Adjudicator's Field Manual

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Chapter 24 Legalization.

24.1 Historical Background.

The legalization program came into existence with the passage of the Immigration Reform and Control Act of 1986 (IRCA). IRCA added two new sections to the Immigration and Nationality Act (sections 210 and 245A) dealing with legalization. Subsequent legislation (e.g., the Immigration Act of 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and the Legal Immigration Family Equity Act) have amended the benefits available under the legalization program, which has also been the subje ct of numerous lawsuits against INS.

24.2 Legalization under Section 245A of the Act .

(a) General .

The Legalization provisions are contained in section 245A of the Act. This section of law provides a means for certain aliens who had maintained an unlawful residence in the United States since prior to January 1, 1982, and who were physically present in the U.S. from November 6, 1986 until the date of filing of the application, to become temporary residents. Then upon application and fulfillment of continuous residence and other conditions, they could file for permanent residence.

(b) Injunctions Against INS and Their Effect .

Two injunctions have, in effect, extended the filing time for certain aliens. They were the *LULAC vs INS* and the *CSS vs Meese* (later renamed *CSS vs Thornburg* when consolidated at the appellate level) lawsuits. INS is required to accept applications from those seeking class membership under the criteria specified in these injunctions.

· *LULAC vs INS* : Persons who were illegally in the U.S. before January 1, 1982, but departed and reentered with a fraudulently obtained visa. A waiver under section 212(a)(6)(C) of the Act must be obtained by concurrent filing of the Form I-690, Application for Waiver of Grounds of Excludability.

· *CSS vs Thornburg* : Persons who were illegally in the U.S. prior to January 1, 1982, but who made a brief, casual and innocent trip outside the U.S. between May 1, 1987 and May 4, 1988.

The applicant must show that he/she had been misled or discouraged from filing an application before May 5, 1988. Subsequent court decisions have maintained that a simple statement from the alien is sufficient to prove that the alien departed and returned and was "front-desked" by INS.

Some applications filed under these two injunctions are supported by fraudulent affidavits and class membership could be denied on the basis that the affidavits cannot be verified. Some document vendors furnish complete cases for the aiens to file in order to gain employment authorization

(c) Applications for Temporary Residence .

(1) Filing of the Application .

The proper application to file requesting classification as a temporary resident was the Form I-687. The complete application contained Form I-687, photographs, Form I-693 (Medical Examination), Form FD-258 (Fingerprint Cards (2)), proof of identity, and evidence of eligibility. The forms could be filed with a Qualified Designated Entity (QDE) (an organization approved by the Attorney General to accept and process legalization applications). Authority for QDEs to accept applications expired at the end of th e prescribed application filing period). A 90 million series A-file was created for each applicant.

(2) Filing Period .

The filing period for Legalization applications was from May 5, 1987 through May 4, 1988. One group of aliens, those classified as "Extended Voluntary Departure", could apply for temporary residence until December 22, 1989.

(3) Initial Review of the Application .

The Form I-687 is an application for temporary residence for a legalization applicant. The evidence supplied with the application is first reviewed by an officer in the District Office. The alien must prove by a preponderance of the evidence that he or she is eligible for temporary residence. The evidence must be verifiable. Proof of identity must be furnished. And if assumed names have been used by the alien, then proof of common identity must be furnished. Proof of the qualifying illegal residence periods must be furnished.

(4) Initial Decision .

An Immigration Adjudicator within the District Office will make a preliminary decision to grant or to deny

the application. Form I-696 will be completed, to document the officer's recommendation, and placed in the A-file. If the initial decision is to grant the application, then the Employment Authorization Document, Form I-688A, is issued to the alien. At this time the Temporary Resident Alien Card, Form I-688, is created and placed in a filing cabinet in terminal digit order. If the initial decision is to deny the application on statutory grounds that do not allow for a waiver, no employment is authorized. The file is then transferred to the Service Center having jurisdiction over the area where the alien resides.

(5) Final Decision .

When the application for temporary residence is granted, a letter is sent from the Service Center requesting that the alien report to a local office to receive the Form I-688, Temporary Resident Alien Card. The I-688 indicates that temporary residence is granted under section 245A of the Act.

(6) Effective Date .

The date of adjustment to temporary resident status is the date of fee receipt.

(d) Termination of Temporary Residence .

Temporary residence may be terminated for cause. Circumstances must exist that would make the alien ineligible for permanent residence (e.g., a felony conviction). The alien is sent a *Notice of Intent to Terminate Temporary Resident Status* , stating the reasons that would make the alien ineligible for permanent residence or temporary residence if that status was granted in error. The alien is granted 30 days to respond or rebut the allegations. If no satisfactory response is received, the temporary resident status is terminated by an order issued by a service center director.

(e) Application for Permanent Residence .

(1) General .

The temporary resident under section 245A of the Act could file an application for permanent residence at any time after attaining temporary residence. However, the application would not be processed until the beginning of the nineteenth month after the alien received temporary residence (date the fee for the Form I-687 was receipted by INS). The application package should contain Form I-698, *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603)* , Form I-693, medical examination form, and one color photograph. IMMACT 90 extended the time period for filing for permanent residence to a maximum of 42 months from the date the alien received temporary residence.

(2) Filing .

The application is filed with the Service Center having jurisdiction over the place of residence of the alien.

(3) Eligibility Requirements .

(A) Residence .

The applicant for permanent residence must show continuous residence from the time temporary residence was granted. The alien could be absent from the U.S. for an aggregate period of 90 days, but no more than 30 days in a single absence, unless he or she could show circumstances beyond their control or of an emergent nature.

(B) Knowledge of U.S. History and Government .

Requirements of section 312 of the Act must be met by taking a standard USCIS test or by certificate of satisfactory completion in a study program approved by the Attorney General, or the alien must be pursuing a course of study approved by the Attorney General. Once the section 312 conditions are met, the alien is not required to take another examination for history and government for naturalization. The section 312 requirements may be waived for an applicant over the age of 65.

(4) Interview .

If the application for permanent residence is complete and approved by the Service Center, then the applicant is sent an interview notice from the Service Center scheduling the alien for an interview at a district office. The interview consists of verifying identity, the completion of section 312 requirements, and the processing of the Form I-89 for the resident alien card.

(5) Admissibility .

The exclusion grounds not applicable to legalization applicants were paragraphs (5) (requirement for labor certification) and (7)(A) (immigrant visa requirement) of section 212 of the Act. Applicants who were not admissible to the United States for other grounds could file Form I-690, *Application for Waiver of Grounds of Excludability* , for all grounds contained in section 212(a) of the Act, except for those offenses defined in paragraphs (2)(A) and (2)(B) (relating to criminals); paragraph (4) (relating to aliens likely to become public charges); paragraph (2)(C) (relating to drug offenses, except for a single offense of simple possession of marijuana, 30 grams or less); and paragraph (3) (security related grounds, except for subparagraph (3)). A felony conviction or conviction of three or more misdemeanors made the applicant ineligible for temporary residence and permanent reside nce.

(6) Denials .

A final denial may be issued by the District Director in an admitted fraud case or where the applicant did not meet statutory requirements. The denial is issued on form I-292 stating the reasons for the denial, and informing the applicant of appeal rights. Should the District Director not wish to make the final decision, with a recommendation of denial, the case could be referred to the Service Center Director having jurisdiction over the residence of the applicant. The denials issued by a Service Center Di rector are issued on form I-692 setting forth the specific reasons for the denial and informing the applicant of appeal rights. When the denial is issued the applicant should be sent three copies of Form I-694, *Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act* . If the decision of the District Director or the Service Center Director is appealed, the appeal must be filed with the Director who denied the application within 30 days of receipt of the written denial. After receipt of the fee, the appeal is forwarded to the Administrative Appeals Office. Untimely appeals are accepted as motions to reopen and either granted on the basis of additional evidence submitted or forwarded to the Administrative Appeals Office.

(f) Confidentiality .

INS, USCIS, and DHS may not use or disclose information in a legalization application or its accompanying evidence except to adjudicate the application itself, or for certain law enforcement functions and fraud proceedings. If the legalization application is granted, however, and the alien later files an immigrant visa petition or other status petition under section 204 of the Act, INS and USCIS may use information in the legalization file in adjudicating the immigrant visa petition. This also applies to adjudicating a later naturalization application. Consult with district counsel when contemplating any use or disclosure of this information.

(g) Precedent Decisions .

- Matter of O- , 19 I & N Dec. 871 (Comm'r 1989) . The Legalization Appeals Unit will *sua sponte* reopen and reconsider section 245A of the Act cases where there appears to be manifest injustice in the original decision. A nonimmigrant exchange visitor is eligible for temporary resident status if he/she was not subject to section 212(e) of the Act or obtained a waiver of section 212(e).

- Matter of M- , 19 I & N Dec. 861 (Comm'r 1989) . A conviction exists pursuant to section 245A(a)(4)(B) of the Act where a judge or jury has found the alien guilty or a plea of guilty or nolo contendere, and the judge has ordered some form of punishment, including but not limited to a fine or probation.

- Matter of S- , 19 I & N Dec. 851 (Comm'r 1988) . An immigrant alien who entered the U.S. prior to 1/1/82 is eligible for temporary resident status if he/she can prove that they were residing in the U.S. in unlawful status since such date. An immigrant who entered the U.S. by means of fraud prior to 1/1/82 must file a waiver of grounds of excludability to be eligible for temporary residence.

- Matter of P- , 19 I & N Dec. 823 (Comm'r 1988) . The Application for Waiver of Excludability (Form I-690) should be adjudicated separately form the Application for Status as a Temporary Resident (Form I-687). A nonimmigrant alien whose unlawful status is known to the U.S. Government prior to 1/1/82 is eligible for temporary resident status under section 245A of the Act, if otherwise qualified.

- Matter of C- , 19 I & N Dec. 808 (Comm'r 1988) . An absence from the U. S. in excess of the 30 day limit does not interrupt continuous residence defined in 8 CFR 245A.1(c)(1)(i) if the absence was unexpected and emergent.

- Matter of N -, 19 I & N Dec. 760 (Comm'r 1988) . A student who acquired reinstatement by fraud, by not revealing unauthorized employment, did not obtain lawful status. Waiver of excludability is required prior to the grant of temporary residence.

- Matter of Medrano , 20 I&N Dec. 21 (BIA 1990) . The status of a lawful temporary resident under section 245A of the Act who commits a deportable offence must be terminated as a condition precedent to the commencement of deportation proceedings, except as provided by the "Medrano regulations" found at 8 CFR 245a.2(a)(2)(ii).

24.3 Special Agricultural Worker (SAW) and Replacement Agricultural Worker (RAW) Programs.

(a) The SAW Program .

The Special Agricultural Worker (SAW) provisions are contained in section 210 of the Act. This section of law provided a means for certain agricultural workers to attain temporary residence then later automatic adjustment to permanent residence.

(1) Jurisdiction .

Special offices were established within INS for the acceptance, review, and adjudication of applications under the Legalization and SAW programs. There were two types of offices established. The first office was the Legalization Office located within a district and under the supervision of the District Director. The second office, called the Regional Processing Facility (RPF), was located within a Service Center, and under the jurisdiction of the Regional Commissioner. It was within this regional facility w here the final decision, in most cases, to grant or deny temporary resident status was made. In the latter part of 1991 most of the legalization offices were closed and the workload was transferred to the district offices. The Regional Processing Facilities were combined with the Service Centers and no longer functioned as separate entities. The Service Centers were placed under the direct supervision of the Office of Service Center Operations in INS Headquarters. The final authority for the granting of Tem porary Residence under section 210 of the Act lies with the Service Center Director.

(2) Definitions of SAW groups .

- Group I : The applicant must have been employed in a qualifying agricultural occupation in the United States for 90 man-days in the aggregate (this means that the 90 days did not have to be consecutive and only one hour of work per day was required to equal a man-day) in each of the 12 month periods ending on May 1, 1984, 1985, and 1986. The applicant must also have resided in the United States for six months, in the aggregate, in each of those 12 month periods.

- Group II :The applicant must have been employed in the United States for 90 man-days in the aggregate, in qualifying agricultural employment, during the 12 month period ending May 1, 1986. There is no United States residence requirement for SAW Group II.

There was a numerical limit of 350,000 placed on SAW Group I admissions. However, there was no limitation placed on SAW Group II admissions, and any SAW Group I applicants in excess of the limitation of 350,000 were granted SAW Group II status.

(3) Filing of the Application .

The proper application to file to request classification as either a Group I or Group II SAW was the Form I-700. The complete application contained Form I-700, Form I-693 (Medical Examination), Form FD-258 (Fingerprint Cards (2)), proof of identity, and evidence of eligibility. The forms could be filed with a Qualified Designated Entity (QDE) (an organization approved by the Attorney General to accept and process legalization applications. Authority for QDEs to accept applications expired at the end of the prescribed application filing period.), a designated Port of Entry or an Overseas Processing Office. A 90 million series A-file was created for each applicant.

(4) Filing Period .

The filing period for SAW applications was from June 1, 1987 through November 30, 1988.

(5) Initial Review of the Application .

The Form I-700 was an application for temporary residence. The evidence supplied with the application was first reviewed by an officer in the District Office. The alien must prove by a preponderance of the evidence that he or she was eligible for temporary residence. The evidence must be verifiable. Proof of identity must be furnished. And if assumed names have been used by the alien, then proof of common identity must be furnished. Proof of the qualifying residence periods must be furnished by SAW Group I applicants only. Proof of qualifying periods of employment must be furnished by all applicants.

(6) Initial Decision .

An Adjudicator within the District Office will make a preliminary decision to grant or to deny the application. Form I-696 will be completed, to document the officer's recommendation, and placed in the A-file. If the initial decision is to grant the application, an Employment Authorization Document, Form I-688A, is issued to the alien. At this time the Temporary Resident Alien Card, Form I-688, is created and placed in the "A" file. If the initial decision is to deny the application on statutory grounds tha t do not allow for a waiver, no employment is authorized. The file is then transferred to the Service Center having jurisdiction over the area where the alien resides.

(7) Final Decision .

When the application for temporary residence was granted, a letter was sent from the RPF requesting the alien to report to a local office to receive the Form I-688, Temporary Resident Alien Card. The I-688 indicated that temporary residence was granted under section 210 of the Act.

(8) Permanent Residence .

Permanent residence was granted to SAWs by statute. All SAWs Group I became legal permanent residents on December 1, 1989. All SAWs Group II became legal permanent residents on December 2, 1990. Both groups were required to file Form I-90A to receive their alien registration cards, Form I-551.

(9) Admissibility .

The exclusion grounds that were not applicable to SAWs are paragraphs (5) (requirement for labor certification) and (7)(A) (immigrant visa requirement) of section 212 of the Act. Applicants who were not admissible to the United States for other grounds could file Form I-690, *Application for Waiver of Grounds of Excludability* , for all grounds contained in section 212(a) of the Act, except for those offenses defined in paragraphs (2)(A) and (2)(B) (relating to criminals); paragraph (4) (relating to aliens likely to become public charges); paragraph (2)(C) (relating to drug offenses, except for a single offense of simple possession of marijuana, 30 grams or less); and paragraph (3) (security related grounds, except for subparagraph (3)). A felony conviction or conviction of three or more misdemeanors made the applicant ineligible for temporary residence.

(10) Denials .

A final denial may be issued by the District Director in an admitted fraud case or where the applicant did not meet statutory requirements. The denial is issued on Form I-292 stating the reasons for the denial and informing the applicant of appeal rights. Should the District Director not wish to make the final decision, with a recommendation of denial, the case could be referred to the Service Center Director having jurisdiction over the residence of the applicant. The denials issued by a Service Center Dir ector are issued on Form I-692 setting forth the specific reasons for the denial and informing the applicant of appeal rights. When the denial is issued the applicant should be sent three copies of Form I-694, *Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act* . If the decision of the District Director or the Service Center Director is appealed, the appeal must be filed with the Director who denied the application within 30 days of receipt of the written denial. After receipt of the fee, the appeal is forwarded to the Administrative Appeals Office. Untimely appeals are accepted as motions to reopen and either granted on the basis of additional evidence submitted or forwarded to the Administrative Appeals Office.

(b) The Replacement Agricultural Worker Program .

Section 210A of the Act, the Replenishment Agricultural Worker (RAW) program, was added by the 1986 IRCA. According to section 210A(a)(1) of the Act, the RAW program was to be effective from FY90 through the end of FY93. The program was enacted as a means of providing additional seasonal agricultural workers to U.S. agricultural employers to alleviate possible shortages of workers for perishable crops. The program allowed the government to replenish the supply of farmworkers by providing foreign workers with legal resident status if the Secretaries of Agriculture and Labor determined that a shortage of such workers existed. In the three year s during which the program was in place, however, a shortage of agricultural workers was never found to exist. Therefore, no immigration benefits were ever granted through the RAW program. As Congress gave no indication that it would extend the RAW program beyond the statutory expiration date, INS removed the regulations implementing the RAW program on May 10, 1994.

(c) Confidentiality .

INS, USCIS and DHS may not use or disclose information in a legalization application or its accompanying evidence except to adjudicate the application itself, or for certain law enforcement functions and fraud proceedings. If the legalization application is granted, however, and the alien later files an immigrant visa petition or other status petition under section 204 of the Act, INS or USCIS may use information in the legalization file in adjudicating the immigrant visa petition. This also applies to adjudicating a later naturalization application. Consult with district counsel when contemplating any use or disclosure of this information.

