§ 1245.9 Adjustment of status of certain nationals of the People’s Republic of China under Public Law 102–404.

(a) Principal applicant status. All nationals of the People’s Republic of China who qualify under the provisions of paragraph (b) of this section may apply for adjustment of status as principals in their own right, regardless of age or marital status. Nationals of other countries who meet the requirements of paragraphs (b) and (c) of this section may apply for adjustment of status as qualified family members.

(b) Aliens eligible to apply for adjustment. An alien is eligible to apply for adjustment of status under the provisions of Public Law 102–404, if the alien:

1. Is a national of the People’s Republic of China or a qualified family member of an eligible national of the People’s Republic of China;

2. Was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country;

3. Has resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent absences;

4. Was not physically present in the People’s Republic of China for more than a cumulative total of 90 days between April 11, 1990, and October 9, 1992;

5. Is admissible to the United States as an immigrant, unless the basis for inadmissibility has been waived;

6. Establishes eligibility for adjustment of status under all provisions of section 245 of the Act, unless the basis for ineligibility has been waived; and

7. Properly files an application for adjustment of status under section 245 of the Act.

(c) Qualified family member who is not a national of the People’s Republic of China. A qualified family member within the meaning of this section includes the spouse, child, son, or daughter of a national of the People’s Republic of China who is eligible for benefits under the provisions of paragraph (b) of this section, provided that:

1. He or she qualified as the spouse or child (as defined in section 101(b)(1) of the Act) of an eligible national of the People’s Republic of China as of April 11, 1990; and

2. The qualifying relationship continues to exist, or the family member is a son or daughter of an eligible national of the People’s Republic of China and the family member was unmarried and under the age of 21 on April 11, 1990.

(d) Waivers of inadmissibility under section 212(a) of the Act. An applicant for the benefits of the adjustment of status provisions of Pub. L. 102–404 is automatically exempted from compliance with the requirements of sections 212(a)(5) and 212(a)(7)(A) of the Act. A Pub. L. 102–404 applicant may also apply for one or more waivers of inadmissibility under section 212(a) of the Act, except for inadmissibility under section 212(a)(2)(C), 212(a)(3)(A), 212(a)(3)(B), 212(a)(3)(C) or 212(a)(3)(E) of the Act.

(e) Waiver of the two-year foreign residence requirement of section 212(e). An applicant for the benefits of the adjustment of status provisions of Public Law 102–404 is automatically exempted from compliance with the two-year foreign residence requirement of section 212(e) of the Act.

(f) Waiver of section 245(c) of the Act. Public Law 102–404 provides that the provisions of section 245(c) of the Act shall not apply to persons applying for the adjustment of status benefits of Public Law 102–404.
(g) Application. Each applicant must file an application for adjustment of status on Form I–485, Application to Register Permanent Residence or Adjust Status, accompanied by the prescribed fee, and the supporting documents specified on the instructions to Form I–485 and described in §1245.2. Secondary evidence may be submitted if the applicant is unable to obtain the required primary evidence. Applicants who are nationals of the People’s Republic of China should complete Part 2 of Form I–485 by checking box “h—other” and writing “CSPA—Principal” next to that block. Applicants who are not nationals of the People’s Republic of China should complete Part 2 of Form I–485 by checking box “h—other” and writing “CSPA—Qualified Family Member” next to that block. Each applicant for the benefits of Public Law 102–404 must also submit evidence of eligibility for the adjustment of status benefits of Public Law 102–404:

(1) A photocopy of all pages of the applicant’s most recent passport or an explanation of why the applicant does not have a passport;

(2) An attachment on a plain piece of paper showing:
   (i) The date of the applicant’s last arrival in the United States before or on April 11, 1990;
   (ii) The date of each departure the applicant made from the United States since that arrival (if the applicant did not depart the United States after the initial date of arrival, the applicant should write “I was in the United States on April 11, 1990, and I have not departed the United States since April 11, 1990”);
   (iii) The reason for each departure; and
   (iv) The date of each return to the United States.

(3) An attachment on a plain piece of paper showing:
   (i) The date the applicant arrived in the People’s Republic of China;
   (ii) The date the applicant left the People’s Republic of China for each trip the applicant made to the People’s Republic of China between April 11, 1990, and October 9, 1992 (if the applicant did not travel to the People’s Republic of China, the applicant should write “I was not in the People’s Republic of China between April 11, 1990, and October 9, 1992”);

(4) A copy of evidence showing that the applicant was found eligible for benefits under E.O. 12711, such as deferred enforced departure (DED), employment authorization, and/or waiver of the two-year foreign residence requirement, if the applicant previously applied for benefits under E.O. 12711; and

(5) Primary or secondary evidence of a qualifying family relationship to an eligible national of the People’s Republic of China, such as a birth or marriage certificate, if the applicant is a qualified family member who is not a national of the People’s Republic of China.

(h) Secondary evidence. If any required primary evidence is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish the birth, marriage, or other event. Documentary evidence establishing that primary evidence is unavailable need not accompany secondary evidence of birth or marriage in the People’s Republic of China.

(i) Filing. The application period begins on July 1, 1993. To benefit from the provisions of Public Law 102–404 (the Chinese Student Protection Act of 1992), an alien must properly file an application for adjustment of status under section 245 of the Act on or before June 30, 1994. All applications for the benefits of Public Law 102–404 must be submitted by mail to the Service Center having jurisdiction over the applicant’s place of residence in the United States. Pursuant to the deactivation clause of Public Law 102–404, if the President of the United States determines and certifies to Congress before July 1, 1993, that conditions in the People’s Republic of China permit persons covered by Public Law 102–404 to safely return to the People’s Republic of China, no applications for lawful permanent resident status under Public Law 102–404 will be processed or granted.
§ 1245.10 Adjustment of status upon payment of additional sum under section 245(i).

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

(1) (i) Grandfathered alien means an alien who is the beneficiary (including a spouse or child of the alien beneficiary if eligible to receive a visa under section 203(d) of the Act) of:

(A) A petition for classification under section 204 of the Act which was properly filed with the Attorney General on or before April 30, 2001, and which was approvable when filed; or

(B) An application for labor certification under section 212(a)(5)(A) of the Act that was properly filed pursuant to section 1245.10(a)(2) of this subpart.

(ii) If the qualifying visa petition or application for labor certification was filed after January 14, 1998, the alien must have been physically present in the United States on December 21, 2000.

(B) An application for labor certification under section 212(a)(5)(A) of the Act that was properly filed pursuant to the regulations of the Secretary of Labor on or before April 30, 2001, and which was approvable when filed.

(ii) If the qualifying visa petition or application for labor certification was filed after January 14, 1998, the alien must have been physically present in the United States on December 21, 2000.

This requirement does not apply with respect to a spouse or child accompanying or following to join a principal alien who is a grandfathered alien as described in this section.

(2) Properly filed means: