

## **9 FAM 42.32(d)(7) CERTAIN MEMBERS OF UNITED STATES ARMED FORCES RECRUITED ABROAD**

*(CT:VISA-1354; 10-21-2009)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 42.32(d)(7) RELATED STATUTORY PROVISIONS**

*(CT:VISA-1354; 10-21-2009)*

See INA 101(a)(27)(K) (8 U.S.C. 1101(a)(27)(K)), INA 203(b)(6) (8 U.S.C. 1153(b)(6)), and INA 203(d) (8 U.S.C. 1153(d)).

#### **INA 101(a)(27)(K)**

(27) The term "special immigrant" means—

- (K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on the date of the enactment of this subparagraph) for a period or periods aggregating—
  - (i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or
  - (ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years, and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant; Note

[Amended by section 601(d) of Public Law 110-161, 121 Stat. 2373; 2007]

#### **INA 203(b)(6)**

(6) Special rules for "k" special immigrants. -

(A) Not counted against numerical limitation in year involved. - Subject to subparagraph (B), the number of immigrant visas made available to special immigrants under section 101(a)(27)(K) in a fiscal year shall not be subject to the numerical limitations of this subsection or of section 202(a).

(B) Counted against numerical limitations in following year.-

(i) Reduction in employment-based immigrant classifications. - The number of visas made available in any fiscal year under paragraphs (1), (2), and (3) shall each be reduced by 1/3 of the number of visas made available in the previous fiscal year to special immigrants described in section 101(a)(27)(K).

(ii) Reduction in per country level. - The number of visas made available in each fiscal year to natives of a foreign state under section 202(a) shall be reduced by the number of visas made available in the previous fiscal year to special immigrants described in section 101(a)(27)(K) who are natives of the foreign state.

(iii) Reduction in employment-based immigrant classifications within per country ceiling. - In the case of a foreign state subject to section 202(e) in a fiscal year (and in the previous fiscal year), the number of visas made available and allocated to each of paragraphs (1) through (3) of this subsection in the fiscal year shall be reduced by 1/3 of the number of visas made available in the previous fiscal year to special immigrants described in section 101(a)(27)(K) who are natives of the foreign state.

(C) [Subparagraph (C) was stricken by Sec. 212(b) of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416, 108 Stat. 4314, Oct. 25, 1994)].

### **INA 203(d)**

Treatment of family members.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101 (b)(1) of this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c) of this section, be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

## **9 FAM 42.32(d)(7) RELATED REGULATORY PROVISIONS**

*(CT:VISA-1354; 10-21-2009)*

See 22 CFR 42.32(d)(7).

**Section 42.32 Employment-based preference 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 indicated below.

**(d) Fourth preference--Special immigrants—**

(7) Certain members of the United States Armed Forces recruited abroad--

(i) Entitlement to status. An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(K) if the consular office has received a petition approved by the DHS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is within the class described in INA 101(a)(27)(K).

(ii) Entitlement to derivative status. Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of any alien classified under INA 203(b)(4) as a special immigrant qualified under this section, if not otherwise 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.