



U.S. Department of Justice
Immigration and Naturalization Service

HQADN 70/23.1

Office of the Executive Associate Commissioner

*425 I Street NW
Washington, DC 20536*

May 30, 2001

*July 18, 2001
Revision of Filing Address*

MEMORANDUM FOR REGIONAL DIRECTORS

FROM: Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: LIFE Legalization Filings (Adjustment of Status Under Section 245A, as Modified by the Legal Immigration Family Equity Act of 2000 (LIFE Act) and Applications for Family Unity Benefits Pursuant to the LIFE Act Amendments).

Purpose

The purpose of this memorandum is to provide initial guidance concerning the filing of adjustment of status applications under section 245A of the Immigration and Nationality Act (Act) as modified by the Legal Immigration Family Equity Act (LIFE Act) and the LIFE Act Amendments of 2000. This memorandum also provides initial guidance concerning the filing of applications for Family Unity benefits pursuant to the LIFE Act Amendments. The LIFE Act is found in Title XI of H.R. 5548, Public Law 106-553, enacted on December 21, 2000, and the LIFE Act Amendments are found in Title XV of H.R. 5666, Public Law 106-554, enacted on December 21, 2000. This memorandum discusses how section 245A of the Act has been modified and how the Immigration and Naturalization Service (Service) will process applications filed pursuant to the LIFE Act. This memorandum also discusses the eligibility requirements for Family Unity benefits and how aliens should apply for these benefits. The LIFE Legalization interim regulation is scheduled to be published in the Federal Register on June 1, 2001.

Background

On November 6, 1986, the President 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 lawful permanent resident 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

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she resided continuously in the United States in an unlawful status since such date through the date that his or her application was filed. Aliens who entered the United States without

inspection and certain nonimmigrants were eligible to apply under IRCA. The legalization program had a 1-year application period that began on May 5, 1987, and ended on May 4, 1988.

There are three class action lawsuits that involved claims by aliens who were unsuccessful in applying for legalization under the IRCA legalization program: Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993) (CSS), League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993) (LULAC), and Zambrano v. INS, vacated, 509 U.S. 918 (1993) (Zambrano). The aliens in CSS, LULAC, and Zambrano argued that either their claims were denied or that they were discouraged from applying.

Eligibility

The LIFE Act provides certain aliens who applied for class membership in the CSS, LULAC, or Zambrano lawsuit the ability to apply to adjust status to that of a lawful permanent resident. Applicants for adjustment of status under the LIFE Act (LIFE Legalization) will need to establish that:

- Before October 1, 2000, they filed with the Attorney General a written claim for class membership, with or without filing fee, in the CSS, LULAC, or Zambrano lawsuit;
- They entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since such date through May 4, 1988;
- They were continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988;
- They are admissible to the United States;
- They have not been convicted of a felony or of three or more misdemeanors committed in the United States;
- They have never 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
- They can meet basic citizenship skills or are satisfactorily pursuing a course of study to achieve these basic citizenship skills.

It must be noted that even if an alien filed a proper claim for class membership and was denied class membership by the Service, he or she will still be eligible to apply for LIFE Legalization.

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Filing

The LIFE Act provides a 1-year application period that will begin on June 1, 2001. Applicants will use the Form I-485, Application to Register Permanent Residence or Adjust Status, when filing for LIFE Legalization. A Form I-485 Supplement D was drafted to provide filing instructions and is attached to this memorandum. The Form I-485 Supplement D is also available through the Service's Web site and through the Service Forms Centers. As there are notable differences between filing a Form I-485 for LIFE Legalization and filing a Form I-485 for any other purpose (i.e., applications can be filed from abroad, the filing fee for LIFE Legalization is \$330, and applications for LIFE Legalization must be filed with a designated "lockbox" address), the Form I-485 Supplement D should be read by all applicants **before** submitting their applications.

If your office receives a Form I-485 for LIFE Legalization via the mail, or has already accepted such an application for LIFE Legalization, attach a completed Routing Slip Coversheet (attached to this memorandum) and forward the package to the lockbox address (**Revised filing address P.O. Box 7219 Chicago, IL 60680-7219**). If an alien attempts to file a Form I-485 for LIFE Legalization in person, provide him or her with the Form I-485 Supplement D and instruct the alien to file the Form I-485 and supporting documents with the lockbox address.

Unlike other Form I-485 applications, the Service will allow LIFE Legalization applications postmarked by the United States Postal Service (USPS) on or before the closing date of the application period to be deemed to be timely filed. If a USPS postmark is missing or illegible, use the date of actual receipt of the application. If an application has both a postmark made by the USPS and by other than the USPS, use the date of the postmark made by the USPS. If an application has both a foreign postmark and a subsequent postmark made by the USPS, use the date of the foreign postmark. Additional guidance will be provided in a future memorandum when the application period is about to end.

Adjudication

Applications for LIFE Legalization benefits will be mailed to a lockbox address in Chicago, IL, irrespective of the place of residence of the applicant. The lockbox facility will perform fee collection, deposit, receipt and data entry of all applications filed under this provision. The lockbox will then forward all LIFE Legalization applications to the Missouri Service Center (MSC) for initial processing.

The Director of the MSC will determine whether the applicant meets certain basic

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eligibility requirements. Specifically, the application will be reviewed to determine if the applicant registered as a class member in one of the aforementioned lawsuits prior to October 1, 2000. The Director of the MSC may issue a Notice of Intent to Deny the application when the file lacks sufficient evidence to establish that the applicant registered as a class member prior to that date. That notice will provide the applicant the opportunity to submit evidence to overcome the grounds for denial. If the applicant does not respond or does not submit sufficient evidence to establish eligibility under this criterion, the Director of the MSC will issue a Notice of Denial.

