

What is Section 245(i) of the Immigration Code and Do I Qualify?

Section 245 allows a person to become a permanent resident without leaving the U.S. through a process known as adjustment of status. Generally, you are barred from adjusting your status if you entered the U.S. without first being inspected by a Customs and Border Patrol (CBP) officer and you have either failed to maintain lawful status or have been unlawfully employed in the U.S. Section 245 is one of the few exceptions to this rule.

Section 245(i) was enacted in 1994 to allow persons who qualify for green cards, but not for adjustment of status, to be able to adjust their status if they were to pay a \$1000 fine. Congress phased out section 245(i) of the law in January 14, 1998, but those who already qualified were grandfathered in. Alternatively, those who missed the January 14, 1998 deadline were ineligible to adjust status in the U.S. and would likely face a three or ten year ban before being allowed to apply abroad.

For a number of reasons Congress on December 15th, 2000 extended the grandfathering date to April 30, 2001. Therefore, under the old law, you must have had a visa petition or labor certification filed on your behalf before January 14, 1998 in order to qualify you for section 245(i). Under the new law, you may qualify for section 245(i) if a visa petition or labor certification was filed on your behalf after January 14, 1998, but on or before April 30, 2001, but only if you were physically present in the U.S. on December 21st, 2000. Physical presence in the U.S. on December 21st, 2000 could have been legal or illegal presence.

Listed below are the groups of people who normally would not be allowed to adjust status, but would be able to under section 245(i):

1. People who entered the U.S. without inspection;
2. People who have fallen out of valid nonimmigrant status or who have otherwise violated the terms of their status;
3. People who have engaged in unauthorized employment;
4. Crewmembers who entered the US with a D visa;
5. People admitted in the transit without visa category; and
6. People admitted under the Visa Waiver Pilot Program (now the Visa Waiver Permanent Program).

Conversely, the following classes of people will remain ineligible for adjustment of status under section 245(i):

1. Stowaways;
2. People admitted on a K visa who failed to marry the petitioning US citizen within 90 days after arrival;
3. People subject to the J-1 two-year home residency requirement;
4. People who have failed to appear at a scheduled deportation hearing or asylum interview, or who have failed to follow a deportation order or grant of voluntary departure;
5. People who are seeking adjustment of status based on a marriage to a US citizen or permanent

resident that was entered into while the person was in deportation proceedings, unless it can be shown that the marriage was entered into in good faith and not for immigration purposes;

6. People who were placed in removal proceedings upon their entry to the US;
7. Children in nonimmigrant status or seeking to adjust their status as orphans;
8. People in S visa status (government informants) who have not received permission from the Attorney General to seek adjustment of status; and
9. People who are deportable by reason of having engaged in terrorist activities while in the US.

Since determining whether you qualify under section 245(i) can be rather tricky, you should consult with an experienced Phoenix immigration lawyer.

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