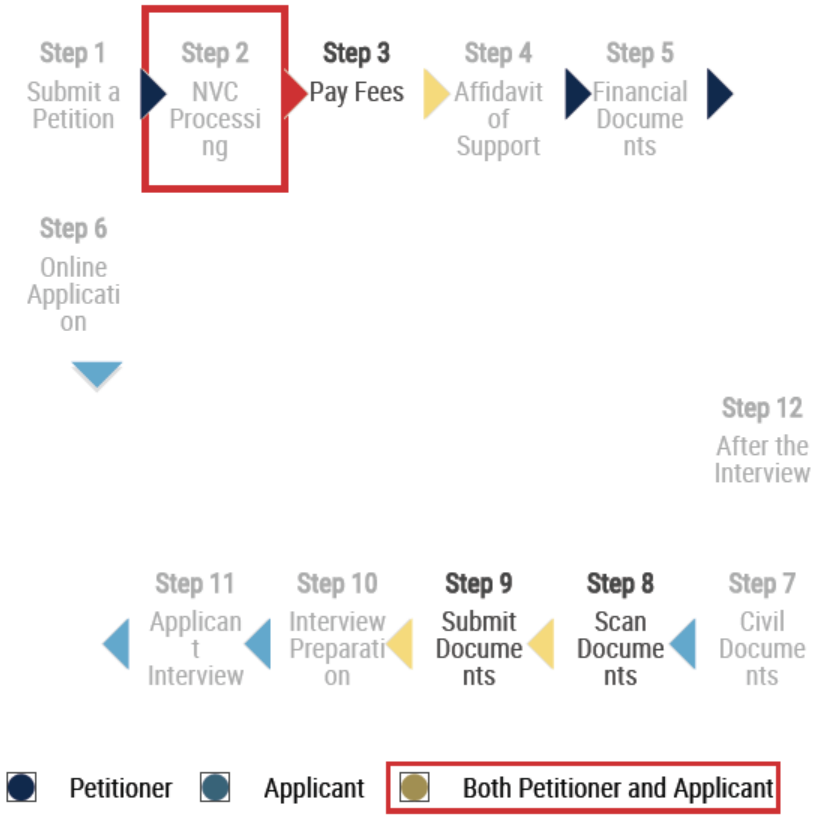
[^ 123] This applies to religious workers only.

[^ 124] Notwithstanding INA 245(c)(2), INA 245(c)(7), and INA 245(c)(8), the officer should treat a noncitizen who meets the conditions set forth in INA 245(k) in the same manner as an applicant under INA

245(a).

Current as of April 11, 2023

Immigrant Visa Process



Step 2: Begin National Visa Center (NVC) Processing

Important Announcement

Answers to many common questions can be found using our self-service tools. Please log into https://ceac.state.gov for your most current case status and for a list of any documents you are required to submit.

The latest updates for U.S. Embassies and Consulates, including operating status of the Consular Section, can be found at https://usembassy.gov. NVC cannot predict when Consular Sections will resume routine services, or when your case will be scheduled for an interview.

Please visit https://nvc.state.gov for answers to your frequently asked questions, and steps for visa processing.

After USCIS approves your petition, they will transfer your case to the Department of State's National Visa Center (NVC) for pre-processing. The first step in this processing is the creation of your case in our system. Once this is complete, we will send you a Welcome Letter by e-mail or physical mail. With the information in this letter, you can log in to our Consular Electronic Application Center (CEAC) to check your status, receive messages, and manage your case.

Once you submit your fees, forms, and supporting documents to NVC, we will review your case to ensure you provided all the documentation required to schedule the immigrant visa interview. Interviews are based on the availability of appointments offered at the Embassy/Consulate.

To determine which cases NVC is currently reviewing, please refer to the NVC Timeframes page on the right navigation bar.

Number of Visas Each Year is Limited in Some Categories

United States law limits the number of immigrant visa numbers available each year in certain visa categories. This means that even if USCIS approves an immigrant visa petition for you, you may not get an immigrant visa number immediately. In addition, U.S. law also limits the number of visas available in certain categories by country. For limited categories, the availability of immigrant visa numbers depends on the date your petition was filed and the number of others waiting for the same visa category. The date your petition was filed is called your priority date.

Priority dates are posted monthly on the Visa Bulletin, which provides up-to-date priority dates for cases NVC is processing. Please note that while NVC attempts to contact all applicants when their visa number is available, you can also use the Department of State's Visa Bulletin to check whether a visa is available for your petition. If a visa is available and NVC has not yet contacted you, please let us know by using our Public Inquiry Form.

Important Notice: Termination of Registration:

Immigration and Nationality Act (INA) section 203(g) provides that the "Secretary of State shall terminate the registration (petition) of any alien who fails to apply for an immigrant visa within one year" of notice of visa availability. The petition may be reinstated if, within two years of notice of visa availability, the alien establishes that the "failure to apply was for reasons beyond the alien's control." Therefore, if you do not respond to notices from NVC within one year you risk termination of your petition under this section of law and would lose the benefits of that petition, such as your priority date.

Previous Step: Submit a Petition

Next Step: Pay Fees

U.S. Citizenship and Immigration Services

Green Card for Family Preference Immigrants

Alert: On Nov. 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the Inadmissibility on Public Charge Grounds final rule (84 Fed. Reg. 41,292 (Aug. 14, 2019), as amended by Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52,357 (Oct. 2, 2019)) (Public Charge Final Rule) nationwide.

See more

U.S. immigration law allows certain noncitizens who are family members of U.S. citizens and lawful permanent residents to become lawful permanent residents (get a Green Card) based on specific family relationships. **If you are the spouse, minor child or parent of a U.S. citizen,** please see the Green Card for Immediate Relatives of U.S. Citizen page for information on how to apply for a Green Card.

Other family members eligible to apply for a Green Card are described in the following family "preference immigrant" categories:

- First preference (F1) - unmarried sons and daughters (21 years of age and older) of U.S. citizens;
- Second preference (F2A) - spouses and children (unmarried and under 21 years of age) of lawful permanent residents;
- Second preference (F2B) - unmarried sons and daughters (21 years of age and older) of lawful permanent residents;
- Third preference (F3) - married sons and daughters of U.S. citizens; and
- Fourth preference (F4) - brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age and older).

This page provides specific information for noncitizens in the United States who want to apply for lawful permanent resident status based on a family preference category while in the United States. This is called "adjustment of status." You should also read the Instructions for Form I-485, Application to Register Permanent Residence or Adjust Status (PDF, 898.98 KB) before you apply.

If you are currently outside the United States, see Consular Processing for information about how to apply for a Green Card as a family preference immigrant.

Close All Open All

- Eligibility for Adjustment of Status
- Bars to Adjustment
- Grounds of Inadmissibility
- How to Apply
- What to Submit (Principal Applicant)
- Family Members
- Employment Authorization and Advance Parole Documents
- Legal Reference

Close All Open All

Last Reviewed/Updated: 01/10/2022