other government agency that the applicant desires to be considered in support of his or her application. If the alien is not in possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, State, or local government agency, the type of document and the date on which it was issued.

(f) *Other relevant document(s) and evaluation of evidence.* The adjudicator will consider any other relevant document(s) as well as evaluate all evidence submitted, on a case-by-case basis. The Service may require an interview when necessary.

(g) *Accuracy of documentation.* In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority.

[67 FR 78674, Dec. 26, 2002]

§ 245.23 Adjustment of aliens in T nonimmigrant classification.

(a) *Eligibility of principal T–1 applicants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2)(i) Was lawfully admitted to the United States as a T–1 nonimmigrant, as defined in 8 CFR 214.11(a)(2); and

(ii) Continues to hold such status at the time of application, or accrued 4 years in T–1 nonimmigrant status and files a complete application before April 13, 2009;

(3) Has been physically present in the United States for a continuous period of at least 3 years since the first date of lawful admission as a T–1 nonimmigrant or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period of time is less; provided that if the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain continuous physical presence in the United States for purposes of section 245(*l*)(1)(A) of the Act;

(4) Is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment;

(5) Has been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of the application for adjustment of status; and

(6)(i) Has, since first being lawfully admitted as a T–1 nonimmigrant and until the conclusion of adjudication of the application, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, as defined in 8 CFR 214.11(a), or

(ii) Would suffer extreme hardship involving unusual and severe harm upon removal from the United States, as provided in 8 CFR 214.11(i).

(b) *Eligibility of derivative family members.* A derivative family member of a T–1 nonimmigrant status holder may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided:

(1) The T–1 principal nonimmigrant has applied for adjustment of status under this section and meets the eligibility requirements described under subsection (a);

(2) The derivative family member was lawfully admitted to the United States in T–2, T–3, T–4, or T–5 nonimmigrant status as the spouse, parent, sibling, or child of a T–1 nonimmigrant, and continues to hold such status at the time of application;

(3) The derivative family member has applied for such adjustment; and

(4) The derivative family member is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable

ground of inadmissibility, at the time of examination for adjustment.

(c) *Exceptions.* An alien is not eligible for adjustment of status under paragraphs (a) or (b) of this section if:

(1) The alien's T nonimmigrant status has been revoked pursuant to 8 CFR 214.11(s);

(2) The alien is described in sections 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E) of the Act; or

(3) The alien is inadmissible under any other provisions of section 212(a) of the Act and has not obtained a waiver of inadmissibility in accordance with 8 CFR 212.18 or 214.11(j). Where the applicant establishes that the victimization was a central reason for the applicant's unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable, and the applicant need not obtain a waiver of that ground of inadmissibility. The applicant, however, must submit with the Form I–485 evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. To qualify for this exception, the victimization need not be the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

(d) *Jurisdiction.* USCIS shall determine whether a T–1 applicant for adjustment of status under this section was lawfully admitted as a T–1 nonimmigrant and continues to hold such status, has been physically present in the United States during the requisite period, is admissible to the United States or has otherwise been granted a waiver of any applicable ground of inadmissibility, and has been a person of good moral character during the requisite period. The Attorney General shall determine whether the applicant received a reasonable request for assistance in the investigation or prosecution of acts of trafficking as defined in 8 CFR 214.11(a), and, if so, whether the applicant complied in such request. If the Attorney General determines that the applicant failed to comply with any reasonable request for assistance, USCIS shall deny the application for adjustment of status unless USCIS finds that the applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(e) *Application*—(1) *General.* Each T–1 principal applicant and each derivative family member who is applying for adjustment of status must file Form I–485, Application to Register Permanent Residence or Adjust Status, and

(i) Accompanying documents, in accordance with the form instructions;

(ii) The fee prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;

(iii) The biometric services fee prescribed by 8 CFR 103.7(b)(1) or an application for a fee waiver;

(iv) A photocopy of the alien's Form I–797, Notice of Action, granting T nonimmigrant status;

(v) A photocopy of all pages of the alien's most recent passport or an explanation of why the alien does not have a passport;

(vi) A copy of the alien's Form I–94, Arrival-Departure Record; and

(vii) Evidence that the applicant was lawfully admitted in T nonimmigrant status and continues to hold such status at the time of application. For T nonimmigrants who traveled outside the United States and re-entered using an advance parole document issued under 8 CFR 245.2(a)(4)(ii)(B), the date that the alien was first admitted in lawful T status will be the date of admission for purposes of this section, regardless of how the applicant's Form I–94 "Arrival-Departure Record" is annotated.

