Rules and Regulations

Federal Register
Vol. 66, No. 106
Friday, June 1, 2001

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AC39

Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Delay of Effective Date

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; delay of effective date.

SUMMARY: The final rule, ''The Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' was published on January 17, 2001 at FR 66 4438. The rule finalizes the proposed rule of the same name which was published December 17, 1999. It implements 13 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The original effective date of the rule (with the exception of one amendment) was April 2, 2001. In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, the effective date of the rule was delayed for 60 days to June 1, 2001, via an action published in the **Federal Register** on February 5, 2001 at 66 FR 8886. The Under Secretary of the Food, Nutrition, and Consumer Services and has just recently been confirmed and has not yet been sworn-in. In order to give the new Under Secretary time to review the rule, this action delays the effective date of the final rule (with the exception of one amendment) an additional 60 days to July 31, 2001.

In addition, the State agencies were required to implement the final rule no later than August 1, 2001. Because the rule will not be effective now until July 31, 2001, this action establishes a new implementation date of October 1, 2001.

DATES: The effective date of the Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, published in the **Federal Register**, on January 17, 2001, at 66 FR 4438, is delayed for an additional 60 days, from June 1, 2001 to a new effective date of July 31, 2001, except for the amendment to 7 CFR 272.2(d)(1)(xiii) which retains the effective date of August 1, 2001. The implementation date of the final rule is delayed for 60 days from August 1, 2001, to a new implementation date of October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Patrick Waldron, Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2495.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. section 553 applies to this section, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

Dated: May 29, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–13854 Filed 5–31–01; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 103, 236, 245a, 274a and 299

[INS No. 2115–01; AG Order No. 2430–2001]

RIN 1115–AG06

Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 1104 of the Legal Immigration Family Equity Act (LIFE Act) and the LIFE Act Amendments by establishing procedures for certain class action participants to become lawful permanent residents of this country. Persons who may be eligible to adjust under section 1104 of the LIFE Act and its Amendments are aliens who have filed for class membership with the Attorney General, before October 1, 2000, in one of three legalization lawsuits: (1) *Catholic Social Services, Inc.* v. *Meese,* vacated sub nom. *Reno* v. *Catholic Social Services, Inc.,* 509 U.S. 43 (1993) (*CSS*); (2) *League of United Latin American Citizens* v. *INS,* vacated sub nom. *Reno* v. *Catholic Social Services, Inc.,* 509 U.S. 43 (1993) (*LULAC*); or (3) *Zambrano* v. *INS,* vacated, 509 U.S. 918 (1993) (*Zambrano*).

This interim rule also implements section 1504 of the LIFE Act Amendments by providing for a stay of removal and work authorization for certain spouses and unmarried children of those aliens eligible to adjust under section 1104 of the LIFE Act.

This rule is necessary to ensure that those aliens eligible to apply for benefits under the provisions of the LIFE Act and LIFE Act Amendments are able to do so in a timely manner.

DATES: *Effective date:* This interim rule is effective June 1, 2001.

Comment date: Written comments must be submitted on or before July 31, 2001.

ADDRESSES: Please submit written comments to Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2115–01 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Elizabeth N. Lee or Suzy Nguyen, Assistant Directors, for matters relating to LIFE Legalization; Elizabeth N. Lee or Rebecca Peters, for matters relating to Family Unity; Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

Legal Immigration Family Equity (LIFE) Act Legalization Provisions

Definitions

What Are the Legalization Provisions of the LIFE Act?

On December 21, 2000, President Clinton signed into law the Legal Immigration Family Equity Act (LIFE Act), Title XI of H.R. 5548, enacted by reference in Public Law 106–553 (Dec. 21, 2000), and the LIFE Act Amendments, Title XV of H.R. 5666, enacted by reference in Public Law 106–554 (Dec. 21, 2000), which provides for numerous different immigration benefits. Section 1104 of the LIFE Act and its Amendments (LIFE Legalization) allow certain eligible aliens to apply for adjustment of status to that of a lawful permanent resident (LPR) under a modified version of section 245A of the Immigration and Nationality Act (Act) (8 U.S.C. 1255a). Aliens who are eligible to apply for adjustment under LIFE Legalization are *only* those who, before October 1, 2000, had filed with the Attorney General a written claim for class membership in the *CSS*, *LULAC*, or *Zambrano* legalization class action lawsuits. In order to qualify for adjustment, aliens must establish that they entered the United States before January 1, 1982, and thereafter resided in continuous unlawful status through May 4, 1988. Aliens must also establish that they were continuously physically present in the United States from November 6, 1986, through May 4, 1988. Furthermore, aliens must demonstrate basic citizenship skills. Finally, aliens must be otherwise admissible to the United States under the Act. LIFE Legalization also provides for a stay of removal or deportation and work authorization for eligible aliens under this law while their adjustment applications are pending.

What Are the Family Unity Provisions of the LIFE Act?

Section 1504 of the LIFE Act Amendments provides that the Attorney General may not remove certain spouses and children of aliens eligible to adjust under LIFE Legalization and shall grant employment authorization to those eligible spouses and children for the period of time in which they have been afforded Family Unity protection. The exact scope of the Family Unity provisions of the LIFE Act Amendments is discussed later in this interim rule.

What Are the Provisions of Section 245A of the Act?

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603. Section 201 of IRCA created a ''legalization'' program under section 245A of the Act, that allowed for certain aliens to apply for adjustment to temporary resident status, and later to LPR status. To be eligible, an alien needed to establish that he or she entered the United States before January 1, 1982, and that he or she resided continuously in the United States in an unlawful status since such date through the date that his or her application for temporary resident status was filed. Aliens who entered the United States without inspection and certain nonimmigrants were eligible to apply under the IRCA. The legalization program had a 1-year application period that began on May 5, 1987, and ended on May 4, 1988.

What Modifications Do the LIFE Legalization Provisions Make to Section 245A of the Act?

LIFE Legalization made several notable modifications to section 245A of the Act (8 U.S.C. 1255a). First, aliens who applied for legalization benefits under IRCA first needed to apply for adjustment to lawful temporary resident status. Subsequent to this adjustment, these aliens were required to apply for adjustment to LPR status. In contrast, those eligible aliens applying for adjustment of status under LIFE Legalization will be submitting applications to adjust to LPR status directly. There is no provision or requirement for first adjusting to lawful temporary resident status.

Second, sections 245A (c)(1) through (c)(4) of the Act allowed for qualified designated entities (QDEs) to forward applications for adjustment of status under section 245A of the Act to the Immigration and Naturalization Service (Service), provided the alien had consented to such action. The LIFE Legalization provisions have no such QDE provision. Accordingly, all applications for adjustment of status under LIFE Legalization must be filed by the alien, or by his or her representative, directly to the Service.

Third, section 245A(c)(7) of the Act provided for the allocation of up to $3 million of the application fees for section 245A of the Act to immigration-related unfair employment practices programs. The LIFE Legalization provisions specifically prohibit the use of any funds collected through this program to be used in such a manner.

Fourth, section 245A(f)(4)(C) of the Act prohibited any court from having jurisdiction over any cause or action or claim by, or on behalf of, any person asserting an interest under section 245A of the Act unless that person had actually filed or attempted to file an application under section 245A of the Act. This section does not apply to an alien eligible for adjustment under LIFE Legalization, effective November 6, 1986.

Fifth, section 245A(h) of the Act provided a 5-year prohibition on newly legalized aliens from receiving certain public welfare assistance. The LIFE Legalization provisions specifically state that section 245A(h) does not apply to those aliens who adjust to LPR status under LIFE Legalization. Although aliens who have adjusted their status under the LIFE Legalization provisions are exempt from the bar on public assistance under Section 245A(h), they

remain subject to the restrictions on access to benefits set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), as amended (Public Law 104–193, 110 Stat. 2105). The Welfare Reform Act, as amended, establishes restrictions on access to federal, state, and local public benefits by aliens, including lawful permanent residents. 8 U.S.C. 1601 through 1625. Aliens who adjust to permanent residency under LIFE Legalization are encouraged to contact the relevant benefit-granting agency for information about their eligibility for specific public benefit programs. *See also,* Notice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344; Notice, Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Interpretation of ''Federal Public Benefit,'' 63 FR 41658.

Sixth, LIFE Legalization provides for the same confidentiality provisions as the IRCA, with the exception that information furnished by an eligible alien pursuant to any applications filed under LIFE Legalization may be used by the Attorney General for purposes of rescinding LPR status pursuant to 8 CFR part 246.

In many other respects the provisions of LIFE Legalization are identical to those contained in section 245A of the Act. Accordingly, where applicable, much of the regulatory language contained in this interim rule is taken from 8 CFR 245a.3 (Application for adjustment from temporary to permanent resident status).

What Are the Three Pertinent Legalization Class Action Lawsuits CSS, LULAC, and Zambrano About?

The three class action lawsuits listed in LIFE Legalization involved claims by aliens who were unsuccessful in applying for legalization under section 245A of the Act enacted in 1986. The aliens in *CSS, LULAC,* and *Zambrano* argued that either their claims were denied or that they were discouraged from applying.

Eligibility

How is an Alien Eligible for Adjustment to LPR Status Under LIFE Legalization?

First, an alien must prove that he or she, before October 1, 2000, filed a written claim with the Attorney General for class membership in the *CSS, LULAC,* or *Zambrano* legalization class action lawsuits in order to be considered an eligible alien for adjustment to LPR status under LIFE Legalization. Applicants who were denied class membership in the *CSS, LULAC,* or *Zambrano* legalization class action lawsuits by the Service are still eligible to apply for adjustment of status under LIFE Legalization.

Second, an eligible alien must then submit evidence to establish the following five requirements—that he or she:

1. Properly files an application for adjustment under LIFE Legalization;

2. Entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988;

3. Was continuously physically present in the United States during the period from November 6, 1986, through May 4, 1988;

4. Is not inadmissible to the United States for permanent residence under any provisions of the Act; and

5. Establishes basic citizenship skills as required.

Ineligibility and Grounds of Inadmissibility

Who Is Ineligible for Adjustment Under LIFE Legalization?

As under IRCA, LIFE Legalization specifies that any otherwise eligible alien who has ever been convicted of a felony or of three or more misdemeanors in the United States is ineligible to adjust status under LIFE Legalization. Further, any alien who has ever assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion is ineligible to adjust status under LIFE Legalization. There are no waivers available for the grounds of ineligibility described in this paragraph.

The LIFE Legalization provisions further specify that section 241(a)(5) of the Act (8 U.S.C. 1231(a)(5)) does not apply to an alien adjusting under LIFE Legalization. Section 241(a)(5) of the Act provides for the reinstatement of a removal order against any alien who illegally re-enters the United States after having been removed or after having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act.

All aliens must establish that they are admissible under section 212(a) of the Act (8 U.S.C. 1182(a)). Sections 212(a)(5) (labor certification requirements) and 212(a)(7)(A) (documentation requirements for immigrants) are not applicable to LIFE Legalization applicants. Any alien who is inadmissible under other provisions of section 212(a) of the Act is not eligible for adjustment to LPR status under section 245A of the Act (8 U.S.C. 1255a). A waiver for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest is available for some, but not all, grounds of inadmissibility. In addition, the LIFE Legalization provisions also allow for waivers for those aliens inadmissible pursuant to sections 212(a)(9)(A) and 212(a)(9)(C) of the Act (aliens previously removed and aliens unlawfully present after previous immigration violations). The following grounds of inadmissibility under section 212(a) of the Act, however, may not be waived:

1. Sections 212(a)(2)(A) and (B) of the Act, crimes involving moral turpitude and controlled substances;

2. Section 212(a)(2)(C) of the Act, controlled substance traffickers;

3. Section 212(a)(3) of the Act, security and related grounds; and

4. Section 212(a)(4) of the Act, aliens likely to become a public charge.

In determining whether the alien is likely to become a public charge, and would therefore be inadmissible under section 212(a)(4) of the Act, there is a Special Rule that is discussed in this interim rule at 8 CFR 245a.18(d). In short, the Special Rule allows the Service to look at an alien's employment history when determining whether he or she is likely to become a public charge.

Filing and Applications

May an Alien Who is Already in Exclusion, Deportation, or Removal Proceedings, or Who has a Motion To Reopen or Motion To Reconsider Pending Before the Immigration Court or the Board of Immigration Appeals (Board) Apply for LIFE Legalization Adjustment With the Service?

Yes, an alien who has a proceeding pending before the Immigration Court or the Board, or who has a motion to reopen or a motion to reconsider filed with the Immigration Court or the Board, may still file an application for LIFE Legalization adjustment of status with the Service. However, the alien must also request that the Immigration Court or the Board, whichever has jurisdiction, administratively close proceedings, or indefinitely continue any pending motion to reopen or reconsider in order to allow the alien to proceed with a LIFE Legalization application. In the request to administratively close the matter or indefinitely continue the motion, the alien must include documents establishing prima facie eligibility for

relief, and proof that the LIFE Legalization application has already been filed with the Service. The Service must consent before the matter is administratively closed.

What Happens if an Applicant is the Subject of a Final Order of Exclusion, Deportation, or Removal?

Jurisdiction over LIFE Legalization applicants lies only with the Service. Thus, an eligible alien who is the subject of a final order of exclusion, deportation, or removal may file such application with the Service. The filing of a LIFE Legalization adjustment application during the application period stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect unless the district director who seeks to execute the order makes a final determination that the application does not present a prima facie claim to LIFE Legalization eligibility on certain criminal grounds and serves the applicant with a written decision explaining the reason for this determination.

How Does an Alien Apply for Adjustment of Status Under LIFE Legalization?

An alien must file Form I–485, Application to Register Permanent Residence or Adjust Status, during the 1-year application period beginning June 1, 2001, and ending May 31, 2002, along with all required documentary evidence and appropriate fee(s). An additional instruction form, Supplement D, LIFE Legalization Supplement to Form I–485 Instructions, will assist applicants with the application process.

When and Where Should the Application be Filed?

LIFE Legalization authorizes the Attorney General to provide a 1-year application period for LIFE Legalization applicants to file for adjustment. The application period begins on June 1, 2001, and ends on May 31, 2002. Pursuant to existing regulations at 8 CFR 103.2(a)(7), applications filed with the Service are considered to be ''received'' on the date of actual receipt in a Service office.

Because of the particular nature of the LIFE Legalization program, and the high anticipated volume of applications by the deadline date, the Service is making a special exception to the requirements at 8 CFR 103.2(a)(7). For purposes of LIFE Legalization only, the Service will implement a postmark rule that is patterned directly on the Internal Revenue Service (IRS) regulations at 26 CFR 301.7502–1. The IRS rules provide an established set of standards for determining the timeliness of mail, whether mailed from within the United States or from abroad. Any LIFE Legalization application that is postmarked by the United States Post Office on or before the deadline date will be considered to be timely filed, regardless of the date it is actually received by the Service. In the case where a postmark is illegible or missing, the Service will consider the application to be timely filed if it is received by June 3, 2002, if the application was mailed from within the United States, or by June 14, 2002, if the application was mailed from abroad. Applications that are postmarked after May 31, 2002, will be untimely and will be denied. To avoid the risk that an application may be postmarked after May 31, 2002, applicants within the United States might consider sending applications via United States registered or certified mail.

All applications for adjustment of status under LIFE Legalization must be submitted by *mail* to: United States Immigration and Naturalization Service, Post Office Box 7219, Chicago, IL 60607–7219. Applications may not be submitted to any other Service location.

Can an Alien Submit an Application for Adjustment of Status Under LIFE Legalization if He or She Is Outside the United States?

Yes, an applicant for LIFE Legalization may apply for adjustment of status from outside the United States. An applicant filing for LIFE Legalization from abroad must mail an application along with all required documentary evidence and appropriate fee(s) to: United States Immigration and Naturalization Service, Post Office Box 7219, Chicago, IL 60607–7219. Applications may not be submitted to any consular post. As with domestic applicants, the Service is making a special exception to the requirements at 8 CFR 103.2(a)(7). Any LIFE Legalization application that is postmarked on or before May 31, 2002, will be considered to be timely filed, regardless of the date it is actually received by the Service. In the case where a postmark is illegible or missing, and the application was mailed from abroad, the Service will consider the application to be timely filed if it is received by June 14, 2002. Applications that are postmarked after May 31, 2002, or applications that have illegible or no postmarks and are received after June 14, 2002, will be untimely and will be denied. If an application has both a foreign postmark and a postmark subsequently made by the United States Post Office, the Service will disregard the postmark made by the United States Post Office. The Service will then consider the foreign postmark when determining the timeliness of the filing of the application. LIFE Legalization provisions do not provide applicants outside the United States with a means to enter the United States in order to apply for adjustment under LIFE Legalization. Upon review of applications from abroad, the Service will notify applicants of any further evidence required and/or what further steps need to be taken.

How Will the Service Evaluate the Evidence Submitted?

In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official Government record, with Service records having precedence over the records of other agencies. Furthermore, adjudications will be made according to the weight of the evidence. It shall be the responsibility of the applicant to obtain and submit copies of the records of any other Government agency that the applicant desires to be considered in support of his or her application.

What Forms and Other Documents Should Be Filed?

Each applicant for LIFE Legalization adjustment of status benefits must file a separate Form I–485, accompanied by the required application fee(s) and supporting documents. As discussed later, applicants are encouraged to file applications for employment authorization and advance parole, if desired, with their Form I–485. Applicants should complete Part 2 (Application Type) of Form I–485 by checking box ''h—other'' and writing ''LIFE Legalization'' next to that block. Each application must be accompanied by:

1. Application fee;
2. Fingerprinting fee;
3. Proof of identity;
4. A completed Form G–325A, Biographic Information Sheet, if the applicant is between the age of 14 and 79;
5. A report of medical examination;
6. Two photographs as described in the Form I–485 instructions;
7. Evidence as described in 8 CFR 245a.14 to establish that before October 1, 2000, the alien filed with the Attorney General a written claim for class membership in the *CSS, LULAC,* or *Zambrano* lawsuit;
8. Evidence as described in 8 CFR 245a.15 to prove continuous residence in an unlawful status since prior to

January 1, 1982, through May 4, 1988, in the United States;

9. Evidence as described in 8 CFR 245a.16 to prove continuous physical presence between November 6, 1986, and May 4, 1988, in the United States; and

10. Evidence as described in 8 CFR 245a.17 to establish the applicant's citizenship skills.

It is noted that LIFE Legalization specifies that any alien who is a male who is at least 18 years of age, but not yet 26 years of age is required to register under the Military Selective Service Act. 50 U.S.C. 453(a). Once a Form I–485 has been accepted by the Service, any LIFE Legalization applicant required to register under the Military Selective Service Act will have his name, current address, Social Security number, date of birth, and the date the Form I–485 was filed forwarded to the Selective Service System. If the LIFE Legalization applicant has already registered with the Selective Service System, the Selective Service will check its records to avoid any duplication.

Must the Applicant Be Fingerprinted?

Yes, unless the applicant is under 14 years of age or over 75 years of age. Upon receipt of the application, the Service will instruct the applicant regarding procedures for obtaining fingerprints through one of the Service's Application Support Centers (ASCs) or authorized Designated Law Enforcement Agencies (DLEAs) chosen specifically for that purpose. Those instructions will direct the applicant to the ASC or DLEA nearest the applicant's home and advise the applicant of the date(s) and time(s) fingerprinting services may be obtained. Applicants should not submit fingerprint cards as part of the initial filing. If the applicant must be fingerprinted, he or she must submit the fee of $25 to cover fingerprinting costs at the time the Form I–485 is filed.

Is There a Fee for Filing This Application?

Yes, those aliens applying for adjustment of status under LIFE Legalization will be required to pay an application fee of $330. The Service recognizes that this is a higher fee than the current Form I–485 application fee; however, the provisions of section 245A of the Act allowed for the Service to provide for a schedule of fees to be charged for the filing of applications under section 245A of the Act. 8 U.S.C. 1255a(c)(7). Moreover, section 245A(g)(3) of the Act, which was not modified by LIFE Legalization, provides that regulations issued pursuant to section 245A of the Act may be prescribed to take effect on an interim final basis if the Attorney General determines, as is the case here, that it is necessary in order to implement that section in a timely manner. As will be discussed later in this interim rule, the Service determined that $330 represents the full cost of processing the Form I–485 for LIFE Legalization.

Can Someone Else Sign the Application if the Applicant is a Child or a Person Who is Mentally Incompetent?

In accordance with 8 CFR 103.2(a)(2), an application may be signed by a parent or legal guardian if the applicant is under 14 years of age, and by a legal guardian if the applicant is mentally incompetent. However, an applicant who is under age 14 is not precluded from signing the application if he or she is capable of understanding the significance of the attestation.

During Pendency of Application

What Other Benefits Are Eligible Aliens Entitled to During the Application Process?

Until a final determination is made on their application, eligible aliens in the United States who present a prima facie application for adjustment to LPR status under LIFE Legalization:

1. May not be deported or removed from the United States;

2. Are entitled to employment authorization; and

3. In accordance with procedures set forth in these regulations, may return to the United States following brief, casual, and innocent trips abroad.

For these reasons, all LIFE Legalization applicants who are in the United States, and who desire to work and/or travel abroad, are encouraged to submit a Form I–765, Application for Employment Authorization, and a Form I–131, Application for Travel Document, with appropriate fees, at the time the Form I–485 is submitted.

Can an Applicant Be Authorized to Work While His or Her LIFE Legalization Adjustment Application Is Pending?

Yes, an alien who establishes a prima facie claim for LIFE Legalization will be granted employment authorization. In determining a prima facie claim, the Service will verify that the applicant applied for class membership in the *CSS, LULAC,* or *Zambrano* lawsuit before October 1, 2000, and that the applicant presents, on the face of the application package, all of the eligibility requirements. An applicant for adjustment is able to apply for, and be granted, an extension of any such employment authorization if he or she remains eligible. An applicant for adjustment of status under LIFE Legalization who wishes to obtain initial employment authorization, or employment authorization renewals, during the pendency of the adjustment of status application, may file a Form I–765 with the Service. Further, if the applicant has already received employment authorization under any other provision of the Act, that employment authorization will not be affected by the filing of an application for adjustment of status under LIFE Legalization.

What is the Service's Policy on Travel Outside the United States by a LIFE Legalization Applicant Who Applied From Within the United States While His or Her LIFE Legalization Adjustment Application is Pending?

LIFE Legalization applicants wishing to travel outside the United States while their adjustment applications are pending should apply for ''advance parole'' on Form I–131, Application for Travel Document. The Form I–131 must be mailed to: United States Immigration and Naturalization Service, Post Office Box 7219, Chicago, IL 60607–7219. If an alien travels abroad and returns to the United States with a grant of advance parole, the Service will presume that the alien is entitled to return to the United States. Further, a LIFE Legalization applicant who departs the United States will not be subject to the provisions of section 212(a)(9)(B) of the Act (8 U.S.C. 1182(a)(9)(B)) (aliens unlawfully present in the United States who seek to reenter the United States). A LIFE Legalization applicant returning to the United States from travel abroad without a grant of advance parole may be subject to removal proceedings and may have to process or/and await his or her adjustment application from outside the United States. This is discussed in the regulations at 8 CFR 245a.13(a)(3), (e)(2), and (e)(3) in this interim rule.

Proof of Eligibility

How Does an Alien Establish That He or She Applied for Class Membership in the CSS, LULAC, or Zambrano Class Action Lawsuit?

