INA: ACT 245 - ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

Sec. 245. [8 U.S.C. 1255]

(a) The status of an alien who was inspected and admitted or paroled into the United States 1/ or the status of any other alien having an approved petition for classification as a VAWA self-petitioner 1aa/ may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if

(1) the alien makes an application for such adjustment,

(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and

(3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 202 and 203 within the class to which the alien is chargeable for the fiscal year then current.

(c) 1/ Other than an alien having an approved petition for classification as a VAWA self-petitioner, 1aa/ subsection (a) shall not be applicable to (1) an alien crewman; (2) 1/ subject to subsection (k), an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217; (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S); (6) an alien who is deportable under section 237(a)(4)(B); 1a/ (7) 2/ any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a nonimmigrant visa.

(d) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) 2aa/ except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K).

(e)(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 2aa/ subsection (d) or (p) of section 214 with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216A.

(g) In applying this section to a special immigrant described in section 101(a)(27)(K), such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States.

(h) In applying this section to a special immigrant described in section 101(a)(27)(J)-

(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant-

(A) 11d/ paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 212(a) shall not apply, and

(B) the Attorney General may waive other paragraphs of section 212(a) (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest. The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 101(a)(27)(J) shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i)(1) 2a/ Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

(A) who--

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section; 2a/

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d)) of--

(i) a petition for classification under section 204 that was filed with the Attorney General on or before 2a/ April 30, 2001; or

(ii) an application for a labor certification under section 212(a)(5)(A) that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and 2a/

(C) 2a/ who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000; may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equaling $1,000 3/ as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986 at any date, who-

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 210 or 245A of the Immigration and Nationality Act or section 202 of the Immigration Reform and Control Act of 1986;

(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section. and

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if-

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

(3) 4/ (A) The portion of each application fee (not to exceed $200) that the Attorney General determines is required to process an application under this section and is remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (o) of section 286.

(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the 4a/ Breached Bond/Detention established under section 286(r), 4a/ except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 286(m) .

(j)5/ (1) If, in the opinion of the Attorney General-

(A) a nonimmigrant admitted into the United States under section 101(a)(15)(S)(i) has supplied information described in subclause (I) of such section; and

(B) the provision of such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section, the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

(2) If, in the sole discretion of the Attorney General-

(A) a nonimmigrant admitted into the United States under section 101(a)(15)(S)(ii) has supplied information described in subclause (I) of such section, and

(B) the provision of such information has substantially contributed to-

(i) the prevention or frustration of an act of terrorism against a United States person or United States property, or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

(C) the nonimmigrant has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956, the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

(3) Upon the approval of adjustment of status under paragraph (1) or (2)6/, the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current.

(k) 7/ An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 203(b) (or, in the case of an alien who is an immigrant described in section 101(a)(27)(C), under section 203(b)(4)) may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if--

(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;

(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days--

(A) failed to maintain, continuously, a lawful status;

(B) engaged in unauthorized employment; or

(C) otherwise violated the terms and conditions of the alien's admission.

(l) 8/ (1) If, in the opinion of the 11/ Secretary of Homeland Security, or in the case of subparagraph (C)(i), in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate 11b/ a nonimmigrant admitted into the United States under section 101(a)(15)(T)(i)--

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 101(a)(15)(T)(i), 11/ or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less;

(B) 11b/ subject to paragraph (6), has, throughout such period, been a person of good moral character; and 11b/

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, 11b/

(ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States, 11/ the Secretary of Homeland Security, 11b/ may adjust the status of the alien (and any person admitted under section 101(a)(15)(T)(ii) 8a/ as the spouse, parent, sibling, 8a/ or child of the alien) to that of an alien lawfully admitted for permanent residence; or 11b/

(iii) 11b/ was younger than 18 years of age at the time of the victimization qualifying the alien for relief under section 101(a)(15)(T).

(2) Paragraph (1) shall not apply to an alien admitted under section 101(a)(15)(T) who is inadmissible to the United States by reason of a ground that has not been waived under section 212, except that, if the 11/ Secretary of Homeland Security considers it to be in the national interest to do so, the 11/ Secretary of Homeland Security, in the 11/ Secretary of Homeland Security discretion, may waive the application of--

(A) paragraphs (1) and (4) of section 212(a); and

(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10(E)), if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).

(3) 10/ An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days, 11b/ unless--

(A) the absence was necessary to assist in the investigation or prosecution described in paragraph (1)(A); or

(B) an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(4) 10/ (A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, 8a/ or parents of such aliens.

(5) 10/ Upon the approval of adjustment of status under paragraph (1), the 11/ Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(6) 11b/ For purposes of paragraph (1)(B), the Secretary of Homeland Security may waive consideration of a disqualification from good moral character with respect to an alien if the disqualification was caused by, or incident to, the trafficking described in section 101(a)(15)(T)(i)(I).

(7) 11b/ The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), and 244(a)(3) (as in effect on March 31, 1997).

