



U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

*425 I Street NW
Washington, DC 20536*

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MEMORANDUM FOR MICHAEL A. PEARSON
EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF FIELD OPERATIONS

FROM: Stuart Anderson /s/
Executive Associate Commissioner
Office of Policy and Planning

SUBJECT: Procedures for Preservation of Immigration Benefits for Victims of
Terrorism (Title IV, Subtitle C (Sections 421-428), of the USA PATRIOT
Act) P.L. 107-56 (October 26, 2001)

On November 20, 2001, Headquarters issued an informational memorandum summarizing the immigration benefits-related provisions of the USA PATRIOT Act. Since many of the provisions of this Act are time sensitive, the Office of Adjudications (ADN), the Office of Immigration Services (ISD), and the Office of Inspections (INP) have developed the interim procedures described in this memorandum. As the need arises, the appropriate HQ office will amend these procedures in subsequent memoranda.

This memorandum discusses, on a section-by-section basis, the specific eligibility criteria for each provision of the USA PATRIOT ACT and procedures for obtaining the benefit. The instructions in this memorandum cover Port-of-Entry (POE), district office, and service center procedures.

Definition

The term "specified terrorist activity" is defined by section 428 of Title IV, Subtitle C of the USA PATRIOT Act as any terrorist activity conducted against the Government or people of the United States on September 11, 2001. Therefore, it includes the attacks on the World Trade Center area and the Pentagon, as well as the crash of Flight 93 in Pennsylvania. It does not, however, include the subsequent anthrax attacks or threats or other previous or subsequent terrorist activities.

Section 421—Special immigrant status

Under this section, three groups of aliens may self-petition for special immigrant status under section 101(a)(27) of the Immigration and Nationality Act (Act). To be eligible for special immigrant status, the alien must be eligible to receive an immigrant visa and admissible to the United States for permanent residence. For purposes of determining admissibility, however, the ground of inadmissibility at section 212(a)(4) of the Act (public charge) does not apply. This means that the affidavit of support is not required. Immigrant visas available under this section will be assigned chronologically in order of application submission. In the event that the Service reaches the annual limit for special immigrants under section 203 of the Act, aliens may retain the prior priority date from the petition that was revoked, terminated or otherwise rendered null due to a specified terrorist activity.

Section 421(b) lists three groups of aliens (listed below) that are eligible for special immigrant status under section 101(a)(27) of the Act as follows:

(1) Principal aliens—Principal alien beneficiaries of:

- Visa petitions filed under section 204 of the Act (Forms I-130, I-140, and I-526)
- Fiancé petitions under section 214(d) of the Act, or
- Applications for labor certification under section 212(a)(5)(A) of the Act.

The petition or application must have been filed on or before September 11, 2001, and the petition or application must have been revoked, terminated, or otherwise rendered null due to a “specified terrorist activity” that resulted in:

- The death or disability of the petitioner, applicant, or alien beneficiary¹; or
- The loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant².

(2) Spouse and children of principal aliens—The spouse and children of principal aliens as described in section 421(b)(1), where the relationship existed on September 10, 2001, and

- The alien is accompanying the principal alien, or

¹ The discussion, in this memorandum, of section 426 of the USA PATRIOT Act contains information on how aliens may demonstrate eligibility due to death or disability, which directly resulted from a specified terrorist activity. This discussion applies to all relevant sections.

² The discussion, in this memorandum, of section 426 of the USA PATRIOT Act contains information on how aliens may demonstrate eligibility due to loss of employment due to physical damage to, or destruction of, the business of the petitioner or applicant, which directly resulted from a specified terrorist activity. This discussion applies to all relevant sections.

- The alien is following-to-join the principal alien not later than September 11, 2003³.

(3) Grandparents of orphans—The grandparents of a child, both of whose parents died as a direct result of a specified terrorist activity, if either parent was a citizen or national of the United States or a lawful permanent resident on September 10, 2001.

