

respectively. These prices provide a range within which the 2008–09 season average grower price could fall. Dividing these average grower prices by 2,000 pounds per ton provides a price per pound range of \$0.46 to \$0.48. Multiplying these per-pound prices by 19.8 pounds (the weight of a 9-kilo volume-fill container) yields a 2008–09 price range estimate of \$9.11 to \$9.50 per 9-kilo volume-fill container of assessable kiwifruit.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.035 per 9-kilo volume-fill container is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 fiscal year as a percentage of total grower revenue would thus likely range between 0.368 and 0.384 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=Marketing>

*OrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be in place as soon as possible because the 2008–09 fiscal year began on August 1, 2008, handlers began shipping kiwifruit in mid-September, and the order requires that the rate of assessment for each fiscal period apply to all assessable kiwifruit handled during the period; (2) the Committee unanimously recommended this change at a public meeting and all interested parties had an opportunity to provide input; (3) this rule relaxes requirements currently in effect and kiwifruit producers and handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 920.213 is revised to read as follows:

#### § 920.213 Assessment rate.

On and after August 1, 2008, an assessment rate of \$0.035 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: December 8, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–29573 Filed 12–10–08; 4:15 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 103, 212, 214, 245 and 299

[CIS No. 2134–01; DHS Docket No. USCIS–2006–0067]

RIN 1615–AA60

### Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Department of Homeland Security is amending its regulations to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to lawful permanent resident. T nonimmigrant status is available to aliens who are victims of a severe form of trafficking in persons and who are assisting law enforcement in the investigation or prosecution of the acts of trafficking. U nonimmigrant status is available to aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes. This rule provides that family members of a principal T or U nonimmigrant granted or seeking adjustment of status may also apply for adjustment of status to lawful permanent resident. This rule also provides for adjustment of status or approval of an immigrant petition for certain family members of U applicants who were never admitted to the United States in U nonimmigrant status.

**DATES:** *Effective date:* This interim rule is effective January 12, 2009.

*Comment date:* Written comments must be submitted on or before February 10, 2009 in order to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS–2006–0067, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department

of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2006-0067 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272-8377.

**FOR FURTHER INFORMATION CONTACT:** Laura Dawkins, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Second Floor, Washington, DC 20529, telephone (202) 272-8350.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. Comments that will provide the most assistance to U.S. Citizenship and Immigration Services in developing these procedures will refer to a specific portion of the rule, suggest changes to the regulation text, discuss the reason for the recommended change, and include data, information, or authority that support the recommended change.

*Instructions:* All submissions received should include the agency name and Docket No. USCIS-2006-0067 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including e-mail addresses and any other personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529 during normal business hours by contacting the information contact listed above.

##### II. Background and Legislative Authority

This rule implements the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law No. 106-386, 114 Stat. 1464 (Oct. 28, 2000), as amended, to permit aliens in lawful T or U nonimmigrant status to apply for adjustment of status to lawful permanent resident.

Aliens who are victims of a severe form of trafficking in persons and who have complied with any reasonable requests for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking, or the investigation of a crime where acts of trafficking are at least one central reason for the commission of that crime, may be admitted to the United States under a "T" nonimmigrant classification or "T visa." See Immigration and Nationality Act of 1952, as amended (INA or Act), sections 101(a)(15)(T) and 214(o), 8 U.S.C. 1101(a)(15)(T) and 1184(o). The Department of Justice (DOJ), through the former Immigration and Naturalization Service (INS), published regulations implementing the "T" nonimmigrant provisions in 2002. 67 FR 4784 (Jan. 31, 2002). Those regulations became effective on March 4, 2002.

Aliens who are victims of specified criminal activity, including trafficking, who assist government officials in investigating or prosecuting those crimes may be admitted to the United States under a "U" nonimmigrant classification or "U visa." See INA sections 101(a)(15)(U) and 214(p); 8 U.S.C. 1101(a)(15)(U) and 1184(p). DHS published regulations implementing the provisions creating the U nonimmigrant classification on September 17, 2007. 72 FR 53014. The "U" regulations became effective October 17, 2007.

This interim final rule implements the provisions of the Act permitting T and U nonimmigrant aliens to apply for an adjustment status to that of lawful permanent resident. See INA sections 245(l), (m); 8 U.S.C. 1255(l), (m). This rule implements the eligibility and application requirements for such aliens to seek adjustment of status to lawful permanent resident.

##### III. Aliens in T Nonimmigrant Status Seeking Adjustment of Status Under Section 245(l) of the Act

###### A. Eligibility Requirements for T Nonimmigrants Seeking Adjustment of Status

This rule promulgates a new 8 CFR 245.23 to list the eligibility requirements for adjustment of status for T-1 nonimmigrants and their family members in lawful T-2, T-3, T-4, and T-5 status under section 245(l) of the Act, 8 U.S.C. 1255(l).

###### 1. Admitted as a T Nonimmigrant

All applicants for adjustment of status under section 245(l) of the Act must have been lawfully admitted to the United States as a T nonimmigrant and must continue to hold such status at the

time of application. New 8 CFR 245.23(a)(2); 245.23(b)(2).

###### 2. Physical Presence for Requisite Period

T-1 nonimmigrant applicants for adjustment of status under section 245(l) of the Act must have been physically present in the United States for either: (1) A continuous period of at least 3 years since the date of admission as a T-1 nonimmigrant; or (2) a continuous period during the investigation or prosecution of the acts of trafficking, provided that the Attorney General has determined the investigation or prosecution is complete, whichever period is less. New 8 CFR 245.23(a)(3); see INA sec. 245(l)(1)(A); 8 U.S.C. 1255(l)(1)(A). With respect to the requisite continuous physical presence period, this rule provides that an applicant's date of admission as a T-1 nonimmigrant is the date that the applicant was first admitted as a T-1 nonimmigrant. New 8 CFR 245.23(a)(3). For example, if the applicant traveled outside the United States after being admitted as a T-1 nonimmigrant and reentered using an advance parole document issued under 8 CFR 245.2(a)(4)(ii)(B), the date that the applicant was first admitted as a T-1 nonimmigrant will be the date of admission used by USCIS for determining whether the applicant has satisfied the physical presence requirement, regardless of how the applicant's Form I-94 "Arrival-Departure Record" is annotated upon his or her reentry (e.g., as "T nonimmigrant" or "parolee"). New 8 CFR 245.23(a)(3); 245.23(e)(2)(i).

However, this rule also provides that an applicant who travels outside of the United States for a single period in excess of 90 days or 180 days in the aggregate will not maintain the continuous physical presence required to establish eligibility for adjustment. New 8 CFR 245.23(a)(3); see INA sec. 245(l)(3), 8 U.S.C. 1255(l)(3). Unlike for U-1 nonimmigrants, the Act does not permit T-1 nonimmigrants to exceed the 90-day or 180-day limitation to assist in an investigation or prosecution or pursuant to an official certification justifying the excessive absence. Compare INA sec. 245(l)(3), 8 U.S.C. 1255(l)(3), with INA sec. 245(m)(2), 8 U.S.C. 1255(m)(2).

###### 3. Admissible at Time of Adjustment

All applicants for adjustment of status under section 245(l) of the Act must be admissible to the United States under the Act, or otherwise have been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of

examination for adjustment. New 8 CFR 245.23(a)(4), 245.23(b)(4), 245.23(c)(2) and (3); *see* INA sec. 245(I)(2), 8 U.S.C. 1255(I)(2); INA sec. 212(a), 8 U.S.C. 1182(a) (listing grounds of inadmissibility and available waivers).

#### 4. Good Moral Character

T–1 nonimmigrant applicants for adjustment of status under section 245(I) of the Act must establish that they have been persons of good moral character since first being lawfully admitted as a T–1 nonimmigrant and until USCIS completes the adjudication of their applications for adjustment of status. New 8 CFR 245.23(a)(5); *see* INA sec. 245(I)(1)(B), 8 U.S.C. 1255(I)(1)(B). However, section 101(f) of the Act, 8 U.S.C. 1101(f), precludes establishment of good moral character if, “during the period for which good moral character is required to be established,” an applicant falls into certain enumerated categories. The list of enumerated categories, however, is not exclusive. Section 101(f) of the Act also provides that persons who do not fall within any of the enumerated categories may also be found to lack good moral character.

Section 101(f)(3) of the Act specifically bars aliens who have engaged in prostitution or commercialized vice (described in section 212(a)(2)(D) of the Act, 8 U.S.C. 1182(a)(2)(D)), from establishing good moral character “during the period for which good moral character is required to be established.” *Id.* The period for which good moral character must be established under section 212(a)(2)(D) of the Act is 10 years from the date of application, but the period for which good moral character must be established under section 245(I) of the Act is a continuous period of at least 3 years since the date of admission or during the period of investigation or prosecution of the acts of trafficking, whichever period of time is less. The interplay of these provisions creates ambiguity and requires interpretation. After considering the necessary interplay between section 101(f)(3) of the Act, the 10-year temporal scope of section 212(a)(2)(D) of the Act, and the more limited period during which good moral character must be shown for purposes of adjustment of status under section 245(I) of the Act, USCIS believes, based on the purpose and history of the statute, that the more limited period is applicable. For example, if an applicant engaged in prostitution or commercialized vice after he or she was first lawfully admitted as a T–1 nonimmigrant, USCIS will consider the applicant to be statutorily precluded under section

101(f)(3) of the Act from establishing that he or she is a person of good moral character. If, on the other hand, the applicant engaged in prostitution or commercialized vice before he or she was first lawfully admitted as a T–1 nonimmigrant (which in many cases will be related to the trafficking of that individual), USCIS will not consider the applicant to be statutorily precluded under section 101(f)(3) of the Act from establishing that he or she is a person of good moral character because the applicant’s activities did not occur during the period for which good moral character is required to be established for purposes of section 245(I) of the Act. This interpretation is consistent with the primary goal of the statute, which is to provide humanitarian assistance to victims who are assisting law enforcement in the investigation or prosecution of their traffickers. In construing the interplay between the relevant statutory provisions, the proper course is to adopt that sense of words which best harmonizes with the context, and then promotes in the fullest manner the policy and objects of Congress. *United States v. Hartwell*, 73 U.S. (6 Wall.) 385, 396 (1868); *see generally* 2A C. Sands, *Sutherland on Statutory Construction* sec. 46.05 (rev. 7th ed. 2008). For example, in cases in which an applicant was forced into sexual slavery or prostitution prior to being granted T–1 nonimmigrant status, it would be contrary to the purpose of the statute to prevent the applicant from showing good moral character for purposes of adjusting status to lawful permanent resident because he or she had engaged in prostitution within 10 years of the date of the application for adjustment of status, but before he or she was granted T–1 nonimmigrant status.

An applicant who is under 14 years of age is generally presumed to be a person of good moral character and is not required to submit evidence of good moral character. However, if there is reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require evidence of good moral character. New 8 CFR 245.23(g)(4).

#### 5. Assistance in the Investigation or Prosecution

T–1 nonimmigrant applicants for adjustment of status under section 245(I) of the Act must establish either (i) that during the requisite period of continuous physical presence they have complied with any reasonable request for assistance in an ongoing Federal, State, or local investigation or prosecution of the acts of trafficking, as

defined in 8 CFR 214.11(a), by submitting a document issued by the Attorney General or his designee certifying that he or she has complied with any reasonable requests for assistance (new 8 CFR 245.23(d), 245.23(f)(1)), or (ii) that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States (new 8 CFR 245.23(d), 245.23(f)(2)).<sup>1</sup> *See* INA sec. 245(I)(1)(C), 8 U.S.C. 1255(I)(1)(C).

Although the T nonimmigrant provisions at section 101(a)(15)(T) of the Act, 8 U.S.C. 1101(a)(15)(T), exempt children under the age of 18 from the requirement to comply with reasonable requests for assistance, no similar age-related exemption is included in the adjustment provisions contained in section 245(I) of the Act, 8 U.S.C. 1255(I). Accordingly, this rule provides that to establish eligibility for adjustment of status, T–1 principal applicants under the age of 18 must either show that they have, since being lawfully admitted as a T nonimmigrant, complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking, or meet the alternative “extreme hardship” requirement of section 245(I)(1)(C)(ii) of the Act. New 8 CFR 245.23(a)(6)(ii). When evaluating the reasonableness of a request for assistance made to a minor since admission as a T nonimmigrant, USCIS will consider the previous application of the exemption at section 101(a)(15)(T)(i)(III)(bb) of the Act.

#### 6. Extreme Hardship Involving Unusual and Severe Harm

As noted above, section 245(I)(1)(C) of the Act, 8 U.S.C. 1255(I)(1)(C), permits T–1 applicants for adjustment of status the alternative of establishing they would suffer extreme hardship involving unusual and severe harm upon removal, in lieu of establishing assistance in the investigation or prosecution. This rule utilizes existing extreme hardship standards set forth at 8 CFR 214.11(i), which were established in the January 31, 2002, interim T nonimmigrant status rule. New 8 CFR 245.23(a)(6)(ii), 245.23(f)(2). These standards provide that extreme hardship involving unusual and severe harm may not be based upon current or future economic detriment, or the lack of or disruption to social or economic

<sup>1</sup> Section 245(I)(1)(C)(i) of the Act requires the Attorney General to determine whether T–1 nonimmigrant applicants have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. This rule does not address the Attorney General’s authority to adjust status under section 245(I)(1)(C)(i) of the Act.

opportunities. Both traditional extreme hardship factors and factors associated with having been a victim of a severe form of trafficking in persons may be considered. Factors such as serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country, the nature and extent of the physical and psychological consequences of severe forms of trafficking in persons, and the likelihood that the trafficker or another acting on behalf of the trafficker in the foreign country would severely harm the applicant may be relevant to such a determination.

#### *B. Application Procedures for T Nonimmigrants Seeking Adjustment of Status*

This rule clarifies that the generally applicable adjustment of status provisions in 8 CFR 245.1 and 245.2 do not apply to applications for adjustment of status under the new 8 CFR 245.23. The adjustment provisions contained in section 245(l) of the Act, 8 U.S.C. 1255(l), are stand-alone provisions and not simply a variation on the general adjustment rules contained in section 245(a) of the Act, 8 U.S.C. 1255(a). New 8 CFR 245.23(k).