(d) Precedent Decisions .

- Matter of Juarez , 20 I&N Dec. 340 (BIA 1991) . The lawful temporary resident SAW who subsequently commits a deportable offense is not required to be terminated as a temporary resident as a condition precedent to the commencement of deportation proceedings.

24.4 Family Unity Program .

(a) General .

On November 29, 1990, The Immigration Act of 1990 (IMMACT), Public Law 101-649, was enacted. Section 301 of IMMACT provides for relief from deportation, and the granting of employment authorization, to an eligible immigrant who is the spouse or unmarried child of a legalized alien holding temporary or permanent residence pursuant to sections 210 or 245A of the Immigration and Nationality Act, or permanent residence under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment). This new program supersedes the administrative Family Fairness Program. The LIFE Act Family Unity program will be discussed in Chapter 24.6 of this field manual.

(b) Purpose .

The purpose of the Family Unity Program is to provide a transition for certain family members of legalized aliens to family-sponsored second preference immigrant status. This is evident not only from section 301 of IMMACT, but also from its interrelationship with section 112 of IMMACT, which created up to an additional 55,000 visa numbers in fiscal years 1992, 1993, and 1994 for spouses and children of eligible legalized aliens under the family-sponsored second preference classification.

(c) Where to File .

An application for benefits under the Family Unity program must be filed at the Service Center having jurisdiction over the alien's place of residence, on Form I-817, Application for Family Unity Benefits. A separate application must be filed by each person claiming eligibility. Denial of an application may not be appealed. The applicant must submit another application to overcome the grounds of denial.

Note:

A separate Form I-765 , Application for Employment Authorization, is NOT required. As part of the settlement of a Nationwide class action lawsuit, Hernandez v. Reno , C.A. No. 9:93 CV 63 (E.D. Tex., filed December 30, 1997), INS agreed to provide for a single application for Family Unity benefits and employment authorization.

(d) Basic Requirements for Family Unity . [Chapter 24.4(d)(1) replaced 08-25-2009]

The following requirements apply to all petitions filed for Family Unity under IMMACT 90, Public Law 101-649 :

(1) The applicant must have been the spouse or unmarried child of a legalized alien on May 5, 1988, or December 1, 1988 in the case of a legalized alien under the Special Agricultural Worker (SAW) program. See section 210 of the Act.

If on May 5, 1988, or where applicable, December 1, 1988, an applicant had the requisite relationship to the legalized alien, the applicant should not be found ineligible for Family Unity benefits based on the occurrence of any of the following:

(A) the unmarried applicant subsequently marries; or

(B) the relationship between the applicant and the qualifying legalized alien spouse, though in existence on the above specified date ends after that date, whether voluntarily or involuntarily; or

(C) the qualifying legalized alien parent is now deceased; or

(D) the qualifying legalized alien spouse is now deceased.

The applicant must meet all other eligibility requirements, see 8 CFR 236.12, and be otherwise eligible for the benefit.

(2) The applicant must have entered on or before May 5, 1988 (or December 1, 1988, where appropriate), and been residing in the United States since that date. If the applicant leaves the United States without

advance parole after May 5, 1988 (or December 1, 1988, where appropriate) the I-817 must be denied; and

(3) The legalized alien must have filed for benefits on or before May 5, 1988 under section 245A of the Act or on or before December 1, 1988 under section 210 of the Act, or is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986. (See also denied cases)

(e) Legalization Application Pending as of May 5, 1988 .

An alien whose 245A legalization application was filed on or before May 5, 1988 but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 for purposes of the Family Unity program. An alien whose 210 SAW application was filed on or before December 1, 1988 but not approved until after that date will be treated as having been a legalized alien as of December 1, 1988 for purposes of the Family Unity program.

(f) Ineligible Aliens .

The following categories of aliens are ineligible for benefits under the Family Unity program:

(1) An alien who is deportable under any paragraph in section 237(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); provided that an alien who is deportable under paragraph 237(a)(1)(A) is also ineligible for benefits under the Family Unity program if deportability is based upon a ground of inadmissibility described in section 212(a)(2) or section 212(a)(3) of the Act;

(2) An alien who has been convicted of a felony or three or more misdemeanors in the United States;

(3) An alien described in section 241(b)(3)(B) of the Act; or

(4) An alien who has committed an act of juvenile delinquency which if committed by an adult would be a felony involving violence.

The regulations governing the family unity program are found at 8 CFR 236.10 through 8 CFR 236.18, Since these regulations are difficult to follow, the following is a list of those exclusion or deportation grounds which render an alien ineligible for Family Unity benefits.

- 237(a)(1)(A) - Inadmissible at entry pursuant to:

- 212(a)(2) - Criminal and related grounds

- 212(a)(3) - Security and related grounds

- 237(a)(1)(D) - Termination of conditional permanent residence

- 237(a)(1)(E) - Smuggling

- 237(a)(1)(G) - Marriage fraud

- 237(a)(2) - Criminal offenses

- 237(a)(3)(B) - Failure to register or falsification of documents

- 237(a)(3)(C) - Document fraud

· 237(a)(3)(D) - Falsely claiming citizenship

· 237(a)(4) - Security and related grounds

· 237(a)(5) - Public charge

· 237(a)(6) - Unlawful voters

· Other ineligible aliens include those convicted of a felony or three or more misdemeanors in the United States; aliens who have ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion; aliens who have been convicted by a final judgment of a particularly serious crime and is a danger go the community; aliens where there are serious reasons to believe a serio us nonpolitical crime was committed outside of the United States; aliens who are a danger to the security of the United States; and aliens who have committed acts of juvenile delinquency which if committed by an adult would be a felony involving violence.

(g) Approved Cases .

