

1101(a)(15)) or any other immigration status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(2) CONTINUOUS PRESENCE- For purposes of this section, an absence from the United States without authorization for a continuous period of 90 days or more than 180 days in the aggregate shall constitute a break in continuous physical presence.

(d) Other Criteria-

(1) GROUNDS OF INELIGIBILITY- An alien is ineligible for Z nonimmigrant status if the Secretary determines that the alien--

(A)(1) is inadmissible to the United States under section 212(a) of the Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

(2) Nothing in this paragraph shall require the Secretary to commence removal proceedings against an alien.

(B) is subject to the execution of an outstanding administratively final order of removal, deportation, or exclusion;

(C) is described in or is subject to section 241(a)(5) of the Act;

(D) has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(E) is an alien--

(i) for whom there are reasonable grounds for believing that the alien has committed a serious criminal offense as described in section 101(h) of the Act outside the United States before arriving in the United States; or

(ii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(F) has been convicted of--

(i) a felony;

(ii) an aggravated felony as defined at section 101(a)(43) of the Act;

(iii) 3 or more misdemeanors under Federal or State law; or

(iv) a serious criminal offense as described in section 101(h) of the Act;

(G) has entered or attempted to enter the United States illegally on or after January 1, 2007; and

(H) with respect to an applicant for Z-2 or Z-3 nonimmigrant status, a Z-2 nonimmigrant, or a Z-3 nonimmigrant who is under 18 years of age, the alien is ineligible for Z nonimmigrant status if the principal Z-1 nonimmigrant or Z-1 nonimmigrant status applicant is ineligible.

(I) The Secretary may in his discretion waive ineligibility under subparagraph (B) or (C) if the alien has not been physically removed from the United States and if the alien demonstrates that his departure from the United States would result in extreme hardship to the alien or the alien's spouse, parent or child.

(2) GROUNDS OF INADMISSIBILITY-

(A) IN GENERAL- In determining an alien's admissibility under paragraph (1)(A)--

(i) paragraphs (6)(A)(i) (with respect to an alien present in the United States without being admitted or paroled before the date of application, but not with respect to an alien who has arrived in the United States on or after January 1, 2007), (6)(B), (6)(C)(i), (6)(C)(ii), (6)(D), (6)(F), (6)(G), (7), (9)(B), (9)(C)(i)(I), and (10)(B) of section 212(a) of the Act shall not apply, but only with respect to conduct occurring or arising before the date of application;

(ii) the Secretary may not waive--

(I) subparagraph (A), (B), (C), (D)(ii), (E), (F), (G), (H), or (I) of section 212(a)(2) of the Act (relating to criminals);

(II) section 212(a)(3) of the Act (relating to security and related grounds);

(III) with respect to an application for Z nonimmigrant status, section 212(a)(6)(C)(i) of the Act;

(IV) paragraph (6)(A)(i) of section 212(a) of the Act (with

respect to any entries occurring on or after January 1, 2007);

(V) section 212(a)(9)(C)(i)(II);

(VI) subparagraph (A), (C), or (D) of section 212(a)(10) of the Act (relating to polygamists, child abductors, and unlawful voters);

(iii) the Secretary may in his discretion waive the application of any provision of section 212(a) of the Act not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest; and

(B) CONSTRUCTION- Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of the Act.

(e) ELIGIBILITY REQUIREMENTS- To be eligible for Z nonimmigrant status an alien shall meet the following and any other applicable requirements set forth in this section:

(1) ELIGIBILITY- The alien must not fall within a class of aliens ineligible for Z nonimmigrant status listed under subsection (d)(1).

(2) ADMISSIBILITY- The alien must not be inadmissible as a nonimmigrant to the United States under section 212, except as provided in subsection (d)(2), regardless of whether the alien has previously been admitted to the United States.

(3) PRESENCE- To be eligible for Z-1 or Z-2 nonimmigrant status, or for nonimmigrant status under section 101(a)(15)(Z)(iii)(I), the alien must--

(A) have been physically present in the United States before January 1, 2007, and have maintained continuous physical presence in the United States since that date;

(B) be physically present in the United States on the date of application for Z nonimmigrant status; and

(C) be on January 1, 2007, and on the date of application for Z nonimmigrant status, not present in lawful status in the United States under any classification described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) or any other immigration status made available under a treaty or other

multinational agreement that has been ratified by the Senate.

(4) EMPLOYMENT- An alien seeking Z-1 nonimmigrant status must be employed in the United States on the date of filing of the application for Z-1 nonimmigrant status.

(5) FEES AND PENALTIES-

(A) PROCESSING FEES-

(i) An alien making an initial application for Z nonimmigrant status shall be required to pay a processing fee in an amount sufficient to recover the full cost of adjudicating the application, but no more than \$1,500 for a single Z nonimmigrant.