##### 1. Filing the Application To Request Adjustment of Status

This rule requires that each applicant for adjustment of status under section 245(l) of the Act, 8 U.S.C. 1255(l), submit a complete application to USCIS: Form I-485, Application to Register Permanent Residence or Adjust Status, filed in accordance with the form instructions; applicable fees or application for a fee waiver; and any additional evidence to fully support the application. New 8 CFR 245.23(a)(1), 245.23(b)(3), 245.23(e). Derivative T nonimmigrants may not submit an application for adjustment of status before the principal T-1 alien files an application for adjustment of status. New 8 CFR 245.23(b)(1).

##### 2. Timely Filing

Aliens who properly apply for adjustment of status in accordance with 8 CFR 245.23 shall remain eligible for adjustment of status. New 8 CFR 214.11(p)(2). T nonimmigrants who fail to apply for adjustment of status during the prescribed period will lose T nonimmigrant status at the end of the 4-year period unless that status is extended beyond 4 years because a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking

certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity. New 8 CFR 214.11(p)(1); see INA sec. 214(o)(7)(B), 8 U.S.C. 1184(o)(7)(B).

In 2006, Congress altered several key aspects of the T nonimmigrant provisions and the related adjustment of status requirements, necessitating changes to 8 CFR 214.11(p). Congress extended the duration of status for a T nonimmigrant from 3 to 4 years and made T nonimmigrant status renewable beyond the 4-year maximum duration based on a certification of law enforcement necessity. Public Law No. 109-162, sec. 821(a), 119 Stat. 2960 (Jan. 5, 2006) (amending INA sec. 214(o)(7), 8 U.S.C. 1184(o)(7)). Without such renewal, however, the statute is clear that T nonimmigrant status may not extend beyond 4 years even if the individual has properly applied for adjustment of status.

This rule provides a transition rule for those T nonimmigrants who accrued 4 years in status prior to promulgation of this rule. Section 214(o)(7) of the Act, 8 U.S.C. 1184(o)(7), prescribes a maximum duration in T nonimmigrant status of 4 years, unless the T nonimmigrant receives a law enforcement certification stating that the T nonimmigrant's presence is necessary to assist in the investigation or prosecution. Therefore, T nonimmigrants who already accrued 4 years in status might not continue to hold such status at the time of application for adjustment of status and would otherwise be ineligible for adjustment of status. USCIS is therefore creating a transition rule to allow these aliens, if otherwise eligible, to adjust status if they file a complete application within 90 days of promulgation of this rule. New 8 CFR 245.23(a)(2)(ii).

Congress also allowed certain applicants to apply for adjustment of status before having accrued 3 years of continuous physical presence in valid T nonimmigrant status. Public Law No. 109-162, sec. 803(a)(1)(B) (amending INA sec. 245(l)(1)(A), 8 U.S.C. 1255(l)(1)(A)). This rule revises 8 CFR 214.11(p)(2) to implement the statutory changes.

Applicants for adjustment of status under section 245(l) of the Act may submit an application for employment authorization (Form I-765, Application for Employment Authorization, in accordance with the form instructions) on the basis of 8 CFR 274a.12(c)(9).

##### 3. Initial Evidence

All applicants for adjustment of status under section 245(l) of the Act must

submit all required "initial evidence" or supporting documentation with the Form I-485. 8 CFR 103.2(b)(1). Otherwise, USCIS will deem the application to be incomplete. If all required initial evidence is not submitted with the application or the evidence does not demonstrate statutory eligibility, USCIS may deny the application for lack of initial evidence, for ineligibility, or for both reasons. In the alternative, USCIS may request that the missing initial evidence be submitted within a specified period of time. 8 CFR 103.2(b)(8).

##### a. Evidence That Applicant Was Admitted in T Nonimmigrant Status

All applicants must submit a copy of the Form I-797, Notice of Action, granting T nonimmigrant status, with the attached Form I-94 Arrival/Departure Record, or a copy of the applicant's passport with a T nonimmigrant visa along with a copy of the Form I-94 Arrival/Departure Record evidencing that the principal alien was admitted into the United States in T nonimmigrant status. New 8 CFR 245.23(e)(2)(i).

##### b. Evidence of Continuous Physical Presence

T-1 nonimmigrant applicants may present as evidence of continuity of physical presence in the United States one or more documents issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority if the document would normally contain such indicia. New 8 CFR 245.23(e)(2)(i). An applicant may use college transcripts or employment records, including certification of the filing of Federal or state income tax returns, to show that an applicant attended school or worked in the United States throughout the requisite continuous physical presence period. The applicant may also present documents showing installment periods, such as a series of monthly rent receipts or utility bills that cover the same period, to establish continuous physical presence during that period. See generally 8 CFR 245.22.

An applicant need not submit documentation to show presence on every single day of the requisite continuous physical presence period, but there should be no significant chronological gaps in documentation. Any absence from the United States, even for one day, is significant for purposes of eligibility because of the

aggregate 180-day restriction on absences from the United States.

Furthermore, if an applicant is aware of documents already contained in his or her DHS 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 include a written copy of a sworn statement given to a DHS officer, a document from the law enforcement agency attesting to the fact that the T-1 nonimmigrant status holder has continued to comply with requests for assistance, the transcript of a formal hearing, or a Record of Deportable/Inadmissible Alien, Form I-213.

To facilitate USCIS' evaluation of an applicant's physical presence in the United States, this rule provides that an applicant must submit a copy of his or her passport (or equivalent travel document) and documentation regarding any departure from the United States and re-entry, including the dates of departure; time, manner, and place of return. New 8 CFR 245.23(e)(2)(i).

A signed statement from the T-1 applicant attesting to continuous physical presence alone will not be sufficient to establish this eligibility requirement. New 8 CFR 245.23(e)(2)(i). If documentation to establish continuous physical presence is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts. *Id.*

This rule further provides that applicants seeking to meet the alternative continuous physical presence requirement at section 245(J)(1)(A) of the Act (less than 3 years of continuous physical presence while in T-1 nonimmigrant status if the investigation or prosecution is complete) must submit a document signed by the Attorney General, or his designee, as an attachment to the Form I-485, Supplement E, stating that the investigation or prosecution is complete. New 8 CFR 245.23(e)(2)(i)(B).

#### c. Evidence of Admissibility

Applicants who are inadmissible by reason of a ground not waived in connection with the prior application for T nonimmigrant status must file an application for a waiver of inadmissibility under section 245(J)(2) of the Act (Form I-601, Application for Waiver of Grounds of Excludability) with the application to adjust status. New 8 CFR 212.18(a). A separate fee for Form I-601 or a fee waiver request must be remitted with the form. This rule clarifies that Form I-601 is used for this

purpose and that a fee is charged for waiver of any ground of inadmissibility. 8 CFR 103.7(b)(1).

Applicants who are inadmissible on security related grounds (INA sec. 212(a)(3), 8 U.S.C. 1182(a)(3)), as international child abductors (INA sec. 212(a)(10)(C), 8 U.S.C. 1182(a)(10)(C)), or as former citizens who renounced citizenship to avoid taxation (INA sec. 212(a)(10)(E), 8 U.S.C. 1182(a)(10)(E)), are not eligible for waivers of inadmissibility under section 245(J)(2) of the Act. New 8 CFR 245.23(c)(1); see INA sec. 245(J)(2)(B), 8 U.S.C. 1255(J)(2)(B).

USCIS may waive the health-related (INA sec. 212(a)(1), 8 U.S.C. 1182(a)(1)) and public charge (INA sec. 212(a)(4), 8 U.S.C. 1182(a)(4)) grounds of inadmissibility if USCIS determines that a waiver is in the national interest as a matter of discretion. See INA sec. 245(J)(2)(A). USCIS understands the waiver of the public charge ground in light of two other provisions of law, Pub. L. 106-386, sections 107(b)(1)(A) and (E), 114 Stat. 1464 (Oct. 28, 2000), which provide that victims of a severe form of trafficking in persons who are over 18 years of age may be certified by the Secretary of Health and Human Services (HHS) to receive certain benefits and services "to the same extent as an alien who is admitted to the United States as a refugee." Victims of a severe form of trafficking in persons who are under 18 are also eligible for services, including cash assistance, to the same extent as refugees, but they do not need to be certified by HHS. Refugees are provided with special humanitarian benefits because of their vulnerable circumstances, and are exempt from virtually every aspect of the public charge determination. Congress has recognized that victims of a severe form of trafficking in persons are in much the same position as refugees, and therefore provided specific authority for DHS to exempt them from the public charge ground of inadmissibility when applying for T nonimmigrant status. See INA sec. 212(d)(13)(A); 8 U.S.C. 1182(d)(13)(A). However, this statutory exemption does not apply to adjustment of status. Consequently, at that stage, applicants must either demonstrate that they are not likely to become public charges under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4), or must apply for a waiver of that ground of inadmissibility under section 245(J)(2)(A) of the Act, 8 U.S.C. 1255(J)(2)(A). In evaluating waiver requests, if an applicant is receiving or has received public benefits as a trafficking victim, USCIS will not consider that fact as conclusive

evidence of the likelihood the applicant will become a public charge.

USCIS also may waive any other ground of inadmissibility, but only if USCIS determines that a waiver is in the national interest and that the activities rendering the applicant inadmissible were caused by or were incident to the principal alien's trafficking victimization. See INA sec. 245(J)(2)(B). Applicants seeking such a waiver must establish that the activities rendering the applicants inadmissible were caused by or incident to their trafficking victimization, that it is in the national interest to waive the ground(s) of inadmissibility, and that the waiver is warranted as a matter of discretion. New 8 CFR 212.18(b)(3).

Under section 212(a)(9)(B)(iii) of the Act, 8 U.S.C. 1182(a)(9), applicants may be exempted from the unlawful presence ground of inadmissibility if they can establish that their victimization was "at least one central reason" for their unlawful presence in the United States. See INA sec. 212(a)(9)(B)(iii)(V), 8 U.S.C. 1182(a)(9)(B)(iii)(V). This rule clarifies that to be a "central reason," the victimization need not be the sole reason for the unlawful presence, but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial. New 8 CFR 245.23(c)(3); cf. *Matter of J-B-N- & S-M-*, 24 I&N 208, 214 (BIA 2007) (interpreting the "one central reason" standard in the asylum context). An applicant requesting only an exemption from section 212(a)(9)(B)(B)(iii)(V) of the Act need not file a Form I-601. New 8 CFR 245.23(c)(3). The applicant, however, must submit with his or her Form I-485 evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. *Id.*

As discussed below, applicants whose adjustment of status applications are denied, including the denial of a request for exemption from the application of section 212(a)(9)(B) of the Act, and the denial of an application for a waiver of inadmissibility (Form I-601) may appeal to the USCIS Administrative Appeals Office (AAO). New 8 CFR 245.23(i).

This rule also clarifies that USCIS may revoke its approval of a waiver of inadmissibility. New 8 CFR 212.18(d); see also 8 CFR 103.5.

#### d. Evidence of Good Moral Character

Initial evidence of a T-1 nonimmigrant applicant's good moral character is the applicant's affidavit attesting to his or her good moral

character, accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the applicant has resided for six or more months during the requisite period in T-1 nonimmigrant status. New 8 CFR 245.23(g). If police clearances, criminal background checks, or similar reports are not available for some or all locations, the applicant may include an explanation and submit other evidence with his or her affidavit. *Id.*

A T-1 nonimmigrant applicant who is under 14 years of age is generally presumed to be a person of good moral character and is not required to submit evidence of good moral character. However, if USCIS has reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require evidence of good moral character. *Id.*

e. Evidence of Assistance in the Investigation or Prosecution

To meet the "assistance" requirement, T-1 applicants must submit a document signed by the Attorney General or his designee certifying that he or she has complied with any reasonable requests for assistance. New 8 CFR 245.23(d), 245(f)(1).

f. Evidence of Extreme Hardship Involving Unusual and Severe Harm

In lieu of showing continued compliance with requests for assistance, T-1 applicants may establish that they would suffer extreme hardship involving unusual and severe harm upon removal from the United States. Such hardship determinations will be evaluated on a case-by-case basis, in accordance with the factors described in 8 CFR 214.11(i). No particular piece of evidence will guarantee a finding that extreme hardship involving unusual and severe harm would result if the applicant is removed from the United States. To minimize the burden of submitting voluminous documentary evidence and to streamline the adjudication of the adjustment application, this rule provides that where the basis for the hardship claim represents a continuation of the hardship claimed in the previously approved application for T nonimmigrant status, the applicant need not re-document the entire hardship claim, but instead may submit evidence demonstrating that the previously-established hardship is ongoing. New 8 CFR 245.23(f)(2). However, in reaching its decision regarding hardship under this section, USCIS is not bound by its previous hardship determination made under 8 CFR 214.11(i). *Id.*

4. Additional Requirements for Derivative Family Members

Derivative family members may apply for adjustment of status under section 245(I)(1) provided the T-1 principal applicant meets the eligibility requirements for adjustment of status and the T-1 principal applicant's adjustment application has been approved, is currently pending, or is concurrently filed. New 8 CFR 245.23(b).

As with T-1 principal applicants, to be eligible for adjustment of status under section 245(I) of the Act, derivative family members must be admissible to the United States under the Act, or otherwise have been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment. New 8 CFR 245.23(a)(4), 245.23(b)(4), 245.23(c)(2) and (3); see INA sec. 245(I)(2), 8 U.S.C. 1255(I)(2); INA sec. 212(a), 8 U.S.C. 1182(a). Section 245(I)(2)(B) of the Act also permits USCIS to waive any ground of inadmissibility that may be applicable to a derivative family member, except for the grounds related to national security, international child abduction, and former citizens who renounced citizenship to avoid taxation. Such a waiver may be granted if USCIS determines that it is in the national interest to do so and that the activities rendering the derivative family member inadmissible were caused by or were incident to the T-1 principal alien's victimization. See INA sec. 245(I)(2), 8 U.S.C. 1255(I)(2). A waiver application for a derivative family member will be adjudicated in accordance with new 8 CFR 212.18.

