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United States General Accounting Office  
Washington, DC 20548

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B-290640

June 18, 2002

The Honorable Patrick J. Leahy  
Chairman  
The Honorable Orrin G. Hatch  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate

The Honorable F. James Sensenbrenner  
Chairman  
The Honorable John Conyers  
Ranking Minority Member  
Committee on the Judiciary  
House of Representatives

Subject: Department of Justice, Immigration and Naturalization Service: Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Justice, Immigration and Naturalization Service (Service), entitled “Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions” (RIN: 1115-AG06). We received the rule on June 4, 2002. It was published in the Federal Register as a final rule on June 4, 2002. 67 Fed. Reg. 38341.

The final rule adopts an interim rule published by the Service on June 1, 2001, with certain amendments, that implemented sections 1104 and 1504 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.

The final rule has an announced effective date of June 4, 2002—the date of publication in the Federal Register. The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A).

The Service states that it found “good cause” under 5 U.S.C. 808(2) of the Congressional Review Act for making the final rule effective upon publication. The Service contends that the final rule had to be effective upon publication so there would not be a gap between the original 1-year application period under the interim rule, which expired on May 31, 2002, and the new 1-year period announced in the final rule. Section 808(2) states that where an agency for “good cause” finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the delay provisions of section 801 do not apply.

GAO has always found the exemption at section 808(2) to the 60-day delay requirement to only be available if the agency did not receive public comments on the rule. See Department of Health and Human Services, Health Care Financing Administration: Medicare Program, B-275549; B-275552, December 9, 1996, GAO/OGC-97-9 and Department of Justice, Office of the Attorney General: September 11<sup>th</sup> Victim Compensation Fund of 2001, B-290094, March 22, 2002, GAO-02-534R. Here, the Service received 132 comments in response to the interim rule by the July 31, 2001, comment deadline and considered them in finalizing the rule. Therefore, the rule does not comply with the delay provisions of section 801(a)(3)(A).

Enclosed is our assessment of the DOJ’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the 60-day delay in the effective date, the Service complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Norman Rabkin, Managing Director, Tax Administration and Justice. Mr. Rabkin can be reached at (202) 512-9110.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Richard A. Sloan  
Director, Policy Directives and  
Instructions Branch  
Department of Justice

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF JUSTICE,  
IMMIGRATION AND NATURALIZATION SERVICE  
ENTITLED  
"ADJUSTMENT OF STATUS UNDER LEGAL IMMIGRATION  
FAMILY EQUITY (LIFE) ACT LEGALIZATION PROVISIONS  
AND LIFE ACT AMENDMENTS FAMILY UNITY PROVISIONS"  
(RIN: 1115-AG06)

(i) Cost-benefit analysis

While the Service did not prepare a cost-benefit analysis of the final rule, the Service notes that the final rule will have an effect on the economy of:

- \$43,293,000 in 2001;
- \$152,195,875 in 2002; and
- \$37,920,000 in 2003.

These increases, according to the Service, are directly associated with the expected increase in the number of applications and an increase in fees.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Attorney General has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The Service has determined that "good cause" exists under 5 U.S.C. 553(d)(3) to have the final rule become effective on the date of publication.

The final rule follows the issuance of an interim rule with a request for comments that was published in the Federal Register on June 1, 2001. The Service received 132 comments in response to the request and discusses the comments in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that were approved on an emergency basis by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Service is revising the approved form and will resubmit it to OMB for approval.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority contained in the Legal Immigration Family Equity Act (LIFE Act) (enacted by reference in Public Law 106-553, December 21, 2000) and the LIFE Act Amendments (enacted by reference in Public Law 106-554, December 21, 2000).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be a “significant regulatory action” under the order.

Executive Order No. 13132 (Federalism)

The Service has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.