Aliens who had applied for class membership in *CSS, LULAC,* or *Zambrano* before October 1, 2000, were required to submit various forms of written applications for class membership to the Service including, but not limited to, a Form I–687, Application for Status as a Temporary Resident—Applicants under Section 245A of the Immigration and

Nationality Act, as amended, a ''Questionnaire for class member applicants,'' and supporting documentation. The Service reviewed the application and evidence submitted, and made a determination on whether the alien qualified for class membership. A written notification was then sent to the alien, and/or his or her representative, informing them of the Service's decision. If the alien was determined to be a class member under *CSS, LULAC,* or *Zambrano,* the alien was entitled to employment authorization.

An alien filing a LIFE Legalization application should submit as many of the documents involved in the process previously described as necessary to establish that he or she had applied for class membership in the *CSS, LULAC,* or *Zambrano* lawsuit before October 1, 2000. These documents should, at a minimum, include the alien's full name, A-number, and date(s). The following documents, for example, may be submitted:

1. Employment authorization document (EAD) based on the class membership;
2. Service notification granting or denying the class membership;
3. Questionnaire for class member applicants in *CSS, LULAC,* or *Zambrano;*
4. Service document(s) pursuant to the class membership application (e.g., Parole Authorization, or denial of such, Order to Show Cause, Notice to Appear, Final Order of Removal, Request for Evidence (RFE), or Form I–687 submitted with the class membership application); or
5. Any other relevant documents.

The Service will check its databases and files to verify the alien's claim. If it can be verified that the alien had in fact applied for class membership, the Service will notify him or her of its determination and grant employment authorization (if applied for by the alien).

What Does it Mean To Prove Continuous Residence in an Unlawful Status Since Prior to January 1, 1982, Through May 4, 1988, in the United States?

As required by IRCA and again of LIFE Legalization applicants, the applicant must provide evidence that he or she entered the United States before January 1, 1982, either as a nonimmigrant or without inspection. Under LIFE Legalization, the applicant must also provide evidence that he or she thereafter resided in continuous unlawful status through May 4, 1988. An eligible alien who entered the United States as a nonimmigrant before January 1, 1982, must establish that:

1. His or her authorized period of admission as a nonimmigrant expired before January 1, 1982, through the passage of time and that he or she resided continuously in the United States in an unlawful status since that date through May 4, 1988; or
2. His or her unlawful status was known to the Government before January 1, 1982, and that he or she resided continuously in the United States in an unlawful status since that date through May 4, 1988.

How Does an Alien Establish That His or Her Unlawful Status Prior to January 1, 1982, Was ''Known to the Government''?

Known to the Government means that, prior to January 1, 1982, documents existed in one or more Federal Government agencies' files such that when such documentation is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. *See Mater of P-,* 19 I&N Dec. 823 (Comm. 1988). Further, any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was ''known to the Government.'' *See Matter of H-,* 20 I&N Dec. 693 (Assoc. Comm. 1993). (Under section 265 of the Act (8 U.S.C. 1305), nonimmigrants were required to register with the Service by January 30 of each year and to notify the Service of their address at the end of each 3-month period.)

What Does it Mean To Prove Continuous Physical Presence Between November 6, 1986, and May 4, 1988, in the United States?

Contained in IRCA and required of LIFE Legalization applicants, evidence must be provided to establish their continuous physical presence in the United States from November 6, 1986, through May 4, 1988.

Can an Alien be Absent Between November 6, 1986, and May 4, 1988, From the United States and Still be ''Continuously Physically Present'' in the United States?

Yes, so long as such absences were brief, casual, and innocent or were pursuant to a Service-authorized advance parole. ''Brief, casual, and innocent'' means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States. Whether an absence is brief, casual, and innocent is a factual question appropriate for case-by-case analysis in consideration of the meaning of the phrase. Brief refers to the temporal length of the absence, and must not be so long as to reduce the significance of the whole period of continuous physical presence. *See Kamheangpatiyooth* v. *INS,* 597 F.2d 1253, 1256–1257 (9th Cir. 1979). Casual is interpreted to mean performed without regularity, occasionally. *See Castrejon-Garcia* v. *INS,* 60 F.3d 1359, 1363 (9th Cir. 1995). Innocent refers to the purpose of the absence from the United States, and whether that purpose was consistent with or contrary to a policy reflected in the immigration laws. *See Catholic Social Services* v. *Meese,* 685 F. Supp. 1149, 1158 (E.D. Cal. 1988).

If an alien was absent from the country pursuant to an advance parole, this absence will not be considered as having interrupted his or her continuous physical presence. Brief, casual, and innocent absences from the United States are not limited to absences with advance parole.

A single absence from the United States of more than 30 days or an aggregate of all absences exceeding 90 days shall not be deemed to be a brief, casual, and innocent absence unless the alien had advance parole or the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period(s) allowed.

Will an Applicant Who Establishes a Prima Facie Case of Eligibility be Required To Appear for an Interview?

If a LIFE Legalization applicant appears eligible for the benefit, an interview will be required as, at a minimum, the applicant must demonstrate a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States as required under section 312(a) of the Act (8 U.S.C. 1423). If an applicant fails to appear for an interview, his or her LIFE Legalization adjustment application may be denied for lack of prosecution. If an applicant is determined to be statutorily ineligible, his or her LIFE Legalization adjustment application may be denied without interview.

As stated earlier, the LIFE Legalization provisions require applicants to demonstrate basic citizenship skills as specified in section 312(a) of the Act (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). Therefore, during their interview, LIFE Legalization applicants

will be required to demonstrate a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States as required under section 312(a) of the Act.

In lieu of the above, to meet the requirement, an applicant may instead submit: (1) A high school diploma; (2) a general educational development diploma (GED); or (3) a certification on letterhead stationery from a state recognized, accredited learning institution in the United States that the applicant is attending or has attended such institution. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government.

Decisions, Appeals, Motions, and Certifications

When Will an Applicant Know That a Final Determination has Been Made on His or Her Adjustment Application?

The applicant will be notified in writing of the Service's decision on his or her adjustment application. If the application is approved, the applicant will be so advised and will also be advised of the delivery of his or her Form I–551, Permanent Resident Card, and of the process for obtaining temporary evidence of alien registration. If the application is denied, the applicant will be notified of the Service's decision and the reason(s) for denial. The applicant will also be notified of his or her appellate rights. If the application was denied because the Service was unable to verify a prima facie claim for LIFE Legalization, the applicant will neither be eligible for, nor entitled to, employment authorization or advance parole. If the reasons for the denial do not include inability to verify application for class membership in the CSS, *LULAC,* or *Zambrano* lawsuit or failure to present a prima facie claim for LIFE Legalization, and the applicant appeals the denial and was entitled to employment authorization and advance parole at the time of the decision of denial, he or she will continue to be eligible to apply for and be entitled to employment authorization and advance parole until a final decision is made on his or her appeal.

What Documentation Will be Issued if the Adjustment Application Is Approved at the Time of the Interview?

If, at the time of the interview, the Service officer conducting the interview determines that the application is approvable, the applicant will receive temporary evidence of LPR status. A Form I–551 will be mailed to the applicant at a later date; therefore, the applicant must maintain possession of any temporary evidence of LPR status until receipt of the Form I–551.

What Documentation Will Be Issued If, at the Time of the Interview, the Service Determines That the Adjustment Application Cannot Be Approved?

If the application cannot be approved at the time of the interview, and further review of the application and supporting documents is required, the applicant will be notified in writing of any subsequent decision rendered by the Service. Applicants should keep this notice for their records. If the application has been approved, a Form I–551 will be mailed separately to the applicant. To obtain temporary evidence of LPR status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of LPR status after verifying the approval of the adjustment of status application. If the applicant is not in possession of a passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting the specifications described in the instructions to the Form I–485 so that the Service may prepare and issue temporary evidence of LPR status.

What Happens if the Application Is Denied?

Whenever an application for adjustment of status under LIFE Legalization is denied, the alien, and his or her attorney or representative, shall be given written notice stating the specific reason(s) for the denial. The denial shall also contain advice to the alien that he or she may appeal the decision, and shall provide instructions on when and where the appeal must be filed. The alien shall be advised that he or she may submit additional evidence, and a supporting brief, with the appeal. The notice of denial shall additionally provide a notice to the alien that if he or she fails to file an appeal from the decision, the notice of denial will serve as a final notice of ineligibility.

What Is the Appeals Process?

All appeals from decisions of denials of applications under LIFE Legalization must be filed on Form I–290B, Notice of appeal to the Administrative Appeals Unit (AAU). Appeals filed from within the United States must be filed with the Service office that denied the application within 30 days of the date the decision was mailed. Any appeal that is received subsequent to this 30-day period will not be accepted for processing and the decision of denial will be considered to be a final notice of ineligibility. If an applicant's last known address of record was outside the United States, and the notice of denial was mailed to that foreign address, then the appeal must be received within 60 days of the date the decision was mailed. Any appeal from abroad that is received subsequent to this 60-day period will not be accepted for processing and the decision of denial will be considered a final notice of ineligibility.

All appeals must be properly completed and must be accompanied by the appropriate fee of $110. Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Office (AAO) for review and decision. The decision on appeal will be provided to the alien, and his or her attorney or representative, in writing, and if the appeal is dismissed, it shall include a final notice of ineligibility. No further administrative appeal shall lie from this decision, nor may the application be filed or reopened before an Immigration Court or the Board of Immigration Appeals during exclusion, removal, or deportation proceedings.

If the appeal is sustained, and the application approved, the alien will be advised in writing of the decision and of the process for obtaining temporary evidence of alien registration. A Form I–551 will be mailed separately to the alien.

How Did the Service Decide That the LIFE Legalization Application Fee Should Be $330?

The Service believes that it is reasonable to identify a current application whose process is similar to the requirements outlined under LIFE Legalization in order to select an appropriate fee to charge applicants under LIFE Legalization. Aliens filing LIFE Legalization applications are applying to adjust their status to that of LPR. The current Service application whose process is most similar to the LIFE Legalization process is the Form I–485, which is currently used by other

aliens to adjust their status to that of LPR. In developing fees, the Service must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. This guidance directs Federal agencies to charge the ''full cost'' of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular A–25 defined ''full cost'' as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' Therefore, the Service referred to its most recent fee review—the FY 2000 ''Immigration Examinations Fee Account Review.'' This review conducted an in-depth analysis of both direct and indirect costs using an activity-based costing methodology. The fee review identified the current full cost of the Form I–485 to be $330. The Service determined that a $330 fee for the Form I–485 would underwrite the Service's processing and administrative costs incurred in the Form I–485 adjudication process, such as staffing, training of Service personnel, and adjudication of applications. The Service will thus use $330 for the fee for LIFE Legalization applications until the next biennial fee review, as required by the Chief Financial Officers Act of 1990, Public Law 101–576, 104 Stat. 2838. The Service will make the fee review available to the public upon request.

LIFE Act Amendments Family Unity Provisions

Eligibility

Who is Eligible for LIFE Act Amendments Family Unity Benefits?

Aliens who might benefit from the Family Unity provisions of the LIFE Act Amendments are those who:

1. Are currently in the United States;

2. Are the spouse or unmarried child of an alien who is eligible for adjustment under LIFE Legalization; and

3. Entered the United States before December 1, 1988, and were residing in the United States on such date.

Section 1504 of the LIFE Act Amendments extends immigration benefits to an alien ''who is the spouse or unmarried child'' of an alien described in section 1104 of the LIFE Act. The LIFE Act Amendments, however, do not refer to a specific date on which that familial status is to be determined. Consistent with the purpose of the Family Unity program to provide temporary protection to keep families together that are on a path to legalize their status under the Act, the Service takes the position that an eligible spouse who was married to an eligible principal alien on the date of enactment, December 21, 2000, but has since divorced, should no longer be entitled to Family Unity benefits after the divorce becomes final. On the other hand, a newly-married spouse would be able to get Family Unity benefits, if otherwise eligible, even if he or she was not married to the principal alien on December 21, 2000.

