DEPARTMENT OF STATE

22 CFR Part 42.34

Public Notice: 11104

RIN 1400-AE77

Visas: Special Immigrant Visas – U.S. Government Employee Special Immigrant Visas for Service Abroad

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Immigration and Nationality Act provides for the granting of special immigrant status for certain aliens who have been employed by, and performed faithful service for, the U.S. government abroad for at least fifteen years. This rule codifies in regulation the eligibility criteria for special immigrant status of such aliens and the application process for applicants.

DATES: This rule is effective December 16, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, VisaRegs@state.gov.

SUPPLEMENTARY INFORMATION:

What is the effect of this regulation?

Section 101(a)(27)(D) of the Immigration and Nationality Act (INA), 8 U.S.C. section 1101(a)(27)(D), authorizes the granting of special immigrant status in exceptional circumstances for employees, or honorably retired former employees, of the U.S. government abroad, or of the American Institute in Taiwan, who have performed faithful

service for a total of fifteen years or more, in addition to their accompanying spouse and children. For special immigration status to be granted, this provision requires that the principal officer of a Foreign Service establishment recommend granting of special immigrant status in an exercise of discretion to aliens in exceptional circumstances. The statute provides that the Secretary of State may choose to approve such a recommendation after finding that it is in the national interest to grant such status, for the status to be conferred. Upon notification that the Secretary of State, or designee, has approved a recommendation and found that granting special immigrant status is in the national interest, the applicant must submit a completed Form DS-1884, *Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad*, to the Department of State ("Department") within one year. Once the DS-1884 is submitted and approved, the employee must submit an immigrant visa application, which a consular officer adjudicates in accordance with relevant provisions in the INA. If the consular officer approves the visa application and issues the visa, the applicant then has six months to immigrate to the United States. To avoid potential confusion, the Department emphasizes that this regulation affects only the granting of special immigrant status to long term employees of the U.S. government abroad under INA section 101(a)(27)(D), 8 U.S.C. section 1101(a)(27)(D); this regulation does not affect the granting of special immigrant status under any of the authorities for special immigrant status, including any of the other provisions in INA section 101(a)(27), 8 U.S.C. section 1101(a)(27), or those specific to nationals of Iraq and Afghanistan.

This rule codifies the circumstances that will be considered "exceptional" for purposes of assessing special immigrant status qualification. The scope of "exceptional

circumstances" set out in this rule departs, in certain respects, from the Department's policies that preceded this rule, which were articulated only in the Foreign Affairs Manual (FAM), specifically 9 FAM 502.5-3(C)(2)(d), not in the CFR. Specifically, the excluded criteria, formerly in 9 FAM 502.5-3(C)(2)(d)(3)(c)(ii)-(vi), that will no longer constitute exceptional circumstances, are: recognition with multiple individual awards; high visibility in a sensitive position; control over key aspects of the operations or overall functioning of a Foreign Service post; valuable services and assistance to the U.S. community at post apart from performance of official duties; and faithful service in a country foreign to the employee that resulted in the employee losing economic and social ties to his or her home country. The regulation also adds two new criteria that will constitute exceptional circumstances moving forward, specifically: recognition with a "Foreign Service National of the Year" award; and disclosure of waste, fraud, abuse, or other issues that result in significant action against an offending party. The FAM will be revised in accordance with this rule on the effective date of this rule.

The rule also makes several technical and organizational edits to 22 CFR 42.32. This rule moves relevant portions of 22 CFR 42.32(d)(2) on special immigrant status (specific to INA section 101(a)(27)(D), 8 U.S.C. section 1101(a)(27)(d)) into a new section, 22 CFR 42.34; and 22 CFR 42.32(d)(2) is amended to include a cross reference to 22 CFR 42.34. The new 22 CFR 42.34 expands upon the application process and the qualifications for special immigrant status, and more clearly organizes these topics.

