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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

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

[INS No. 2115–01; AG Order No. 2588–2002]

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: Final rule.

SUMMARY: On June 1, 2001, the Attorney General published an interim rule in the **Federal Register** that implemented 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 status 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).* The interim rule provided a 1-year application period from June 1, 2001, to May 31, 2002, for those aliens applying for adjustment of status pursuant to section 1104 of the LIFE Act. The interim rule also implemented 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 status under section 1104 of the LIFE Act.

This rule provides final adoption of the interim rule, with certain amendments as appropriate. This final rule is necessary to ensure that those aliens eligible to apply for legalization benefits under the provisions of the LIFE Act and LIFE Act Amendments are able to do so within the application period. This final rule will provide definitive regulations for all applicants under section 1104 of the LIFE Act and section 1504 of the LIFE Act Amendments.

DATES: This final rule is effective June 4, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth N. Lee or Suzy Nguyen, Assistant Directors, Residence and Status Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION: On December 21, 2000, former President Clinton signed into law the 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 provide 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 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 also must 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.

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. 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.

On June 1, 2001, the Attorney General published an interim rule in the **Federal Register** at 66 FR 29661. The Attorney General amended the Immigration and Naturalization Service (Service) regulations by adding Subparts B and C to 8 CFR part 245a. Subpart B implemented the LIFE Legalization provisions of the LIFE Act and Subpart C implemented the Family Unity provisions of the LIFE Act Amendments.

The interim rule invited interested persons to provide written comments on or before July 31, 2001. The Service received 132 comments during the comment period and has carefully considered all these comments in formulating this final rule. The following is a discussion of the comments and the Service's response.

Comments relating to LIFE Legalization

Fees (8 CFR 103.7)

Five commenters questioned the Service's imposition of a $330 filing fee for LIFE Legalization applications. Many of these commenters argued that the Service disregarded the legislative intent that LIFE Legalization applicants be treated in the same manner that they would have been treated had they filed applications for legalization during the

initial application period.[1] These commenters contended that any alien who is eligible to apply for LIFE Legalization would have been required to pay only a $185 filing fee during the Immigration Reform and Control Act of 1986 (IRCA) legalization application period (the filing fee for the Form I–687, Application to Adjust Status as a Temporary Resident-Applicants, under section 245A of the INA). The Service appreciates that many commenters have concerns regarding what they perceive to be a substantial increase in filing fees for legalization benefits. The Service must note, however, that in addition to the $185 filing fee for the Form I–687, IRCA legalization applicants were required to pay an additional $120 filing fee when applying for LPR status (the filing fee for the Form I–698, Application to Adjust Status From Temporary to Permanent Resident). As such, IRCA legalization applicants paid filing fees totaling $305, just $25 less than the fee imposed by the Service on LIFE Legalization applicants in the interim rule.

That being said, the Service has reconsidered the fee that will be imposed on LIFE Legalization applicants. As was discussed in the preamble to the interim rule (66 FR 29665, 29667–68), in developing fees, the Service must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. The Service referred to a preliminary draft of its most recent fee review—the FY 2000 Immigration Examinations Fee Account Review—when determining the fee to be levied on LIFE Legalization applicants using the Form I–485, Application to Register Permanent Residence or Adjust Status. That review conducted an in-depth analysis of both direct and indirect costs using an activity-based costing methodology. The draft of the fee review identified the full cost of the Form I–485 to be $330. Since publication of the interim rule, the Service has re-evaluated the FY 2000 Immigration Examinations Fee Account Review and calculated the full cost of the Form I–485 to be $255 instead (*see* the Service's final rule published on December 21, 2001, at 66 FR 65811). Accordingly, the application fee for LIFE Legalization applicants is reduced to $255. Any individual who previously filed a LIFE Legalization application and paid the $330 filing fee will receive a refund in the amount of the difference ($75) from the Service. If an individual is due a refund, there is no reason or need for that individual to contact the Service; the refund will be generated without any action from the LIFE Legalization applicant.[2]

Some commenters argued that members of the *LULAC* class action lawsuit were previously required to pay the original $185 filing fee and they should be credited this amount when filing for LIFE Legalization. The Service does not agree. The LIFE Act provides for certain class action applicants to apply, under a new procedure, for adjustment of status pursuant to section 245A of the Act. Any prior Form I–687 that may have been filed by these class action applicants has no bearing on any Form I–485 that may be filed pursuant to LIFE Legalization. This is a new program with new filing requirements. As such, all aliens applying for LIFE Legalization are subject to the imposition of the full $255 filing fee.

Some commenters also criticized the Service's position that none of the fees collected from the filing of LIFE Legalization applications will be used in the enforcement of IRCA's anti-discrimination provisions. As was discussed in the supplementary information of the interim rule (66 FR 29662), 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. Section 1104(c)(6) of the LIFE Act specifically prohibits the use of any funds collected through this program to be used in such a manner. Consequently, the Service is statutorily prohibited from using any LIFE Legalization application fees for the enforcement of immigration-related unfair employment practices.

Definitions (8 CFR 245a.10)

One commenter wanted the Service to amend the requirement that an applicant must establish he or she filed a written claim for class membership in *CSS, LULAC,* or *Zambrano.* Alternatively, this commenter argued that any applicants who had submitted a Form I–687 prior to the enactment of the LIFE Act should be considered by the Service to have already established prima facie eligibility, as well as continuous residence and physical presence requirements. In addition, the commenter argues that anyone who filed a Form I–687 prior to the enactment of the LIFE Act should not have to file a new application pursuant to the LIFE Act. The Service disagrees with these arguments. Sections 1104(b) and (c)(2) of the LIFE Act specifically require that LIFE Legalization applicants must have filed a written claim for class membership, and establish continuous unlawful residence and physical presence, basic citizenship skills, and admissibility as an immigrant. Furthermore, use of the Form I–687 has not been exclusively limited to the *CSS, LULAC,* and *Zambrano* lawsuits, and in some cases, the Form I–687 was not required to be completely filled out or signed by the applicant. Therefore, the fact that an individual may have filed a Form I–687 does not alone establish prima facie eligibility for LIFE Legalization. The Service will not amend the final regulations in response to this comment.

However, the Service has decided to establish a definition for ''written claim for class membership.'' During the past 14 years, the courts have provided sufficient periods of time for aliens alleging class membership to come forward and notify the Attorney General that they believe that they meet the class definitions. Various forms of evidence that would prove notice to the Attorney General are listed in 8 CFR 245a.14. The Service is adding to that list other forms of evidence which would have been issued pursuant to filing a claim for class membership. The Service is adding Form I–765, Application for Employment Authorization, submitted by an alien who filed for class membership, and an application for a stay of removal submitted by an alien who filed for class membership, and notes that the Service will also evaluate all relevant documents offered by the applicant to establish notice.

