IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
6302910035	1.052	1.2466
6302910045	1.052	1.2466
6302910050	1.052	1.2466
6302910060	1.052	1.2466
6303110000	0.9448	1.1196
6303910000	0.6429	0.7618
6304111000	1.0629	1.2595
6304190500	1.052	1.2466
6304191000	1.1689	1.3851
6304191500	0.4091	0.4848
6304192000	0.4091	0.4848
6304910020	0.9351	1.1081
6304920000	0.9351	1.1081
6505901540	1.181	1.3995
6505902060	0.9935	1.1773
6505902545	0.5844	0.6925

* * * * *

Dated: May 15, 1998.

Mary E. Atienza,

Deputy Administrator, Cotton Programs.

[FR Doc. 98–13525 Filed 5–20–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 240, 245, 274a and 299

[INS NO. 1893–97; AG Order No. 2154–98]

RIN 1115–AF04

Adjustment of Status for Certain Nationals of Nicaragua and Cuba

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 202 of the Nicaragua Adjustment and Central American Relief Act (NACARA) by establishing procedures for certain nationals of Nicaragua and Cuba who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad and waives many of the usual requirements for this benefit.

DATES: *Effective date:* This interim rule is effective June 22, 1998.

Comment date: Comments must be submitted on or before July 20, 1998.

ADDRESSES: Please submit written comments, original and two copies,to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1893–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014; *For matters relating to the Executive Office for Immigration Review*—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesbury Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

How Does Section 202 of NACARA Affect Nicaraguan and Cuban Nationals?

The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of the District of Columbia Appropriations Act, 1998, Pub. L. 105–100 (111 Stat. 2160, 2193), was signed into law on November 19, 1997. As amended, section 202 of NACARA allows certain Nicaragua and Cuban nationals who are physically present in the United States to adjust status to that of lawful permanent resident. In order to be eligible for benefits under NACARA, an applicant must be a national of Nicaragua or Cuba; must be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (the Act), other than those provisions specifically excepted by NACARA; must have been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment is filed (not counting absences totaling 180 days or less); and must properly file an application before April 1, 2000. In addition, certain family members of NACARA beneficiaries are also eligible for adjustment of status under NACARA.

What Are the Benefits of NACARA?

An alien seeking adjustment of status under NACARA is not subject to a number of the requirements to which aliens seeking adjustment under section 245 of the Act may be subject.

First, a NACARA applicant is not required to have been inspected and admitted or paroled into the United States.

Second, a NACARA applicant is not subject to any of the barriers to adjustment contained in section 245(c) of the Act (e.g., the bars against aliens who have accepted or continued in unauthorized employment, aliens who remained in the United States longer than authorized, and aliens admitted as crewmen, in transmit without visa, or under the visa waiver pilot program). Consequently, an alien who would otherwise be ineligible under section 245(c) may apply for adjustment under NACARA.

Third, NACARA applicants are not subject to the immigrant visa preference system requirements contained in sections 201 and 202 of the Act. Hence, neither the worldwide quota restrictions nor the per-country quota restrictions apply.

Fourth, applicants need not demonstrate that they are not inadmissible under paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Act in order to adjust status under section 202 of Public Law 105–100. Accordingly, NACARA allows an otherwise qualified applicant to adjust status under NACARA notwithstanding inadmissibility for likelihood of becoming a public charge, for failure to obtain a labor certification, for failure to meet certain requirements applicable to foreign-trained physicians, for failure to meet certain standards for foreign health-care workers, for entering or remaining in the country illegally, for violating documentary requirements relating to entry as an immigrant, or for accruing more than 180 days of unlawful presence prior to the alien's last departure or removal.

Fifth, unlike those seeking to adjust status under other provisions of law, a NACARA applicant who has been paroled into the United States and is now in exclusion or removal proceedings before an immigration judge is not barred from filing an application for adjustment of status under the provisions of NACARA while in such proceedings.

What Are the NACARA Requirements Regarding Continuous Physical Presence in the United States

Under the terms of NACARA, eligible applicants must have been physically present in the United States continuously since December 1, 1995. However, they may have been outside of the United States for periods not to exceed 180 days in the aggregate between December 1, 1995, and the date of adjustment of status. A NACARA applicant shall not be considered to

have failed to maintain continuous physical presence in the United States by reason of any absences for periods that do not exceed 180 days in the aggregate. Furthermore, the 180-day cumulative period shall be tolled during an absence authorized pursuant to issuance of an Authorization for Parole of an alien into the United States (Form I–512).

How Can a NACARA Applicant Prove Continuous Physical Presence in the United States?

A NACARA applicant must establish two aspects of physical presence in the United States: commencement on or prior to December 1, 1995, and continuity since that date.

Under section 202(b)(2)(A) of Pub. L. 105–100, as amended, an applicant may prove commencement of continuous physical presence in the United States by demonstrating that on or before December 1, 1995, he or she:

(i) Applied to the Attorney General for asylum;

(ii) was issued an order to show cause under section 242 or 242B of the Immigration and Nationality Act (as in effect prior to April 1, 1997);

(iii) was placed in exclusion proceedings under section 236 of such Act (as in effect prior to April 1, 1997);

(iv) Applied for adjustment of status under section 245 of such Act;

(v) Applied to the Attorney General for employment authorization;

(vi) Performed service, or engaged in a trade or business, within the United States which is evidenced by records maintained by the Commissioner of Social Security; or

(vii) Applied for any other benefit under the Immigration and Nationality Act by means of an application establishing the alien's presence in the United States prior to December 1, 1995.

Normally, such demonstration will be made through submission of a photocopy of a Government-issued document. In some cases, the alien may submit other evidence demonstrating one or more of the above actions, which may be verified through Government records.

Section 202(b)(2)(B) of NACARA also permits, but does not require, the Attorney General to provide by regulation for additional methods by which an applicant could prove commencement of continuous physical presence in the United States. The Department of Justice (Department) is availing itself of this authority to allow a NACARA applicant to submit, as evidence of commencement of physical presence in the United States, other documentation issued by state and local authorities (such as school, hospital, police, and public assistance records). The Department believes that these evidentiary options may well provide sufficient opportunities for qualified applicants to establish commencement of physical presence in the United States without encouraging fraudulent applications. However, in order to ensure that no significant group of eligible aliens is precluded from establishing eligibility for NACARA benefits, the Department is soliciting public comments on the need for any additional methods of establishing commencement of physical presence in the United States and suggestions as to what those additional methods should be, including whether the documentary standards listed in 8 CFR 245.13(e)(3) for demonstrating continuity of physical presence should also be applied to the requirement for demonstrating commencement of physical presence. Commenters are encouraged to explain which classes of aliens would benefit from the proposal, and how the proposal could be implemented without severely compromising the integrity of the adjudicative process.

