

Special Immigrant Juvenile Exemptions

245(h)(2)(B) of the INA and in the implementing regulations at 8 C.F.R. 245.1(e)(3).

8 C.F.R. 245.1(e)(3)

(3) Special immigrant juveniles —

(i) Eligibility for adjustment of status. For the limited purpose of meeting one of the eligibility requirements for adjustment of status under section 245(a) of the Act, which requires that an individual be inspected and admitted or paroled, an applicant classified as a special immigrant juvenile under section 101(a)(27)(J) of the Act will be deemed to have been paroled into the United States as provided in § 245.1(a) and section 245(h) of the Act.

(ii) Bars to adjustment. An applicant classified as a special immigrant juvenile is subject only to the adjustment bar described in section 245(c)(6) of the Act. Therefore, **an applicant classified as a special immigrant juvenile is barred from adjustment if deportable due to engagement in terrorist activity or association with terrorist organizations** (section 237(a)(4)(B) of the Act). There is no waiver of or

exemption to this adjustment bar if it applies.

(iii) *Inadmissibility provisions that do not apply.* The following inadmissibility provisions of section 212(a) of the Act do not apply to an applicant classified as a special immigrant juvenile and do not render the applicant ineligible for the benefit:

(A) Public charge (section 212(a)(4) of the Act);

(B) Labor certification (section 212(a)(5)(A) of the Act);

(C) Aliens present without admission or parole (section 212(a)(6)(A) of the Act);

(D) Misrepresentation (section 212(a)(6)(C) of the Act);

(E) Stowaways (section 212(a)(6)(D) of the Act);

(F) Documentation requirements for immigrants (section 212(a)(7)(A) of the Act);

(G) Aliens unlawfully present (section 212(a)(9)(B) of the Act);

(iv) *Inadmissibility provisions that do apply.* Except as provided for in paragraph (e)(3)(iii) of this section, all inadmissibility provisions in section 212(a) of the Act apply to an applicant classified as a special immigrant juvenile.

(v) *Waivers.*

(A) Pursuant to section 245(h)(2)(B) of the Act, USCIS may grant a waiver for humanitarian purposes, to assure family unity, or in the public interest for any applicable provision of

section 212(a) of the Act to an applicant seeking to adjust status based upon their classification as a special immigrant juvenile, except for the following provisions:

(1) Conviction of certain crimes (section 212(a)(2)(A) of the Act) (except for a single offense of simple possession of 30 grams or less of marijuana);

(2) Multiple criminal convictions (section 212(a)(2)(B) of the Act) (except for a single offense of simple possession of 30 grams or less of marijuana);

(3) Controlled substance traffickers (section 212(a)(2)(C) of the Act) (except for a single offense of simple possession of 30 grams or less of marijuana);

(4) Security and related grounds (section 212(a)(3)(A) of the Act);

(5) Terrorist activities (section 212(a)(3)(B) of the Act);

(6) Foreign policy (section 212(a)(3)(C) of the Act); or

(7) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (section 212(a)(3)(E) of the Act).

INA §237(c) Waived for Special Immigrant Juveniles

Furthermore, associated deportability grounds under section 237(c) of the INA are waived for special immigrant juveniles.

Inadmissibility provisions not listed at section 245(h)(2) *do apply* to special immigrant juveniles seeking adjustment of status. Accordingly, a special immigrant juvenile adjustment applicant would have to obtain a waiver of inadmissibility or other form of relief from applicable grounds of inadmissibility in order to be eligible for adjustment of status.

The inadmissibility grounds that do apply to special immigrant juveniles are as follows:

INA 212(a)(1) — Health-related

INA 212(a)(2) — Crime-related

INA 212(a)(3) — Security-related

INA 212(a)(6)(B) — Failure to attend removal proceedings

INA 212(a)(6)(E) — Smugglers

INA 212(a)(6)(F) — Subject of civil penalty

INA 212(a)(6)(G) — Student visa abusers

INA 212(a)(8) — Ineligible for citizenship

INA 212(a)(9)(A) — Certain foreign nationals previously removed

INA 212(a)(9)(C) — Foreign nationals unlawfully present after previous immigration violations

INA 212(a)(10) — Practicing polygamists, guardians required to accompany helpless persons, international child abductors,

unlawful voters, and former citizens who renounced citizenship to avoid taxation

Section 245(h)(2)(B) Waivers

Section 245(h)(2)(B) of the INA provides for a special immigrant juvenile-specific waiver for adjustment of status purposes. The USCIS may grant a waiver of inadmissibility to a special immigrant juvenile applicant for one of the following reasons:

1. Humanitarian purposes;² Family unity;³ or When it is otherwise in the public interest.

Section

245(h)(2)(B) prevents the USCIS from weighing the special immigrant juvenile's relationship with his or her parents or adoptive parents in considering a waiver. This prohibition also extends to a parent who was not determined by a juvenile court to have abused the juvenile .

It is also important to note that the section 245(h)(2)(B) waiver applies *only* for the purpose of a special immigrant juvenile's adjustment of status application.

INA 245(h)(2) Waivers **CANNOT** Waive

However, the special immigrant juvenile-specific waiver at section 245(h)(2) cannot waive the following grounds of inadmissibility:

INA 212(a)(2)(A) — Conviction of certain crimes

INA 212(a)(2)(B) — Multiple criminal convictions

INA 212(a)(2)(C) — Controlled substance traffickers

INA 212(a)(3)(A) — Security and related grounds

INA 212(a)(3)(B) — Terrorist activities

INA 212(a)(3)(C) — Foreign policy related

INA 212(a)(3)(E) — Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

Unauthorized Employment & Violations of Terms of Nonimmigrant Visa

The bar at section 245(c)(2) covering unauthorized employment and other lapses in status does not apply to special immigrant juveniles. Special immigrant juveniles are also exempted from section 245(c)(8), which covers aliens who accepted unauthorized employment while their presence in the United States was not authorized and those who violate the terms of their nonimmigrant visas (see 62 FR 39417, 39422 (Jul. 23, 1997)).

Sections 245(c)(1), (c)(3)-(5) do not apply to special immigrant juvenile adjustment applicants since the issues are ameliorated by the fact that special immigrant juveniles are deemed to have been paroled for purposes of adjustment by virtue of the approval of the Form I-360.

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