

held a valid license from a U.S. jurisdiction), DHS, subject to the conditions in paragraph (n)(2) of this section, may in its discretion admit, extend the period of authorized stay, or change the nonimmigrant status of an alien described in paragraph (d)(1) or paragraph (d)(2) of this section, despite the alien's inadmissibility under section 212(a)(5)(C) of the Act, provided the alien is not otherwise inadmissible.

(ii) After July 26, 2004 (or, after July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), such discretion shall be applied on a case-by-case basis.

(2) *Conditions.* Until July 26, 2004 (or until July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), the temporary admission, extension of stay, or change of status of an alien described in 8 CFR part 212(d)(1) or (d)(2) of this section that is provided for under this paragraph (n) is subject to the following conditions:

(i) The admission, extension of stay, or change of status may not be for a period longer than 1 year from the date of the decision, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;

(ii) The alien must obtain the certification required by paragraph (a) of this section within 1 year of the date of decision to admit the alien or to extend the alien's stay or change the alien's status; and,

(iii) Any subsequent petition or application to extend the period of the alien's authorized stay or change the alien's nonimmigrant status must include proof that the alien has obtained the certification required by paragraph (a) of this section, if the extension or stay or change of status is sought for the primary purpose of the alien's performing labor in a health care occupation listed in paragraph (c) of this section.

(3) *Immigrant aliens.* An alien described in paragraph (a) of this section,

who is coming to the United States as an immigrant or is applying for adjustment of status pursuant to section 245 of the Act (8 U.S.C. 1255), to perform labor in a health care occupation described in paragraph (c) of this section, must submit the certificate or certified statement as provided in this section at the time of visa issuance or adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for any admission into the United States, change of status within the United States, or adjustment of status within 5 years of the date that it is issued.

(5) *Revocation of certificate or certified statement.* When a credentialing organization notifies the DHS, via the Nebraska Service Center, that an individual's certification or certified statement has been revoked, the DHS will take appropriate action, including, but not limited to, revocation of approval of any related petitions, consistent with the Act and DHS regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

[68 FR 43915, July 25, 2003, as amended at 69 FR 43731, July 22, 2004; 74 FR 26938, June 5, 2009; 76 FR 53788, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

§212.16 Applications for exercise of discretion relating to T nonimmigrant status.

(a) *Filing the waiver application.* An alien applying for the exercise of discretion under section 212(d)(13) or (d)(3)(B) of the Act (waivers of inadmissibility) in connection with an application for T nonimmigrant status shall submit the request on the form designated by USCIS, with the appropriate fee in accordance with §103.7(b)(1) of this chapter or an application for a fee waiver, to USCIS with the application for status under section 101(a)(15)(T)(i) of the Act.

(b) *Treatment of waiver application.* (1) USCIS shall determine whether a ground of inadmissibility exists with respect to the alien applying for T nonimmigrant status. If a ground of inadmissibility is found, USCIS shall determine if it is in the national interest to exercise discretion to waive the ground of inadmissibility, except for grounds

of inadmissibility based upon sections 212(a)(3), 212(a)(10)(C) and 212(a)(10)(E) of the Act, which USCIS may not waive. Special consideration will be given to the granting of a waiver of a ground of inadmissibility where the activities rendering the alien inadmissible were caused by or incident to the victimization described under section 101(a)(15)(T)(i) of the Act.

(2) In the case of applicants inadmissible on criminal and related grounds under section 212(a)(2) of the Act, USCIS will only exercise its discretion in exceptional cases unless the criminal activities rendering the alien inadmissible were caused by or were incident to the victimization described under section 101(a)(15)(T)(i) of the Act.

(3) An application for waiver of a ground of inadmissibility for T nonimmigrant status (other than under section 212(a)(6) of the Act) will be granted only in exceptional cases when the ground of inadmissibility would prevent or limit the ability of the applicant to adjust to permanent resident status after the conclusion of 3 years.

(4) USCIS shall have sole discretion to grant or deny a waiver, and there shall be no appeal of a decision to deny a waiver. However, nothing in this paragraph (b) is intended to prevent an applicant from re-filing a request for a waiver of a ground of inadmissibility in appropriate cases.

(c) *Incident to victimization.* When an applicant for status under section 101(a)(15)(T) of the Act seeks a waiver of a ground of inadmissibility under section 212(d)(13) of the Act on grounds other than those described in sections 212(a)(1) and (a)(4) of the Act, the applicant must establish that the activities rendering him or her inadmissible were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I) of the Act.

(d) *Revocation.* The Service may at any time revoke a waiver previously authorized under section 212(d) of the Act. Under no circumstances shall the alien or any party acting on his or her behalf have a right to appeal from a decision to revoke a waiver.

[67 FR 4795, Jan. 31, 2002, as amended at 76 FR 53788, Aug. 29, 2011]

§212.17 Applications for the exercise of discretion relating to U nonimmigrant status.

(a) *Filing the waiver application.* An alien applying for a waiver of inadmissibility under section 212(d)(3)(B) or (d)(14) of the Act (waivers of inadmissibility), 8 U.S.C. 1182(d)(3)(B) or (d)(14), in connection with a petition for U nonimmigrant status being filed pursuant to 8 CFR 214.14, must submit the waiver request and the petition for U nonimmigrant status on the forms designated by USCIS in accordance with the form instructions. An alien in U nonimmigrant status who is seeking a waiver of section 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B) (unlawful presence ground of inadmissibility triggered by departure from the United States), must file the waiver request prior to his or her application for re-entry to the United States in accordance with the form instructions.

(b) *Treatment of waiver application.* (1) USCIS, in its discretion, may grant the waiver based on section 212(d)(14) of the Act, 8 U.S.C. 1182(d)(14), if it determines that it is in the public or national interest to exercise discretion to waive the applicable ground(s) of inadmissibility. USCIS may not waive a ground of inadmissibility based upon section 212(a)(3)(E) of the Act, 8 U.S.C. 1182(a)(3)(E). USCIS, in its discretion, may grant the waiver based on section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), except where the ground of inadmissibility arises under sections 212(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), or (3)(E) of the Act, 8 U.S.C. 1182(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), or (3)(E).

(2) In the case of applicants inadmissible on criminal or related grounds, in exercising its discretion USCIS will consider the number and severity of the offenses of which the applicant has been convicted. In cases involving violent or dangerous crimes or inadmissibility based on the security and related grounds in section 212(a)(3) of the Act, USCIS will only exercise favorable discretion in extraordinary circumstances.

(3) There is no appeal of a decision to deny a waiver. However, nothing in this paragraph is intended to prevent an applicant from re-filing a request