



## ARMED AND READY FOR THE MARRIAGE BASED ADJUSTMENT INTERVIEW

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### **BY: ELIZABETH REICHARD\***

Hold on to your seats. It has happened. The U.S. Citizenship & Immigration Services (USCIS) is actually processing marriage-based adjustment applications in an expeditious manner. They generally involve marriages between U.S. Citizens and Foreign Nationals. When I started practicing immigration law a few years ago, applicants in New York waited a year or more before being called in for an adjustment interview. Today, they wait a mere three months.

This is great news for couples, particularly those in which the sponsored spouse is out of status but entered through inspection, and the petitioning spouse is a U.S. citizen. They are quickly able to obtain work and travel authorization, and thereby more easily acclimate to American society.

Expeditious processing, however, demands more complete preparation prior to filing the adjustment application. With a minimal time lapse between the initial filing and the interview, practitioners and applicants must be armed with all required documentation at the time of filing. Gone are the days when one could file and then collect original documents during the seemingly endless processing period. Because the USCIS has stepped it up in the adjustment process, we too are expected to step it up. District Adjudications Officers (DAOs) now take a zero tolerance approach to incomplete applications. If a couple appears at the interview without the required documentation, the DAO is likely to deny their case. If the Beneficiary is out of status, then he/she is at risk of being issued a Notice to Appear. No longer is the I-72, Request for Evidence, a failsafe for incomplete applications. It is called "De-nial" and it is not just a river in Egypt.

Based on this changing climate, I have developed a top ten list to prepare clients for their adjustment interviews. Following this list will enable practitioners to cover all of their bases at the time of filing the application with the National Benefits Center. It is best not to rely on a client's word that he/she will have the proper documentation to you by the time of the interview. Have everything at filing. Under the zero tolerance approach, failure to present certain initial evidence means denial. So save your clients' some money and save yourself wasted time by having everything at the outset.

**1. Have the Petitioner's original Birth Certificate, Citizenship Certificate/US Passport or Permanent Resident card.**

If the Petitioner is a naturalized citizen, it is better to present a Citizenship Certificate as opposed to a US Passport. Recently, I have been told by two DAOs that with a rise in fraudulent documents, they put little weight in the US passport as proof of citizenship. While a passport is prima facie evidence of citizenship, it is better to be safe than sorry.

**2. Have the Beneficiary's original Passport, Form I-94 Departure Record, and Birth Certificate (along with its translation).**

When the original birth certificate is not available, refer to the Foreign Affairs Manual (FAM) for instructions regarding substitute identity documentation. Also refer to the FAM to ensure that the original birth certificate complies with the specific country's requirements. For instance, the FAM states that South Africa issues a "Long Form" birth certificate. If a couple comes before you with a "Short Form" birth certificate, insist that they obtain the "Long Form" to be in compliance with FAM requirements. Upon receiving the required documents from the client, carefully inspect them for authenticity. Also, compare them to one another, making sure that the names listed on the documents match-up. If the names do not match, then the case may be denied.

**3. Have the original marriage certificate, divorce decrees and/or death certificates of all previous marriages from the relevant civil authorities.**

These are available in pretty much every country, so insist that your clients make every effort to obtain them. Again, refer to the FAM for the prescribed documents pertaining to each country. If documentation is unavailable, refer to the FAM for instructions regarding substitute evidence. A case will not be granted unless there is proof that any

previous marital relationships no longer exist.

**4. Have the original court dispositions if the Beneficiary has ever been arrested.**

It is absolutely necessary to know whether or not your client has ever been arrested, even for minor offenses. I suggest that you ask your client if he/she has ever seen the inside of a courtroom. In my experience, this question sometimes jogs the foggy memories of those arrested “under the influence.” DAOs have no tolerance for applicants who assert that they have never been arrested, when in fact they have. Impress upon your clients that the DAO has the results of his/her name and background checks at the time of the interview. If the Beneficiary has ever been arrested, the DAO will know about it, so tell the truth.

**5. Have copies of federal, state and local income tax returns for the last three years from Petitioner and Beneficiary, along with W-2s and 1099 statements.**

In New York, the Petitioner and Beneficiary are often asked to submit their IRS “return transcripts.” While these are not always required, it is the best evidence for establishing that tax returns have in fact been filed. One can obtain return transcript by calling 1-800-829-1040. (After you dial, press 2 and then 2 again. Enter your Social Security Number, and then press 1, press 1 again, press 4, which will enable you to order the IRS return transcript.)

**6. Have relevant employment documentation.**

Employment letters from both Petitioner’s and Beneficiary’s employers (if employed). Letter must state date employment began, job title, salary, marital status, dependents claimed and emergency contact information. It is also wise to provide the last three pay stubs.

**7. Have evidence of the bona fides of the marriage.**

Officers are concerned about whether the couple has commingled their lives. One can do this best by showing that the couple’s financial and living arrangements are intertwined. This can be established by offering evidence of joint bank accounts, apartment leases, utility bills, insurance policies naming the spouse as a beneficiary, etc. A bona fide relationship can also be shown by submitting travel itineraries of joint trips, love letters, photographs of the couple, invitations to weddings and special events, etc.

**8. Explore with your client his/her immigrant intent upon entering the**

**country.**

Prior to filing, the attorney should know what his/her clients' intentions were when they entered the United States. If they came on Visa Waiver or as an F-1 student, did they enter with intention to have a wedding and then stay afterwards? Or, did they make the decision to get married and stay permanently in the United States after they arrived? Please note that immigrant intent is not an issue if you entered on an H-1B or L-1 visa.

**9. Explain to your client the implications of traveling while their application is pending.**

If your client is out of status and subject to the three or ten year bar to admission, advise him/her not to travel while the adjustment application is pending. Having an approved advance parole document will not let him/her re-enter even if his/her adjustment application is pending. For those clients who are not subject to the three or ten year bar, but do not have valid non-immigrant status, they should also be advised not to travel after their adjustment interview and before receiving the actual green card. In the rare instance that their case is denied after the interview, they do not want to be stuck outside of the United States.

**10. Talk to your clients about how to converse with the DAO.**

Finally, prepare your clients for the toughest and meanest DAO in town! If they get a nice one as they often do, then the experience is all the better! If they get one who is belligerent, then they won't be caught off guard and will know how best to respond. I always tell my clients that when being pushed by a DAO, they should pause, take a step back, and think about the question before answering it. A harsh tone from a DAO does not mean DENIAL. Sometimes the most difficult DAOs are the best. So take the beating and answer the questions cordially.

Having the above mentioned documents and information at the time of the filing the application will limit some of the surprises that often befall upon practitioners and applicants during the adjustment application process. Of course, there is no way to avoid surprises, but if you come with all initial evidence and information, the experience will be much more pleasant and your likelihood for approval will be higher.

\*\*Below please find a link to our Checklist for filing an adjustment application.

[REQUIRED DOCUMENTS FOR ADJUSTMENT OF STATUS INTERVIEW](#)

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**\* Elizabeth T. Reichard is an Associate at Cyrus D. Mehta and Associates, P.L.L.C, where she practices primarily in the area of immigration law. She is a graduate of the College of the Holy Cross and Case Western Reserve School of Law, where she was the Editor-in-Chief of the Journal of International Law. Ms. Reichard is the Secretary of the Immigration Committee for the New York City Bar Association as well as the Secretary of the Board of International Partners in Mission, an international non-profit organization working to empower women, children, and youth. She is admitted to the bar of the State of New York.**