

## INA § 245 / § 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

### Currentness

#### **(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa**

The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner 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) Record of lawful admission for permanent residence; reduction of preference visas**

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 1152](#) and [1153](#) of this title within the class to which the alien is chargeable for the fiscal year then current.

#### **(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa**

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in [section 1151\(b\)](#) of this title or a special immigrant described in [section 1101\(a\)\(27\)\(H\), \(I\), \(J\), or \(K\)](#) of this title) 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 1182\(d\)\(4\)\(C\)](#) of this title; (4) an alien (other than an immediate relative as defined in [section 1151\(b\)](#) of this title) who was admitted as a nonimmigrant visitor without a visa under [section 1182\(l\)](#) of this title or [section 1187](#) of this title; (5) an alien who was admitted as a nonimmigrant described in [section 1101\(a\)\(15\)\(S\)](#) of this title, <sup>1</sup> (6) an alien who is deportable under [section 1227\(a\)\(4\)\(B\)](#) of this title; (7) any alien who seeks adjustment of status to that of an immigrant under [section 1153\(b\)](#) of this title 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 1324a\(h\)\(3\)](#) of this title, or who has otherwise violated the terms of a nonimmigrant visa.

#### **(d) Alien admitted for permanent residence on conditional basis; fiancee or fiance of citizen**

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 1186a](#) of this title. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in [section 1101\(a\)\(15\)\(K\)](#) of this title except to that of an alien lawfully admitted to the United States on a conditional basis under [section 1186a](#) of this title 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 1101\(a\)\(15\)\(K\)](#) of this title.

**(e) Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception**

**(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 1154\(g\)](#) of this title 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 1154\(a\)](#) of this title or [subsection \(d\)](#) or [\(p\) of section 1184](#) of this title 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) Limitation on adjustment of status**

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 1186b](#) of this title.

**(g) Special immigrants**

In applying this section to a special immigrant described in [section 1101\(a\)\(27\)\(K\)](#) of this title, such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States.

**(h) Application with respect to special immigrants**

In applying this section to a special immigrant described in [section 1101\(a\)\(27\)\(J\)](#) of this title--

**(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 \(4\), \(5\)\(A\), \(6\)\(A\), \(6\)\(C\), \(6\)\(D\), \(7\)\(A\),](#) and [\(9\)\(B\) of section 1182\(a\)](#) of this title shall not apply; and

**(B)** the Attorney General may waive other paragraphs of [section 1182\(a\)](#) of this title (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 1101\(a\)\(27\)\(J\)](#) of this title 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) Adjustment in status of certain aliens physically present in United States**

**(1)** 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;

**(B)** who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under [section 1153\(d\)](#) of this title) of--

**(i)** a petition for classification under [section 1154](#) of this title that was filed with the Attorney General on or before April 30, 2001; or

**(ii)** an application for a labor certification under [section 1182\(a\)\(5\)\(A\)](#) of this title that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

**(C)** 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 December 21, 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 equalling \$1,000 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 1160](#) or [1255a](#) of this title 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 1160](#) or [1255a](#) of this title 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.

**(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)(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 1356](#) of this title.

**(B)** Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Breached Bond/Detention Fund established under [section 1356\(r\)](#) of this title, 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 1356\(m\)](#) of this title.

**(j) Adjustment to permanent resident status**

**(1)** If, in the opinion of the Attorney General--

- (A)** a nonimmigrant admitted into the United States under [section 1101\(a\)\(15\)\(S\)\(i\)](#) of this title 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 1182\(a\)\(3\)\(E\)](#) of this title.

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

- (A)** a nonimmigrant admitted into the United States under [section 1101\(a\)\(15\)\(S\)\(ii\)](#) of this title 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 2708\(a\) of Title 22](#),

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 1182\(a\)\(3\)\(E\)](#) of this title.

**(3)** Upon the approval of adjustment of status under paragraph (1) or (2), 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 1151\(d\)](#) and [1153\(b\)\(4\)](#) of this title for the fiscal year then current.

**(k) Inapplicability of certain provisions for certain employment-based immigrants**

An alien who is eligible to receive an immigrant visa under [paragraph \(1\), \(2\), or \(3\) of section 1153\(b\)](#) of this title (or, in the case of an alien who is an immigrant described in [section 1101\(a\)\(27\)\(C\)](#) of this title, under [section 1153\(b\)\(4\)](#) of this title) 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.

**(I) Adjustment of status for victims of trafficking**

**(1)** If, in the opinion of the 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<sup>2</sup> a nonimmigrant admitted into the United States under [section 1101\(a\)\(15\)\(T\)\(i\)](#) of this title-

**(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 1101\(a\)\(15\)\(T\)\(i\)](#) of this title, 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)** subject to paragraph (6), 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;

**(ii)** the alien<sup>3</sup> would suffer extreme hardship involving unusual and severe harm upon removal from the United States; or

**(iii)** was younger than 18 years of age at the time of the victimization qualifying the alien for relief under [section 1101\(a\)\(15\)\(T\)](#) of this title.<sup>4</sup>

the Secretary of Homeland Security may adjust the status of the alien (and any person admitted under [section 1101\(a\)\(15\)\(T\)\(ii\)](#) of this title as the spouse, parent, sibling, 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 1101\(a\)\(15\)\(T\)](#) of this title who is inadmissible to the United States by reason of a ground that has not been waived under [section 1182](#) of this title, except that, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General's<sup>5</sup> discretion, may waive the application of

**(A)** [paragraphs \(1\) and \(4\) of section 1182\(a\)](#) of this title; and

**(B)** any other provision of such section (excluding paragraphs (3), (10)(C), and (10)(E))<sup>6</sup>, if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in [section 1101\(a\)\(15\)\(T\)\(i\)\(I\)](#) of this title.

**(3)** 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--

**(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)(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, or parents of such aliens.

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

**(6)** 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 1101\(a\)\(15\)\(T\)\(i\)\(I\)](#) of this title.

**(7)** 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 1101\(a\)\(15\)\(T\), 1101\(a\)\(15\)\(U\), 1105a, 1229b\(b\)\(2\),](#) and [1254a\(a\)\(3\)](#) of this title (as in effect on March 31, 1997).

**(m) Adjustment of status for victims of crimes against women**

**(1)** The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under [section 1101\(a\)\(15\)\(U\)](#) of this title to that of an alien lawfully admitted for permanent residence if the alien is not described in [section 1182\(a\)\(3\)\(E\)](#) of this title, unless the Secretary 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 1101\(a\)\(15\)\(U\)](#) of this title; and

**(B)** in the opinion of the 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 1101\(a\)\(15\)\(U\)\(i\)](#) of this title the 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 1101\(a\)\(15\)\(U\)\(ii\)](#) of this title if the 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 Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

**(5)(A)** 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 1101\(a\)\(15\)\(U\)\(iii\)](#) of this title.

**(B)** 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 1101\(a\)\(15\)\(U\)\(iii\)](#) of this title.