

V VISAS: THE LIFE ACT'S ANSWER TO FAMILY UNIFICATION

updated by Matthew I. Hirsch*

INTRODUCTION

The V visa was created in December 2000, in the waning days of the 106th Congress and the Clinton administration. Since then, more than 200,000 family-sponsored beneficiaries and their dependents have used the V category as a means of coming to the United States or staying in the United States, with employment authorization, while waiting for scarce visa numbers to become available.

According to the bill's sponsors, the V visa was intended to promote family unification and to assist hundreds of thousands of applicants waiting to be united with their families in the United States. Faced with backlogs of five years and longer in the family-based second preference (FB-2), but unwilling or unable to increase the number of visas available in this category, Congress instead adopted a partial solution that allowed some family members of U.S. legal permanent residents who were eligible to immigrate in the FB-2A category to live and work in the United States while waiting for an immigrant visa to become available or to be approved.

When enacted, the V visa was limited only to beneficiaries of family-based petitions filed on or before December 21, 2000, and that date has not changed. As such, there are few if any individuals filing new applications for V visas. However, slow movement in the FB-2A category means that individuals with V status must continue to maintain and to seek extensions of that status, as they wait for family-based visa numbers to become available. By reason of this fact, and because U.S. Citizenship and

Immigration Services (USCIS) now allows extensions of V status for those who were previously barred by age-out regulations, the V visa continues to afford relief to significant numbers of family-based beneficiaries and their dependents.

AUTHORITIES AND BASIC ELIGIBILITY REQUIREMENTS

Statute

The statutory provisions creating the V category are part of the Legal Immigration and Family Equity Act (LIFE Act).¹ Enacted on December 21, 2000, §1102 of the LIFE Act amended the Immigration and Nationality Act (INA) §101(a)(15) by adding a new subsection (V), which created and defined the new V visa category.²

As set forth in the statute, an applicant for V status must be the beneficiary of a petition for alien relative (Form I-130) seeking classification within the family-based second preference, within the subpart reserved for spouses of legal permanent residents and their minor children under INA §203(a)(2)(A). Moreover, to be eligible, the FB-2A petition must have been filed with the former Immigration and Naturalization Service (legacy INS) on or before the enactment of the LIFE Act on December 21, 2000.³ In addition, in order to qualify for V status, the petition must have been pending for at least three years⁴ and:

- The I-130 must still be pending with USCIS;⁵ or
- The I-130 may be approved, but a visa number is not yet available;⁶ or

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¹ Pub. L. No. 106-553, 114 Stat. 2762.

² *Id.* at §1102(a) (amending the Immigration and Nationality Act (INA) §101(a)(15)). The title of §1102 is “Nonimmigrant Status for Spouses and Children of Permanent Residents Awaiting the Availability of an Immigrant Visa.”

³ The V visa/status is available only for family 2A cases (spouses and minor children of LPRs) and *not* for family 2B cases (unmarried sons and daughters of LPRs).

⁴ INA §101(a)(15)(V).

⁵ INA §101(a)(15)(V)(i).

⁶ INA §101(a)(15)(V)(ii)(I).

- The I-130 has been approved and a visa number is available, but the beneficiary's adjustment of status or application for an immigrant visa remains pending.⁷

Regulations and Instructions

In the months after the LIFE Act was introduced, the U.S. Department of State (DOS) issued interim regulations for the V visa category.⁸ Some of these provisions are set forth at 22 Code of Federal Regulations (CFR) §41.86. Additional guidance on V visa processing was thereafter sent by cable to U.S. consular offices.⁹

On September 7, 2001, legacy INS issued its interim regulations for the V category.¹⁰ Many of these regulations became final as 8 CFR §214.15. Since then, legacy INS and USCIS have issued memoranda to further explain and interpret the procedural and substantive requirements for obtaining and maintaining V status.

