

§ 42.34 Special immigrant visas—certain U.S. Government employees.

(a) *General.* An applicant is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

(1) (i) The applicant has performed faithful service to the United States Government abroad, or the American Institute in Taiwan, for a total of fifteen years or more; or

(ii) The applicant is the surviving spouse or child of an employee of the United States Government abroad who performed faithful service for a total of not less than 15 years or was killed in the line of duty; and

(2) The principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director), recommends granting special immigrant status to such person in exceptional circumstances; and

(3) The Secretary of State, or designee, approves such recommendation and finds that it is in the national interest to grant such status.

(b) *Petition requirement.* An applicant who seeks classification as a special immigrant described in paragraph (a) of this section must file a Form DS-1884, Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, or the Surviving Spouse or Child of an Employee of the U.S. Government Abroad, with the Department of State. An applicant described in INA 101(a)(27)(D) may file such a petition only after, but within one year of, notification from the Department that the Secretary of State or designee has approved a recommendation from the principal officer that special immigrant status be accorded the applicant in exceptional circumstances and has found it in the national interest to do so.

(1) *Petition fees.* The Secretary of State shall establish a fee for the filing of a petition to accord status under INA 203(b)(4) which shall be collected following notification that the Secretary of State, or designee, has approved the recommendation that the applicant be granted status as a special immigrant under INA 101(a)(27)(D).

(2) *Establishing priority date.* The priority date of an applicant seeking sta-

tus under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) shall be the date on which the petition to accord such classification, the DS-1884, is filed. The filing date of the petition is the date on which a properly completed form and the required fee are accepted by a Foreign Service post. Pursuant to INA 203(d), and whether named in the petition, the current spouse or child who meets the definition of “child” under INA 101(b)(1) of an applicant classified under INA 203(b)(4), if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to the classification and priority date of the beneficiary of the petition.

(3) *Delegation of authority to approve petitions.* The authority to approve petitions to accord status under INA 203(b)(4) to an applicant described in INA 101(a)(27)(D) is hereby delegated to the chief consular officer at the post of recommendation or, in the absence of the consular officer, to any alternate approving officer designated by the principal officer. Such authority may not be exercised until the Foreign Service post has received formal notification of the Secretary of State or designee’s approval of special immigrant status for the petitioning applicant.

(4) *Petition validity.* Except as noted in this paragraph, the validity of a petition approved for classification under INA 203(b)(4) shall be six months beyond the date of the Secretary of State’s approval thereof or the availability of a visa number, whichever is later.

(5) *Extension of special immigrant status and petition validity.* If the principal officer of a post concludes that circumstances in a particular case are such that an extension of validity of the Secretary of State or designee’s approval of the principal officer’s recommendation or of the petition would be in the national interest, the principal officer shall recommend to the Secretary of State or designee that such validity be extended for not more than one additional year.

(c) *Definitions—(1) Full-time service.* Where 15 years of service is the minimum time required for eligibility for a special immigrant visa, the employee must have been employed for a total of

at least 15 full-time years, or the equivalent thereof, in the service of the U.S. Government abroad. The number of hours per week that qualify an employee as full-time is dependent on local law and prevailing practice in the country where the individual is or was employed, as reflected in the employment documentation submitted with the application for special immigrant status. The years of service may be met based on employment abroad with one, or more than one, agency of the U.S. Government provided the total amount of full-time service with the U.S. Government is 15 years or more, or the equivalent thereof.

(2) *Faithful service.* Where faithful service is required for eligibility for a special immigrant visa, an employee must have performed faithfully in the position held. The principal officer has the primary responsibility for determining whether the employee's service meets this requirement. A record of disciplinary actions that have been taken against the employee does not automatically disqualify the applicant. The principal officer must assess the record of disciplinary actions considering the extent and gravity of the misconduct and when the incidents occurred, and determine whether the record as a whole, notwithstanding disciplinary actions, is one of faithful service.

(3) *Continuity.* Where 15 years of service is the minimum time required for eligibility for a special immigrant visa, the employee's period of service need not have been continuous but must have an aggregate total of 15 years of service to qualify.

(4) *Abroad.* The service must have occurred anywhere outside the United States, as the term "United States" is defined in INA 101(a)(38).

(5) *Employment at the American Institute in Taiwan.* INA 101(a)(27)(D) permits both present and former employees of the American Institute in Taiwan to apply for special immigrant status. An employee's service before and after the founding of the American Institute in Taiwan is counted toward the minimum 15 years of service requirement.

