

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) paragraphs (4), (5)(A), and (7)(A) 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), the Attorney General, 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) has, throughout such period, been a person of good moral character, and

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

(ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States, 11/ the Secretary of Homeland Security, or in the case of subparagraph (C)(i), the Attorney General, 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.

(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.

(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.

(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 Attorney General 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.

§ 245.23 Adjustment of aliens in T nonimmigrant classification.

(a) Eligibility of principal T-1 applicants. Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2) (i) Was lawfully admitted to the United States as a T-1 nonimmigrant, as defined in 8 CFR 214.11(a)(2); and

(ii) Continues to hold such status at the time of application, or accrued four years in T-1 nonimmigrant status and files a complete application within 90 days of [insert date of promulgation];

(3) Has been physically present in the United States for a continuous period of at least 3 years since the first date of lawful admission as a T-1 nonimmigrant or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period of time is less; provided that if the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain continuous physical presence in the United States for purposes of section 245(l)(1)(A) of the Act;

(4) Is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment;

(5) Has been a person of good moral character since first being lawfully admitted as a T-1 nonimmigrant and until USCIS completes the adjudication of the application for adjustment of status; and

(6)(i) Has, since first being lawfully admitted as a T-1 nonimmigrant and until the conclusion of adjudication of the application, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, as defined in 8 CFR 214.11(a), or

(ii) Would suffer extreme hardship involving unusual and severe harm upon removal from the United States, as provided in 8 CFR 214.11(i).

(b) Eligibility of derivative family members. A derivative family member of a T-1 nonimmigrant status holder may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided:

(1) The T-1 principal nonimmigrant has applied for adjustment of status under this section and meets the eligibility requirements described under subsection (a);

(2) The derivative family member was lawfully admitted to the United States in T-2, T-3, T-4, or T-5 nonimmigrant status as the spouse, parent, sibling, or child of a T-1 nonimmigrant, and continues to hold such status at the time of application;

(3) The derivative family member has applied for such adjustment; and

(4) The derivative family member is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment.

(c) Exceptions. An alien is not eligible for adjustment of status under paragraphs (a) or (b) of this section if:

(1) The alien's T nonimmigrant status has been revoked pursuant to 8 CFR 214.11(s);

(2) The alien is described in sections 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E) of the Act; or

(3) The alien is inadmissible under any other provisions of section 212(a) of the Act and has not obtained a waiver of inadmissibility in accordance with 8 CFR 212.18 or 214.11(j). Where the applicant establishes that the victimization was a central reason for the applicant's unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable, and the applicant need not obtain a waiver of that ground of

inadmissibility. The applicant, however, must submit with the Form I-485 evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. To qualify for this exception, the victimization need not be the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

(d) Jurisdiction. USCIS shall determine whether a T-1 applicant for adjustment of status under this section was lawfully admitted as a T-1 nonimmigrant and continues to hold such status, has been physically present in the United States during the requisite period, is admissible to the United States or has otherwise have been granted a waiver of any applicable ground of inadmissibility, and has been a person of good moral character during the requisite period. The Attorney General shall determine whether the applicant received a reasonable request for assistance in the investigation or prosecution of acts of trafficking as defined in 8 CFR 214.11(a), and, if so, whether the applicant complied in such request. If the Attorney General determines that the applicant failed to comply with any reasonable request for assistance, USCIS shall deny the application for adjustment of status unless USCIS finds that the applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(e) Application.

(1) General. Each T-1 principal applicant and each derivative family member who is applying for adjustment of status must file Form I-485, Application to Register Permanent Residence or Adjust Status, and

(i) Accompanying documents, 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) The biometric services fee prescribed by 8 CFR 103.7(b)(1) or an application for a fee waiver;
- (iv) A photocopy of the alien's Form I-797, Notice of Action, granting T nonimmigrant status;
- (v) A photocopy of all pages of the alien's most recent passport or an explanation of why the alien does not have a passport;
- (vi) A copy of the alien's Form I-94, Arrival-Departure Record; and
- (vii) Evidence that the applicant was lawfully admitted in T nonimmigrant status and continues to hold such status at the time of application. For T nonimmigrants who traveled outside the United States and re-entered using an advance parole document issued under 8 CFR 245.2(a)(4)(ii)(B), the date that the alien was first admitted in lawful T status will be the date of admission for purposes of this section, regardless of how the applicant's Form I-94 "Arrival-Departure Record" is annotated.

