

notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. Pertinent evidence, including testimony of witnesses, shall be incorporated in the record. The immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director who caused the notice to be served. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. If the decision of the district director is that the matter be terminated, the alien shall be informed of such decision. If the decision of the district director is that the status of the alien should be adjusted to that of a nonimmigrant, his decision shall provide that unless the alien, within 10 days of receipt of notification of such decision, requests permission to retain his status as an immigrant and files with the district director Form I-508 and, if applicable, Form I-508F, the alien's immigrant status be adjusted to that of a nonimmigrant. The alien shall be informed of such decision and of the reasons therefor, and of his right to appeal in accordance with the provisions of part 103 of this chapter. If the alien does not request that he be permitted to retain status and file the Form I-508 and, if applicable, Form I-508F within the period provided therefor, the district director, without further notice to the alien, shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted. Form I-94A shall be delivered to the alien. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status created and shall be subject to such other terms and conditions, including the exaction of bond, as the district director may deem appropriate.

[22 FR 9801, Dec. 6, 1957, as amended at 23 FR 9124, Nov. 26, 1958; 35 FR 13829, Sept. 1, 1970; 78 FR 18472, Mar. 27, 2013]

#### § 247.13 Disposition of Form I-508.

If Form I-508 is executed and filed, the duplicate copy thereof (noted to show the election made on Form I-508F, if applicable) shall be filed in the office of the Assistant Commissioner, Administrative Division, and may be made available for inspection by any interested officer or agency of the United States.

[35 FR 13829, Sept. 1, 1970]

#### § 247.14 Surrender of documents.

An alien whose status as a permanent resident has been adjusted to that of a nonimmigrant in accordance with section 247 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken any documents (such as Form I-151 or I-551 or any other form of Permanent Resident Card, immigrant identification card, resident alien's border-crossing identification card (Form I-187), certificate of registry, or certificate of lawful entry) in his possession evidencing his former permanent resident status.

[22 FR 9802, Dec. 6, 1957, as amended at 45 FR 32657, May 19, 1980; 63 FR 70316, Dec. 21, 1998]

## PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

Sec.

248.1 Eligibility.

248.2 Ineligible classes.

248.3 Petition and application.

AUTHORITY: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

#### § 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2 of this part, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status in accordance with section 247 of the Act who is continuing to maintain his or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fiancé(e), or the child of such alien, under section 101(a)(15)(K) of the

Act or as an alien in transit under section 101(a)(15)(C) of the Act. Except where the nonimmigrant classification to which the alien seeks to change is exempted by law or regulation from section 212(a)(4) of the Act or that section has been waived, as a condition for approval of a change of nonimmigrant status, the alien must demonstrate that he or she has not received since obtaining the nonimmigrant status from which he or she seeks to change, public benefits, as described in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months). DHS will only consider public benefits received on or after October 15, 2019 for petitions or applications postmarked (or, if applicable, submitted electronically) on or after that date. An alien defined by section 101(a)(15)(V) or 101(a)(15)(U) of the Act may be accorded nonimmigrant status in the United States by following the procedures set forth in 8 CFR 214.15(f) and 214.14, respectively.

(b) *Decision in change of status proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested change of status, it may be granted at the discretion of DHS. There is no appeal from the denial of an application for change of status.

(c) Except in the case of an alien applying to obtain V nonimmigrant status in the United States under § 214.15(f) of this chapter, a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of USCIS, and without separate application, where it is demonstrated at the time of filing that:

(1) The failure to file a timely application was due to extraordinary circumstances beyond the control of the applicant or petitioner, and USCIS finds the delay commensurate with the circumstances;

(2) The alien has not otherwise violated his or her nonimmigrant status;

(3) The alien remains a bona fide non-immigrant; and

(4) As a condition for approval, an alien seeking to change nonimmigrant classification must demonstrate that he or she has not received, since obtaining the nonimmigrant status from which he or she seeks to change, one or more public benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months). For purposes of this determination, DHS will only consider public benefits received on or after October 15, 2019 for petitions or applications postmarked (or, if applicable, submitted electronically) on or after that date. This provision does not apply where the nonimmigrant classification from which the alien seeks to change or to which the alien seeks to change is exempt from section 212(a)(4) of the Act, or where that section has been waived.

