the applicant from filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I–212) in accordance with §212.2 of this chapter.

(u) **Tolling the physical presence in the United States provision for certain individuals—**

(1) **Departure with advance authorization for parole.** In the case of an alien who departed the United States after having been issued an Authorization for Parole of an Alien into the United States (Form I–512), and who returns to the United States in accordance with the conditions of that document, the physical presence in the United States requirement of section 902(b)(1) of HRIFA is tolled while the alien is outside the United States pursuant to the issuance of the Form I–512.

(2) **Request for parole authorization from outside the United States.** In the case of an alien who is outside the United States and submits an application for parole authorization in accordance with paragraph (t)(2) of this section, and such application for parole authorization is granted by the Service, the physical presence requirement contained in section 902(b)(1) of HRIFA is tolled from the date the application is received at the Nebraska Service Center until the alien is paroled into the United States pursuant to the issuance of the Form I–512.

(3) **Departure without advance authorization for parole.** In the case of an otherwise-eligible applicant who departed the United States on or before December 31, 1998, the physical presence in the United States provision of section 902(b)(1) of HRIFA is tolled as of October 21, 1998, and until July 12, 1999.

(v) **Judicial review of HRIFA adjustment of status determinations.** Pursuant to the provisions of section 902(f) of HRIFA, there shall be no judicial appeal or review of any administrative determination as to whether the status of an alien should be adjusted under the provisions of section 902 of HRIFA.

§245.18 Physicians with approved employment-based petitions serving in a medically underserved area or a Veterans Affairs facility.

(a) Which physicians are eligible for this benefit? Any alien physician who has been granted a national interest waiver under §204.12 of this chapter may submit Form I–485 during the 6-year period following Service approval of a second preference employment-based immigrant visa petition.

(b) **Do alien physicians have special time-related requirements for adjustment?**

(1) Alien physicians who have been granted a national interest waiver under §204.12 of this chapter must meet all the adjustment of status requirements of this part.

(2) The Service shall not approve an adjustment application filed by an alien physician who obtained a waiver under section 203(b)(2)(B)(ii) of the Act until the alien physician has completed the period of required service established in §204.12 of this chapter.

(c) **Are the filing procedures and documentary requirements different for these particular alien physicians?** Alien physicians submitting adjustment applications upon approval of an immigrant petition are required to follow the procedures outlined within this part with the following modifications.

(1) **Delayed fingerprinting.** Fingerprinting, as noted in the Form I–485 instructions, will not be scheduled at the time of filing. Fingerprinting will be scheduled upon the physician’s completion of the required years of service.

(2) **Delayed medical examination.** The required medical examination, as specified in §245.5, shall not be submitted with Form I–485. The medical examination report shall be submitted with the documentary evidence noting the physician’s completion of the required years of service.

(d) **Employment authorization.** (1) Once USCIS has approved a petition described in paragraph (a) of this section, the alien physician may apply for permanent residence and employment authorization on the forms designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.
\[
\begin{align*}
\text{(2) Since section } & 203(b)(2)(B)(i) \text{ of the Act requires the alien physician to complete the required employment before USCIS can approve the alien physician’s adjustment application, an alien physician who was in lawful non-immigrant status when he or she filed the adjustment application is not required to maintain a nonimmigrant status while the adjustment application remains pending. Even if the alien physician’s nonimmigrant status expires, the alien physician shall not be considered to be unlawfully present, so long as the alien physician is practicing medicine in accordance with } \\
\text{§ 204.5(k)(4)(iii) of this chapter.}
\end{align*}
\]
accomplished by submitting the following:

(i) Evidence noted in paragraph (h) of this section that is available at the second anniversary of the I–140 approval.

(ii) Documentation from the employer attesting to the full-time medical practice and the date on which the physician began his or her medical service.

(2) Physicians with a 3-year service requirement are not required to make a supplemental filing, and must only comply with the requirements of paragraph (h) of this section.