The NACARA statute is silent as to the methods by which an applicant may demonstrate the continuity of his or her physical presence in the United States. By regulation, the Department is hereby providing that a NACARA applicant may demonstrate continuity of physical presence in the United States through the submission of one or more documents issued by any governmental or non-governmental authority. Such documentation must bear the name of the applicant, have been dated at the time it was issued, and bear the signature of the issuing authority. In some cases, a single document may suffice to establish continuity for the entire post-December 1, 1995, period, while in other cases the alien may need to submit a number of documents. For example, a college transcript or an employment record may show that an applicant attended school or worked in the United States throughout the entire post-December 1, 1995, period. On the other hand, an applicant would need to submit a number of monthly rent receipts or electric bills to establish the same continuity of presence. While the Department neither requires nor wants the applicant to submit documentation to show presence on every single day since December 1, 1995, there should be no significant chronological gaps in the documentation, either. Generally, a gap of 3 months or less in documentation is not considered significant. Furthermore, if the applicant is aware of documents already contained in this or her Immigration and Naturalization Service (Service) file that establish physical presence, he or she may merely list those documents, giving the type and date of the document. Examples of such documents might include a written copy of a sworn statement given to a Service officer, the transcript of a formal hearing, and a Record of Deportable/Inadmissible Alien (Form I–213).

How Does an Applicant Establish Admissibility?

The grounds of inadmissibility specified in paragraphs (4) (public charge), (5) (lack of labor certification), (6)(A) (illegal entry), (7)(A) (immigrant not in possession of an immigrant visa or other valid entry document), and (9)(B) (unlawful presence) of section 212(a) of the Act do not apply to NACARA applicants. Additionally, a Nicaraguan or Cuban national present in the United States who has been ordered excluded, deported, or removed from, or who has agreed to depart voluntarily from, the United States may apply for adjustment of status under NACARA.

If a NACARA applicant is inadmissible to the United States under one of the grounds of inadmissibility contained in section 212(a) of the Act other than those specifically excepted by NACARA, but is eligible for an individual waiver of that ground of inadmissibility, he or she may file an application for the waiver concurrently with his or her application for adjustment of status. Adjustment of status may not be granted unless the waiver has first been approved.

How Do the Provisions of NACARA Affect Dependents of Nicaraguan and Cuban Nationals?

The provisions of NACARA also apply to certain dependents. To receive NACARA benefits as a dependent of a NACARA beneficiary, an alien would have to be a national of either Nicaragua or Cuba (but need not necessarily be of the same nationality as the principal beneficiary—a Cuban dependent could qualify through a Nicaraguan principal beneficiary and vice versa); would have to be the spouse, child (i.e., under 21 years of age and unmarried), or unmarried son or daughter (i.e., 21 years of age or older) of a NACARA principal beneficiary at the time of the principal beneficiary's adjustment of status to that of permanent resident; and would have to be admissible to the United States under section 212(a) of the Act (other than those provisions specifically excepted by NACARA). NACARA dependents must be physically present in the United States in order to apply

and must properly file an application before April 1, 2000.

Additionaly, an unmarried son or daughter, other than a child as defined in section 101(b)(1) of the Act, would have to have been physically present in the United States continuously since December 1, 1995 (not counting absences totaling 180 days or fewer). Although many qualifying dependents of NACARA principal beneficiaries would be able to receive NACARA benefits in their own right, some would only be able to qualify under the dependent provisions. Examples of otherwise eligible persons who could only qualify as dependents would include a spouse or child who arrived in the United States between December 1, 1995, and the principal beneficiary's filing date, and a spouse or child who had been absent for an aggregate of more than 180 days.

How Are Dependents Who Do Not Meet NACARA Requirements Affected?

A family member who is unable to qualify for NACARA adjustment of status on his or her own, or as a dependent under the provisions of NACARA, may eventually become eligible for lawful permanent resident status under other provisions of the Act. Examples of such individuals would include a dependent who is not a national of Nicaragua or Cuba, a spouse or child whose relationship to the principal applicant is not established until after the principal applicant is granted permanent resident status, and an unmarried son or daughter over the age of 21 who entered the United States after December 1, 1995. Upon becoming a permanent resident, a NACARA beneficiary could file a visa petition to accord such a dependent immigrant classification under section 203(a)(2) of the Act, thereby enabling the dependent who is not eligible for NACARA benefits to seek immigration to the United States through the normal family-based immigration process.

What Happens if an Applicant Is Already in Exclusion, Deportation, or Removal Proceedings, or Has a Motion To Reopen or Motion To Reconsider Pending Before the Immigration Court or the Board of Immigration Appeals (Board)?

Proceedings Pending Before the Executive Office for Immigration Review (EOIR)

Persons who have proceedings pending before an Immigration Court or the Board, or persons who have a pending motion to reopen or reconsider filed on or before May 21, 1998, shall remain within the jurisdiction of EOIR for the purpose of consideration of applications for adjustment of status under section 202 of NACARA.

Proceedings Pending Before an Immigration Judge

If an alien (other than an arriving alien who has not been paroled into the United States) is in exclusion, deportation, or removal proceedings before an immigration judge, or if an alien has a motion to reopen or motion to reconsider filed on or before May 21, 1998 pending before an immigration judge, jurisdiction over an application for adjustment of status under section 202 of NACARA shall lie with the Immigration Court. The procedure for filing an application for adjustment under NACARA is described below. If an alien who is not clearly ineligible for adjustment of status under section 202 of NACARA and who has a pending motion to reopen or motion to reconsider files an application for adjustment of status under section 202 of NACARA, the immigration judge shall reopen the alien's proceedings for consideration of the adjustment application. Applications shall be subject to the filing requirements of 8 CFR 3.11 and 3.31.

Proceedings Pending Before the Board

If an alien who is not clearly ineligible for adjustment of status under section 202 of NACARA has a pending appeal with the Board, the Board shall remand the proceedings to the immigration judge for the sole purpose of adjudicating the application for adjustment. The Board shall so remand the case regardless of whether the alien has already filed an application for adjustment of status under NACARA. Further, if an alien has a pending motion to reopen or motion to reconsider filed with the Board on or before May 21, 1998, the Board shall reopen and remand the proceedings to the immigration judge for the sole purpose of adjudicating an application for adjustment of status under section 202 of NACARA.

If upon remand the immigration judge denies the application, or the alien fails to file an application for adjustment under section 202 of NACARA, the immigration judge shall return the case to the Board by certification. This will allow the Board to consider the denial of the NACARA application as well as all other outstanding issues from the previously pending appeal or motion. The alien shall not be required to file another Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26), or to pay an appeal filing fee because the immigration judge's certification of the denial to the Board will automatically transfer the immigration judge's decision to the Board.