(2) T-1 principal applicants. In addition to the items in paragraph (e)(1) of this section, T-1 principal applicants must submit:

- (i) Evidence, including an affidavit from the applicant and a photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport), that he or she has been continuously physically present in the United States for the requisite period as described in paragraph (a)(2) of this section. Applicants should submit evidence described in 8 CFR 245.22. A signed statement from the applicant attesting to the applicant's continuous physical presence alone will not be sufficient to

establish this eligibility requirement. If additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts.

(A) If the applicant has departed from and returned to the United States while in T-1 nonimmigrant status, the applicant must submit supporting evidence showing the dates of each departure from the United States and the date, manner and place of each return to the United States.

(B) Applicants applying for adjustment of status under this section who have less than three years of continuous physical presence while in T-1 nonimmigrant status must submit a document signed by the Attorney General or his designee, attesting that the investigation or prosecution is complete.

(ii) Evidence of good moral character in accordance with paragraph (g) of this section; and

(iii)(A) Evidence that the alien has complied with any reasonable request for assistance in the investigation or prosecution of the trafficking as described in subparagraph (f)(1) of this section since having first been lawfully admitted in T-1 nonimmigrant status and until the adjudication of the application; or

(B) Evidence that the alien would suffer extreme hardship involving unusual and severe harm if removed from the United States as described in subparagraph (f)(2).

(3) Evidence relating to discretion. Each T applicant bears the burden of showing that discretion should be exercised in his or her favor. Where adverse factors are present, an applicant may offset these by submitting supporting documentation

establishing mitigating equities that the applicant wants USCIS to consider. Depending on the nature of 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, only the most compelling positive factors would justify a favorable exercise of discretion 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.

(f) Assistance in the investigation or prosecution or a showing of extreme hardship. Each T-1 principal applicant must establish, to the satisfaction of the Attorney General, that since having been lawfully admitted as a T-1 nonimmigrant and up until the adjudication of the application, he or she complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking, as defined in 8 CFR 214.11(a), or establish, to the satisfaction of USCIS, that he or she would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(1) Each T-1 applicant for adjustment of status under section 245(l) of the Act must submit a document issued by the Attorney General or his designee certifying that the applicant has complied with any reasonable requests for assistance in the investigation or prosecution of the human trafficking offenses during the requisite period; or

(2) In lieu of showing continued compliance with requests for assistance, an applicant may establish, to the satisfaction of USCIS, that he or she would suffer extreme hardship involving unusual and severe harm upon removal from the United States. The hardship determination will be evaluated on a case-by-case basis, in accordance with the factors described in 8 CFR 214.11(i). Where the basis for the hardship claim represents a continuation of the hardship claimed in the application for T nonimmigrant status, the applicant need not re-document the entire claim, but rather may submit evidence to establish that the previously established hardship is ongoing. However, in reaching its decision regarding hardship under this section, USCIS is not bound by its previous hardship determination made under 8 CFR 214.11(i).

(g) Good moral character. A T-1 nonimmigrant applicant for adjustment of status under this section must demonstrate that he or she has been a person of good moral character since first being lawfully admitted as a T-1 nonimmigrant and until USCIS completes the adjudication of their applications for adjustment of status. Claims of good moral character will be evaluated on a case-by-case basis, taking into account section 101(f) of the Act and the standards of the community. The applicant must submit evidence of good moral character as follows:

(1) An affidavit from the applicant attesting to his or her good moral character, accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the applicant has resided for six or more months during the requisite period in continued presence or T-1 nonimmigrant status.

(2) If police clearances, criminal background checks, or similar reports are not available for some or all locations, the applicant may include an explanation and submit other evidence with his or her affidavit.

(3) USCIS will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the applicant's good moral character.

(4) An applicant who is under 14 years of age is generally presumed to be a person of good moral character and is not required to submit evidence of good moral character. However, if there is reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require evidence of good moral character.