5. Evidence Relating to Discretion

Consistent with all of the other adjustment of status provisions, section 245(I) of the Act makes adjustment of status to that of a lawful permanent resident a discretionary benefit. To enable USCIS to determine whether to exercise discretion favorably, this rule provides that all T adjustment applicants have the burden of showing that discretion should be exercised in their favor. New 8 CFR 245.23(e)(3). Generally, favorable factors such as family ties, hardship, and length of residence in the United States may be sufficient to merit a favorable exercise of administrative discretion. However, where adverse factors are present, the applicant will need to offset these factors by showing sufficient mitigating equities. This rule permits applicants to submit information regarding any mitigating factors they wish to be considered. *Id.* Depending on the nature

of an applicant's adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's adverse factors, such a showing might still be insufficient. *Id.* See *Matter of Jean*, 23 I&N Dec. 373, 383-384 (A.G. 2002), *aff'd* *Jean v. Gonzales*, 452 F.3d 392 (5th Cir. 2006). See also *Pinentel v. Mukasey*, 530 F.3d 321 (5th Cir. 2008); *Meija v. Gonzales*, 499 F.3d 991 (9th Cir. 2007). For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. *Id.*

6. Application and Biometric Services Fees

The fee for filing an Application to Register Permanent Residence or Adjust Status (Form I-485) is listed at 8 CFR 103.7(b). USCIS recognizes that some applicants for adjustment of status under section 245(I) of the Act may be unable to pay the full application fee. Applicants who are able to show that they are financially unable to pay the application fee may submit an application for a fee waiver as outlined in 8 CFR 103.7(c). This rule also permits a fee waiver for the Form I-601 fee. The decision whether to grant a fee waiver lies within the sole discretion of USCIS. Further guidance on fee waivers can be found on the USCIS Web site currently at <http://www.uscis.gov/feewaiver>.

In addition to the filing fee for the Form I-485 and Form I-601, if applicable, applicants will have to submit the established fee for biometric services, or fee waiver request, for each person ages 14 through 79 inclusive with each application. This fee can also be found at 8 CFR 103.7(b).

C. Traveling While Application for Adjustment of Status Is Pending

T nonimmigrants applying for adjustment of status, and who are not in removal, exclusion, or deportation proceedings, must follow the generally applicable rule that an applicant with a pending adjustment of status application must obtain advance parole from USCIS. New 8 CFR 245.23(j); 8 CFR 245.2(a)(4)(ii)(B). Advance parole can be requested by completing and filing Form I-131, Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, before departing

the United States. *Id.* If an applicant fails to acquire advance parole prior to departure, USCIS will deem the application for adjustment of status abandoned as of the moment of departure from the United States. If the adjustment of status application of such an individual is subsequently denied, he or she will be treated as an applicant for admission subject to sections 212 and 235 of the Act. *Id.* If a T nonimmigrant applying for adjustment of status is in removal, exclusion, or deportation proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States if the applicant failed to acquire advance parole prior to departure. New 8 CFR 245.23(i); 8 CFR 245.2(a)(4)(ii)(A).

#### *D. Decisions on Applications Under Section 245(l) of the Act*

##### 1. Annual Limitation on the Number of Adjustments of T-1 Nonimmigrants

USCIS may adjust the status of no more than 5,000 T-1 principal aliens in a given fiscal year. *See* INA sec. 245(l)(4)(A), 8 U.S.C. 1255(l)(4)(A). This numerical limitation does not apply to spouses, children, parents, and unmarried siblings in T-2, T-3, T-4, and T-5 status who seek adjustment of status as derivatives. *See* INA sec. 245(l)(4)(B), 8 U.S.C. 1255(l)(4)(B).

USCIS will adjudicate applications in the order in which they are received. Once the numerical limit has been reached in a particular fiscal year, all pending and subsequently received applications will continue to be reviewed in the normal process to determine eligibility. However, USCIS will not approve adjustment of status prior to the beginning of the next fiscal year and not until a number under the cap becomes available. New 8 CFR 245.23(l)(2). USCIS will place eligible applicants who are not granted adjustment of status due solely to the numerical limit on a waiting list and notify the applicants of that placement. *Id.* Applicants on the waiting list will be given priority in the following fiscal year based on the date the application was properly filed. *Id.*

##### 2. Decisions on Applications

USCIS will notify an applicant in writing of its decision on the adjustment of status and any applicable waiver application. New 8 CFR 245.23(h). If the application is approved, USCIS will issue a notice of approval, instructing the applicant to go to a local USCIS office or an Application Support Center to complete Form I-89, which collects

the necessary information to produce the Form I-551 (Alien Registration Receipt Card or "green card"). The notice of approval will also inform the applicant how to obtain temporary evidence of lawful permanent resident status. Upon approval of an application for adjustment of status, USCIS will record the alien's admission as a lawful permanent resident as of the date of such approval. *See* INA sec. 245(l)(5), 8 U.S.C. 1255(l)(5).

If the application for adjustment of status is denied, the applicant will be notified in writing of the reasons for the denial and of the right to appeal the decision to the USCIS Administrative Appeals Office. New 8 CFR 245.23(i). Because derivative family members' applications are dependent upon approval of the principal applicant's adjustment application, this rule also provides that denial of the T-1 principal applicant's application will result in the automatic denial of a derivative family member's application. *Id.*

#### **IV. Aliens in U Nonimmigrant Status Adjusting Status Under Section 245(m) of the Act**

##### *A. Eligibility Requirements for U Nonimmigrants Seeking Adjustment of Status*

This rule promulgates new 8 CFR 245.24 to list the eligibility requirements for adjustment of status for U-1 nonimmigrants and their family members in lawful U-2, U-3, U-4, and U-5 nonimmigrant status under section 245(m) of the Act, 8 U.S.C. 1255(m).

##### 1. Admitted as a U Nonimmigrant

All applicants for adjustment of status under section 245(m) of the Act must have been lawfully admitted to the United States in U nonimmigrant status and must continue to hold such status at the time of the application. New 8 CFR 245.24(b)(2).

This rule provides a transition rule for those aliens who accrued 4 years or more in U interim relief status prior to promulgation of this rule. Section 214(p)(6) of the Act, 8 U.S.C. 1184(p)(6), prescribes a maximum duration in U nonimmigrant status of 4 years, unless the U nonimmigrant receives a law enforcement certification stating that the U nonimmigrant's presence is necessary to assist in the investigation or prosecution. Title 8 CFR 214.14(c)(6) provides that aliens with U interim relief status whose Form I-918, Petition for U Nonimmigrant Status, is approved will be accorded U nonimmigrant status as of the date that a request for U interim relief was initially approved. Therefore, aliens who already accrued 4

years in U interim relief status might not continue to hold such status at the time of application for adjustment of status and would otherwise be ineligible for adjustment of status. USCIS is therefore creating a transition rule to allow these aliens, if otherwise eligible, to apply to adjust status within 120 days of approval of the Form I-918. New 8 CFR 245.24(b)(2)(ii). Recipients of U interim relief may apply for adjustment of status after 4 years in U interim relief status if they have previously filed a complete Form I-918. *Id.* If the Form I-918 is subsequently approved, USCIS will then adjudicate the pending adjustment application. USCIS believes that this transition rule will allow applicants to remain eligible to adjust status and will not penalize those applicants with more than 4 years in U interim relief status.

##### 2. Physical Presence for Requisite Period

All applicants for adjustment of status under section 245(m) of the Act must have maintained continuous physical presence in the United States for at least 3 years since the date of admission as a U nonimmigrant. New 8 CFR 245.24(b)(3); *see* INA sec. 245(m)(1)(A), 8 U.S.C. 1255(m)(1)(A). Applicants who have departed from the United States for any period in excess of 90 days or for any periods exceeding 180 days in the aggregate shall not be considered to have maintained continuous physical presence. New 8 CFR 245.24(a)(1); *see* INA sec. 245(m)(2), 8 U.S.C. 1255(m)(2). An absence for any period in excess of 90 days or for any periods exceeding 180 days is permissible only if the excessive absence is necessary to assist in the investigation or prosecution of persons in connection with the qualifying criminal activity or if an official involved in the investigation or prosecution certifies that the absence is otherwise justified. *Id.* Absences for less than 90 days at one time or 180 days in the aggregate will not be deducted from the requisite continuous physical presence period required to establish eligibility for adjustment of status and will not be deemed an interruption of the period. *Id.*

##### 3. Unreasonable Refusal To Assist in the Investigation or Prosecution

Section 245(m)(1) of the Act, 8 U.S.C. 1255(m)(1), prohibits USCIS from adjusting the status of an otherwise eligible U nonimmigrant if the Attorney General determines, based on affirmative evidence, that the U nonimmigrant unreasonably refused to provide assistance to a Federal, State, or local criminal investigation or prosecution. USCIS interprets this

statutory provision as imposing an ongoing requirement for U-1 nonimmigrants not to refuse unreasonably to provide assistance in an investigation or prosecution. For a derivative family member of a U-1 nonimmigrant (a U-2, U-3, U-4, or U-5 nonimmigrant) who was not required to provide such assistance as a prerequisite for obtaining U nonimmigrant status, USCIS interprets this provision to mean that if the derivative U-2, U-3, U-4, or U-5 nonimmigrant possessed information about the qualifying criminal activity on which the U-1 nonimmigrant petition was based and was asked to assist in the investigation or prosecution, the derivative U nonimmigrant has a responsibility not to unreasonably refuse to provide that assistance.

Thus, this rule defines "refusal to provide assistance in a criminal investigation or prosecution" as the refusal by the alien to provide assistance to an official or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status. New 8 CFR 245.24(a)(5).

The rule provides that the determination of whether an alien's refusal to provide assistance was unreasonable will be based on all available affirmative evidence and take into account the totality of the circumstances and such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe trauma (either mental or physical), and the age and maturity of the applicant. New 8 CFR 245.24(a)(5).

In order to facilitate implementation of this statutory requirement, the rule provides that applicants must submit evidence that demonstrates whether or not they received requests for assistance from an official or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the applicants were granted U nonimmigrant status and the applicants' response to such requests. New 8 CFR 245.24(d)(8); 245.24(e). The applicant is not required to establish the reasonableness of any refusals to comply with such requests

for assistance, as it is a matter for the Attorney General to determine whether any refusal was unreasonable. However, it is appropriate and consistent with the statutory scheme to require the applicants to describe any requests they received for law enforcement assistance, to identify the persons or agencies who made the requests, and to state how they responded to such requests. As a general matter, the alien is in a proper position to identify such basic facts relating to whether any such requests for assistance were made to the alien and how the alien responded to the requests. This information is necessary for the Attorney General to be able to evaluate whether an alien's refusal to provide assistance was unreasonable under the circumstances. Given the range of qualifying offenses for the U visa, USCIS anticipates that the substantial majority of such crimes will be the subject of state or local criminal investigations and prosecutions, rather than cases arising under federal criminal laws, and, in addition, that many of the investigations and prosecutions may already have been closed (perhaps for several years) by the time the alien is applying for adjustment of status, given the requirement that the alien must be in U nonimmigrant status for 3 years before applying for adjustment.

In order to facilitate the adjudication of U adjustment applications, this rule provides an option for applicants to obtain a document signed by an official or law enforcement agency that had responsibility for persons in connection with the investigation or prosecution of the qualifying criminal activity. New 8 CFR 245.24(e)(1). The document should affirm that the applicant complied with (or did not refuse to comply with) reasonable requests for assistance in the investigation or prosecution during the requisite period. *Id.* Applicants, if they so choose, may satisfy this evidentiary requirement by submitting a newly executed Form I-918, Supplement B, "U Nonimmigrant Status Certification." New 8 CFR 245.24(e)(2). If the alien does choose to submit such a document in support of his or her application, USCIS (with the agreement of DOJ) has concluded that there would be no need to refer the application to DOJ absent extraordinary circumstances. This option will thus simplify the evidence aliens are expected to submit in support of their adjustment applications and will avoid delays in the adjudicatory process attributable to the requirement to refer U adjustment applications to DOJ.

USCIS is aware that, in some cases, it may be difficult, if not impossible, for an applicant to obtain such a document.

Therefore, if an applicant does not submit such a document, the applicant may submit an affidavit describing the applicant's efforts, if any, to obtain a newly executed Form I-918, Supplement B, or other evidence describing whether or not the alien received any request to provide assistance in a criminal investigation or prosecution and the alien's response to any such request. New 8 CFR 245.24(e)(2). The applicant should include a description of all instances of which the applicant is aware in which the applicant was requested to provide assistance in the criminal investigation or prosecution of persons in connection with the qualifying criminal activity after the applicant was granted U nonimmigrant status and how the alien responded to such requests. *Id.* Applicants should also include, when possible, identifying information about the law enforcement personnel involved in the case and any information of which the applicant is aware about the status of the criminal investigation or prosecution, including any charges filed and the outcome of any criminal proceedings, or whether the investigation or prosecution was dropped and the reasons. *Id.* Depending on the circumstances, evidence might include such documentation as court documents, police reports, news articles, copies of reimbursement forms for travel to and from court, and affidavits of other witnesses or officials. If applicable, an applicant also may choose to provide a more detailed description of situations where the applicant declined to comply with requests for assistance because the applicant believed that the failure to comply with such requests for assistance was reasonable under the circumstances. *Id.*

The instructions to the Form I-918, Supplement B, U Nonimmigrant Status Certification, require that officials who sign a Supplement B in support of an alien's application for U nonimmigrant status have an obligation to notify USCIS if the alien has refused to assist in the investigation or prosecution of persons in connection with the qualifying criminal activity. At any time, USCIS or DOJ may at its discretion contact the agency that certified the Form I-918, Supplement B, or any other law enforcement authority, for information concerning an applicant's continuing assistance in an investigation or prosecution. New 8 CFR 245.24(e)(3).