Aliens in Exclusion, Deportation, or Removal Proceedings (8 CFR 245a.12(b)(1))

Six commenters objected to the requirement of the concurrence of Service counsel before an immigration judge or the Board of Immigration Appeals may administratively close proceedings, arguing that no guidance is provided in the regulations as to when Service counsel will withhold such concurrence. Service counsel will withhold such concurrence if the alien is not prima facie eligible for legalization. Further guidance through the final regulations is not necessary. No

[1] On November 6, 1986, former 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. The legalization program had a 1-year application period that began on May 5, 1987, and ended on May 4, 1988.

[2] The Service anticipates that all refunds will be delivered by September 3, 2002. If an individual has not received his or refund by September 3, 2002, he or she should contact Lorraine Juiffre at 802–872–6200 ext. 3035.

amendments to the final regulations will be made as a result of this comment.

These same commenters pointed out that an alien with a final order receives an automatic stay of removal by filing an application for LIFE Legalization, and as such argued that concurrence by Service counsel in order to administratively close the matter of an alien currently in proceedings is pointless because the Service could not remove such alien in any event. The Service points to the distinction between administrative proceedings to determine removability and the actual removal of an alien. Should the Service counsel find an alien in proceedings to be prima facie ineligible for LIFE Legalization benefits, such matter will not be administratively closed. If the alien were ultimately ordered removed, such order will be stayed pending the final outcome of the adjudication of that LIFE Legalization application (*see* 8 CFR 245a.13(f)). The final regulations will not be amended in response to these comments.

Filing From Abroad (8 CFR 245a.12(c))

One commenter stated that the Service regulations governing application for LIFE Legalization from abroad is not specific enough with regards to procedures such as fingerprinting, interviewing, and parole into the United States. As indicated in the interim regulations, the Service will provide the applicant who applies for LIFE Legalization from abroad with specific instructions after his or her application has been reviewed. The Service is coordinating efforts with other Federal agencies and American consulates abroad in order to accommodate applicants who file from abroad. Since there are many scenarios for an applicant from abroad (*e.g.,* he or she may reside in an area with an overseas Service office, or in an area with only an American consulate, or in an area remote from either, *etc.*), the Service will provide each applicant with specific procedures that would best accommodate his or her situation and location. Further, any additional procedural guidelines regarding applications from abroad may be set via Service policy memos. As such, the final regulations will not be amended as a result of this comment.

Proof of Citizenship Skills (8 CFR 245a.12(d)(10))

Five commenters suggested that the Service clarify that a LIFE Legalization applicant may submit proof that he or she is satisfactorily pursuing a course of study to achieve basic citizenship skills at any time during the application process. The commenters stated that the Form I–485 Supplement D, LIFE Legalization Supplement to Form I–485 Instructions, advised applicants that such evidence could be submitted at the time of application, subsequent to filing the application but before the Service interview, or at the time of Service interview. The Service has considered this comment and has made appropriate adjustments to the language at 8 CFR 245a.12(d)(10) to accommodate this suggestion.

Secondary Evidence (8 CFR 245a.12(g))

Four commenters questioned the necessity of 8 CFR 245a.12(g). These commenters contended that the section in the interim regulations that described secondary evidence and the Service's acceptance of such evidence is redundant and unnecessary. Upon further review of this section of the interim regulations, the Service finds that much of the language contained in 8 CFR 245a.12(g) is indeed unnecessary, especially when much of that language is contained in 8 CFR 103.2(b)(2). As such, the Service has adopted these commenters' suggestions and has amended the language at 8 CFR 245a.12(f) and (g).

Employment Authorization (8 CFR 245a.13(d)(2))

Five commenters requested that the Service include a timeframe within which a Form I–765, Application for Employment Authorization, must be adjudicated. The Service does not believe that any regulatory language needs to be included in the final rule to address this issue. Employment authorization shall be granted to certain LIFE Legalization applicants pursuant to 8 CFR 274a.12(c)(24). The regulations at 8 CFR 274a.13(d) provide that a Form I–765 filed pursuant to 8 CFR 274a.12(c) (with certain specific exceptions) be adjudicated within 90 days of receipt. These same regulations provide for the issuance of interim employment authorization if a Form I–765 is not adjudicated within those 90 days. In other words, if a LIFE Legalization applicant applies for, and is eligible for, employment authorization, and does not receive such employment authorization within 90 days of filing, he or she may request interim employment authorization at the Service district office having jurisdiction over his or her place of residence. In light of these existing regulations, the Service will not amend the regulations at 8 CFR 245a.13(d)(2).

Travel Authorization (8 CFR 245a.13(e))

Four commenters expressed concern for the language at 8 CFR 245a.13(e) relating to the issuance of advance parole. Specifically, these commenters were troubled that the interim rule at 8 CFR 245a.13(e) indicated that the Service shall issue advance parole ''pursuant to the standards prescribed in section 212(d)(5) of the Act.'' Section 212(d)(5) of the Act states, in pertinent part, that the ''Attorney General may * * * parole [aliens] into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' A review of this reference, especially in light of the language at 8 CFR 245a.13(e)(1) (which indicates that the Service shall approve applications for advance parole filed by any alien eligible for LIFE Legalization), does appear to be too stringent. Accordingly, the Service has amended the regulations in response to these commenters' concerns.

One commenter questioned the Service's requirement that all requests for advance parole be submitted to the lockbox address in Chicago and adjudicated at the Missouri Service Center. The commenter indicated that this filing requirement could pose a problem for those LIFE Legalization applicants who have to travel abroad due to emergent circumstances. The Service appreciates this commenter's concern. Therefore, if a LIFE Legalization applicant must travel abroad due to reasons described in section 212(d)(5) of the Act, he or she will be allowed to file the Form I–131, Application for Travel Document, with the District Director having jurisdiction over his or her place of residence. Such an alien *must* demonstrate to the District Director that he or she is an eligible alien who has filed for adjustment of status pursuant to LIFE Legalization *and* that he or she must travel abroad due to urgent humanitarian reasons. All other Forms I–131 filed by LIFE Legalization applicants must be filed with the Director of the Missouri Service Center. The regulations have been amended accordingly.

Four commenters argued that the interim rule placed an unauthorized evidentiary burden of proof on LIFE Legalization applicants who travel abroad without advance parole. Nothing in the interim rule affects the Service's adjudication of a LIFE Legalization application due to an applicant's travel abroad while the LIFE Legalization application is pending. Section

1104(c)(3)(B) of the LIFE Act states that ''the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness of a close relative or other family need.'' As the Act directed the Attorney General to issue regulations on the topic, 8 CFR 245a.13(e) was issued. Pursuant to 8 CFR 245a.13(e), an alien who travels abroad will be afforded the opportunity to establish the requirements of section 1104(c)(3)(B) of the LIFE Act to the Service or to an immigration judge.