(d) *Change of nonimmigrant classification to that of a nonimmigrant student.*

(1) Except as provided in paragraph (c)(3) of this section, a nonimmigrant applying for a change of classification as an F-1 or M-1 student is not considered ineligible for such a change solely because the applicant may have started attendance at school before the application was submitted. USCIS will deny an application for a change to classification as an M-1 student if the applicant intends to pursue the course of study solely in order to qualify for a subsequent change of nonimmigrant classification to that of an alien temporary worker under section 101(a)(15)(H) of the Act. Furthermore, an alien may not change from classification as an M-1 student to that of an F-1 student.

(2) [Reserved]

(3) A nonimmigrant who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay as a B-1 or B-2 nonimmigrant on or after such date, may not pursue a course of study at an approved school unless the Service has approved his or her application for change of status to a classification as an F-1 or M-1 student. USCIS will

deny the change of status if the B-1 or B-2 nonimmigrant enrolled in a course of study before filing the application for change of status or while the application is pending.

(e) *Application for change of non-immigrant classification from that of a student under section 101(a)(15)(M)(i) to that described in section 101(a)(15)(H).* A district director shall deny an application for change of nonimmigrant classification from that of an M-1 student to that of an alien temporary worker under section 101(a)(15)(H) of the Act if the education or training which the student received while an M-1 student enables the student to meet the qualifications for temporary worker classification under section 101(a)(15)(H) of the Act.

(f) *Change of nonimmigrant classification to that as described in section 101(a)(15)(N).* An application for change to N status shall not be denied on the grounds the applicant is an intending immigrant. Change of status shall be granted for three years not to exceed termination of eligibility under section 101(a)(15)(N) of the Act. Employment authorization pursuant to section 274(A) of the Act may be granted to an alien accorded nonimmigrant status under section 101(a)(15)(N) of the Act. Employment authorization is automatically terminated when the alien changes status or is no longer eligible for classification under section 101(a)(15)(N) of the Act.

[36 FR 9001, May 18, 1971, as amended at 48 FR 14592, Apr. 5, 1983; 52 FR 11621, Apr. 10, 1987; 59 FR 1465, Jan. 11, 1994; 62 FR 10386, Mar. 6, 1997; 66 FR 42595, Aug. 14, 2001; 66 FR 46704, Sept. 7, 2001; 67 FR 18064, Apr. 12, 2002; 72 FR 53041, Sept. 17, 2007; 76 FR 53794, Aug. 29, 2011; 84 FR 41508, Aug. 14, 2019; 84 FR 52363, Oct. 2, 2019]

#### § 248.2 Ineligible classes.

(a) Except as described in paragraph (b) of this section, the following categories of aliens are not eligible to change their nonimmigrant status under section 248 of the Act, 8 U.S.C. 1258:

(1) Any alien in immediate and continuous transit through the United States without a visa;

(2) Any alien classified as a non-immigrant under section 101(a)(15) (C), (D), (K), or (S) of the Act;

(3) Any alien admitted as a non-immigrant under section 101(a)(15)(J) of the Act, or who acquired such status after admission in order to receive graduate medical education or training, whether or not the alien was subject to, received a waiver of, or fulfilled the two-year foreign residence requirement of section 212(e) of the Act. This restriction shall not apply when the alien is a foreign medical graduate who was granted a waiver under section 212(e)(iii) of the Act pursuant to a request made by a State Department of Public Health (or its equivalent) under Pub. L. 103-416, and the alien complies with the terms and conditions imposed on the waiver under section 214(k) of the Act and the implementing regulations at §212.7(c)(9) of this chapter. A foreign medical graduate who was granted a waiver under Pub. L. 103-416 and who does not fulfill the requisite 3-year employment contract or otherwise comply with the terms and conditions imposed on the waiver is ineligible to apply for change of status to any other nonimmigrant classification; and

