

U.S. Department of Homeland Security
20 Massachusetts Ave, N.W.
Washington, DC 20529



U.S. Citizenship and
Immigration Services

HQOPRD AD07-04

Interoffice Memorandum

To: Service Center Directors
Regional Directors
District Directors
Officers-In-Charge

From: Michael L. Aytes /s/
Associate Director, Domestic Operations

Date: March 15, 2007

Re: Adjustment of Status for K-2 Aliens

1. Purpose

The purpose of this memorandum is to remind officers that K-2 aliens seeking to adjust status are NOT required to demonstrate a step-parent/step-child relationship with the petitioner. A K-2 alien who is over 18 years of age may adjust status provided they satisfy the requirements for adjustment of status under Section 245 of the Immigration and Nationality Act (INA). Officers should follow the regulations at 8 CFR 214.2(k)(6)(ii) regarding adjustment of status for K-2 aliens.

The Immigration and Marriage Fraud Amendments of 1986 created a gap regarding the procedure for a K-2 alien to adjust status to that of a person admitted for permanent residence.¹ The agency has filled the gap with the controlling regulation at 8 CFR 214.2(k)(6)(ii), which reads:

Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K-1 visa issued on or after November 10, 1986, the K-1 beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record

¹Prior to the passage of the LIFE Act of 2000 (Pub. L. 106-553), as amended, the use of the symbol "K-2" for the nonimmigrant category pertaining to the child of a K-1 nonimmigrant, had already been established. Although the statutory definition in section 101(a)(15)(K)(ii) of the Act pertains to the nonimmigrant spouse of a U.S. citizen, the corresponding visa category is "K-3." The visa category K-2 continues to apply to the child of a K-1, with the category for the child of a K-3 being a K-4. Officers are reminded to distinguish between K-2 and K-4 aliens regarding the relevant statutory provisions and visa classifications.

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their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

Section 216 of the INA imposes conditions on the nature of the legal permanent resident status already granted for certain alien spouses, sons and daughters. Section 216(a)(1) reads in part “an alien son or daughter ... shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.”

Officers should NOT limit the adjustment of status of K-2 aliens to persons under the age of 18 based on the term “minor child” as it appears in 245(d). The INA does not define the term “minor child.” Section 101(b)(1) defines the term “child” as “an unmarried person under twenty-one years of age.” Consequently, officers should allow for the adjustment of status of K-2 aliens under the age of 21, provided the requirements for adjustment of status in 245 of the INA are satisfied

2. Contact Information

Questions regarding the guidance contained in this memorandum should be directed to Andrew Perry, Regulations and Product Management, Domestic Operations Directorate, through the appropriate supervisory channels.

3. Use

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to adjudications of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.