

9 FAM 42.32(d)(2) FOURTH PREFERENCE - SPECIAL IMMIGRANTS - CERTAIN U.S. GOVERNMENT EMPLOYEES

*(CT:VISA-1349; 10-21-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.32(d)(2) RELATED STATUTORY PROVISIONS

(CT:VISA-1349; 10-21-2009)

See INA 101(a)(27)(D) (8 U.S.C. 1101(a)(27)(D)), INA 203(b)(4) (8 U.S.C. 1153(b)(4)) and INA 204(a)(1)(G) (8 U.S.C. 1154(a)(1)(G))

INA 101(a)(27)(D)

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: Provided, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status.

INA 203(b)(4)

b. Preference Allocation for Employment-Based Immigrants. - Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

- (4) Certain special immigrants. - Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii), and not more than 100 may be made

available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 101(a)(27)(M).

INA 204(a)(1)(G)

(G) (i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203 (b)(4), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

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See 22 CFR 42.32(d)(2)

Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as indicated below.

- (d) Fourth preference--Special immigrants
(2) Certain U.S. Government employees—
(i) General.

(A) An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) if a petition to accord such status has been approved by the Secretary of State. An alien may file such a petition only after, but within one year of, notification from the Department that the Secretary of State has approved a recommendation from the Principal Officer that special immigrant status be accorded the alien in exceptional circumstances and has found it in the national interest so to do.

(B) An alien may qualify as a special immigrant under INA 101(a)(27)(D) on the basis of employment abroad with more than one agency of the U.S. Government provided the total amount of full-time service with the U.S. Government is 15 years or more.

(C) Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an alien classified under INA 203(b)(4), if not entitled to an immigrant status and the immediate issuance of a visa, is entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition.

(ii) Special immigrant status for certain aliens employed at the United States mission in Hong Kong.

(A) An alien employed at the United States Consulate General in Hong Kong under the authority of the Chief of Mission or an alien employed pursuant to section 5913 of title 5 of the United States Code is eligible for classification under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

(1) The alien has performed faithfully for a total of three years or more;

(2) The alien is a member of the immediate family of an employee entitled to such special immigrant status; and

(3) The welfare of the alien or the family member is subject to clear threat due directly to the employee's employment with the United States Government or under a United States Government official; and

(4) Subsequent to the Secretary's approval of the Principal Officer's recommendation and finding it in the national interest to do so, but within one year thereof, the alien has filed a petition for status under INA 203(b)(4) which the Secretary has approved.

(B) An alien desiring to benefit from this provision must seek such status not later than January 1, 2002.

(C) For purposes of Section 42.32(d)(2)(ii)(A), the term member of the immediate family means the definition (as of November 29, 1990) in Volume 6 of the Foreign Affairs Manual, section 117k, of a relative who has been living with the employee in the same household.

(iii) Priority date. The priority date of an alien seeking status under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) shall be the date on which the petition to accord such classification is filed. The filing date of the petition is that on which a properly

completed form and the required fee are accepted by a Foreign Service post.

(iv) Petition validity. Except as noted in this paragraph, the validity of a petition approved for classification under INA 203(b)(4) shall be six months beyond the date of the Secretary of State's approval thereof or the availability of a visa number, whichever is later. In cases described in Section 42.32(d)(2)(ii), the validity of the petition shall not in any case extend beyond January 1, 2002.

(v) Extension of petition validity. If the principal officer of a post concludes that circumstances in a particular case are such that an extension of the validity of the Secretary's approval of special immigrant status or of the petition would be in the national interest, the principal officer shall recommend to the Secretary of State that such validity be extended for not more than one additional year.

(vi) Fees. The Secretary of State shall establish a fee for the filing of a petition to accord status under INA 203(b)(4) which shall be collected following notification that the Secretary has approved status as a special immigrant under INA 101(a)(27)(D) for the alien.

(vii) Delegation of authority to approve petitions. The authority to approve petitions to accord status under INA 203(b)(4) to an alien described in INA 101(a)(27)(D) is hereby delegated to the chief consular officer at the post of recommendation or, in the absence of the consular officer, to any alternate approving officer designated by the principal officer. Such authority may not be exercised until the Foreign Service post has received formal notification of the Secretary's approval of special immigrant status for the petitioning alien.