Basic Eligibility

There are three sub-categories within the V visa category. These are: V-1 for the spouse of a lawful permanent resident; V-2 for an eligible minor child (unmarried and under age 21); and V-3 for the eligible derivative child (unmarried and under age 21) of either the V-1 or V-2 nonimmigrant.¹¹

Benefits of the V Visa

Reflecting its goal of family unification, the V visa category incorporated certain waivers of inadmissibility and other benefits that would otherwise

limit the availability and usefulness of the visa. These include:

- **Exemption from the Unlawful Presence Ground of Inadmissibility Under INA §212(a)(9)(B)**¹²—Before the LIFE Act, FB-2A beneficiaries with extended periods of unlawful presence in the United States would be subject to the three- and ten-year bars to readmission to the United States. The LIFE Act provides an exemption to the three- and ten-year bars, thereby making it possible for the beneficiary of a long-pending petition in the FB-2A category to both remain in the United States and to depart and re-enter as a V visa holder.¹³ Note that this exemption is only available while the person is in V status. If the V visa has expired or is revoked, a person with long periods of unlawful presence will still be subject to the three- and ten-year bars.¹⁴
- **Waiver of Certain Grounds of Inadmissibility**¹⁵—In addition to being exempt from the three- and ten-year bars of INA §212(a)(9), eligible applicants for V visa status are not subject to grounds of inadmissibility for entering without inspection, INA §212(a)(6)(A), and for not having a valid passport or visa, INA §212(a)(7). These waivers represent important aspects of the law in that they allow spouses and dependent children of legal permanent residents who may have entered without inspection and without documents to live and work legally in the United States, while they wait for visa numbers to become available.
- **Indefinite Extension of V Status**¹⁶—Eligible applicants may be granted V status in increments of two years and this may be extended indefinitely, for as long as the applicant continues to be eligible for V status, with some exceptions noted below.
- **Employment Authorization**—In order to facilitate the transition of V nonimmigrants to permanent residence, an individual may apply for employment authorization valid for a period equal to his or her authorized admission in V status.¹⁷

⁷ INA §101(a)(15)(V)(ii)(II). The U.S. Department of State (DOS) has taken the position that “a visa application ‘remains pending’ if the applicant has applied for an immigrant visa ... and the visa has neither been issued, nor refused for any reason under applicable law or regulation.” 22 CFR §41.86(a). U.S. Citizenship and Immigration Services (USCIS) takes the same position. 8 CFR §214.15(d).

⁸ 66 Fed. Reg. 19390 (Apr. 16, 2001).

⁹ See DOS Cables, “V Visas Processing: Next Steps,” published on AILA InfoNet at Doc. No. 01090432 (posted Sep. 4, 2001); “V VISAS: Unapproved Petition Beneficiary Names Added to CLASS,” published on AILA InfoNet at Doc. No. 01121332 (posted Dec. 13, 2001); “V Visa Medical Issues and Request for V Visa Annotations and Medical Envelopes ...,” published on AILA InfoNet at Doc. No. 02040431 (posted Apr. 4, 2002).

¹⁰ 66 Fed. Reg. 46697 (Sept. 7, 2001).

¹¹ 8 CFR §214.15(a).

¹² 8 CFR §214.15(i)(3)(i).

¹³ *Id.*

¹⁴ 8 CFR §214.15(i)(3)(ii).

¹⁵ 8 CFR §214.15(f).

¹⁶ 8 CFR §214.15(g)(3).

¹⁷ 8 CFR §214.15(h).

OBTAINING V CLASSIFICATION

Obtaining the V Visa Abroad

Unlike K visa applicants, the LIFE Act does not require V visa applicants to file a petition and obtain USCIS approval before applying for a visa at a U.S. consulate.¹⁸ A qualified applicant may apply for the V visa directly at a U.S. consular post.

Where to Apply

V visas are only issued at consular posts that issue immigrant visas, and only to applicants who are residents in the consular district.¹⁹ Note that a V visa can only be obtained at the post designated as the processing post on the underlying I-130.²⁰

Who Can Apply

All applicants must satisfy the basic eligibility requirements for V status. However, DOS has made it clear that applications filed by individuals with current priority dates will not be processed as V visa cases but as immigrant visa cases.²¹ To reiterate, the V visa classifications are as follows:

- V-1: for the beneficiary spouse of a petition for FB-2A status.²²
- V-2: for the beneficiary child of a petition for FB-2A status.²³
- V-3: for the derivative child of either the beneficiary spouse or child of a petition for FB-2A status.²⁴ Also, eligible applicants may be issued a V-3 visa regardless of whether their V-1 or V-2 parent has applied for or been issued a V visa.²⁵

¹⁸ Compare INA §214(r)(1) (requiring approved USCIS petition before consul can issue K visa) with INA §214(q)(1) (imposing no such requirement on V visa issuance). See also 8 CFR §214.15(e) (authorizing eligible aliens to apply for V visas at a U.S. consular office abroad pursuant to the procedures set forth in 22 CFR §41.86).

