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**YOUR IMMIGRATION SOLUTION**



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## The consequences of filing an ineligible application

the complexities of immigration law. In the past, USCIS would simply deny the application and the alien would leave the United States on their own or continue to remain with family in hopes of future relief or file a new application when qualified. Now, not only will USCIS deny the alien's application, but it will also issue the alien a Notice to Appear (NTA), placing him or her in removal proceedings before an Immigration Judge. Sometimes, the alien may even be detained at the adjustment of status interview.

This stepped up enforcement policy of USCIS can leave persons with a few, albeit limited,

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OVER the past couple of years, the United States Immigration and Citizenship Services (USCIS) stepped up enforcement and political prosecution of immigrants. As such, individuals and families need to be prepared and well represented whenever they apply for an immigration benefit or attend an interview with the USCIS. Although it may be tempting to try to save money by filing an application for adjustment of status by oneself or by choosing a non lawyer, the price of losing the case is now much higher than the costs of hiring a good attorney. Aliens whose application for adjustment of status is denied may be facing much more than just a disappointment; they now face possible deportation.

Immigration law is one of the most complicated areas of law and even minor mistakes can result in severe consequences to the immigrant and his family. All too often an alien will file an application for adjustment of status for which the alien is either not eligible or the application was not filed correctly. For example, they may not have entered lawfully, may be out of status, or may be a crewman and not qualify under Section 245(i) of the Immigration and Nationality Act (a provision that allows certain aliens to apply for adjustment of status if they pay a penalty.) They may have a criminal bar or may have a previous order of removal that they do not know about. They may have filed the application on their own, or they may have even filed the application with the assistance of an attorney unfamiliar with

options once the application has been filed. The first option an individual would want to consider is the possibility of renewing his adjustment of status application in Immigration Court. Sometimes USCIS wrongly denies an application. Fortunately, federal regulations provide an opportunity for the Immigration Court to review USCIS's decision. However, this option will require the assistance of an immigration attorney to fully brief the Court and can often involve novel legal issues or challenges to the immigration service's policies.

Unfortunately, some persons are simply ineligible for adjustment of status and should never have filed an application in the first place. In this case, the alien still has options before the Court and should think twice before accepting voluntary departure. Although accepting voluntary

departure avoids the consequences of a removal order (a 10 year bar from returning to the United States), many immigrants still face other grounds of inadmissibility when they seek to reunite with their families. A common ground of inadmissibility that is not solved by voluntary departure is the 10-year bar for unlawful presence. For example, an immigrant who was unlawfully present in the United States for over 1 year and voluntarily departs still faces a ten-year bar from returning to the United States. Although the immigrant would not need to waive any bar resulting from a voluntary departure order, he or she will need to file a waiver for the unlawful presence bar. Because the consequences of failing to depart are so severe, and the benefits of returning are so limited, the privilege of voluntary departure is not for everyone.

It is never too late to obtain the advice of an attorney. Of course the best preparation you can have is to make sure your application will be approved before filing it with USCIS. Do not place your life and your family's future in the hands of an inexperienced attorney. In life it may be good to take risks but in immigration it is not. You and your family's future depend on it.

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