

such decision. If the decision of the district director is that the status of the alien should be adjusted to that of a nonimmigrant, his decision shall provide that unless the alien, within 10 days of receipt of notification of such decision, requests permission to retain his status as an immigrant and files with the district director Form I-508 and, if applicable, Form I-508F, the alien's immigrant status be adjusted to that of a nonimmigrant. The alien shall be informed of such decision and of the reasons therefor, and of his right to appeal in accordance with the provisions of part 103 of this chapter. If the alien does not request that he be permitted to retain status and file the Form I-508 and, if applicable, Form I-508F within the period provided therefor, the district director, without further notice to the alien, shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted. Form I-94A shall be delivered to the alien. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status created and shall be subject to such other terms and conditions, including the exaction of bond, as the district director may deem appropriate.

[22 FR 9801, Dec. 6, 1957, as amended at 23 FR 9124, Nov. 26, 1958; 35 FR 13829, Sept. 1, 1970]

#### § 247.13 Disposition of Form I-508.

If Form I-508 is executed and filed, the duplicate copy thereof (noted to show the election made on Form I-508F, if applicable) shall be filed in the office of the Assistant Commissioner, Administrative Division, and may be made available for inspection by any interested officer or agency of the United States.

[35 FR 13829, Sept. 1, 1970]

#### § 247.14 Surrender of documents.

An alien whose status as a permanent resident has been adjusted to that of a nonimmigrant in accordance with section 247 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the of-

fice in which the action under this part was taken any documents (such as Form I-151 or I-551 or any other form of Permanent Resident Card, immigrant identification card, resident alien's border-crossing identification card (Form I-187), certificate of registry, or certificate of lawful entry) in his possession evidencing his former permanent resident status.

[22 FR 9802, Dec. 6, 1957, as amended at 45 FR 32657, May 19, 1980; 63 FR 70316, Dec. 21, 1998]

### PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

Sec.

248.1 Eligibility.

248.2 Ineligible classes.

248.3 Application.

AUTHORITY: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

#### § 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status pursuant to section 247 of the Act, who is continuing to maintain his nonimmigrant status, may apply to have his nonimmigrant classification changed to any nonimmigrant classification other than that of a fiancée or fiancé under section 101(a)(15)(K) of the Act, or as an alien in transit under section 101(a)(15)(C) of the Act.

(b) *Timely filing and maintenance of status.* A change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service, and without separate application, where it is demonstrated at the time of filing that:

(1) The failure to file a timely application was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(2) The alien has not otherwise violated his or her nonimmigrant status;

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(3) The alien remains a bona fide non-immigrant; and

(4) The alien is not the subject of removal proceedings under 8 CFR part 240.

(c) *Change of nonimmigrant classification to that of a nonimmigrant student.* A nonimmigrant applying for a change to classification as a student under sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act is not considered ineligible for such a change solely because the applicant may have started attendance at school before the application was submitted. The district director shall deny an application for a change to classification as a student under section 101(a)(15)(M)(i) of the Act if the applicant intends to pursue the course of study solely in order to qualify for a subsequent change of nonimmigrant classification to that of an alien temporary worker under section 101(a)(15)(H) of the Act. Furthermore, an alien may not change from classification as a student under section 101(a)(15)(M)(i) of the Act to that of a student under section 101(a)(15)(F)(i) of the Act.

(d) *Application for change of non-immigrant classification from that of a student under section 101(a)(15)(M)(i) to that described in section 101(a)(15)(H).* A district director shall deny an application for change of nonimmigrant classification from that of an M-1 student to that of an alien temporary worker under section 101(a)(15)(H) of the Act if the education or training which the student received while an M-1 student enables the student to meet the qualifications for temporary worker classification under section 101(a)(15)(H) of the Act.

(e) *Change of nonimmigrant classification to that as described in section 101(a)(15)(N).* An application for change to N status shall not be denied on the grounds the applicant is an intending immigrant. Change of status shall be granted for three years not to exceed termination of eligibility under section 101(a)(15)(N) of the Act. Employment authorization pursuant to section 274(A) of the Act may be granted to an alien accorded nonimmigrant status under section 101(a)(15)(N) of the Act. Employment authorization is automatically terminated when the alien

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changes status or is no longer eligible for classification under section 101(a)(15)(N) of the Act.

[36 FR 9001, May 18, 1971, as amended at 48 FR 14592, Apr. 5, 1983; 52 FR 11621, Apr. 10, 1987; 59 FR 1465, Jan. 11 1994; 62 FR 10386, Mar. 6, 1997]

### § 248.2 Ineligible classes.

The following categories of aliens are not eligible to change their non-immigrant status under section 248 of the Act:

(a) Any alien in immediate and continuous transit through the United States without a visa;

(b) Any alien classified as a non-immigrant under section 101(a)(15) (C), (D), (K), or (S) of the Act;

(c) Any alien admitted as a non-immigrant under section 101(a)(15)(J) of the Act, or who acquired such status after admission in order to receive graduate medical education or training, whether or not the alien was subject to, received a waiver of, or fulfilled the two-year foreign residence requirement of section 212(e) of the Act. This restriction shall not apply when the alien is a foreign medical graduate who was granted a waiver under section 212(e)(iii) of the Act pursuant to a request made by a State Department of Public Health (or its equivalent) under Pub. L. 103-416, and the alien complies with the terms and conditions imposed on the waiver under section 214(k) of the Act and the implementing regulations at § 212.7(c)(9) of this chapter. A foreign medical graduate who was granted a waiver under Pub. L. 103-416 and who does not fulfill the requisite 3-year employment contract or otherwise comply with the terms and conditions imposed on the waiver is ineligible to apply for change of status to any other nonimmigrant classification; and

(d) Any alien classified as a non-immigrant under section 101(a)(15)(J) of the Act (other than an alien described in paragraph (c) of this section) who is subject to the foreign residence requirement of section 212(e) of the Act and who has not received a waiver of the residence requirement, except when the alien applies to change to a classification under section 101(a)(15)(A) or (G) of the Act.