May an Alien Who Is in Proceedings Before an Immigration Court or the Board of Immigration Appeals Apply for Adjustment of Status Before the Service?

Yes, under certain circumstances. An alien who is in exclusion, deportation, or removal proceedings before an Immigration Court or the Board may move to have the proceeding administratively closed for the purpose of filing an application for adjustment under NACARA. If the Service concurs in such motion, the Immigration Court or the Board, as appropriate, will administratively close the proceedings. Such closure would permit recalendaring of the closed proceedings if, for example, the alien fails to file an application for adjustment of status under NACARA before April 1, 2000, or the Service denies any application for adjustment of status filed by the alien under NACARA. Should the Service deny the application of status filed by the alien under NACARA. Should the Service deny the application, or the alien fail to file the application before April 1, 2000, the Service will move to recalendar the proceedings and the proceedings will be recalendared by the Immigration Court or the Board, as appropriate. In the case of an application denied by the Service, the alien could seek reconsideration of the denied adjustment application in such recalendared proceedings.

What Happens if an Applicant Is the Subject of a Final Order of Removal?

An alien who is the subject of a final order of removal, and who has never filed an application for adjustment of status under section 202 of NACARA with the Immigration Court, must file such application with the Service. However, if such alien has a motion to reopen or a motion to reconsider filed on or before May 2, 1998 pending before an Immigration Court or the Board, then the application for adjustment must be filed with the Immigration Court or with the Board, as appropriate. The mere filing of an application for adjustment of status under section 202 of NACARA with the Service or the referral of a denied application to an immigration judge does not stay the execution of the final order of removal. To request that execution of the final order be stayed by the Service, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set

forth in 8 CFR 241.6. If the application is referred to the immigration judge, and the Service does not grant a stay of execution of the final order, the alien must request that the immigration judge or Board specifically grant a stay of execution of the final order of removal pursuant to 8 CFR 245.13(d)(5)(ii).

When Can an Application Be Filed?

The application period for NACARA benefits begins June 22, 1998 and ends on March 31, 2000.

What Forms and Other Documents Should Be Filed?

Each applicant for NACARA adjustment of status benefits must file a separate Application to Register Permanent Residence or Adjust Status (Form I–485), accompanied by the required application fee and supporting documents described below. NACARA applicants should complete Part 2 (Application Type) of that form by checking box ''h—other'' and writing ''NACARA—Principal'' or ''NACARA—Dependent'' next to that block. Each application filed must be accompanied by the required initial evidence: (1) a birth certificate or other record of birth; (2) two photographs as described in the Form I–485 instructions; (3) a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; (4) a report of medical examination; (5) if the applicant is at least 14 years of age, a local police clearance from each jurisdiction where the alien has resided for six months or longer since arriving in the United States; (6) a copy of the applicant's Arrival-Departure Record (Form I–94) or other evidence of inspection and admission or parole into the United States, if applicable; (7) one or more of the documents described in section 202(b)(2) of NACARA and 8 CFR 245.13(e)(2) to establish commencement of physical presence in the United States; and (8) one or more of the documents described in 8 CFR 245.13(e)(3) to establish continuity of physical presence in the United States. In addition, the applicant must submit a statement showing all departures from and arrivals in the United States since December 1, 1995. Finally, if the alien is applying as the spouse, child, or unmarried son or daughter of another NACARA beneficiary, the applicant must submit evidence of the relationship (for example, a marriage certificate).

Must the Applicant Be Fingerprinted?

Yes. Upon receipt of the application, the Service will instruct the applicant regarding procedures for obtaining fingerprints through one of the Service's Application Support Centers (ASCs) or authorized Designated Law Enforcement Agencies (DLEAs) chosen specifically for that purpose. Those instructions will direct the applicant to the ASC or DLEA nearest the applicant's home, and advice the applicant of the date(s) and time(s) fingerprinting services may be obtained. Applicants should not submit fingerprint cards as part of the initial filing.

Is There a Fee for Filing This Application?

NACARA adjustment of status applications must be submitted with the fee required by 8 CFR 103.7(b)(1) for Form I–485 (currently $130 for applicants 14 years of age or older, and $100 for applicants under age 14). If the application is submitted to the INS Texas Service Center, the fee must also be submitted to that center. If the application is submitted to an Immigration Court or the Board of Immigration Appeals, the fee must be submitted to the appropriate local office of the Service in accordance with 8 CFR 3.31. An applicant who is deserving of the benefits of section 202 of NACARA and is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

How and Where Should the Application Be Filed?

If the applicant is not in exclusion, deportation, or removal proceedings before an Immigration Court or the Board of Immigration Appeals, the application and attachments must be submitted by mail to: USINS Texas Service Center, P.O. Box 851804, Mesquite, TX 75185–1804. If the applicant is in proceedings pending before an Immigration Court or the Board of Immigration Appeals, or if the applicant has a motion to reopen or motion to reconsider filed on or before May 21, 1998 pending before an Immigration Court or the Board, the application and attachments must be submitted to the Immigration Court with jurisdiction over the case or to the Board if the Board has jurisdiction. In such cases, the fee should be submitted to the Service pursuant to 8 CFR 3.31, as provided above. It should be noted that if the motion to reopen or motion to reconsider is filed after May 21, 1998, jurisdiction over any application for adjustment of status under NACARA lies with the Service, not with EOIR.

Applications for adjustment of status under NACARA may not be submitted to any other Service locations or to any consular posts.

Will an Applicant Filing an Application for Adjustment of Status Under NACARA With the Service Be Required to Appear Before the Service for an Interview?

The decision whether to require an interview is solely within the discretion of the Service. The Service may elect to waive the interview of the applicant. If the application is adjudicated without interview, a notice of the decision will be mailed to the applicant. If an interview is required, the application will be forwarded to the local Service office having jurisdiction over the applicant's place of residence. The applicant will be notified of the date and time to appear for the interview. If an applicant fails to appear for an interview, the application may be denied in accordance with existing regulations.

Can an Applicant Be Authorized To Work While the Application Is Pending?