Additionally, in accordance with procedures determined by DOJ and DHS, USCIS will refer certain applications for adjustment of status,

including any affirmative evidence of applicants' refusal to provide assistance in a criminal investigation or prosecution, to DOJ for a determination of whether the applicant has unreasonably refused to comply with a request for assistance in an investigation or prosecution. New 8 CFR 245.24(e)(4). USCIS anticipates referring an application to DOJ only if a certifying official or agency has provided evidence that the alien has refused to provide such assistance, or if there is other affirmative evidence in the record suggesting that the applicant may have unreasonably refused to provide assistance to the investigation or prosecution of persons in connection with the qualifying criminal activity. In these instances, USCIS will request that DOJ determine, based on all available affirmative evidence, whether the applicant has unreasonably refused to comply with a request for assistance. DOJ will have 90 days to provide a written determination to USCIS, or where appropriate, request an extension of time to provide such a determination. *Id.* After such time, USCIS may adjudicate the application whether or not DOJ has provided a response. *Id.*

#### *B. Application Procedures for U Nonimmigrants Seeking Adjustment of Status*

This rule clarifies that the generally applicable adjustment of status provisions in 8 CFR 245.1 and 8 CFR 245.2 do not apply to applications for adjustment of status under the new 8 CFR 245.24. The adjustment provisions contained in section 245(m) of the Act, 8 U.S.C. 1255(m), are stand-alone provisions and not simply a variation of the general adjustment rules contained in section 245(a) of the Act, 8 U.S.C. 1255(a). New 8 CFR 245.24(l).

This rule also provides that USCIS will maintain sole jurisdiction over the adjudication of applications to adjust status under section 245(m) of the Act because the statutory language vests this authority in the Secretary of Homeland Security. New 8 CFR 245.24(f).

This rule designates Form I-485, Application to Register Permanent Residence or Adjust Status, as the form that a U nonimmigrant status holder must use to request adjustment of status. New 8 CFR 245.24(d). The instructions to Form I-485 specify where applicants must file their application packages.

The rule requires applicants to follow the instructions on the form for proper completion and to include the proper fees or a fee waiver request. New 8 CFR 245.24(d). The rule also instructs applicants to submit supporting evidence to establish continuous

physical presence, as well as any information the applicant would like USCIS to consider when determining whether adjustment of status is warranted as a matter of discretion on humanitarian grounds or to ensure family unity, or is otherwise in the public interest. *Id.*

#### 1. Evidence That Applicant Was Admitted in U Nonimmigrant Status

All applicants must submit a copy of the Form I-797, Notice of Action, granting U nonimmigrant status, with the attached Form I-94 Arrival/Departure Record, or a copy of the applicant's passport with a U nonimmigrant visa along with a copy of the Form I-94 Arrival/Departure Record evidencing the applicant's admission into the United States in U nonimmigrant status. New 8 CFR 245.24(d).

#### 2. Evidence Relating to Requests for Assistance in an Investigation or Prosecution

An application for adjustment of status under section 245(m) of the Act, 8 U.S.C. 1255(m), may not be approved where the Attorney General or his designee determines based on affirmative evidence that the applicant unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the applicant was granted U nonimmigrant status. New 8 CFR 245.24(d)(8); 245.24(e).

As discussed above, an applicant can facilitate the adjudication of the adjustment application by obtaining a document signed by an official or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity, affirming that the applicant complied with (or did not unreasonably refuse to comply with) requests for assistance in the investigation or prosecution during the requisite period. New 8 CFR 245.24(e)(1). Applicants may satisfy this option by submitting a newly executed Form I-918, Supplement B, "U Nonimmigrant Status Certification." *Id.*

However, if an applicant does not submit such a document, the applicant may submit an affidavit describing the applicant's efforts, if any, to obtain a newly executed Form I-918, Supplement B, or other evidence describing whether the alien received any request to provide assistance in a criminal investigation or prosecution

and the alien's response to any such request. New 8 CFR 245.24(e)(2).

#### 3. Evidence of Continuous Physical Presence

All applicants must submit evidence, including an affidavit, attesting that they have accrued 3 years of continuous physical presence in the United States since admission in U nonimmigrant status. New 8 CFR 245.24(d)(9). Such evidence may include one or more documents issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority if the document would normally contain such indicia. An applicant also may submit college transcripts or employment records, including certification of the filing of Federal or state income tax returns, to show that he or she attended school or worked in the United States throughout the entire 3-year U nonimmigrant status period. The applicant also may submit documents showing installment payments, such as a series of monthly rent receipts or utility bills that cover the same 3-year period, to establish continuous physical presence. *See generally* 8 CFR 245.22.

An applicant need not submit documentation to show presence on every single day of the 3-year U nonimmigrant status period, but there should be no significant chronological gaps in documentation. Any absence from the United States, even for one day, is significant for purposes of eligibility because of the aggregate 180-day restriction on absences from the United States.

If the applicant is aware of documents already contained in his or her DHS file that establish physical presence, he or she need only 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 DHS officer, a document from a law enforcement agency attesting to the fact that the U nonimmigrant has continued to comply with requests for assistance, the transcript of a formal hearing, or a Record of Deportable/Inadmissible Alien, Form I-213.

To facilitate USCIS' evaluation of physical presence in the United States, applicants must submit documentation regarding any departure and re-entry, including a copy of their passport (or equivalent travel document) with dates of departure and corresponding time, manner, and place of return. New 8 CFR

245.24(d)(5) and (6). Applicants who were absent from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days or more must submit a statement from the investigating or prosecuting agency certifying that the absences were necessary to assist in the investigation or prosecution, or were otherwise justified. *Id.* The omission of such certification will result in denial of the application.

A signed statement from the applicant attesting to continuous physical presence alone will not be sufficient to establish this eligibility requirement. *Id.* If documentation to establish continuous physical presence is not available, the applicant must explain why in an affidavit and provide additional affidavits from other individuals with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts. *Id.*

#### 4. Evidence Relating to Admissibility and Discretion

The only ground of inadmissibility applicable to U nonimmigrants applying for adjustment of status under section 245(m) of the Act is section 212(a)(3)(E) of the Act, 8 U.S.C. 1182(a)(3)(E), which relates to participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing. This ground of inadmissibility is not waivable for purposes of adjustment of status of U nonimmigrants. *See* INA sec. 245(m)(1), 8 U.S.C. 1255(m)(1). Otherwise, U adjustment applicants are not required to establish that they are admissible on any of the grounds set forth in section 212(a) of the Act.

Nevertheless, as with all of the other adjustment of status provisions, section 245(m) of the Act makes adjustment of status under that section a discretionary benefit. To enable USCIS to determine whether to exercise discretion favorably, applicants have the burden of showing that discretion should be exercised in their favor. New 8 CFR 245.24(d)(11). Although U adjustment applicants are not required to establish that they are admissible, USCIS may take into account all adverse factors, including acts that would otherwise render the applicant inadmissible, in making its discretionary decision on the application. Generally, favorable factors such as family ties, hardship, and length of residence in the United States may be sufficient to merit a favorable exercise of administrative discretion. However, where adverse factors are present, it will be necessary for the applicant to offset these factors by showing sufficient

mitigating factors. This rule permits applicants to submit information regarding any mitigating factors they would like USCIS to consider when determining whether a favorable exercise of discretion is appropriate. *Id.* Depending on the nature of an applicant's adverse factors, the applicant may be required to demonstrate clearly that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's adverse factors, such a showing might still be insufficient. *Id.* *See Matter of Jean*, 23 I&N Dec. 373, 383–384 (A.G. 2002), *aff'd Jean v. Gonzales*, 452 F.3d 392 (5th Cir. 2006). *See also Pinentel v. Mukasey*, 530 F.3d 321 (5th Cir. 2008); *Meija v. Gonzales*, 499 F.3d 991 (9th Cir. 2007). For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. 8 CFR 245.24(d)(11).

#### C. Decisions on Adjustment of Status Applications From U Nonimmigrants

USCIS will give written notice of its decision on the adjustment of status application to the applicant. New 8 CFR 245.24(f). If the application is approved, USCIS will issue a notice of approval instructing the applicant to go to a local USCIS office or Application Support Center to complete Form I–89, which collects the necessary information to produce the Form I–551 (Alien Registration Receipt Card or “green card”). The notice of approval will also inform the applicant how to obtain temporary evidence of lawful permanent resident status. Upon approval of an application for adjustment of status, USCIS will record the alien's admission as a lawful permanent resident as of the date of such approval. New 8 CFR 245.24(f)(1); *see* INA sec. 245(m)(4), 8 U.S.C. 1255(m)(4).

If the application for adjustment of status is denied, the applicant will be notified in writing of the reasons for the denial and of the opportunity to appeal the decision to the Administrative Appeals Office (AAO). New 8 CFR 245.24(f)(2). Because section 245(m) of the Act gives the Secretary of Homeland Security exclusive authority over applications for adjustment of status of U nonimmigrants, such applications may not be renewed or otherwise filed before an immigration judge in removal

proceedings. New 8 CFR 245.24(k). The Attorney General will publish companion rules amending 8 CFR parts 1240 and 1245.

#### D. Qualifying Family Members Who Have Never Held U Nonimmigrant Status

Section 245(m) of the Act, 8 U.S.C. 1255(m), allows two categories of qualifying family members of principal U–1 nonimmigrants to apply for adjustment of status or an immigrant visa: (1) Family members in lawful U–2, U–3, U–4, or U–5 nonimmigrant status; and (2) certain qualifying family members who have never held U nonimmigrant status. Because the procedures for family members in lawful U status are the same as those for principal applicants and have already been discussed above, this section will only discuss those qualified family members who have never held U nonimmigrant status.

##### 1. Eligibility Requirements

After granting adjustment of status to a U–1 principal applicant, USCIS may grant lawful permanent resident status to certain spouses, children, and parents based upon their relationship to the principal applicant. *See* INA sec. 245(m)(3), 8 U.S.C. 1255(m)(3). The statute allows USCIS to extend these derivative benefits only if: (1) The qualifying family member was never admitted to the United States in U nonimmigrant status, and (2) it is established that either the family member or the U–1 principal applicant would suffer extreme hardship if the qualifying family member is not allowed to remain in or be admitted to the United States. *Id.* Because qualifying family members' applications are dependent upon approval of the principal applicant's adjustment of status application, this rule provides that denial of the U–1 principal applicant's application would result in the automatic denial of a derivative family member's application. New 8 CFR 245.24(h)(2)(ii).

This rule establishes a two-stage application process (described in detail below) for qualifying family members to obtain lawful permanent residence. First, the principal applicant must file an immigrant petition on behalf of the qualifying family member. New 8 CFR 245.24(h). Second, if the immigrant petition is approved, qualifying family members who are present in the United States may adjust their status to that of lawful permanent residents, and qualifying family members outside the United States may go to a U.S. embassy

or consulate to obtain their immigrant visas. *Id.*

## 2. Immigrant Petition Process

This rule establishes a new form for U-1 principal applicants to file on behalf of qualifying family members: USCIS Form I-929, "Petition for Qualifying Family Member of a U-1 Nonimmigrant" (I-929). New 8 CFR 245.24(h)(1). U-1 principals may file Form I-929 concurrently with, or at any time after they have filed, their Form I-485 under section 245(m) of the Act. This rule provides, however, that a Form I-929 may not be approved until the U-1 principal's application to adjust status is approved. New 8 CFR 245.24(h)(2).

Form I-929 must be filed with the applicable fee, or fee waiver request, and in accordance with the form instructions. New 8 CFR 245.24(h)(1)(ii). It must be submitted with evidence establishing the relationship, such as a birth or marriage certificate. New 8 CFR 245.24(h)(1)(iii). If primary evidence is not available, secondary evidence or affidavits may be submitted in accordance with 8 CFR 103.2(b)(2).

Section 245(m)(3) of the Act, 8 U.S.C. 1255(m)(3), requires the Secretary to determine whether the U-1 principal or a qualifying family member would suffer extreme hardship if the family member is not allowed to remain in or join the U-1 principal in the United States. This rule, therefore, requires Form I-929 to be submitted with evidence establishing that the qualifying family member, or the principal U-1 alien, would suffer extreme hardship as described in new 8 CFR 245.24(h)(1)(iv) (to the extent the factors listed are applicable). USCIS will consider all credible relevant evidence of extreme hardship and will evaluate each application on a case-by-case basis in accordance with the factors outlined in new 8 CFR 245.24(h)(1)(iv). The decision that an applicant has met his or her burden of demonstrating extreme hardship is a matter of discretion. No particular piece of evidence will guarantee a finding that extreme hardship would result if the applicant's family members were not allowed to enter or remain in the United States.

As discussed above, U adjustment applicants are not required to establish that they are admissible on any of the grounds set forth in section 212(a) of the Act, 8 U.S.C. 1182(a), other than on section 212(a)(3)(E) of the Act (relating to participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing), and the companion restrictions set forth in sections 245(a) and (c) of the Act, 8

U.S.C. 1255(a) and (c), do not apply to applicants for lawful permanent residence under section 245(m). Nevertheless, approval of adjustment of status under that section is a discretionary determination of the Secretary. Consequently, this rule provides that the qualifying family member has the burden of showing that discretion should be exercised in his or her favor. Although U adjustment applicants are not required to establish that they are admissible on any of the grounds set forth in section 212(a) of the Act except under section 212(a)(3)(E) of the Act, USCIS may take into account all adverse factors, including acts that would otherwise render the applicant inadmissible, in making its discretionary decision on the application. Generally, favorable factors such as family ties, hardship, and length of residence in the United States may be sufficient to merit a favorable exercise of administrative discretion. However, where adverse factors are present, the applicant must offset these factors by showing sufficient mitigating equities. This rule permits applicants to submit information regarding any mitigating factors they would like USCIS to consider when determining whether a favorable exercise of discretion is appropriate. New 8 CFR 245.24(h). Depending on the nature of an applicant's adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's adverse factors, such a showing might still be insufficient. *Id. See Matter of Jean*, 23 I&N Dec. 373, 383-384 (A.G. 2002), *aff'd Jean v. Gonzales*, 452 F.3d 392 (5th Cir. 2006). *See also Pinintel v. Mukasey*, 530 F.3d 321 (5th Cir. 2008); *Meija v. Gonzales*, 499 F.3d 991 (9th Cir. 2007). For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. *Id.*

This rule provides that USCIS will provide written notice of its decision on the Form I-929 to the applicant. New 8 CFR 245.24(h)(2). If USCIS denies the Form I-929, the applicant will be notified in writing of the reasons for the denial and of the opportunity to appeal the decision to the USCIS Administrative Appeals Office. New 8 CFR 245.24(h)(2)(ii).

