

9 FAM 42.53 EXHIBIT II EMPLOYMENT-BASED PETITIONS

(CT:VISA-1874; 09-07-2012)

(Office of Origin: CA/VO/L/R)

8 CFR 204.5(d)-(f), (n) Petitions for employment-based immigrants. (In Part)

- (d) **Priority date.** The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an individual labor certification from the Department of Labor shall be the date the request for certification was accepted for processing by any office within the employment service system of the Department of Labor. The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an application for Schedule A designation or with evidence that the alien's occupation is a shortage occupation within the Department of Labor's Labor Market Information Pilot Program shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with the Service. The priority date of a petition filed for classification as a special immigrant under section 203(b)(4) of the Act shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with the Service. The priority date of an alien who filed for classification as a special immigrant prior to October 1, 1991, and who is the beneficiary of an approved I-360 petition after October 1, 1991, shall be the date the alien applied for an immigrant visa or adjustment of status. In the case of a special immigrant alien who applied for adjustment before October 1, 1991, Form I-360 may be accepted and adjudicated at a Service District Office or sub-office.
- (e) **Retention of section 203(b)(1), (2), or (3) priority date.** A petition approved on behalf of an alien under sections 203(b)(1), (2), or (3) of the Act accords the alien the priority date of the approved petition for any subsequently filed petition for any classification under sections 203(b)(1), (2), or (3) of the Act for which the alien may qualify. In the event that the alien is the beneficiary of multiple petitions under sections 203(b)(1), (2), or (3) of the Act, the alien shall be entitled to the earliest priority date. A petition revoked under sections 204(e) or 205 of the Act will not confer a priority date, nor will any priority date be established as a result of a denied petition. A priority date is not transferable to another alien.
- (f) **Maintaining the priority date of a third or sixth preference petition filed prior to October 1, 1991.** Any petition filed before October 1, 1991, and approved on any date, to accord status under section 203(a)(3) or 203(a)(6) of the Act, as in effect before October 1, 1991, shall be deemed a petition approved to accord status under section 203(b)(2) or within the appropriate

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classification under section 203(b)(3), respectively, of the Act as in effect on or after October 1, 1991, provided that the alien applies for an immigrant visa or adjustment of status within the two years following notification that an immigrant visa is immediately available for his or her use.

(n) **Closing action—**

(3) *Validity of approved petitions.* Unless revoked under section 203(e)(sic)¹ or 205 of the Act, an employment-based petition is valid indefinitely.

8 CFR 211.5(c) Alien commuters. (In Part)

(c) **Eligibility for benefits under the immigration and nationality laws.** Until he or she has taken up residence in the United States, an alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his or her own behalf or on behalf of his or her relatives other than as specified in paragraph (a) of this section. When an alien commuter takes up residence in the United States, he or she shall no longer be regarded as a commuter. He or she may facilitate proof of having taken up such residence by notifying the Service as soon as possible, preferably at the time of his or her first reentry for that purpose. Application for issuance of a new Permanent Resident card to show that he or she has taken up residence in the United States shall be made *in accordance with 8 CFR 264.5.*

¹ Should be *INA* 203(g).