In addition, the regulation at 8 CFR 245a.13(e)(1) permits each LIFE Legalization applicant to apply for advance parole. Through 8 CFR 245a.13(e)(2) and (3), applicants are encouraged to do so, in two different ways. Under 8 CFR 245a.13(e)(2), an alien who goes abroad and returns under a grant of advance parole is presumed to be entitled to return under section 1104(c)(3)(B) of the LIFE Act unless the Service, having placed the alien in an expedited removal or section 240 of the Act proceeding, proves by a preponderance of the evidence that the alien is not eligible for adjustment pursuant to LIFE Legalization. If the alien goes abroad without obtaining advance parole, however, 8 CFR 245a.13(e)(3) provides that the alien must be denied admission and may be removed, unless the alien establishes ''clearly and beyond doubt'' that he or she filed a timely LIFE Legalization application showing prima facie eligibility, *and* the alien's absence meets the requirements of section 1104(c)(3)(B) of the LIFE Act.

These commenters object to the ''clearly and beyond doubt'' standard of proof for 8 CFR 245a.13(e)(3), believing that this standard is impermissibly burdensome on aliens. Section 235(b)(2) of the Act clearly states that the Service must deny admission to an applicant for admission, unless the alien is ''clearly and beyond doubt'' entitled to admission. The same standard of proof applies in section 240 of the Act proceedings against an applicant for admission (section 240(c)(2)(A) of the Act). Moreover, the Service, under 8 CFR 245a.13(e)(1), must grant advance parole to any advance parole applicant who makes a prima facie showing of LIFE Legalization eligibility.

Establishing Class Membership Application (8 CFR 245a.14)

Some commenters stated that the Service should not require LIFE Legalization applicants to submit evidence that they applied for class membership. These commenters contended that the Service should have all of the necessary evidence in its databases and administrative files, and that requiring LIFE Legalization applicants to file this evidence is an unfair burden. The Service does believe that aliens who filed a written claim for class membership in *CSS, LULAC,* or *Zambrano* prior to October 1, 2000, will appear in the Service's databases as so registered. If for some reason, however, an applicant who did timely file for class membership does not appear in Service databases, then any documentary evidence of such filing provided by the applicant will be reviewed by the Service. If this documentary evidence is provided with the application, the Service will not need to request such evidence from the applicant, thereby expediting the application process. If the applicant does not have this documentary evidence in his or her possession, but believes that the Service has this evidence in the applicant's administrative file, the interim regulations at 8 CFR 245a.12(g) provide that applicants could submit a statement to that effect in lieu of the actual documentation. This language has been moved to 8 CFR 245a.12(f) in the final regulations. The Service is not amending the language in the final rule in response to these comments.

Two commenters requested that the Service accept affidavits, letters, and documents from community agencies as evidence of class membership application. It is noted that the interim regulations at 8 CFR 245a.14(e) (8 CFR 245a.14(g) in the final regulations) permit LIFE Legalization applicants to submit ''[a]ny other relevant document(s)'' in proving class membership application along with those listed under 8 CFR 245a.14(a) through (d) (8 CFR 245a.14(a) through (f) in the final regulations). This regulatory language does not limit the type of documentation that may be submitted to prove class member application. The Service believes the inclusion of this phrase (other relevant documents) creates a practical, as well as an expansive, definition that encompasses all types of evidence, including those discussed by the commenters. As the Service's interim rule does allow for the submission of the above-mentioned documents, the Service will not amend the regulations in response to these comments.

In addition, the Service clarifies that, where an alien filed a written claim for class membership, he or she is deemed to have also filed a claim for class membership on behalf of a spouse or child who was a spouse or child as of the date the alien (who filed a written claim for class membership) alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period. Thus, the definition of ''eligible alien'' is amended to include a spouse or child who was a spouse or child as of the date the alien (who filed a written claim for class membership) alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period. This in no way implies that such spouses and children will derive adjustment of status based on the LIFE Legalization application of the alien who filed a written claim for class membership. Rather, the spouse or child of the alien who filed the claim for class membership will also be considered to be an ''eligible alien'' who may file a separate application for LIFE Legalization that will be adjudicated based on the merits of such alien's documentation.

Continuous Residence (8 CFR 245a.15)

Many commenters expressed concern over the Service's requirement that LIFE Legalization applicants produce evidence of their continuous residence in an unlawful manner prior to January 1, 1982, through May 4, 1988. Several commenters cited the great length of time that has passed since 1982, while others cited LIFE Legalization applicants' unlawful status and fear of discovery, as possible reasons for not having evidence of their residence during this time period. The Service recognizes that LIFE Legalization applicants will be required to produce documents dated nearly 20 years ago. Because section 1104(c)(2)(B) of the LIFE Act imposes this continuous residence requirement, however, the Service will continue to require LIFE Legalization applicants to document their residence in the United States during the requisite time period.

One commenter suggested that an alien's departure between January 1, 1982, and May 4, 1988, under an order of deportation should not interrupt the alien's continuous residence. The statute clearly provides that departure while a deportation order is in effect ends ''continuous residence''; section 245A(g)(2)(B)(i) of the Act states that

''an alien shall not be considered to have resided continuously in the United States if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation.'' No provision of the LIFE Act revoked this section of the Act. As such, the Service will not amend the final regulations in response to this comment.

One commenter requested clarification of the language at 8 CFR 245a.15(d). This commenter questioned the use of the word ''eligible'' in the following sentence: ''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.'' The Service has reviewed this sentence and is confident of its wording. The paragraphs following the sentence quoted above list those categories of nonimmigrants who might be able to establish unlawful residence in the United States. If an alien falls into one of these categories of nonimmigrants, and meets the other eligibility requirements of LIFE Legalization (*i.e.,* he or she applied for class membership in one of the three class action lawsuits prior to October 1, 2000, he or she is admissible as an immigrant, he or she has not been convicted of a felony or of three or more misdemeanors, *etc.*), then he or she may file for adjustment of status pursuant to LIFE Legalization. The Service will not amend the final regulations in response to this comment.

Continuous Physical Presence (8 CFR 245a.16)

Six commenters argued that the standards set out in 8 CFR 245a.16(b) regarding brief, casual, and innocent absences in relation to the continuous physical presence requirement did not allow for case-by-case adjudication. It was never the intent in the interim rule to set out a categorical definition of brief, casual, and innocent absences. The numerical standards were placed in the interim rule to serve as a guide to adjudicators. If the number of days the applicant was absent from the United States fell below the guidelines, the adjudicator need look no further. If the applicant's trip was greater than 30 days or an aggregate of 90 days, the applicant could provide reasons for why his or her return could not be accomplished within the time period(s) allowed. As such, a case-by-case adjudication is necessitated by the interim rule. Given the misinterpretation by these commenters, however, the Service will amend 8 CFR 245a.16(b) to remove the standards. Applicants should now be prepared to offer evidence establishing that absences of any period of time were brief, casual, and innocent.