An alien whose application for benefits under the Family Unity program is granted will receive protection from removal for a 2-year period. He or she will be deemed to be in an authorized period of stay. Such authorized period of stay will be deemed to begin as of the date the Form I-817 was filed and continues without interruption until the Form I-817 is approved and through the period the alien retains Family Unity protection.

(h) Employment Authorization .

An alien granted benefits under the Family Unity program is authorized to be employed in the United States and should be provided an Employment Authorization Document valid for the same 2-year period as the protection from removal.

(i) Travel .

An alien granted Family Unity benefits who intends to travel outside the United States and then return must apply for advance authorization using Form I-131, Application for Travel Document. The authority to grant an application for advance authorization for alien granted family unity benefits rests solely with the district director . (See also Chapter 54 of this field manual.)

(j) Denied Cases .

If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue a Notice to Appear (NTA). The first case denied for an applicant will not be referred for an NTA until 90 days from the date of the denial, to allow the alien the opportunity to file a new I-817 application in order to attempt to overcome the basis of the denial.

(k) Extension of Family Unity benefits . [Chapter 24.4(k) replaced 08-25-2009]

An application for an extension of Family Unity benefits must be filed by the alien on Form I-817. An extension may be granted if the alien's eligibility for benefits under the Family Unity program continues.

In addition, notwithstanding 8 CFR 236.15(e) , if an applicant for extension of Family Unity benefits demonstrates that he or she no longer has a petitionable relationship with a legalized alien, his or her application may be approved even though the applicant is the not the beneficiary of an I-130 petition.

However, applicants who still have a petitionable relationship with the legalized alien must still comply with the I-130 requirements of 8 CFR 236.15(e) .

24.5 Legalization Provisions of the LIFE Act (LIFE Legalization).

(a) General .

On December 21, 2000, the Legal Immigration Family Equity (LIFE) Act, Pub. L. 106-553, and the LIFE Act Amendments, Pub. L. 106-554, were passed. Section 1104 of the LIFE Act and its amendments (LIFE Legalization) allow eligible aliens who have been involved in certain long-standing legalization litigation to apply for adjustment of status to become LPRs under a modified version of section 245A of the Act. Implementation of the LIFE Legalization program started on June 1, 2001 with the publication of the interim rules (66 Federal Register 29661). Final rules were published on June 4, 2002 (67 FR 38341).

(b) Purpose .

The purpose of the LIFE Legalization provisions was to remedy 3 long- standing class action lawsuits CSS , LULAC , and Zambrano (*Catholic Social Services, Inc. v. Meese* , vacated sub nom. *Reno v. Catholic Social Services, Inc* ., 509 U.S. 43 (1993) ; *League of United Latin American Citizens v. INS* , vacated sub nom. *Reno v. Catholic Social Services, Inc.* , 509 U.S. 43 (1993); and *Zambrano v. INS* , vacated, 509 U.S. 918 (1993)) brought against INS arising from the 1986 IRCA legalization program. It is estimated that there are approximately 200,000 long-term U.S. residents who are believed to be eligible for the LIFE Legalization program. INS launched a national public outreach campaign in January 2002 to publicize the program, with a concentrated effort in Los Angeles, Chicago, Houston, and New York City.

(c) Eligibility Requirements .

(1) Eligible alien .

Any alien who filed a written claim for class membership in one of the 3 lawsuits with the AG before October 1, 2000, is eligible to apply for adjustment of status to LPR under the LIFE Legalization program during the application period. This also includes a spouse or child as defined at section 101(b)(1) of the Act of the alien who was such as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period.

(2) Unlawful residence .

LIFE Legalization applicants must have entered the U.S. before January 1, 1982, and resided continuously in the U.S. in an unlawful status since that date through May 4, 1988. They must have been continuously physically present in the U.S. during the final 18 months of this period, from November 6, 1986 until May 4, 1988.

(3) Admissibility .

The exclusion grounds that are not applicable to LIFE Legalization applicants are paragraphs (5) (requirement for labor certification) and (7)(A) (immigrant visa requirement) of section 212(a) of the Act. Applicants who were not admissible to the United States for other grounds could file Form I-690, *Application for Waiver of Grounds of Excludability* , for all grounds contained in section 212(a) of the Act, except for those offenses defined in paragraphs (2)(A) and (2)(B) (relating to criminals); paragraph (4) (relating to aliens likely to become public charges); paragraph (2)(C) (relating to drug offenses, except for a single offense of simple possession of marijuana, 30 grams or less); and paragraph (3) (security related grounds, except for subparagraph (3)). A felony conviction or conviction of three or more misdemeanors renders the applicant ineligi ble under LIFE Legalization.

(4) Basic Citizenship Skills .

LIFE Legalization applicants must show that they have a minimal understanding of ordinary English and a knowledge or understanding of the history and government of the United States, or that they are satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve an understanding of English and U.S. history and government.

(d) Application .

(1) Where to File .

The filing period for LIFE Legalization applications is from June 1, 2001 through June 4, 2003. Applicants must file a completed Form I-485, Application to Register Permanent Residence or Adjust Status, along with proof of identity, and 2 photographs. Furthermore, applicants between the ages of 14 and 79 are required to submit a fingerprinting fee. For all applicants, a Form I-693, Report of Medical Examination, must be completed by a certified civil surgeon. Specific instructions for LIFE Legalization applicants are on Form I-485 Supplement D, LIFE Legalization Supplement to Form I-485 Instructions.

(2) Filing Fees .

The applicant must pay the filing fees for the Form I-485 and fingerprinting in effect at the time of filing (see 8 CFR 103.7).

(3) Work Authorization (EAD) .

Applicants who applied for class membership before October 1, 2000, in the three legalization lawsuits will be entitled to work authorization. These individuals may obtain authorization to work while their applications are pending by submitting a completed Form I-765 , *Application for Work Authorization* , with the appropriate fee, along with their Form I-485 to the same Chicago P.O. Box address.

