

9 FAM 502.5-3(C)(2) Approval Standards for U.S. Government Employee Special Immigrant Status under INA 101(a)(27)(D)

(CT:VISA-1079; 05-18-2020)

- a. **Defining "Honorably Retired":** A former employee of the U.S. government abroad seeking classification under INA 101(a)(27)(D) must establish that he or she is "honorably retired" as the term is used in the statute. An employee, whose termination is a result of reduction-in-force, separation due to age, voluntary retirement, or resignation for personal reasons, can be considered "honorably retired". Separation not within the meaning of "honorably retired" would involve forced or requested removal for cause or a resignation aimed at forestalling such removal.
- b. **Defining "Faithful Service":** An alien seeking classification under INA 101(a)(27)(D) must have performed faithfully in the position held. The principal officer has primary responsibility for determining whether the alien's service meets this requirement. A record of disciplinary actions that have been taken against the employee does not automatically disqualify the employee. The principal officer is to assess the importance of any such disciplinary actions in light of:
- (1) The gravity of the reasons for the disciplinary action; and
 - (2) Whether the record as a whole, notwithstanding existing disciplinary actions, is one of faithful service.
- c. **Years of U.S. Government Service:** An alien must have been employed for a total of at least 15 full-time years in the service of the U.S. government abroad.
- (1) **Full-Time Service:** Although the total employment period must equal at least 15 years of full-time service, the employee need not have worked full-time throughout the period. For example, if the employee worked full-time for 10 years and half-time for at least 10 more, that equivalent of 15 years of full-time employment would qualify the employee for consideration.
 - (2) **Continuity:** The employee's period of service need not have been continuous. For example, if an alien was employed for nine years, left for a period of time, and later returned to U.S. government service for six or more years, this would meet the 15-year requirement.
 - (3) **Where and for Whom Worked Irrelevant:** The location of the employment does not matter as long as it meets the definition of abroad. Similarly, it does not matter if the employment was with different agencies, provided that it all meets the definition of U.S. government employment.
- d. **"Exceptional Circumstances" Requirement:**
- (1) The principal officer's recommendation that an alien be granted special immigrant status under INA 101(a)(27)(D) must be made in "exceptional circumstances." The legislative history of this provision does not indicate specifically what such "exceptional circumstances" might be. However, Congress clearly did not intend that an alien be granted the benefits of INA 101(a)(27)(D) simply as recognition for the requisite years of service.
 - (2) The following categories represent longstanding criteria used to determine whether there were "exceptional circumstances" present in an employee's case.

In preparing recommendations to the Department, posts must describe in the AO request text exceptional circumstances that met the below criteria.

Recommendations containing only general statements or anecdotes that do not detail clearly the specifics of how the employee meets one or more of the following criteria will not normally satisfy the "exceptional circumstances" requirement and will be returned to post for further consideration. It is important that the AO request narrative strongly indicates that there were "exceptional circumstances" present in an employee's case and describes the circumstances in full detail.

- (3) **Categories of "Exceptional Circumstances":** "Exceptional circumstances" fall broadly within the three categories below. Cases falling under the first category (a) likely will be more of an objective nature than categories (b) and (c). Category (b) will be more objectively oriented than category (c).
- (a) **"Exceptional Circumstances" of a Prima Facie Nature:** The following factors are illustrative of situations in which an employee's service with the U.S. government generally will be deemed to have "exceptional circumstances." Note that employees in the following situations also must meet the other requirements for SIV status, including the qualifying employment relationship and the 15-year statutory minimum length of "faithful service":
- (i) Relations between the alien employee's country of nationality and the United States have been severed;
 - (ii) The country in which the alien employee was employed and the United States have severed diplomatic relations;
 - (iii) The country in which the alien employee was employed and the United States have strained relations and in which the employee may be subjected to persecution by the local government merely because of association with the U.S. government, or where the circumstances are such that the employee may be pressured to divulge information available to him or her which would be contrary to U.S. national interests; and/or
 - (iv) The alien was hired as an employee at the Consulate General at Hong Kong on or before July 1, 1999. (See also 99 State 124186.)
- (b) **Cases that Strongly Merit Consideration of a Finding of "Exceptional Circumstance":** In some cases, an employee has in the course of "faithful service" fulfilled responsibilities or rendered service so far beyond the call of duty that some form of recognition is merited. If circumstances such as those mentioned below are present in a case, the AO request must address the circumstances in detail. Circumstances such as the following definitely would meet the "exceptional circumstances" requirement:
- (i) The employee has performed faithful and excellent service to the U.S. government, and it is believed that continued service to the U.S. government might endanger the life of the employee; or
 - (ii) The employee has, in the course of faithful service, fulfilled responsibilities or given service in a manner that approaches the heroic. Obvious examples are prevention of a physical attack on a U.S. official or citizen at the risk of an employee's own life; cumulative TDY