A more difficult issue, however, arises when an alien ''ages-out'' when he or she reaches his or her 21st birthday because he or she no longer meets the Act's definition of a ''child'', *see* 8 U.S.C. 1101(b)(1). As section 1504(b) of the LIFE Act Amendments describes an eligible child as an alien who ''is'' the unmarried child of an alien described in section 1104(b) of the LIFE Act, it is not apparent from the face of the statutory language that Family Unity protection can be extended to aliens who were children on December 21, 2000, but who ''age-out'' of the Act's definition of child by virtue of reaching their 21st birthday. Congress's precise intention is not clear in this regard, although the limited legislative history available states that the objective was to ensure that family members ''are treated in the same manner as the family members of those who adjusted their status under IRCA.'' *Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000,* 146 Cong. Rec. S11851 (Dec. 15, 2000). However, the language of section 1504 is different from section 301 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, 104 Stat. 4978, 5029, which specifically referred to status as a child as of a particular date in the past.

Given the need to implement an interpretation of the statute that is consistent as it applies to both spouses and children, and in view of the interpretation of other provisions of the immigration laws relating to a child who ''ages-out'' upon reaching the age of 21, the Department interprets section 1504(b) of the LIFE Act Amendments to require the requisite familial status (the spousal or child relationship) both at the time when the application for Family Unity benefits is adjudicated and thereafter. If the familial status does not exist at the time of adjudication the alien will not be eligible for Family Unity benefits. If the status as a spouse or child exists at the time of adjudication, but ceases to exist thereafter, the alien will no longer be eligible for Family Unity benefits. Similarly, an alien who ceases to be an unmarried child because of the alien's marriage is no longer eligible.

The fact that an alien is ineligible for Family Unity benefits under section 1504 of the LIFE Act Amendments solely because he or she has reached the age of 21 after December 21, 2000, or for other reasons, does not mean that the alien necessarily will be removed from the United States. The Service has in place guidance for the exercise of prosecutorial discretion that provide for the assessment, on a case-by-case basis, of whether seeking the removal of a particular alien serves a substantial Federal enforcement interest. Factors to be considered include, among others, humanitarian concerns (including family ties in the United States) and whether there is a legal avenue available for the alien to regularize his or her status if not removed from the United States. Whether an alien who is no longer eligible for Family Unity benefits is eligible for employment authorization depends upon whether the alien falls within one of the classes of aliens authorized employment in 8 CFR 274a.12. The Service is also considering whether to seek clarification of the scope of the Family Unity benefit as applied to ''age-out'' children through statutory amendment.

The LIFE Act Amendments also authorize the Attorney General to parole aliens who are no longer physically present in the United States into the United States so that they may obtain benefits under the LIFE Act Amendments Family Unity provisions. The Service is in the process of developing the specific procedures for implementing this provision of the LIFE Act Amendments. As such, the details will be discussed in a separate rulemaking at a later time. The parole provisions only apply to eligible family members of an alien who has already been granted LIFE Legalization, and do not apply to LIFE Legalization applicants or their families.

Description of Program

What Is the Difference Between the Existing Family Unity Program and the Family Unity Provisions of the LIFE Act Amendments?

The statutory eligibility requirements imposed on aliens in order to qualify for benefits under the existing Family Unity Program (FUP) implementing section 301 of IMMACT 90, and the LIFE Act Amendments Family Unity provisions are different. In order to benefit from the FUP, the applicant had to be the spouse or unmarried child (under the age of 21) of an alien who had already adjusted status to that of either temporary or permanent resident under section 245A of the Act (8 U.S.C. 1255a). Also, in

order to qualify, the FUP applicants were required to establish entry into the United States before May 5, 1988, residence on that date, continuous residence in the United States since that date, and that a qualifying relationship with the legalized alien existed as of May 5, 1988. 8 CFR 236.12. The specific eligibility requirements for aliens who might benefit from the LIFE Act Amendments Family Unity provisions will be discussed in more detail later in this interim rule. In general, however, aliens who might benefit from the LIFE Act Amendments Family Unity provisions must establish entry into the United States before December 1, 1988, residence in the United States on December 1, 1988, and that a qualifying relationship with an alien who is eligible for adjustment of status under LIFE Legalization currently exists. Thus, while the old FUP is focused on unifying families that were in existence as of May 5, 1988, the Family Unity provisions of the LIFE Act Amendments serve to benefit only those families that are in existence after the date of enactment of the LIFE Act Amendments.

Another difference between the two programs is that the current FUP regulations ban FUP beneficiaries from receiving Federal financial assistance. Specifically, 8 CFR 236.17 states that any spouse or child who receives Family Unity benefits through an alien who received lawful temporary residence, and who was banned from receiving certain public welfare assistance for a period of 5 years pursuant to section 245A(h) of the Act, is similarly banned from receiving certain public welfare assistance. The LIFE Act explicitly states that section 245A(h) of the Act does not apply to aliens adjusting status under LIFE Legalization. The inapplicability of section 245A(h) of the Act to aliens adjusting status under LIFE Legalization, however, does not mean that they are generally eligible for all public benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, 110 Stat. 2105, as amended, limits the eligibility of lawful permanent residents and other ''qualified aliens,'' as defined by the welfare reform law, for certain Federal, state, and local means-tested public benefits. 8 U.S.C. 1601 through 1625. Individuals are encouraged to contact the relevant benefit-granting agency for information about their eligibility for public benefit programs.

Ineligible Aliens

Who Is Ineligible for Family Unity Benefits Under the LIFE Act Amendments?

Pursuant to section 1504(d) of the LIFE Act Amendments (and by incorporation, section 241(b)(3)(B) of the Act, 8 U.S.C. 1231(b)(3)(B)), an alien is ineligible for Family Unity benefits if the Service finds or determines that:

1. The alien has been convicted of a felony or of three or more misdemeanors in the United States;

2. The alien has 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;

3. The alien has been convicted by a final judgment of a particularly serious crime and is a danger to the community of the United States;

4. There are serious reasons to believe that the alien has committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

5. There are reasonable grounds to believe that the alien is a danger to the security of the United States.

It must be noted that under section 1504(a)(1) of the LIFE Act Amendments, an alien granted Family Unity benefits under the provisions of the LIFE Act Amendments may not be removed on certain grounds. The grounds on which such an alien may not be removed are limited to the following:

1. Section 237(a)(1)(A) of the Act (8 U.S.C. 1227(a)(1)(A)) (aliens who were inadmissible at the time of entry or adjustment of status), except that the alien may be removed if he or she is inadmissible because of a ground listed in section 212(a)(2) (criminal and related grounds) or in section 212(a)(3) (security and related grounds) of the Act;

2. 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);

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

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

Consistent with the existing regulations implementing section 301 of IMMACT 90, if an alien is removable on a ground that is not protected by section 1504(a)(1) of the LIFE Act Amendments, the Service finds that it would be inappropriate to grant Family Unity benefits to that alien. Accordingly, aliens in such circumstance will not be afforded Family Unity benefits.

Filing

How Does an Alien Who Is Present in the United States Apply for Benefits Under the Family Unity Provisions of the LIFE Act Amendments?

Aliens who are eligible for benefits under the Family Unity provisions of the LIFE Act Amendments and who are currently residing in the United States should file a Form I–817. The Form I–817 must be submitted by *mail* to: United States Immigration and Naturalization Service, Post Office Box 7219, Chicago, IL 60607–7219. An alien who is eligible for benefits under the Family Unity provisions of the LIFE Act Amendments and files a Form I–817 on or before May 31, 2002, need only demonstrate that he or she has a qualifying relationship to an alien who is *eligible to apply* for LIFE Legalization. Any Form I–817 that is filed on or after June 1, 2002 (i.e., after the statutorily mandated LIFE Legalization application period has ended), must include evidence that the alien through whom the applicant is alleging eligibility for Family Unity benefits has filed a Form I–485 pursuant to LIFE Legalization. If a Form I–817 is submitted on or before May 31, 2002, but is not adjudicated until on or after June 1, 2002, the Service will request that the applicant submit evidence that the alien through whom the applicant is alleging eligibility for Family Unity benefits has filed a Form I–485. When the Form I–817 is filed, the alien must include:

1. The required fee of $120.00;

2. Four photographs as described in the Form I–817 instructions;

3. Documentary evidence of his or her qualifying relationship to the alien eligible for adjustment of status under LIFE Legalization;

4. Documentary evidence of his or her entry into the United States prior to December 1, 1988;

5. Documentary evidence of his or her residence in the United States on December 1, 1988;

6. Documentary evidence that his or her spouse or parent applied for class membership in the *CSS, LULAC,* or *Zambrano* lawsuit before October 1, 2000;

7. If the Form I–817 is filed on or after June 1, 2002, documentary evidence that his or her spouse or parent has filed a Form I–485 seeking adjustment of status under LIFE Legalization; and

8. When required, a fingerprint fee of $25.00.

The instructions to the Form I–817 provide examples of documents that can

be submitted by an individual to prove eligibility under these provisions. The instructions also advise under what circumstances a fingerprint fee is required.

Will the Family Unity Applicants Be Required To Appear for an Interview?

Not every applicant under the Family Unity provisions of the LIFE Act Amendments will be required to appear before a Service officer for an interview. If, however, a Service officer believes that an interview would be necessary to review evidence of the applicant's eligibility, then one will be scheduled. The Family Unity applicant would be notified in writing of the time and place of the interview.

How Will a Family Unity Applicant Know That a Final Determination has Been Made on His or Her Form I–817?

The Service will notify the applicant in writing of any decision made on the Form I–817. If the Form I–817 is approved, the Family Unity beneficiary will be so notified and will receive an employment authorization document (EAD). The EAD will be valid for 1 year. If the Form I–817 is denied, the Family Unity applicant will be so notified. There is no appeal from the denial of a Form I–817.

Will a Family Unity Beneficiary Receive Automatic Extensions of His or Her EAD at the End of the 1-Year Period?

No, the Service will not automatically extend a Family Unity beneficiary's EAD upon its expiration. The Service is in the process of finalizing procedures that must be followed by all Family Unity beneficiaries to extend their EADs. These procedures will be discussed in a separate rulemaking at a later time.

Protection From Removal and Eligibility for Employment

Is a Family Unity Applicant Entitled to Employment Authorization While the Form I–817 Is Pending?

No, the initial filing of a Form I–817 does not entitle the applicant to employment authorization from the Service. If and when the applicant's initial Form I–817 is approved, the alien will receive Family Unity benefits prescribed by law, including employment authorization.

Is the Grant of Family Unity Benefits Under the LIFE Act Amendments a Period of Authorized Stay Such That the Beneficiary Is Not Accruing Unlawful Presence Within the Scope of Section 212(a)(9)(B) of the Act?

Yes, if an applicant is granted Family Unity benefits pursuant to the LIFE Act Amendments, he or she will be deemed to have received an authorized period of stay approved by the Attorney General. Such authorized period of stay will be deemed to begin as of the date the Form I–817 was filed. Accordingly, a Family Unity beneficiary will not accrue unlawful presence as long as he or she retains Family Unity protection. If, however, a beneficiary under the Family Unity provisions of the LIFE Act Amendments has his or her benefits terminated by the Service, the former Family Unity beneficiary will begin accruing unlawful presence immediately from the date of such termination.

Travel Outside the United States

Is a Family Unity Applicant Allowed To Travel Outside the United States While the Form I–817 Is Pending?

No, any applicant who departs the United States while his or her Form I–817 is pending will be deemed to have abandoned the application and the application will be denied. If a Form I–817 is approved, the Family Unity beneficiary will be allowed to travel to and from the United States provided he or she applies for advance parole, using Form I–131, before departing the United States.

