§ 1245.22 Evidence to demonstrate an alien’s physical presence in the United States on a specific date.

(a) Evidence. Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where a more specific regulation relating to a particular adjustment of status provision has been issued in the Service’s adjudication of the appeal.

(3) Applications submitted with a request for the waiver of a ground of inadmissibility. In the discretion of the Service, applications that do not require adjudication of a waiver of inadmissibility under section 212(a)(2), (a)(6)(B), (a)(6)(F), (a)(8)(A), or (a)(10)(D) of the Act may be approved and assigned numbers within the 5,000 limit before those applications that do require a waiver of inadmissibility under any of those provisions. Applications requiring a waiver of any of those provisions will be assigned a tracking number chronologically by the date of approval of the necessary waivers rather than the date of filing of the application.

(4) Procedures when the 5,000 limit is reached. The Service will track the total number of adjustments and stop processing applications after the 5,000 limit has been reached. When the limit is reached, the Service will return any additional applications to applicants with a dated notice encouraging applicants to retain their application package and the notice in the event the 5,000 limit is expanded or eliminated and the alien wishes to apply again. The Service will keep an identifying chronological record of the application for purposes of processing applications under this section if the 5,000 limit subsequently is expanded or eliminated. If at the time the 5,000 limit is reached, it appears that Congress is about to pass legislation to expand or eliminate the cap, the Service retains the discretion to retain such applications and the related fees.

[67 FR 78673, Dec. 26, 2002]
8 CFR, such regulation is controlling to the extent that it conflicts with this section.

(b) The number of documents. If no one document establishes the alien’s physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to and after that date.

(c) Service-issued documentation. To demonstrate physical presence on a specific date, the alien may submit Service-issued documentation. Examples of acceptable Service documentation include, but are not limited to, photocopies of:

(1) Form I–94, Arrival-Departure Record, issued upon the alien’s arrival in the United States;

(2) Form I–862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I–221, Order to Show Cause, issued by the Service on or prior to the required date, placing the applicant in deportation proceedings under section 242 or 242A (redesignated as section 238) of the Act (as in effect prior to April 1, 1997); or

(5) Any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to the required date that establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

(d) Government-issued documentation. To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(1) A state driver’s license;

(2) A state identification card;

(3) A county or municipal hospital record;

(4) A public college or public school transcript;

(5) Income tax records;

(6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant’s behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(7) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

(e) Copies of records. It shall be 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. If the alien is not in possession of such a document or documents, but believes that a copy 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
Federal, State, or local government
agency, the type of document and the
date on which it was issued.

(f) Other relevant document(s) and eval-
uation of evidence. The adjudicator will
consider any other relevant document-
s as well as evaluate all evidence
submitted, on a case-by-case basis. The
Service may require an interview when
necessary.

(g) Accuracy of documentation. In all
cases, any doubts as to the existence,
authenticity, veracity, or accuracy of
the documentation shall be resolved by
the official government record, with
records of the Service having prece-
dence over the records of other agen-
cies. Furthermore, determinations as
to the weight to be given any par-
ticular document or item of evidence
shall be solely within the discretion of
the adjudicating authority.

[67 FR 78674, Dec. 26, 2002]

PART 1246—RESCISSION OF
ADJUSTMENT OF STATUS

Sec.
1246.1 Notice.
1246.2 Allegations admitted; no an-
swer filed; no hearing requested.
1246.3 Allegations contested or denied; hear-
ing requested.
1246.4 Immigration judge’s authority; with-
drawal and substitution.
1246.5 Hearing.
1246.6 Decision and order.
1246.7 Appeals.
1246.8 [Reserved]
1246.9 Surrender of Form I–551.

AUTHORITY: Authority: 8 U.S.C. 1103, 1254,
1255, 1256, 1259; 8 CFR part 2.

SOURCE: 62 FR 10385, Mar. 6, 1997, unless
otherwise noted. Duplicated from part 246 at

EDITORIAL NOTE: Nomenclature changes to
part 1246 appear at 68 FR 9846, Feb. 28, 2003,

§ 1246.2 Allegations admitted; no an-
swer filed; no hearing requested.

If the answer admits the allegations
in the notice, or if no answer is filed
within the thirty-day period, or if no
hearing is requested within such pe-
riod, the district director or asylum of-
cice director shall rescind the adjust-
ment of status previously granted, and
no appeal shall lie from his decision.

[62 FR 10385, Mar. 6, 1997, as amended at 64
FR 27881, May 21, 1999]

§ 1246.3 Allegations contested or de-
nied; hearing requested.

If, within the prescribed time fol-
lowing service of the notice pursuant
to §1246.1, the respondent has filed an
answer which contests or denies any al-
legation in the notice, or a hearing is
requested, a hearing pursuant to §1246.5
shall be conducted by an immigration
judge, and the requirements contained
in §§1240.3, 1240.4, 1240.5, 1240.6, 1240.7,