U.S. Department of Homeland Security
Office of Field Operations
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Washington, DC 20529

U.S. Citizenship and Immigration Services

Interoffice Memorandum

JAN 10 2005

To: Robert Cowan,
Director, National Benefits Center

From: Terrance M. O'Reilly
Director, Field Operations

SUBJECT: Adjudication of Form I-539 for V-2 and V-3 extension

On October 5, 2004 in Akhtar v. Burzynski, No. 02-57037, the Ninth Circuit invalidated the age-out provisions of 8 C.F.R. 214.15(g) and remanded the action to the District Court for further proceedings.

While the decision would only apply to cases filed by applicants in the Ninth Circuit, CIS will apply the decision nation-wide immediately. A regulatory solution is in the making; however, effective immediately, the following guidance is provided for adjudication of Form I-539 filed for V-2 and V-3 extension.

If the only reason for potentially denying an I-539 filed for V-2 or V-3 extension is that the alien has turned 21, the application shall be approved and the period of admission shall be in accordance with 8 C.F.R. 214.15(g)(1) (granted a period of admission not to exceed two years). The alien shall continue in such status until such status is terminated pursuant to 8 C.F.R. 214.15(j).

An alien who had previously been accorded V-2 or V-3 status and whose application for V-2 or V-3 extension was denied solely due to the alien being over the age of 21 may file a new application for extension.

Nothing in this guidance alters the fact that in order to be eligible for initial V-2 or V-3 status the alien must meet the definition of "child" of section 101(b) of the I.N.A.