If the Director of the MSC is satisfied that the applicant timely registered as a class member, the MSC will process applications for employment authorization and advance parole, if filed with the Form I-485. Once the application has been included in the applicant's A-file and fingerprint results have been received from the FBI, the case will be forwarded to the district office having jurisdiction over the applicant's place of residence. The district office will be responsible for conducting an interview with the LIFE Legalization applicant to determine the applicant's basic citizenship skills and to determine if all other eligibility criteria have been met.

As mentioned above, the LIFE Act allows for LIFE Legalization applications to be filed from abroad. As with other applicants for LIFE Legalization, the Director of the MSC shall determine eligibility under the "class membership registration" criteria, and then either deny the application or refer it to the district office for final adjudication. The Service will discuss, in a separate rulemaking at a later date, how LIFE Legalization applicants will be admitted into the United States for their interviews. Nothing in this memorandum should be construed to permit aliens to be admitted into the United States to file for LIFE Legalization.

During pendency of application

The LIFE Act allows for eligible aliens applying from within the United States to receive employment authorization and travel privileges while their applications are pending with the Service.

Those LIFE Legalization applicants wishing to receive employment authorization must file Form I-765, Application for Employment Authorization, with fee, with the same lockbox address with which the Form I-485 was filed. Unless the Service has evidence that indicates 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 once the Service has determined that the alien is an "eligible alien" (defined in the regulations as an alien who filed a written claim for class membership with the Attorney General in the CSS, LULAC, or

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Zambrano lawsuit before October 1, 2000). The Service will then issue an Employment Authorization Document (EAD) to be valid for one year.

Those LIFE Legalization applicants wishing to receive travel privileges should file Form I-131, Application for Advance Parole, with fee, with the same lockbox address with which the Form I-485 was filed. Unless the Service has evidence that indicates 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 once the Service has determined that the alien is an “eligible alien” (defined in the regulations as an alien who filed a written claim for class membership with the Attorney General in the CSS, LULAC, or Zambrano lawsuit before October 1, 2000). The Service will issue advance parole to the alien. A LIFE Legalization applicant returning from abroad with advance parole will be entitled to return. A LIFE Legalization applicant returning from abroad without advance parole may be subject to removal or expedited removal proceedings and may have to await the processing of the LIFE Legalization application from abroad. As such, LIFE Legalization applicants should be encouraged to submit a Form I-131 prior to any foreign travel.

It should be noted that an alien who is under a final order of exclusion, deportation, or removal and who departs from the United States would be a “self-deport” and would be subject to the inadmissibility provisions of section 212(a)(9) of the Act. This is true regardless of whether the alien obtained a Form I-512, Authorization for Parole of an Alien Into the United States (advance parole), prior to departure. While being inadmissible would not preclude the alien from being *paroled* into the United States, it would preclude the alien from being *admitted* to the United States or being granted an adjustment of status, unless the alien first applied for and was granted permission to reapply for admission into the United States on Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal.

Family Unity

The LIFE Act Amendments provide that certain spouses and unmarried children of aliens eligible for LIFE Legalization receive Family Unity benefits. To be eligible for Family Unity benefits under the LIFE Act Amendments, an alien must:

- Currently be the spouse or unmarried child of an alien eligible for LIFE Legalization;
- Have entered the United States before December 1, 1988, and have been residing in the United States on such date; and
- Currently be in the United States.

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For purposes of establishing eligibility as an unmarried child, the applicant must demonstrate that he or she was not 21 years or older on or before the date of adjudication of the Form I-817, Application for Family Unity Benefits.

Until further notice, when applying for Family Unity benefits, an applicant need only establish that the spouse or parent through whom they are claiming eligibility is an “eligible alien,” not that the “eligible alien” has applied for LIFE Legalization.

The LIFE Act Amendments also provide Family Unity benefits to certain spouses and unmarried children of aliens who adjusted their status to lawful permanent resident pursuant to LIFE Legalization and who are no longer present in the United States. The Service will discuss in a separate rulemaking at a later date the procedures for granting Family Unity benefits to an otherwise eligible alien who is no longer present in the United States.

Filing

Applicants for Family Unity benefits must use the Form I-817. The Form I-817 should be filed with the LIFE Legalization lockbox address and will be adjudicated at the Missouri Service Center. If your office receives a Form I-817 for Family Unity benefits pursuant to the LIFE Act Amendments via the mail, or has already accepted such an application for Family Unity benefits, attach a completed Routing Slip Coversheet and forward the package to the lockbox address. If an alien attempts to file a Form I-817 for Family Unity benefits pursuant to the LIFE Act Amendments in person, instruct the alien to file the Form I-817 and supporting documents with the lockbox address.

Benefits

If the Missouri Service Center Director determines that an applicant is eligible for Family Unity benefits, the applicant will receive an EAD valid for a period of 1 year. During the 1-year validity period of the EAD, the Family Unity beneficiary will also receive protection from removal provided that the grounds of removal are specified in:

- Section 237(a)(1)(B) (aliens present in the United States in violation of the Act or any other law of the United States);
- Section 237(a)(1)(C) (aliens who violated their nonimmigrant status or violated the conditions of entry);
- Section 237(a)(3)(A) (aliens who failed to comply with the change of address notification requirements of the Act); or

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

Nothing in the Family Unity provisions of the LIFE Act Amendments shall be construed to limit the authority of the Service to take any enforcement action (including removal) against an applicant for, or current beneficiary of, Family Unity benefits with respect to any ground of removal not specified above.

Points of contact

Service personnel with questions relating to LIFE Legalization should go through appropriate supervisor channels and contact Elizabeth N. Lee or Suzy Nguyen via cc:Mail. Questions relating to Family Unity benefits should be directed to Elizabeth N. Lee or Rebecca Peters.

Attachments (2)