

Department of State

§ 41.86

(c) *Child*. An alien is classifiable under INA 101(a)(15)(K)(iii) if:

(1) The consular officer is satisfied that the alien is the child of an alien classified under INA 101(a)(15)(K)(i) or (ii) and is accompanying or following to join the principal alien; and

(2) The alien otherwise has met all other applicable requirements in order to receive a nonimmigrant visa, including the requirements of paragraph (d) of this section.

(d) *Eligibility as an immigrant required*. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section as if the alien were an applicant for an immigrant visa, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

[66 FR 19393, Apr. 16, 2001]

§ 41.82 Certain parents and children of section 101(a)(27)(I) special immigrants. [Reserved]

§ 41.83 Certain witnesses and informants.

(a) *General*. An alien shall be classifiable under the provisions of INA 101(a)(15)(S) if:

(1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and

(2)(i) The consular officer has received verification from the Department of State, Visa Office, that:

(A) in the case of INA 101(a)(15)(S)(i) the DHS has certified that the alien is accorded such classification, or

(B) in the case of INA 101(a)(15)(S)(ii) the Assistant Secretary of State for Consular Affairs on behalf of the Secretary of State and the DHS have certified that the alien is accorded such classification;

(ii) and the alien is granted an INA 212(d)(1) waiver of any INA 212(a) ground of ineligibility known at the time of verification.

(b) *Certification of S visa status*. The certification of status under INA 101(a)(15)(S)(i) by the Secretary of Homeland Security or of status under INA 101(a)(15)(S)(ii) by the Secretary of State and the Secretary of Homeland

Security acting jointly does not establish that the alien is eligible to receive a nonimmigrant visa.

(c) *Validity of visa*. The period of validity of a visa authorized on the basis of paragraph (a) of this section shall not exceed the period indicated in the certification required in paragraph (b) and shall not in any case exceed the period of three years.

[61 FR 1838, Jan. 24, 1996, as amended at 71 FR 34521, June 15, 2006]

§ 41.84 Victims of trafficking in persons.

(a) *Eligibility*. An alien may be classifiable as a parent, spouse or child under INA 101(a)(15)(T)(ii) if:

(1) The consular officer is satisfied that the alien has the required relationship to an alien who has been granted status by the Secretary for Homeland Security under INA 101(a)(15)(T)(i);

(2) The consular officer is satisfied that the alien is otherwise admissible under the immigration laws of the United States; and

(3) The consular officer has received an DHS-approved I-914, Supplement A, evidencing that the alien is the spouse, child, or parent of an alien who has been granted status under INA 101(a)(15)(T)(i).

(b) *Visa validity*. A qualifying family member may apply for a nonimmigrant visa under INA(a)(15)(T)(ii) only during the period in which the principal applicant is in status under INA 101(a)(15)(T)(i). Any visa issued pursuant to such application shall be valid only for a period of three years or until the expiration of the principal alien's status as an alien classified under INA 101(a)(15)(T)(i), whichever is shorter.

[68 FR 37964, June 26, 2003]

§ 41.86 Certain spouses and children of lawful permanent resident aliens.

(a) *Definition of "remains pending"*. For the purposes of this section, a visa application "remains pending" if the applicant has applied for an immigrant visa in accordance with the definition in part 40, § 40.1(1)(2) and the visa has neither been issued, nor refused for any reason under applicable law and regulation.

(b) *Entitlement to classification.* A consular officer may classify an alien as a nonimmigrant under INA 101(a)(15)(V) if:

(1) The consular officer has received notification from the Department of State or the Department of Justice that a petition to accord status to the alien as a spouse or child pursuant to INA 203(a)(2)(A) was filed on or before December 21, 2000; or

(2) The alien is eligible to derive benefits pursuant to INA 203(d) as a child of an alien described in paragraph (b)(1) of this section and such alien has qualified for V classification; and

(3) It has been three years or more since the filing date of the petition described in paragraph (b)(1) of this section and applicable to paragraph (b)(2) of this section and either:

(i) The petition has not been approved; or

(ii) If it has been approved, either no immigrant visa number is immediately available or the alien's application for adjustment of status or the alien's application for a visa remains pending.

(c) *Eligibility as an immigrant required.* The consular officer, insofar as practicable, must determine the eligibility of an alien described in paragraph (b) of this section to receive a nonimmigrant visa under INA 101(a)(15)(V), other than an alien who previously has been granted V status in the United States by DHS, as if the alien were an applicant for an immigrant visa, except that the alien is exempt from the vaccination requirement of INA 212(a)(1), the labor certification requirement of INA 212(a)(5) and the unlawful presence ineligibility of INA 212(a)(9)(B).

(d) *Place of application.* Notwithstanding the requirements of §41.101, in determining the place of application for an alien seeking a visa pursuant to INA 101(a)(15)(V) the requirements of part 42, §§42.61(a) and (b)(1) of this chapter will apply.

[66 FR 19393, Apr. 16, 2001]

Subpart J—Application for Nonimmigrant Visa

§41.101 Place of application.

(a) *Application for regular visa made at jurisdictional consular office of alien's*

residence or physical presence. (1) An alien applying for a nonimmigrant visa shall make application at a consular office having jurisdiction over the alien's place of residence, or if the alien is a resident of Taiwan, at the American Institute in Taiwan, unless—

(i) The alien is physically present in the United States and is entitled to apply for issuance or reissuance of a visa under the provisions of §41.111(b); or

(ii) A consular office having jurisdiction over the area in which the alien is physically present but not resident has agreed, as a matter of discretion or at the direction of the Department, to accept the alien's application; or

(iii) The alien is subject to INA 222(g) and must apply as set forth in paragraph (b) or (c) of this section.

(2) The Deputy Assistant Secretary of State for Visa Services is authorized to designate the geographical area for which each consular office possesses jurisdiction to process nonimmigrant visa applications.

(b) *Place of application for persons subject to INA 222(g).* Notwithstanding the requirements of paragraph (a) of this section, an alien whose prior nonimmigrant visa has been voided pursuant to INA 222(g), who is applying for a new nonimmigrant visa, shall make application at a consular office which has jurisdiction in or for the country of the alien's nationality unless extraordinary circumstances have been determined to exist with respect to that alien as set forth in paragraph (c) of this section.

(c) *Exceptions based on extraordinary circumstances.* (1) An alien physician serving in underserved areas of the United States under the provisions of INA 214(l) for whom an application for a waiver of the 2-year foreign residence requirement and/or a petition to accord H-1B status was filed prior to the end of the alien's authorized period of stay and was subsequently approved, but whose authorized stay expired during the adjudication of such application(s), shall make application in accordance with paragraph (a) of this section.

(2) Any other individual or group whose circumstances are determined to be extraordinary, in accordance with paragraph (d)(1) of this section, by the