This rule also eliminates 22 CFR 42.32(d)(2)(ii), *Special immigrant status for certain aliens employed at the United States mission in Hong Kong*, because the window to apply for special immigrant status under this section closed on January 1, 2002. The

remaining provisions of 22 CFR 42.32(d)(2), including 22 CFR 42.32(d)(2)(i) and 22 CFR 42.32(d)(2)(iii)-(vi), are revised and moved to 22 CFR 42.34 and consolidated with current guidance drawn from 9 FAM 502.5-3. Sections 42.32(d)(2)(i)(A) and (C) are moved to section 42.34(b), and the Department has revised the description of accompanying or following-to-join spouses and children to more precisely align with INA section 203(d), 8 U.S.C. section 1153(d). The description of following-to-join spouses and children that is being superseded by this rule had stated they were "entitled to a derivative status corresponding to the classification and priority date of the beneficiary of the petition." This language has been amended to remove reference to "derivative status" to more accurately reflect INA section 203(d), 8 U.S.C. section 1153(d), which states that such spouses and children if not otherwise entitled to an immigrant status and the immediate issuance of a visa, are entitled to the same classification and priority date of the beneficiary of the petition. Text formerly in section 42.32(d)(2)(i)(B) is now consolidated with the definition of "qualifying full-time service" in section 42.34(c)(1).

In the definitions section, the rule clarifies what is meant by fulfilling 15 years of qualifying full-time service, explaining that it can be achieved in a number of ways. For example, working full-time for 10 years and half-time for at least 10 more would qualify the employee for consideration.

The rule also codifies a definition of "faithful service," which is a statutory requirement for special immigrant status under INA section 101(a)(27)(D), 8 U.S.C. section 1101(a)(27)(D). This definition reflects longstanding Department practice and guidance on what constitutes "faithful service," and the responsibility of the principal

officer to determine that the alien's service has been faithful. Department guidance that preceded this rule, and will continue, instructs principal officers at foreign service post to consider employees' disciplinary records and other similar factors in making this assessment.

The Department has also incorporated into the regulation, with some changes, guidance at 9 FAM 502.5-3(C)(2)(d)(3)(a)(iii) since March 27, 2019, explaining that "exceptional circumstances" includes situations where the United States and the host country have strained relations and the employee may be subjected to persecution or pressure to divulge information. Because the term "persecution," as defined in certain other U.S. legal contexts, does not accurately reflect the Department's policy relative to finding exceptional circumstances for this special immigrant status, the regulation adopts a standard of "retribution," to more accurately reflect the Department's policy and practice in this area. The Department does not anticipate this change in terminology will affect the application of this exceptional circumstance provision, because the Department, for the purposes of this provision, has historically considered conduct to be "persecution" within the meaning of the FAM guidance, as amended, despite not necessarily meeting the elements of "persecution" as defined in other contexts, such as in the asylum context, and as informed by the Board of Immigration Appeals and opinions by the Attorney General. Since the inception of this program, as a matter of policy, the Department has viewed 20 or more years of faithful service as prima facie evidence of "exceptional circumstances," because the employee has devoted such a large portion of his or her career to the U.S. government. This rule retains that understanding.

Section 42.32(d)(2)(iii) is now § 42.34(b)(2). The last sentence from 22 CFR 42.32(d)(2)(iv), stating "In cases described in § 42.33(d)(2)(ii), the validity of the petition shall not in any case extend beyond January 1, 2002" is not included in this rule, because it no longer applies.

This rule makes technical, but non-substantive changes to the text previously in § 42.32(d)(2)(v), and now in § 42.32(b)(5). First, the rule adds "or designee's" after "Secretary of State," and removes the "'s" after "Secretary of State." This rule also re-phrases the former reference to the Secretary of State's "approval of special immigrant status" to "approval of the principal officer's recommendation" for consistency with other references in this rule. Additional reorganization includes moving § 42.32(d)(2)(iv) to § 42.34(b)(4); § 42.32(d)(2)(vi) to § 42.34(b)(1); and § 42.32(d)(2)(vii) to § 42.34(b)(3).

What law or directive authorizes the rulemaking?