service of at least six months in Iraq or Afghanistan; or protection of U.S. property in time of war, uprising, natural disaster, or other grave local disturbance. All LE staff TDY time served in Afghanistan and Iraq may be considered as part of "exceptional circumstances" required for an SIV.

- (c) **Other "Exceptional Circumstances" Cases:** Exceptional circumstances can encompass less spectacular activities than those referred to in [9 FAM 502.5-3\(C\)\(2\)](#) paragraph d(3)(b) above. It is not necessary for such an employee to have risked his or her life in the line of duty or to have worked for more than 15 years to qualify for consideration under this section. The following factors may, individually or in combination, support a determination of "exceptional circumstances":
- (i) Employees who have performed faithful and excellent service to the U.S. government for a period substantially exceeding the 15-year statutory minimum. Particular consideration will be given to cases involving the excellent service of an employee with 20 or more years of employment with the U.S. government;
 - (ii) The employee has been recognized with multiple individual awards listed in [3 FAM 4820](#) or 4830; however, a single award in those categories in recognition of particularly exceptional service could support a finding of exceptional circumstances. Awards may be a helpful way to identify and document that an employee's service to the U.S. government has been particularly valuable and worthy of an SIV. Bear in mind that the quality of service reflected by the award, rather than the award itself, is what is relevant. A nomination that relies upon any awards to show "exceptional circumstances" must include a detailed description in the AO request text of the circumstances leading to the employee's nomination for the award, as well as the award's citation. Awards granted on a group basis generally will be given little weight, because such awards have limited utility in establishing whether the recipients were exceptional individually. If an award is not listed in [3 FAM 4820](#) or [3 FAM 4830](#), including another agency's award, either post's human resources office or the Department's Bureau of *Global Talent Management* must determine whether the award is equivalent to the Department's Honor or Annual awards;
 - (iii) The employee has (or has had) high visibility in a sensitive position, and the employee's performance as a representative of the U.S. government in contacts with host government entities and other organizations has brought great credit to the agency by which employed;
 - (iv) The employee's position with the U.S. government requires control over key aspects of the operations or overall functioning of a Foreign Service post. As an example, control over the finances of a post would be a favorable consideration. We will give particular consideration to an employee whose performance has resulted in substantial monetary savings for the U.S. Government or has yielded other significant benefits;
 - (v) The employee has, apart from performance of official duties, rendered valuable services and assistance to the U.S. community at post,

including activities undertaken after termination of the employee's official employment relationship with the U.S. government;

- (vi) The employee has provided faithful and excellent service for an extended time in a responsible position in a country foreign to that employee, has thereby lost economic and social ties in the home country, and thus, might find it extremely difficult to be at ease in either the country of service or the home country after retiring, or virtually impossible to find suitable employment if desired.
- (4) The principal officer's recommendation that the employee or retired employee be granted special immigrant status under exceptional circumstances must be based on:
- (a) Official records to establish the period of time served with the U.S. government;
 - (b) Documented evidence of "exceptional circumstances"; and
 - (c) Assessment of the overall picture of the employee's performance as illustrated in the personnel file by such items as evaluation reports, reprimands, awards, etc. It is not required that the principal officer or SIV committee have personal knowledge of the applicant; depending on the circumstances of the case, a positive recommendation could be made solely from information in the applicant's personnel file.