

(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; 63 FR 12987, Mar. 17, 1998; 74 FR 26940, June 5, 2009; 76 FR 53792, Aug. 29, 2011]

§ 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. 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.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is outside the United States, the principal alien may file Form I-824, Application for Action on an Approved Application or Petition, with the office which approved the original application.

(e) *Removal provisions of section 237 of the Act.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the removal provisions of section 237 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 237 of the Act. The Service shall obtain a current Form DD-214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

(f) *Rescission proceedings under section 246 of the Act.* If the Service determines that a military special immigrant under section 101(a)(27)(K) of the Act was not in fact eligible for adjustment of status, the Service may pursue rescission proceedings under section 246 of the Act.

[57 FR 33862, July 31, 1992, as amended at 58 FR 50836, Sept. 29, 1993; 62 FR 10384, Mar. 6, 1997; 74 FR 26940, June 5, 2009]