

nature, and members of their immediate families, are not eligible for benefits under section 13. In view of the annual limitation of 50 on the number of aliens whose status may be adjusted under section 13, any alien who is prima facie eligible for adjustment of status to that of a lawful permanent resident under another provision of law shall be advised to apply for adjustment pursuant to such other provision of law. An applicant for the benefits of section 13 shall not be subject to the labor certification requirement of section 212(a)(14) of the Immigration and Nationality Act. The applicant shall be notified of the decision and, if the application is denied, of the reasons for the denial and of the right to appeal under the provisions of part 103 of this chapter. Any applications pending with the Service before December 29, 1981 must be resubmitted to comply with the requirements of this section.

(Secs. 103, 245, of the Immigration and Nationality Act, as amended; 71 Stat. 642, as amended, sec. 17, Pub. L. 97-116, 95 Stat. 1619 (8 U.S.C. 1103, 1255, 1255b))

[47 FR 44238, Oct. 7, 1982, as amended at 59 FR 33905, July 1, 1994]

§ 245.4 Documentary requirements.

The provisions of part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(Secs. 103, 214, 245 Immigration and Nationality Act, as amended; (8 U.S.C. 1103, 1184, 8 U.S.C. 1255, Sec. 2, 96 Stat. 1157, 8 U.S.C. 1255 note))

[30 FR 14779, Nov. 30, 1965. Redesignated at 48 FR 4770, Feb. 3, 1983, and further redesignated at 52 FR 6322, Mar. 3, 1982, and further redesignated at 56 FR 49481, Oct. 2, 1991]

§ 245.5 Medical examination.

Pursuant to section 232(b) of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status who entered

the United States as a non-immigrant fiance or fiancée of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1)(A)(ii) or (1)(A)(iii) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and part 235 of this chapter.

[56 FR 49841, Oct. 2, 1991, as amended at 62 FR 10384, Mar. 6, 1997]

§ 245.6 Interview.

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. This interview may be waived in the case of a child under the age of 14; when the applicant is clearly ineligible under section 245(c) of the Act or § 245.1 of this chapter; or when it is determined by the Service that an interview is unnecessary.

[57 FR 49375, Nov. 2, 1992]

§ 245.7 Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. L. 101-167).

(a) *Application.* Each person applying for benefits under section 599E of Public Law 101-167 must file Form I-485 (Application for Lawful Permanent Residence) with the director having jurisdiction over the applicant's place of residence and must pay the appropriate fee. Each application shall be accompanied by Form I-643 (Health and Human Services Statistical Data Sheet), the results of a medical examination given in accordance with § 245.8 of this part, and, if the applicant has reached his or her 14th birthday but is not over 79 years of age, Form G-325A and an applicant fingerprint card (Form FD-258).

(b) *Aliens eligible to apply for adjustment.* The benefits of this section shall only apply to an alien who:

(1) Was a national of the Soviet Union, Vietnam, Laos, or Cambodia, and

(2) Was inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 1990, after being denied refugee status.

(c) *Eligibility.* Benefits under Section 599E of Public Law 101–167 are limited to any alien described in paragraph (b) of this section who:

(1) Applies for such adjustment,

(2) Has been physically present in the United States for at least one year and is physically present in the United States on the date the application for such adjustment is filed,

(3) Is admissible to the United States as an immigrant, except as provided in paragraph (d) of this section, and

(4) Pays a fee for the processing of such application.

(d) *Waiver of certain grounds for inadmissibility.* The provisions of paragraphs (14), (15), (20), (21), (25), (28) (other than subparagraph (F)), and (32) of section 212(a) of the Act shall not apply to adjustment under this section. The Attorney General may waive any other provision of section 212(a) (other than paragraph (23)(B), (27), (29), or (33)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(e) *Date of approval.* Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in paragraph (b)(2) of this section.

(f) *No offset in number of visas available.* When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act.

[55 FR 24860, July 19, 1990. Redesignated at 56 FR 49841, Oct. 2, 1991, as amended at 59 FR 33905, July 1, 1994]

§245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.

(a) *Application.* Each person applying for adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act must file a Form I-485, Application to Register Permanent Residence or Adjust Status, with the director having jurisdiction over the applicant's place of residence. Benefits under this section are limited to aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years, and their spouses and children. For purposes of this section, special immigrants described in section 101(a)(27)(K) of the Act and his or her spouse and children shall be deemed to have been paroled into the United States pursuant to section 245(g) of the Act. Each applicant must file a separate application with the appropriate fee.

(b) *Eligibility.* The benefits of this section shall apply only to an alien described in section 101(a)(27)(K) of the Act who applies for such adjustment. The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 102–110 may also apply for adjustment of status. The provisions of section 245(c) of the Act do not apply to the principal Armed Forces special immigrant or to his or her spouse or child.

(c) *Interview of the applicant.* Upon completion of the adjustment of status interview for a special immigrant under section 101(a)(27)(K) of the Act, the director shall make a *prima facie* determination regarding eligibility for naturalization benefits if the applicant is to be granted status as an alien lawfully admitted for permanent residence. If the director determines that the applicant is immediately eligible for naturalization under section 328 or 329 of the Act, the director shall advise the applicant that he or she is eligible to apply for naturalization on Form N-400, Application to File Petition for Naturalization. If the applicant wishes to apply for naturalization, the director shall instruct the applicant concerning the requirements for naturalization and provide him or her with the necessary forms.