Upon approval of a Form I-929 for a qualifying family member who is outside of the United States, USCIS will forward the notice of approval either to the Department of State's National Visa Center so the applicant can apply to the consular post for an immigrant visa, or to the appropriate port of entry for a visa exempt alien. New 8 CFR 245.24(h)(2)(i)(A). Those family members issued immigrant visas under section 245(m)(3) of the Act, 8 U.S.C. 1255(m)(3), must still establish admissibility before a U.S. Customs and Border Protection (CBP) officer when applying for admission to the United States at a port of entry. Once a Form I-929 is approved for a qualifying family member who is in the United States, the family member becomes eligible to apply for adjustment of status.

## 3. Adjustment of Status for Qualifying Family Members Who Never Held U Nonimmigrant Status

This rule allows a U-1 principal to file the Form I-929 for qualifying family members either concurrently with or at a later date than their Form I-485 application for adjustment of status. Form I-485 must be filed with the appropriate fee or fee waiver request and in accordance with the form instructions. Upon approval of a Form I-485, USCIS will issue a notice of approval, instructing the applicant to go to a local USCIS office or Application Support Center to complete Form I-89, which collects the necessary information to produce the Form I-551. The notice of approval also will inform the applicant how to obtain temporary evidence of lawful permanent resident status. USCIS will record the alien's admission for lawful permanent residence as of the date of such approval. New 8 CFR 245.24(i)(2)(i).

If either the Form I-929 or the Form I-485 is denied, USCIS will notify the applicant in writing of the reasons for the denial and of the opportunity to appeal the decision to the USCIS Administrative Appeals Office. New 8 CFR 245.24(i)(2)(ii). Because qualifying family members' applications depend on approval of the principal applicant's adjustment application, this rule also provides that denial of the U-1 principal applicant's application will result in the automatic denial of a qualifying family member's application. *Id.*

## 4. Fee To Be Charged for Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant

USCIS is proposing to charge a fee to recover the costs incurred to adjudicate

the petitions for qualifying family members of U-1 nonimmigrants. USCIS is authorized by law to recover the full cost of processing every Form I-929. However, the resources required to deliver this benefit are difficult to estimate due to the small number of potential applicants and the differing level of complexity involved in the determination of each application.

To determine a reasonable fee, USCIS reviewed the requirements of other programs that provide special benefits to the same or similar user populations as the new Form I-929. Information on other forms, such as the quantity of information that must be researched, collected, completed, submitted, and analyzed were used as an indication of the resources expended by USCIS to deliver the benefit. Those indicators were compared with that of the Form I-929 to arrive at a fee for the Form I-929.

The reasonable fee for USCIS to charge a petitioner for adjudication of a Form I-929 was calculated using several methods. For ease of administration, USCIS has decided to charge the same fee for each Form I-929. The one fee policy will be revisited if inequities to certain groups are noted. The analysis indicated that USCIS should collect a fee of \$215 for each Form I-929 adjudication. A copy of the detailed fee determination is available from USCIS upon request. USCIS recognizes that some applicants for adjustment of status may be unable to pay the full application fee. Applicants who are financially unable to pay the application fee may submit an application for a fee waiver, as outlined in 8 CFR 103.7(c). The granting of a fee waiver will be at the sole discretion of USCIS. Further guidance on USCIS fee waivers can be found on the USCIS Web site currently at <http://www.uscis.gov/feewaiver>.

#### *E. Traveling While Application for Adjustment of Status Is Pending*

U nonimmigrants who are applying for adjustment of status, and who are not under exclusion, deportation, or removal proceedings, must follow the generally applicable rule that an applicant with a pending adjustment of status application must obtain advance parole from USCIS. 8 CFR 245.2(a)(4)(ii)(B). Advance parole can be requested by completing and filing Form I-131, Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, before departing the United States. New 8 CFR 245.24(j), 245.2(a)(4)(ii)(B). If such an applicant fails to acquire advance parole prior to departure, USCIS will deem the

application for adjustment of status abandoned as of the moment of departure from the United States. If the adjustment of status application of such an individual is subsequently denied, he or she will be treated as an applicant for admission subject to sections 212 and 235 of the Act, 8 U.S.C. 1182, 1225. *Id.* If a U nonimmigrant applying for adjustment of status is under exclusion, deportation, or removal proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States if the applicant failed to acquire advance parole prior to departure. New 8 CFR 245.24(j), 245.2(a)(4)(ii)(A).

#### *F. Employment Authorization While Adjustment of Status Application Is Pending*

Applicants for adjustment of status under section 245(m) of the Act may apply for employment authorization on the basis of 8 CFR 274a.12(c)(9). Applicants must submit a Form I-765, Application for Employment Authorization, in accordance with the form instructions.

#### *G. Application and Biometric Services*

As stated above, section 286(m) of the Act, 8 U.S.C. 1356(m), requires that USCIS collect fees to recover the cost of providing certain immigration and naturalization benefits.

The required fee for filing an Application to Register Permanent Residence or Adjust Status (Form I-485) is listed at 8 CFR 103.7(b). USCIS recognizes that some applicants for adjustment of status may be unable to pay the full application fee. Applicants who are financially unable to pay the application fee may submit an application for a fee waiver as outlined in 8 CFR 103.7(c). The decision whether to grant a fee waiver lies within the sole discretion of USCIS. Further guidance on fee waivers can be found on the USCIS Web site currently at <http://www.uscis.gov/graphics/formsfee/forms/index.htm>.

In addition to the filing fee for the Form I-485, applicants must submit the established fee for biometric services, or a fee waiver request, for each person age 14 through 79 inclusive. New 8 CFR 245.24(d)(3). This fee can also be found at 8 CFR 103.7(b).

#### **V. Regulatory Requirements**

##### *A. Administrative Procedure Act*

USCIS has determined that delaying the effect of this rule during the period of public comment would be impracticable and contrary to the public

interest. This rule is being published as an interim final rule and is effective 30 days after publication. USCIS invites comments and will address those comments in the final rule.

If the implementation of the provisions of this rule were delayed pending public comments, many aliens could be required to depart the United States because of the automatic termination of their nonimmigrant status even though they would become eligible for adjustment of status upon promulgation of this rule.

An interim rule, New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, provided for T nonimmigrant status. 67 FR 4784 (Jan. 31, 2002). As stated above, a T nonimmigrant's failure to timely apply for adjustment of status will result in termination of that T status at the end of that 4-year period unless the T status is extended because law enforcement certifies that the presence of the alien in the United States is necessary to assist in an investigation or prosecution. See INA sec. 214(o)(7)(B), 8 U.S.C. 1184(o)(7)(B). Currently, approximately 330 principal T-1 nonimmigrants have been in T nonimmigrant status for more than 3 years and therefore are eligible to apply for adjustment of status under this rule immediately upon its effective date. There is a risk that the 4-year limitation for T nonimmigrant status will run out for these aliens, resulting in termination of T nonimmigrant status. Therefore, USCIS has determined that this rule needs to become effective as soon as possible to ensure that these aliens can apply for adjustment of status and avoid falling out of lawful immigration status.

Likewise, U nonimmigrants may apply for adjustment of status after they have been in lawful U nonimmigrant status for at least 3 years. See INA sections 101(a)(15)(U), 214(p), and 245(m); 8 U.S.C. 1101(a)(15)(U), 1184(p), and 1255(m). The interim final rule implementing U nonimmigrant classification was recently published. 72 FR 53014 (Sept. 17, 2007). A U nonimmigrant is eligible to apply for adjustment of status if the alien was admitted in either U-1, U-2, U-3, U-4, or U-5 nonimmigrant status and has continuous physical presence for at least 3 years. New 8 CFR 245.24. Currently, there are approximately 5,000 aliens who were granted interim benefits before they could apply for U nonimmigrant status. These aliens were deemed prima facie eligible for U nonimmigrant status prior to publication of the regulations for U nonimmigrant status. The U-visa rule provides that the time spent in interim

relief will count toward the 3 years of physical presence required for adjustment of status purposes, 8 CFR 214.14(a)(13), and U nonimmigrant status will be granted as of the date that a request for U interim relief was initially approved, 8 CFR 214.14(c)(6). USCIS estimates that 2,100 of the 5,412 aliens currently granted interim benefits pending publication of the U nonimmigrant regulations will have been in the United States for 3 years when this rule is published. Therefore, a similar problem exists for those granted U nonimmigrant status as with T nonimmigrants if the effective date of this rule is delayed pending public notice and comment.

#### B. Regulatory Flexibility Act

DHS has reviewed this rule in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors. The rule applies to individuals, not small entities, and allows certain aliens who are victims of severe forms of trafficking in persons or victims of crimes listed in section 101(a)(15)(U) of the Act to adjust their status to lawful permanent residents; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

#### C. 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 it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### D. 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 U.S.-based companies to compete with foreign-based companies in domestic and export markets.

#### E. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking is a “significant” regulatory action under Executive Order 12866. As required by section 6(a)(3)(C) of the Executive Order, USCIS prepared an assessment of the benefits and costs anticipated to occur as a result of this rule for the Office of Management and Budget.

The VTVPA was intended to combat trafficking in persons with preventative measures, prosecution of traffickers, and protection of victims. USCIS adjudicates applications for immigration benefits filed by victims of a severe form of trafficking in persons and other specified crimes. According to findings from the National Crime Victimization Survey, in 2005, U.S. residents age 12 or older experienced approximately 23 million crimes; 22% (5.2 million) were crimes of violence. For every 1,000 persons age 12 or older, there occurred: 1 rape or sexual assault, 1 assault with injury, and 3 robberies. However, only 49.9 percent of all violent crimes are reported to police.<sup>2</sup> Aliens, especially those without legal immigration status, are often reluctant to help in the investigation or prosecution of those crimes. And, while there is no specific data on alien victims of crime, demographic statistics indicate that aliens may be victimized at even higher rates than citizens. For example, in 2005, persons in households with an annual income under \$7,500 experienced higher rates of robbery and assault than persons in households with higher income levels. In addition, Hispanics were victims of overall violence at a rate higher than non-Hispanics, making up 15% of all violent crime victims, but only 13% of the population. U visas are intended, in part, to help overcome this reluctance to aid in law enforcement.

As of May 2004, the U.S. Government estimated that 14,500 to 17,500 people are trafficked annually into the United States and 600,000 to 800,000 are trafficked globally. Also, 80 percent of trafficking victims are female, 70 percent of those are trafficked for commercial sex, and most victims trafficked to the U.S. come from East Asia and the Pacific.

#### 1. Economic Impacts—Fees

This rule and the VTVPA, as amended, are intended to enhance the ability of law enforcement and to advance humanitarian goals. The main benefits of a rule change imposed by

Congress to address such concerns tend to be intangible. Nonetheless, DHS has assessed both the costs and benefits of this rule and they are as follows:

USCIS uses fees to fund the cost of processing applications and associated support benefits, providing benefits to asylum and refugee applicants, and providing benefits to other immigrants at no charge. The fees to be collected as a result of this rule will be approximately \$2,955,880 in the first year after this rule is published, \$1,932,880 in the second year, and average about \$32,472,880 per year in the third and subsequent years. To estimate the new fee collections to be generated by this rule, USCIS estimated the fees to be collected for new applications for adjustment of status from T and U nonimmigrants and their eligible family members. After that, we estimated fees from associated applications that are required such as biometrics, and others that are likely to occur in direct connection with applications for adjustment, such as employment authorization or travel authorization.

*T adjustment.* Currently, there are 787 persons with T nonimmigrant status as principals (T-1) and 682 in the United States who are derivatives (relatives) of the principal (T-2, T-3, T-4, T-5), for a total of 1,469 persons with T visas.

*Primary T-1.* Approximately 330 T-1 nonimmigrants have been in such status for 3 years and are therefore eligible to apply for adjustment of status to that of a lawful permanent resident under this rule. Thus, at least those 330 T-1 nonimmigrants are expected to apply for adjustment of status in the year after this rule takes effect. The fee for Form I-485 is \$930.<sup>3</sup> Thus, an estimated annual fee collection of \$306,900 for adjustment for T status for primary T nonimmigrants will result directly from this rule. The numbers of applications and fees collected are expected to be similar in future years.

*Derivatives.* Of the 682 derivatives of the principal (T-2, T-3, T-4, T-5 nonimmigrants), it is estimated that 286 have been in the country for 3 years or more, using the same ratio of T-1 nonimmigrants who have been in the U.S. for 3 years (330 of 787, or 42%). As a result, 286 primary T-1 derivatives are eligible and will apply for adjustment of status under this rule. This would result in fees collected from applications for adjustment of status for T-1 derivative nonimmigrants of \$265,980 in the first

<sup>2</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Criminal Victimization, <http://www.ojp.gov/bjs/cvictgen.htm>.

<sup>3</sup> Children under 14 applying with a parent must pay \$600 and the fee is waivable for certain applicants, but for this analysis, no adjustments are made in this analysis for any fee waivers or reduced fees for children under 14.

year this interim rule is effective (286 × \$930 Form I-485 fee). This figure is expected to be similar in future years.

*U-adjustment (U-1).* In the supporting documents for the rule “New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status” (“U-visa rule”), USCIS estimated that approximately 12,000 people will apply for U nonimmigrant status in the first year after that rule is effective. However, no more than 10,000 principal aliens may be granted U nonimmigrant status in a given fiscal year (October 1 through September 30). For the purposes of this rule and this accompanying analysis, USCIS estimates that the 10,000 cap will be reached each year. USCIS also estimates that every U nonimmigrant will apply for adjustment of status as soon as he or she can, if they can and if still in the country, following publication of this interim rule. Thus, USCIS expects that 10,000 aliens will be eligible to apply for adjustment of status after they have been in U status for 3 years. USCIS estimates that each such U-1 nonimmigrant will apply and submit Form I-485, and the prescribed fee, although most U adjustments will not occur until 3 years after the U-visa rule was effective. In year 3, therefore, additional fees expected to be collected by USCIS under this rule are \$9,300,000 (\$930 fee for form I-485 × 10,000). Results are expected to be similar in subsequent years.

