U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/23.1-P

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

April 6, 2001

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

FROM: William R. Yates /S/
Deputy Executive Associate Commissioner
Office of Field Operations
Immigration Services Division

SUBJECT: Field Guidance for Adjustment of Status applications filed under section 245(i), as amended by the Legal Immigration Family Equity Act Amendments of 2000.

On March 26, 2001, an interim rule was published in the Federal Register (66 FR 16383) to amend the regulations at 8 CFR 245.10 establishing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act (INA). This regulation implements some portions of the Legal Immigration Family Equity Act Amendments of 2000 (the LIFE Act) signed into law on December 21, 2000. Certain provisions became effective on that date, including re-authorization of section 245(i) of the INA.

This memorandum supplements the memorandum of January 26, 2001 issued by the Office of Programs.

- **New sunset date for aliens with current priority dates and physical presence requirement.**
  The LIFE Amendments of 2000 (the LIFE Amendments) changed the sunset date of the section from January 14, 1998, to April 30, 2001 and added 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. Visa petitions filed with the Attorney General and applications for labor certification filed with

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the Department of Labor on or before April 30, 2001 will serve to grandfather the alien beneficiary(s) for use of section 245(i) of the INA when they file for adjustment of status.

- **Evidence of physical presence on December 21, 2000**
  The memorandum of January 16, 2001 detailed the type of evidence the Immigration and Naturalization Service (the Service) will consider in determining whether the alien was physically present on December 21, 2000 as required.
  Note: The physical presence requirement only applies to principal applicants for adjustment of status under section 245(i) of the INA. Dependent spouses and children do not need to demonstrate physical presence on December 21, 2000.

- **Determining if the Immigrant Visa Petition is "Approvable When Filed"**
  Not all immigrant visa petitions that are properly filed on or before April 30, 2001 will serve to grandfather the alien beneficiary for purposes of 245(i). The interim rule interprets the language of Section 245(i) since it was amended in 1997 to also require that the visa petition must have been "approvable when filed" to qualify the alien beneficiary for grandfathering. "Approvable when filed" is defined in the regulations to mean that on the date of filing, the immigrant visa petition was properly filed, meritorious in fact, and non-frivolous.

  Immigrant visa petitions may be filed initially without all of the necessary information for the Service to adjudicate the petition. However, a visa petition will not qualify an alien for grandfathering unless the Service is able to determine, based on the available information, that the petition was approvable when filed.

- **Timely Filings**
  The new regulation requires an immigrant visa petition to be "properly filed" before or on April 30, 2001 for the purpose of grandfathering. This means that the immigrant visa petition must either be **physically received** by the Service prior to the close of business on April 30, 2001, or if mailed to the Service, **postmarked** before or on April 30, 2001. It is important that field offices either stamp the actual receipt date on the immigrant visa petitions or retain evidence of the postmark with each petition. In the case of an envelope containing multiple petitions, evidence of the postmark must be attached to each petition.

  Visa petitions which meet the threshold filing requirements of 8 CFR 103.2(a) will not be rejected. However, petitions without the names of the petitioner and beneficiary, the proper fee, and the signature of the petitioner will not be accepted for filing.

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- **Receipt and Tracking of 245(i) Penalty Sum**
  The priority date of the underlying immigrant visa petition upon which the Form I-485 is filed is a determining factor as to whether Supplement A is filed under the "old" Section 245(i) provision or under the Section 245(i) provisions included in the LIFE Act Amendments.

  "Old" 245(i)
  If the priority date of the immigrant visa petition that serves as the basis for the adjustment of status application is on or before January 14, 1998, then Supplement A is considered filed under the "old" Section 245(i) provisions. Supplement A to Form I-485 filed under the "old" provisions of Section 245(i) must be receipted and the $1000 penalty sum deposited under the existing instructions (Attachment 1).

  Life Act 245(i)
  If the priority date is between January 15, 1998 and April 30, 2001, inclusive, Supplement A is considered filed under the 245(i) provisions in the LIFE Act Amendments.

The LIFE Act Amendments mandate that the penalty sum be divided differently for accounting purposes than the penalty sum submitted under the "old" Section 245(i). Until registers are updated and CLAIMS 3 changes have been completed, Supplement A to Form I-485 filed under the LIFE Act Amendments must be receipted and the $1000 penalty sum deposited as if it were filed under the "old" provisions. However, the office that deposits the penalty sum under Section 245(i) of the LIFE Act Amendments must keep a separate log (spreadsheet) of all LIFE Act Amendments 245(i) applications.

By the **5th business day of each month**, each District Office and Service Center shall report to their assigned HQISD contact, the number of $1000 penalty sums collected under the LIFE Act Amendments 245(i) provision in the preceding month. EXCEL spreadsheets (Attachment 2) must be forwarded via E-mail to the appropriate point of contact listed below. For further information regarding the handling of 245(i) penalty sums or for an electronic copy of the required spreadsheet: Service Centers should contact Laura Carney of the Service Center Operations Division of ISD at 202-305-3676, and District Offices should contact Kathy Dominguez of the Field Services Operations Division of ISD at 202-616-1050.

- **Office Openings on April 30, 2001**
  There is no requirement that District Offices remain open beyond normal operating hours on April 30, 2001. However, it is recommended that offices follow the same procedures instituted for the last 245(i) sunset date, January 14, 1998. The use of postmark for a timely filing may impact the volume of applicants seeking to file in person at District Offices on April 30, 2001. It is up to individual District Offices to determine what can be done to best meet the anticipated response in their local communities. HQISD asked the Regional Offices to survey District Offices as to their operating hours for the sunset date, and it appears that most will remain open until midnight to accept in person filings. It is important that District Offices convey information to the public about extended office hours for April 30, 2001.

The regulation and other LIFE Act related documents are on the LIFE ACT Bulletin Board. In addition, Service personnel may use the Intranet to send questions and comments for consideration by the LIFE Act Project Team. Service personnel with questions should go through appropriate supervisory channels. For questions relating to operational procedures, contact Kathy Dominguez, HQISD via e-mail. For policy questions relating to section 245(i) adjustments, contact Michael Valverde at HQADN via e-mail.

Attachments

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