(4) Filing from Abroad .

Individuals residing outside the U.S. can apply for LIFE Legalization by following the same instructions. Furthermore, they can also apply for work authorization. However, an employment authorization document is not an immigration document for admission into the U.S.

(5) Travel .

Applicants who wish to travel abroad while their LIFE Legalization is pending are eligible to mail a completed Form I-131, *Application for Travel Document* , to the same Chicago P.O. Box address. In urgent humanitarian situations, applicants can file a completed Form I-131 with their local USCIS District Office.

As with any other parole requests, the decision on whether to grant advance parole is discretionary and determined on a case-by-case analysis. If the request for advance parole is granted, the applicant is permitted to return to the U.S. after traveling abroad in accordance with any terms and conditions placed on the advance parole document. Individual s who are subject to a final order of removal, deportation or exclusion and who depart the U.S. are subject to certain bars to obtaining LIFE Legalization unless they apply for and obtain approval of Form I-212, *Application for Permission to Reapply for Admission after Deportation or Removal* , prior to their departure from the U.S.

(e) Benefits .

LIFE Legalization provides eligible applicants with work authorization and a stay of removal or deportation proceedings or orders, while their adjustment applications are pending.

(f) Preliminary Processing :

The evidence supplied with the application is first reviewed by an officer at the National Benefits Center (NBC) to establish that the applicant meets the basic qualifying criteria to apply: he or she is an eligible alien, and he or she is not statutorily ineligible due to a felony conviction or convictions of three or more misdemeanors. If the applicant passes the preliminary processing at NBC, the application is forwarded to the District Office with jurisdiction over the applicant's residence for an inter view and adjudication of the remaining eligibility requirements (e.g., continuous residence, physical presence, admissibility, citizenship skills, etc.). If more than one A-file exists for an applicant, files should be consolidated prior to forwarding. If filed by the applicant, EAD and advance parole requests may be processed after such applicant passes the preliminary processing. If the applicant lacks sufficient evidence to pass the preliminary processing, a Notice of Intent to Deny should be issued.

(1) Eligible Alien .

The alien must prove that he or she (or spouse or child of such an alien) filed a written claim for class membership in CSS , LULAC , or Zambrano with the AG before October 1, 2000.

(A) A number of written forms were used for this (e.g., Form I-687, pre-printed forms not produced by INS, affidavits, etc.). The form is considered to be a claim for class membership if it contains the name of an alien who alleges that he/she was "front-desked" or "merely discouraged" from filing an application

during the 1986 IRCA application period on the basis of allegations presented in the three lawsuits. If the applicant has INS or USCIS records, check in all the records and files for any evidence of written claim for class membership. It is noted that INS recorded only one name per application for class membership so check to see if it may contain names of family members who would be able to qualify as principal applicants under LIFE Legalization.

(B) INS recorded the class action claims in USCIS using the COA codes CS, LU, and ZM, thus it is likely that the applicant will have such a code in USCIS. Another possible USCIS code is PEN.

(C) An applicant who was the child or spouse of a principal alien between May 5, 1987 and May 4, 1988, and whose principal alien filed a written application for class membership before October 1, 2000, is deemed to have filed an application for class membership.

(2) Statutorily Ineligible .

A preliminary criminal records check should be performed on the applicant to see whether he/she has a felony conviction or conviction of three or more misdemeanors. If so, this would render the applicant statutorily ineligible to apply for LIFE Legalization.

(g) Interviews .

Scheduling of interviews is determined by the District Office. The District Office should review the file to determine if a Request for Evidence needs to be mailed with the interview notice. Applicants may submit additional evidence prior to or at the time of the interview.

(h) Adjudication Standards .

During the interview and adjudication of a LIFE Legalization application, an eligible alien must establish that he or she:

(1) Properly filed an application for adjustment pursuant to LIFE Legalization;

(2) Filed a written claim for class membership with the Attorney General before October 1, 2000;

(3) Entered the U.S. before January 1, 1982, and thereafter resided in continuous unlawful status since such date through May 4, 1988;

(4) Was continuously physically present in the U.S. from November 6, 1986 through May 4, 1988;

(5) Is admissible to the U.S.;

(6) Has not been convicted of a felony or three misdemeanors;

(7) Has never assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political group; and

(8) Possesses basic citizenship skills or is satisfactorily pursuing a course of study to achieve these basic citizenship skills.

(i) Entered the U.S. Before January 1, 1982, and Thereafter Resided in Continuous Unlawful Status since Such Date Through May 4, 1988 .

Carefully check the evidence submitted to establish that the applicant entered the U.S. before January 1, 1982 either as a nonimmigrant or without inspection. If during this period, the alien was outside the U.S. under a deportation order, this breaks his/her continuous residence.

(j) Was Continuously Physically Present in the U.S. from November 6, 1986, Through May 4, 1988 .

Evidence of physical presence may consist of any documentation issued by any governmental or non-governmental authority, provided it has the applicant's name, dated at time of issuance, has signature, seal, or other authenticating instrument of the authorized representative of the issuing authority.

(k) Departures from the U.S. Between November 6, 1986, and May 4, 1988 .

Any departure during this time must have been brief, casual and innocent so as to not interrupt continuous physical presence. Failure of an alien to have advance parole should not be considered.

(l) Criminal Convictions and Inadmissibility .

(1) No Waivers Allowed .

No waivers are permitted and the application may be denied without an interview if the record of proceeding contains court documents evidencing the following conviction(s):

· felony, three or more misdemeanors, persecution of others, crime involving moral turpitude (section 212(a)(2)(A)(i)(I) of the Act),

· multiple criminal convictions (section 212(a)(2)(B) of the Act),

· controlled substances traffickers (section 212(a)(2)(C) of the Act),

· controlled substances (section 212(a)(2)(A)(i)(II) of the Act),

· security and related grounds (section 212(a)(3) of the Act).