An unexpired authorization to accept employment under another provision of the Act will not be invalidated by the filing of an application for adjustment of status under NACARA or by the administrative closure of the exclusion, deportation, or removal proceeding to pursue relief pursuant to NACARA. Furthermore, an applicant for adjustment under NACARA is not precluded from applying for, and being granted, an extension of any such employment authorization for which he or she remains eligible. Any applicant for adjustment of status under NACARA who wishes to obtain initial employment authorization, or continued employment authorization when his or her prior authorization expires, during the pendency of the adjustment of status application may file an Application for Employment Authorization (Form I–765), in accordance with the instructions on the form. With limited exceptions, the interim rule provides that employment authorization will not be granted until the application for adjustment has been pending for 180 days. This approach is in keeping with section 202(c)(3) of NACARA, which mandates approval of employment authorization if the adjustment application ''is pending for a period exceeding 180 days,'' and has not been denied, and which authorizes, but does not mandate, approval of employment authorization if the application has been pending for fewer than 180 days. Under the interim rule, the Department will authorize employment for applicants whose cases have been pending for fewer than 180 days only if the

applicant applies for work authorization and adjustment at the same time. In addition, the Service record must contain evidence that the applicant is a national of Nicaragua or Cuba who had applied to the Service for an immigration benefit, or had been placed in deportation or exclusion proceedings, not later than December 1, 1995, as provided in paragraphs (1)(A)(i) through (v) and (vii) of section 202(b) of NACARA, unless the record also shows that the applicant is clearly ineligible for adjustment of status under NACARA (e.g., the applicant has been convicted of an aggravated felony). The potential benefits of filing for adjustment of status and employment authorization concurrently will be emphasized during public information sessions that the Service will hold with local community groups. The Department believes that limited employment authorization to these circumstances and to circumstances in which 180 days have elapsed since the filing of the application will both: (1) discourage fraudulent applications filed simply as a way to gain work authorization, and (2) permit employment more promptly for those whose applications appear likely to be granted. However, in publishing this interim rule the Department solicits the views of interested parties on this topic.

Can an Application for Adjustment of Status Be Submitted if the Alien Is Outside the United States?

No. The statute and regulations require that an alien be physically present in the United States in order to properly file an application. However, the regulation does contain a special provision allowing an otherwise eligible alien who is outside the United States to submit a request for parole authorization. Such request would have to be accompanied by photocopies of the documents the alien intends to file in support of his or her claim for eligibility for adjustment of status under NACARA if the parole authorization is granted. Parole authorization may be granted, as a matter of discretion, if upon review of the application for parole authorization and related documents it is determined that the application for adjustment of status is likely to be approved once it has been properly filed. The alien would be allowed to file the application after being paroled into the country. Accordingly, the alien must remain outside the United States until the request for parole authorization is approved. Any attempt to enter the United States without the parole authorization could result in the alien's being found inadmissible to, and removed from, the United States.

Can an Applicant Travel Outside the United States While the Application Is Pending?

Nothing in NACARA authorizes the Service to allow an applicant to re-enter the United States without proper documents. If an applicant plans to leave the United States to go to any other country, including Canada or Mexico, before a decision is made on his or her NACARA adjustment application, the applicant should contact the Service to request advance authorization for parole. If an applicant leaves the United States without such advance authorization, action on his or her NACARA adjustment application may be terminated and the application may be denied. An applicant may also experience difficulty when returning to the United States if he or she does not have such advance authorization. Furthermore, any absence from the United States without an advance parole authorization issued prior to departure counts toward the 180-day aggregate time period that the applicant is allowed to be outside the United States.

If an Alien Who Is Under a Final Order of Exclusion, Deportation, or Removal Departs From the United States, Will the Alien Be Effecting His or Her own Exclusion, Deportation, or Removal?

Yes. Such alien would be a ''self-deport'' and would be subject to the inadmissibility provisions of section 212(a)(9) of the Act, regardless of whether the alien obtained an Authorization for Parole of an Alien Into the United States (Form I–512) 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.

How Can an Alien Apply for Such Permission?

An Alien needing such permission may file an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I–212), in accordance with the instructions on that form. Form I–212 may be filed prior to the alien's departure.

Can an Alien Who Has Not Filed the Application for Adjustment Obtain a Form I–512?

Once this regulation becomes effective on June 22, 1998, and except as discussed above, only the NACARA-eligible aliens who have filed an application for adjustment of status will be able to obtain a Form I–512. However, because some individuals may need to travel prior to that date, on December 24, 1997, the Service issued instructions to all local Service offices allowing district directors to issue Form I–512 to aliens who appear to be eligible for adjustment of status under NACARA and need to travel. The interim rules provides that for aliens who departed the United States with a Form I–512 issued pursuant to those December 24, 1997, instructions, the 180-day cumulative period during which an alien may be absent without breaking continuous physical presence in the United States in tolled while the alien is outside the United States in accordance with the conditions of the advance parole authorization. In this fashion, the Department precludes undue hardships for the affected individuals.

Furthermore, for those aliens who were not issued a Form I–512 because they departed before the Service could implement the December 24, 1997, instructions, the interim rule provides for the tolling of the 180-day cumulative period from November 19, 1997, until July 20, 1998, provided the alien departed from the United States prior to December 31, 1997. This provision extends until July 20, 1998, in order to provide interested aliens 30 days from the effective date of the interim regulation to file the application for parole authorization with the Texas Service Center. As discussed above, once the application for parole authorization has been filed the 180-day cumulative period during which an alien is not required to be physically present in the United States is tolled, provided the application for parole authorization is granted. Such tolling would remain in effect until the alien arrives in the United States with the Form I–512 issued by the director of the Texas Service Center.

What Documentation Will Be Issued if the Adjustment Application Is Approved?

After processing is completed, a notice of the decision will be mailed to the NACARA applicant. Applicants should keep this notice for their records. If the application has been approved, an alien registration receipt card will be

mailed separately to the applicant. To obtain temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the NACARA adjustment of status application. If the applicant is not in possession of a passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting Alien Documentation, Identification, and Telecommunication System (ADIT) specifications so that the Service may prepare and issue temporary evidence of lawful permanent residence status. If the alien previously had been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status .

What Happens if an Application Is Denied by the Service?

If the Service finds that an applicant is ineligible for adjustment of status under NACARA, the Service will advise him or her of its determination and of the applicant's right to seek, and the procedures for seeking, consideration of the application by an immigration judge. Depending on the individual case circumstances, those procedures could take one of three different routes as follows:

(1) If exclusion, deportation, or removal proceedings had never been commenced, the Service will issue a Notice to Appear, thereby initiating removal proceedings during which the applicant may renew his or her application for adjustment under NACARA before an Immigration Court. In such proceedings, the immigration judge shall adjudicate the renewed application.

(2) If exclusion, deportation, or removal proceedings had been initiated and administratively closed under the procedure set forth in 8 CFR 245.13(d)(3), the Service will advise the alien of the Service's denial of the NACARA adjustment application and will move the Immigration Court, or the Board if at the time of administrative closure the Board had jurisdiction over the case, to recalendar the proceeding. The previously closed removal proceedings will then be recalendared by the Immigration Court or the Board, as appropriate.

(3) If a final order of exclusion, deportation, or removal had been issued, the Service, using Form I–290C, Notice of Certification, will refer its decision to deny the NACARA adjustment application to an immigration judge, who will adjudicate the application in proceedings designed solely for the purpose of such adjudication.

