

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