

Adjudicator's Field Manual

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Chapter 37 Nonimmigrants Intending to Adjust Status (K and V Classifications).

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37.4 Provisions for the V Nonimmigrant Classification

(a) Law and Regulations Concerning the V Nonimmigrant Classification.

The general provisions governing the V nonimmigrant classification are found at section **101(a)(15)(V)** of the Act and **8 CFR part 214.15**. Section 37.4 of the AFM addresses only the policies and procedures for obtaining and extending V nonimmigrant status in the United States. The State Department procedures for obtaining a V visa are found at **22 CFR 41.86**.

(b) Aliens Eligible for V Status.

An eligible alien is the principal spouse or child beneficiary (and derivative child) of an F2A immigrant visa petition (spouse or child of a lawful permanent resident) that was filed with the Service on or before December 21, 2000, and:

(1) Has been pending for 3 years or more; or

(2) Has been approved, and 3 or more years have passed since such filing date, in either of the following circumstances:

(A) An immigrant visa is not immediately available to the alien because of the priority date; or

(B) The alien's application for an immigrant visa, or the alien's application for adjustment of status under section **245** of the Act, pursuant to the approval of such petition, remains pending.

(c) The Definition of "Pending" in Reference to Visa Petitions.

For purposes of the V nonimmigrant classification, a pending petition is defined as an F2A visa petition that

was filed with the Service on or before December 21, 2000, that has not been adjudicated. In addition, the petition must have been properly filed according to **8 CFR part 103.2(a)** , and if, subsequent to filing, the Service or USCIS returns the petition to the applicant for any reason or makes a request for evidence, the petitioner must satisfy the request within the time period set forth at **8 CFR 103.2(b)(8)** . If the Service or USCIS denies a petition, but the petitioner appeals that decision, the petition will be considered pending until the administrative appeal is decided by the Service or USCIS . A petition rejected by the Service or USCIS as not properly filed is not considered to be pending.

(d) The Admissibility Requirement .

In addition to meeting the eligibility criteria described in paragraph (b), aliens applying to obtain V status in the United States must be admissible to the United States, except that, in determining the alien's admissibility in V nonimmigrant status, sections **212(a)(6)(A)** , **(a)(7)** , and **(a)(9)(B)** of the Act do not apply.

(e) Procedures for Obtaining V Nonimmigrant Status in the United States .

(1) Applying to USCIS for V Nonimmigrant Status .

The application procedures described here are set forth in **8 CFR part 214.15** . To initially apply for V nonimmigrant status, an eligible alien must submit the following:

(A) Form **I-539** , Application to Extend/Change Nonimmigrant Status;

(B) The application fee for Form **I-539** , as required by **8 CFR 103.7(b)(1)** , or a request for a fee waiver;

(C) The fingerprint fee as required by **8 CFR part 103.2(e)(4)** ;

(D) Form **I-693** , Medical Examination of Aliens Seeking Adjustment of Status, without the vaccination supplement; and

(E) Additional Evidence of Eligibility as Required by Supplement A to Form I-539. Supplement A to Form I-539 provides instructions regarding the submission of evidence. An alien applying for V nonimmigrant status should submit proof of filing of the immigrant petition that qualifies the alien for V status. Proof of filing may include Form I-797, Notice of Action, which serves as a receipt of the petition or as a notice of approval, or a receipt for a filed petition or notice of approval issued by a local district office. If the alien does not have such proof, USCIS will review other forms of evidence, such as correspondence to or from the Service or USCIS regarding a pending petition. If the alien does not have any of the items previously mentioned in this paragraph, but believes he or she is eligible for V nonimmigrant status, he or she should state where and when the petition was filed, the name and alien number of the petitioner, and the names of all beneficiaries (if known).

(2) Filing Location .

All applications for V status and V-related employment authorization must be sent to the USCIS Lock-box, and will be adjudicated at the National Benefits Center. Applicants should send applications for V status by mail to:

U.S. USCIS

P.O. Box 7216

Chicago, IL 60680-7216

or by courier to:

USCIS [**Address updated as of June 14, 2006**]

427 S. LaSalle – 3rd Floor

Chicago, IL 60605-1098

(f) Adjudication of Applications for V Nonimmigrant Status.

(1) Determining Admissibility.

In addition to meeting the eligibility criteria described in paragraph (b), aliens applying to obtain V status in the United States must be admissible to the United States, except that, in determining the alien's admissibility in V nonimmigrant status, sections **212 (a)(6)(A)**, **(a)(7)**, and **(a)(9)(B)** of the Act do not apply.