(h) What evidence is needed to prove final compliance with the service requirement? No later than 120 days after completion of the service requirement established under §204.12(a) of this section, an alien physician must submit to the Service Center having jurisdiction over his or her place of employment documentary evidence that proves the physician has in fact satisfied the service requirement. Such evidence must include, but is not limited to:

(1) Individual Federal income tax returns, including copies of the alien’s W–2 forms, for the entire 3-year period or the balance years of the 5-year period that follow the submission of the evidence required in paragraph (e) of this section; 

(2) Documentation from the employer attesting to the full-time medical service rendered during the required aggregate period. The documentation shall address instances of breaks in employment, other than routine breaks such as paid vacations;

(3) If the physician established his or her own practice, documents noting the actual establishment of the practice, including incorporation of the medical practice (if incorporated), the business license, and the business tax returns and tax withholding documents submitted for the entire 3 year period, or the balance years of the 5-year period that follow the submission of the evidence required in paragraph (e) of this section.

(i) What if the physician does not comply with the requirements of paragraphs (f) and (g) of this section? If an alien physician does not submit (in accordance with paragraphs (f) and (g) of this section) proof that he or she has completed the service required under 8 CFR 204.12(a), USCIS shall serve the alien physician with a written notice of intent to deny the alien physician’s application for adjustment of status and, after the denial is finalized, to revoke approval of the Form I–140 and national interest waiver. The written notice shall require the alien physician to provide the evidence required by paragraph (f) or (g) of this section. If the alien physician fails to submit the evidence within the allotted time, USCIS shall deny the alien physician’s application for adjustment of status and shall revoke approval of the Form I–140 and of the national interest waiver.

(j) Will a Service officer interview the physician? (1) Upon submission of the evidence noted in paragraph (h) of this section, the Service shall match the documentary evidence with the pending form I–485 and schedule the alien physician for fingerprinting at an Application Support Center.

(2) The local Service office shall schedule the alien for an adjustment interview with a Service officer, unless the Service waives the interview as provided in §245.6. The local Service office shall also notify the alien if supplemental documentation should either be mailed to the office, or brought to the adjustment interview.

(k) Are alien physicians allowed to travel outside the United States during the mandatory 3 or 5-year service period? An alien physician who has been granted a national interest waiver under §204.12 of this chapter and has a pending application for adjustment of status may travel outside of the United States during the required 3 or 5-year service period by obtaining advanced parole prior to traveling. Such physicians may apply for advance parole on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(l) What if the Service denies the adjustment application? If the Service denies the adjustment application, the
§ 245.20 Alien physician may renew the application in removal proceedings.


§ 245.20 [Reserved]


(a) Eligibility. USCIS may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States before October 1, 1997;

(2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(3) Was physically present in the United States prior to and on October 1, 1997; and

(4) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) Application. An applicant must submit an application on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions. Applicants who are 14 through 79 years of age must also submit the biometrics service fee described in 8 CFR 103.17.

(c) Applications from aliens in immigration proceedings. An alien in pending immigration proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 may apply directly to USCIS in accordance with paragraph (b) of this section.

(d) Applications from aliens with final orders of removal, deportation, or exclusion. An alien with a final order of removal, deportation, or exclusion who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to USCIS in accordance with paragraph (b) of this section.

(1) An application under this section does not automatically stay the order of removal, deportation, or exclusion. An alien who is eligible for adjustment of status under section 586 of Public Law 106–429 may request a stay of removal during the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6.

(2) DHS will exercise its discretion not to grant a stay of removal, deportation, or exclusion with respect to an alien who is inadmissible on any of the grounds specified in paragraph (m)(3) of this section, unless there is substantial reason to believe that USCIS will grant the necessary waivers of inadmissibility.

(3) An immigration judge or the Board may not grant a motion to reopen or stay in connection with an application under this section.

(4) If USCIS approves the application, the approval will constitute the automatic re-opening of the alien’s immigration proceedings, vacating of the final order of removal, deportation, or exclusion, and termination of the reopened proceedings.

(e) Grounds of inadmissibility that do not apply. In making a determination of whether an applicant is otherwise eligible for admission to the United States for lawful permanent residence under the provisions of section 586 of Public Law 106–429, the grounds of inadmissibility under sections 212(a)(4), (a)(5), (a)(7)(A), and (a)(9) of the Act shall not apply.

(f) Waiver of grounds of inadmissibility. In connection with an application for adjustment of status under this section, the alien may apply for a waiver