Procedures

Form—An alien who falls within categories (1), (2), or (3) may apply for benefits under the USA PATRIOT Act by submitting Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with fee (or request for fee waiver), to the INS service center that has jurisdiction over the alien's place of residence. Self-petitioners should so indicate in Part II, Box K, by writing on the form that they are applying for benefits under the USA PATRIOT Act and indicate the specific, qualifying reason for their eligibility e.g., principal, spouse/child of a principal, grandparent).

Additional evidence—Self-petitioners for special immigrant status should also include evidence, as outlined later in this memorandum, of their eligibility for the special immigrant status, including, but not limited to, evidence that demonstrates the requisite death, disability, or loss of employment due to physical damage to, or destruction of, the petitioning business. In addition, such an applicant must also provide a statement describing, or evidence of, the petition or application that was revoked, terminated, or rendered null by the above reasons. Such evidence may be in the form of a receipt issued by the Service. In the case of category (3), the alien grandparent must be coming to assume legal custody of the orphaned grandchild before the grandchild turns 21 years old, or who was under the age of 18 at the time the petition was filed and is not older than 21.

Related forms—Aliens present in the United States whose Form I-360 is approved may then file Form I-485, Application to Register Permanent Residence or Adjust Status, with all supporting documentation with the local office that has jurisdiction over their place of residence. When the Form I-485 is filed, an applicant may file related applications for employment authorization and advance parole.

In the case of a grandparent or other alien who is residing abroad and has an approved Form I-360 under this section, the Service should annotate the approved

³ The law uses the terms “accompanying” and “following-to-join” in this paragraph to apply as if the death of the petitioner had not occurred.

petition with the appropriate section of the USA PATRIOT Act and forward to the National Visa Center for future immigrant processing.

Class of admission

The class of admission code for aliens adjusting status under section 421(b)(1), (2) or (3) of the USA PATRIOT Act is Z-83.

Section 422—Extension of various deadlines

Subsections (a) through (f) of this section provide extension of various deadlines for certain groups of aliens. In many cases, aliens benefiting from section 422 will need to demonstrate that their failure to meet the specific deadline was due to a specified terrorist activity. The Service notes that, due to the date of issuance of this memorandum, it is unlikely that many aliens remain able to benefit from subsections 422(b), (d), (e), and (f).

Section 422(a) Nonimmigrants—extended period of admission

Principal nonimmigrant aliens—An alien who was lawfully present in a nonimmigrant status on September 10, 2001, and who was disabled as a direct result of a specified terrorist activity, may remain lawfully in that status until the later of:

- (1) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted, as documented on the Form I-94; or
- (2) 1 year after the disability.

Dependent nonimmigrant aliens—An alien who was lawfully present in a nonimmigrant status on September 10, 2001, and who was on that date the spouse or child of an alien who subsequently died or was disabled as a direct result of a specified terrorist activity may remain lawfully in that status until the later of:

- (3) the date such lawful nonimmigrant status otherwise would have terminated if this subsection had not been enacted, as documented on the Form I-94; or
- (4) 1 year after the death or disability.

Employment authorization—Such aliens are employment authorized and must be issued a document evidencing such employment within 30 days of receipt of an application for such documentation on Form I-765 filed with the local district office.

Procedures—An eligible alien whose nonimmigrant status was terminated must apply to the appropriate service center for an extension of that status in accordance with section 422(a). The alien must provide evidence, as discussed later in this memorandum, demonstrating his or her eligibility for this extension. Once approved for the additional time, an alien may apply for employment authorization with the local office, using (c)(14) as the eligibility code. Such an application must be made to the district office with jurisdiction over the alien's place of residence.

Section 422(b) Nonimmigrants—late filing of applications for extension of stay or change of status

Filing delays—An alien lawfully present in the United States in a nonimmigrant status on September 10, 2001, who was prevented from filing a timely application for an extension of stay or change of status as a direct result of a specified terrorist activity, will have his or her application considered as timely if it is filed no later than 60 days after it would have otherwise been due.

