INA: ACT 245 - ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

Sec. 245. [8 U.S.C. 1255]

(a) The status of an alien who was inspected and admitted or paroled into the United States 1/ or the status of any other alien having an approved petition for classification as a VAWA self-petitioner 1aa/ may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if

(1) the alien makes an application for such adjustment,

(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and

(3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 202 and 203 within the class to which the alien is chargeable for the fiscal year then current.

(c) 1/ Other than an alien having an approved petition for classification as a VAWA self-petitioner, 1aa/ subsection (a) shall not be applicable to

(1) an alien crewman;

(2) 1/ subject to subsection (k), an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H) , (I) , (J) , or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States;

(3) any alien admitted in transit without visa under section 212(d)(4)(C) ;

(4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217 ;

(5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S) ;

(6) an alien who is deportable under section 237(a)(4)(B) ; 1a/

(7) 2/ any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful nonimmigrant status; or

(8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3) , or who has otherwise violated the terms of a nonimmigrant visa.

(d) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216 . The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) 2aa/ except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K) .

(e) (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a la wful petition) for the filing of a petition under section 204(a) or 2aa/ subsection (d) or (p) of section 214 with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216A .

(g) In applying this section to a special immigrant described in section 101(a)(27)(K) , such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States.

(h) In applying this section to a special immigrant described in section 101(a)(27)(J) -

(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant-

(A) **11d/** paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section **212(a)** shall not apply, and

(B) the Attorney General may waive other paragraphs of section **212(a)** (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest. The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Noth ing in this subsection or section **101(a)(27)(J)** shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i) (1) **2a/** Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States--

(A) who--

(i) entered the United States without inspection; or

(ii) is within one of the clas ses enumerated in subsection (c) of this section; **2a/**

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section **203(d)**) of--

(i) a petition for classification under section **204** that was filed with the Attorney General on or before **2a/** April 30, 2001; or

(ii) an application for a labor certification under section **212(a)(5)(A)** that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and **2a/**

(C) **2a/** who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000; may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equaling $1,000 **3/** as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or

permanent resident status under section **210** or **245A** of the Immigration and Nationality Act or section **202** of the Immigration Reform and Control Act of 1986 at any date, who-

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section **210** or **245A** of the Immigration and Nationality Act or section **202** of the Immigration Reform and Control Act of 1986;

(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iii) applied for benefits under section **301(a)** of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section. and

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if-

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

(3) **4/** (A) The portion of each application fee (not to exceed $200) that the Attorney General determines is required to process an application under this section and is remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (o) of section 286.

(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the **4a/** Breached Bond/Detention established under section **286(r)** , **4a/** except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section **286(m)** .