(h) Filing and decision. An application for adjustment of status from a T nonimmigrant under section 245(l) of the Act shall be filed with the USCIS office identified in the instructions to Form I-485. Upon approval of adjustment of status under this section, USCIS will record the alien's lawful admission for permanent residence as of the date of such approval and will notify the applicant in writing. Derivative family members' applications may not be approved before the principal applicant's application is approved.

(i) Denial. If the application for adjustment of status or the application for a waiver of inadmissibility is denied, USCIS will notify the applicant in writing of the reasons for the denial and of the right to appeal the decision to the Administrative Appeals Office (AAO) pursuant to the AAO appeal procedures found at 8 CFR 103.3.

Denial of the T-1 principal applicant's application will result in the automatic denial of a derivative family member's application.

(j) Effect of Departure. If an applicant for adjustment of status under this section departs the United States, he or she shall be deemed to have abandoned the application, and it will be denied. If, however, the applicant is not under exclusion, deportation, or removal proceedings, and he or she filed a Form I-131, Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, and was granted advance parole by USCIS for such absences, and was inspected and paroled upon returning to the United States, he or she will not be deemed to have abandoned the application. If the adjustment of status application of such an individual is subsequently denied, he or she will be treated as an applicant for admission subject to sections 212 and 235 of the Act. If an applicant for adjustment of status under this section is under exclusion, deportation, or removal proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States.

(k) Inapplicability of 8 CFR 245.1 and 245.2. Sections 245.1 and 245.2 of this chapter do not apply to aliens seeking adjustment of status under this section.

(l) Annual cap of T-1 principal applicant adjustments. (1) General. The total number of T-1 principal applicants whose status is adjusted to that of lawful permanent residents under this section may not exceed the statutory cap in any fiscal year.

(2) Waiting list. All eligible applicants who, due solely to the limit imposed in section 245(l)(4) of the Act and paragraph (m)(1) of this section, are not granted adjustment of status will be placed on a waiting list. USCIS will send the applicant

written notice of such placement. Priority on the waiting list will be determined by the date the application was properly filed, with the oldest applications receiving the highest priority. In the following fiscal year, USCIS will proceed with granting adjustment of status to applicants on the waiting list who remain admissible and eligible for adjustment of status in order of highest priority until the available numbers are exhausted for the given fiscal year. After the status of qualifying applicants on the waiting list has been adjusted, any remaining numbers for that fiscal year will be issued to new qualifying applicants in the order that the applications were properly filed.

9. Section 245.24 is added to read as follows:

§ 245.24 Adjustment of aliens in U nonimmigrant status.

(a) Definitions. As used in this section, the term:

(1) Continuous Physical Presence means the period of time that the alien has been physically present in the United States and must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the application for adjustment of status. If the alien has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant must include a certification from the agency that signed the Form I-918, Supplement B, in support of the alien's U nonimmigrant status that the absences were necessary to assist in the criminal investigation or prosecution or were otherwise justified.

(2) Qualifying Family Member means a U-1 principal applicant's spouse, child, or, in the case of an alien child, a parent who has never been admitted to the United States as a nonimmigrant under sections 101(a)(15)(U) and 214(p) of the Act.

(3) U Interim Relief means deferred action and work authorization benefits provided by USCIS or the Immigration and Naturalization Service to applicants for U nonimmigrant status deemed *prima facie* eligible for U nonimmigrant status prior to publication of the U nonimmigrant status regulations.

(4) U Nonimmigrant means an alien who is in lawful U-1, U-2, U-3, U-4, or U-5 status.

(5) Refusal to Provide Assistance in a Criminal Investigation or Prosecution is the refusal by the alien to provide assistance to a law enforcement agency or official that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status. The Attorney General will determine whether the alien's refusal was unreasonable under the totality of the circumstances based on all available affirmative evidence. The Attorney General may take into account such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe traumatization (both mental and physical), and the age and maturity of the applicant.