Procedures—Service center directors have existing authority and guidelines for accepting applications for extension of stay or change of status submitted after the applicant's period of admission has expired. Aliens wishing to utilize this provision must submit an application, per existing standards, and submit evidence documenting that they were unable to submit the application timely as a direct result of a specified terrorist activity.

Return delays—Likewise, an alien, and his or her dependent spouse and children, who were in lawful nonimmigrant status on September 10, 2001, but who were not present in the United States, and were unable to return to the United States in order to file a timely application for extension of stay or change of status as a direct result of a specified terrorist activity, will have 60 additional days from the expiration of the period of admission as a nonimmigrant to file an application for extension of stay or change of status. The period of lawful admission as a nonimmigrant will continue for 60 additional days as well.

Procedures--Service center directors have existing authority and guidelines for accepting applications for extension of stay or change of status submitted after the applicant's period of admission has expired. Aliens wishing to utilize this provision must submit an application, per existing standards, and submit evidence documenting that they were unable to submit the application timely as a direct result of a specified terrorist activity.

Departure delays—An alien lawfully present in the United States in a nonimmigrant status on September 10, 2001, who was prevented from departing the United States after the alien's period of lawful admission expired as a direct result of a specified terrorist activity shall not be considered to have accrued unlawful presence during the period between September 11, 2001 and November 11, 2001.

Section 422(c) Special provisions for FY 2001 Diversity immigrants

Principals—A diversity visa-related immigrant visa number issued to an alien for FY 2001 may be used by the alien until April 1, 2002, if the alien demonstrates that he or she was unable to use the DV number prior to September 30, 2001, as a direct result of a specified terrorist activity.

Dependents—The spouse and children (on September 10, 2001) of an alien issued a diversity visa-related immigrant visa number for FY 2001 who died as a direct result of a specified terrorist activity shall, until June 30, 2002, be entitled to the same status as they would have otherwise been able to receive if the principal alien were not deceased or if the spouse or children's visa applications had been adjudicated prior to September 30, 2001.

Procedures—In cases where a DV number was issued by the Department of State but the alien was unable to adjust status prior to the end of FY 2001 due to a specified terrorist activity, local offices should adjudicate diversity visa-related applications for adjustment of status as if fiscal year 2001 ends on April 1, 2002, or June 30, 2002, as appropriate. An alien requesting benefits under this provision should submit evidence as described below with his or her application to adjust status.

POE—In cases where a DV-related visa was issued by the Department of State but the alien was unable to enter the U.S. prior to the end of FY 2001 due to a specified terrorist activity, the Department of State will issue a transportation letter to accompany the expired visa. This letter will state that the DV validity has been extended under section 422(c) of the USA PATRIOT Act. Consular posts will also contact INS when such a letter has been issued. Inspectors should admit such diversity visa-related applications for admission until April 1, 2002, or June 30, 2002, as appropriate.

Section 422(d) Extension of the validity of immigrant visas

An alien issued an immigrant visa that contains an expiration date prior to December 31, 2001, who was unable to enter the United States prior to that

expiration as a direct result of a specified terrorist activity shall be considered to have an immigrant visa valid through December 31, 2001.

Procedures—Inspectors at POEs should treat as valid an expired immigrant visa presented by an alien who is otherwise eligible for admission as an immigrant if the expiration date is prior to December 31, 2001, provided that the alien can demonstrate that he or she was prevented from entering the United States prior to the immigrant visa's expiration as a direct result of a specified terrorist activity.

Aliens abroad who are unable to board a plane due to an expired immigrant visa may obtain a new immigrant visa from the Embassy or Consulate that issued the initial immigrant visa.

Section 422(e) Grants of parole extended

An alien's grant of parole (including advance parole) under section 212(d)(5) of the Act that expires on or after September 11, 2001, is deemed extended for a period of 90 days if the alien beneficiary of the grant of parole was unable to return to the United States prior to the date of expiration of the parole as a direct result of a specified terrorist activity.

