

“(B) the alien shall not be considered, by reason of such authorized departure, to have failed to maintain continuous physical presence in the United States for purposes of section 240A(a) of the Immigration and Nationality Act [8 U.S.C. 1229b(a)] if the absence meets the requirements of section 240A(b)(2) of such Act.

“(2) Aliens described in this paragraph are the following:

“(A) Aliens provided benefits under section 301 of the Immigration Act of 1990 (relating to family unity).

“(B) Aliens provided temporary protected status under section 244 of the Immigration and Nationality Act, including aliens provided such status under section 303 of the Immigration Act of 1990 [Pub. L. 101-649, set out below].”

EFFECT ON EXECUTIVE ORDER 12711

Pub. L. 101-649, title III, §302(c), Nov. 29, 1990, 104 Stat. 5036, as amended by Pub. L. 102-232, title III, §304(a), Dec. 12, 1991, 105 Stat. 1749; Pub. L. 103-416, title II, §219(y), Oct. 25, 1994, 108 Stat. 4318; Pub. L. 104-208, div. C, title III, §308(g)(1), Sept. 30, 1996, 110 Stat. 3009-622, provided that: “Notwithstanding subsection (g) of section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a(g)] (inserted by the amendment made by subsection (a)), such section shall not supercede or affect Executive Order 12711 (April 11, 1990 [8 U.S.C. 1101 note], relating to policy implementation with respect to nationals of the People’s Republic of China).”

SPECIAL TEMPORARY PROTECTED STATUS FOR SALVADORANS

Pub. L. 101-649, title III, §303, Nov. 29, 1990, 104 Stat. 5036, as amended by Pub. L. 102-65, §1, July 2, 1991, 105 Stat. 322; Pub. L. 104-208, div. C, title III, §308(g)(1), (6)(A), Sept. 30, 1996, 110 Stat. 3009-622, 3009-623, provided that:

“(a) DESIGNATION.—

“(1) IN GENERAL.—El Salvador is hereby designated under section 244(b) of the Immigration and Nationality Act [8 U.S.C. 1254a(b)], subject to the provisions of this section.

“(2) PERIOD OF DESIGNATION.—Such designation shall take effect on the date of the enactment of this section [Nov. 29, 1990] and shall remain in effect until the end of the 18-month period beginning January 1, 1991.

“(b) ALIENS ELIGIBLE.—

“(1) IN GENERAL.—In applying section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] pursuant to the designation under this section, subject to section 244(c)(3) of such Act, an alien who is a national of El Salvador meets the requirements of section 244(c)(1) of such Act only if—

“(A) the alien has been continuously physically present in the United States since September 19, 1990;

“(B) the alien is admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of such Act, and is not ineligible for temporary protected status under section 244(c)(2)(B) of such Act; and

“(C) in a manner which the Attorney General shall establish, the alien registers for temporary protected status under this section during the registration period beginning January 1, 1991, and ending October 31, 1991.

“(2) REGISTRATION FEE.—The Attorney General shall require payment of a reasonable fee as a condition of registering an alien under paragraph (1)(C) (including providing an alien with an ‘employment authorized’ endorsement or other appropriate work permit under this section). The amount of the fee shall be sufficient to cover the costs of administration of this section. Notwithstanding section 3302 of title 31, United States Code, all such registration fees

collected shall be credited to the appropriation to be used in carrying out this section.

“(c) APPLICATION OF CERTAIN PROVISIONS.—

“(1) IN GENERAL.—Except as provided in this subsection, the provisions of section 244 of the Immigration and Nationality Act [8 U.S.C. 1254a] (including subsection (h) thereof) shall apply to El Salvador (and aliens provided temporary protected status) under this section in the same manner as they apply to a foreign state designated (and aliens provided temporary protected status) under such section.

“(2) PROVISIONS NOT APPLICABLE.—Subsections (b)(1), (b)(2), (b)(3), (c)(1), (c)(4), (d)(3), and (i) of such section 244 shall not apply under this section.

“(3) 6-MONTH PERIOD OF REGISTRATION AND WORK AUTHORIZATION.—Notwithstanding section 244(a)(2) of the Immigration and Nationality Act, the work authorization provided under this section shall be effective for periods of 6 months. In applying section 244(c)(3)(C) of such Act under this section, ‘semiannually, at the end of each 6-month period’ shall be substituted for ‘annually, at the end of each 12-month period’ and, notwithstanding section 244(d)(2) of such Act, the period of validity of documentation under this section shall be 6 months.

“(4) REENTRY PERMITTED AFTER DEPARTURE FOR EMERGENCY CIRCUMSTANCES.—In applying section 244(f)(3) of the Immigration and Nationality Act under this section, the Attorney General shall provide for advance parole in the case of an alien provided special temporary protected status under this section if the alien establishes to the satisfaction of the Attorney General that emergency and extenuating circumstances beyond the control of the alien requires the alien to depart for a brief, temporary trip abroad.

“(d) ENFORCEMENT OF REQUIREMENT TO DEPART AT TIME OF TERMINATION OF DESIGNATION.—

“(1) SHOW CAUSE ORDER AT TIME OF FINAL REGISTRATION.—At the registration occurring under this section closest to the date of termination of the designation of El Salvador under subsection (a), the Immigration and Naturalization Service shall serve on the alien granted temporary protected status an order to show cause that establishes a date for deportation proceedings which is after the date of such termination of designation. If El Salvador is subsequently designated under section 244(b) of the Immigration and Nationality Act [8 U.S.C. 1254a], the Service shall cancel such orders.

“(2) SANCTION FOR FAILURE TO APPEAR.—If an alien is provided an order to show cause under paragraph (1) and fails to appear at such proceedings, except for exceptional circumstances, the alien may be deported in absentia under section 240(b)(5) of the Immigration and Nationality Act [8 U.S.C. 1229a(b)(5)] (inserted by section 545(a) of this Act) and certain discretionary forms of relief are no longer available to the alien pursuant to such section.”

§ 1254b. Collection of fees under temporary protected status program

(a) In addition to collection of registration fees described in section 1254a(c)(1)(B) of this title, fees for fingerprinting services, biometric services, and other necessary services may be collected when administering the program described in section 1254a of this title.

(b) Subsection (a) shall be construed to apply for fiscal year 1998 and each fiscal year thereafter.

(Pub. L. 111-83, title V, §549, Oct. 28, 2009, 123 Stat. 2177.)

Editorial Notes

CODIFICATION

This section was enacted as part of the Department of Homeland Security Appropriations Act, 2010, and not

as part of the Immigration and Nationality Act which comprises this chapter.

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa

The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Record of lawful admission for permanent residence; reduction of preference visas

Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 1152 and 1153 of this title within the class to which the alien is chargeable for the fiscal year then current.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H), (I), (J), or (K) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(l) of this title or section 1187 of this title; (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(15)(S) of this title,¹ (6) an alien who is deportable under section 1227(a)(4)(B) of this title; (7) any alien who seeks adjustment of status to that of an immigrant under section 1153(b) of this title

and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 1324a(h)(3) of this title, or who has otherwise violated the terms of a nonimmigrant visa.

(d) Alien admitted for permanent residence on conditional basis; fiancée or fiancé of citizen

The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a of this title. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception

(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 1154(g) of this title shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p)² of section 1184 of this title with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) Limitation on adjustment of status

The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186b of this title.

(g) Special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed, for

¹ So in original. The comma probably should be a semicolon.

² See References in Text note below.