

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.

[73 FR 75560, Dec. 12, 2008; 74 FR 395, Jan. 6, 2009; 78 FR 18472, Mar. 27, 2013; 85 FR 46927, Aug. 3, 2020]

§ 245.25 Adjustment of status of aliens with approved employment-based immigrant visa petitions; validity of petition and offer of employment.

(a) *Validity of petition for continued eligibility for adjustment of status.* An alien who has a pending application to adjust status to that of a lawful permanent resident based on an approved employment-based immigrant visa petition filed under section 204(a)(1)(F) of the Act on the applicant's behalf must have a valid offer of employment based on a valid petition at the time the application to adjust status is filed and at the time the alien's application to adjust status is adjudicated, and the applicant must intend to accept such offer of employment. Prior to a final administrative decision on an application to adjust status, USCIS may require that the applicant demonstrate, or the applicant may affirmatively

demonstrate to USCIS, on Form I-485 Supplement J, with any supporting material and credible documentary evidence, in accordance with the form instructions that:

(1) The employment offer by the petitioning employer is continuing; or

(2) Under section 204(j) of the Act, the applicant has a new offer of employment from the petitioning employer or a different U.S. employer, or a new offer based on self-employment, in the same or a similar occupational classification as the employment offered under the qualifying petition, provided that:

(i) The alien's application to adjust status based on a qualifying petition has been pending for 180 days or more; and

(ii) The qualifying immigrant visa petition:

(A) Has already been approved; or

(B) Is pending when the beneficiary notifies USCIS of a new job offer 180 days or more after the date the alien's adjustment of status application was filed, and the petition is subsequently approved:

(1) Adjudication of the pending petition shall be without regard to the requirement in 8 CFR 204.5(g)(2) to continuously establish the ability to pay the proffered wage after filing and until the beneficiary obtains lawful permanent residence; and

(2) The pending petition will be approved if it was eligible for approval at the time of filing and until the alien's adjustment of status application has been pending for 180 days, unless approval of the qualifying immigrant visa petition at the time of adjudication is inconsistent with a requirement of the Act or another applicable statute; and

(iii) The approval of the qualifying petition has not been revoked.

(3) In all cases, the applicant and his or her intended employer must demonstrate the intention for the applicant to be employed under the continuing or new employment offer (including self-employment) described in paragraphs (a)(1) and (2) of this section, as applicable, within a reasonable period upon the applicant's grant of lawful permanent resident status.

(b) *Definition of same or similar occupational classification.* The term “same occupational classification” means an occupation that resembles in every relevant respect the occupation for which the underlying employment-based immigrant visa petition was approved. The term “similar occupational classification” means an occupation that shares essential qualities or has a marked resemblance or likeness with the occupation for which the underlying employment-based immigrant visa petition was approved.

[81 FR 82490, Nov. 18, 2016]

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

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AUTHORITY: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

SOURCE: 52 FR 16208, May 1, 1987, unless otherwise noted.

Subpart A—Immigration Reform and Control Act of 1986 (IRCA) Legalization Provisions

§ 245a.1 Definitions.

As used in this chapter:

(a) *Act* means the Immigration and Nationality Act, as amended by The Immigration Reform and Control Act of 1986.

(b) *Service* means the Immigration and Naturalization Service (INS).

(c)(1) *Resided continuously* as used in section 245A(a)(2) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States, pursuant to the state-side criteria program, shall be regarded as having been granted advance parole by the Service.

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due