

## Appendix: Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

### Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

Category	Subject to INA 212(a)(4)	INA 213A, and Form I-864, Affidavit of Support Under Section 213A of the INA, Required or Exempt?
First Preference: Priority workers <sup>1</sup>	Yes, in general, <sup>2</sup> per INA 212(a)(4)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5 percent or more) <sup>3</sup> in filed Form I-140, per INA 212(a)(4)(D) and 8 CFR 213a
Second Preference: Professionals with advanced degrees or noncitizens of exceptional ability <sup>4</sup>	Yes, in general, <sup>5</sup> per INA 212(a)(4)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5 percent or more) in filed Form I-140, per INA 212(a)(4)(D) and 8 CFR 213a
Third: Skilled workers, professionals, and other	Yes, in general, <sup>7</sup> per INA 212(a)(4)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5

<sup>1</sup> Includes the following categories: E-16 Immigrants with extraordinary ability; E-17 Outstanding professors or researchers; E-18 Certain Multinational executives or managers; E-19 Spouses of E-11, E-12, E-13, E-16, E-17, or E-18; E-10 Children of E-11, E-12, E-13, E-16, E-17, or E-18.

<sup>2</sup> If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, also falls under a category exempted under [INA 212\(a\)\(4\)\(E\)](#) (for example, T nonimmigrants, U nonimmigrants, and VAWA self-petitioners) the applicant is not subject to INA 212(a)(4) (but is still required to file Form I-864).

<sup>3</sup> Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister. Significant ownership interest means an ownership interest of five percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act. See [8 CFR 213a.1](#).

<sup>4</sup> Includes the following categories: E-26 Professionals holding advanced degrees; ES-6 Soviet scientists E-27 Spouses of E-21 or E-26; E-28 Children of E-21 or E-26.

<sup>5</sup> If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (five percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, also falls under a category exempted under [INA 212\(a\)\(4\)\(E\)](#) (for example, T nonimmigrants, U nonimmigrants, and VAWA self-petitioners) the applicant is not subject to INA 212(a)(4) (but is still required to file Form I-864).

<sup>7</sup> If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, also falls under a category exempted

## Appendix: Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

### Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

Category	Subject to INA 212(a)(4)	INA 213A, and Form I-864, Affidavit of Support Under Section 213A of the INA, Required or Exempt?
workers <sup>6</sup>		percent or more) in filed Form I-140, per INA 212(a)(4)(D) and 8 CFR 213a
Fifth: Investors <sup>8</sup>  INA 203(b)(5), 8 CFR 204.6	Yes, per INA 212(a)(4)	Not Applicable <sup>9</sup>

under [INA 212\(a\)\(4\)\(E\)](#) (for example, T nonimmigrants, U nonimmigrants, and VAWA self-petitioners) the applicant is not subject to INA 212(a)(4) (but is still required to file Form I-864).

<sup>6</sup> Includes the following categories: EX-6 Schedule - A worker; EX-7 Spouses of EX-6; EX-8 Children of EX-6; E-36 Skilled workers; E-37 Professionals with baccalaureate degrees; E-39 Spouses of E-36, or E-37; E-30 Children of E-36, or E-37; EW-8 Other workers; EW-0 Children of EW-8; EW-9 Spouses of EW-8; EC-6 Chinese Student Protection Act (CSPA) principals; EC-7 Spouses of EC-6; EC-8 Children of EC-6.

<sup>8</sup> Includes the following categories: C-56 Employment creation, not in targeted area, adjustments, conditional; E-56 Employment creation; I-56 Employment creation, targeted area, pilot program, adjustments, conditional; T-56 Employment creation, targeted area, conditional; R-56 Investor pilot program, not targeted, conditional; C-57 Spouses of C-51 or C-56, conditional; E-57 Spouses of E-51 or E-56; I-57 Spouses of I-51 or I-56, conditional; T-57 Spouses of T-51 or T-56, conditional; R-57 Spouses of R-51 or R-56, conditional; C-58 Children of C-51 or C-56, conditional; E-58 Children of E-51 or E-56; I-58 Children of I-51 or I-56, conditional; T-58 Children of T-51 or T-56, conditional; R-58 Children of R-51 or R-56, conditional.

<sup>9</sup> EB-5 applicants filing an Immigrant Petition by Standalone Investor ([Form I-526](#)) or Immigrant Petition by Regional Center Investor ([Form I-526E](#)) are self-petitioners. The regulation at [8 CFR 213a.1](#) relates to a person having ownership interest in an entity filing for a prospective employee and therefore the requirement for an affidavit of support under [INA 212\(a\)\(4\)\(D\)](#) is inapplicable.