(b) Eligibility of U Nonimmigrants. Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2) (i) Was lawfully admitted to the United States as either a U-1, U-2, U-3, U-4 or U-5 nonimmigrant, as defined in 8 CFR 214.1(a)(2), and

(ii) Continues to hold such status at the time of application; or accrued at least four years in U interim relief status and files a complete adjustment application within 120 days of the date of approval of the Form I-918, Petition for U Nonimmigrant Status;

(3) Has continuous physical presence for three years as defined in paragraph (a) (1) of this section;

(4) Is not inadmissible under section 212(a)(3)(E) of the Act;

(5) Has not unreasonably refused to provide assistance provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and

(6) Establishes to the satisfaction of the Secretary that the alien's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

(c) Exception. An alien is not eligible for adjustment of status under paragraph (b) of this section if the alien's U nonimmigrant status has been revoked pursuant to 8 CFR 214.14(h).

(d) Application Procedures for U nonimmigrants. Each U nonimmigrant who is requesting adjustment of status must submit:

(1) Form I-485, Application to Register Permanent Residence or Adjust Status, in accordance with the form instructions;

- (2) The fee prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;
- (3) The biometric services fee as prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;
- (4) A photocopy of the alien's Form I-797, Notice of Action, granting U nonimmigrant status;
- (5) A photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport) and documentation showing the following:
 - (i) The date of any departure from the United States during the period that the applicant was in U nonimmigrant status;
 - (ii) The date, manner, and place of each return to the United States during the period that the applicant was in U nonimmigrant status; and
 - (iii) If the applicant has been absent from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days or more, a certification from the investigating or prosecuting agency that the absences were necessary to assist in the investigation or prosecution of the criminal activity or were otherwise justified;
- (6) A copy of the alien's Form I-94, Arrival-Departure Record;
- (7) Evidence that the applicant was lawfully admitted in U nonimmigrant status and continues to hold such status at the time of application;
- (8) Evidence pertaining to any request made to the alien by an official or law enforcement agency for assistance in an investigation or prosecution of persons in connection with the qualifying criminal activity, and the alien's response to such request;

(9) Evidence, including an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years as defined in paragraph (a)(1) of this section. Applicants should submit evidence described in 8 CFR 245.22. A signed statement from the applicant attesting to continuous physical presence alone will not be sufficient to establish this eligibility requirement. If additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific;

(10) Evidence establishing that approval is warranted. Any other information required by the instructions to Form I-485, including whether adjustment of status is warranted as a matter of discretion on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(11) Evidence relating to discretion. An applicant has the burden of showing that discretion should be exercised in his or her favor. Although U adjustment applicants are not required to establish that they are admissible, 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.

(e) Continued assistance in the investigation or prosecution. Each applicant for adjustment of status under section 245(m) of the Act must provide evidence of whether or not any request was made to the alien to provide assistance, after having been lawfully admitted as a U nonimmigrant, in an investigation or prosecution of persons in connection with the qualifying criminal activity, and his or her response to any such requests.

(1) An applicant for adjustment of status under section 245(m) of the Act may submit a document signed by an official or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity, affirming that the applicant complied with (or did not unreasonably refuse to comply with) reasonable requests for assistance in the investigation or prosecution during the requisite period. To meet this evidentiary requirement, applicants may submit a newly executed Form I-918, Supplement B, “U Nonimmigrant Status Certification.”

(2) If the applicant does not submit a document described in paragraph (e)(1), the applicant may submit an affidavit describing the applicant's efforts, if any, to obtain a newly executed Form I-918, Supplement B, or other evidence describing whether or not the alien received any request to provide assistance in a criminal investigation or prosecution, and the alien's response to any such request.

(i) The applicant should also include, when possible, identifying information about the law enforcement personnel involved in the case and any information, of which the applicant is aware, about the status of the criminal investigation or prosecution, including any charges filed and the outcome of any criminal proceedings, or whether the investigation or prosecution was dropped and the reasons.

(ii) If applicable, an applicant may also provide a more detailed description of situations where the applicant refused to comply with requests for assistance because the applicant believed that the requests for assistance were unreasonable.

(3) In determining whether the applicant has satisfied the continued assistance requirement, USCIS or the Department of Justice may at its discretion contact the certifying agency that executed the applicant's original Form I-918, Supplement B, "U Nonimmigrant Status Certification" or any other law enforcement agency.

