

Ninth Circuit clarifies eligibility for “grandfathering” of 245(i) benefits for spouses

Landin-Molina v. Holder (9th Cir. 2009)

By Max Nuyen

Before 1994, in order to be eligible for adjustment of status, the applicant must have entered the country after having been inspected by a customs official at the point of entry. In 1994, Congress created a loophole to this general rule by enacting § 245(i) of the Immigration and Naturalization Act, which authorized adjustment of status for certain persons who were *unlawfully* present in the U.S. (i.e., those who entered without inspection). Section 245(i) was indeed a giant loophole because it permitted a whole class of persons who were previously ineligible for adjustment of status to apply for permanent residence status. Congress attached some conditions to § 245(i). Namely, the applicant must have a sponsor file an immigrant petition or labor certification on the applicant’s behalf prior to April 30, 2001, which was the sunset date for § 245(i). Thus, Congress created a seven year window in which unlawful aliens were able to obtain lawful status if their sponsor filed sponsorship papers in time.

The benefits afforded by § 245(i) were expansive and far reaching because it also extended the adjustment eligibility to spouses and children of persons who benefitted from § 245(i). That means a spouse or child of a person who adjusted status through § 245(i) may do the same. This was known as “grandfathering,” which permitted additional persons to piggyback on the eligibility of one person. A person who qualified for § 245(i) may be able to confer his eligibility to his spouse and all his children (and such persons in turn could also confer eligibility). Like all immigration benefits, there were certain limitations.

In a recent case, the U.S. Court of Appeals for the Ninth Circuit set forth what those limitations are with respect to spouses of § 245(i) beneficiaries. The alien in this case came to the U.S. without inspection in 1999. In 2004, after being placed in removal proceedings, the alien married his spouse, who had recently obtained lawful permanent residence status pursuant to § 245(i). The alien argued he had been “grandfathered” § 245(i) benefits on account of his marriage to his wife, who was a § 245(i) beneficiary. The immigration judge and the Board of Immigration Appeals rejected the alien’s argument, finding he had not been grandfathered because he married his spouse after she had already adjusted status.

On appeal, the Ninth Circuit affirmed the BIA’s decision. The Ninth Circuit found in order for a spouse to be eligible for grandfathering of § 245(i) benefits, the marriage must have existed prior to the beneficiary spouse’s adjustment of status. This is because § 245(i) required a derivative spouse to be “accompanying or following to join” the principal spouse. If the marriage did not exist at the time the principal spouse adjusted status, it would not be possible for a beneficiary spouse to fulfill the requirement that he was “accompanying or following to join” the principal spouse. The plain language of the § 245(i) implicitly requires the derivative spouse be a “spouse” before the principal spouse adjusts status. A marriage entered into after the fact would not qualify.

Thus, the Ninth Circuit concluded the alien’s adjustment application was properly rejected because he married his spouse after she had already become a lawful permanent

resident. Her eligibility for § 245(i) benefits did not flow to him because he was not a spouse at the time that she received the benefits.