(4) Any alien classified as a non-immigrant under section 101(a)(15)(J) of the Act (other than an alien described in paragraph (c) of this section) who is subject to the foreign residence requirement of section 212(e) of the Act and who has not received a waiver of the residence requirement, except when the alien applies to change to a classification under section 101(a)(15)(A) or (G) of the Act.

(5) Any alien admitted as a visitor under the visa waiver provisions of §212.1(e) of this chapter.

(6) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and part 217 of this chapter.

(b) The prohibition against a change of nonimmigrant status for the categories of aliens described in paragraphs (a)(1) through (6) of this section is inapplicable to aliens applying for a change of nonimmigrant status to that of a nonimmigrant under section

### § 248.3

### 8 CFR Ch. I (1–1–21 Edition)

101(a)(15)(U) of the Act, 8 U.S.C. 1101(a)(15)(U).

[47 FR 44238, Oct. 7, 1982, as amended at 48 FR 41017, Sept. 13, 1983; 52 FR 48084, Dec. 18, 1987; 53 FR 24903, June 30, 1988; 60 FR 26683, May 18, 1995; 60 FR 44271, Aug. 25, 1995; 72 FR 53041, Sept. 17, 2007]

#### § 248.3 Petition and application.

Requests for a change of status must be filed on the form designated by USCIS with the fee prescribed in 8 CFR 106.2 and in accordance with the form instructions.

(a) *Requests by petitioners.* A petitioner must submit a request for a change of status to E–1, E–2, E–3, H–1C, H–1B, H–1B1, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q–1, R–1, or TN nonimmigrant.

(b) *Application by nonimmigrant—(1) Individual applicant.* Any nonimmigrant who seeks to change status to:

(i) A dependent nonimmigrant classification as the spouse or child of a principal whose nonimmigrant classification is listed in paragraph (a) of this section, or

(ii) Any other nonimmigrant classification not listed in paragraph (a) of this section must apply for a change of status on his or her own behalf.

(2) *Multiple applicants.* More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on the principal's nonimmigrant status.

(c) *Special provisions for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15)(A) or (G) of the Act.* Each application for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15)(A) or (G) must be filed on the prescribed application accompanied by the appropriate endorsement from the Department of State recommending the change of status. If the Department of State recommends against the change, the application shall be denied. An application for a change of classification by a principal alien in a position classified

A–1, A–2, G–1, G–2, G–3, or G–4 shall be processed without fee. Members of the principal alien's immediate family who are included on the principal alien's application shall also be processed without fee.

(d) [Reserved]

(e) *Change of classification not required.* The following do not need to request a change of classification:

(1) An alien classified as a visitor for business under section 101(a)(15)(B) of the Act who intends to remain in the United States temporarily as a visitor for pleasure during the period of authorized admission; or

(2) An alien classified under sections 101(a)(15)(A) or 101(a)(15)(G) of the Act as a member of the immediate family of a principal alien classified under the same section, or an alien classified under sections 101(a)(15)(E), (H), (I), (J), or (L) of the Act as the spouse or child who accompanied or followed-to-join a principal alien who is classified under the same section, may attend school in the United States, provided that the principal alien or spouse or child maintain their nonimmigrant status.

(f) *Approval of application.* If the application is granted, the applicant shall be notified of the decision and granted a new period of time to remain in the United States without the requirement of filing a separate application and paying a separate fee for an extension of stay. The applicant's nonimmigrant status under his new classification shall be subject to the terms and conditions applicable generally to such classification and to such other additional terms and conditions, including exacting of bond, which USCIS deems appropriate to the case.