Termination of Family Unity Benefits

Can an Alien's Family Unity Benefits Ever Be Terminated?

Yes, the Service may terminate Family Unity benefits whenever the necessity for such action comes to the attention of the Service. The following bases of termination are founded upon the grounds of ineligibility for Family Unity benefits discussed earlier in this interim rule. These grounds for termination include, but are not limited to:

1. A determination is made that Family Unity benefits were acquired as the result of fraud or willful misrepresentation of a material fact;
2. The Family Unity beneficiary commits an act or acts which render him or her ineligible for benefits under the LIFE Act Amendments Family Unity provisions; or
3. The alien, upon whose status LIFE Act Family Unity benefits are based, is issued a final determination of ineligibility for LIFE Legalization;
4. Failure of the alien, upon whose status LIFE Act Family Unity benefits are based, to apply for LIFE Legalization within the statutory application period;
5. The alien, upon whose status LIFE Act Family Unity benefits are based, loses his or her status as a LPR;
6. A qualifying relationship to the alien, upon whose status LIFE Act Family Unity benefits are based, no longer exists.

The LIFE Act Amendments do not specifically address the subject of termination. However, the reference in section 1504(a)(2) of the LIFE Act Amendments to ''the period of time in which protection is provided,'' and the general principle that an agency can act through regulation to fill gaps in a statute in a way that reasonably gives effect to the statutory scheme and avoids absurd results, support the Service's rulemaking to ensure, for example, that a benefit that is improvidently granted as a result of fraud may be withdrawn. The grounds for termination include situations in which the principal alien does not apply, or is found ineligible for legalization. As the very name ''Family Unity'' implies, a protection that is derivatively based upon another alien who has an opportunity to legalize his or her status, no longer carries out the reasonable statutory intention if that alien is ineligible to legalize and lacks protection from removal. Rather, this would place the derivative family members in a more advantageous immigration position than the principal alien, yet in a limbo situation in which they could not be removed on certain grounds of deportation but would not have any prospect of adjusting their status to lawful permanent residence. The rule avoids this absurd result by filling the gap in the LIFE Act Amendments by providing reasonable bases and procedures for termination.

What Is the Termination Process?

If the Service determines that an alien who received benefits pursuant to the LIFE Act Amendments Family Unity provisions is no longer eligible for such benefits, the alien will be advised in writing of such determination. The alien will be advised of the Service's intent to terminate and of the reason(s) thereof. The alien will be given 30 days to respond to the notice of intent to terminate and to submit evidence in his or her behalf. The alien will then be advised in writing of the Service's final determination.

Congressional Review Act

Although this rule falls under the category of major rule as that term is

defined in 5 U.S.C. 804(2)(A), the Department finds that under 5 U.S.C. 808(2) good cause exists for implementation of this rule on June 1, 2001. The reason for immediate implementation is as follows: The provisions of Public Law 106–553, which was enacted on December 21, 2000, require that the Service publish implementing regulations not later than 120 days after the date that Public Law 106–553 was enacted. Accordingly, the Service is required to issue regulations immediately. Moreover, because the application period prescribed under the LIFE Act for eligible aliens to apply for adjustment under section 245A of the Act, as modified by Public Law 106–553, does not begin until the Attorney General issues this regulation, and given the public interest in providing these important benefits and protections, the Attorney General has determined to issue this regulation as an interim final rule, effective immediately.

Interim Rule Justification

The Service is implementing this rule on an interim final basis with a request for post promulgation comments. The provisions of Public Law 106–553 require that the Attorney General issue implementing regulations no later than 120 days after the date that the legislation was enacted on December 21, 2000. Moreover, section 245A(g)(3) of the Act (8 U.S.C. 1255a(g)(3)), which was not modified by Public Law 106–553, provides that regulations issued pursuant to section 245A of the Act may be prescribed to take effect on an interim final basis if the Attorney General determines that it is necessary in order to implement that section in a timely manner. Because the application period prescribed under the LIFE Act for eligible aliens to apply for adjustment under section 245A of the Act, as modified by Public Law 106–553, does not begin until the Attorney General issues this regulation, and given the public interest in providing these important benefits and protections, the Attorney General has determined that timely implementation of the LIFE Legalization program requires the issuance of this regulation on an interim final basis.

Good Cause Exception

The foregoing statutory provisions notwithstanding, the Department also finds that this regulation falls within the ''good cause'' exception found at 5 U.S.C. 553(b)(3)(B) and (d)(3) as the immediate effectiveness of this rule is necessary in order to allow aliens to apply for these important benefits and protections at their earliest opportunity. Accordingly, prior notice and public comment on this interim rule is unnecessary and contrary to the public interest.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors. The rule applies to individuals, not small entities, and allows certain class action participants who entered before January 1, 1982, to apply for adjustment of status. It, therefore, has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will result in an effect on the economy of:

$152,379,000 for 2001;
$77,352,000 for 2002; and
$34,260,000 for 2003.

This increase is directly associated with the expected increase in the number of applications as a result of Public Laws 106–553 and 106–554, and the increase in fee that is provided for in section 245A(c)(7) of the Act (8 U.S.C. 1255a(c)(7)). The Service projects that in fiscal year 2001, a total of 789,000 applications will be submitted because of the LIFE Act Legalization and Family Unity provisions as follows:

300,000 Forms I–485;
150,000 Forms I–131;
15,000 Forms I–193;
300,000 Forms I–765; and
24,000 Forms I–817.

The Service projects that in fiscal year 2002, a total of 568,000 applications will be submitted as follows:

100,000 Forms I–485;
55,000 Forms I–131;
5,000 Forms I–193;
400,000 Forms I–765; and
8,000 Forms I–817.

The Service projects that in fiscal year 2003, a total of 328,000 applications will be submitted as follows:

100,000 Forms I–130;
20,000 Forms I–131;
200,000 Forms I–765; and
8,000 Forms I–817.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Family Assessment

The Attorney General has reviewed this regulation and has determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681, Div. A. Accordingly, the Attorney General has assessed this action in accordance with the criteria specified by section 654 (c)(1). In this rule, the Family Unity provisions of the LIFE Act Amendments positively affect the stability of the family by providing a means for the family unit to remain intact.

Paperwork Reduction Act of 1995

This rule provides for the use of a new Form I–485 Supplement D and the revision of Form I–817. These forms are considered information collection requirements under the Paperwork Reduction Act. Since the Service was required to publish regulations implementing Public Law 106–553 within 120 days after enactment, the Service has requested and received emergency review and clearance by the Office of Management and Budget

(OMB) in accordance with the Paperwork Reduction Act. The emergency approval is only valid for 180 days.

A regular review of this information will also be undertaken. Written comments are encouraged and will be accepted until July 31, 2001. Submit comments to: Immigration and Naturalization Service, Policy Directives and Instructions Branch, 425 I Street NW, Room 4034, Washington, DC 20536. Your comments should address one or more of the following points.

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden the Form I–485 supplement D requirement will place on the public, estimates that approximately 400,000 applicants will apply for adjustment of status under LIFE Legalization. The Service has estimated that it takes applicants five and one quarter (5.25) hours to complete Form I–485. The Service also estimates that it will take the applicants approximately one (1) additional hour to complete the Form I–485 with the supplement D. As such, the Service estimates that it will take the applicants a total of six and one quarter (6.25) hours to complete the LIFE Legalization application. This amounts to 2.5 million total annual burden hours for the collection of this information.

The Service, in calculating the overall burden the revised Form I–817 requirement will place on the public, estimates that approximately 40,000 applicants will apply for Family Unity benefits under the LIFE Act Amendments. The Service also estimates that it will take the applicants approximately two and one half (2.5) hours to complete the application. This amounts to 100,000 total annual burden hours for the collection of this information.

Additionally, comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should be directed to the Immigration and Naturalization Service, Policy Directives and Instructions Branch, 425 I Street, N.W., Room 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, 202–514–3291.

List of Subjects

8 CFR Part 100

Organization of functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedures, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.4 [Amended]

2. Section 100.4 is amended in paragraph (e) by adding the entry for the ''Missouri Service Center, Lee's Summit, Missouri'' immediately after the entry for ''Vermont Service Center, St. Albans, Vermont''.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

4. Section 103.2 is amended by revising the first sentence in paragraph (a)(7)(i), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(a) * * *

(7) * * *

(i) *General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. * * *

* * * * *

5. Section 103.7 is amended by adding a sentence at the end of the entry for ''Form I–485'' in paragraph (b)(1), to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–485. * * * All applicants filing for adjustment under LIFE Legalization (Public Law 106–553) must pay $330.00.

* * * * *

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

6. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104–208; 8 CFR part 2.

7. Section 236.14(a) is amended by revising the second sentence to read as follows:

§ 236.14 Filing.

(a) * * * A Form I–817, Application for Family Unity Benefits, must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. * * *

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245a OF THE IMMIGRATION AND NATIONALITY ACT

8. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a, and 1255a note.

9. Sections 245a.1 through 245a.5 are designated as Subpart A.

10. The heading for Subpart A is added to read:

Subpart A—Immigration Reform and Control Act of 1986 (IRCA) Legalization Provisions

11. Subparts B and C are added to read as follows:

Subpart B—Legal Immigration Family Equity (LIFE) Act Legalization Provisions

Sec.

Subpart C—LIFE Act Amendments Family Unity Provisions

Subpart B—Legal Immigration Family Equity (LIFE) Act Legalization Provisions

§ 245a.10 Definitions.

In this Subpart B, the terms:

Eligible alien means an alien who, before October 1, 2000, filed with the Attorney General a written claim for class membership, with or without filing fee, pursuant to a court order issued in the case of:

(1) *Catholic Social Services, Inc.* v. *Meese,* vacated sub nom. *Reno* v. *Catholic Social Services, Inc.,* 509 U.S. 43 (1993) (*CSS*);

(2) *League of United Latin American Citizens* v. *INS,* vacated sub nom. *Reno* v. *Catholic Social Services, Inc.,* 509 U.S. 43 (1993) (*LULAC*); or

(3) *Zambrano* v. *INS,* vacated, 509 U.S. 918 (1993) (*Zambrano*).

Lawful Permanent Resident (LPR) means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

LIFE Act means the Legal Immigration Family Equity Act and the LIFE Act Amendments of 2000.

LIFE Legalization means the provisions of section 1104 of the LIFE Act and section 1503 of the LIFE Act Amendments.

Prima facie means eligibility is established if an ''eligible alien'' presents a properly filed and completed Form I–485 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this Subpart B.

§ 245a.11 Eligibility to adjust to LPR status.

An eligible alien, as defined in § 245a.10, may adjust status to LPR status under LIFE Legalization if:

(a) He or she properly files, with fee, Form I–485, Application to Register Permanent Residence or Adjust Status, with the Service during the application period beginning June 1, 2001, and ending May 31, 2002;

(b) He or she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988;

(c) He or she was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988;

(d) He or she is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in § 245a.18, and that he or she:

(1) Has not been convicted of any felony or of three or more misdemeanors committed in the United States;

(2) Has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(3) Is registered or registering under the Military Selective Service Act, if the alien is required to be so registered; and

(e) He or she can demonstrate basic citizenship skills.

§ 245a.12 Filing and applications.

(a) *When to file.* The application period begins on June 1, 2001, and ends on May 31, 2002. To benefit from the provisions of LIFE Legalization, an alien must properly file an application for adjustment of status, Form I–485, with appropriate fee, to the Service during this 1-year application period as described in this section. All applications, whether filed in the United States or filed from abroad, must be postmarked on or before May 31, 2002, to be considered timely filed.

(1) If the postmark is illegible or missing, and the application was mailed from within the United States, the Service will consider the application to be timely filed if it is *received* on or before June 3, 2002.

