



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 204

[CIS No. 2800-25; DHS Docket No. USCIS-2006-0010]

RIN 1615-AB50

Eligibility of Arriving Aliens in Removal Proceedings To Apply for Adjustment of Status and Jurisdiction To Adjudicate Applications for Adjustment of Status; Correction

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS)

ACTION: Interim final rule; correcting amendments.

SUMMARY: On May 12, 2006, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) published an interim final rule titled “*Eligibility of Arriving Aliens in Removal Proceedings To Apply for Adjustment of Status and Jurisdiction To Adjudicate Applications for Adjustment of Status*” The rule amended DHS and DOJ regulations governing applications for adjustment of status filed by paroled “arriving aliens” seeking to become lawful permanent residents and removed certain provisions. In that rule, DHS removed a paragraph from its regulations and redesignated the paragraph that followed to close the gap. DHS inadvertently failed to make a conforming amendment to a related regulatory provision to reflect the redesignation. This document describes the oversight and corrects the CFR. This action makes no substantive changes.

DATES: Effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration

Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240-721-3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Need for Correction

On May 12, 2006, DHS and DOJ published an interim final rule, with a request for comments, in the *Federal Register* titled “*Eligibility of Arriving Aliens in Removal Proceedings To Apply for Adjustment of Status and Jurisdiction To Adjudicate Applications for Adjustment of Status.*”¹ The 2006 interim final rule amended DHS and DOJ regulations governing applications for adjustment of status filed by paroled “arriving aliens” seeking to become lawful permanent residents. As part of the rulemaking, DHS and DOJ amended their respective regulations. Among other changes, DHS removed then paragraph (c)(8) of 8 CFR 245.1 and redesignated then paragraph (c)(9) as paragraph (c)(8) to close the gap.² DHS did not substantively amend then paragraph (c)(9). DHS merely shifted that provision to paragraph (c)(8) after DHS removed paragraph (c)(8)’s content. Accordingly, 8 CFR 245.1(c)(8) now contains the same content that was previously in paragraph (c)(9), and paragraph (c)(9) no longer exists.

DHS, however, inadvertently failed to make conforming changes to a separate provision of DHS’s regulations, 8 CFR 204.2(a)(1)(iii), which continues to reference 8 CFR 245.1(c)(9). Specifically, the second sentence of 8 CFR 204.2(a)(1)(iii) refers to 8 CFR 245.1(c)(9) and 245.1(c)(9)(iii)(F).³ DHS should have amended the references in this sentence to refer to paragraphs (c)(8) and (c)(8)(iii)(F) respectively. This document now corrects this oversight in the CFR to ensure that 8 CFR 204.2(a)(1)(iii) correctly cross-references 8 CFR 245.1(c)(8).

DHS is not substantively changing 8 CFR 204.2(a)(1)(iii) and 245.1(c)(8). Those long-standing provisions codify and implement certain statutory requirements that generally prohibit

¹ See 71 FR 27585 (May 12, 2006) (2006 interim final rule).

² See *id.* at 27591.

³ See 8 CFR 204.2(a)(1)(iii) (2024).

USCIS from approving certain visa petitions⁴ or applications for adjustment of status⁵ based on a marriage that occurred during exclusion, deportation, or removal proceedings, or related judicial proceedings. Prior to the 2006 interim final rule, then 8 CFR 245.1(c)(9) implemented the statutory prohibition for adjustment of status applications. Similarly, 8 CFR 204.2(a)(1)(iii) implements the prohibition for certain visa petitions. DHS did not either substantively or non-substantively revise the content of 8 CFR 245.1(c)(9), related to adjustment of status based on marriages during exclusion, deportation, or removal proceedings, or related judicial proceedings, when DHS redesignated that paragraph as 8 CFR 245.1(c)(8) in 2006.⁶ Similarly, this correction document is not substantively amending the content in 8 CFR 204.2(a)(1)(iii) related to visa petitions based on such marriages, or making any edits to 8 CFR 245.1(c)(8). Rather, DHS is merely amending 8 CFR 204.2(a)(1)(iii) to correctly cross-reference the provisions of 8 CFR 245.1(c)(8) to reflect DHS's redesignation of that paragraph in the 2006 interim final rule.

Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the Federal Register to provide a period for public comment before the provisions of a rule take effect.⁷ In addition, section 553(d) of the APA requires agencies to delay the effective date of final rules by a minimum of 30 days after the date of their publication in the Federal Register.⁸ An agency may bypass notice-and-comment rulemaking and a delayed effective date when the agency “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁹

DHS believes there is good cause for publishing this correction document without prior notice and opportunity for public comment and with an effective date of less than 30 days because DHS finds that such procedures are unnecessary. As explained above, this document

⁴ See INA sec. 204(g), 8 U.S.C. 1154(g).

⁵ See INA sec. 245(e), 8 U.S.C. 1255(e).

⁶ See 71 FR at 27591.

⁷ See 5 U.S.C. 553(b).

⁸ See 5 U.S.C. 553(d)(3).

⁹ See 5 U.S.C. 553(b)(B), (d)(3).

corrects an oversight in the regulatory text and does not make substantive changes to the policies that were adopted in the 2006 interim final rule or any other rule, including those reflected in 8 CFR 204.2(a)(1)(iii) and 8 CFR 245.1(c)(8) that generally prohibit USCIS from approving certain visa petitions and applications for adjustment of status based on a marriage that occurred during exclusion, deportation, or removal proceedings, or related judicial proceedings subject to certain exemptions. This document merely corrects a cross-reference in 8 CFR 204.2(a)(1)(iii) to ensure that it accurately reflects that DHS redesignated then 8 CFR 245.1(c)(9) as 8 CFR 245.1(c)(8) in the 2006 interim final rule, which was itself a non-substantive change. Therefore, DHS believes that it has good cause to waive the notice and comment and effective date requirements of section 553 of the APA.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Adoption and foster care, Immigration, Reporting and recordkeeping requirements

Accordingly, for the reasons set forth in the preamble, 8 CFR part 204 is amended as follows:

PART 204 – IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

2. Amend § 204.2 by revising the second sentence of paragraph (a)(1)(iii) to read as follows:

§ 204.2 Petitions for relatives, widows and widowers, and abused spouses and children.

(a) * * *

(1) * * *

(iii) * * * Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)(8) of this chapter, except that the burden in

visa petition proceedings to establish eligibility for the exemption in § 245.1(c)(8)(iii)(F) of this chapter shall rest with the petitioner.

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