(g) *Denial of application.* When the application is denied, the applicant shall be notified of the decision and the reasons for the denial. There is no appeal from the denial of the application under this chapter.

(h) *Change to S nonimmigrant classification.* An eligible state or federal law enforcement agency ("LEA"), which shall include a state or federal court or a United States Attorney's Office, may seek to change the nonimmigrant classification of a nonimmigrant lawfully admitted to the United States, except those enumerated in § 248.2 of this

chapter, to that of an alien witness or informant pursuant to section 101(a)(15)(S) of the Act by filing with the Assistant Attorney General, Criminal Division, the forms designated by USCIS with the fee prescribed in 8 CFR 106.2 and in accordance with the form instructions establishing eligibility for the change of nonimmigrant classification.

(1) If the Assistant Attorney General, Criminal Division, certifies the request for S nonimmigrant classification in accordance with the procedures set forth in 8 CFR 214.2(t), the Assistant Attorney General shall forward the LEA's request on Form I-854 with Form I-539 to the Commissioner. No request for change of nonimmigrant classification to S classification may proceed to the Commissioner unless it has first been certified by the Assistant Attorney General, Criminal Division.

(2) In the event the Commissioner decides to deny an application to change nonimmigrant classification to S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny.

(i) *Change of nonimmigrant status to perform labor in a health care occupation.* A request for a change of nonimmigrant status filed by, or on behalf of, an alien seeking to perform labor in a health care occupation as provided in 8 CFR 212.15(c), must be accompanied by a certificate as described in 8 CFR 212.15(f), or if the alien is eligible, a certified statement as described in 8 CFR 212.15(h). See 8 CFR 214.1(j) for a special rule concerning applications for change of status for aliens admitted

temporarily under section 212(d)(3) of the Act and 8 CFR 212.15(n).

[36 FR 9001, May 18, 1971, as amended at 48 FR 14593, Apr. 5, 1983; 48 FR 41017, Sept. 13, 1983; 48 FR 44763, Sept. 30, 1983; 50 FR 25697, June 21, 1985; 59 FR 1466, Jan. 11, 1994; 60 FR 44271, Aug. 25, 1995; 65 FR 14779, 14780, Mar. 17, 2000; 65 FR 18432, Apr. 7, 2000; 67 FR 76280, Dec. 11, 2002; 68 FR 43921, July 25, 2003; 73 FR 61336, Oct. 16, 2008; 74 FR 26940, June 5, 2009; 76 FR 53794, Aug. 29, 2011; 81 FR 2084, Jan. 15, 2016; 85 FR 46927, Aug. 3, 2020]

## PART 249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

Sec.

249.1 Waiver of inadmissibility.

249.2 Application.

249.3 Reopening and reconsideration.

AUTHORITY: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

### § 249.1 Waiver of inadmissibility.

In conjunction with an application under section 249 of the Act, an otherwise eligible alien who is inadmissible under paragraph (9), (10), or (12) of section 212(a) of the Act or so much of paragraph (23) of section 212(a) of the Act as relates to a single offense of simple possession of 30 grams or less of marijuana may request a waiver of such ground of inadmissibility under section 212(h) of the Act. Any alien within the classes described in subparagraphs (B) through (H) of section 212(a)(28) of the Act may apply for the benefits of section 212(a)(28)(I)(ii) in conjunction with an application under section 249 of the Act.

[47 FR 44238, Oct. 7, 1982]

### § 249.2 Application.

(a) *Jurisdiction.* An application by an alien, other than an arriving alien, who has been served with a notice to appear or warrant of arrest shall be considered only in proceedings under 8 CFR part 240. In any other case, an alien who believes he or she meets the eligibility requirements of section 249 of the Act shall apply to the district director having jurisdiction over his or her place of residence. The application shall be made on Form I-485 and shall be accompanied by Form G-325A, which