*Interim relief.* Approximately 5,412 people were granted deferred action and work authorization benefits by USCIS based on a determination that they were prima facie eligible for U nonimmigrant status prior to publication of the regulations for U status. The U-visa rule provides that the time spent in interim relief will be counted toward the 3-year physical presence required for adjustment of status. Of those 5,412 people, USCIS estimates that 2,100 will have been continuously present for 3 years when this rule is published; 1,000 more will qualify in year 2 of this rule being effective. This will result in fee income from petitions for U adjustments of \$1,953,000 (2,100 × \$930) in year 1, and \$930,000 in year 2. The additional 1,312 will qualify in future years.

*Derivatives (U-2).* The 10,000 per fiscal year limitation does not apply to spouses, children, parents, and unmarried siblings who are accompanying or following to join the principal alien victim. Thus, it is estimated that relatives of U nonimmigrants will apply for adjustment of status approximately 3 years following the effective date of their approval for U nonimmigrant

status. USCIS estimates that each U nonimmigrant will bring an average of about two family members to the United States and that those family members will want to adjust their status when they are eligible. The fee income generated by the resulting 20,000 applicants each remitting a fee of \$930 results in fee income of \$18,600,000 in year 3 after the rule becomes effective, and thereafter.

*Family members who are not U nonimmigrants—“Qualifying Family Members.”* New Form I-929, Petition for Qualifying Family Member of a U-1 nonimmigrant, will be used by U nonimmigrants to request derivative benefits for qualifying family members who never held U nonimmigrant status. U nonimmigrants may also petition for derivative status on behalf of resident family members by submitting a Form I-918, Supplement A, “Petition for Qualifying Family Member of U-1 Recipient,” for each qualifying family member either at the same time or after filing his or her own Form I-918. To apply for adjustment, U nonimmigrants must submit Form I-485. For those family members in the United States who have never had U nonimmigrant status, the U nonimmigrant may apply for adjustment for those family members by submitting Form I-929, after or concurrently with their own request for adjustment of status submitted on Form I-485 with both fees, plus the biometric services fee or fee waiver requests.

*Family members never admitted to the United States.* Qualifying family members who are present in the United States may apply for immigrant visas on behalf of qualifying family members outside the United States. If the Form I-929 is approved for such family members, the family members may go to a U.S. embassy or consulate to obtain their immigrant visa. USCIS estimates that 20,000 people will apply for derivative U visas annually as nonresidents, because the principal can apply to bring a family member to the United States as soon as the principal applies for a U nonimmigrant visa. It is logical that many aliens will do that on their initial Forms I-918 rather than wait until they apply for a visa or seek to bring them to the United States after they apply for adjustment of status. Thus, it is estimated that only 2,000 of the 20,000 people who will apply for U visas will have family members who apply for this benefit, and that they will only apply for an average of one family member each. Consequently, the new Form I-929, “Petition for Qualifying Family Member of a U-1 Nonimmigrant,” will result in additional fee collections of about

\$430,000 per year, beginning in the first year that this rule is in effect, and continuing consistently thereafter.

*Employment authorization.* USCIS charges no additional fee for an employment authorization request by an applicant who has paid the I-485 fee. Thus, no fee income is estimated from primary or secondary T or U nonimmigrants applying for adjustment of status under this rule for employment authorizations.

*Travel document.* USCIS charges no fee for an I-131 filed by an applicant who has paid the Form I-485 application fee. Therefore, an I-131 fee will only be charged to U derivatives who will be submitting the new Form I-929 without a concurrent Form I-485. However, very few applicants are expected to do so. Thus, no fee income is estimated from Form I-131 as a result of this rule.

*Biometric services fees.* USCIS will collect a fee for biometrics services for adjustment applications from T and U nonimmigrants and their derivative family members. For the purposes of this analysis it is assumed that all of the 31,000 estimated applications submitted per year under this rule will have to submit biometrics. Also, all of the 2,000 estimated annual Forms I-929 are estimated to require the collection of biometrics and payment of the applicable fee. The USCIS biometrics services fee is \$80. The resultant fee income will be \$2,480,000.

*Waiver of grounds of inadmissibility.* T nonimmigrants who apply for adjustment of status may need an inadmissibility waiver before they may be granted adjustment of status. As a result, such applicants must submit Form I-601, Application for Waiver of Grounds of Inadmissibility, and pay the applicable \$545 fee or request a fee waiver as outlined in 8 CFR 103.7(c). USCIS estimates that this requirement will apply to about 2,000 nonimmigrants who apply for adjustment of status. Therefore, this will result in additional fee collections per year of \$1,090,000.

## 2. Benefits

The benefits of this rule stem mainly from an understanding of the problems that this rule and the underlying statutes are intended to address.

*Trafficking.* The U.S. government has condemned human trafficking as an affront to human dignity and a heinous crime. By authorizing adjustment of status for T and U nonimmigrants and their eligible family members, this rule is another step in the U.S. government's efforts to combat human trafficking in the United States. Recent cases point

out the magnitude of human trafficking, efforts of law enforcement to combat the problem, the personal toll it can take on its victims, and the real need to address the problem:

- In January 2008, Jimmie Lee Jones was sentenced to serve 15 years on federal charges of conspiring to engage in sex trafficking and transporting young women across state lines for purposes of prostitution. Jones conspired to force six victims, including two juveniles, to engage in commercial sex acts through force, fraud and coercion. He lured and recruited the minor and adult victims into prostitution with promises of legitimate modeling or exotic dancing work and used physical violence, threats of violence, deception, and other forms of coercion to compel the victims to work as prostitutes.

- In 2005 in New Jersey, at least 30 girls and young women—some as young as 14—were smuggled from Honduras to Hudson County, where they were forced into virtual slavery in bars and beaten if they tried to leave. On July 21, 2005, ten members of this smuggling ring were indicted. Subsequently, 3 traffickers were sentenced to the maximum sentence, 3 more traffickers have entered guilty pleas and are awaiting sentencing and four more are awaiting trial in Honduras.

- In January 2004, Juan Carlos Soto was sentenced to 23 years in prison for smuggling women from Honduras and El Salvador into the U.S., and forcing them to stay in his so-called “safe houses” until they had “worked off” their debt to him. During the day, these women were forced to perform domestic work, while at night they were repeatedly raped and forced to provide sexual services.

- In the largest trafficking case in U.S. history, Kil Soo Lee ran the Daewoosa garment factory in American Samoa. The government charged that Kil brought over 250 Vietnamese and Chinese nationals into American Samoa, mostly young women, to work as sewing machine operators. Victims were held for up to two years and forced to work through extreme food deprivation, beatings, and physical restraint. The victims were held in barracks on a guarded company compound, threatened with confiscation of their passports, deportation, economic bankruptcy, severe economic hardship to family members, false arrest, and other consequences. On February 21, 2003, Kil was convicted of numerous federal criminal violations, including involuntary servitude, and was later sentenced to 40 years in prison.

- In 1997, the New York City Police Department unearthed an immigrant smuggling scheme involving as many as 62 deaf-mute Mexican immigrants who had been persuaded to come to the United States with promises of jobs. These immigrants were forced to beg on the streets of New York City for eighteen hours a day, seven days a week and meet a \$600 per week quota. They were subjected to beatings, electrocution, mental abuse, and sexual molestation.

- In 1995, El Monte, California police raided a garment factory and discovered 72 Thai nationals who had been lured to the United States with promises of employment, forced to work in a garment shop up to eighteen hours a day, seven days a week, and were paid less than sixty cents an hour. The owners restrained them by threats and physical violence.

Moreover, human trafficking is often intertwined with other illicit activities such as fraud, extortion, racketeering, money laundering, bribery of public officials, drug trafficking, document forgery, and gambling.

Authorizing adjustment of status for such victims uses USCIS benefits as part of a collaborative federal effort incorporating immigration status issues, which are often at the forefront of a victim’s concern. The VTPA, as amended, takes a victim-centered approach to addressing trafficking. Trafficking victims are often reluctant to testify due to fear of reprisals against themselves or their family members, or fear of removal from the United States to countries where they can face additional hardships, retribution, or alienation. Additionally, trafficking victims not familiar with their rights may be afraid to report their abusers for fear of their own detention, prosecution, or deportation. This effort is coupled with additional state and federal criminal laws, government benefits, services, and protections for victims.

By passing the VTPA, and subsequent amendments thereto, Congress recognized that victims of severe trafficking should be protected if they assist in prosecution of the traffickers, rather than be punished and deported for unlawful entry, or unauthorized employment. The protections provided by this law address the lack of legal rights, protection, and access to the legal system because of the illegal presence of trafficking victims.

*Violent crime.* Congress created the U nonimmigrant status (“U visa”) to provide immigration protection to crime victims who assist in the investigation and prosecution of those crimes. Although there are no specific data on

alien crime victims, statistics maintained by DOJ have shown that aliens, especially those aliens without legal status, are often reluctant to help in the investigation or prosecution of crimes. U visas are intended to help overcome this reluctance and aid law enforcement accordingly.

### 3. Costs

*Government costs.* This rule requires no outlays of congressionally-appropriated funds. The requirements of this rule and the associated benefits are funded by fees collected from persons requesting these benefits. The fees are deposited into the Immigration Examinations Fee Account. These fees are used to fund the full cost of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services.

*Paperwork costs.* The T nonimmigrant adjustment of status provisions of this rule will increase the information collection burden hours imposed on the public. First, as indicated above, USCIS estimates that 31,000 adjustment applications will be received per year. USCIS estimates that each applicant will need an average of 7.25 hours to complete and submit the information required under this rule. Thus, the public burden (in hours) will increase by approximately 224,750 burden hours as a result of the additional Forms I-485 that will be submitted as a result of this rule.

By adding the new Form I-929, the U nonimmigrant adjustment of status provisions are estimated to add an estimated 2,000 applicants per year to the burden currently required for the U visa program. USCIS estimates that it will require an average of one hour per applicant to complete and submit the information required under this rule. Thus, the public burden (in hours) will increase by approximately 2,000 burden hours as a result of the additional Forms I-929 that will be submitted as a result of this rule.

USCIS estimates that 13,000 U-2 nonimmigrants will apply for employment authorization by submitting Form I-765. The public reporting burden for this form is estimated to average 3 hours and 25 minutes per response. Thus, the public burden will increase by approximately 44,417 hours as a result of the additional Forms I-765 that will be submitted as a result of this rule.

USCIS estimates that it also will receive about 2,970 requests per year for advance parole, on average, beginning in the third year following the effective date of this rule that would not be

received otherwise. The public reporting burden for Form I-131 is estimated to average 55 minutes per application. Thus, the public burden will increase by approximately 2,723 burden hours as a result of the additional Forms I-131 that will be submitted as a result of this rule.

For the estimate of the per hour cost of time spent on the forms resulting from this rule, USCIS used the hourly wage from the Bureau of Labor Statistics, Employment Cost Trends, Private Industry, All Workers, Wages and Salaries, Cost of Compensation (Cost per hour worked), Third Quarter, 2006. That figure is \$18.04 per hour. Thus, the paperwork burden that this rule adds on the public is estimated to cost respondents \$4,940,976 in time spent on preparing and submitting the required information [ $\$18.04 \times 273,890$  ( $224,750 + 2,000 + 44,417 + 2,723$ )].

#### 4. Analysis of Alternatives

Some alternatives exist as cost-effective means for administering the T and U nonimmigrant adjustment provisions from the standpoint of government outlays and burden on applicants. However, many alternatives are not realistic if USCIS is to achieve its legislative mandate and when considered in the interest of consistency with how the current T and U nonimmigrant programs are administered.

*T nonimmigrant adjustment of status:* No more than 5,000 T-1 principal aliens may have their status adjusted to that of a lawful permanent resident in a given fiscal year (October 1 through September 30). This numerical limitation does not apply to relatives in derivative status who seek adjustment of status. Therefore, the potential exists that the number of approvable petitions per fiscal year will exceed the numerical limit (*i.e.*, cap). However, USCIS has not come close to reaching the cap in all of the fiscal years combined since the T nonimmigrant rule was promulgated 4.5 years ago. Since that time, only 787 aliens have been granted principal T-1 nonimmigrant status. Thus, it is unlikely that the numerical cap will be reached in any fiscal year in the near future.

USCIS did not consider alternatives to handling applications for adjustment of status. Ease of administration dictates that adjustment of status applications from T nonimmigrants would be best handled on a first in, first out basis, because that is the way applications for T status are currently handled. If petitions are received after the limit is reached, they will be reviewed to determine whether they are approvable

but for the numerical cap. Approvable petitions reviewed after the numerical cap has been reached will be placed on a waiting list, and written notice will be sent to the petitioners. Priority on the waiting list will be based upon the date on which the petition is filed. At the beginning of the next fiscal year, petitions on the waiting list will be granted first. Advantages to this approach include allowing the alien victim to remain in the United States to assist in the investigation or prosecution of criminal activity. If petitions for adjustment of status exceed the annual cap, USCIS must maintain a waiting list; however, that is not projected to occur. Thus, incremental implementation and additional alternatives were not considered or analyzed.

*U nonimmigrant adjustment of status:* The number of grants of U nonimmigrant status that may be made in a fiscal year is limited by an annual cap of 10,000. In the U nonimmigrant rule, USCIS decided to adjudicate petitions on a first in, first out basis with additional procedures for petitions received after the numerical cap has been reached. There are no numerical caps on the applications for adjustment of status for U nonimmigrants. Therefore, adjustment of status applications from U nonimmigrants and their derivatives will be handled on a first in, first out basis, with no procedures for dealing with U adjustment retrogression.<sup>4</sup> Additional alternatives that would have provided that applications for adjustment of status from U nonimmigrants would be handled differently than those of U nonimmigrants were not considered.

#### 5. Summary

The provisions of this rule are essential to the effective administration of the T and U nonimmigrant adjustment of status provisions. This rule will further humanitarian interests by protecting victims of human trafficking and victims of other serious crimes who have provided assistance to U.S. law enforcement in the investigation or prosecution of such crimes. Also, this rule will strengthen the ability of the law enforcement agencies to investigate and prosecute crimes by providing immigration benefits to victims.

The estimated economic effects of this rule are summarized as follows:

<sup>4</sup> When visas are limited by statute, a petitioner's priority is determined by the date the petition was filed and visas are often available only to applicants whose priority dates are before a certain cut-off date. This roll-back in priority dates is what is commonly referred to as "visa number retrogression."