(2) The Availability of Waivers of Grounds of Inadmissibility.

Aliens who are inadmissible under section **212(a)** of the Act may request a waiver of such grounds of inadmissibility pursuant to section **212(d)(3)(A)** of the Act. However, because the V nonimmigrants, like the K-1 fiancées, are de facto immigrants, the adjudicating officer must also determine if a waiver for the same ineligibility is available for admission as an immigrant. If not, the officer may decide not to approve the **212(d)(3)(A)** waiver, and the case could be denied. If there is also a waiver for admission as an immigrant, the officer can approve the **212(d)(3)** waiver and, if warranted, also advise the applicant that he or she may need to submit Form I-601, Waiver of Grounds of Excludability, when he or she files for adjustment of status.

(3) Fingerprint Procedures.

All aliens initially applying to obtain V nonimmigrant status between the ages of 14 and 79 must be fingerprinted in accordance with fingerprinting procedures for adjustment of status. Aliens in V nonimmigrant status applying for an extension do not need to be fingerprinted. An applicant who does not appear for fingerprinting without previously notifying USCIS may have his or her application denied under **8 CFR 103.2(b)(13)**.

(4) Medical Examination.

Individuals in the United States initially applying to obtain V nonimmigrant status must submit a medical exam report (Form I-693) completed by a designated civil surgeon with their application. The vaccination requirements of section **212(a)(1)(A)(ii)** of the Act do not apply at this stage of the process. To be valid, the medical examination must have been completed within 1 year prior to the application. With the exception of the vaccination requirement, a Form I-693 submitted with an application for V status should be treated in the same manner as a Form I-693 submitted with an application for adjustment of status.

(5) Approval.

USCIS will issue to aliens granted V nonimmigrant status in the United States Form I-797 , Notice of Action, as evidence of V nonimmigrant status. Form I-797 will note the alien's classification (V-1, V-2 or V-3) as well as the end date of the alien's period of lawful admission. An eligible spouse of an alien lawfully admitted for permanent residence, who is the principal beneficiary of a Form I-130 , is a V-1. An eligible child of an alien lawfully admitted for permanent residence, who is the principal beneficiary of a Form I-130, is a V-2. The child of either, if eligible to accompany or follow to join the principal alien under section **203(d)** of the Act is a V-3.

(6) Denial.

USCIS will issue to aliens denied V nonimmigrant status Form I-797, Notice of Action, stating the reason for the denial. In some instances, USCIS may issue a Notice of Intent to Deny. Such notice should only be issued in accordance with established procedures.

(7) Requests for Additional Evidence.

For applications for which USCIS cannot determine eligibility without additional evidence, USCIS may issue a request for additional evidence in accordance with the regulations at **8 CFR 103.2(b)(8)** .

(g) Period of Admission.

(1) Period of Admission for the Spouse of an LPR.

Except as provided in paragraph 37.4(g)(3) below, an alien whose status in the United States is changed to V-1 will be granted a period of admission not to exceed 2 years.

(2) Period of Admission for the Child of an LPR or Derivative Child. [Section revised as of June 14, 2006]

Accordingly, except as provided in paragraph 37.4(g)(3) below, an alien whose status in the United States is changed to V-2 or V-3 will be granted a period of admission not to exceed 2 years. **See note below.**

(3) Period of Admission for Aliens with Current Priority Dates. [Section revised as of June 14, 2006]

If an alien who is eligible for V status has a current priority date and makes an application for V status in the United States, grant the alien a 6-month period of admission.

In any case, if the alien has not filed an application either for adjustment of status or for an application for an immigrant visa within that period, the alien cannot extend or be readmitted to V nonimmigrant status. If the alien does file an application either for adjustment of status or for an immigrant visa within the time allowed, the alien will continue to be eligible for further extensions of V nonimmigrant status as provided in this section while that application remains pending. **See note below.**

(4) Extension. [Section revised as of June 14, 2006]

An alien may apply to USCIS for an extension of V nonimmigrant status pursuant to **8 CFR 214.15**. Aliens may apply for the extension of V nonimmigrant status, submitting Form I-539, and the associated filing fee, 120 days before the expiration of their current period of admission. If approved, grant an extension to

aliens in V nonimmigrant status who remain eligible for V nonimmigrant status for a period not to exceed 2 years. **See note below.**

(5) Application for Extension Where There Is a Current Priority Date . [**Section revised as of June 14, 2006**]

If an alien who remains eligible for V-1 status has a current priority date and makes an application for the extension of V status in the United States, grant the alien a 6-month extension. If an alien who remains eligible for V-2 or V-3 status has a current priority date and makes an application for the extension of V status in the United States, grant the alien a 6-month extension.