What Happens if an Application Is Denied by the Immigration Court?

If the Immigrant Court denies the NACARA adjustment application of an alien in exclusion, deporting, or removing proceedings before the Immigration Court, the decision to appealed to the Board along with and under the same procedures as all other issues before the Immigration Court in those proceedings. If the Immigration Court denies the NACARA adjustment application of an alien whose case was remanded to the Immigration Court by the Board, the Immigration Court shall certify the decision to the Board for review. If the Immigration Court denies the NACARA adjustment application of an alien whose case was referred by the Service for a NACARA-only inquiry, the alien shall have the right to appeal the decision of the Board, subject to the requests for 8 CFR parts 3 and 240 governing appeals from immigration judges to the Board, including the requirements of filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) and paying the filing fee.

What Happens if an Alien Fails To Appear for a Hearing Before the Immigration Judge on a NACARA Adjustment as Applicable?

An alien must appear for all scheduled hearings before an immigration judge, unless his or her appearance is waived by the immigration judge. An alien who is in exclusion, deportation, or removal proceedings before the immigration judge and who fails to appear for a hearing regarding a NACARA adjustment application will be subject to the applicable statutory and regulatory *in absentia* procedures (i.e., section 242B of the Act as it existed prior to the amendments of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) on September 30, 1996, for deportation proceedings, and section 240 of the Act as amended IIRIRA for removal proceedings).

What Rules of Procedure Apply in NACARA-only Hearings Conducted on Cases Referred by the Service to the Immigration Court?

Although an alien who is placed before the immigration judge for a NACARA-only hearing after referral on a Notice of Certification (Form I–290) to the Immigration Court by the Service is not specifically subject to the statutory and regulatory provisions governing exclusion, deportation, and removal proceedings, the Department has inserted language in this interim rule reflecting the standards in section 240 of the Act for removal proceedings, including the *in absentia* procedures. Absent specific statutory direction in this area, the procedures of section 240 of the Act were chosen because such procedures are similar to those from the pre-IIRIRA section 242B of the Act and indicate Congress's most recent preference for procedures dealing with failures to appear for immigration proceedings. Use of the language from section 240 of the Act also assures that the *in absentia* procedures used for those in NACARA-only proceedings are consistent with the *in absentia* procedures applicable to aliens who file NACARA adjustment applications in ongoing removal and deportation proceedings.

As for those aliens who, upon reopening and remanding by the Board to the Immigration Court, fail to file a NACARA adjustment application with the Immigration Court, the immigration judge will certify the case back to the Board for consideration of the previously pending appeal or motion. If, prior to receiving a final order from the Board, the alien subsequently requests as remand to file a NACARA adjustment application, the Board shall remand the case to the Immigration Court, unless the alien is clearly ineligible for such relief.

Good Cause Exception

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B). Section 202 of NACARA became effective immediately upon enactment on November 19, 1997. Publication of this rule as an interim rule will expedite implementation of that section and allow Nicaraguan and Cuban nationals and their spouses and children to apply for and obtain the benefits available to applicants for adjustment of status under NACARA as soon as possible before the statutory application deadline of April 1, 2000.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain Nicaraguan and Cuban nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and will not significantly or uniquely affect small government. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Alien, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements. Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362, 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1 is amended by adding paragraph (b)(12) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(12) Decisions of Immigration Judges on applications for adjustment of status referred on a Notice of Certification (Form I–290C) to the Immigration Judge in accordance with § 245.13(n)(2) of this chapter or remanded to the Immigration Court in accordance with § 245.13(d)(2) of this chapter.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

3. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; sec. 202, Pub. L. 105–100 (111 Stat. 2160, 2193); 8 CFR part 2.

§ 240.1 [Amended]

4. In § 240.1, paragraph (a) is amended in the first sentence by adding the phrase ''and section 202 of Pub. L. 105–100'' immediately after the phrase ''and 249 of the Act''.

§ 240.11 [Amended]

5. In § 240.11, paragraph (a)(1) is amended in the first sentence by revising the phrase ''adjustment of status under section 1 of the Act of November 2, 1966 (as modified by section 606 of Pub. L. 104–132) or under section 101 or 104 of the Act of October 28, 1977,'' to read ''adjustment of status under section 1 of the Act of November 2, 1966 (as modified by section 606 of Pub. L. 104–208), section 101 or 104 of the Act of October 28, 1977, or section 202 of Pub. L. 105–100,''.

§ 240.31 [Amended]

6. Section 240.31 is amended in the first sentence by adding the phrase '', including the adjudication of applications for adjustment of status pursuant to section 202 of Pub. L. 105–100'' immediately after the phrase ''and this chapter''.

§ 240.41 [Amended]

7. In § 240.41, paragraph (a) is amended in the first sentence by adding the phrase ''and section 202 of Pub. L. 100'' after ''and 249 of the Act''.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

8. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100 (111 Stat. 2160, 2193); 8 CFR part 2.

9. Section 245.13 is added to read as follows:

§ 245.13 Adjustment of Status of Certain Nationals of Nicaragua and Cuba under Public Law 105–100.

(a) *Aliens eligible to apply for adjustment.* An alien is eligible to apply for adjustment of status under the provisions of section 202 of Pub. L. 105–100, if the alien:

(1) Is a national of Nicaragua or Cuba;

(2) Except as provided in paragraph (o) of this section, has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier that the date the application for adjustment is granted, excluding:

(i) Any periods of absence from the United States not exceeding 180 days in the aggregate; and

(ii) Any periods of absence for which the applicant received an Advance Authorization for Parole (Form I–512) prior to his or her departure from the United States, provided the applicant returned to the United States in accordance with the conditions of such Advance Authorization for Parole;

(3) Is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, with the exception of paragraphs (4), (5), (6)(A), (7)(A) and (9)(B). If available, an applicant may apply for an individual waiver as provided in paragraph (c) of this section;

(4) Is physically present in the United States at the time the application is filed; and

(5) Properly files an application for adjustment of status in accordance with this section.

(b) *Qualified family members.* (1) *Existence of relationship at time of adjustment.* The spouse, child, or unmarried son or daughter of an alien eligible for adjustment of status under the provisions of Pub. L. 105–100 is eligible to apply for benefits as a dependent provided the qualifying relationship existed when the principal beneficiary was granted adjustment of status and the dependent meets all applicable requirements of sections 202(a) and (d) of Pub. L. 105–100.

(2) *Spouse and minor children.* If physically present in the United States, the spouse or minor child of an alien who is eligible for permanent residence under the provisions of Pub. L. 105–100 may also apply for and receive adjustment of status under this section, provided such spouse or child meets the criteria established in paragraph (a) of this section, except for the requirement of continuous physical presence in the United States since December 1, 1995. Such application may be filed concurrently with or subsequent to the filing of the principal's application but may not be approved prior to approval of the principal's application.