(2) If the postmark is illegible or missing, and the application was mailed from outside the United States, the Service will consider the application to be timely filed if it is *received* on or before June 14, 2002.

(3) If the postmark is made by other than the United States Post Office, and is filed from within the United States, the application must bear a date on or before May 31, 2002, and must be received on or before June 3, 2002.

(4) If an application filed from within the United States bears a postmark that was made by other than the United States Post Office, bears a date on or before May 31, 2002, and is received after June 3, 2002, the alien must establish:

(i) That the application was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked by the United States Post Office May 31, 2002; and

(ii) That the delay in receiving the application was due to a delay in the transmission of the mail; and

(iii) The cause of such delay.

(5) If an application filed from within the United States bears both a postmark that was made by other than the United States Post Office and a postmark that was made by the United States Post Office, the Service shall disregard the postmark that was made by other than the United States Post Office.

(6) If an application filed from abroad bears both a foreign postmark and a postmark that was subsequently made by the United States Post Office, the Service shall disregard the postmark

that was made by the United States Post Office.

(7) In all instances, the burden of proof is on the applicant to establish timely filing of an application for LIFE Legalization.

(b) *Filing of applications in the United States.* The Service has jurisdiction over all applications for the benefits of LIFE Legalization under this Subpart B. All applications filed with the Service for the benefits of LIFE Legalization must be submitted by *mail* to the Service. After proper filing of the application, the Service will instruct the applicant to appear for fingerprinting as prescribed in § 103.2(e) of this chapter. The Director of the Missouri Service Center shall have jurisdiction over all applications filed with the Service for LIFE Legalization adjustment of status, unless the Director refers the applicant for a personal interview at a local Service office as provided in § 245a.19.

(1) *Aliens in exclusion, deportation, or removal proceedings, or who have a pending motion to reopen or motion to reconsider.* An alien who is prima facie eligible for adjustment of status under LIFE Legalization who is in exclusion, deportation, or removal proceedings before the Immigration Court or the Board of Immigration Appeals (Board), or who is awaiting adjudication of a motion to reopen or motion to reconsider filed with the Immigration Court of the Board, may request that the proceedings be administratively closed or that the motion filed be indefinitely continued, in order to allow the alien to pursue a LIFE Legalization application with the Service. In the request to administratively close the matter or indefinitely continue the motion, the alien must include documents demonstrating prima facie eligibility for the relief, and proof that the application for relief had been properly filed with the Service as prescribed in this section. With the concurrence of Service counsel, if the alien appears eligible to file for relief under LIFE Legalization, the Immigration Court or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely.

(2) If an alien has a matter before the Immigration Court or the Board that has been administratively closed for reasons unrelated to this Subpart B, the alien may apply before the Service for LIFE Legalization adjustment of status.

(3) *Aliens with final orders of exclusion, deportation, or removal.* An alien, who is prima facie eligible for adjustment of status under LIFE Legalization, and who is subject to a final order of exclusion, deportation, or removal, may apply to the Service for LIFE Legalization adjustment.

(c) *Filing of applications from outside the United States.* An applicant for LIFE Legalization may file an application for LIFE Legalization from abroad. An application for LIFE Legalization filed from outside the United States shall be submitted by mail to the Service according to the instructions on the application. The Missouri Service Center Director shall have jurisdiction over all applications filed with the Service for LIFE Legalization adjustment of status. After reviewing the application and all evidence with the application, the Service shall notify the applicant of any further requests for evidence regarding the application and, if eligible, how an interview will be conducted.

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must file Form I–485. An applicant should complete Part 2 of Form I–485 by checking box ''h—other'' and writing ''LIFE Legalization'' next to that block. Each application must be accompanied by:

(1) The $330 application fee.

(2) The $25 fee for fingerprinting if the applicant is between the ages of 14 and 75.

(3) Evidence to establish identity, such as a passport, birth certificate, any national identity document from the alien's country of origin bearing photo and fingerprint, driver's license or similar document issued by a state if it contains a photo, or baptismal record/marriage certificate.

(4) A completed Form G–325A, Biographic Information Sheet, if the applicant is between the ages of 14 and 79.

(5) A report of medical examination, as specified in § 245.5 of this chapter.

(6) Two photographs, as described in the instructions to Form I–485.

(7) Proof of application for class membership in *CSS, LULAC,* or *Zambrano* class action lawsuits as described in § 245a.14.

(8) Proof of continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988, as described in § 245a.15.

(9) Proof of continuous physical presence from November 6, 1986, through May 4, 1988, as described in § 245a.16.

(10) Proof of citizenship skills as described in § 245a.17.

(e) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status under this Subpart B. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (f) of this section.

(f) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(g) *Secondary evidence.* Except as otherwise provided in this paragraph, if the primary evidence required in this Subpart B is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, statements or other relevant documents may be submitted. In adjudicating the application for LIFE Legalization adjustment of status, the Service shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraph (d)(3) of this section. However, subject to verification by the Service, if the evidence required to be submitted by the applicant is already contained in the Service's file relating to the applicant, the applicant may submit a statement to that effect in lieu of the actual documentation.

§ 245a.13 During pendency of application.

(a) *In general.* When an eligible alien in the United States submits a prima facie application for adjustment of status under LIFE Legalization during the application period, until a final determination on his or her application has been made, the applicant:

(1) May not be deported or removed from the United States;

(2) Is authorized to engage in employment in the United States and is provided with an ''employment authorized'' endorsement or other appropriate work permit; and

(3) Is allowed to travel and return to the United States as described at paragraph (e) of this section. Any domestic LIFE Legalization applicant who departs the United States while his or her application is pending without advance parole may be denied re-admission to the United States as

described at paragraph (e) of this section.

(b) *Determination of filing of claim for class membership.* With respect to each LIFE Legalization application for adjustment of status that is properly filed under this Subpart B during the application period, the Service will first determine whether or not the applicant is an ''eligible alien'' as defined under § 245a.10 of this Subpart B by virtue of having filed with the Service a claim of class membership in the *CSS, LULAC,* or *Zambrano* lawsuit before October 1, 2000. If the Service's records indicate, or if the evidence submitted by the applicant with the application establishes, that the alien had filed the requisite claim of class membership before October 1, 2000, then the Service will proceed to adjudicate the application under the remaining standards of eligibility.

(c) *Prima facie eligibility.* Unless the Service has evidence indicating ineligibility due to criminal grounds of inadmissibility, an application for adjustment of status shall be treated as a prima facie application during the pendency of application, until the Service has made a final determination on the application, if:

(1) The application was properly filed under this Subpart B during the application period; and

(2) The applicant establishes that he or she filed the requisite claim for class membership in the *CSS, LULAC,* or *Zambrano* lawsuit.

(d) *Authorization to be employed in the United States while the application is pending.*

(1) *Application for employment authorization.* An applicant for adjustment of status under LIFE Legalization who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file a Form I–765, Application for Employment Authorization, with the Service, including the fee as set forth in § 103.7(b)(1) of this chapter. The applicant may submit Form I–765 either concurrently with or subsequent to the filing of the application for adjustment of status benefits on Form I–485.

(2) *Adjudication and issuance.* Until a final determination on the application has been made, an eligible alien who submits a prima facie application for adjustment of status under this Subpart B shall be authorized to engage in employment in the United States and be provided with an ''employment authorized'' endorsement or other appropriate work permit in accordance with § 274a.12(c)(24) of this chapter. An alien shall not be granted employment authorization pursuant to LIFE Legalization until he or she has submitted a prima facie application for adjustment of status under this Subpart B. If the Service finds that additional evidence is required from the alien in order to establish prima facie eligibility for LIFE Legalization, the Service shall request such evidence from the alien in writing. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the alien may be eligible.

(e) *Travel while the application is pending.* This paragraph is authorized by section 1104(c)(3) of the LIFE Act relating to the ability of an alien to travel abroad and return to the United States while his or her LIFE Legalization adjustment application is pending. Parole authority is granted to the Missouri Service Center Director for the purposes described in this section and may only be exercised pursuant to the standards prescribed in section 212(d)(5) of the Act. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted advance parole or admission into the United States under any other provision of law or regulation for which the alien may be eligible.

(1) An applicant for LIFE Legalization benefits applying from the United States should file, with his or her application for adjustment, a Form I–131, Application for Travel Document, with fee as set forth in § 103.7(b)(1) of this chapter. The Service shall approve the Form I–131 and issue an advance parole document, unless the Service finds that the alien's application does not establish a prima facie claim to adjustment of status under LIFE Legalization.

(2) If an alien travels abroad and returns to the United States with a grant of advance parole, the Service shall presume that the alien is entitled to return under section 1104(c)(3)(B) of the LIFE Act, unless, in a removal or expedited removal proceeding, the Service shows by a preponderance of the evidence, that one or more of the provisions of § 245a.11(d) makes the alien ineligible for adjustment of status under LIFE Legalization.

(3) If an alien travels abroad and returns without a grant of advance parole, he or she shall be denied admission and shall be subject to removal or expedited removal unless the alien establishes, clearly and beyond doubt, that:

(i) He or she filed an application for adjustment pursuant to LIFE Legalization during the application period that presented a prima facie claim to adjustment of status under LIFE Legalization; and,

(ii) His or her absence was either a brief and casual trip consistent with an intention on the alien's part to pursue his or her LIFE Legalization adjustment application, or was a brief temporary trip that occurred because of the alien's need to tend to family obligations relating to a close relative's death or illness or similar family need. A single absence from the United States of more than thirty (30) days or an aggregate of all absences exceeding ninety (90) days shall not be deemed to be a brief and casual trip unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period(s) allowed.

(4) An applicant for LIFE Legalization benefits who applies for admission into the United States shall not be subject to the provisions of section 212(a)(9)(B) of the Act.

(5) Denial of admission under this section is not a denial of the alien's application for adjustment. The alien may continue to pursue his or her application for adjustment from abroad, and may also appeal any denial of such application from abroad. Such application shall be adjudicated in the same manner as other applications filed from abroad.

(f) *Stay of final order of exclusion, deportation, or removal.* The filing of a LIFE Legalization adjustment application on or after June 1, 2001, and on or before May 31, 2002, stays the execution of any final order of exclusion, deportation or removal. This stay shall remain in effect until there is a final decision on the LIFE Legalization application, unless the district director who intends to execute the order makes a formal determination that the applicant does not present a prima facie claim to LIFE Legalization eligibility pursuant to §§ 245a.18(a)(1) or (a)(2), or §§ 245.18a(c)(2)(i), (c)(2)(ii), or (c)(2)(iii), and serves the applicant with a written decision explaining the reason for this determination. Any such stay determination by the district director is not appealable. Neither an Immigration Judge nor the Board has jurisdiction to adjudicate an application for stay of execution of an exclusion, deportation, or removal order, on the basis of the alien's having filed a LIFE Legalization adjustment application.

§ 245a.14 Application for class membership in the CSS, LULAC, or Zambrano lawsuit.

The Service will first determine whether an alien filed a written claim for class membership in the CSS, LULAC, or Zambrano lawsuit as reflected in the Service's indices, a review of the alien's administrative file with the Service, and by all evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that, before October 1, 2000, he or she was a class member applicant in the *CSS, LULAC,* or *Zambrano* lawsuit. An alien should include as many forms of evidence as the alien has available to him or her. Such forms of evidence include, but are not limited to:

(a) An Employment Authorization Document (EAD) or other employment document issued by the Service pursuant to the alien's class membership in the *CSS, LULAC,* or *Zambrano* lawsuit (if a photocopy of the EAD is submitted, the alien's name, A-number, issuance date, and expiration date should be clearly visible);

(b) Service document(s) addressed to the alien, or his or her representative, granting or denying the class membership, which includes date, alien's name and A-number;

(c) The questionnaire for class member applicant under *CSS, LULAC,* or *Zambrano* submitted with the class membership application, which includes date, alien's full name and date of birth;

(d) Service document(s) addressed to the alien, or his or her representative, discussing matters pursuant to the class membership application, which includes date, alien's name and A-number. These include, but are not limited to the following:

(1) Form I–512, Parole authorization, or denial of such;

(2) Form I–221, Order to Show Cause;

(3) Form I–862, Notice to Appear;

(4) Final order of removal or deportation;

(5) Request for evidence letter (RFE); or

(6) Form I–687 submitted with the class membership application.