Procedures—If an alien presents a genuine, expired Form I-512, Authorization for Parole of an Alien into the United States, which contains an expiration date on or after September 11, 2001, the Service should process such document as unexpired for a period not to exceed 90 days of the expiration date listed on the Form I-512 if the alien can establish that he or she was prevented from returning to the United States by a specified terrorist activity. All aliens presenting such a document must still be otherwise eligible for parole and be inspected on a case-by-case basis.

Section 422(f) Voluntary departure extended

All periods of voluntary departure that expired between September 11, 2001 and October 11, 2001 (inclusive) are deemed extended for an additional 30-day period. Thus, for example, if the period of voluntary departure expired on September 20, 2001, but the alien did not depart until October 19, 2001, the alien will be regarded as having made a timely departure. There is no requirement that the alien demonstrate that the delay in departure was due to a specified terrorist activity.

Circumstances preventing timely action and directly resulting in various delays

The following list contains the various events that may have occurred due to a specified terrorist activity that aliens may use to support their claim for benefits under section 422. This list is not exhaustive, and the Service will review all evidence on a case-by-case basis.

Section 422(a) EOS/COS filing delays—Office closures, mail or courier service cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

Section 422(b) Nonimmigrant departure and return delays—Office closures, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

Section 422(c) DV filing delays—Office closures, mail or courier service cessations or delays, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

Section 422(d) IV extensions—Office closures, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

Section 422(e) Parole extensions—Office closures, airline flight cessations or delays, and other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements.

Section 423—Humanitarian relief for certain surviving spouses and children

This section provides benefits for the surviving relatives of United States citizens, lawful permanent residents, and certain employment-based adjustment of status applicants.

Section 423(a) Continued treatment of the spouses and children of United States citizens as immediate relatives

If a United States citizen was killed as a direct result of a specified terrorist activity, his or her spouse and/or children continue, for 2 years, to meet the definition of an immediate relative at section 201(b) of the Act. At the time of the citizen's death, the alien spouse cannot have been legally separated from the citizen, and he or she cannot remarry and still benefit from this provision.

Conversely, the children of the citizen will be considered to remain immediate relatives for 2 years regardless of age or marriage.

Procedures—To benefit from this section, an alien must file Form I-130 under section 204(a)(1)(A)(ii), as appropriate for spouses, within 2 years of the death of the U.S. citizen. This provision does not have derivative classifications. Therefore, each alien must file his or her own petition. The alien should write in Box A., Relationship, with “USA PATRIOT Act, Section 423(a),” and provide evidence of eligibility. The USA PATRIOT Act deems a petition filed by an eligible child to be a petition under section 204(a)(1)(A) of the Act.

In the case of aliens who have returned abroad and whose Form I-130 is approved under this section, the Service should annotate the approved petition with the appropriate section of the USA PATRIOT Act and forward to the National Visa Center.

In the case where the Department of State issues an immigrant visa based on this section, the consular office will issue a standard IR-1 or IR-2 visa. Because of the special exemptions of the age and marital status requirements of IR-2s under this provision, however, the IR-2 visa will contain a notation indicating that the visa was issued pursuant to section 423(a) of the USA PATRIOT Act. For such visas only, Service inspectors may admit the qualifying alien as an IR-2, despite age or marital status.

Section 423(b) Spouses, children, and unmarried sons and daughters of lawful permanent resident aliens

Beneficiaries of petitions—If a lawful permanent resident alien who was killed as a direct result of a specified terrorist activity had a pending petition(s) for his or her spouse, children, and/or unmarried sons or daughters on or before September 11, 2001, the petition(s) shall remain valid and the alien beneficiary will retain his or her priority date. Such alien beneficiaries may apply for employment authorization and request deferred action to remain in the United States until such time as their priority date is reached. Such aliens may also be eligible for the special immigrant provisions under section 421.

Procedures—There is no new petition required for the retention of the priority date. The Service will process the application as if the death had not occurred. At the time of adjudication or interview, the Service may request additional evidence to confirm that the alien is eligible for benefits under this section. During the time before a visa number becomes available to an alien, he or she may request

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deferred action and related employment authorization. Such an application must be made to the local office with jurisdiction over the alien's place of residence. The alien may apply for adjustment of status when his or her priority date becomes current.