(3) *Unmarried adult sons and daughters.* An unmarried son or daughter of an alien who is eligible for permanent residence under the provisions of Pub. L. 105–100 may apply for and receive adjustment under this section, provided such son or daughter meets the criteria established in paragraph (a) of this section.

(c) *Applicability of inadmissibility grounds contained in section 212(a).* An applicant for the benefits of the adjustment of status provisions of section 202 of Pub. L. 105–100 need not establish admissibility under paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Act in order to be able to adjust his or her status to that of permanent resident. An applicant under section 202 of Pub. L. 105–100 may also apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, if applicable, in accordance with § 212.7 of this chapter.

(d) *Aliens in exclusion, deportation, or removal proceedings, and aliens subject to a final order of exclusion, deportation, or removal.* (1) *Proceedings pending before an Immigration Court.* Except as provided in paragraph (d)(3) of this section, while an alien is in exclusion, deportation, or removal proceedings pending before an immigration judge, or has a pending motion to reopen or motion to reconsider filed with an immigration judge on or before May 21, 1998, sole jurisdiction over an application for adjustment of status under section 202 of Public Law 105–100 shall lie with the immigration judge. If an alien who has a pending motion to reopen or motion to reconsider filed with an immigration judge on or before May 21, 1998 files an application for adjustment of status under section 202 of Pub. L. 105–100, the immigration judge shall reopen the alien's proceedings for consideration of the adjustment application, unless the alien is clearly ineligible for adjustment of status under section 202 of Pub. L. 105–100. All applications for adjustment of status under section 202 of Pub. L. 105–100 filed with an Immigration Court shall be subject to the requirements of §§ 3.11 and 3.31 of this chapter.

(2) *Proceedings pending before the Board of Immigration Appeals.* Except as provided in paragraph (d)(3) of this section, in the case of an alien who either has a pending appeal with the Board or has a pending motion to reopen or motion to reconsider filed with the Board on or before May 21, 1998, the Board shall remand, or reopen and remand, the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 202 of Pub. L. 105–100, unless the alien is clearly ineligible for adjustment of status under section 202 of Pub. L. 105–100. If the immigration judge denies, or the alien fails to file, the application for adjustment of status under section 202 of Pub. L. 105–100, the immigration judge shall certify the decision to the Board for consideration in conjunction with the applicant's previously pending appeal or motion.

(3) *Administrative closure of pending exclusion, deportation, or removal proceedings.* (i) In the case of an alien who is in exclusion, deportation, or removal proceedings, or has a pending motion to reopen or a motion to reconsider such proceedings filed on or before May 21, 1998, and who appears to be eligible to file an application for adjustment of status under section 202 of Pub. L. 105–100, the Immigration Court having jurisdiction over such proceedings or motion, or if the matter is before the Board on appeal or by motion, the Board, shall, upon request of the alien and with the concurrence of the Service, administratively close the proceedings, or continue indefinitely the motion, to allow the alien to file such application with the Service as prescribed in paragraph (g) of this section.

(ii) In any case not administratively closed in accordance with paragraph (d)(3)(i) of this section, the immigration judge having jurisdiction over the exclusion, deportation, or removal proceedings shall have jurisdiction to accept and adjudicate any application for adjustment of status under section 202 of Pub. L. 105–100 during the course of such proceedings.

(4) *Aliens with final orders of exclusion, deportation, or removal.* An alien who is subject to a final order of exclusion, deportation, or removal, and who has not been denied adjustment of status under section 202 of Public Law 105–100 by the immigration judge or the Board of Immigration Appeals, may apply to the Service for adjustment of status under section 202 of Pub. L. 105–100.

(5) *Stay of final order of exclusion, deportation, or removal.* (i) *With the Service.* The filing of an application for adjustment under section 202 of Public Law 105–100 with the Service shall not stay the execution of such final order unless the applicant has filed, and the Service has approved an Application for Stay of Removal (Form I–246) in accordance with section 241(c)(2) of the Act and § 241.6 of this chapter.

(ii) *With EOIR.* When the Service refers a decision to an immigration judge on a Notice of Certification (Form I–290C) in accordance with paragraph (m)(3) of this section, the referral shall not stay the execution of the final order. Execution of such final order shall proceed unless a stay of execution is specifically granted by the immigration judge, the Board, or an authorized Service officer.

(6) *Effect on applications for adjustment under other provisions of the law.* Nothing in this section shall be deemed to allow any alien who is in either exclusion proceedings that commenced prior to April 1, 1997, or

removal proceedings as an inadmissible arriving alien that commenced on or after April 1, 1997, and who has not been paroled into the United States, to apply for adjustment of status under any provision of law other than section 202 of Pub. L. 105–100.

(e) *Application and supporting documents.* Each applicant for adjustment of status must file an Application to Register Permanent Residence or Adjust Status (Form I–485). An applicant should complete Part 2 of Form I–485 by checking box ''h—other'' and writing ''NACARA—Principal'' or ''NACARA—Dependent'' next to that block. Each application must be accompanied by:

(1) The fee prescribed in § 103.7(b)(1) of this chapter;

(2) Evidence of commencement of physical presence in the United States not later than December 1, 1997. Such evidence may consist of either:

(i) Documentation evidencing one or more of the activities specified in section 202(b)(2)(A) of Pub. L. 105–100, or

(ii) Other documentation issued by a Federal, State, or local authority provided such other documentation bears the seal of such authority, was dated at the time of issuance, and bears a date of issuance not later than December 1, 1995. Examples of such other documentation include, but are not limited to:

(A) A State driver's license;

(B) A State identification card issued in lieu of a driver's license to a non-driver;

(C) A county or municipal hospital record;

(D) A public college or public school transcript; and

(E) Income tax records;

(3) Evidence of continuity of physical presence in the United States issued by any governmental or non-governmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature of the authorized representative of the issuing authority. There should be no chronological gaps in such documentation exceeding 90 days in length, excluding periods when the applicant states that he or she was not physically present in the United States. Such documentation need not bear the seal of the issuing authority and may include, but is not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a dated bank cancellation stamp;

(vi) Employment records, including pay checks;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction; and

(viii) For applicants who have had ongoing correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records;

(4) A copy of the applicant's birth certificate;

(5) A complete Biographic Information Sheet (Form G–325A), if the applicant is between 14 and 79 years of age;

(6) A report of medical examination, as specified in § 245.5 of this chapter;

(7) Two photographs, as described in the instructions to Form I–485;

(8) If the applicant is 14 years of age or older, a police clearance from each municipality where the alien has resided for six months or longer since arriving in the United States;

(9) If the applicant is applying as the spouse of another Pub. L. 105–100 beneficiary, a copy of their certificate of marriage and copies of documents showing the legal termination of all other marriages by the applicant or the other beneficiary;

(10) If the applicant is applying as the child, unmarried son, or unmarried daughter of another (principal) beneficiary under section 202 of Pub. L. 105–100 who is not the applicant's biological mother, copies of evidence (such as the applicant's parent's marriage certificate and documents showing the legal termination of all other marriages, an adoption decree, or other relevant evidence) to demonstrate the relationship between the applicant and the other beneficiary;

(11) A copy of the Arrival-Departure Record (Form –I–94) issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled; and

(12) If the applicant has departed from and returned to the Untied States since December 1, 1995, an attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before or on December 1, 1995;

(ii) The date of each departure (if any) from the United States since that arrival;

(iii) The reason for each departure; and

(iv) The date, manner, and place of each return to the United States.