(e) Any other relevant document(s).

§ 245a.15 Continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988.

(a) *General.* The Service will determine whether an alien entered the United States before January 1, 1982, and resided in continuous unlawful status since such date through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

(b) *Evidence.*

(1) A list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

(2) The following evidence may establish an alien's unlawful status in the United States:

(i) Form I–94, Arrival-Departure Record;

(ii) Form I–20A–B, Certificate of Eligibility for Nonimmigrant (F–1) Student Status—For Academic and Language Students;

(iii) Form IAP–66, Certificate of Eligibility for Exchange Visitor Status;

(iv) A passport; or

(v) Nonimmigrant visa(s) issued to the alien.

(c) *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

(1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(2) The alien was maintaining residence in the United States; and

(3) The alien's departure from the United States was not based on an order of deportation.

(d) *Unlawful status.* The following categories of aliens, who are otherwise eligible to adjust to LPR status pursuant to LIFE Legalization, may file for adjustment of status provided they resided continuously in the United States in an unlawful status since prior to January 1, 1982, through May 4, 1988:

(1) An eligible alien who entered the United States without inspection prior to January 1, 1982.

(2) *Nonimmigrants.* An eligible alien who entered the United States as a nonimmigrant before January 1, 1982, whose authorized period of admission as a nonimmigrant expired before January 1, 1982, through the passage of time, or whose unlawful status was known to the Government before January 1, 1982. Known to the Government means documentation existing in one or more Federal Government agencies' files such that when such document is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. Any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was known to the Government.

(i) *A or G nonimmigrants.* An eligible alien who entered the United States for duration of status (D/S) in one of the following nonimmigrant classes, A–1, A–2, G–1, G–2, G–3 or G–4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982. A dependent family member may be considered a member of this class if the dependent family member was also in A or G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

(ii) *F nonimmigrants.* An eligible alien who entered the United States for D/S in one of the following nonimmigrant classes, F–1 or F–2, who completed a full course of study, including practical training, and whose time period, if any, to depart the United States after completion of study expired prior to January 1, 1982. A dependent F–2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Form I–94, Arrival-Departure Record, that extended beyond January 1, 1982, is considered eligible if the principal F–1 alien is found eligible.

(iii) *Nonimmigrant exchange visitors.* An eligible alien who was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Act), who entered the United States before January 1, 1982, and who:

(A) Was not subject to the 2-year foreign residence requirement of section 212(e) of the Act; or

(B) Has fulfilled the 2-year foreign residence requirement of section 212(e) of the Act; or

(C) Has received a waiver for the 2-year foreign residence requirement of section 212(e) of the Act.

(3) *Asylum applicants.* An eligible alien who filed an asylum application prior to January 1, 1982, and whose application was subsequently denied or whose application was not decided by May 4, 1988.

(4) *Aliens considered to be in unlawful status.* Aliens who were present in the United States in one of the following categories were considered to be in unlawful status:

(i) An eligible alien who was granted voluntary departure, voluntary return, extended voluntary departure, or placed

in deferred action category by the Service prior to January 1, 1982.

(ii) An eligible alien who is a Cuban or Haitian entrant (as described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 and at § 212.5(g) of this chapter), who entered the United States before January 1, 1982. Pursuant to section 1104(c)(2)(B)(iv) of the LIFE Act, such alien is considered to be in an unlawful status in the United States.

(iii) An eligible alien who was paroled into the United States prior to January 1, 1982, and whose parole status terminated prior to January 1, 1982.

(iv) An eligible alien who entered the United States before January 1, 1982, and whose entries to the United States subsequent to January 1, 1982, were not documented on Form I–94.

§ 245a.16 Continuous physical presence from November 6, 1986, through May 4, 1988.

(a) The Service will determine whether an alien was continuously physically present in the United States from November 6, 1986, through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application evidence establishing his or her continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Evidence establishing the alien's continuous physical presence in the United States from November 6, 1986, to May 4, 1988, may consist of any documentation issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument.

(b) For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States. A single absence from the United States of more than thirty (30) days or an aggregate of all absences exceeding ninety (90) days shall not be deemed to be a brief, casual, and innocent absence unless the alien had advance parole or the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period(s) allowed.

(c) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous physical presence as required at the time of filing an application under this section.

§ 245a.17 Citizenship skills.

(a) *Requirements.* Applicants for adjustment under LIFE Legalization must meet the requirements of section 312(a) of the Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). Unless an exception under paragraph (c) of this section applies to the applicant, LIFE Legalization applicants must establish that:

(1) He or she has complied with the same requirements as those listed for naturalization applicants under §§ 312.1 and 312.2 of this chapter; or

(2) He or she has a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and United States history and government). The applicant may submit a high school diploma or GED either at the time of filing Form I–485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted); or

(3) He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I–485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

(b) *Second interview.* An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier, at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

(c) *Exceptions.* LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

(1) Is 65 years of age or older; or

(2) Is developmentally disabled as defined under § 245a.1(v).

§ 245a.18 Ineligibility and applicability of grounds of inadmissibility.

(a) *Ineligible aliens.*

(1) An alien who has been convicted of a felony or of three or misdemeanors committed in the United States is ineligible for adjustment to LPR status under this Subpart B; or

(2) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion is ineligible for adjustment of status under this Subpart B.

(b) *Grounds of inadmissibility not to be applied.* Section 212(a)(5) of the Act (labor certification requirements) and section 212(a)(7)(A) of the Act (immigrants not in possession of valid visa and/or travel documents) shall not apply to applicants for adjustment to LPR status under this Subpart B.

(c) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c)(2) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to ensure family unity, or when the granting of such a waiver is otherwise in the public interest. If available, an applicant may apply for an individual waiver as provided in paragraph (c)(1) of this section without regard to section 241(a)(5) of the Act.

(1) *Special rule for waiver of inadmissibility grounds for LIFE Legalization applicants under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act.* An applicant for adjustment of status under LIFE Legalization who is inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the Act, may apply for a waiver of these grounds of inadmissibility while present in the United States, without regard to the normal requirement that a Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, be filed prior to embarking or re-embarking for travel to the United States, and without regard to the length of time since the alien's removal or deportation from the United States. Such an alien shall file Form I–690, Application for Waiver of Grounds of Excludability Under Sections 245A or 210 of the Immigration and Nationality Act, with the district director having jurisdiction over the applicant's case if the application for adjustment of status is pending at a local office, or with the Director of the Missouri Service Center. Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Act does not cure a break in continuous residence resulting from a departure from the United States at any time during the period from January 1, 1982, and May 4, 1988, if the alien was subject to a final exclusion or deportation order at the time of the departure.

(2) *Grounds of inadmissibility that may not be waived.* Notwithstanding any other provisions of the Act, the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (c) of this section:

(i) Sections 212(a)(2)(A) and (2)(B) (crimes involving moral turpitude and controlled substances);

(ii) Section 212(a)(2)(C) (controlled substance traffickers);

(iii) Section 212(a)(3) (security and related grounds); and

(iv) Section 212(a)(4) (public charge) except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act). If a LIFE Legalization applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section.

(d) *Determination of ''likely to become a public charge'' and special rule.* Prior to use of the special rule for determination of public charge under paragraph (d)(3) of this section, an alien must first be determined to be inadmissible under section 212(a)(4) of the Act. If the alien is determined to be ''likely to become a public charge'', he or she may still be admissible under the terms of the Special Rule.

(1) In determining whether an alien is ''likely to become a public charge'', financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.

(2) The special rule for determination of public charge under paragraph (d)(3) of this section is to be applied only after an initial determination that the alien is inadmissible under the provisions of section 212(a)(4) of the Act.

(3) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(iv) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the special rule for determination of public charge.

(e) *Public cash assistance and criminal history verification.* Declarations by an alien that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification by the Service. The alien must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

§ 245a.19 Interviews.

(a) All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed, except that the adjudicative interview may be waived for a child under the age of 14, or when it is impractical because of the health or advanced age of the applicant. Applicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution. Applications for LIFE Legalization adjustment may be denied without interview if the applicant is determined to be statutorily ineligible.

(b) At the time of the interview, wherever possible, original documents must be submitted except the following: official government records; employment or employment-related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf.

(c) If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by the alien's representative. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Service.

§ 245a.20 Decisions, appeals, motions, and certifications.

(a) *Decisions.*

(1) *Approval of applications.* If the Service approves the application for adjustment of status under LIFE Legalization, the district director shall record the alien's lawful admission for permanent residence as of the date of such approval and notify the alien accordingly. The district director shall also advise the alien regarding the delivery of his or her Form I–551,

Permanent Resident Card, and of the process for obtaining temporary evidence of alien registration. If the alien has previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the district director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the district director.

(2) *Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. If the Service intends to rely on adverse information of which the applicant is not aware, the Service will comply with § 103.2(b)(16) of this chapter, and will not deny the application until the applicant has had the opportunity to respond to the adverse information. If inconsistencies are found between information submitted with the adjustment application and information previously furnished by the alien to the Service, the alien shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I–290B, Notice of appeal to the Administrative Appeals Unit (AAU), with required fee specified in § 103.7(b)(1) of this chapter. Except in instances when a LIFE Legalization application is denied for failure to establish timely application for class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit, or in instances when the LIFE Legalization applicant failed to present a prima facie application for LIFE Legalization as defined in § 245a.13(c), employment authorization will be 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 application with fee, provided that the application is submitted on or before May 31, 2002.

(b) *Appeals process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations, Administrative Appeals Office (AAO), who is the appellate authority designated in § 103.1(f)(3) of this chapter. Any appeal shall be submitted to the Service office that rendered the decision with the required fee.

(1) If an appeal is filed from within the United States, it must be received by the Service within 30 calendar days after service of the Notice of Denial (NOD) in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the 30 day period has tolled will not be accepted. The 30 day period for submitting an appeal begins 3 days after the NOD is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative, and an appeal has been properly filed, an additional 30 days will be allowed for this review from the time the ROP is photocopied and mailed.

(2) If an applicant's last known address of record was outside the United States, and the NOD was mailed to that foreign address, the appeal must be received by the Service within 60 calendar days after service of the NOD in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the 60 day period has tolled will not be accepted. The 60-day period for submitting an appeal begins 3 days after the NOD is mailed.

(c) *Motions.* The Service director who denied the application may reopen and reconsider any adverse decision *sua sponte*. When an appeal to the AAO has been filed, the director may issue a new decision that will grant the benefit that has been requested. Motions to reopen a proceeding or reconsider a decision shall not be considered under this Subpart B.

(d) *Certifications.* The Service director who adjudicates the application may, in accordance with § 103.4 of this chapter, certify a decision to the AAO when the case involves an unusually complex or novel question of law or fact.

(e) *Effect of final adjudication of application on aliens previously in proceedings.*

(1) *Upon the granting of an application.* If the application for LIFE Legalization is granted, proceedings shall be deemed terminated or a final order of exclusion, deportation, or removal shall be deemed canceled as of the date of the approval of the LIFE Legalization application for adjustment of status.

(2) *Upon the denial of an application.*

(i) *Where proceedings were administratively closed.* In the case of an alien whose previously initiated exclusion, deportation or removal proceeding had been administratively closed or continued indefinitely under § 245a.12(b)(1), the director shall make a request for recalendaring to the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, when there is a final decision denying the LIFE Legalization application. The Immigration Court or the Board will then recalendar the prior proceeding.