Pursuant to INA section 104(a), 8 U.S.C. section 1104(a), the Secretary of State may establish regulations necessary for the administration of the INA. INA section 101(a)(27)(D), 8 U.S.C. section 1101(a)(27)(D), provides for the granting of special immigrant status in exceptional circumstances to immigrants who are employees, or honorably retired former employees, of the U.S. government abroad, or of the American Institute in Taiwan, and who have performed faithful service for at least 15 years, as well as their accompanying spouse and children. Further, INA section 101(a)(27)(D), 8 U.S.C. section 1101(a)(27)(D), provides that the Secretary of State must approve each recommendation and find that it is in the national interest to grant special immigrant status. INA section 203(b)(4), 8 U.S.C. section 1153(b)(4), allocates visas to be made

available to qualified special immigrants each fiscal year.

What problem does the rulemaking address, and how does this rulemaking address it?

Until now, Department regulations have not addressed the criteria used by the Department in implementing statutory eligibility standards for special immigrant status. Certain criteria that were included in Volume 9 of the FAM were subjective or otherwise led to inconsistency in recommendations submitted by different overseas posts. This likely resulted in uncertainty for special immigrant status applicants and, potentially, inconsistent results for similarly situated applicants. The Department is revising the eligibility criteria to exclude the most subjective of criteria and adding new objective bases for establishing exceptional circumstances. The Department aims to promote consistency in adjudications of applications for special immigrant status. Codifying these objective criteria is intended to increase the likelihood that similar service is rewarded similarly around the world and increase the fairness and integrity of the special immigrant status process through more consistent application of the law. These transparent standards will aid the U.S. government abroad in recruiting and retaining loyal and committed foreign nationals.

How will the Department implement this rule?

There is a six-month delay in the effective date of this rule for the Department to continue the orderly adjudication of cases that are ready or nearly ready for consideration by the principal officer or the Secretary, or designee. The new standards will apply to all recommendations from the principal officer of a Foreign Service establishment submitted to the Department for consideration by the Secretary of State, or designee, on or after the effective date. The Department considers a recommendation to be submitted when the

Department has received the principal officer's recommendation through the proper submission methods from post. This rulemaking provides prospective applicants seeking to qualify under INA section 101(a)(27)(D), 8 U.S.C. section 1101(a)(27)(D), for special immigrant status notice regarding the Department's implementation of the program.

Regulatory Findings

Administrative Procedure Act

This rule relates to a foreign affairs function, and consequently, in accordance with 5 U.S.C. section 553(a)(1), it is not subject to the notice-and-comment rule making procedures set forth in 5 U.S.C. section 553. This rule affects the U.S. government's ability to recruit and retain locally employed staff for its overseas missions. It also clearly and directly impacts foreign affairs functions of the United States and "implicat[es] matters of diplomacy directly." *City of N.Y. v. Permanent Mission of India to the U.N.*, 618 F.3d 172, 202 (2d Cir. 2010).

This rule involves the Secretary of State's authority to determine that it is in the national interest to grant special immigrant status to a current or former employee of the U.S. government, a determination that involves a wide range of foreign affairs considerations and functions, including the U.S. government's bilateral relationship with the host country, the impact on the U.S. government's ability to recruit qualified personnel in the country, and the impact of special immigrant status availability on the willingness of foreign nationals to become, and remain as, employees of the U.S. government.

Special immigrant status eligibility is critical for the U.S. government to recruit and retain loyal, valuable local staff outside the United States, without which the

Department could not efficiently function overseas. The Department alone employs approximately 50,000 local staff at over 200 Foreign Service posts overseas, excluding local staff employed on behalf of all the other U.S. government agencies operating overseas, for which we lack data.[1] Because special immigrant status is only available to locally employed staff with at least fifteen years of faithful service, and under exceptional circumstances, potential eligibility encourages employees to remain in their jobs and to provide long-term, institutional memory to U.S. government agencies abroad. This is particularly essential in countries where local staff members face retribution by the host government, making it even more challenging to recruit and retain a locally employed workforce. The potential for locally employed staff to obtain special immigrant status for their spouses and children, in particular, is central to the U.S. government's ability to recruit and retain loyal and committed foreign nationals to support U.S. missions overseas. Consequently, the approval of recommendations for special immigrant status, and the promulgation of standards for such approval under the Secretary of State's authority in INA section 101(a)(27)(D), 8 U.S.C. section 1101(a)(27)(D), involve foreign affairs functions of the Department of State.