Aliens who are not beneficiaries of a visa petition—If a lawful permanent resident alien who was killed as a direct result of a specified terrorist activity has not filed a visa petition for his or her spouse, children, and/or unmarried sons or daughters, the alien spouse, child, or son or daughter may file a self-petition for classification under 203(a)(2) (A) or (B) of the Act, as appropriate, as if the lawful permanent resident is still alive. Aliens seeking benefits under this provision must have been present in the United States on September 11, 2001. Such aliens may apply for employment authorization and request deferred action to remain in the United States until such time as their priority date is reached.

Procedures—Aliens requesting benefits under this section should file Form I-130, Petition for Alien Relative, at the service center that has jurisdiction over the alien's place of residence. Aliens should include evidence that demonstrates their eligibility for benefits under this section. During the time before a visa number becomes available to an alien, he or she may request deferred action and related employment authorization. Such an application must be made to the local office with jurisdiction over the alien's place of residence. The alien may apply for adjustment of status when his or her priority date becomes current.

In the case of aliens who have returned abroad and whose Form I-130 is approved under this section, the Service should annotate the approved petition with the appropriate section of the USA PATRIOT Act and forward to the National Visa Center.

Section 423(c) Surviving spouses and children of employment-based immigrants

An alien who on September 10, 2001, was the spouse or child of an alien who was killed as a direct result of a specified terrorist activity and who was either an employment-based lawful permanent resident or had an employment-based Form I-485 pending and was admissible, may continue to have his or her Form I-485 adjudicated as if the death had not occurred, provided the Form I-485 was filed on or before September 11, 2001.

Procedures— There is no new application or petition required for the continuation of the adjustment application. The Service will process the application as if the death has not occurred. At time of adjudication or interview,

the Service may request additional evidence to confirm that the alien is eligible for benefits under this section.

Section 423(d) Waiver of the public charge ground of inadmissibility

Aliens eligible for benefits under section 423(a), (b), or (c) of this Act are exempt the public charge ground of inadmissibility found at section 212(a)(4) of the Act. That ground of inadmissibility encompasses the Form I-864, the Affidavit of Support. Thus, no affidavit of support is required in these cases.

Class of admission

Aliens benefiting from section 423 should be assigned the same class of admission as if the death of the petitioner had not occurred. Immigrant visas issued by the Department of State under section 423 will be annotated accordingly.

Section 424—Age-out benefits for certain alien children

Section 424(2) An alien beneficiary whose 21st birthday occurred after September 2001.

For any alien child beneficiary of a petition or application to adjust status filed on or before September 11, 2001, the alien shall be considered to remain a child for an additional 45-day period if the alien's 21st birthday occurs(ed) after September 2001.

Adjudication procedures—If an alien described in paragraph (2) of section 422 has an application or petition pending before the Service that was filed prior to September 11, 2001, and the desired benefit requires the applicant or petitioner to be under the age of 21, that alien shall be considered to remain a child for an additional period of 45 days after his or her 21st birthday. This benefit may apply to, but is not limited to, visa petitions, applications to adjust status, applications for an extension of nonimmigrant status, applications for a change of nonimmigrant status, and/or applications for asylum or refugee status.

Form I-485—If the Form I-485 was filed on or prior to September 11, 2001, or is based upon a visa petition filed on or before September 11, and the alien's 21st birthday occurred after September 2001, the application may be approved for an additional 45 days from the date of his or her 21st birthday.

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POE procedures—The DOS will annotate "PL 107-56 USA Patriot Act Sec. 424" on all immigrant and non-immigrant visas issued based on visa petitions filed on or before September 11, 2001 where the beneficiary has turned or will turn 21 years of age in or after October 2001.

Immigrant visa—If the applicant is over the age of 21, the DOS system will not electronically print the Form I-551 A; therefore, the DOS will manually generate the immigrant visa cover page. Such visa packets will include a cover memorandum verifying authenticity. These IVs should be processed in accordance with standard procedures outlined in the IFM.

