

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.

(e) *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]

§ 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 nonimmigrant under section 101(a)(15) (C), (D), (K), or (S) of the Act;

(3) Any alien admitted as a nonimmigrant 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 nonimmigrant 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 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 Application.

Requests for a change of status must be filed on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b) and in accordance with the form instructions.

(a) *Petition by employer.* An employer must submit a petition for a change of status to E-1 treaty trader, E-2 treaty investor, H-1C, H-1B, 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 exaction 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 103.7(b)(1) 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]

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 shall be considered part of the application. The application shall also be accompanied by documentary evidence establishing continuous residence in the United States since prior to January 1, 1972, or since entry and prior to July 1, 1924. All documents must be submitted in accordance with § 103.2(b) of this chapter. Documentary evidence may include any records of official or personal transactions or recordings of events occurring during the period of