Regulatory Flexibility Act/Executive Order 13272: Small Business.

Because this rule is exempt from notice and comment rulemaking under 5 U.S.C. section 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. sections 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. section 605(b)), the Department certifies

[1] Corey R Gill, *U.S. Department of State Personnel: Background and Selected Issues for Congress*, Congressional Research Service, 15 (May 18, 2018).

that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. section 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. section 804(2).

Executive Order 12866, 13563, and 13771

The Office of Information and Regulatory Affairs has determined that this is a significant regulatory action under Executive Order 12866 and has reviewed this document. The Department has also reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The Department has also considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein. This regulation is *de minimis* under Executive Order 13771.

This regulation is being promulgated to avoid unfair variation in the administration of the special immigrant status program and to ensure consistent application of certain provisions of immigration law to principal officer recommendations for special immigrant status at U.S. foreign missions around the world. The Department

estimates that approximately 60 recommendations from a principal officer per year may be initially impacted by this rule, because an employee's qualifications will not demonstrate the requisite exceptional circumstances to qualify for special immigrant status due to the changes in standards implemented through this rule. The Department is unable to reliably estimate the number of dependents who may also be restricted in their ability to qualify for derivative status until their spouse or parent is recommended by a principal officer under this new rule. Assuming an average of 2 derivatives per principal applicant, the rule could affect approximately 180 people worldwide per year. The Department derived the estimate of affected principal officer recommendations from recent data regarding applicants who previously qualified for this program under the exceptional circumstances that are being removed or changed under this rule.[2]

The majority of the affected principal officer recommendations related to employee qualifications each year are likely to be delayed rather than permanently eliminated, as there are several other circumstances through which employees may receive principal officer recommendations and qualify for special immigrant status in the future. For example, some principal officer recommendations for applicants with at least 15 years of service, but less than 20 years of service, could previously qualify under the grounds of receiving at least two individual honor awards. This rule eliminates this category of exceptional circumstance. However, these same principal officer

[2] Specifically, the Department analyzed a sample of cases reviewed from June 2018 to March 2019. Of the 508 principal officer recommendations reviewed during that 10-month period, 50 qualified for this program solely based on the categories of exceptional circumstances that are being removed or changed. The volume of applications reviewed during this period was consistent with historical precedent. Based on this sample, the Department estimates that approximately five potential principal officer recommendations per month, or 60 per year, will not be eligible for special immigrant status but may have been eligible under the previous eligibility criteria. However, the Department has no way to anticipate the number of aliens who might qualify in the future under the new categories of exceptional circumstances created in this regulation.

recommendations may still qualify under a separate exceptional circumstance in the future by reaching 20 years of service. As a result, while an estimated 60 recommendations from principal officers regarding the qualification of applicants may be affected, the Department does not expect that a significant number of principal officer recommendations will be permanently affected.

The Department notes that there is a possibility that this rule may make it more difficult to hire foreign workers; however, as this program will remain intact and the effect is more likely to delay rather than eliminate eligibility, the Department expects this impact to be minimal. The Department will incur *de minimis* administrative costs to provide clear guidance and messaging regarding this change to all posts and to locally employed staff that may be impacted by the rule. While some locally employed staff may believe a principal officer would likely recommend them for special immigrant status on bases eliminated by this rule, there are several other categories, as discussed above, through which they may qualify in the future.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

Special immigrant status applicants complete the DS-1884 (OMB Control Number 1405-0082) and the DS-260 (OMB Control Number 1405-0185) after the Secretary, or designee, approves the recommendation from the principal officer. This rule has no effect on the DS-1884 or the cost burdens for individual applicants completing these forms. Rather, this rule applies to the adjudication standards applied internally by the Department's personnel. The Department believes this rule may initially reduce the overall number of DS-1884, Petition to Classify Special Immigrant Under INA 203(b)(4), by approximately 60 per year due to a decrease either in the number of principal officer recommendations submitted to the Department or the number of recommendations approved by the Secretary, or his designee. However, many of the affected applicants will likely eventually qualify and file both the form DS-1884 and DS-260. Because this rule is likely to delay, rather than prevent, most affected applicants from completing these forms, the Department does not believe that this proposal will affect the burden of these forms.