(2) *T–1 principal applicants.* In addition to the items in paragraph (e)(1) of this section, T–1 principal applicants must submit:

(i) Evidence, including an affidavit from the applicant and a photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport), that he or she has been continuously physically present in the United States for the requisite period as described in paragraph (a)(2) of this section. Applicants should submit evidence described in 8 CFR 245.22. A signed statement from the applicant attesting to the applicant's continuous physical presence

alone will not be sufficient to establish this eligibility requirement. If additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts.

(A) If the applicant has departed from and returned to the United States while in T–1 nonimmigrant status, the applicant must submit supporting evidence showing the dates of each departure from the United States and the date, manner and place of each return to the United States.

(B) Applicants applying for adjustment of status under this section who have less than 3 years of continuous physical presence while in T–1 nonimmigrant status must submit a document signed by the Attorney General or his designee, attesting that the investigation or prosecution is complete.

(ii) Evidence of good moral character in accordance with paragraph (g) of this section; and

(iii)(A) Evidence that the alien has complied with any reasonable request for assistance in the investigation or prosecution of the trafficking as described in paragraph (f)(1) of this section since having first been lawfully admitted in T–1 nonimmigrant status and until the adjudication of the application; or

(B) Evidence that the alien would suffer extreme hardship involving unusual and severe harm if removed from the United States as described in paragraph (f)(2) of this section.

(3) *Evidence relating to discretion.* Each T applicant bears the burden of showing that discretion should be exercised in his or her favor. Where adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider. Depending on the nature of adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(f) *Assistance in the investigation or prosecution or a showing of extreme hardship.* Each T–1 principal applicant must establish, to the satisfaction of the Attorney General, that since having been lawfully admitted as a T–1 nonimmigrant and up until the adjudication of the application, he or she complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking, as defined in 8 CFR 214.11(a), or establish, to the satisfaction of USCIS, that he or she would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(1) Each T–1 applicant for adjustment of status under section 245(*l*) of the Act must submit a document issued by the Attorney General or his designee certifying that the applicant has complied with any reasonable requests for assistance in the investigation or prosecution of the human trafficking offenses during the requisite period; or

(2) In lieu of showing continued compliance with requests for assistance, an applicant may establish, to the satisfaction of USCIS, that he or she would suffer extreme hardship involving unusual and severe harm upon removal from the United States. The hardship determination will be evaluated on a case-by-case basis, in accordance with the factors described in 8 CFR 214.11(i). Where the basis for the hardship claim represents a continuation of the hardship claimed in the application for T nonimmigrant status, the applicant need not re-document the entire claim, but rather may submit evidence to establish that the previously established hardship is ongoing. However, in reaching its decision regarding hardship under this section, USCIS is not bound by its previous hardship determination made under 8 CFR 214.11(i).

(g) *Good moral character.* A T–1 nonimmigrant applicant for adjustment of

status under this section must demonstrate that he or she has been a person of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of their applications for adjustment of status. Claims of good moral character will be evaluated on a case-by-case basis, taking into account section 101(f) of the Act and the standards of the community. The applicant must submit evidence of good moral character as follows:

(1) An affidavit from the applicant attesting to his or her good moral character, accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the applicant has resided for 6 or more months during the requisite period in continued presence or T–1 nonimmigrant status.

(2) If police clearances, criminal background checks, or similar reports are not available for some or all locations, the applicant may include an explanation and submit other evidence with his or her affidavit.

(3) USCIS will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the applicant's good moral character.

(4) An applicant who is under 14 years of age is generally presumed to be a person of good moral character and is not required to submit evidence of good moral character. However, if there is reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require evidence of good moral character.