(f) *Secondary evidence.* If the primary evidence required in paragraph (e)(4), (e)(9) or (e)(10 of this section is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish the birth, marriage, or other event. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. In adjudicating the application for adjustment of status under section 202 of Public Law 105–100, the Service or immigration judge shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraphs (e)(2) and (e)(3) of this section. However, subject to verification by the Service, if the documentation specified in paragraphs (e)(2) and (e)(3) is already contained in the Service's file relating to the applicant, the applicant may submit an affidavit to that effect in lieu of the actual documentation.

(g) *Filing.* The application period begins on June 22, 1998. To benefit from the provisions of section 202 of Public Law 105–100, an alien must properly file an application for adjustment of status before April 1, 2000. Except as provided in paragraph (d) of this section, all applications for the benefits of section 202 of Pub. L. 105–100 must be submitted by mail to: USINS Texas Service Center, P.O. Box 851804, Mesquite, TX 75185–1804. After proper filing of the application, the Service will notify the applicant to appear for fingerprinting as prescribed in § 103.2(e) of this chapter.

(h) *Jurisdiction.* Except as provide din paragraphs (d) and (i) of this section, the director of the Texas Service Center shall have jurisdiction over all applications for adjustment of status under section 202 of Public Law 105–100.

(i) *Interview.* (1) Except as provided in paragraphs (d), (i)(2), and (i)(3) of this section, all applicants for adjustment of status under section 202 of Pub. L. 105–100 must be personally interviewed by an immigration officer at a local office of the Service. In any case in which the director of the Texas Service Center determines that an interview of the applicant is necessary, that director shall forward the case to the appropriate local Service office for interview and adjudication.

(2) In the case of an applicant who has submitted evidence of commencement of physical presence in the United States consisting of one or more of the documents specified in section 202(b)(2)(A)(i) through (v) or section

202(b)(2)(A)(vii) of Pub. L. 105–100 and upon examination of the application, including all other evidence submitted in support of the application, all relevant Service records and all other relevant law enforcement indices, if the director of the Texas Service Center determines that the alien is clearly eligible for adjustment of status under Pub. L. 105–100 and that an interview of the applicant is not necessary, the director may approve the application.

(3) Upon examination of the application, all supporting documentation, all relevant Service records, and all other relevant law enforcement indices, if the director of the Texas Service Center determines that the alien is clearly ineligible for adjustment of status under Pub. L. 105–100 and that an interview of the applicant is not necessary, the director may deny the application.

(j) *Authorization to be employed in the United States while the application is pending.* (1) *Application.* An applicant for adjustment of status under section 202 of Pub. L. 105–100 who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file an Application for Employment authorization (Form I–765), with fee as set forth in § 103.7(b)(1) of this chapter. The applicant may either submit Form I–765 concurrently with Form I–485 or wait for at least 90 days after submission of Form I–485.

(2) *Adjudication and issuance.* In general, employment authorization may not be issued to an applicant for adjustment of status under section 202 of Pub. L. 105–100 until the adjustment application has been pending for 180 days. However, if Service records contain one or more of the documents specified in section 202(b)(2)(A)(i) through (v) and (vii) of Pub. L. 105–100, evidence of the applicant's Nicaraguan or Cuban nationality, and no indication that the applicant is clearly ineligible for adjustment of status under section 202 of Pub. L. 105–100, the application for employment authorization may be approved, and the resulting document issued immediately upon verification that the Service record contains such information. If the Service fails to adjudicate the application for employment authorization upon expiration of the 180-day waiting period or within 90 days of the filing of application for employment authorization, whichever comes later, the alien shall be eligible for interim employment authorization in accordance with § 274a.13(d) of this chapter. Nothing in this section shall preclude an applicant for adjustment of status under Pub. L. 105–100 from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the alien may be eligible.

(k) *Parole authorization for purposes of travel.* (1) *Travel from and return to the United States while the application for adjustment of status is pending.* If an applicant for benefits under section 202 of Pub. L. 105–100 desires to travel outside, and return to, the United States while the application for adjustment of status is pending, he or she must file a request for advance parole authorization on an Application for Travel Document (Form I–131), with fee as set forth in § 103.7(b)(1) of this chapter and in accordance with the instructions on the form. If the alien is either in deportation or removal proceedings, or subject to a final order of deportation or removal, the Form I–131 must be submitted to the Assistant Commissioner for International Affairs; otherwise the Form I–131 must be submitted to the director of the Texas Service Center, who shall have jurisdiction over such applications. If any applicant departs the United States without first obtaining an advance parole, his or her application for adjustment of status under section 202 of Pub. L. 105–100 is deemed to be abandoned as of the moment of his or her departure.

(2) *Parole authorization for the purpose of filing an application for adjustment of status under section 202 of Pub. L. 105–100.* An otherwise eligible applicant who is outside the United States and wishes to come to the United States in order to apply for benefits under section 202 of Pub. L. 105–100 may request parole authorization for such purpose by filing an Application for Travel Document (Form I–131) with the Texas Service Center, at P.O. Box 851804, Mesquite, TX 75185–1804. Such application must be supported by a photocopy of the Form I–485 that the alien will file once he or she has been paroled into the United States. The applicant must include photocopies of all the supporting documentation listed in paragraph (e) of this section, except the filing fee, the medical report, the fingerprint card, and the local police clearances. If the director of the Texas Service Center is satisfied that the alien will be eligible for adjustment of status once the alien has been paroled into the United States and files the application, he or she may issue an Authorization for Parole of an Alien into the United States (Form I–512) to allow the alien to travel to, and be paroled into, the United States for a period of 60 days. The applicant shall have 60 days from the date of parole to file the application for adjustment of status. If the alien files the application for adjustment of status within that 60-day period, the Service may re-parole the alien for such time as is necessary for adjudication of the application. Failure to file such application for adjustment of status within 60 days shall result in the alien being returned to the custody of the Service and being examined as an arriving alien applying for admission. Such examination will be conducted in accordance with the provisions of section 235(b)(1) of the Act if the alien is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act, or section 240 of the Act if the alien is inadmissible under any other grounds.