(ii) *Where final order was stayed.* If the application for LIFE Legalization is denied, the stay of a final order of exclusion, deportation, or removal afforded in § 245a.13(f) shall be deemed lifted as of the date of such denial.

§ 245a.21 Confidentiality.

(a) No person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the LIFE Legalization provisions shall be considered an employee of the Department of Justice or bureau or agency thereof.

(b) No information furnished pursuant to an application for permanent resident status under this Subpart B shall be used for any purpose except:

(1) To make a determination on the application;

(2) For the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraphs (c) of this section; or

(3) For the purposes of rescinding, pursuant to section 246(a) of the Act (8 U.S.C. 1256(a)), any adjustment of status obtained by the alien.

(c) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false statement or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false statement or document for use in an application for adjustment of status under this Subpart B.

(d) Information contained in granted files may be used by the Service at a later date to make a decision:

(1) On an immigrant visa petition or other status filed by the applicant under section 204(a) of the Act;

(2) On a naturalization application submitted by the applicant;

(3) For the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986; or

(4) For the furnishing of information, at the discretion of the Attorney General, in the same manner and

circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8.

(e) Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

§ 245a.22 Rescission.

(a) Rescission of adjustment of status under LIFE Legalization shall occur only under the procedures of 8 CFR part 246.

(b) Information furnished by an eligible alien pursuant to any application filed under LIFE Legalization may be used by the Attorney General, and other officials and employees of the Department of Justice and any bureau or agency thereof, for purposes of rescinding, pursuant to 8 CFR part 246, any adjustment of status obtained by the alien.

§§ 245a.23 through 245a.29 [Reserved]

Subpart C—LIFE Act Amendments Family Unity Provisions

§ 245a.30 Description of program.

This Subpart C implements the Family Unity provisions of section 1504 of the LIFE Act Amendments, Public Law 106–554.

§ 245a.31 Eligibility.

An alien who is currently in the United States may obtain Family Unity benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

(a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under § 245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;

(b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and

(c) If applying for Family Unity benefits on or after June 1, 2002, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I–485 pursuant to this Subpart B.

§ 245a.32 Ineligible aliens.

The following categories of aliens are ineligible for Family Unity benefits under the LIFE Act Amendments:

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

(b) An alien who has 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; or

(c) An alien 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; or

(d) An alien who the Attorney General has serious reasons to believe has committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(e) An alien who the Attorney General has reasonable grounds to believe is a danger to the security of the United States.

§ 245a.33 Filing.

(a) *General.* An application for Family Unity benefits under section 1504 of the LIFE Act Amendments must be filed on a Form I–817, Application for Family Unity Benefits, with the Missouri Service Center. A Form I–817 must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(b) *Decision.* The Missouri Service Center Director has sole jurisdiction to adjudicate an application for Family Unity benefits under the LIFE Act Amendments. If the Service finds that additional evidence is required from the alien in order to properly adjudicate the application, the Service shall request such evidence from the alien in writing. The Director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(c) *Referral of denied cases for consideration of issuance of notice to appear.* 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. After an initial denial, an applicant's case will not be referred for issuance of a notice to appear until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under § 245a.32(a), the Service reserves the right to issue a notice to appear at any time after the initial denial.

§ 245a.34 Protection from removal, eligibility for employment, and period of authorized stay.

(a) *Scope of protection.* Nothing in this Subpart C shall be construed to limit the authority of the Service to commence removal proceedings against an applicant for or beneficiary of Family Unity benefit under this Subpart C on any ground of removal. Also, nothing in this Subpart C shall be construed to limit the authority of the Service to take any other enforcement action against such an applicant or beneficiary with respect to any ground of removal not specified in paragraphs (a)(1) through (a)(4) of this section. Protection from removal under this Subpart C is limited to the grounds of removal specified in:

(1) Section 237(a)(1)(A) of the Act (aliens who were inadmissible at the time of entry or adjustment of status), except that the alien may be removed if he or she is inadmissible because of a ground listed in section 212(a)(2) (criminal and related grounds) or in section 212(a)(3) (security and related grounds) of the Act; or

(2) 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);

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

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

(b) *Duration of protection from removal.* An alien whose application for Family Unity benefits under the LIFE Act Amendments is approved will receive protection from removal, commencing with the date of approval of the application. While any evidence of protection from removal shall be dated to expire 1 year after the date of approval, a grant of protection from removal under this section shall be considered effective from the date on which the application was properly filed.

(c) *Employment authorization.* An alien granted Family Unity benefits under the LIFE Act Amendments is authorized to be employed in the United States. The validity period of the employment authorization document shall be dated to expire 1 year after the date of approval of the Form I–817.

(d) *Period of authorized stay.* An alien granted Family Unity benefits under the LIFE Act Amendments is deemed to have received an authorized period of stay approved by the Attorney General within the scope of section 212(a)(9)(B) of the Act.

§ 245a.35 Travel outside the United States.

(a) An alien who departs the United States while his or her application for Family Unity benefits is pending will be deemed to have abandoned the application and the application will be denied.

(b) An alien granted Family Unity benefits under the LIFE Act Amendments who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131. The authority to grant an application for advance authorization for an alien granted Family Unity benefits under the LIFE Act Amendments rests solely with the Service. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be inadmissible under section 212(a)(2) or (3) of the Act, shall be paroled into the United States. He or she shall be provided the remainder of the protection from removal period previously granted under the Family Unity provisions of the LIFE Act Amendments.

§ 245a.36 [Reserved]

§ 245a.37 Termination of Family Unity Program benefits.

(a) *Grounds for termination.* The Service may terminate Family Unity benefits under the LIFE Act Amendments whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(1) A determination is made that Family Unity benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(2) The beneficiary commits an act or acts which render him or her ineligible for Family Unity benefits under the LIFE Act Amendments;

(3) The alien, upon whose status Family Unity benefits under the LIFE Act were based, fails to apply for LIFE Legalization by May 31, 2002, has his or her LIFE Legalization application denied, or loses his or her LPR status; or

(4) A qualifying relationship to the alien, upon whose status Family Unity benefits under the LIFE Act Amendments were based, no longer exists.

(b) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of this chapter. Nothing in this section shall preclude the Service from commencing removal proceedings prior to termination of Family Unity benefits.

(c) *Effect of termination.* Termination of Family Unity benefits under the LIFE Act Amendments shall render the alien amenable to removal under any ground specified in section 237 of the Act (including those grounds described in § 245a.34(a)). In addition, the alien will no longer be considered to be in a period of stay authorized by the Attorney General as of the date of such termination.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

12. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

13. Section 274a.12 is amended by:

a. Revising the last sentence in paragraph (a) introductory text;

b. Removing the word ''or'' at the end of paragraph (a)(12);

c. Replacing the period with ''; or'' at the end of paragraph (a)(13);

d. Adding paragraph (a)(14); and by

e. Adding paragraph (c)(24).

The revisions and additions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) *Aliens authorized employment incident to status.* * * * Any alien who is within a class of aliens described in paragraphs (a)(3) through (a)(8) or (a)(10) through (a)(14) of this section, and who seeks to be employed in the United States, must apply to the Service for a document evidencing such employment authorization.

* * * * *

(14) An alien granted Family Unity benefits under section 1504 of the Legal Immigrant Family Equity (LIFE) Act Amendments, Public Law 106–554, and the provisions of 8 CFR part 245a, Subpart C of this chapter, as evidenced by an employment authorization document issued by the Service.

* * * * *

(c) * * *

(24) An alien who has filed an application for adjustment pursuant to section 1104 of the LIFE Act, Public Law 106–553, and the provisions of 8 CFR part 245a, Subpart B of this chapter. Employment authorization shall be granted in increments not exceeding 1 year during the period that the application is pending (including any period when an administrative appeal is pending) and shall expire on a specific date.

* * * * *

PART 299—IMMIGRATION FORMS

14. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

15. Section 299.1 is amended in the table by:

a. Adding the entry for Form ''I–485 Supplement D'' in proper numerical sequence; and by

b. Revising the entries for Forms ''I–765'' and ''I–817'', to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * *	*	* * *
I–485 Supplement D	04–26–01	LIFE Legalization Supplement to Form I–485 Instructions.
* * *	*	* * *
I–765	04–24–01	Application for Employment Authorization.
* * *	*	* * *
I–817	04–26–01	Application for Family Unity Benefits.
* * *	*	* * *

16. Section 299.5 is amended in the table by:

a. Adding the entry for Form ''I–485 Supplement D'' in proper numerical sequence; and by

b. Revising the entry for Form ''I–817'', to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* * *	* * *	*
I–485 Supplement D	LIFE Legalization Supplement to Form I–485 Instructions	1115–0239
* * *	* * *	*
I–817	Application for Family Unity Benefits	1115–0166
* * *	* * *	*

Dated: May 25, 2001.

John Ashcroft,

Attorney General.

[FR Doc. 01–13669 Filed 5–31–01; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 299

[INS No. 2108–01]

RIN 1115–AG03

Establishing Premium Processing Service for Employment-Based Petitions and Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by establishing a Premium Processing Service for certain employment-based petitions and applications. If an entity pays the required fee for Premium Processing Service, the Service will process the petition or application within 15 calendar days. Premium Processing Service will provide American businesses with the opportunity to obtain faster processing of petitions and applications to meet their needs for foreign workers.

DATES: *Effective date:* This interim rule is effective June 1, 2001.

Comment date: Written comments must be submitted on or before July 31, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536, or via fax to (202) 305–0143. To ensure proper handling, please reference INS No. 2108–01 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Tracy Renaud, Adjudications Officer, Immigration Services Division, Immigration and Naturalization Service, 800 K Street, NW., 10th Floor, Washington, DC 20536, telephone (202) 305–8010.

SUPPLEMENTARY INFORMATION:

Background

What Is the Authority To Charge a Premium Processing Fee?

On December 21, 2000, the President signed the District of Columbia Appropriations Act, 2001, Public Law 106–553, 114 Stat. 2762 (2000). The legislation added a new section 286(u) to the Immigration and Nationality Act (Act) that authorizes the Attorney General to collect a $1,000 ''premium processing'' fee in addition to the regular filing fee that must be paid for the filing with the Service of certain petitions and applications. Under this new legislation, the authority to collect the premium processing fee applies only to employment-based petitions and applications.

Why Have Premium Processing Service?

The Premium Processing Service will enable the Service to improve its services to its business customers. These businesses must sometimes recruit and hire foreign workers to fill jobs in short time frames. The Service's current processing times for employment-based petitions and applications may not accommodate the needs of these businesses. The Premium Processing Service will give American businesses an option to pay for faster processing of petitions and applications for foreign workers.

What Is Premium Processing Service?

The District of Columbia Appropriations Act of 2001, Public Law 106–553, established ''premium processing service'' and the associated filing fee. It also specified that the Service was required to process applications under the Premium Processing Service in 15 calendar days. However, the legislation did not explicitly define what ''premium processing service'' means. Therefore, the Service is using its authority under section 103(a) of the Act to establish the details of this new service.

For example, if the applicant or petitioner pays for Premium Processing Service of a petition or application, the Service will issue an approval notice, notice of intent to deny, request for evidence, or notice of an investigation for fraud or misrepresentation within 15 calendar days. Premium Processing Service begins on the day the Service physically receives a petition or application and ends on the day the Service issues a notice or request. If the Service does not issue a notice or request within 15 calendar days, the Service will refund the fee automatically. However, when the Service fails to issue a notice or request within 15 calendar days and refunds the fee, the Service will still expeditiously process the case. If the application or petition in question was not eligible for Premium Processing Service, the fee will be refunded and the Service will continue to process the case normally.

What Are the Benefits of the Premium Processing Service?

The Premium Processing Service provides a benefit to all entities that file applications and petitions with the Service, and not just to those employers