(m) 9/ 10/(1) The 11a/ Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary 11c/ determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if--

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the 11a/ Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 101(a)(15)(U)(i) the 11a/ Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 101(a)(15)(U)(ii) if the 11a/ Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the 11a/ Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(5)(A) 11c/ The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).

(B) 11c/ Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).

8 CFR

Section 245.24 Adjustment of aliens in U nonimmigrant status. (Section added effective 1/12/09; 73 FR 75540)

(g) Filing petitions for qualifying family members. A principal U-1 applicant may file an immigrant petition under section 245(m)(3) of the Act on behalf of a qualifying family member as defined in paragraph (a)(2) of this section, provided that:

(1) The qualifying family member has never held U nonimmigrant status;

(2) The qualifying family relationship, as defined in paragraph (a)(2) of this section, exists at the time of the U-1 principal's adjustment and continues to exist through the adjudication of the adjustment or issuance of the immigrant visa for the qualifying family member;

(3) The qualifying family member or the principal U-1 alien, would suffer extreme hardship as described in 8 CFR 245.24(g) (to the extent the factors listed are applicable) if the qualifying family member is not allowed to remain in or enter the United States; and

(4) The principal U-1 alien has adjusted status to that of a lawful permanent resident, has a pending application for adjustment of status, or is concurrently filing an application for adjustment of status.

(h) Procedures for filing petitions for qualifying family members.
(1) Required documents. For each qualifying family member who plans to seek an immigrant visa or adjustment of status under section 245(m)(3) of the Act, the U-1 principal applicant must submit, either concurrently with, or after he or she has filed, his or her Form I-485:

(i) Form I-929 in accordance with the form instructions;

(ii) The fee prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;

(iii) Evidence of the relationship listed in paragraph (a)(2) of this section, such as a birth or marriage certificate. If primary evidence is unavailable, secondary evidence or affidavits may be submitted in accordance with 8 CFR 103.2(b)(2);

(iv)Evidence establishing that either the qualifying family member or the U-1 principal alien would suffer extreme hardship if the qualifying family member is not allowed to remain in or join the principal in the United States. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to document all applicable factors in their applications, as the presence or absence of any one factor may not be determinative in evaluating extreme hardship. To establish extreme hardship to a qualifying family member who is physically present in the United States, an applicant must demonstrate that removal of the qualifying family member would result in a degree of hardship beyond that typically associated with removal. Factors that may be considered in evaluating whether removal would result in extreme hardship to the alien or to the alien's qualifying family member include, but are not limited to:

(A) The nature and extent of the physical or mental abuse suffered as a result of having been a victim of criminal activity;

(B) The impact of loss of access to the United States courts and criminal justice system, including but not limited to, participation in the criminal investigation or prosecution of the criminal activity of which the alien was a victim, and any civil proceedings related to family law, child custody, or other court proceeding stemming from the criminal activity;

(C) The likelihood that the perpetrator's family, friends, or others acting on behalf of the perpetrator in the home country would harm the applicant or the applicant's children;

(D) The applicant's needs for social, medical, mental health, or other supportive services for victims of crime that are unavailable or not reasonably accessible in the home country;

(E) Where the criminal activity involved arose in a domestic violence context, the existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household;

(F) The perpetrator's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant or the applicant's children; and

(G) The age of the applicant, both at the time of entry to the United States and at the time of application for adjustment of status; and

(v) Evidence, including a signed statement from the qualifying family member and other supporting documentation, to establish that discretion should be exercised in his or her favor. Although qualifying family members are not required to establish that they are admissible on any of the grounds set forth in section 212(a) of the Act other than on section 212(a)(3)(E) of the Act, USCIS may take into account all factors, including acts that would otherwise render the applicant inadmissible, in making its discretionary decision on the application. Where adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate. Depending on the nature of the adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. For example, USCIS will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(2) Decision. The decision to approve or deny a Form I-929 is a discretionary determination that lies solely within USCIS's jurisdiction. The Form I-929 for a qualifying family member may not be approved, however, until such time as the principal U-1 applicant's application for adjustment of status has been approved. After completing its review of the application and evidence, USCIS will issue a written decision and notify the applicant of that decision in writing.

(i) Approvals. (A) For qualifying family members who are outside of the United States, if the Form I-929 is approved, USCIS will forward notice of the approval either to the Department of State's National Visa Center so the applicant can apply to the consular post for an immigrant visa, or to the appropriate port of entry for a visa exempt alien.

(B) For qualifying family members who are physically present in the United States, if the Form I-929 is approved, USCIS will forward notice of the approval to the U-1 principal applicant.

(ii) Denials. If the Form I-929 is denied, the applicant will be notified in writing of the reason(s) for the denial in accordance with 8 CFR part 103. If an applicant chooses to appeal the denial to the Administrative Appeals Office pursuant to 8 CFR 103.3, the denial will not become final until the appeal is adjudicated. Denial of the U-1 principal applicant's application will result in the automatic denial of a qualifying family member's Form I-929. There shall be no appeal of such an automatic denial.