

9 FAM 42.32(d)(4) NOTES

*(CT:VISA-1676; 09-06-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.32(d)(4) N1 CLASSES OF FOREIGN MEDICAL GRADUATES ELIGIBLE TO ADJUST STATUS AS SPECIAL IMMIGRANTS

(CT:VISA-1676; 09-06-2011)

- a. INA 101(a)(27)(H) permits certain alien physicians and the accompanying spouse and children to adjust status as special immigrants without regard to labor certification requirements or the restrictions of INA 245(c) concerning previous unauthorized employment, provided the alien physicians were fully and permanently licensed to practice medicine in a State and practicing medicine in a State on January 9, 1978, had entered the United States as nonimmigrant temporary workers or exchange visitors before January 10, 1978, and have been thereafter continuously in the United States in the practice or study of medicine. It is reasonable to assume that all eligible physician beneficiaries have already taken advantage of this provision. There may, however, still be a few spouses and children who have not yet accompanied the principal to the United States and may still wish to do so.
- b. This class, like most other special immigrant classes, is now incorporated in the employment-based fourth preference. As a result, the spouse or child of such an adjustee cannot be issued a derivative special immigrant visa but must be the beneficiary of a petition to accord status under INA 101(a)(27)(H) as an "accompanying" spouse or child. Thus, it will be necessary for the resident alien spouse or child to follow the procedure in [22 CFR 40.1\(a\)](#) to confer such status. The petition may be filed by either the principal resident alien or the beneficiary.

9 FAM 42.32(d)(4) N2 ACCOMPANYING SPOUSE AND CHILDREN

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The definition of “accompanying” in 22 CFR 40.1(a) includes a requirement for the issuance of *an immigrant* visa within six months of the adjustment, or registration, of the principal alien. In light of the new requirement for a petition in these cases and the fact that the time required for petition approval may make compliance therewith impossible, the Department will deem that requirement to have been met if the petition is filed within that six-month period.