(2) Waivers Allowed .

Section 212(a)(9)(A) and section 212(a)(9)(C) of the Act have not been waived for LIFE Legalization applicants but they may apply for a waiver of those grounds on Form I-690, *Application for Waiver of Excludability* .

(3) Automatically Waived .

LIFE Legalization applicants are not subject to unlawful presence ground of inadmissibility pursuant to section 212(a)(9)(B) of the Act as this section has been waived for these applicants.

(m) Public Charge .

The "Special Rule" should be applied in LIFE Legalization cases which allows INS or USCIS to look retrospectively at an alien's employment history when determining whether he/she is prospectively likely to become a public charge. Accordingly, INS and USCIS will take into account an alien's employment history in the U.S., to include the period prior to the 1986 advent of employer sanctions.

(n) Citizenship Skills .

If the applicant has a high school diploma, GED, or certification from a state-recognized, accredited learning institution, he/she may not have to pass the citizenship test. This requirement may be waived for applicants age 65 or older, or for medical reasons.

(o) Consideration of the LIFE Legalization Application under IRCA .

An applicant who has established that he/she registered for class membership as required but otherwise does not qualify for adjustment under LIFE Legalization, must be given consideration to whether he/she could be granted temporary resident status under IRCA § 201. For instance, under IRCA, an alien need not show residence or presence after the application was filed. In such an adjudication, the "date of filing the application" is deemed to be the date the applicant establishes that he/she was front-desked or discouraged from filing. If the applicant has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence under the pre-LIFE Act provisions of section 245A of the Act.

(p) Failure to Appear .

If the applicant fails to appear for the first scheduled interview, check to ensure the notice was sent to the last known address of record. 30 days after the first no-show, a second interview notice should be sent, which should inform the applicant that failure to appear will result in the denial of the application.

(q) Approval .

If the application is approved, the applicant should receive temporary evidence of LPR status. The COA for applicants adjusting to LPR status under LIFE Legalization is W46 . Upon approval, update CLAIMS and Copies 1 and 3 of Form I-181 to reflect date, place, and COA (Copy 1 stays in A-file, send A-file to NRC)(send Copy 3 to MSC). If biometric data has not been received, MSC will refer the applicant for an appointment at an ASC.

(r) Notice of Intent to Deny (NITD) .

When an adverse decision is proposed, USCIS will notify the applicant of its intent to deny and the basis for denial. The applicant has 30 days to respond to the NITD.

(s) Denials (NOD) .

The Notice of Denial should state the reasons for the denial and inform the applicant of appeal rights. If inconsistencies are found between information submitted with the LIFE Legalization application and information previously furnished by the alien to INS, the alien must be given the opportunity to explain these discrepancies or rebut any adverse information. The denial notice should also advise the applicant that if he/she fails to file an appeal from the decision, the notice of denial will serve as a f inal notice of ineligibility. Unless the alien was previously subject to a final removal order, the denial notice will not order the applicant to depart the U.S. and Form I-291 will not contain language to that effect. Furthermore, no NTA will be issued pursuant to a denied LIFE Legalization application.

(t) Appeals .

The applicant is entitled to file an appeal on Form I-290B, *Notice of Appeal to the Administrative Appeals Unit (AAU)* , with the required fee. The appeal must be filed with the office that rendered the denial decision. Appeals must be filed within 30 or 60 days after service of NOD depending on whether the applicant is residing in or outside the U.S. Upon receipt of the appeal, the administrative record should be forwarded to the AAO for review and decision. Place a copy of the record, decision, and appeal into a work (W) file and keep that at the District Office that issued the denial until the AAO completes the case. Exc ept where the LIFE Legalization application is denied for failure to prove class membership application in CSS , LULAC , or Zambrano , or where the applicant failed to present a prima facie application, employment authorization is granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed. After exhaustion of an appeal, an alien who believes that the grounds for denial have been overcome may submit another LIFE Legalization application with fee as long as the application period is still open.

(u) Motions to Reopen/Reconsider .

Motions to reopen or reconsider filed by the applicant or his/her attorney or representative will not be considered. However, the Director who decided an application may reopen and reconsider an an approval or denial where appropriate.

(v) Aliens in Removal Proceedings .

Jurisdiction over all LIFE Legalization claims rests with INS or USCIS. Any alien currently in proceedings before the immigration judge (IJ) or Board of Immigration Appeals (BIA) who is prima facie eligible for LIFE Legalization may file an application with INS or USCIS. The alien must request or petition the IJ or BIA

to administratively close proceedings. The INS or USCIS counsel must consent before the proceedings can be administratively closed. The INS or USCIS counsel will consent where the alien is pr ima facie eligible and has filed a LIFE Legalization application with INS or USCIS. If the LIFE Legalization is approved, the proceedings previously administratively closed will be automatically terminated. If the LIFE Legalization is denied, the proceedings will be re-calendared. Therefore, if an application is denied and the alien was in removal proceedings, district counsel should be notified when no appeal is filed within the requisite deadline.

(w) Aliens with Final Orders or Removal, Deportation or Exclusion .

If an alien is the subject of a final order, he/she may still file a LIFE Legalization application with INS or USCIS. The filing of the application automatically stays this order until a final decision is made on the application. However, the alien may be removed on certain criminal grounds that make him/her ineligible under LIFE Legalization. Therefore, if an application is denied and the alien was subject to a final order, district counsel should be notified if no appeal is filed within the requisite dead line. It is noted that section 241(a)(5) of the Act (providing for the reinstatement of a removal order against any alien who illegally re-enters the U.S. after having been removed or after having departed voluntarily under an order of removal) does not apply to an alien adjusting under LIFE Legalization.

(x) Confidentiality .

