

§ 204.9

8 CFR Ch. I (1–1–07 Edition)

the organization, component, or function shall be taken into account. An individual shall not be considered to be acting in a managerial or executive capacity merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(f) *Evidence to accompany petition.* A petition filed on Form I-140 shall be accompanied by:

(1) Form ETA-750B, Statement of Qualifications of Alien; and

(2) A letter from the employer attesting to the information contained in paragraph (d) of this section. Since the alien's move to the United States from Hong Kong does not need to take place immediately, the employer's information on the job in the United States will be determined by the circumstances of the individual case. If immediate immigration is intended, a specific job description must be included with the employer's attestation. If immigration will be deferred, a simple commitment by the employer that a qualifying job will be available in the United States will be acceptable. Prior to seeking admission to the United States, a deferred visa applicant must present a specific job description letter for redetermination of eligibility. Such letter shall be presented to the visa-issuing consular post, or to the Service office where the alien is applying for adjustment of status in the United States.

(g) *Closing action—(1) Approval.* If the alien is residing in Hong Kong, an approved petition will be forwarded for visa processing to the United States Consulate at Hong Kong. Whether the alien is in Hong Kong or is adjusting in the United States, the legend "HONG KONG SEC. 124" will be clearly printed in the block used for indicating preference at the top of Form I-140.

(2) *Denial.* The denial of a petition filed under this provision shall be appealable to the Associate Commissioner, Examinations. Notification of denial and appeal rights, and the procedure for appeal shall be the same as those contained in 8 CFR 103.3.

(3) *Revocation.* A petition approved under this provision shall be automatically revoked for the same reasons provided in 8 CFR 205.1(c). The procedure

for revocation on notice shall be the procedure described in 8 CFR 205.2. Termination of employment shall be grounds for automatic revocation; however, a transfer within the same company to a different division, section, subsidiary, or affiliate (regardless of geographical location) will not be disqualifying.

[56 FR 23210, May 21, 1991, as amended at 57 FR 14792, 14793, Apr. 23, 1992]

§ 204.9 Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

(a) *Petition for Armed Forces special immigrant.* An alien may not be classified as an Armed Forces special immigrant unless the alien is the beneficiary of an approved petition to classify such an alien as a special immigrant under section 101(a)(27)(K) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow or Special Immigrant.

(1) *Who may file.* An alien Armed Forces enlistee or veteran may file the petition for Armed Forces special immigrant status in his or her own behalf. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed with the Service Center having jurisdiction over the place of the alien's current or intended place of residence in the United States, with the overseas Service office having jurisdiction over the alien's residence abroad, or in conjunction with 8 CFR 245.8.

(b) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(K) of the Act if:

(1) The alien has served honorably on active duty in the Armed Forces of the United States after October 15, 1978;

(2) The alien's original lawful enlistment was outside the United States (under a treaty or agreement in effect October 1, 1991) for a period or periods aggregating—

(i) Twelve years, and who, if separated from such service, was never separated except under honorable conditions; or

(ii) Six years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this rule and who has reenlisted to incur a total active duty service obligation of at least 12 years;

(3) The alien is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year; and

(4) The executive department under which the alien has served or is serving has recommended the granting of special immigrant status to the immigrant.

(c) *Derivative beneficiaries.* A spouse or child accompanying or following to join a principal immigrant who has requested benefits under this section may be accorded the same special immigrant classification as the principal alien. This may occur whether or not the spouse or child is named in the petition and without the approval of a separate petition, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the principal immigrant.

(1) The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's special immigrant application under section 101(a)(27)(K) of the Act was approved. The spouse or child of an immigrant classified as a section 103(a)(27)(K) special immigrant is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(2) When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is in the United States but was not included in the principal alien's application, the spouse or child shall file Form I-485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over his or her place of residence, regardless of the status of that spouse or child in the United States. The application must be supported by evidence that the principal alien has been granted special immigrant status under section 101(a)(27)(K) of the Act.

(3) *Revocation of derivative status.* The termination of special immigrant status for a person who was the principal applicant shall result in termination of the special immigrant status of a spouse or child whose status was based on the special immigrant application of the principal.