Nonimmigrant visas—If the visa is annotated as described above and the alien's 21st birthday occurred in or after October 2001, the alien is to be admitted for 45 days from the date of his or her 21st birthday. If the visa validity date has passed, the alien is required to obtain the appropriate visa prior to admission to the United States.

"Following to join" children of Refugees—For an alien child applying for admission as the "Following to join" child of a Refugee, and whose 21st birthday occurred after September 2001, such an alien can be admitted until 45 days after the date of his or her 21st birthday if the Form I-730 was filed on or before September 11, 2001.

Note: These sections are NOT limited to aliens affected by the events of September 11, 2001. The provisions of sections 424(1) and (2) apply to all aliens who have a petition or application pending on or before September 11, 2001. This means that all such aliens will receive an additional 90-day or 45-day period of age-out exemption.

Section 425—Temporary administrative relief

This section provides the Attorney General with the authority to grant administrative relief to any alien lawfully present in the United States on September 10, 2001, who was the spouse, parent, or child of a person who died or was disabled as a direct result of a specified terrorist activity, and who is not otherwise entitled to relief under this Act.

Procedures—Administrative relief shall take the form of deferred action and employment authorization. Affected persons must request this relief, and the local office Director must review each request on a case-by-case basis.

Section 426—Evidence of death, disability, or loss of employment

Death—The following documentation may be used to demonstrate that a person was killed as a direct result of a specified terrorist activity:

- An official Death Certificate, where the date of death is listed as on or after September 11, 2001, accompanied by other documentation attributing the death to a specified terrorist activity;
- An interim Death Certificate, as issued by the State of New York, where the date of death is listed on or after September 11, 2001;
- Flight Records (for deceased passengers);
- Public records, listing the deceased as a victim of the September 11 attacks;
- Other official or non-official documentation.

The Service will evaluate all evidence on a case-by-case basis.

Disability—Service personnel shall use the following definition to make a determination of disability. In relevant part, it is the definition found in the Americans with Disability Act (ADA) at 42 USC § 12102(a)(2):

- (2) Disability. - The term “disability” means, with respect to an individual-
- (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

Further, for purposes of the USA PATRIOT Act, a licensed medical doctor or licensed psychiatrist must provide documentation that the physical or mental impairment meets this definition and is a direct result of the specified terrorist activity.

Loss of employment due to physical damage to, or destruction of, business—

The following documentation may be used to demonstrate loss of employment due to the physical damage to, or destruction of, a business, which directly resulted from a specified terrorist activity:

- A letter from the employer (in the case of a business that was not totally destroyed);
- Official records indicating that the business was completely destroyed; or
- Other documentation showing the complete destruction of the business.

However, if an alien is able to continue in the employ of the business at a different location, such an alien will not be considered to have lost employment

due to the physical damage to, or destruction of, a business, which directly resulted from a specified terrorist activity. In any case, the Service will evaluate all evidence on a case-by-case basis.

Section 427—No benefits to terrorists or family members of terrorists

This section restricts any terrorist “culpable for a specified terrorist activity” or the family members of such an alien from obtaining benefits under Title IV, Subtitle C of the USA PATRIOT Act.

Culpability may be found where the alien either admits to involvement with a specified terrorist activity, is convicted of a crime related to a specified terrorist activity, and/or is found liable in a civil suit for his or her wrongful conduct related to a specified terrorist activity.

Section 428—Definitions

This section defines the term “specified terrorist activity” to mean any terrorist activity conducted against the Government or people of the United States on September 11, 2001. Therefore, it includes the attacks on the World Trade Center area and the Pentagon, as well as the crash of Flight 93 in Pennsylvania. It does not, however, include the subsequent anthrax attacks or threats or other previous or subsequent terrorist activities.

This section also states that unless provided or required otherwise in Subtitle C of the USA PATRIOT Act, the definitions found in the Immigration and Nationality Act shall apply to terms found in Subtitle C of the USA PATRIOT Act.