¹⁹ 22 CFR §41.86(d).

²⁰ *Id.*

²¹ DOS Cable, "Processing V and K-3 Visas: The View So Far" at para. 6 (Jan. 30, 2001), posted on AILA InfoNet at Doc. No. 01013102 (Jan. 31, 2001) (hereinafter "DOS Cable, Jan. 30, 2001").

²² 8 CFR §214.15(a).

²³ *Id.*

²⁴ *Id.*

²⁵ DOS Cable, Jan. 30, 2001, *supra* note 21, at para. 4.

How to Apply

Documents and Examinations Required

When applying abroad, the V visa application consists of Forms DS-3052 (nonimmigrant V visa application) and DS-156 (and DS-157 when required).²⁶ These forms are available on the DOS website.²⁷

In addition, because the V visa is a "hybrid" visa, meaning that the nonimmigrant applicant is also an intending immigrant, V visa applicants are required to undergo some of the procedures required for immigrant visas applicants, including a medical examination and a National Crime Information Center name-check.²⁸ The applicant must also submit police certificates with the application, and must be prepared to document the relationship underlying the family-based petition.²⁹

Overcoming Public Charge Considerations

Applicants for V status are not exempt from the public charge provisions at INA §212(a)(4). As such, a V visa applicant must demonstrate that he or she will not become a public charge in the United States.³⁰ This can be accomplished with a letter from the petitioner's employer, a job offer for the applicant, evidence that the applicant will be self-supporting in the United States, or anything else. The longer and more detailed Form I-864 affidavit of support is not required for V visa applicants. However, according to DOS, the Form I-134 affidavit may be required where the consular officer deems it useful.³¹

²⁶ See www.travel.state.gov/visa/frvi/forms/forms_1342.html. The DOS is in the process of rolling out a new, online, nonimmigrant visa application, designated the DS-160. The DS-160 will combine current nonimmigrant application forms such as the DS-156, 157, 158, and related forms, such as the DS-156E, 156K and 156V, into a single electronic format.

²⁷ *Id.*

²⁸ 22 CFR §41.86(c). The applicant is exempt, however, from the vaccination requirement of INA §212(a)(1), the labor certification requirement of INA §212(a)(5), and the unlawful presence bar of INA §212(a)(9)(B). *Id.*

²⁹ DOS Cable, Jan. 30, 2001, *supra* note 21, at para. 13.

³⁰ *Id.*

³¹ *Id.* at para. 14. *Matter of A-*, 19 I&N Dec. 867 (Comm'r. 1988) ("to determine public charge, the INS applies a totality of the circumstances approach which includes whether the alien has received public assistance, his or her age, capacity to earn a living, health, family, situation, work history, affidavits of support and physical and mental condition.").

Fees

The only fee required of V visa applicants at a U.S. consulate is the standard machine-readable visa fee. There are no reciprocity fees or additional processing fees.³²

Validity Period

In general, V visas are valid for 10 years and good for multiple entries.³³ The major exception to this rule is that unmarried children of the principal applicant “may receive multiple entry visas valid only until they reach the age of 21 years.”³⁴

Age-Out Cases

As with immigrant visas, V-2 visas are not available to children who no longer qualify for the FB-2A category because they turned 21, or “aged-out”, before the enactment of the LIFE Act on December 21, 2000, or while waiting to establish eligibility or to receive V-2 status.³⁵

DOS has explained that the Child Status Protection Act (CSPA)³⁶ does not apply to V visa applicants.³⁷ Those children who age-out before the three year period required for V-2 eligibility will not qualify for V-2 visas, and their petitions will automatically be downgraded to the FB-2B category, an even more backlogged category reserved for the unmarried adult sons and daughters of legal permanent residents.³⁸ However, children can benefit from the CSPA when applying for immigrant visas.³⁹

Moreover, all children applying for V-2 visas are required to sign a form “apprising them that entering into a marriage prior to admission into the United States or prior to obtaining adjustment of status will render them ineligible for adjustment as an FB-2A immigrant visa applicant.”⁴⁰

³² DOS Cable, Jan. 30, 2001, *supra* note 21, at para. 26.

