

## § 42.22

(c) *Child of a U.S. citizen victim of terrorism.* The child of a U.S. citizen slain in the terrorist actions of September 11, 2001, shall retain the status of an immediate relative child (regardless of changes in age or marital status) if the child files a petition for such status within two years of the citizen's death pursuant to section 423(a)(2) of Public Law 107-56, and the consular officer has received an approved petition according such status or official notification of such approval.

[56 FR 49676, Oct. 1, 1991, as amended at 64 FR 55419, Oct. 13, 1999; 67 FR 1415, Jan. 11, 2002]

## § 42.22 Returning resident aliens.

(a) *Requirements for returning resident status.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(A) if the consular officer is satisfied from the evidence presented that:

(1) The alien had the status of an alien lawfully admitted for permanent residence at the time of departure from the United States;

(2) The alien departed from the United States with the intention of returning and has not abandoned this intention; and

(3) The alien is returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond the alien's control and for which the alien was not responsible.

(b) *Documentation needed.* Unless the consular officer has reason to question the legality of the alien's previous admission for permanent residence or the alien's eligibility to receive an immigrant visa, only those records and documents required under INA 222(b) which relate to the period of residence in the United States and the period of the temporary visit abroad shall be required. If any required record or document is unobtainable, the provisions of § 42.65(d) shall apply.

(c) *Returning resident alien originally admitted under the Act of December 28, 1945.* An alien admitted into the United States under Section 1 of the Act of December 28, 1945 ("GI Brides Act") shall not be refused an immigrant visa after a temporary absence abroad solely because of a mental or physical de-

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fect or defects that existed at the time of the original admission.

[56 FR 49676, Oct. 1, 1991, as amended at 63 FR 48578, Sept. 11, 1998]

## § 42.23 Certain former U.S. citizens.

(a) *Women expatriates.* An alien woman, regardless of marital status, shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that she was formerly a U.S. citizen and that she meets the requirements of INA 324(a).

(b) *Military expatriates.* An alien shall be classifiable as a special immigrant under INA 101(a)(27)(B) if the consular officer is satisfied by appropriate evidence that the alien was formerly a U.S. citizen and that the alien lost citizenship under the circumstances set forth in INA 327.

## Subpart D—Immigrants Subject to Numerical Limitations

SOURCE: 56 FR 49676, Oct. 1, 1991, unless otherwise noted.

## § 42.31 Family-sponsored immigrants.

(a) *Entitlement to status.* An alien shall be classifiable as a family-sponsored immigrant under INA 203(a) (1), (2), (3) or (4) if the consular officer has received from INS a Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa approved in accordance with INA 204 to accord the alien such preference status, or official notification of such an approval, and the consular officer is satisfied that the alien has the relationship to the petitioner indicated in the petition. In the case of a petition according an alien status under INA 203(a) (1) or (3) or status as an unmarried son or daughter under INA 203(a)(2), the petitioner must be a "parent" as defined in INA 101(b)(2) and 22 CFR 40.1. In the case of a petition to accord an alien status under INA 203(a)(4) filed on or after January 1, 1977, the petitioner must be at least twenty-one years of age.

(b) *Entitlement to derivative status.* Pursuant to INA 203(d), and whether or not named in the petition, the child of a family-sponsored first, second, third