- The estimated fees to be collected as a result of this rule will be approximately \$2,955,880 in the first year after this rule is published, \$1,932,880 in the second year, and an average about \$32,472,880 per year in the third and subsequent years after taking effect.

- No more than 5,000 T-1 principal aliens may have their status adjusted to that of a lawful permanent resident in a given fiscal year, but this numerical limitation does not apply to adjustment of status of U nonimmigrants or qualifying relatives of T or U nonimmigrants.

- An estimated 330 T nonimmigrants are expected to apply for adjustment of status in the year following the effective date of this rule.

- An estimated 286 family members of T nonimmigrants are expected to apply for adjustment of status in the year following the effective date of this rule.

- After the U nonimmigrant rule has been in effect for 3 years, an estimated 10,000 principal U nonimmigrants are expected to apply for adjustment of status.

- An estimated 20,000 relatives of U nonimmigrants will apply for adjustment of status within approximately 3 years following receipt of derivative U nonimmigrant status.

- An estimated 2,000 aliens will apply for immigrant visas or adjustment of status under special provisions for certain family members of aliens who adjusted their status as U nonimmigrants where the qualifying family members are not physically present in the United States or are in the United States, but not currently in U nonimmigrant status.

- With respect to the paperwork burden on the public, this rule is estimated to cost respondents \$4,940,976 in time spent on preparing and submitting the required information.

This rule requires no outlay of congressionally-appropriated funds. All costs will be covered by fees collected by the agency.

#### F. Executive Order 13132 (Federalism)

This rule 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation

of a federalism summary impact statement.

*G. Executive Order 12988 (Civil Justice Reform)*

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

*H. Family Assessment*

I have reviewed this regulation and determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law No. 105-277, Div. A. Accordingly, I have assessed this action in accordance with the criteria specified by section 654(c)(1). This regulation will positively affect family well-being by encouraging vulnerable individuals who have been victims of a severe form of trafficking in persons or other specified criminal activity to report the trafficking and criminal activity and to aid law enforcement in the investigation and prosecution of cases and by providing critical assistance and benefits to victims. Additionally, this regulation provides the means for both victims and qualified family members to adjust their status to lawful permanent residence, thereby ensuring family unity and stability.

*I. Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or record-keeping requirements inherent in a rule. The information collection requirements contained in this rule have been cleared by OMB under the provisions of the Paperwork Reduction Act. 44 U.S.C. Chapter 35; 5 CFR 1320. Clearance numbers for these collections are contained in 8 CFR 299.5, Display Control Numbers and are noted herein. Form I-131, Application for Travel Document, OMB Control Number 1615-0013; Form I-290B, Notice of Appeal to the Administrative Appeals Office, OMB Control Number 1615-0095; Form I-485, Application to Register Permanent Residence or Adjust Status, OMB Control Number 1615-0023; Form I-601, Application for Waiver of Grounds of Excludability, OMB Control Number 1615-0029; Form I-765, Application for Employment Authorization, OMB Control Number 1615-0040.

However, the current number of respondents listed for these information collections on the OMB's inventory of approved information collections will

have to be increased to reflect the increase in the number of respondents and burden hours as a result of this rule. In addition, since this rule requires applicants submitting those forms to pay the corresponding fees, the annual costs for these information collections will also increase. Accordingly, USCIS has submitted an update for the annual cost burden and number of respondents using OMB's automated Office of Information and Regulatory Affairs Consolidated Information System (ROCIS).

Additionally, USCIS will make non-substantive minor edits to Forms I-131, I-601, and I-765, to reflect the new usage by T and U nonimmigrants applying for adjustment of status. These forms, with the minor edits, have been submitted to OMB for review and approval.

This interim rule permits certain T and U nonimmigrants to adjust their status to that of lawful permanent residents. In addition to the evidence required by Form I-485, this rule at 8 CFR 245.23(a) requires T adjustment applicants to demonstrate continuous physical presence in the United States for a requisite period, good moral character for a requisite period, and continued cooperation with law enforcement authorities or extreme hardship, by supplying the evidence outlined in 8 CFR 245.23(e)(2). For U adjustment applicants, in addition to the evidence required by Form I-485, the rule at 8 CFR 245.24(a) requires applicants to demonstrate continuous physical presence for at least 3 years and that they have not unreasonably refused to provide assistance in the criminal investigation or prosecution by supplying the evidence outlined in 8 CFR 245.24(d)(1) and 245.24(e)(2). These additional documentation requirements are considered an information collection and will be included on new Supplement E to Form I-485.

This rule also requires that U-1 nonimmigrants who are applying for adjustment of status and wish to petition for immigrant visas or lawful permanent residence on behalf of family members who have never held U nonimmigrant status submit new Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant, with fee in accordance with the instructions on the form. This requirement is considered a new information collection.

Since this is an interim rule, these information collections have been submitted and approved by OMB under the emergency review and clearance procedures covered under the PRA.

USCIS is requesting comments on these two information collections until February 10, 2009. When submitting comments on the information collection(s), your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of Information Collection for Form I-485, and Supplement A, and Supplement E:*

a. *Type of information collection:* Revision of currently approved collection.

b. *Title of Form/Collection:* Application to Register Permanent Residence or Adjust Status.

c. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-485, and Supplement A and E; U.S. Citizenship and Immigration Services.

d. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. Sections 245(l) and (m) of the Act allow certain T and U nonimmigrants to adjust status to that of lawful permanent residents. This interim rule designates Form I-485 as the form for use by applicants for such benefits. (Supplement A of Form I-485 is used by persons seeking to adjust their status under the provisions of section 245(i) of the Act and therefore will not be used by T and U nonimmigrants who are applying to adjust their status.) Supplement E of Form I-485 provides additional instructions to T and U nonimmigrants seeking to adjust their status and includes documentation requirements not found on Form I-485 itself. The information collection is necessary in order for USCIS to make a determination that the eligibility requirements and conditions are met regarding the applicant.

e. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I-485—617,033 respondents at 6.25 hours per response, Supplement A—3,888 respondents at 0.216 hours per response, Supplement E—33,112 at 0.75 hours per response.

f. *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 3,882,129 burden hours.

*Overview of Information Collection for Form I-929:*

a. *Type of information collection:* New information collection.

b. *Title of Form/Collection:* Petition for Qualifying Family Member of a U-1 Nonimmigrant.

c. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-929; U.S. Citizenship and Immigration Services.

d. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. Section 245(m) of the Act allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U-1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I-929. The information collection is necessary in order for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

e. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 respondents at 1 hour per response.

f. *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 2,000 burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, Attention: Chief, 202-272-8377.

#### List of Subjects

##### 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of

information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

##### 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

##### 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

##### 8 CFR Part 245

Aliens, Immigration, 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 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 2. Section 103.7 is amended by revising the entry for Form I-601 and adding the entry for “Form I-929” in proper alpha-numeric sequence in paragraph (b)(1), and revising paragraph (c)(5) to read as follows:

##### § 103.7 Fees.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

Form I-601. For filing an application for waiver of ground of inadmissibility—\$545.

\* \* \* \* \*

Form I-929. For U-1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status—\$215.

\* \* \* \* \*

(c) \* \* \*

(5) No fee relating to any application, petition, appeal, motion, or request made to U.S. Citizenship and Immigration Services may be waived under paragraph (c)(1) of this section except for the following:

(i) Biometrics; Form I-90; Form I-751; Form I-765; Form I-817; I-929; Form N-300; Form N-336; Form N-400; Form

N-470; Form N-565; Form N-600; Form N-600K; and Form I-290B and motions filed with U.S. Citizenship and Immigration Services relating to the specified forms in this paragraph (c); and

(ii) Only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act; an applicant under section 209(b) of the Act; an approved VAWA self-petitioner; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status: Form I-485 and Form I-601; and

(iii) Form I-192 and Form I-193 (only in the case of an alien applying for lawful nonimmigrant status under sections 101(a)(15)(T) or (U)).

\* \* \* \* \*

#### PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

■ 4. Section 212.18 is added to read as follows:

##### § 212.18 Applications for waivers of inadmissibility in connection with an application for adjustment of status by T nonimmigrant status holders.

(a) *Filing the waiver application.* An alien applying for a waiver of inadmissibility under section 245(l)(2) of the Act in connection with an application for adjustment of status under 8 CFR 245.23(a) or (b) must submit:

(1) A completed Form I-485 application package;

(2) The appropriate fee in accordance with 8 CFR 103.7(b)(1) or an application for a fee waiver; and, as applicable,

(3) Form I-601, Application for Waiver of Grounds of Excludability.

(b) *Treatment of waiver application.* (1) USCIS may not waive an applicant's inadmissibility under sections 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E) of the Act.

(2) If an applicant is inadmissible under sections 212(a)(1) or (4) of the Act, USCIS may waive such inadmissibility if it determines that granting a waiver is in the national interest.

(3) If any other provision of section 212(a) renders the applicant inadmissible, USCIS may grant a waiver of inadmissibility if the activities rendering the alien inadmissible were caused by or were incident to the victimization and USCIS determines that it is in the national interest to waive

the applicable ground or grounds of inadmissibility.

(c) *Other waivers.* Nothing in this section shall be construed as limiting an alien's ability to apply for any other waivers of inadmissibility for which he or she may be eligible.

(d) *Revocation.* The Secretary of Homeland Security may, at any time, revoke a waiver previously granted through the procedures described in 8 CFR 103.5.

#### PART 214—NONIMMIGRANT CLASSES

■ 5. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1372, 1379, 1731–32, section 643, Pub. L. 104–208, 110 Stat. 3009–708; 48 U.S.C. 1901, note, and 1931 note; 8 CFR part 2.

■ 6. Sections 214.11(p)(1) and (2) are revised to read as follows:

##### § 214.11 Alien victims of severe forms of trafficking in persons.

\* \* \* \* \*

(p) *Duration of T nonimmigrant status.*

(1) *In general.* An approved T nonimmigrant status shall expire after 4 years from the date of approval. The status may be extended if a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity. At the time an alien is approved for T nonimmigrant status or receives an extension, USCIS shall notify the alien when his or her nonimmigrant status will expire. The applicant shall immediately notify USCIS of any changes in the applicant's circumstances that may affect eligibility under section 101(a)(15)(T)(i) of the Act and this section.

(2) *Information pertaining to adjustment of status.* USCIS will notify an alien granted T nonimmigrant status of the requirement to timely apply for adjustment of status, and that the failure to apply for adjustment of status in accordance with 8 CFR 245.23 will result in termination of the alien's T nonimmigrant status at the end of the 4-year period unless that status is extended in accordance with paragraph (p)(1) of this section. Aliens who properly apply for adjustment of status to that of a person admitted to permanent residence in accordance with

8 CFR 245.23 shall remain eligible for adjustment of status.

\* \* \* \* \*

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

■ 7. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

■ 8. Section 245.23 is added to read as follows:

##### § 245.23 Adjustment of aliens in T nonimmigrant classification.

(a) *Eligibility of principal T-1 applicants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

- (1) Applies for such adjustment;
- (2)(i) Was lawfully admitted to the United States as a T-1 nonimmigrant, as defined in 8 CFR 214.11(a)(2); and
- (ii) Continues to hold such status at the time of application, or accrued 4 years in T-1 nonimmigrant status and files a complete application before April 13, 2009;

(3) Has been physically present in the United States for a continuous period of at least 3 years since the first date of lawful admission as a T-1 nonimmigrant or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period of time is less; provided that if the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain continuous physical presence in the United States for purposes of section 245(J)(1)(A) of the Act;

(4) Is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment;

(5) Has been a person of good moral character since first being lawfully admitted as a T-1 nonimmigrant and until USCIS completes the adjudication of the application for adjustment of status; and

(6)(i) Has, since first being lawfully admitted as a T-1 nonimmigrant and

until the conclusion of adjudication of the application, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, as defined in 8 CFR 214.11(a), or

(ii) Would suffer extreme hardship involving unusual and severe harm upon removal from the United States, as provided in 8 CFR 214.11(i).

(b) *Eligibility of derivative family members.* A derivative family member of a T-1 nonimmigrant status holder may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided:

(1) The T-1 principal nonimmigrant has applied for adjustment of status under this section and meets the eligibility requirements described under subsection (a);

(2) The derivative family member was lawfully admitted to the United States in T-2, T-3, T-4, or T-5 nonimmigrant status as the spouse, parent, sibling, or child of a T-1 nonimmigrant, and continues to hold such status at the time of application;

(3) The derivative family member has applied for such adjustment; and

(4) The derivative family member is admissible to the United States under the Act, or otherwise has been granted a waiver by USCIS of any applicable ground of inadmissibility, at the time of examination for adjustment.

(c) *Exceptions.* An alien is not eligible for adjustment of status under paragraphs (a) or (b) of this section if:

(1) The alien's T nonimmigrant status has been revoked pursuant to 8 CFR 214.11(s);

(2) The alien is described in sections 212(a)(3), 212(a)(10)(C), or 212(a)(10)(E) of the Act; or

(3) The alien is inadmissible under any other provisions of section 212(a) of the Act and has not obtained a waiver of inadmissibility in accordance with 8 CFR 212.18 or 214.11(j). Where the applicant establishes that the victimization was a central reason for the applicant's unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable, and the applicant need not obtain a waiver of that ground of inadmissibility. The applicant, however, must submit with the Form I-485 evidence sufficient to demonstrate that the victimization suffered was a central reason for the unlawful presence in the United States. To qualify for this exception, the victimization need not be the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

(d) *Jurisdiction.* USCIS shall determine whether a T-1 applicant for adjustment of status under this section was lawfully admitted as a T-1 nonimmigrant and continues to hold such status, has been physically present in the United States during the requisite period, is admissible to the United States or has otherwise been granted a waiver of any applicable ground of inadmissibility, and has been a person of good moral character during the requisite period. The Attorney General shall determine whether the applicant received a reasonable request for assistance in the investigation or prosecution of acts of trafficking as defined in 8 CFR 214.11(a), and, if so, whether the applicant complied in such request. If the Attorney General determines that the applicant failed to comply with any reasonable request for assistance, USCIS shall deny the application for adjustment of status unless USCIS finds that the applicant would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(e) *Application.*

(1) *General.* Each T-1 principal applicant and each derivative family member who is applying for adjustment of status must file Form I-485, Application to Register Permanent Residence or Adjust Status, and

(i) Accompanying documents, in accordance with the form instructions;

(ii) The fee prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;

(iii) The biometric services fee prescribed by 8 CFR 103.7(b)(1) or an application for a fee waiver;

(iv) A photocopy of the alien's Form I-797, Notice of Action, granting T nonimmigrant status;

(v) A photocopy of all pages of the alien's most recent passport or an explanation of why the alien does not have a passport;

(vi) A copy of the alien's Form I-94, Arrival-Departure Record; and

(vii) Evidence that the applicant was lawfully admitted in T nonimmigrant status and continues to hold such status at the time of application. For T nonimmigrants who traveled outside the United States and re-entered using an advance parole document issued under 8 CFR 245.2(a)(4)(ii)(B), the date that the alien was first admitted in lawful T status will be the date of admission for purposes of this section, regardless of how the applicant's Form I-94 "Arrival-Departure Record" is annotated.