If the alien has not filed an application either for adjustment of status or for an immigrant visa within the 6-month period, the alien cannot extend further or be readmitted to V nonimmigrant status. If the alien does file an application either for adjustment of status or for an immigrant visa within the time allowed, the alien will continue to be eligible for further extensions of V nonimmigrant status as provided in this section while that application remains pending. **See note below.**

NOTE:

Although the regulations at **8 CFR 214.15(g)** limit the period of admission for aliens in V-2 or V-3 status until the date of the alien's twenty-first (21st) birthday, that regulation has been invalidated by the Ninth Circuit Court of Appeals in *Akhtar v. Burzynski* , 384 F.3d 1193 (9th Cir. 2004) . USCIS has acquiesced in this position nationwide. Any delay or failure to file in filing an application for extension of status by an applicant whose prior V-2 or V-3 status expired prior to the *Akhtar* decision pursuant to 8 CFR 214.15(g) shall be considered to have been due to "extraordinary circumstances beyond the control of the applicant" as provided in **8 CFR 214.1(c)(4)(i)** . If otherwise eligible for an extension, such applicant's extension shall be granted from the date the previous authorized stay expired.

(h) Employment Authorization .

An alien in V nonimmigrant status may apply to USCIS for employment authorization pursuant to **8 CFR 214.15** and **§ 274a.12(a)(14)** . An alien must file Form I-765 , Application for Employment Authorization, with the fee required by **8 CFR 103.7** . USCIS will grant employment authorization to aliens in V nonimmigrant status who remain eligible for V nonimmigrant status valid for a period equal to the alien's authorized admission as a V nonimmigrant. Aliens who file an application for V-related employment authorization that is not submitted with Form I-539 should submit evidence of V status in the form of either Form I-94 or Form I-797 .

(i) Travel Abroad; Unlawful Presence.

(1) Travel by Aliens Who Obtain V Nonimmigrant Status in the United States.

An alien who applies for and obtains V nonimmigrant status in the United States will be issued Form I-797, Notice of Action, indicating the alien's V status in the United States. Form I-797 does not serve as a travel document. If such an alien, including nationals of Canada, departs the United States, he or she must obtain a V visa from a consular office abroad in order to be readmitted to the United States as a V nonimmigrant. This visa requirement, however, does not apply if the alien traveled to contiguous territory or adjacent islands, possesses another valid visa, and is eligible for automatic revalidation. The following text should appear on Form I-797, Notice of Approval, for aliens granted V status in the United States:

“This document (Form I-797, Notice of Approval) is not a valid travel document. An alien granted V nonimmigrant status in the United States will need to obtain a V visa from a consular office abroad in order to be inspected and admitted to the United States as a V nonimmigrant after traveling abroad. (An alien will not need to apply for a V visa abroad in order to be admitted if he or she has traveled to contiguous territories or adjacent islands, has another valid visa, and is eligible for automatic revalidation.)”

(2) No Advance Parole Requirement for V Nonimmigrants with a Pending Form I-485.

An alien in V nonimmigrant status with a pending Form I-485 (application for adjustment of status) that was properly filed with the Service or USCIS does not have to obtain advance parole in order to prevent the abandonment of that application when the alien departs the United States.

(3) Unlawful Presence.

(A) Application for V Status.

An alien otherwise eligible for V status is not subject to the ground of inadmissibility under section **212(a)(9)(B)** of the Act. It is noted, however, that the alien is subject to section **212(a)(9)(C)** of the Act.

(B) Application for Permanent Resident Status .

A V nonimmigrant alien is subject to the ground of inadmissibility under section **212(a)(9)(B)** of the Act when applying for an immigrant visa or for adjustment of status to that of a lawful permanent resident. Therefore, a departure from the United States at any time after having accrued more than 180 days of unlawful presence will render the alien inadmissible under that section for the purpose of adjustment of status or admission as an immigrant, unless he or she has obtained a waiver under section **212(a)(9)(B)(v)** of the Act or falls within one of the exceptions in section **212(a)(9)(B)(iii)** of the Act.

(C) Advisory .