(h) *Filing and decision.* An application for adjustment of status from a T nonimmigrant under section 245(*l*) of the Act shall be filed with the USCIS office identified in the instructions to Form I–485. Upon approval of adjustment of status under this section, USCIS will record the alien's lawful admission for permanent residence as of the date of such approval and will notify the applicant in writing. Derivative family members' applications may not be approved before the principal applicant's application is approved.

(i) *Denial.* If the application for adjustment of status or the application for a waiver of inadmissibility is denied, USCIS will notify the applicant in writing of the reasons for the denial and of the right to appeal the decision to the Administrative Appeals Office (AAO) pursuant to the AAO appeal procedures found at 8 CFR 103.3. Denial of the T–1 principal applicant's application will result in the automatic denial of a derivative family member's application.

(j) *Effect of Departure.* If an applicant for adjustment of status under this section departs the United States, he or she shall be deemed to have abandoned the application, and it will be denied. If, however, the applicant is not under 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) *Inapplicability of 8 CFR 245.1 and 245.2.* Sections 245.1 and 245.2 of this chapter do not apply to aliens seeking adjustment of status under this section.

(l) *Annual cap of T–1 principal applicant adjustments.* (1) *General.* The total number of T–1 principal applicants whose status is adjusted to that of lawful permanent residents under this section may not exceed the statutory cap in any fiscal year.

(2) *Waiting list.* All eligible applicants who, due solely to the limit imposed in section 245(*l*)(4) of the Act and paragraph (m)(1) of this section, are not granted adjustment of status will be placed on a waiting list. USCIS will send the applicant written notice of

such placement. Priority on the waiting list will be determined by the date the application was properly filed, with the oldest applications receiving the highest priority. In the following fiscal year, USCIS will proceed with granting adjustment of status to applicants on the waiting list who remain admissible and eligible for adjustment of status in order of highest priority until the available numbers are exhausted for the given fiscal year. After the status of qualifying applicants on the waiting list has been adjusted, any remaining numbers for that fiscal year will be issued to new qualifying applicants in the order that the applications were properly filed.

[73 FR 75558, Dec. 12, 2008]

§ 245.24 Adjustment of aliens in U nonimmigrant status.

(a) *Definitions.* As used in this section, the term:

(1) *Continuous Physical Presence* means the period of time that the alien has been physically present in the United States and must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the application for adjustment of status. If the alien has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant must include a certification from the agency that signed the Form I–918, Supplement B, in support of the alien's U nonimmigrant status that the absences were necessary to assist in the criminal investigation or prosecution or were otherwise justified.

(2) *Qualifying Family Member* means a U–1 principal applicant's spouse, child, or, in the case of an alien child, a parent who has never been admitted to the United States as a nonimmigrant under sections 101(a)(15)(U) and 214(p) of the Act.

(3) *U Interim Relief* means deferred action and work authorization benefits provided by USCIS or the Immigration and Naturalization Service to applicants for U nonimmigrant status deemed *prima facie* eligible for U nonimmigrant status prior to publication of the U nonimmigrant status regulations.

(4) *U Nonimmigrant* means an alien who is in lawful U–1, U–2, U–3, U–4, or U–5 status.

(5) *Refusal to Provide Assistance in a Criminal Investigation or Prosecution* is the refusal by the alien to provide assistance to a law enforcement agency or official that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status. The Attorney General will determine whether the alien's refusal was unreasonable under the totality of the circumstances based on all available affirmative evidence. The Attorney General may take into account such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe traumatization (both mental and physical), and the age and maturity of the applicant.

(b) *Eligibility of U Nonimmigrants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2)(i) Was lawfully admitted to the United States as either a U–1, U–2, U–3, U–4 or U–5 nonimmigrant, as defined in 8 CFR 214.1(a)(2), and

(ii) Continues to hold such status at the time of application; or accrued at least 4 years in U interim relief status and files a complete adjustment application within 120 days of the date of approval of the Form I–918, Petition for U Nonimmigrant Status;

(3) Has continuous physical presence for 3 years as defined in paragraph (a)(1) of this section;

(4) Is not inadmissible under section 212(a)(3)(E) of the Act;

(5) Has not unreasonably refused to provide assistance to an official or law