

9 FAM 42.32(d)(7) NOTES EMPLOYMENT-BASED FOURTH PREFERENCE MEMBERS OF U.S. ARMED FORCES

*(CT:VISA-1019; 09-12-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 42.32(d)(7) N1 APPLICABILITY TO VISA ISSUANCE

(TL:VISA-69; 10-30-92)

The Armed Forces Immigration Adjustment Act of 1991, Public Law 102-110 was enacted on October 1, 1991. Section 2 of this Act provided for special immigrant status under INA 101(a)(27)(K) for certain foreign nationals who served honorably in the U.S. Armed Forces, or will serve, for a period of 12 years. These enlistees/veterans and their spouses and children may apply to become permanent resident aliens of the United States and also become immediately eligible to apply for naturalization as U.S. citizens. Although the title of this Act implies that the beneficiaries of this classification will apply for adjustment of status, it is possible that some beneficiaries and/or their spouses or children will apply for immigrant visas.

9 FAM 42.32(d)(7) N2 PETITION REQUIREMENT

(CT:VISA-675; 01-24-2005)

To be classified as a special immigrant under INA 101(a)(27)(K) an alien must be the beneficiary of an approved Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petition must be filed with the Department of Homeland Security (DHS) having jurisdiction over the place of the alien's current or intended place of residence in the United States, or with the overseas DHS office having jurisdiction over the alien's residence abroad.

9 FAM 42.32(d)(7) N3 ELIGIBILITY

(CT:VISA-675; 01-24-2005)

An alien may be eligible for classification under INA 101(a)(27)(K) if the:

- (1) Alien is a veteran who served honorably in the U.S. Armed Forces on active duty for a period of 12 years after October 15, 1978;
- (2) Alien is currently enlisted in the U.S. Armed Forces, has served at least six years, and has reenlisted for a total active duty service obligation of at least 12 years;
- (3) Alien's original enlistment was outside the United States under a treaty or agreement in effect October 1, 1991 (the United States has special agreements with the Philippines, Micronesia, and the Marshall Islands to allow natives of those countries to serve in our Armed Forces); and
- (4) Executive department under which the alien has served or is serving has recommended the granting of special immigrant status.

9 FAM 42.32(d)(7) N4 DERIVATIVE STATUS

(CT:VISA-1019; 09-12-2008)

The accompanying or following-to-join spouse or child of an alien granted special immigrant status under INA 101(a)(27)(K) may also be accorded the same special immigrant classification. This may occur whether or not the spouse or child is named in the petition and without the approval of a separate petition. The relationship of spouse or child, however, must have existed at the time the principal alien's special immigrant application was approved. If the spouse or child is in the United States but was not included in the principal alien's application, the spouse or child shall file Form I-485, Application for Permanent Residence, with the DHS. If the spouse or child is outside the United States, the principal alien shall file Form I-824, Application for Action on an Approved Application or Petition.

9 FAM 42.32(d)(7) N5 DOCUMENTATION

(TL:VISA-69; 10-30-92)

The following documents must be submitted in support of the petition:

- (1) Certified proof of enlistment (after 6 years of active duty service) or certification of past active duty status of 12 years, issued by the authorizing official of the executive department in which the applicant serves or has served, certifying that the applicant has the required honorable service and recommending special immigrant status; and
- (2) Birth certificate, or other acceptable documentary proof, establishing that the applicant is a national of an independent state maintaining a treaty or agreement allowing nationals of that state to enlist in the U.S. Armed Forces.