One commenter stated that the regulations at 8 CFR 245a.16(a) would prevent the submission of Social Security Administration (SSA) or Internal Revenue Service (IRS) printouts as evidence of continuous physical presence. The regulations read, in pertinent part, that evidence ''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.'' The Service does not believe this language would prevent the submission of SSA or IRS printouts, provided these printouts bear the name of the applicant, are dated at the time they are issued (*i.e.,* when they are printed out by the issuing agency), and are appropriately endorsed by the issuing agency. The Service will not amend the regulations in response to these comments.

Grounds of Inadmissibility (8 CFR 245a.18)

Many commenters were concerned about individuals who have contracted a communicable disease of public health significance. LIFE Legalization applicants, like all other applicants for admission to the United States, must be able to establish their admissibility pursuant to section 212(a) of the Act. If a LIFE Legalization applicant is found inadmissible based on any of the health-related grounds described at section 212(a)(1) of the Act, he or she may file for a waiver of these grounds of inadmissibility. The interim rule does not prohibit this. Consequently, the Service will not amend the regulations based on these comments.

Six commenters stated that the interim rule did not take into account the fact that many LIFE Legalization applicants have not been entitled to employment authorization and therefore may not be able to demonstrate consistent employment history. In this context, the application of the phrase ''history of employment'' is statutory and is found in the Special Rule for Determination of Public Charge at section 245A(d)(2)(B)(iii) of the Act. The statutory Special Rule is found in IRCA and is incorporated by reference in the LIFE Act. The Service believes that the statutory Special Rule is meant to assist a legalization applicant to prevent a finding of being inadmissible on public charge grounds.

One commenter argues that IRCA and the LIFE Act require that an applicant demonstrate that he or she is not likely to become a public charge; that the LIFE Act interim rule provides that an alien with a consistent employment history is not inadmissible; and that, if the adjudication took place during the original application period (May 5, 1987, to May 4, 1988), the determination of whether a given class member was likely to become a public charge would have taken place when there ''was no legal bar to class members working in the United States, *see* 8 U.S.C. 1324a.'' This commenter fails to note that the ''employment history'' is derived from the statutory Special Rule, and that *employer* sanctions provisions were enacted in IRCA on November 6, 1986. Again, both IRCA and the LIFE Act require that an alien prove that he or she is not likely to become a public charge, clearly a prospective analysis. Both statutes contain the same ''Special Rule'' to be applied in the public charge analysis and both use the standard of demonstrating ''employment history'' to overcome a finding that one is likely to become a public charge.

Nevertheless, the Service has decided to amend 8 CFR 245a.18. The Service is adding language to the regulations regarding the adjudication of public charge for a LIFE Legalization applicant. In adjudicating the issue of public charge, the Service will automatically apply the Special Rule. Adjudicating whether one is likely to become a public charge is necessarily a prospective analysis. The Special Rule provides for a retrospective analysis in determining the prospect of becoming a public charge. Accordingly, the Service will take into account an alien's employment history in the United States, to include the period prior to the 1986 advent of employer sanctions. Additional language in the regulation will encourage applicants to submit as much information as possible in order to preclude a public charge finding. The analysis will be on a case-by-case basis and will permit the applicant to prove financial responsibility pursuant to any number of ways, to include pointing to the ability to have a sponsor file a Form I–134, Affidavit of Support, on the applicant's behalf. Anyone can be the sponsor for the Form I–134.

Interviews (8 CFR 245a.19)

Four commenters stated that the interim rule regarding the interviewing of LIFE Legalization applicants implied that they would not be interviewed by

an immigration officer in their jurisdiction. The Service did not intend to convey this message through the interim rule. The interim rule at 8 CFR 245a.19(a) stated that ''[a]pplicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center.'' All LIFE Legalization applicants who applied for adjustment of status from within the United States, and who must appear for a Service interview, will be interviewed by a Service officer at the Service office with jurisdiction over their place of residence. Those LIFE Legalization applicants who applied for adjustment of status from abroad, and who must appear for a Service interview, will be interviewed by a Service officer as determined by the Director of the Missouri Service Center. The Service does not, therefore, believe that the final regulations must be amended in response to these comments.

One commenter requested that the Service not require interviews of LIFE Legalization applicants. This commenter argued that many LIFE Legalization applicants had already been interviewed when they applied for class membership in one of the three class action lawsuits. While some applicants may not be required to establish basic citizenship skills because they meet one of the listed exceptions, or they have met the requirements in some other fashion (obtained a GED or are enrolled in an acceptable learning program), there will be many LIFE Legalization applicants who will be required to pass a basic citizenship test at the time of his or her Service interview. Further, in-person interviews are useful to both the Service officer and the applicant. It provides an opportunity for any inconsistencies or gaps in the application to be resolved in a timely manner without having to resort to correspondence through the mail. Moreover, there will be instances where an in-person interview will be necessary because shortcomings or discrepancies in an applicant's file cannot be resolved through correspondence (*e.g.,* an applicant does not have sufficient documentation to establish continuous physical presence, but is able to convince a Service officer at an in-person interview that he or she was physically present in the United States). Accordingly, the regulations will not be amended.

Decisions and Appeals (8 CFR 245a.20)

Four commenters requested that the Service's final rule provide for the issuance of a notice of intent to deny prior to the denial of any LIFE Legalization application. The interim rule at 8 CFR 245a.20(a)(2) does provide for the notification of a LIFE Legalization applicant if the Service intends to deny his or her application based upon information of which the applicant was not aware. The Service does recognize that applicants who filed for legalization under IRCA did receive a ''Notice of Intent to Deny'' prior to the issuance of a denial that clearly notified the applicant of the Service's intent to deny his or her application. While the Service has been and will be following this same procedure for LIFE Legalization applicants, it recognizes that this intention is not clearly delineated in the regulations as presently drafted. As such, the Service has made an amendment to the language at 8 CFR 245a.20(a)(2) in response to these commenters' concerns.

These same commenters also requested that the Service expressly state that all LIFE Legalization applicants whose applications are denied may appeal their decisions to the Administrative Appeals Office. The interim rule at 8 CFR 245a.20(a)(2) clearly states that ''a party affected under this part by an adverse decision is entitled to file an appeal . . . to the Administrative Appeals Unit.'' The Service believes that the interim rule is quite clear that all decisions of denial issued pursuant to LIFE Legalization may be appealed. As such, the Service makes no changes pursuant to these comments.