(3) *Effect of departure on an outstanding warrant of exclusion, deportation, or removal.* If an alien who is the subject of an outstanding final order of exclusion, deportation, or removal departs from the United States, with or without an advance parole authorization, such final order shall be executed by the alien's departure. The execution of such final order shall not preclude the applicant from filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I–212) in accordance with § 212.2 of this chapter.

(l) *Approval.* If the director approves the application for adjustment of status under the provisions of section 202 of Pub. L. 105–100, the director shall record the alien's lawful admission for permanent resident as of the date of such approval and notify the applicant accordingly. If the alien had previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the director. If an immigration judge grants or if the Board, upon appeal, grants an application for adjustment under the provisions of section 202 of Pub. L. 105–100, the alien's lawful admission for permanent residence shall be as of the date of such grant.

(m) *Denial and review of decision.* If the director denies the application for adjustment of status under the provisions of section 202 of Pub. L. 105–100, the director shall notify the

applicant of the decision. The director shall also:

(1) In the case of an alien who is not maintaining valid nonimmigrant status and who had not previously been placed in exclusion, deportation, or removal proceedings, initiate removal proceedings in accordance with § 239.1 of this chapter during which the alien may renew his or her application for adjustment of status under section 202 of Pub. L. 105–100; or

(2) In the case of an alien whose previously initiated exclusion, deportation, or removal proceeding had been administratively closed or continued indefinitely under paragraph (d)(3) of this section, advise the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, of the denial of the application. The Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation, or removal proceeding, during which proceeding the alien may renew his or her application for adjustment under section 202 of Pub. L. 105–100; or

(3) In the case of an alien who is the subject of an outstanding final order of exclusion, deportation, or removal, refer the decision to deny the application by filing a Notice of Certification (Form I–290C) with the Immigration Court that issued the final order for consideration in accordance with paragraph (n) of this section.

(n) *Action of immigration judge upon referral of decision by a Notice of Certification (Form I–290C).* (1) *General.* Upon the referral by a Notice of Certification (Form I–290C) of a decision to deny the application, in accordance with paragraph (m)(3) of this section, and under the authority contained in § 3.10 of this chapter, the immigration judge shall conduct a hearing to determine whether the alien is eligible for adjustment of status under section 202 of Public Law 105–100. Such hearing shall be conducted under the same rules of procedure as proceedings conducted under part 240 of this chapter, except the scope of review shall be limited to a determination on the alien's eligibility for adjustment of status under section 202 of Public Law 105–100. During such proceedings all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, deportability, removability, and eligibility for any form of relief other than adjustment of status under section 202 of Public Law 105–100. Should the alien fail to appear for such hearing, the immigration judge shall deny the application for adjustment under section 202 of Public Law 105–100.

(2) *Appeal of immigration judge decision.* Once the immigration judge issues his or her decision on the application, either the alien or the Service may appeal the decision to the Board. Such appeal must be filed pursuant to the requirements for appeals to the Board from an immigration judge decision set forth in §§ 3.3 and 3.8 of this chapter.

(3) *Rescission of the decision of an immigration judge.* The decision of an immigration judge under paragraph (n)(1) of this section denying an application for adjustment under section 202 of Public Law 105–100 for failure to appear may be rescinded only:

(i) Upon a motion to reopen filed within 180 days after the date of the denial if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act; or

(ii) Upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice of the hearing in person (or, if personal service was not practicable, through service by mail to the alien or to the alien's counsel of record, if any) or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien.

(o) *Transition period provisions for tolling the physical presence in the United States provision for certain individuals.* (1) *Departure without advance authorization for parole.* In the case of an otherwise eligible applicant who departed the United States on or before December 31, 1997, the physical presence in the United States provision of section 202(b)(1) of Pub. L. 105–100 is tolled as of November 19, 1997, and until July 20, 1998.

(2) *Departure with advance authorization for parole.* In the case of an alien who departed the United States after having been issued an Authorization for parole of an Alien into the United States (Form I–512), and who returns to the United States in accordance with the conditions of that document, the physical presence in the United States requirement of section 202(b)(1) of Pub. L. 105–100 is tolled while the alien is outside the United States pursuant to the issuance of the Form I–512.

(3) *Request for parole authorization from outside the United States.* In the case of an alien who is outside the United States and submits an application for parole authorization in accordance with paragraph (k)(2) of this section, and such application for parole authorization is granted by the Service, the physical presence in the United States provisions of section 202(b)(1) of Pub. L. 105–100 is tilled from the date the application is received at the Texas Service Center until the alien is paroled into the United States pursuant to the issuance of the Form I–512.

(Approved by the Office of Management and Budget under Control Number 1115–0221.)

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

10. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

§ 274a.12 [Amended]

11. In § 274a.12, paragraph (c)(9) is amended in the second sentence by revising the term ''Employment authorization'' to read: ''Except as provided in § 245.13(j) of this chapter, employment authorization''.

§ 274a.13 [Amended]

12. In § 274a.13, paragraph (d) is amended in the first sentence by revising the phrase ''§ 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and § 274a.12(c)(9) in so far as it is governed by § 245.13(j) of this chapter''.

PART 299—IMMIGRATION FORMS

13. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

14. Section 299.1 is amended in the table by:

a. Revising the entry for Form ''I–290C'', and by

b. Adding the entry for Form ''I–485 Supplement B'' in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * *	*	* * *
I–290C	03–01–98	Notice of Certification.
* * *	*	* * *
I–485 Supplement B	03–01–98	NACARA Supplement to Form I–485 Instructions.
* * *	*	* * *

15. Section 299.5 is amended in the table by adding the entry for Form ''I–485 Supplement B'' in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* * *	*	*
I–485 Supplement B	NACARA Supplement to Form I–485 Instructions	1115–0221
* * *	*	*

Dated: May 12, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–13246 Filed 5–20–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–40–AD; Amendment 39–10534; AD 98–11–07]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time inspection of the double shuttle valve in the upper fuselage fairing for incorrectly labeled part numbers, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure replacement of the double shuttle valves when they have reached their maximum life limit; incorrectly labeled part numbers of the double shuttle valves that are not replaced could result in the failure of the roll control spoilers, and, consequently, lead to reduced controllability of the airplane.

DATES: Effective June 25, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 25, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on March 20, 1998 (63 FR 13577). That action proposed to require a one-time inspection of the double shuttle valve in the upper fuselage fairing for incorrectly labeled part numbers, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does