

Adjudicator's Field Manual

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Chapter 23 Adjustment of Status to Lawful Permanent Resident.

23.1 Prior Law and Historical Background, has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of February 25, 2016.

23.2 General Adjustment of Status Issues, has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of February 25, 2016.

23.3 [Reserved] Chapter 23.3, Reserved, has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of February 25, 2015.

23.4 Presumption of Lawful Admission and Creation of Record under 8 CFR 101, has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of December 21, 2016.

23.5 Adjustment of Status under Section 245 of the Act has been partially superseded by USCIS Policy Manual, Volume 7: Adjustment of Status.

23.6 Refugee and Asylee Adjustment under Section 209 of the Act, has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of March 4, 2014.

23.7 Registration of Lawful Permanent Residence under Section 249 of the Act, has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of December 21, 2016.”

23.8 Section 289 Cases has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of May 15, 2020.

23.9 Section 7 of the Central Intelligence Agency Act of 1949 Cases

23.10 Adjustment of Status under Section 13 of the Act of September 11, 1957 (8 U.S.C. 1255b)

23.11 Cuban Adjustment Act Cases

23.12 Adjustment of Status under NACARA (sec. 202 of Pub L 105-100)

23.13 Adjustment of Status under HRIFA (sec. 902 of Pub L 105-277)

23.14 Adjustment of Status for Certain Syrian Nationals Granted Asylum

Section 247(b) of the INA was written prior to the creation of the E-3 classification. An E-3 nonimmigrant, Australian specialty occupation worker, although classifiable under section 101(a)(15)(E) of the INA, has no special rights, privileges, immunities or exemptions to waive and therefore is not required to submit Form I-508 .

(n) Adjustment of Status by T Nonimmigrants [**Added 07-21-2010, AD 10-38, PM-602-0004**]

(1) Eligibility.

(A) [Reserved]

(B) Physical Presence for a Requisite Period. A T nonimmigrant will not be considered to have failed to maintain continuous physical presence in two circumstances:

- If the T nonimmigrant's absence from the United States was necessary to assist in the investigation or prosecution of the acts of trafficking. The applicant should provide an affirmative statement detailing his or her role in the investigation or prosecution of the acts of trafficking. Along with the statement, the applicant must submit a signed statement from an official involved in the investigation or prosecution of the acts of trafficking on official letterhead describing how the applicant's absence from the United States was necessary to assist in the investigation or prosecution.
- If an official involved in the investigation or prosecution of the acts of trafficking certifies that the absence from the United States was otherwise justified. The applicant should provide a signed statement from an official involved in the investigation or prosecution of the acts of trafficking on official letterhead describing how his or her absence from the United States was otherwise justified.

If the applicant was granted T nonimmigrant status and resided in the Commonwealth of the Northern Mariana Islands (CNMI), whether before or after November 28, 2009. For T nonimmigrants in the CNMI, the three year continuous physical presence required for adjustment of status begins to accrue when the application for T nonimmigrant status is granted, even if the applicant was not actually admitted in T nonimmigrant status.

(C) Good Moral Character. USCIS may waive consideration of a disqualification from good moral character, including the bars to making a good moral character determination found at INA § 101(f), if the disqualification was caused by, or incident to, the acts of trafficking that formed the basis of the underlying application for T nonimmigrant status. INA § 245(l)(6). A T nonimmigrant applying for adjustment bears the burden of demonstrating that the acts that would otherwise prevent USCIS from making a finding of good moral character were caused by or incident to the acts of trafficking. In order to meet this burden, the T nonimmigrant may submit:

- An affirmative statement explaining the relation between the bar-of-good-moral-character finding and the acts of trafficking; and
- Any other credible evidence.

(D) Assistance in an Investigation or Prosecution, Extreme Hardship, or Age.

(i) The burden is on the applicant, where applicable, to establish continued compliance with any reasonable requests for assistance. At a minimum, an applicant should submit an affirmative statement describing how he or she continues to be helpful in the investigation or prosecution and any other credible

evidence. A non-exhaustive list of evidence includes a statement from a Federal, State or local law enforcement official describing how the applicant complied with any reasonable requests for assistance, trial transcripts, court documents, police reports, and news articles. If an applicant wants to rely on evidence previously submitted as part of the T nonimmigrant application, the applicant need not resubmit that evidence but can instead point to any evidence already contained in her or her DHS file.

(a) If an applicant submitted a Form I-914, Supplement B, along with the application for T nonimmigrant status stating that he or she was assisting law enforcement, but is no longer doing so at the time of the application for adjustment of status, the applicant should describe in the affirmative statement the reasons he or she is no longer assisting. Reasons could include, but are not limited to, the fact that the investigation or prosecution is now over or that a request for assistance was not reasonable. If a T nonimmigrant did not submit a Form I-914, Supplement B, but was granted status on the basis of the applicant's willingness to assist, the applicant should explain in the affirmative statement that he or she continues to be willing to assist and that no requests or reasonable requests were made to assist in any investigation or prosecution.

(b) USCIS will consult the Attorney General as it deems appropriate to determine compliance with the requirement of assistance in the investigation or prosecution of acts of trafficking. Applicants are not required to submit a document issued by the Attorney General or his or designee certifying that the applicant has complied with any reasonable requests for assistance. 8 CFR 245.23(f) is superseded.

(c) An applicant who was granted the trauma exception to compliance with reasonable requests for assistance in an investigation or prosecution at the T nonimmigrant petition phase does not need to demonstrate compliance with reasonable requests for assistance in the investigation or prosecution of the acts of trafficking at the adjustment of status phase.

(ii) An applicant who was under the age of 18 at the time of the trafficking victimization does not need to demonstrate compliance with reasonable requests for assistance in the investigation or prosecution of the acts of trafficking at the adjustment of status phase. INA § 245(l)(1)(C)(iii).

(iii) An applicant can demonstrate extreme hardship involving unusual and severe harm upon removal from the United States instead of demonstrating compliance with reasonable requests for assistance in the investigation or prosecution of the acts of trafficking. INA § 245(l)(1)(C)(ii).

(2) Application Procedures for T Nonimmigrant Adjustment of Status.

(A) Jurisdiction. USCIS has sole jurisdiction over all applications for adjustment of status for T nonimmigrants.

(o) Adjustment of Status by U Nonimmigrants.

(1) Eligibility.

(A) [Reserved]

(B) [Reserved]

(C) Unreasonable Refusal to Assist in the Investigation of Prosecution. USCIS will determine whether the applicant has unreasonably refused to provide assistance in the investigation or prosecution of the qualifying criminal activity. In its discretion, USCIS may consult the Attorney General in making a determination that affirmative evidence demonstrates that the applicant unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting qualifying criminal activity.

(D) Physical Presence and the Commonwealth of the Northern Mariana Islands. A U nonimmigrant will not be considered to have failed to maintain continuous physical presence if the applicant was granted U nonimmigrant status and resided in the Commonwealth of the Northern Mariana Islands (CNMI), whether before or after November 28, 2009. For U nonimmigrants in the CNMI, the three year continuous physical presence required for adjustment of status begins to accrue when the application for U nonimmigrant status is granted, even if the applicant was not actually admitted in U nonimmigrant status.

(p) Precedent Decisions Pertaining to Adjustment of Status .

This section has been superseded by USCIS Policy Manual, Volume 7: Adjustment of Status as of February 25, 2016