The Department estimates a related reduction in the overall number of immigrant visa applications on form DS-260 by approximately 180 per year, based on the past average of approximately two derivative family members per applicant for this applicant

pool. The Department is unable to reliably estimate the number of dependents of affected applicants for special immigrant status who will not file a DS-260, if the principal subsequently is approved for SIV status, because, *e.g.*, they will age out of dependent eligibility or they will be unable or unwilling to wait.

List of Subjects in 22 CFR Part 42:

Aliens, Immigration, Passports and Visas.

Accordingly, for the reasons set forth in the preamble, the Department of State amends 22 CFR part 42 as follows:

PART 42 VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105-277, 112 Stat. 2681; Pub. L. 108-449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901-14954 (Pub. L. 106-279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111-287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109-162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114-70, 129 Stat. 561).

Subpart D—Immigrants Subject to Numerical Limitations

2. In § 42.32, revise paragraph (d)(2) to read as follows:

§ 42.32 Employment-based preference immigrants.

* * * * *

(d) * * *

(2) *See* 22 CFR 42.34.

* * * * *

2. Add § 42.34 to read as follows:

§ 42.34 Special immigrant visas – certain U.S. Government employees

(a) *General.* (1) An alien is classifiable under INA 203(b)(4) as a special immigrant described in INA 101(a)(27)(D) provided:

(i) The alien has performed faithful service to the United States Government abroad, or of the American Institute in Taiwan, for a total of fifteen years, or more;

(ii) The principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director), recommends granting special immigrant status to such alien in exceptional circumstances;

(iii) The Secretary of State, or designee, approves such recommendation and finds that it is in the national interest to grant such status.

(b) *Petition requirement*. An alien who seeks classification as a special immigrant under INA 203(b)(4) based on service as an employee to the U.S. government abroad or American Institute in Taiwan must file a Form DS-1884, Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad, with the Department of State. An alien may file such a petition only after, but within one year of, notification from the Department that the Secretary of State or designee has approved a recommendation from the principal officer that special immigrant status be accorded the alien in exceptional circumstances, and has found it in the national interest to do so.

(1) *Petition fees*. The Secretary of State shall establish a fee for the filing of a petition to accord status under INA 203(b)(4) which shall be collected following notification that the Secretary of State, or designee, has approved the recommendation that the alien be granted status as a special immigrant under INA 101(a)(27)(D).

(2) *Establishing priority date.* The priority date of an alien seeking status under INA 203(b)(4) as a special immigrant described in 101(a)(27)(D) shall be the date on which the petition to accord such classification, the DS-1884, is filed. The filing date of the petition is the date on which a properly completed form and the required fee are accepted by a Foreign Service post. Pursuant to INA 203(d), and whether or not named in the petition, the spouse or child of an alien classified under INA 203(b)(4), if not otherwise entitled to an immigrant status and the immediate issuance of a visa, is entitled to the classification and priority date of the beneficiary of the petition.

(3) *Delegation of authority to approve petitions.* The authority to approve petitions to accord status under INA 203(b)(4) to an alien described in INA 101(a)(27)(D) is hereby delegated to the chief consular officer at the post of recommendation or, in the absence of the consular officer, to any alternate approving officer designated by the principal officer. Such authority may not be exercised until the Foreign Service post has received formal notification of the Secretary of State or designee's approval of special immigrant status for the petitioning alien.

(4) *Petition validity.* Except as noted in this paragraph, the validity of a petition approved for classification under INA 203(b)(4) shall be six months beyond the date of the Secretary of State's approval thereof or the availability of a visa number, whichever is later.

(5) *Extension of special immigrant status and petition validity.* If the principal officer of a post concludes that circumstances in a particular case are such that an extension of validity of the Secretary of State or designee's approval of the principal officer's recommendation or of the petition would be in the national interest, the principal officer shall recommend to the Secretary of State or designee that such validity be extended for not more than one additional year.