INS and USCIS may not use or disclose information in a legalization application or its accompanying evidence except to adjudicate the application itself, or for certain law enforcement functions and fraud proceedings. If the legalization application is granted, however, and the alien later files an immigrant visa petition or other status petition under section 204 of the Act, INS or USCIS may use information in the legalization file in adjudicating the immigrant visa petition. This also applies to adjudicating a later naturalization application. Consult with district counsel when contemplating any use or disclosure of this information.

24.6 LIFE Act Family Unity Provisions.

(a) Purpose .

The LIFE Act Amendments provide that certain spouses and unmarried children of aliens eligible for LIFE Legalization receive Family Unity benefits.

(b) Jurisdiction and Proper Filing .

Each applicant for the LIFE Family Unity Program must file a separate Form I-817, Application for Family Unity Benefits, at the National Benefits Center. The Form I-817 must be accompanied by four (4) passport-style photos, documents in support of the claim, and the requisite filing fee and fingerprinting fee.

Note:

A separate Form I-765 , Application for Employment Authorization, is NOT required.

(c) Eligibility .

(1) The applicant must currently be the spouse or unmarried child of an alien eligible for LIFE Legalization. Unlike the Family Unity Program established by IMMACT 90 and discussed in Chapter 24.4 of this field manual, an unmarried child does "age- out" of Family Unity benefits upon the attainment of 21 years of age.

(2) The applicant must have entered the United States before December 1, 1988, and have been residing in the United States on such date.

(3) The applicant must currently be in the United States.

(4) The principal alien must:

- Be an "eligible alien" (as that term is defined at 8 CFR 245a.10) ;

- Be an "eligible alien" who has applied for LIFE Legalization (if the applicant is applying for Family Unity benefits on or after June 5, 2003); or

- Have adjusted status to lawful permanent resident pursuant to LIFE Legalization.

Note

The LIFE Act Amendments also provide Family Unity benefits to certain spouses and unmarried children of aliens who adjusted their status to lawful permanent resident pursuant to LIFE Legalization and who are no longer present in the United States. Regulations providing procedures for granting Family Unity benefits to an otherwise eligible alien who is no longer present in the United States are forthcoming.

(d) Ineligibility .

The folowing individuals are not eligible for Family Unity benefits:

(1) A Family Unity applicant who has been convicted of a felony or of three or more misdemeanors in the United States.

(2) A Family Unity applicant who has ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religions, nationality, membership in a particular social group, or political opinion.

(3) A Family Unity applicant who has been convicted by a final judgment of a particularly serious crime and who is a danger to the community of the United States.

(4) A Family Unity applicant who INS or USCIS has serious reasons to believe has committed a serious nonpolitical crime outside of the United States before the applicant arrived in the United States.

(5) A Family Unity applicant who INS or USCIS has reasonable grounds to believe is a danger to the security of the United States.

(e) Decisions .

(1) Approvals .

If the service center director approves a Form I-817, the Family Unity beneficiary will receive protection from removal for a 1-year period if the principal alien has not adjusted to lawful permanent resident status or for a 2-year period if the principal alien has adjusted to lawful permanent resident status. He or she will be deemed to be in an authorized period of stay . Such authorized period of stay will be deemed to begin as of the date the Form I-817 was filed and continues without interruption until the Form I-817 is approved and through the period the alien retains Family Unity protection. The Family Unity beneficiary will also receive an Employment Authorization Document valid for the same period as the protection from removal. The Family Unity beneficiary receives protection from removal provided that the grounds of removal are specified in:

- Section 237(a)(1)(B) of the Act (aliens present in the United States in violation of the Act or any other law of the United States);

- Section 237(a)(1)(C) of the Act (aliens who violated their nonimmigrant status or violated the conditions of entry);

- Section 237(a)(3)(A) of the Act (aliens who failed to comply with the change of address notification requirements of the Act); or

- Section 237(a)(1)(A) of the Act (aliens who were inadmissible at the time of entry) unless it relates to a ground of inadmissibility described in section 212(a)(2) (criminal and related grounds) or section 212(a)(3) (security and related grounds) of the Act.

Note

If the Family Unity beneficiary is the unmarried child of a principal alien, and he or she will turn 21 during the period for which he or she would be granted Family Unity benefits, the evidence of protection from removal and any EAD will be dated to expire the day before the beneficiary's 21 st birthday.

(2) Denials .

If the service center director finds that a Form I-817 cannot be approved, a written notice of denial must be provided to the applicant. There is no appeal from a denied Form I-817. If the applicant believes that the grounds of denial have been overcome, he or she may submit a new Form I-817, with fee, to the service center director. A notice to appear must not be issued until 90 days after the initial denial.

(f) Extension of Family Unity Benefits .

The LIFE Act Amendments also provide for extensions of Family Unity benefits. Regulations providing procedures for granting extensions of Family Unity benefits are forthcoming.

(g) Termination of Family Unity Benefits .

(1) INS or USCIS may terminate benefits under the Family Unity Program if:

- The Family Unity benefits were acquired through fraud or willful misrepresentation of a material fact;

- The Family Unity beneficiary commits an act that makes him or her inadmissible as an immigrant for benefits under the Family Unity program;

- The principal alien loses his or her legalized status (naturalization of the principal alien does not render the Family Unity beneficiaries ineligible for Family Unity benefits), fails to apply for LIFE Legalization by June 4, 2003, or has his or her LIFE Legalization application denied; or

- A qualifying relationship to the principal alien no longer exists (i.e., the principal alien and his or her spouse divorce, or the child of the principal alien turns 21).

(2) The Service Center Director must provide a written notice of intent to terminate to the Family Unity beneficiary and allow 30 days for response. A final notice of termination must also be provided to the Family Unity beneficiary upon a determination to terminate.

(3) A Family Unity beneficiary who has his or her benefits terminated will begin accruing unlawful presence immediately from the date of such termination. Further, if Family Unity benefits are terminated and the alien then departs from the United States, any unlawful presence accrued prior to the grant of Family Unity benefits may make the alien subject to section 212(a)(9)(B) of the Act and ineligible for other immigration benefits.