

Green Card Applicants: Your Pending I-131 Application for Advance Parole May Be Denied if You Depart the U.S.

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In an abrupt divergence from previous practice, the United States Citizenship and Immigration Services (USCIS) has begun denying I-131 Applications for Advance Parole if the Applicant had departed the U.S. while the application was pending.

When an individual applies for a green card in the U.S., they have the option of also filing for advance parole. Advance parole is travel authorization. Because some nonimmigrant visa categories require a "non-immigrant" intent, once an individual applies for the green card – and demonstrates an "immigrant" intent – their existing visa is no longer valid. As a result, if an individual whose visa is no longer valid needs to depart the U.S. while their green card application is pending – they can apply for permission to reenter or be "paroled" into the U.S. after their trip – in advance.

Not all green card applicants require such permission to travel, because they have "immigrant" visas or a visa that allows for "dual intent." As such, these individuals may apply for advance parole as a back-up. It has long been USCIS practice that I-131 applications for applicants with a separate valid advance parole document or a valid H, K, L or V visa would continue to be processed regardless of whether the individual had traveled internationally or were out of the U.S. at the time of adjudication.

Now, USCIS, citing the I-131 Form instructions, "[i]f you depart the United States before the Advance Parole Document is issued, your application for an Advance Parole Document will be considered abandoned" is denying these applications.

If your or your employee's I-131 application is denied because of international travel during the pendency of the application, do not panic. This is not a cause for concern, because the denial has no impact on your existing H, K, L or V visa, existing advance parole document or pending green card application. Further, there is no fee to file a new I-131 application for advance parole.

For additional information, please contact your Proskauer lawyer.