³³ *Id.* at para. 27.

³⁴ *Id.*

³⁵ *Id.* at para. 23.

³⁶ Pub. L. No. 107-208, 116 Stat. 927, published on AILA InfoNet at Doc. No. 02080740 (posted Aug. 7, 2002).

³⁷ DOS Cable, “Child Status Protection Act” (Jan. 17, 2003), published on AILA InfoNet at Doc. No. 03020550 (posted Feb. 5, 2003) (hereinafter DOS Cable, Jan. 17, 2003). *But see, Akhtar v. Burzynski*, 384 F.3d 1193 (2004), discussed *infra*.

³⁸ DOS Cable, Jan. 30, 2001, *supra* note 21, at para. 24.

³⁹ DOS Cable, Jan. 17, 2003, *supra* note 37, at para. 31.

⁴⁰ DOS Cable, Jan. 30, 2001, *supra* note 21, at para. 25.

Notifying the Consulate

In some cases, consular posts will have notification of an approved petition in the FB-2 category. In other cases, where USCIS has not sent DOS notice of an approved petition, or where the petition is pending, the applicant must request that USCIS send verification to DOS.⁴¹ Consular officers will not accept secondary evidence of the petition filing such as a filing receipt.⁴²

Obtaining V Classification in the United States⁴³

How to Apply

Some eligible applicants for V status are present in the United States. Aliens who are present in the United States and who meet the requirements for V classification may apply to USCIS for a change of status using Form I-539 accompanied by supplement A.⁴⁴ An important provision of the LIFE Act extends the privilege of changing to V status even to aliens who are unlawfully in the United States.⁴⁵ As mentioned above, for eligible applicants, the bars for presence in the United States without admission or parole,⁴⁶ presence without documentation,⁴⁷ and the three- and ten-year bars for unlawful presence⁴⁸ do not apply.⁴⁹

Practice Pointer: When completing Form I-539, check box b in Part 2, question 1. Next to the box are the words “A change of status. The new status I am requesting is:” On the blank line following the words, write “V status.”

Where to File

All V applications (including V extension applications) are processed by the National Benefits Center

⁴¹ “State Department Offers Guidance on Issuance of V Visas,” 3 *Immigration Business News & Comment* 19, 174 (prepared by A. Fragomen, Jr. and S. Bell (Oct. 15, 2001)).

⁴² *Id.*

⁴³ Chapter 37.4 of the USCIS *Adjudicator’s Field Manual* (AFM) includes provisions for the V nonimmigrant classification.

⁴⁴ Supplement A to the I-539, filing instructions for V nonimmigrant status are available at www.uscis.gov/files/form/i-539a_103008.pdf.

⁴⁵ See INA §214(q)(3).

⁴⁶ INA §212(a)(6)(A).

⁴⁷ INA §212(a)(7).

⁴⁸ INA §212(a)(9)(B).

⁴⁹ INA §214(q)(3)(C).

(NBC) in Missouri. As with other cases filed at the NBC, applications are first sent to a lockbox in Chicago for the collection of fees.⁵⁰

Documents and Examinations Required

An applicant for initial V status must submit Form I-693, medical examination. The vaccination supplement is not required.⁵¹

The application for V status must also be accompanied by proof of the underlying, pending or approved, I-130.⁵² Though a receipt notice or notice of approval is the easiest way to prove that the petition was timely filed, USCIS will consider other forms of evidence, such as correspondence with a USCIS officer regarding a pending I-130 petition.⁵³ If no other evidence is available, the V applicant should state where and when the I-130 petition was filed, the name and alien number of the petitioner, and the names of all beneficiaries.⁵⁴

Fees

The first-time applicant for V status must remit the ordinary fee for Forms I-539 along with a biometric fee.⁵⁵ If filing for an extension, the applicant need not submit the biometric fee or a new medical exam.⁵⁶

Employment Authorization

A person in V status is eligible to apply for an employment authorization document (EAD) by submitting Form I-765 to the NBC.⁵⁷ The Form I-765 can be filed at the same time as the Form I-539; however, the I-765 application cannot be processed until the I-539 application is approved.⁵⁸

The I-765 is accompanied by a filing fee or request for fee waiver, as well as two photographs taken per USCIS specifications and a copy of the V visa or an I-94 showing V status (unless the application is submitted concurrently with the I-539).⁵⁹ Once is-

sued, the EAD should be valid for the period of authorized V status,⁶⁰ presumably even if it is longer than one year.

