

# Unauthorized Employment INA §245(c)(2)

## Unauthorized Employment

**Section 245(c)(2) covers unauthorized employment**

“ With certain exceptions, an applicant is barred from adjusting status if:

He or she continues in or accepts unauthorized employment prior to filing an application for adjustment of status;[\[1\]](#) or

He or she has ever engaged in unauthorized employment, whether before or after filing an adjustment application.[\[2\]](#)

**These bars apply not only to unauthorized employment since an applicant's most recent entry but also to unauthorized employment *during any previous periods of stay in the United States.***[\[3\]](#)

## **B. Periods of Time to Consider and Effect of Departure**

**The [INA 245\(c\)\(2\)](#) bar applies to unauthorized employment prior to filing the adjustment application. The departure and subsequent reentry of an applicant who was employed without authorization in the United States prior to filing an adjustment application does not erase the this bar. Otherwise, an applicant who engaged in unauthorized employment could simply depart the United States, reenter immediately, and become eligible to file for adjustment of status.**[\[4\]](#)

**The [INA 245\(c\)\(8\)](#) bar applies to any time engaged in unauthorized employment while physically present in the United States regardless of whether it occurred before or after submission of the adjustment application. USCIS places no time restrictions on when unauthorized employment must have occurred, because the INA does not state that the unauthorized employment must have occurred during any particular period of time.**[\[5\]](#)

**An officer, therefore, should review an applicant's entire employment history in the United States to determine whether the applicant has engaged in unauthorized employment. In addition to an applicant's most recent entry and admission, an officer should examine all of the applicant's previous entries and admissions into the United States. An officer should disregard how much time has passed since each entry and whether the applicant subsequently left the United States and returned lawfully.**

# EXEMPTIONS

**This section and other lapses in status does not apply to special immigrant juveniles.**

**Spouses of US Citizens are also exempt from the grounds of inadmissibility for accepting employment without authorization.**

# Evidence to Consider

**An officer may request, review, and consider the following documentation to determine whether the applicant may be barred from adjustment based on unauthorized employment under [INA 245\(c\)\(2\)](#) or [INA 245\(c\)\(8\)](#):**

- **Arrival/Departure Record (Form I-94); Notice of Action (Form I-797); Pay stubs; ~~W-2s~~**

## Revision #1

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