(d) *Documents which must be submitted in support of the petition.* (1) A petition to classify an immigrant as a special immigrant under section 101(a)(27)(K) of the Act must be accompanied by the following:

(i) Certified proof of reenlistment (after 6 years of active duty service), or certification of past active duty status of 12 years, issued by the authorizing official of the executive department in which the applicant serves or has served, which certifies that the applicant has the required honorable active duty service and commitment. The authorizing official need not be at a level above the "local command". The certification must be submitted with Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant; and

(ii) Birth certificate of the applicant establishing that the applicant is a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year.

(2) Any documents submitted in support of the petition must meet the evidentiary requirements as set forth in 8 CFR part 103.

(3) Submission of an original Form DD-214, Certificate of Release or Discharge from Active Duty; Form G-325b, Biographic Information; and Form N-426, Request for Certification of Military or Naval Service, is not required for approval of a petition for special immigrant status.

(e) *Decision.* The petitioner will be notified of the director's decision and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner for Examinations in accordance with 8 CFR part 103.

(f) *Revocation under section 205 of the Act.* An alien who has been granted special immigrant classification under

section 101(a)(27)(K) of the Act must meet the qualifications set forth in the Act at the time he or she is admitted to the United States for lawful permanent residence. If an Armed Forces special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge prior to entering the United States with an immigrant visa or approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence, the petition designating his or her classification as a special immigrant is revoked automatically under the general provisions of section 205 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 for the classification under section 101(a)(27)(K) of the Act.

[57 FR 33861, July 31, 1992, as amended at 58 FR 50836, Sept. 29, 1993]

§ 204.10 Petitions by, or for, certain scientists of the Commonwealth of Independent States or the Baltic states.

(a) *General.* A petition to classify an alien under section 203(b)(2) of the Act as a scientist or engineer of the eligible independent states of the former Soviet Union or the Baltic states must be filed on Form I-140, Immigrant Petition for Alien Worker. The petition may be filed by the alien, or anyone in the alien's behalf. USCIS must approve a petition filed on behalf of the alien on or before September 30, 2006, or until 950 petitions have been approved on behalf of eligible scientists, whichever is earliest.

(b) *Definitions.* As used in this section the term:

Baltic states mean the sovereign nations of Latvia, Lithuania, and Estonia.

Eligible independent states and Baltic scientists means aliens:

- (1) Who are nationals of any of the independent states of the former Soviet Union or the Baltic states; and
- (2) Who are scientists or engineers who have expertise in nuclear, chem-

ical, biological, or other high-technology field which is clearly applicable to the design, development, or production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction, or who are working on nuclear, chemical, biological, or other high-technology defense projects, as defined by the Secretary of Homeland Security, that are clearly applicable to the design, development, and production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction.

Independent states of the former Soviet Union means the sovereign nations of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

(c) *Filing requirements—(1) Application form and time limits.* A petition to classify an alien under section 203(b)(2)(A) of the Act as a scientist from the eligible independent states of the former Soviet Union or the Baltic states must be filed on Form I-140, Immigrant Petition for Alien Worker. The petition may be filed by the alien, or by anyone on the alien's behalf. Such petition must be properly filed with all initial evidence described in paragraph (e) of this section by September 30, 2006 or before the limit of 950 visas has been reached, whichever is earliest. To clarify that the petition is for a Soviet scientist, the petitioner should clearly print the words "SOVIET SCIENTIST" in Part 2 of Form I-140 and check block "d", indicating the petition is for a member of the professions holding an advanced degree or an alien of exceptional ability.

(2) *Jurisdiction.* Form I-140 must be filed with the service center having jurisdiction over the alien's place of intended residence in the United States.

(d) *Priority date.* The priority date of any petition filed for this classification is the date the completed, signed petition (including all initial evidence as defined in paragraph (e) of this section and the correct fee) is properly filed with the USCIS.

(e) *Initial evidence.* The petition must be accompanied by:

- (1) Evidence that the alien is a national of one of the independent states