

Dallas Chief Counsel Paul B. Hunker has provided us with the following guideline and the attached proposed motion for termination:

Some informal advice about requests to terminate for adjustment of status before USCIS and motions to terminate for adjustment.

1. Request that ICE agree to terminate case

Our preferred course of action is that a private attorney mail Legal Assistant Carol Glennon a request to terminate for adjustment at least 30 days before a master calendar setting. We then should be in a position at the master calendar setting to represent if we are willing to move to terminate to permit USCIS to adjudicate the adjustment application.

The request should contain the following:

1. ORIGINAL adjustment packet to submit to CIS for adjudication, *including* but not limited to:
 - a. I-797C (fee receipt/Notice of Action) for the Form I-485 including payment of supplement fee if needed (NOTE: it is insufficient to have a copy of the CHECK/MONEY ORDER sent to CIS—this will result in a refusal to join the motion, must have the actual receipt)
 - b. Signed Form I-485 application, completed correctly with every question fully answered
 - c. Supplement A to Form I-485 (ONLY if needed)
 - d. Proof of the Approval of an immigrant petition filed on the alien's behalf including but not limited to:
 - i. the approval notice, Form I-797C for the I-130 is sufficient if the I-130 is approved (do not need entire I-130 packet)
 - ii. if the I-130 is PENDING* you must submit the I-797C receipt notice (proof of payment is NOT enough, must have receipt notice), you must also submit an ENTIRE COPY of the I-130 packet filed with CIS, including the marriage certificate, the lawful status of the petitioner, a copy of the I-130 petition, and documents showing the prima facie validity of the marriage, etc.
 - iii. the approval notice, Form I-797C for the I-140 with a copy of the employment letter from the employing agency
 - e. Proof that visa availability is current (i.e. the current DOS visa bulletin)
 - f. Proof of 245(i) eligibility if the respondent entered unlawfully (if the respondent is not listed as the direct beneficiary of the petition, must show the relationship) ALSO, if the 245(i) qualifying petition was NOT APPROVED but just filed, you must support your argument that it was APPROVABLE when filed
 - g. G-325A
 - h. Copy of Foreign Birth Certificate of the Respondent
 - i. Copies of proof of lawful entry (if entered lawfully)
 - j. WAIVERS*
 - i. If a waiver is needed, you must submit a copy of the fully completed and signed waiver (Form I-601, etc.) along with the I-797C fee receipt for the appropriate form. The waiver must state *specifically* what ground of inadmissibility you are attempting to waive!
 - ii. Submit all support documents to show hardship if needed
 - k. Affidavit of Support Form I-864 with all supporting documents required by the regulations including:
 - i. Copy of the Current Poverty Guidelines (I-864P)

- ii. Copy of the Petitioner's Tax returns for the most recent tax year (NOTE: if this is NOT an IRS transcript, you MUST include the petitioner's W2 FORM pursuant to the regulations)
 - iii. If relying on the respondent's income in any way—must submit an I-864A (household member) by the alien AND proof that the alien was LAWFULLY employed through work authorization during the time period where you are counting his salary AND that the alien has current work authorization
 - iv. If a co-sponsor is needed, you must submit another I-864 for the cosponsor, proof of that sponsor's lawful status in the United States (an I-864A if using that co-sponsor's spouse's income), the tax returns and W2 form for those individuals.
1. Criminal documents—if the alien has EVER been arrested (other than by ICE officials) the alien must provide the following*:
- i. If arrest did not result in charges being filed—proof no charges were filed
 - ii. If charges filed—court certified copies of complete arrest record and conviction record and/or any acquittal or dismissal orders
 - iii. If received probation—evidence you completed probation

The packet above is NOT required to contain a Form I-693 medical exam, passport photos of the alien, or proof that the respondent has complied with biometrics; however, these will be required by USCIS in addition to other possible documents they might request. Please see USCIS guidelines.

If we decline to agree to terminate, you will be contacted by phone or email with our response and a brief explanation as to why we will not agree to termination

2. Joint Motion to Terminate

In general, we prefer that the private bar submit to us requests for termination at least 30 days before the next master calendar setting. However, if a case has been set for a merits hearing, and you still believe that termination for adjustment is appropriate, you can mail to Carol Glennon at least 90 days before the hearing a proposed joint motion to terminate. Accompanying the draft joint motion but distinct from it should be the I-485 and supporting documentation referenced above. The motion should follow the draft format we have included with this email.

We will consider a request for a joint motion to terminate before a master calendar setting, but we prefer that the private attorney simply request termination at the upcoming master, rather than send a draft joint motion. In any event, the draft joint motion needs to be submitted at least 30 days before the master calendar setting.

If the ACC approves the request to terminate, the ACC will sign the proposed joint motion and return the original signed motion to the private attorney. It is the private attorney's responsibility to file the motion with the court. He/she must cross serve our office with the signed motion that was filed with the court. Do not submit additional documentation to the court that was not provided in the original packet; this could lead the Dallas OCC to file a motion to reconsider if the case is terminated based on documents not submitted to the OCC originally. Dallas OCC will retain the ORIGINAL adjustment packet submitted in support of the motion and will not send that packet back to the private attorney, so that it can be sent directly to USCIS once the case is terminated.

If we decline to join the private attorney will be contacted by phone or email with our response and a brief explanation as to why we will not agree to termination

3. Motion to Terminate

In general, we will oppose motions to terminate for adjustment filed with the court, as this is not a valid basis to terminate a case, unless such motion were to be joint.

4. Other matters

In general, DHS will no longer consider packet submissions handed to a DHS attorney the day of a master calendar hearing, as typically, and ACC during a busy master docket will not have time to review all the supporting documentation and file and make a decision.

If you have not received a response to your request to terminate or request for a joint motion to terminate within 10 business days of the next hearing, you may email Carol Glennon and she will inform you of the attorney who is assigned the motion.

Please remember that if your case is set for an individual hearing before the Immigration Court, it is your responsibility to comply with ALL filing deadlines of the court, including submission of you adjustment application with the fee receipt to the IJ by the deadline given at the master calendar as well as the cross service deadline for all supporting documentation. It is also your responsibility to have your client comply with the biometrics appointments and medical examination. Dallas OCC will still object to continuances where the respondent's counsel claims he or she submitted documents to our office and assumed he or she did not need to submit them to the court because a joint motion would be granted. Please do not ever assume a motion will be granted because you think it is a "clean case."

The requirements below are condition precedents to the Dallas OCC agreeing to terminate a case for adjustment. However, it remains a matter of discretion whether or not the Dallas OCC will agree. For example, where the case involves an alien with a criminal history or where we suspect fraud, the Dallas OCC may not agree to terminate the case.