(c) *Definitions*—(1) *Full-time service.* An alien must have been employed for a total of at least 15 full-time years, or the equivalent thereof, in the service of the U.S. government abroad. The number of hours per week that qualify an employee as full-time is dependent on local law and prevailing practice in the country where the alien is or was employed, as reflected in the employment documentation submitted with the application for special immigrant status. An alien may qualify as a special immigrant under INA 101(a)(27)(D) on the basis of employment abroad with one or more than one agency of the U.S. government provided the total amount of full-time service with the U.S. government is 15 years or more, or the equivalent thereof.

(2) *Faithful service.* An alien must have performed faithfully in the position held. The principal officer has the primary responsibility for determining whether the alien's service meets this requirement. A record of disciplinary actions that have been taken against the alien does not automatically disqualify the alien. The principal officer must assess the disciplinary action in light of the extent and gravity of the misconduct and when it occurred and determine whether the record as a whole, notwithstanding disciplinary actions, is one of faithful service.

(3) *Continuity.* The alien's period of service need not have been continuous.

(4) *Abroad*. The service must have occurred anywhere outside the United States, as the term "United States" is defined in INA 101(a)(38).

(5) *Employment at the American Institute in Taiwan*. INA 101(a)(27)(D) permits both present and former employees of the American Institute in Taiwan to apply for special immigrant status. An alien's service before and after the founding of the American Institute in Taiwan is counted toward the minimum 15 years of service requirement.

(6) *Honorably retired*. Separations within the meaning of "honorably retired" include, for example, those resulting from mandatory or voluntary retirement, reduction-in-force, or resignation for personal reasons. Separations not within the meaning of "honorably retired" would include a termination for cause or an involuntary termination or resignation in lieu of a termination for cause.

(7) *Definition of exceptional circumstances*. The principal officer must determine that an alien demonstrates at least one form of "exceptional circumstances" to support an application for special immigrant status.

(i) *Prima facie indicators of exceptional circumstances.* In the following situations an alien's service with the U.S. government generally will be deemed to have met exceptional circumstances.

(A) Diplomatic relations between the alien's country of nationality and the United States have been severed;

(B) Diplomatic relations between the country in which the alien was employed and the United States have been severed;

(C) The country in which the alien was employed and the United States have strained relations and the employee may be subjected to retribution by the local, State, Federal, or other official government body merely because of association with the U.S. government, or the alien may be pressured to divulge information contrary to U.S. national interests; or

(D) The alien was hired as an employee at the Consulate General at Hong Kong on or before July 1, 1999.

(ii) *Strong indicators of exceptional circumstances.* (A) It is believed that continued service to the U.S. government might endanger the life of the alien;

(B) The alien has, fulfilled responsibilities or given service in a manner that approaches the heroic;

(C) The alien has been awarded a global or a regional "Foreign Service National of the Year" Award;

(D) The alien has disclosed waste, fraud or abuse, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation within the Department or other U.S. government agency, if such disclosure results in significant action by the Department or other U.S. government agency against an offending party, such as termination or severance of a contractual relationship, or criminal charges against any person or entity;

(E) The employee has served the U.S. government for a period of twenty years or more.

(8) *Immediate intent to immigrate.* (i) The recommendation of the principal officer must certify that the employee being recommended is prepared to pursue an immigrant visa application within one year of the Department's notification to the post of approval of special immigrant status and, if the employee is not honorably retired, that the employee intends permanent separation from U.S. government employment abroad no later than the date of departure for the United States following issuance of an immigrant visa.

(ii) Employees of Hong Kong Consulate General hired on or before July 1, 1999, are not required to establish immediate intent to immigrate. Employees of the Hong Kong Consulate General who received or were approved for special immigrant status before July 1, 1999, also may continue employment with the U.S. government.

Carl C. Risch
Assistant Secretary for Consular Affairs,
U.S. Department of State.

Billing Code: 4710-06

[FR Doc. 2020-12344 Filed: 6/15/2020 8:45 am; Publication Date: 6/16/2020]