

Department of Homeland Security

§ 248.1

time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status granted and shall be subject to such other terms and conditions, including the exaction of bond as the district director may deem appropriate.

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations made in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. Pertinent evidence, including testimony of witnesses, shall be incorporated in the record. The immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director who caused the notice to be served. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. If the decision of the district director is that the matter be terminated, the alien shall be informed of 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 office 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, 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 or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fiancé(e), or the child of such alien, under section 101(a)(15)(K) of the Act, or as an alien in transit under section 101(a)(15)(C) of the Act. An alien defined by section 101(a)(15)(V) of the Act may be accorded nonimmigrant status in the United States by following the procedures set forth in §214.15(f) of this chapter.

(b) Except in the case of an alien applying to obtain V nonimmigrant status in the United States under §214.15(f) of this chapter, 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;

(3) The alien remains a bona fide nonimmigrant; 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.*

(1) Except as provided in paragraph (c)(3) of this section, a nonimmigrant applying for a change of classification as an F-1 or M-1 student 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 or service center director shall deny an application for a change to classification as an M-1 student 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 an M-1 student to that of an F-1 student.

(2) [Reserved]

(3) A nonimmigrant who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay as a B-1 or B-2 nonimmigrant on or after such date, may not pursue a course of study at an approved school unless the Service has approved his or her application for change of status to a classification as an F-1 or M-1 student. The district director or service center director will deny the change of status if the B-1 or B-2 nonimmigrant enrolled in a course of study before filing the application for change of status or while the application is pending before the Service.

(d) *Application for change of nonimmigrant 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 changes status or is no longer eligible

Department of Homeland Security

§ 248.3

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; 66 FR 42595, Aug. 14, 2001; 66 FR 46704, Sept. 7, 2001; 67 FR 18064, Apr. 12, 2002]

§ 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.

(e) Any alien admitted as a visitor under the visa waiver provisions of §212.1(e) of this chapter.

(f) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and part 217 of this chapter.

[47 FR 44238, Oct. 7, 1982, as amended at 48 FR 41017, Sept. 13, 1983; 52 FR 48084, Dec. 18, 1987; 53 FR 24903, June 30, 1988; 60 FR 26683, May 18, 1995; 60 FR 44271, Aug. 25, 1995]

§ 248.3 Application.

(a) *Change of status on Form I-129.* An employer seeking the services of an alien as an E-1, E-2, H-1A, H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, Q-1, R-1, or TC nonimmigrant, must, where the alien is already in the U.S. and does not currently hold such status, apply for a change of status on Form I-129. The form must be filed with the fee required in §103.7 of this chapter and the initial evidence specified in §214.2 of this chapter and on the petition form. Dependents holding derivative status may be included in the petition if the form is for only one worker. In all other cases, dependents of the worker should file on Form I-539.

(b) *Change of status on Form I-539.* Any nonimmigrant who desires a change of status to any nonimmigrant classification, other than those listed in paragraph (a) of this section, or to E-1 or E-2 classification as the spouse or child of a principal E-1 or E-2, must apply for a change of status on Form I-539. The application must be filed with the fee required in §103.7 of this chapter and any initial evidence specified in the applicable provisions of §214.2 of this chapter, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the co-applicants are his or her spouse and/or children who hold derivative non-immigrant status based on the principal's nonimmigrant status.

(c) *Special provisions for change of non-immigrant classification to, or from, a position classified under section 101(a)(15) (A) or (G) of the Act.* Each application for change of nonimmigrant classification to, or from, a position classified