Producing Supporting Documentary Evidence

Many commenters stated that they had already submitted all required evidence in support of their claims to eligibility for legalization. Commenters also expressed concern over what could be a lengthy processing time for any Freedom of Information Act (FOIA) requests to obtain these documents, and then presumably submit them in support of their LIFE Legalization applications. The Service acknowledges that there is a designated time period in which to apply for LIFE Legalization and, therefore, all FOIA requests for records of LIFE Legalization applicants will be expeditiously handled. The Service wishes to reiterate that the interim rule at 8 CFR 245a.12(g) advised applicants that, in lieu of the actual documentation, they could submit a statement indicating that supporting documentation is already contained in the Service's records. This language will be moved to 8 CFR 245a.12(f) in the final rule. Also, the Service will be reviewing all previously created administrative files associated with LIFE Legalization applicants.

Regulatory Changes Deemed Necessary by the Service

The interim rule at 8 CFR 245a.12(d)(2) instructed LIFE Legalization applicants to submit a $25 fingerprinting fee if they are between the ages of 14 and 75. Currently, all other applicants for adjustment of status must be fingerprinted if they are between the ages of 14 and 79, inclusive. Upon further consideration, the Service will require all LIFE Legalization applicants between the ages of 14 and 79 to be fingerprinted. This change will bring the fingerprinting requirements for LIFE Legalization applicants into alignment with the fingerprinting requirements for all other applicants for adjustment of status. LIFE Legalization applicants should be aware that the December 21, 2001, final rule at 66 FR 65811 raised the fingerprint fee from $25 to $50. LIFE Legalization applicants are subject to this higher fee.

The interim rule at 8 CFR 245a.17(c) provided exceptions for certain LIFE Legalization applicants to the establishment of basic citizenship skills. This final rule will clarify that the age exception (being 65 years of age or older) must be met at the time the application for adjustment of status is filed. Section 1104(c)(2)(E)(i)(I) of the LIFE Act requires that LIFE Legalization applicants meet the requirements of section 312(a) of the Act. Sections 312(b) and (c) of the Act provide for exceptions to the naturalization citizenship skills if certain criteria are met as of the date of filing. The implementing regulations at 8 CFR 312.1(b) and 312.2(b) also indicate that a person must meet the age requirement in order to meet these exceptions as of the date of filing. Accordingly, the Service will require that any exceptions to the basic citizenship skills requirements based on age must be met at the time of filing.

Section 1104(c)(2)(D)(i) of the LIFE Act provides that an alien must establish that he or she is admissible to the United States as an immigrant except as otherwise provided under section 245A(d)(2) of the Act. Section 245A(d)(2) of the Act references waivers of grounds of exclusion. In particular, section 245A(d)(2)(B)(ii)(II) of the Act references in what capacity section 212(a)(2)(C) of the Act may not be waived. The Service sees a conflict between section 245A(d)(2)(B)(ii)(II) of the Act and section 212(a)(2)(C) of the Act. When originally enacted, IRCA contained a similar admissibility provision at section 245A(d)(2) of the Act barring the waiver of certain

grounds in the then-existing section 212 of the Act. However, section 245A(d)(2) of the Act was amended by section 603(a)(13)(D) of the Immigration Act of 1990 (IMMACT 90) (Public Law 101–649) to comport with the related changes to section 212 of the Act. Specifically, section 245A(d)(2)(B)(ii)(II) of the Act was amended by IMMACT 90 to remove the reference to pre-IMMACT 90 section 212(a)(23) of the Act (relating to a controlled substance and trafficking in controlled substance), insert a reference to section 212(a)(2)(C) of the Act, but retain the exception (so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana). What would correlate to the pre-IMMACT 90 section 212(a)(23)(A) of the Act is now listed at section 212(a)(2)(A)(ii) of the Act and would thus be referenced at section 245A(d)(2)(B)(ii)(I) of the Act. By its express terms, the exception pertains to ''simple possession'' and as such the Service makes the interpretation that the exception must be applied to the grounds listed at section 212(a)(2)(A)(ii) of the Act and amends the regulations accordingly.

The application period is established by section 1104(c)(2)(A) of the LIFE Act as ''the 12-month period beginning on the date on which the Attorney General issues final regulations to implement this section.'' Given the number of clarifications provided in this final rule and in keeping with congressional intent to permit eligible aliens an opportunity to apply and to end the litigation, the Service has decided to end the application period 1 year from publication of this final rule in the **Federal Register**. As such, the application period commenced with the publication of the interim rule, June 1, 2001, and will end on June 4, 2003.

Congressional Intent To End Litigation

In enacting the provisions for LIFE Legalization, Congress sought to bring an end to the litigation and to permit eligible class members to apply for legalization under section 245A of the Act. Senators Kennedy and Abraham stated that ''the LIFE Act * * * directs the Immigration and Naturalization Service (INS) to adjudicate the applications of individuals in * * * lawsuits on the merits, rather than continuing to litigate whether they were timely filed.'' 146 Cong. Rec. S11, 850–02, Exhibit 2 (daily ed. Dec. 15, 2000) (Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and The LIFE Act Amendments of 2000). Moreover, the Government has represented to Federal courts its willingness to accept applications of any alien who alleges he or she was ''front-desked.''[3] The Service had set up a Front-Desking Legalization Questionnaire Program so as to permit any alien who established that he or she was ''front-desked'' to apply for legalization. Prior to the expiration of the Front-Desking Legalization Questionnaire Program, Congress enacted the LIFE Act establishing a new application period for the three identified class actions (*CSS, LULAC,* and *Zambrano*). In *Reno* v. *Catholic Social Services,* 509 U.S. 43, 67 n.28 (1993), the Supreme Court left open the possibility that an alien who was not ''front-desked'' could show that the ''front-desking policy'' was a ''substantial cause'' of their failure to apply. In the LIFE Act, Congress provides benefits for, and identifies to the Attorney General, three lawsuits that include claims not only of aliens who allege that they were ''front-desked'' but also of aliens who claim that they were discouraged.

The difference in requirements between IRCA and LIFE 245A provisions regarding the continuous unlawful residence requirement could produce results inconsistent with the above goal. In the abstract, a class member may not be able to meet the LIFE Act requirement but may be able to meet the IRCA requirement. Under IRCA, applicants must establish that they resided continuously in the United States in an unlawful status from before January 1, 1982, to the date they applied for legalization (section 245A(a)(2)(A)). The Supreme Court indicated that class members ''applied'' for legalization at the time they were ''front-desked.'' *See Reno, Id.* Under the LIFE Act, however, aliens must establish that they resided continuously in the United States in an unlawful status before January 1, 1982, to May 4, 1988 (section 1104(c)(2)(B) of the LIFE Act).