(ii) An alien applying for extension of his Z nonimmigrant status shall be required to pay a processing fee in an amount sufficient to cover administrative and other expenses associated with processing the extension application, but no more than \$1,500 for a single Z nonimmigrant.

(B) PENALTIES-

(i) An alien making an initial application for Z-1 nonimmigrant status shall be required to pay, in addition to the processing fee in subparagraph (A), a penalty of \$1,000.

(ii) A Z-1 nonimmigrant making an initial application for Z-1 nonimmigrant status shall be required to pay a \$500 penalty for each alien seeking Z-2 or Z-3 nonimmigrant status derivative to the Z-1 applicant.

(iii) An alien who is a Z-2 or Z-3 nonimmigrant and who has not previously been a Z-1 nonimmigrant, and who changes status to that of a Z-1 nonimmigrant, shall in addition to processing fees be required to pay the initial application penalties applicable to Z-1 nonimmigrants.

(C) STATE IMPACT ASSISTANCE FEE- In addition to any other amounts required to be paid under this subsection, a Z-1 nonimmigrant making an initial application for Z-1 nonimmigrant status shall be required to pay a State impact assistance fee equal to \$500.

(D) DEPOSIT AND SPENDING OF FEES- The processing fees under

subparagraph (A) shall be deposited and remain available until expended as provided by sections 286(m) and (n).

(E) Deposit, allocation, and spending of penalties-

(i) DEPOSIT OF PENALTIES- The penalty under subparagraph (B) shall be deposited and remain available as provided by section 286(w).

(ii) DEPOSIT OF STATE IMPACT ASSISTANCE FUNDS- The funds under subparagraph (C) shall be deposited and remain available as provided by section 286(x).

(6) INTERVIEW- An applicant for Z nonimmigrant status must appear to be interviewed.

(7) MILITARY SELECTIVE SERVICE- The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) that such alien has registered under that Act.

(f) Application Procedures-

(1) IN GENERAL- The Secretary of Homeland Security shall prescribe by notice in the Federal Register, in accordance with the procedures described in section 610 of the [NAME OF THIS ACT], the procedures for an alien in the United States to apply for Z nonimmigrant status and the evidence required to demonstrate eligibility for such status.

(2) INITIAL RECEIPT OF APPLICATIONS- The Secretary of Homeland Security, or such other entities as are authorized by the Secretary to accept applications under the procedures established under this subsection, shall accept applications from aliens for Z nonimmigrant status for a period of one year starting the first day of the first month beginning no more than 180 days after the date of enactment of this section. If, during the one-year initial period for the receipt of applications for Z nonimmigrant status, the Secretary of Homeland Security determines that additional time is required to register applicants for Z nonimmigrant status, the Secretary may in his discretion extend the period for accepting applications by up to 12 months.

(3) BIOMETRIC DATA- Each alien applying for Z nonimmigrant status must submit biometric data in accordance with procedures established by the Secretary of Homeland Security.

(g) Content of Application Filed by Alien-

(1) APPLICATION FORM- The Secretary of Homeland Security shall create an application form that an alien shall be required to complete as a condition of obtaining Z nonimmigrant status.

(2) Application information-

(A) IN GENERAL- The application form shall request such information as the Secretary deems necessary and appropriate, including but not limited to, information concerning the alien's physical and mental health; complete criminal history, including all arrests and dispositions; gang membership, renunciation of gang affiliation; immigration history; employment history; and claims to United States citizenship.

(3) Security and law enforcement background checks-

(A) SUBMISSION OF FINGERPRINTS- The Secretary may not accord Z nonimmigrant status unless the alien submits fingerprints and other biometric data in accordance with procedures established by the Secretary.

(B) BACKGROUND CHECKS- The Secretary shall utilize fingerprints and other biometric data provided by the alien to conduct appropriate background checks of such alien to search for criminal, national security, or other law enforcement actions that would render the alien ineligible for classification under this section.

(h) Treatment of Applicants-

(1) IN GENERAL- An alien who files an application for Z nonimmigrant status shall, upon submission of any evidence required under paragraphs (f) and (g) and after the Secretary has conducted appropriate background checks, to include name and fingerprint checks, that have not by the end of the next business day produced information rendering the applicant ineligible--

(A) be granted probationary benefits in the form of employment authorization pending final adjudication of the alien's application;

(B) may in the Secretary's discretion receive advance permission to re-enter the United States pursuant to existing regulations governing advance parole;

(C) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of

the alien's application, unless the alien is determined to be ineligible for Z nonimmigrant status; and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))) unless employment authorization under subparagraph (A) is denied.