I-601 Waiver

Should an application for waiver of inadmissibility, Form I-601,⁶¹ be necessary, this application can be filed with the V application at the NBC, which will issue a receipt and then forward it to the USCIS district office for adjudication. Assuming the waiver is granted, the USCIS district office will send it back to the NBC to process the I-539 application.⁶²

Obtaining V Status While in Proceedings

A person who is eligible for V status but who is in immigration proceedings may request the immigration judge or the Board of Immigration Appeals (BIA) to administratively close the proceedings so that he or she may apply for V status with USCIS.⁶³ If the request to close proceedings is granted, USCIS will have jurisdiction to grant the person's application for a change of status to V.⁶⁴ If USCIS denies the application, it will file a motion to re-calendar the proceedings.⁶⁵

If a final order of removal, deportation, or exclusion has already been issued, an eligible applicant must move to reopen proceedings. Motions to reopen are governed by 8 CFR §§1003.23 and 1003.2. If the reopening of the case is barred by time, a V-eligible applicant would need the cooperation of U.S. Immigration and Customs Enforcement's (ICE) district counsel to file a joint motion to reopen proceedings out of time.⁶⁶

EXTENSION OF V STATUS

In most cases, eligible applicants are granted initial periods of V status for two years.⁶⁷ Extensions

⁵⁰ USCIS, P.O. Box 7216, Chicago, IL 60680.

⁵¹ 8 CFR §214.15(f)(1).

⁵² 8 CFR §214.15(f)(2).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ The filing fee for Form I-539 as of July 30, 2007, is \$300.

⁵⁶ 66 Fed. Reg. 46697, 46699 (Sept. 7, 2001).

⁵⁷ INA §214(q)(1)(A), *as added by* LIFE Act §1102(b); 8 CFR §214.15(h).

⁵⁸ Form I-765 instructions available at www.uscis.gov/i-765.

⁵⁹ *Id.*

⁶⁰ INA §214(q)(1)(A), *as added by* LIFE Act §1102(b).

⁶¹ Form I-601 is used to apply for a waiver of grounds of inadmissibility. It can be used proactively, as where the applicant has to admit to a ground of inadmissibility, and is used in this way frequently with I-485 applications.

⁶² "Missouri Service Center Liaison Report (11/21/01)," *published on* AILA InfoNet at Doc. No. 01120634 (*posted* Dec. 6, 2001).

⁶³ 8 CFR §214.15(l).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 66 Fed. Reg. at 46701.

⁶⁷ 8 CFR §214.15(g).

may be obtained in subsequent two-year increments.⁶⁸ Special rules apply to persons who have a current priority date, but who have not yet filed an application for immigrant visa or application to adjust status. Those individuals are limited to a six-month period of initial eligibility and six-month extensions, as long as they apply for an immigrant visa or adjustment of status within the initial six-month period of admission.⁶⁹

New Developments for Age-Out Extensions

On October 5, 2004, the Ninth Circuit, in the case of *Akhtar v. Burzynski*, struck down the age-out provision of the V visa regulations contained at 8 CFR §214.15g.⁷⁰ Prior to the court's decision, a child of a permanent resident or a derivative child could only hold V status until the day before the child's 21st birthday. Once the child turned 21, he or she automatically lost their V status. This situation created tremendous hardships for V-2 and V-3 visa holders who, after waiting years for a visa number to become available, found themselves ineligible for V status and compelled to make hard choices between separating from their families and violating immigration laws.

The court in *Akhtar* rectified this inequity by striking down the age-out provision and granting certain V-2 and V-3 beneficiaries the right to extend their status even after turning 21. The court's decision examined the legislative history of the LIFE Act and reasoned that the Act's intended purpose of family unification was in conflict with agency regulations separating families because of an applicant's age.⁷¹

Following the decision in *Akhtar*, in January 2005, USCIS issued a memorandum indicating that regulations applying the case would be forthcoming.⁷² The memorandum stated that USCIS would apply the court decision nationwide immediately, even though, by coming out of the Ninth Circuit, the decision would otherwise be limited to residents of

Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.⁷³

According to the USCIS memo, if the only reason for denying an extension of V-2 or V-3 status is that the alien had turned 21, then the application would be approved. In addition, the memo states that USCIS will allow an alien to file a new application for extension of V-2 or V-3 status if he or she was previously denied solely because the alien was over the age of 21.⁷⁴

Following the first memo, USCIS issued a more complete memorandum clarifying and implementing issues arising from *Akhtar* decision.⁷⁵ The second memo expanded the grounds of exception to cover individuals who lost their eligibility for V-2 or V-3 status due to the naturalization of the petitioner. More specifically, it provided that beneficiaries who did not become immediate relatives upon the naturalization of the petitioner could apply for extensions of V-2 and V-3 status.⁷⁶

It should be noted that the court in *Akhtar* was considering the case of two individuals who had not filed applications to extend their V-2 or V-3 status but who had asked the court to allow them to extend, despite the fact that they had reached 21 years of age.⁷⁷ While the court in *Akhtar* granted the plaintiffs the ability to seek relief in the district court, the USCIS memo issued in January 2005 did not do so. In fact, the memorandum was completely silent with regard to persons who did not file extensions of their V-2 or V-3 status in the face of then-valid regulations barring extension for persons who had reached 21 years of age.

USCIS cleared up the inconsistency in a press release issued on May 16, 2005.⁷⁸ That press release

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ USCIS Memorandum, M. Aytes, "Clarification of Aging-Out Provisions as They Affect Preference Relatives and Immediate Family Members under the Child Status Protection Act" (June 14, 2006), published on AILA InfoNet at Doc. No. 06062870 (posted June 28, 2006).

⁷⁶ *Id.* The memo also provides procedures for applicants who have been denied the opportunity to file motions to reopen their cases.

⁷⁷ *Akhtar*, 384 F.3d at 1193.

⁷⁸ USCIS Press Release, "USCIS Announces New Policy Regarding V Status Extensions," (May 16, 2005), published on AILA InfoNet at Doc. No. 05051761 (posted May 17, 2005).

⁶⁸ 8 CFR §214.15(g)(3).

⁶⁹ 8 CFR §214.15(g)(4).

⁷⁰ *Akhtar v. Burzynski*, 384 F.3d 1193 (9th Cir. 2004), published on AILA InfoNet at Doc. No. 04102260 (posted Oct. 22, 2004).

⁷¹ *Id.*

⁷² USCIS Memorandum, T. O'Reilly, "Adjudication of Form I-539 for V-2 and V-3 extension" (Jan. 10, 2005), published on AILA InfoNet at Doc. No. 05020460 (posted Feb. 4, 2005).

announced a new policy under which an alien who is physically present in the United States can file a new extension application if he or she was previously in V-2 or V-3 status and did not apply for an extension solely because he or she was 21 years of age at the time of expiration of V status. This new policy closed the gap between the *Akhtar* decision and the previous USCIS memorandum.

The press release further indicated that applicants for extension will receive a period of admission not to exceed two years and that V status can continue to be extended until applicants become permanent residents or their V status is terminated. As a reminder, USCIS noted that qualification for initial V-2 or V-3 status requires the applicant to meet the legal definition of child, namely being unmarried and less than 21 years of age.

Although this latter press release resolved age-out issues for those present in the United States who did not seek a V visa extension, no policy has been formulated to address the plight of those individuals who had already left the United States instead of seeking a V visa extension due to the age-out provisions that have now been stricken. Practitioners evaluating whether to pursue extension of V status for those who left the country should consider that *Akhtar* did not limit its holding only to those physically present in the United States. Insofar as USCIS has on two occasions tried to extend the holding of *Akhtar* nationwide, an argument can be made that the relief should apply also to those who have left the United States. Until further regulations, policy memoranda, or court decisions are issued, however, it is unclear how such applications will be treated.

TERMINATION OF V STATUS

An alien's V status automatically terminates 30 days following the occurrence of any of the following:

- The denial, withdrawal, or revocation of the I-130 petition filed on behalf of V visa holder.⁷⁹ It is important to note that the regulations *do not* provide an exception allowing a spouse or child who has been subject to domestic abuse by the lawful permanent resident petitioner to self-petition for V status if the petitioner withdraws the I-130.

⁷⁹ 8 CFR §214.15(j)(1)(i).