The following text should appear on Form I-797 , Notice of Approval, for aliens granted V status in the United States:

“If an alien departs the United States at any time after having accrued more than 180 days of unlawful presence, he or she will be inadmissible as an immigrant, and thus, unable to become a lawful permanent resident, for a period of 3 or 10 years. This ground of inadmissibility may be waived if the alien can demonstrate that the refusal of admission to lawful permanent resident would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the alien. Minors, asylees, family unity beneficiaries, or battered spouses or children are exempt this ground of inadmissibility.”

(j) Termination of Status .

(1) General Rules for Automatic Termination .

The status of an alien admitted to the United States as a V nonimmigrant under section **101(a)(15)(V)** of the Act shall be automatically terminated 30 days following the occurrence of any of the following:

(A) The denial, withdrawal, or revocation of the Form **I-130** , Petition for Alien Relative, filed on behalf of that alien;

(B) The denial of the immigrant visa application filed by that alien;

(C) The denial of the alien's application for adjustment of status to that of lawful permanent residence;

(D) The V-1 spouse's divorce from the LPR becomes final;

(E) The death of the LPR petitioner; or

(F) The marriage of an alien in V-2 or V-3 status.

(2) Termination of the Status of V-3 Nonimmigrants.

When a principal alien's V nonimmigrant status is terminated, the V nonimmigrant status of any alien listed as a V-3 dependent or who is seeking derivative benefits is also terminated.

(3) Appeals.

If the denial of the immigrant visa petition is appealed, the alien's V nonimmigrant status does not terminate until 30 days after the appeal is dismissed.

(4) Violations of Nonimmigrant Status.

Nothing in the LIFE Act or **8 CFR 214.15** precludes DHS from immediately initiating removal proceedings for other violations of an alien's V nonimmigrant status.

(k) Status of V Nonimmigrants after the Naturalization of the Petitioner .

(1) Principal Beneficiaries . [Section revised as of June 14, 2006]

(A) Immediate Relatives .

If the lawful permanent resident who filed the qualifying Form I-130 immigrant visa petition subsequently naturalizes, the V nonimmigrant status of the spouse and any children who become immediate relatives of a U.S. citizen as defined in section **201 (b)** of the INA will terminate after his or her current period of admission ends. In such cases, the alien spouse or child who is the principal beneficiary of the Form I-130 (V-1 or V-2) will be eligible to apply for adjustment of status and related employment authorization immediately. If the V-1 spouse or V-2 child had already filed an application for adjustment of status by the time the LPR naturalized, a new application for adjustment will not be required. An alien in V-3 status who is an immediate relative of the U.S. citizen may file Form I-485 immediately together with the U.S. citizen's I-130 petition on his or her behalf.

(B) Aliens in V-2 and V-3 Status who are not Immediate Relatives .

The language of **8 CFR 214.15(k)** relating to termination of V status only applies if an alien beneficiary is an immediate relative as of the date of the petitioner's naturalization . In all other instances, the alien will retain V status, and remain eligible for extensions of V status until an immigrant visa becomes immediately available to the alien. At that time, any requests for extension of V status will be processed pursuant to **8 CFR 214.15(g)(4)** and paragraphs **37.4(g)(4)** and **37.4(g)(5)** of this Chapter.

(2) Certain Derivative Beneficiaries .

An alien in V-3 status who is the child of the V-2 is not considered to be an immediate relative when the petitioner naturalizes. When DHS encounters such an alien, it may consider using prosecutorial discretion. DHS has in place guidance for the exercise of prosecutorial discretion that provides for the assessment, on a case-by-case basis, of whether seeking the removal of a particular alien serves a substantial Federal enforcement interest. Factors to be considered include, among others, humanitarian concerns (including family ties in the United States) and whether there is a legal avenue available for the alien to regularize his or her status if not removed from the United States. Once the former V-2 immigrates, he or she can file an I-130 for the former V-3, who may be able to file an I-485 or may have to wait for an immigrant visa number to become available.

(l) The Eligibility of Aliens in Proceedings.

(1) An alien who is already in immigration proceedings and who believes that he or she may have become eligible to apply for V nonimmigrant status should request before the immigration judge or the Board that the proceedings be administratively closed (or before the Board that a previously-filed motion for reopening or reconsideration be indefinitely continued), in order to allow the alien to pursue an application for V nonimmigrant status with USCIS. If the immigration judge or Board grants the request, and in the event that USCIS finds an alien eligible for V nonimmigrant status, USCIS can adjudicate the change of status under this section and move to terminate the proceedings. In the event that USCIS finds an alien ineligible for V nonimmigrant status, USCIS shall recommence proceedings by filing a motion to re-calendar.