(6) *Honorably retired.* Separations within the meaning of "honorably re-

tired" include, for example, those resulting from mandatory or voluntary retirement, reduction-in-force, or resignation for personal reasons. Separations not within the meaning of "honorably retired" would include a termination for cause or an involuntary termination or resignation in lieu of a termination for cause.

(7) *Exceptional circumstances for employees of the United States Government abroad.* For classification as a special immigrant under INA 101(a)(27)(D)(i), the principal officer must determine that an employee demonstrates at least one form of "exceptional circumstances" to support an application for special immigrant status.

(i) *Prima facie indicators of exceptional circumstances.* In the following situations, an employee's service with the U.S. Government generally will be deemed to have met exceptional circumstances.

(A) Diplomatic relations between the employee's country of nationality and the United States have been severed;

(B) Diplomatic relations between the country in which the employee was employed and the United States have been severed;

(C) The country in which the employee was employed and the United States have strained relations and the employee may be subjected to retribution by the local, State, Federal, or other official government body merely because of association with the U.S. Government, or the employee may be pressured to divulge information contrary to U.S. national interests; or

(D) The employee was hired at the Consulate General at Hong Kong on or before July 1, 1999.

(ii) *Strong indicators of exceptional circumstances.* (A) It is believed that continued service to the U.S. Government might endanger the life of the employee;

(B) The employee has fulfilled responsibilities or given service in a manner that approaches the heroic;

(C) The employee has been awarded a global or a regional "Foreign Service National of the Year" Award;

(D) The employee has disclosed waste, fraud or abuse, a substantial and specific danger to public health or safety, or a violation of law, rule, or

§ 42.41

22 CFR Ch. I (4–1–25 Edition)

regulation within the Department or other U.S. Government agency, if such disclosure results in significant action by the Department or other U.S. Government agency against an offending party, such as termination or severance of a contractual relationship, or criminal charges against any person or entity.

(E) The employee has served the U.S. Government for a period of twenty years or more.

(8) *Exceptional circumstances for surviving spouses and children.* For classification as a special immigrant under INA 101(a)(27)(D)(ii), the principal officer must determine that the deceased employee:

(i) Was killed in the line of duty; or
(ii) Performed faithful service to the United States Government abroad for a total of not less than 15 years; and

(A) Was employed by the U.S. Government as of the date of their death or in the immediately preceding period as defined in paragraph (c)(9) of this section, or

(B) Was an honorably retired former employee who, prior to their death, demonstrated at least one form of “exceptional circumstances” as defined in paragraph (c)(7) of this section.

(9) *Immediately preceding period.* (i) As provided in paragraph (c)(8)(ii)(A) of this section, a deceased employee is considered to have been employed by the U.S. Government in the period immediately preceding their death if such employment ceased due to circumstances that resulted in their death.

(ii) A deceased employee is presumed to not meet the criteria in paragraph (c)(8)(ii)(A) of this section if the employee’s death occurred more than five years following cessation of employment. This presumption can be rebutted if the applicant establishes, to the satisfaction of the principal officer, that the employment ceased due to circumstances that resulted in the employee’s death, and the Secretary or appropriate designee finds it in the national interest to grant such status. The principal officer has the primary responsibility for determining whether the applicant meets this criterion, taking into consideration as informed by the circumstances of the cessation of

employment, the cause of the employee’s death as documented by the applicant, and other relevant evidence the applicant presents that demonstrates that the cessation of employment was for reasons that ultimately resulted in the employee’s death.

(10) *Immediate intent to immigrate.* (i) The recommendation of the principal officer must certify that the applicant being recommended is prepared to file a petition within one year of the Department’s notification to the post of approval of special immigrant status, and to pursue an immigrant visa application within six months of the Secretary of State’s approval of the petition or of an immigrant visa becoming available, whichever is later. If the applicant is an employee who is not yet honorably retired, the recommendation must also certify that the employee intends permanent separation from U.S. Government employment abroad no later than the date of departure for the United States following issuance of an immigrant visa.

(ii) Employees of Hong Kong Consulate General hired on or before July 1, 1999, are not required to establish immediate intent to immigrate. Employees of the Hong Kong Consulate General who received or were approved for special immigrant status before July 1, 1999, also may continue employment with the U.S. Government.

[89 FR 99079, Dec. 10, 2024]

Subpart E—Petitions

§ 42.41 Effect of approved petition.

Consular officers are authorized to grant to an alien the immediate relative or preference status accorded in a petition approved in the alien’s behalf upon receipt of the approved petition or official notification of its approval. The status shall be granted for the period authorized by law or regulation. The approval of a petition does not relieve the alien of the burden of establishing to the satisfaction of the consular officer that the alien is eligible in all respects to receive a visa.

[56 FR 49682, Oct. 1, 1991]