Similarly, the continuous physical presence requirement is different in the two statutes. Specifically, IRCA required applicants to prove continuous physical presence in the United States since November 6, 1986 (section 245A(a)(3)(A) of the Act). Service regulations allowed that the applicant's obligation to prove continuous physical presence from November 6, 1986, ran only to the date of application (8 CFR 245a.2(b)(1)). The LIFE Act, however, requires all applicants to prove continuous physical presence from November 6, 1986, to May 4, 1988. Thus, the LIFE Act's legalization provisions do not aid class members who allege they interrupted their continuous physical presence after being ''front-desked'' or discouraged.

The Joint Memorandum states that ''nothing in this legislation is intended to preclude this option, or to preclude the Attorney General from resolving any other IRCA adjustment applications on the merits.'' Thus, to facilitate congressional intent, and in accordance with the Supreme Court decision and the Government's commitment, the Service has decided to add to the final rule a provision whereby the Service will adjudicate a LIFE Act application as an application under the standards of section 245A of the Act (that is, under the pre-LIFE Act standards) if the applicant is eligible for such relief under section 245A of the Act but not under section 1104 of the LIFE Act.

For example, if an alien fails to meet the continuous unlawful residence requirement pursuant to section 1104(c)(2)(B) of the LIFE Act, the Service will apply the continuous unlawful residence requirement using section 245A(a)(2)(A) of the Act and deem the ''date the application is filed'' to be the date the applicant establishes that he or she was ''front-desked'' or discouraged from filing. If the alien then meets the continuous unlawful resident requirement at section 245A(a)(2)(A) of the Act, and all other legalization requirements under section 245A of the Act, such an alien shall be granted temporary resident status pursuant to IRCA. Such an alien would then be required to follow all requirements set forth in 8 CFR 245a, Subpart A, such as filing a Form I–698, Application to Adjust Status from Temporary to Permanent Resident, in order to adjust his or her resident status from temporary to permanent.

Comments Relating to LIFE Act Amendments Family Unity Provisions

Aging Out (8 CFR 245a.31)

The majority of commenters requested that the Service reconsider its position on children of LIFE Legalization applicants who reach the age of 21. As was discussed in the interim rule, 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. The statutory language of the Family Unity provisions of the LIFE Act Amendments do not permit Family Unity protection to be extended to aliens who were children

[3] There are certain aliens who claimed that they attempted to physically tender an application for legalization with a fee during the 1-year IRCA application period, at a Service office, but had that application rejected by the Service for filing. This is commonly referred to as having had an application ''front-desked.''

on December 21, 2000, but who ''age-out'' of the Act's definition of child by virtue of reaching their 21st birthday before their Family Unity applications are adjudicated. 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 Service interprets section 1504(b) of the LIFE Act Amendments to require the requisite familial status (the spousal or parent-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. Given the statutory constraints imposed by the LIFE Act Amendments, the Service is unable to adopt these commenters' suggestion to ''freeze'' the age of a child as of the date of enactment of the LIFE Act Amendments (December 21, 2000).

One commenter argued that it would be proper for the Service to continue to grant LIFE Act Amendments Family Unity protection to unmarried adult sons and daughters of LIFE Legalization beneficiaries while denying similar protection to divorced spouses and married children of such beneficiaries. The commenter reasoned that, unlike divorced spouses and married children who have no means of receiving an immigrant visa or adjusting to LPR status through an alien who has adjusted to LPR status pursuant to LIFE Legalization, the unmarried son or daughter of such a LPR may be granted immigrant status based on that relationship. The Service appreciates this comparison; however, section 1504(b) of the LIFE Act Amendments specifically limits protection to ''an alien who is the spouse or unmarried child of an alien described in section 1104(b) of the [LIFE] Act.'' Had Congress intended to shield unmarried sons and daughters from aging out of LIFE Act Amendments Family Unity protection, it could have drafted section 1504 more in line with section 301 of the Immigration Act of 1990 (IMMACT 90), the provision that authorized the pre-existing Family Unity Program (FUP). Section 301 establishes a link between eligibility for immigrant status and continued eligibility for Family Unity protection by providing that the requisite family relationship had to have been established by a specific date and that the alien otherwise be a ''qualified immigrant'', which the Service has interpreted to mean continuously eligible for immigrant status based upon his or her relationship to a legalized alien. See, 8 CFR 236.12(a)(2). In the absence of similar language, the Service must treat LIFE Act Amendments Family Unity applicants consistently within the existing statutory definitions of child and spouse and therefore cannot adopt this commenter's suggestion.

Other commenters requested that the Service allow for Family Unity benefits to continue to be granted to spouses of LIFE Legalization applicants even if the marriage ends in divorce. Again, section 1504(b) of the LIFE Act Amendments specifically states that an eligible spouse or child ''is the spouse or unmarried child of an alien described in section 1104(b) of the [LIFE] Act.'' The Service is, therefore, unable to grant Family Unity benefits to former spouses of LIFE Legalization applicants.

Some commenters argued that once the principal alien has adjusted to LPR status under section 1104 of the LIFE Act, his or her family members may qualify for the same benefits as those aliens who benefit from the FUP established by section 301 of IMMACT 90. Section 301 of IMMACT 90 provides Family Unity benefits to the spouses and children of legalized aliens. Section 301(b)(2)(B) of IMMACT 90 defined legalized aliens as aliens who adjusted to temporary or permanent resident status pursuant to section 245A of the Act. 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). Thus, the old FUP focused on unifying families that were in existence as of May 5, 1988. Beneficiaries of FUP protection do not automatically ''age-out'' upon turning 21, assuming that they are still eligible for family sponsored immigration status based upon his or her relationship to the legalized alien. These commenters argued that LIFE Legalization applicants may ultimately adjust to LPR status pursuant to section 245A of the Act, and, accordingly, their family members should be entitled to the benefits of the FUP under section 301 of IMMACT 90.

Section 301 of IMMACT 90 provides Family Unity benefits to the relatives of aliens who adjust status under the terms of section 245A of the Act as established by IRCA. Section 1504 of the LIFE Act Amendments provides Family Unity benefits to the relatives of aliens who adjust status under the terms of section 245A of the Act *as modified* by section 1104 of the LIFE Act. Section 1504(b) of the LIFE Act Amendments defines those relatives eligible for Family Unity benefits as the ''spouse or unmarried child of an alien described in section 1104(b) of the [LIFE] Act.'' Section 1504(c) of the LIFE Act Amendments provides for the parole of eligible relatives into the United States if the principal alien ''has obtained lawful permanent resident status under section 1104 of the [LIFE] Act.'' It is clear that Congress established a family unity program for the relatives of the LIFE Legalization beneficiaries that is separate and apart from the FUP established for the relatives of IRCA Legalization beneficiaries.