(2) TIMING OF PROBATIONARY BENEFITS- No probationary benefits shall be issued to an alien until the alien has passed all appropriate background checks or the end of the next business day, whichever is sooner.

(3) CONSTRUCTION- Nothing in this section shall be construed to limit the Secretary's authority to conduct any appropriate background and security checks subsequent to issuance of evidence of probationary benefits under paragraph (4).

(4) PROBATIONARY AUTHORIZATION DOCUMENT- The Secretary shall provide each alien described in paragraph (1) with a counterfeit-resistant document that reflects the benefits and status set forth in paragraph (h)(1). The Secretary may by regulation establish procedures for the issuance of documentary evidence of probationary benefits and, except as provided herein, the conditions under which such documentary evidence expires, terminates, or is renewed. All documentary evidence of probationary benefits shall expire no later than six months after the date on which the Secretary begins to approve applications for Z nonimmigrant status.

(5) BEFORE APPLICATION PERIOD- If an alien is apprehended between the date of enactment and the date on which the period for initial registration closes under subsection (f)(2), and the alien can establish prima facie eligibility for Z nonimmigrant status, the Secretary shall provide the alien with a reasonable opportunity to file an application under this section after such regulations are promulgated.

(6) DURING CERTAIN PROCEEDINGS- Notwithstanding any provision of the Act, if the Secretary determines that an alien who is in removal proceedings is prima facie eligible for Z nonimmigrant status, then the Secretary shall affirmatively communicate such determination to the immigration judge. The immigration judge shall then terminate or administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(i) ADJUDICATION OF APPLICATION FILED BY ALIEN-

(1) IN GENERAL- The Secretary may approve the issuance of

documentation of status, as described in subsection (j), to an applicant for a Z nonimmigrant visa who satisfies the requirements of this section.

(2) EVIDENCE OF CONTINUOUS PHYSICAL PRESENCE, EMPLOYMENT, OR EDUCATION-

(A) PRESUMPTIVE DOCUMENTS- A Z nonimmigrant or an applicant for Z nonimmigrant status may presumptively establish satisfaction of each required period of presence, employment, or study by submitting records to the Secretary that demonstrate such presence, employment, or study, and that the Secretary verifies have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

(B) VERIFICATION- Each Federal agency, and each State or local government agency, as a condition of receipt of any funds under Section 286(x), shall within 90 days of enactment ensure that procedures are in place under which such agency shall--

(i) consistent with all otherwise applicable laws, including but not limited to laws governing privacy, provide documentation to an alien upon request to satisfy the documentary requirements of this paragraph; or

(ii) notwithstanding any other provision of law, including section 6103 of title 26, United States Code, provide verification to the Secretary of documentation offered by an alien as evidence of--

(I) presence or employment required under this section, or

(II) a requirement for any other benefit under the immigration laws.

(C) OTHER DOCUMENTS- A Z nonimmigrant or an applicant for Z nonimmigrant status who is unable to submit a document described in subparagraph (i) may establish satisfaction of each required period of presence, employment, or study by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including--

(i) bank records;

(ii) business records;

(iii) employer records;

(iv) records of a labor union or day labor center; and

(v) remittance records.

(D) ADDITIONAL DOCUMENTS- The Secretary may--

(i) designate additional documents to evidence the required period of presence, employment, or study; and

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent fraudulent submissions.

(3) PAYMENT OF INCOME TAXES-

(A) IN GENERAL- Not later than the date on which status is adjusted under this section, the alien establishes the payment of any applicable Federal tax liability by establishing that--

(i) no such tax liability exists;

(ii) all outstanding liabilities have been paid; or

(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(B) APPLICABLE FEDERAL TAX LIABILITY- For purposes of clause (i), the term `applicable Federal tax liability' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required by subparagraph (D)(i) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(C) IRS COOPERATION- The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subparagraph.

(D) IN GENERAL- The alien may satisfy such requirement by establishing that--

(i) no such tax liability exists;

(ii) all outstanding liabilities have been met; or

(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service and with the department of revenue of each State to which taxes are owed.

(4) BURDEN OF PROOF- An alien who is applying for a Z nonimmigrant visa under this section shall prove, by a preponderance of the evidence, that the alien has satisfied the requirements of this section.

(5) DENIAL OF APPLICATION-

(i) An alien who fails to satisfy the eligibility requirements for a Z nonimmigrant visa shall have his application denied and may not file additional applications.

(ii) An alien who fails to submit requested initial evidence, including requested biometric data, and requested additional evidence by the date required by the Secretary shall, except where the alien demonstrates to the satisfaction of the Secretary that such failure was reasonably excusable or was not willful, have his application considered abandoned.