

JAN 26 2001

MEMORANDUM FOR ALL REGIONAL DIRECTORS
ALL SERVICE CENTER DIRECTORS
ALL DISTRICT DIRECTORS
ALL OFFICERS IN CHARGE

FROM: Michael D. Cronin
Acting Executive Associate Commissioner
Office of Programs

SUBJECT: Adjustment of status under section 245(i), as amended by the
Legal Immigration Family Equity Act Amendments of 2000.

Purpose

The purpose of this memorandum is to provide guidance concerning adjustment of status under section 245(i) of the Immigration and Nationality Act (Act) as amended by the Legal Immigration Family Equity Act (LIFE) Amendments of 2000. The LIFE Amendments of 2000 are found in Title XV of HR 5666, Public Law 106-554, and enacted on December 21, 2000. This memorandum discusses how section 245(i) of the Act has been modified and how those modifications affect eligibility and adjudications. The Immigration Services Division (ISD) concurs with this memorandum.

History

Section 245 of the Act allows an alien to apply for adjustment of status to that of a lawful permanent resident (LPR) while in the United States if certain conditions are met. The alien must have been inspected and admitted or paroled, be eligible for an immigrant visa and admissible for permanent residence, and, with some exceptions, have maintained lawful nonimmigrant status. The alien must also not have engaged in unauthorized employment. Section 245(i) of the Act allows an alien to apply to adjust status under section 245 notwithstanding the fact that he or she entered without inspection, overstayed, or worked without authorization.

From October 1, 1994 to January 14, 1998, any alien who filed for adjustment of status under section 245(i) had to pay the additional sum specified in that section. Changes made to section 245(i) in the Departments of Commerce, State and Justice Appropriations Act for 1998, Pub. L. No. 105-119, limit the class of aliens who are eligible to file an application for adjustment of status under section 245(i). The Service issued two memoranda, dated April 14, 1999, and June 10, 1999, providing guidance on the acceptance of applications for adjustment of status under section 245(i), and discussing who is grandfathered under section 245(i). Except as modified by this memorandum, those memoranda remain valid.

Changes to section 245(i) by the LIFE Amendments of 2000

The LIFE Amendments of 2000 amended section 245(i) of the Act in two ways.

1. New sunset date for aliens with current priority dates: The LIFE Amendments of 2000 changed the sunset date of the section from January 14, 1998, to April 30, 2001. Beginning immediately, any alien who is included in the categories of restricted aliens under 8 CFR 245.1 (b) may apply for adjustment of status under section 245 of the Act if the alien:
 1. is physically present in the United States;
 2. is the beneficiary of a visa petition or application for labor certification properly filed on or before April 30, 2001, and determined to be approvable at time of filing;
 3. is eligible for an immigrant classification under section 203 of the Act, and has an immigrant visa number immediately available at the time of filing an application for adjustment of status;
 4. is not inadmissible to the United States under section 212 of the Act, or, if appropriate, all grounds of inadmissibility have been waived;
 5. properly files Form I-485, Application to Register Permanent Residence or Adjust Status, with the fees required for that application;
 6. properly files Supplement A to Form I-485;
 7. pays an additional sum of \$1000 unless payment of the sum is not required under subsection 245(i)(1)(B)(ii) of the Act; and

2. Physical presence requirement for beneficiaries of visa petitions or applications for labor certification filed after January 14, 1998 and on or before April 30, 2001: The LIFE Amendments of 2000 add a new requirement, that all aliens who seek to adjust on the basis of a visa petition or application for labor certification filed after January 14, 1998, must have been physically present in the United States on December 21, 2000. Thus, to be eligible to adjust under section 245(i) after the April 30, 2001 sunset date, an alien must meet one of the following four conditions:
 1. The alien is the beneficiary of a visa petition pursuant to section 204 of the Act properly filed on or before January 14, 1998, which was approvable on the date of filing, regardless of whether it was subsequently denied or withdrawn, or its approval was revoked except in cases where there is evidence of fraud;
 2. The alien is the beneficiary of a visa petition pursuant to section 204 of the Act properly filed after January 14, 1998, and on or before April 30, 2001, which was approvable on the date of filing regardless of whether it was subsequently denied or withdrawn, or its approval was revoked except in cases where there is evidence of fraud, and the alien was physically present on December 21, 2000;
 3. The alien is the beneficiary of an application for labor certification which was properly filed on or before January 14, 1998; or ,
 4. The alien is the beneficiary of an application for labor certification that was properly filed after January 14, 1998, and on or before April 30, 2001, and the alien was physically present on December 21, 2000.

Evidence of physical presence on December 21, 2000

Aliens adjusting status under section 245(i) based on a visa petition or application for labor certification filed after January 14, 1998, and on or before April 30, 2001, must prove physical presence in the United States on December 21, 2000. Note: The physical presence requirement only applies to principal applicants for adjustment of status under section 245(i) of the Act. Dependent spouses and children do not need to demonstrate physical presence on December 21, 2000.

An alien may demonstrate physical presence by submitting a photocopy of a Federal, State, or local Government-issued document that demonstrates the alien's physical presence in the United States on December 21, 2000. If the alien is not in possession of such document, but believes that a copy of the document is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Government agency, the type of document and the date on which it was issued.

If the alien does not submit a Government-issued document that demonstrates his or her physical presence on December 21, 2000, Service officers should accept and evaluate non-Government issued documents. Such documentation must bear the name of the applicant, have been dated at the time it was issued, and bear the seal or signature of the issuing authority (if the documentation is normally signed or sealed), be issued on letterhead stationery, or be otherwise authenticated.

In some instances, a single document may suffice to establish the applicant's physical presence on December 21, 2000. In most cases, however, we anticipate that the alien will need to submit several documents. In such cases, the Service should accept documentation establishing the applicant's physical presence in the United States prior to, as well as after December 21, 2000. For example, bank records that show that an applicant made a mortgage payment on December 1, 2000, and again on January 1, 2001, would be acceptable. The dates documenting the alien's physical presence prior to and after December 21, 2000 should be reasonably near to that date. The Service may not accept a personal affidavit of physical presence on December 21, 2000, without an interview or additional secondary information that validates the affidavit.

It is the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application.

Applications before the new sunset date

Since the deadline for submitting visa petitions or applications for labor certifications for the purpose of grandfathering under section 245(i) of the Act has been re-opened until April 30, 2001, the Service is adopting a similar approach to accepting applications and petitions up to the sunset date, as outlined in the January 9, 1998 memorandum, Subject: Special procedures for the sunset of amended section 245(i) of the Immigration and Nationality Act, from the Office of Field Operations.

Visa petitions, which meet the threshold filing requirements of 8 CFR 103.2(a)(1) and (2), the required fee and the applicant's signature, may not be rejected prior to May 1, 2001. In order to allow the maximum opportunity for timely receipt of visa petitions, the Service will make special arrangements for submission of visa petitions to Service Offices as the April 30, 2001, sunset date approaches.

Point of Contact

Service personnel with questions relating to section 245(i) adjustments should go through appropriate supervisory channels and contact Michael Valverde via cc: mail with questions.
Attachments (2)