- The denial or withdrawal of the immigrant visa application or application for adjustment of status filed by the person in V status.⁸⁰
- If the person in V status loses eligibility for the FB-2A category (*i.e.*, V-1 spouse obtains a final divorce from the petitioning lawful permanent resident or V-2/V-3 child under 21 of a lawful permanent resident marries), he or she loses V status.⁸¹
- When the principal alien's V status is terminated, the status of any V-3 dependent or person seeking derivative benefits is also terminated.⁸²
- If the denial of the immigrant visa petition is appealed, the alien's V nonimmigrant status terminates 30 days after the administrative appeal is dismissed.⁸³

If the Petitioner Naturalizes

When a legal permanent resident petitioner naturalizes, the spouse becomes an immediate relative of a U.S. citizen as defined in INA §201(b) and is therefore eligible to immediately apply for adjustment of status and related employment authorization without the need to file a new I-130.⁸⁴ Note that whether a child is eligible to apply for the same benefit depends on whether an I-130 petition has been or can be approved on his or her individual behalf. Also note that other issues, like the three- and ten-year bars, may apply.

Previously, the naturalization of the petitioner in such cases meant that the V-2 and V-3 status of eligible dependents was automatically terminated. Following the decision of the Ninth Circuit in *Akhtar*, this regulation was set aside by USCIS in favor of a new provision allowing aliens in V-2 and V-3 status *who did not become immediate relatives* by virtue of the petitioner's naturalization, to retain their V-2 and V-3 status and to file for extensions as needed.⁸⁵

ADJUSTMENT OF STATUS

Eventually a person who qualifies for V status will become eligible to immigrate or to apply for ad-

⁸⁰ 8 CFR §§214.15(j)(1)(ii)–(iii).

⁸¹ 8 CFR §§214.15(j)(1)(iv)–(v).

⁸² 8 CFR §214.15(j)(2).

⁸³ 8 CFR §214.15(j)(3).

⁸⁴ *Id.*

⁸⁵ See *supra* note 75, published on AILA InfoNet at Doc. No. 06062870 (posted June 28, 2006).

justment of status. An alien in V status who otherwise meets the requirements of INA §245(a) may adjust to permanent residence. If the V nonimmigrant does not meet the eligibility requirements of §245(a), they may be eligible to adjust under INA §245(i), a provision enacted in December 2000, which allows persons who had entered without inspection or with other immigration violations to adjust status, so long as they are the beneficiary of a family- or employment-based visa petition or application for labor certification filed before April 30, 2001.⁸⁶

It is important to note that filing an application for adjustment of status does not terminate V status. In addition, if the priority date on the approved I-130 petition is current, but the V applicant does not have a pending immigrant visa application abroad, or a pending adjustment application in the United States, the V nonimmigrant will only be granted a one-time, six-month extension, or be admitted to the United States in V status for a six-month period, if eligible.⁸⁷

Unless the beneficiary has another lawful status or has filed a proper adjustment application within that six-month period, he or she will be removable upon termination of V status and will start to accrue unlawful presence.⁸⁸ However, if the alien does file a timely and proper application for adjustment of status or an immigrant visa application, he or she will continue to be eligible for further extensions of V status while that application remains pending.⁸⁹

CONCLUSION

The V visa category has served its intended purpose by helping to unify legal permanent resident petitioners with their spouses and dependent children. Since its enactment over eight years ago, more than tens of thousands of beneficiaries have benefited from its provisions, enabling them to come to the United States or to remain in the United States in legal status while waiting for a visa number to become available.

However, the requirements of the law mean that there are no new applicants for V status. Rather, with ever-increasing demand and stagnant supply, beneficiaries in the FB-2A category again find themselves waiting for five years and longer to be legally unified with their lawful permanent resident spouses and parents.

Such forced separation is just one of many factors driving illegal immigration. One hopes that, when comprehensive immigration reform again reaches the legislative agenda, increases in family-based allocations will reduce or eliminate the cause of such separation and make the V visa just a footnote in immigration history.

⁸⁶ INA §245(i).

⁸⁷ 8 CFR §214.15(g)(4)(i)–(ii).

⁸⁸ 66 Fed. Reg. 46697, 46699–700 (Sept. 7, 2001); *see also* 8 CFR §214.15(j)(4).

⁸⁹ 8 CFR §214.15(g)(4)(iii).