

(d) *Waiver of certain grounds for inadmissibility.* The provisions of paragraphs (14), (15), (20), (21), (25), (28) (other than subparagraph (F)), and (32) of section 212(a) of the Act shall not apply to adjustment under this section. The Attorney General may waive any other provision of section 212(a) (other than paragraph (23)(B), (27), (29), or (33)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(e) *Date of approval.* Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in paragraph (b)(2) of this section.

(f) *No offset in number of visas available.* When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act.

[55 FR 24860, July 19, 1990. Redesignated at 56 FR 49841, Oct. 2, 1991, as amended at 59 FR 33905, July 1, 1994; 63 FR 12987, Mar. 17, 1998]

§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

(a) *Application.* Each person applying for adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act must file a Form I-485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over the applicant's place of residence. Benefits under this section are limited to aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years, and their spouses and children. For purposes of this section, special immigrants described in section 101(a)(27)(K) of the Act and his or her spouse and children shall be deemed to have been paroled into the United States pursuant to section 245(g) of the Act. Each applicant must file a separate application with the appropriate fee.

(b) *Eligibility.* The benefits of this section shall apply only to an alien described in section 101(a)(27)(K) of the Act who applies for such adjustment. The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 102-110 may also apply for adjustment of status. The provisions of section 245(c) of the Act do not apply to the principal Armed Forces special immigrant or to his or her spouse or child.

(c) *Interview of the applicant.* Upon completion of the adjustment of status interview for a special immigrant under section 101(a)(27)(K) of the Act, the director shall make a *prima facie* determination regarding eligibility for naturalization benefits if the applicant is to be granted status as an alien lawfully admitted for permanent residence. If the director determines that the applicant is immediately eligible for naturalization under section 328 or 329 of the Act, the director shall advise the applicant that he or she is eligible to apply for naturalization on Form N-400, Application to File Petition for Naturalization. If the applicant wishes to apply for naturalization, the director shall instruct the applicant concerning the requirements for naturalization and provide him or her with the necessary forms.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is outside the United States, the principal alien may file Form I-824, Application for Action on an Approved Application or Petition, with the office which approved the original application.

(e) *Removal provisions of section 237 of the Act.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the removal provisions of section 237 of the Act, provided the alien is in one or more of

the classes of deportable aliens specified in section 237 of the Act. The Service shall obtain a current Form DD-214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

(f) *Rescission proceedings under section 246 of the Act.* If the Service determines that a military special immigrant under section 101(a)(27)(K) of the Act was not in fact eligible for adjustment of status, the Service may pursue rescission proceedings under section 246 of the Act.

[57 FR 33862, July 31, 1992, as amended at 58 FR 50836, Sept. 29, 1993; 62 FR 10384, Mar. 6, 1997]

§ 245.9 Adjustment of status of certain nationals of the People's Republic of China under Public Law 102-404.

(a) *Principal applicant status.* All nationals of the People's Republic of China who qualify under the provisions of paragraph (b) of this section may apply for adjustment of status as principals in their own right, regardless of age or marital status. Nationals of other countries who meet the requirements of paragraphs (b) and (c) of this section may apply for adjustment of status as qualified family members.

(b) *Aliens eligible to apply for adjustment.* An alien is eligible to apply for adjustment of status under the provisions of Public Law 102-404, if the alien:

(1) Is a national of the People's Republic of China or a qualified family member of an eligible national of the People's Republic of China;

(2) Was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country;

(3) Has resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent absences;

(4) Was not physically present in the People's Republic of China for more than a cumulative total of 90 days between April 11, 1990, and October 9, 1992;

(5) Is admissible to the United States as an immigrant, unless the basis for excludability has been waived;

(6) Establishes eligibility for adjustment of status under all provisions of section 245 of the Act, unless the basis for ineligibility has been waived; and

(7) Properly files an application for adjustment of status under section 245 of the Act.

(c) *Qualified family member who is not a national of the People's Republic of China.* A qualified family member within the meaning of this section includes the spouse, child, son, or daughter of a national of the People's Republic of China who is eligible for benefits under the provisions of paragraph (b) of this section, provided that:

(1) He or she qualified as the spouse or child (as defined in section 101(b)(1) of the Act) of an eligible national of the People's Republic of China as of April 11, 1990; and

(2) The qualifying relationship continues to exist, or the family member is a son or daughter of an eligible national of the People's Republic of China and the family member was unmarried and under the age of 21 on April 11, 1990.

(d) *Waivers of inadmissibility under section 212(a) of the Act.* An applicant for the benefits of the adjustment of status provisions of Pub. L. 102-404 is automatically exempted from compliance with the requirements of sections 212(a)(5) and 212(a)(7)(A) of the Act. A Pub. L. 102-404 applicant may also apply for one or more waivers of inadmissibility under section 212(a) of the Act, except for inadmissibility under section 212(a)(2)(C), 212(a)(3)(A), 212(a)(3)(B), 212(a)(3)(C) or 212(a)(3)(E) of the Act.

(e) *Waiver of the two-year foreign residence requirement of section 212(e).* An applicant for the benefits of the adjustment of status provisions of Public Law 102-404 is automatically exempted from compliance with the two-year foreign residence requirement of section 212(e) of the Act.

(f) *Waiver of section 245(c) of the Act.* Public Law 102-404 provides that the provisions of section 245(c) of the Act shall not apply to persons applying for the adjustment of status benefits of Public Law 102-404.