(4) In accordance with procedures determined by the Department of Justice and the Department of Homeland Security, USCIS will refer certain applications for adjustment of status to the Department of Justice for determination of whether the applicant unreasonably refused to provide assistance in a criminal investigation or prosecution. If the applicant submits a document described in paragraph (e)(1), USCIS will not refer the application for consideration by the Department of Justice absent extraordinary circumstances. In other cases, USCIS will only refer an application to the Department of Justice if an official or law enforcement agency has provided evidence that the alien has refused to comply with requests to provide assistance in an investigation or prosecution of persons in connection with the qualifying criminal activity or if there are other affirmative evidence in the record suggesting that the applicant may have

unreasonably refused to provide such assistance. In these instances, USCIS will request that the Department of Justice determine, based on all available affirmative evidence, whether the applicant unreasonably refused to provide assistance in a criminal investigation or prosecution. The Department of Justice will have 90 days to provide a written determination to USCIS, or where appropriate, request an extension of time to provide such a determination. After such time, USCIS may adjudicate the application whether or not the Department of Justice has provided a response.

(f) Decision. The decision to approve or deny a Form I-485 filed under section 245(m) of the Act is a discretionary determination that lies solely within USCIS's jurisdiction. After completing its review of the application and evidence, USCIS will issue a written decision approving or denying Form I-485 and notify the applicant of this decision.

(1) Approvals. If USCIS determines that the applicant has met the requirements for adjustment of status and merits a favorable exercise of discretion, USCIS will approve the Form I-485. Upon approval of adjustment of status under this section, USCIS will record the alien's lawful admission for permanent residence as of the date of such approval.

(2) Denials. Upon the denial of an application for adjustment of status under section 245(m) of the Act, the applicant will be notified in writing of the decision and the reason 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 the provisions of 8 CFR 103.3, the denial will not become final until the appeal is adjudicated.

(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.

(i) Application procedures for qualifying family members who are physically present in the United States to request adjustment of status. (1) Required documents. Qualifying family members in the United States may request adjustment of status by submitting:

(i) Form I-485, Application to Register Permanent Residence or Adjust Status, in accordance with the form instructions;

(ii) An approved Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant;

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

(iv) The biometric services fee as prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver.

(2) Decision. The decision to approve or deny Form I-485 is a discretionary determination that lies solely within USCIS's jurisdiction. After completing its review of

the application and evidence, USCIS will issue a written decision approving or denying Form I-485 and notify the applicant of this decision in writing.

(i) Approvals. Upon approval of a Form I-485 under this section, USCIS shall record the alien's lawful admission for permanent residence as of the date of such approval.

(ii) Denial. Upon the denial of any application for adjustment of status, the applicant will be notified in writing of the decision and the reason 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 the provisions of 8 CFR 103.3, the denial will not become final until the appeal is adjudicated. During the appeal period, the applicant may not obtain or renew employment authorization under 8 CFR 274a.12(c)(9). Denial of the U-1 principal applicant's application will result in the automatic denial of a qualifying family member's Form I-485; such an automatic denial is not appealable.

(j) Effect of departure. If an applicant for adjustment of status under this section departs the United States, he or she shall be deemed to have abandoned the application, and it will be denied. If, however, the applicant is not under exclusion, deportation, or removal proceedings, and he or she filed a Form I-131, Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, and was granted advance parole by USCIS for such absences, and was inspected and paroled upon returning to the United States, he or she will not be deemed to have abandoned the application. If the adjustment of status application of such an individual is subsequently denied, he or she will be treated as an applicant for admission subject to sections 212 and 235 of the Act. If an applicant for adjustment of status under this section is under

exclusion, deportation, or removal proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States.

(k) Exclusive jurisdiction. USCIS shall have exclusive jurisdiction over adjustment applications filed under section 245(m) of the Act.

(l) Inapplicability of 8 CFR 245.1 and 245.2. The provisions of 8 CFR 245.1 and 245.2 do not apply to aliens seeking adjustment of status under section 245(m) of the Act.