However, it must be noted that, given the decision to permit the conversion of a LIFE Legalization application to an application for IRCA legalization where such standards are more favorable to the applicant, it follows that if the principal alien's LIFE Legalization application is treated as an application under IRCA, then his or her family members, if eligible, may apply for Family Unity benefits under section 301 of IMMACT 90.

Filing and Decisions (8 CFR 245a.33)

Four commenters noted that the interim rule failed to implement section 1504(c) of the LIFE Act Amendments allowing for the application for Family Unity benefits from outside the United States. The Service is drafting a proposed rule on the LIFE Act Amendments Family Unity provisions that will cover these areas of concern and, accordingly, they will not be addressed in this rulemaking.

One commenter requested that the Service allow for the appeal of denials of applications for Family Unity benefits. This commenter stated that allowing applicants to reapply for Family Unity benefits subsequent to a denial for Family Unity benefits is not sufficient and that there must be an allowance for higher-level review of denied applications. First, there is no statutory instruction to create such a procedure within the Family Unity provisions of the LIFE Act Amendments. Second, 8 CFR 245a.33(c) provides an automatic 90-day delay between the denial of an alien's Form I–817 and the referral of the decision for enforcement action. This delay is designed to create an opportunity for renewed consideration of the alien's

claim to benefits under a process that will likely prove faster than the appeal procedure would have been. The Service has, therefore, concluded that the benefits of the more streamlined re-application process outweigh those of the proposed administrative appeal procedure and has not adopted this suggestion.

This same commenter further requested that the Service provide Family Unity applicants the same confidentiality provisions afforded applicants for LIFE Legalization. This commenter expressed concern that applicants seeking Family Unity benefits may subject themselves to removal proceedings should their Forms I–817 be denied. Again, while section 1104 of the LIFE Act does provide specific confidentiality provisions with regards to legalization applicants, section 1504 of the LIFE Act Amendments provides no such confidentiality provisions. Consequently, no amendments to the final rule will be made as a result of this comment.

Duration of Family Unity Benefits (8 CFR 245a.34)

One commenter requested that the Service clarify the length of time Family Unity benefits will be granted to eligible family members. This commenter stated that while it appeared Family Unity benefits would be granted in increments of 1 year, this was not explicit in the interim rule. This commenter also stated that Family Unity benefits should be granted in increments of 2 years, to mirror the existing FUP (whose beneficiaries receive 2-year periods of protection). Applicants for LIFE Legalization receive employment authorization valid for 1-year periods. The Service believes that any family members who derive Family Unity benefits based on the principal alien's application for LIFE Legalization should not receive employment authorization for longer periods than the principal alien. Therefore, the interim rule provided that any Family Unity beneficiary who received Family Unity benefits based on the principal alien's pending application for LIFE Legalization would receive Family Unity benefits only in increments of 1 year. Upon further consideration, however, the Service has decided to grant Family Unity benefits in increments of 2 years once the principal alien has adjusted to LPR status. The final rule is amended accordingly.

The Service has also reconsidered the duration of Family Unity benefits that will be granted to the children of LIFE Legalization applicants. If an alien is 20 years or older and applies for initial, or an extension of, Family Unity benefits based on his or her parent's pending application for LIFE Legalization, he or she will be granted Family Unity benefits that will end on the day before the alien turns 21 years of age. If an alien is 19 years or older and applies for initial, or an extension of, Family Unity benefits pursuant to the LIFE Act Amendments based on his or her parent's adjustment to LPR status pursuant to LIFE Legalization, he or she will be granted Family Unity benefits that will end on the day before the alien turns 21 years of age. This will prevent a situation where the Service will be required to terminate Family Unity benefits when the child ages-out. This has been codified in the final rule.

Congressional Review Act

Although this rule constitutes a ''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 4, 2002. The reason for immediate implementation is as follows: The provisions of Public Law 106–553 require that the Service provide a one-year application period for LIFE Legalization applicants. The regulations implemented by the interim rule published on June 1, 2001, provided that the one-year application period would expire on May 31, 2002. Making this rule effective immediately upon publication in the **Federal Register** is necessary to ensure that the new one-year application period will begin before the one year application period under the interim rule ends. Allowing a gap between the two application periods would create confusion and thus be contrary to the public interest.

Administrative Procedure Act

For the reasons just stated with respect to the Congressional Review Act, the Department also finds that this regulation falls within the ''good cause'' exception found at 5 U.S.C. 553(d)(3). Delaying implementation of this final rule would be 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. This 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 one 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:

$43,293,000 for 2001;
$152,195,875 for 2002; and
$37,920,000 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 estimates that in fiscal year 2001, a total of 263,000 applications have been submitted because of the LIFE Act Legalization and Family Unity provisions as follows:

100,000 Forms I–485;
50,000 Forms I–131;
5,000 Forms I–193;
100,000 Forms I–765; and
8,000 Forms I–817.

The Service projects that in fiscal year 2002, a total of 894,000 applications will be submitted as follows:

300,000 Forms I–485;
155,000 Forms I–131;
15,000 Forms I–193;
400,000 Forms I–765; and
24,000 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 rule has been

submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule 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

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

Family Assessment

The Attorney General has reviewed this rule 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

The information collection requirement contained in this rule, Form I–485 Supplement D, is being revised. This form will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.

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, the interim rule amending 8 CFR parts 100, 103, 236, 245a, 274a and 299 which was published at 66 FR 29661 on June 1, 2001, is adopted as a final rule with the following changes:

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

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

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

2. Section 245a.6 is added to part 245a, Subpart A, to read as follows:

§ 245a.6 Treatment of denied application under part 245a, Subpart B.

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director shall consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A). In such an adjudication using this Subpart A, the district director will deem the ''date of filing the application'' to be the date the eligible alien establishes that he or she was ''front-desked'' or that, though he or she took concrete steps to apply, the front-desking policy was a substantial cause of his or her failure to apply. If the eligible alien has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence under this Subpart A.

3. Section 245a.10 is amended by:

a. Revising the definition of ''eligible alien''; and by

b. Adding the definition of ''written claim for class membership'' immediately after the definition of ''prima facie.''

The addition and revision read as follows:

§ 245a.10 Definitions.

* * * * *

Eligible alien means an alien (including a spouse or child as defined at section 101(b)(1) of the Act of the alien who was such as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period) 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:

* * * * *

Written claim for class membership means a filing, in writing, in one of the forms listed in § 245a.14 that provides the Attorney General with notice that the applicant meets the class definition in the cases of *CSS, LULAC* or *Zambrano.*

4. Section 245a.11 is amended by revising paragraph (a) to read as follows:

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

* * * * *

(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 June 4, 2003.

* * * * *

5. Section 245a.12 is amended by:

a. Revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (a)(4) introductory text, and (a)(4)(i);

b. Revising paragraphs (d)(1), (d)(2), and (d)(10);

c. Adding a sentence at the end of paragraph (f); and by

d. Removing paragraph (g).

The additions and revisions read as follows:

§ 245a.12 Filing and applications.

(a) *When to file.* The application period began on June 1, 2001, and ends on June 4, 2003. 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 the 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 June 4, 2003, 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 9, 2003.

(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 18, 2003.

(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 June 4, 2003, and must be received on or before June 9, 2003.

(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 June 4, 2003, and is received after June 9, 2003, 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 that was postmarked by the United States Post Office June 4, 2003; and

* * * * *

(d) * * *

(1) The Form I–485 application fee as contained in 8 CFR 103.7(b)(1).

(2) The fee for fingerprinting as contained in 8 CFR 103.7(b)(1), if the applicant is between the ages of 14 and 79.

* * * * *

(10) Proof of citizenship skills as described in § 245a.17. This proof may be submitted either at the time of filing the application, subsequent to filing the application but prior to the interview, or at the time of the interview.

* * * * *

(f) *Evidence.* * * * Subject to verification by the Service, if the evidence required to be submitted by the applicant is already contained in the Service's file or databases relating to the applicant, the applicant may submit a statement to that effect in lieu of the actual documentation.

* * * * *

6. Section 245a.13 is amended by:

a. Revising paragraph (e) introductory text;

b. Revising the first sentence in paragraph (e)(1);

c. Redesignating paragraphs (e)(2) through (e)(5), as paragraphs (e)(3) through (e)(6) respectively;

d. Adding a new paragraph (e)(2);

e. Removing the last sentence from redesignated paragraph (e)(4)(ii); and by

f. Revising paragraph (f).

The additions and revisions read as follows:

§ 245a.13 During pendency of application.

* * * * *

(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. 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 who wishes to travel during the pendency of the application and who is applying from within the United States should file, with his or her application for adjustment, at the Missouri Service Center, a Form I–131, Application for Travel Document, with fee as set forth in § 103.7(b)(1) of this chapter. * * *

(2) An eligible alien who has properly filed a Form I–485 pursuant to this Subpart B, and who needs to travel abroad pursuant to the standards prescribed in section 212(d)(5) of the Act, may file a Form I–131 with the district director having jurisdiction over his or her place of residence.

* * * * *

(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 June 4, 2003, 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 §§ 245a.18(c)(2)(i), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v), or (c)(2)(vi), 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.

7. Section 245a.14 is amended by:

a. Redesignating paragraph (e) as paragraph (g); and by

b. Adding paragraphs (e) and (f).

New paragraphs (e) and (f) read as follows:

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

* * * * *

(e) Form I–765, Application for Employment Authorization, submitted pursuant to a court order granting interim relief.

(f) An application for a stay of deportation, exclusion, or removal pursuant to a court's order granting interim relief.

* * * * *

§ 245a.16 [Amended]

8. Section 245a.16 is amended by removing the last sentence of paragraph (b).

§ 245a.17 [Amended]

9. Section 245a.17(c)(1) is amended by revising the term ''or older; or'' to read ''or older on the date of filing; or''.

10. Section 245a.18 is amended by:

a. Revising paragraphs (c)(2)(i) and (c)(2)(ii);

b. Redesignating paragraphs (c)(2)(iii) and (c)(2)(iv) as paragraphs (c)(2)(v) and (c)(2)(vi), respectively;

c. Adding paragraphs (c)(2)(iii) and (c)(2)(iv);

d. Removing the introductory text of paragraph (d);

e. Removing paragraph (d)(2);

f. Redesignating paragraph (d)(3) as paragraph (d)(2);

g. Revising newly redesignated paragraph (d)(2); and by

h. Adding paragraph (d)(3).

The additions and revisions read as follows:

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

* * * * *

(c) * * *

(2) * * *

(i) Section 212(a)(2)(A)(i)(I) (crimes involving moral turpitude);

(ii) Section 212(a)(2)(A)(i)(II) (controlled substance, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana);

(iii) Section 212(a)(2)(B) (multiple criminal convictions);

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

* * * * *

(d) * * *

(2) An alien who has a consistent employment history that 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)(vi) of

this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. 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.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I–134, Affidavit of Support. The failure to submit Form I–134 shall not constitute an adverse factor.

* * * * *

11. Section 245a.20 is amended by revising paragraph (a)(2), to read as follows:

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

(a) * * *

(2) *Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefor. When an adverse decision is proposed, the Service shall notify the applicant of its intent to deny the application and the basis for the proposed denial. The applicant will be granted a period of 30 days from the date of the notice in which to respond to the notice of intent to deny. All relevant material will be considered in making a final decision. 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. An applicant 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 Office (AAO), with required fee specified in § 103.7(b)(1) of this chapter. Renewal of employment authorization issued pursuant to § 245a.13 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 June 4, 2003.

* * * * *

12. Section 245a.31 is amended by revising paragraph (c) to read as follows:

§ 245a.31 Eligibility.

* * * * *

(c) If applying for Family Unity benefits on or after June 5, 2003, 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.

13. Section 245a.34 is amended by revising paragraphs (b) and (c) to read as follows:

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

* * * * *

(b) *Duration of protection from removal.* When an alien whose application for Family Unity benefits under the LIFE Act Amendments is approved, he or she will receive protection from removal, commencing with the date of approval of the application. A grant of protection from removal under this section shall be considered effective from the date on which the application was properly filed.

(1) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's application for LIFE Legalization, any evidence of protection from removal shall be dated to expire 1 year after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, any evidence of protection from removal shall be dated to expire 2 years after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(c) *Employment authorization.* An alien granted Family Unity benefits under the LIFE Act Amendments is authorized to be employed in the United States.

(1) In the case of an alien who has been granted Family Unity benefits based on the principal alien's application for LIFE Legalization, 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, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, the validity period of the employment authorization document shall be dated to expire 2 years after the date of approval of the Form I–817, or the day before the alien's 21st birthday, whichever comes first.

* * * * *

14. Section 245a.37 is amended by revising paragraph (a)(3) to read as follows:

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

(a) * * *

(3) The alien, upon whose status Family Unity benefits under the LIFE Act were based, fails to apply for LIFE Legalization by June 4, 2003, has his or her LIFE Legalization application denied, or loses his or her LPR status; or

* * * * *

PART 299—IMMIGRATION FORMS

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

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

16. Section 299.1 is amended in the table by revising the entry for Form ''I–485 Supplement D'', to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* *
I–485 Supplement D.	.....	LIFE Legalization Supplement to Form I–485 Instructions.
* *	*	* *

Dated: May 29, 2002.

John Ashcroft,

Attorney General.

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