(2) *T-1 principal applicants.* In addition to the items in paragraph (e)(1) of this section, T-1 principal applicants must submit:

(i) Evidence, including an affidavit from the applicant and a photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport), that he or she has been continuously physically present in the United States for the requisite period as described in paragraph (a)(2) of this section. Applicants should submit evidence described in 8 CFR 245.22. A signed statement from the applicant attesting to the applicant's continuous physical presence alone will not be sufficient to establish this eligibility requirement. If additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific facts.

(A) If the applicant has departed from and returned to the United States while in T-1 nonimmigrant status, the applicant must submit supporting evidence showing the dates of each departure from the United States and the date, manner and place of each return to the United States.

(B) Applicants applying for adjustment of status under this section who have less than 3 years of continuous physical presence while in T-1 nonimmigrant status must submit a document signed by the Attorney General or his designee, attesting that the investigation or prosecution is complete.

(ii) Evidence of good moral character in accordance with paragraph (g) of this section; and

(iii)(A) Evidence that the alien has complied with any reasonable request for assistance in the investigation or prosecution of the trafficking as described in paragraph (f)(1) of this section since having first been lawfully admitted in T-1 nonimmigrant status and until the adjudication of the application; or

(B) Evidence that the alien would suffer extreme hardship involving unusual and severe harm if removed from the United States as described in paragraph (f)(2) of this section.

(3) *Evidence relating to discretion.* Each T applicant bears the burden of showing that discretion should be exercised in his or her favor. Where adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider. Depending on the nature of adverse factors, the applicant may be required to clearly

demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(f) *Assistance in the investigation or prosecution or a showing of extreme hardship.* Each T-1 principal applicant must establish, to the satisfaction of the Attorney General, that since having been lawfully admitted as a T-1 nonimmigrant and up until the adjudication of the application, he or she complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking, as defined in 8 CFR 214.11(a), or establish, to the satisfaction of USCIS, that he or she would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

(1) Each T-1 applicant for adjustment of status under section 245(l) of the Act must submit a document issued by the Attorney General or his designee certifying that the applicant has complied with any reasonable requests for assistance in the investigation or prosecution of the human trafficking offenses during the requisite period; or

(2) In lieu of showing continued compliance with requests for assistance, an applicant may establish, to the satisfaction of USCIS, that he or she would suffer extreme hardship involving unusual and severe harm upon removal from the United States. The hardship determination will be evaluated on a case-by-case basis, in accordance with the factors described in 8 CFR 214.11(i). Where the basis for the hardship claim represents a continuation of the hardship claimed in the application for T nonimmigrant status, the applicant need not re-document the entire claim, but rather may submit evidence to establish that the previously established hardship is ongoing. However, in reaching its decision regarding hardship under this section, USCIS is not bound by its previous hardship determination made under 8 CFR 214.11(i).

(g) *Good moral character.* A T-1 nonimmigrant applicant for adjustment of status under this section must demonstrate that he or she has been a person of good moral character since

first being lawfully admitted as a T-1 nonimmigrant and until USCIS completes the adjudication of their applications for adjustment of status. Claims of good moral character will be evaluated on a case-by-case basis, taking into account section 101(f) of the Act and the standards of the community. The applicant must submit evidence of good moral character as follows:

(1) An affidavit from the applicant attesting to his or her good moral character, accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the applicant has resided for 6 or more months during the requisite period in continued presence or T-1 nonimmigrant status.

(2) If police clearances, criminal background checks, or similar reports are not available for some or all locations, the applicant may include an explanation and submit other evidence with his or her affidavit.

(3) USCIS will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the applicant's good moral character.

(4) An applicant who is under 14 years of age is generally presumed to be a person of good moral character and is not required to submit evidence of good moral character. However, if there is reason to believe that an applicant who is under 14 years of age may lack good moral character, USCIS may require evidence of good moral character.

(h) *Filing and decision.* An application for adjustment of status from a T nonimmigrant under section 245(I) of the Act shall be filed with the USCIS office identified in the instructions to Form I-485. Upon approval of adjustment of status under this section, USCIS will record the alien's lawful admission for permanent residence as of the date of such approval and will notify the applicant in writing. Derivative family members' applications may not be approved before the principal applicant's application is approved.

(i) *Denial.* If the application for adjustment of status or the application for a waiver of inadmissibility is denied, USCIS will notify the applicant in writing of the reasons for the denial and of the right to appeal the decision to the Administrative Appeals Office (AAO) pursuant to the AAO appeal procedures found at 8 CFR 103.3. Denial of the T-1 principal applicant's application will result in the automatic denial of a derivative family member's application.

(j) *Effect of Departure.* If an applicant for adjustment of status under this

section departs the United States, he or she shall be deemed to have abandoned the application, and it will be denied. If, however, the applicant is not under exclusion, deportation, or removal proceedings, and he or she filed a Form I-131, Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, and was granted advance parole by USCIS for such absences, and was inspected and paroled upon returning to the United States, he or she will not be deemed to have abandoned the application. If the adjustment of status application of such an individual is subsequently denied, he or she will be treated as an applicant for admission subject to sections 212 and 235 of the Act. If an applicant for adjustment of status under this section is under exclusion, deportation, or removal proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States.

(k) *Inapplicability of 8 CFR 245.1 and 245.2.* Sections 245.1 and 245.2 of this chapter do not apply to aliens seeking adjustment of status under this section.

(l) *Annual cap of T-1 principal applicant adjustments.* (1) *General.* The total number of T-1 principal applicants whose status is adjusted to that of lawful permanent residents under this section may not exceed the statutory cap in any fiscal year.

(2) *Waiting list.* All eligible applicants who, due solely to the limit imposed in section 245(I)(4) of the Act and paragraph (m)(1) of this section, are not granted adjustment of status will be placed on a waiting list. USCIS will send the applicant written notice of such placement. Priority on the waiting list will be determined by the date the application was properly filed, with the oldest applications receiving the highest priority. In the following fiscal year, USCIS will proceed with granting adjustment of status to applicants on the waiting list who remain admissible and eligible for adjustment of status in order of highest priority until the available numbers are exhausted for the given fiscal year. After the status of qualifying applicants on the waiting list has been adjusted, any remaining numbers for that fiscal year will be issued to new qualifying applicants in the order that the applications were properly filed.

■ 9. Section 245.24 is added to read as follows:

**§ 245.24 Adjustment of aliens in U nonimmigrant status.**

(a) *Definitions.* As used in this section, the term:

(1) *Continuous Physical Presence* means the period of time that the alien has been physically present in the United States and must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the application for adjustment of status. If the alien has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant must include a certification from the agency that signed the Form I-918, Supplement B, in support of the alien's U nonimmigrant status that the absences were necessary to assist in the criminal investigation or prosecution or were otherwise justified.

(2) *Qualifying Family Member* means a U-1 principal applicant's spouse, child, or, in the case of an alien child, a parent who has never been admitted to the United States as a nonimmigrant under sections 101(a)(15)(U) and 214(p) of the Act.

(3) *U Interim Relief* means deferred action and work authorization benefits provided by USCIS or the Immigration and Naturalization Service to applicants for U nonimmigrant status deemed *prima facie* eligible for U nonimmigrant status prior to publication of the U nonimmigrant status regulations.

(4) *U Nonimmigrant* means an alien who is in lawful U-1, U-2, U-3, U-4, or U-5 status.

(5) *Refusal to Provide Assistance in a Criminal Investigation or Prosecution* is the refusal by the alien to provide assistance to a law enforcement agency or official that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status. The Attorney General will determine whether the alien's refusal was unreasonable under the totality of the circumstances based on all available affirmative evidence. The Attorney General may take into account such factors as general law enforcement, prosecutorial, and judicial practices; the kinds of assistance asked of other victims of crimes involving an element of force, coercion, or fraud; the nature of the request to the alien for assistance; the nature of the victimization; the applicable guidelines for victim and witness assistance; and the specific circumstances of the applicant, including fear, severe traumatization (both mental and physical), and the age and maturity of the applicant.

(b) *Eligibility of U Nonimmigrants.* Except as described in paragraph (c) of this section, an alien may be granted

adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

- (1) Applies for such adjustment;
- (2)(i) Was lawfully admitted to the United States as either a U-1, U-2, U-3, U-4 or U-5 nonimmigrant, as defined in 8 CFR 214.1(a)(2), and
  - (ii) Continues to hold such status at the time of application; or accrued at least 4 years in U interim relief status and files a complete adjustment application within 120 days of the date of approval of the Form I-918, Petition for U Nonimmigrant Status;
- (3) Has continuous physical presence for 3 years as defined in paragraph (a)(1) of this section;
- (4) Is not inadmissible under section 212(a)(3)(E) of the Act;
- (5) Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and
- (6) Establishes to the satisfaction of the Secretary that the alien's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.
  - (c) *Exception.* An alien is not eligible for adjustment of status under paragraph (b) of this section if the alien's U nonimmigrant status has been revoked pursuant to 8 CFR 214.14(h).
  - (d) *Application Procedures for U nonimmigrants.* Each U nonimmigrant who is requesting adjustment of status must submit:
    - (1) Form I-485, Application to Register Permanent Residence or Adjust Status, in accordance with the form instructions;
    - (2) The fee prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;
    - (3) The biometric services fee as prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;
    - (4) A photocopy of the alien's Form I-797, Notice of Action, granting U nonimmigrant status;
    - (5) A photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport) and documentation showing the following:
      - (i) The date of any departure from the United States during the period that the applicant was in U nonimmigrant status;
      - (ii) The date, manner, and place of each return to the United States during

the period that the applicant was in U nonimmigrant status; and

(iii) If the applicant has been absent from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days or more, a certification from the investigating or prosecuting agency that the absences were necessary to assist in the investigation or prosecution of the criminal activity or were otherwise justified;

(6) A copy of the alien's Form I-94, Arrival-Departure Record;

(7) Evidence that the applicant was lawfully admitted in U nonimmigrant status and continues to hold such status at the time of application;

(8) Evidence pertaining to any request made to the alien by an official or law enforcement agency for assistance in an investigation or prosecution of persons in connection with the qualifying criminal activity, and the alien's response to such request;

(9) Evidence, including an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years as defined in paragraph (a)(1) of this section. Applicants should submit evidence described in 8 CFR 245.22. A signed statement from the applicant attesting to continuous physical presence alone will not be sufficient to establish this eligibility requirement. If additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant's continuous physical presence by specific:

(10) *Evidence establishing that approval is warranted.* Any other information required by the instructions to Form I-485, including whether adjustment of status is warranted as a matter of discretion on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(11) *Evidence relating to discretion.* An applicant has the burden of showing that discretion should be exercised in his or her favor. Although U adjustment applicants are not required to establish that they are admissible, USCIS may take into account all factors, including acts that would otherwise render the applicant inadmissible, in making its discretionary decision on the application. Where adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate. Depending on the nature

of the adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. For example, USCIS will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(e) *Continued assistance in the investigation or prosecution.* Each applicant for adjustment of status under section 245(m) of the Act must provide evidence of whether or not any request was made to the alien to provide assistance, after having been lawfully admitted as a U nonimmigrant, in an investigation or prosecution of persons in connection with the qualifying criminal activity, and his or her response to any such requests.

(1) An applicant for adjustment of status under section 245(m) of the Act may submit a document signed by an official or law enforcement agency that had responsibility for the investigation or prosecution of persons in connection with the qualifying criminal activity, affirming that the applicant complied with (or did not unreasonably refuse to comply with) reasonable requests for assistance in the investigation or prosecution during the requisite period. To meet this evidentiary requirement, applicants may submit a newly executed Form I-918, Supplement B, "U Nonimmigrant Status Certification."

(2) If the applicant does not submit a document described in paragraph (e)(1) of this section, the applicant may submit an affidavit describing the applicant's efforts, if any, to obtain a newly executed Form I-918, Supplement B, or other evidence describing whether or not the alien received any request to provide assistance in a criminal investigation or prosecution, and the alien's response to any such request.

(i) The applicant should also include, when possible, identifying information about the law enforcement personnel involved in the case and any information, of which the applicant is aware, about the status of the criminal investigation or prosecution, including any charges filed and the outcome of any criminal proceedings, or whether the investigation or prosecution was dropped and the reasons.

(ii) If applicable, an applicant may also provide a more detailed description

of situations where the applicant refused to comply with requests for assistance because the applicant believed that the requests for assistance were unreasonable.

(3) In determining whether the applicant has satisfied the continued assistance requirement, USCIS or the Department of Justice may at its discretion contact the certifying agency that executed the applicant's original Form I-918, Supplement B, "U Nonimmigrant Status Certification" or any other law enforcement agency.

(4) In accordance with procedures determined by the Department of Justice and the Department of Homeland Security, USCIS will refer certain applications for adjustment of status to the Department of Justice for determination of whether the applicant unreasonably refused to provide assistance in a criminal investigation or prosecution. If the applicant submits a document described in paragraph (e)(1) of this section, USCIS will not refer the application for consideration by the Department of Justice absent extraordinary circumstances. In other cases, USCIS will only refer an application to the Department of Justice if an official or law enforcement agency has provided evidence that the alien has refused to comply with requests to provide assistance in an investigation or prosecution of persons in connection with the qualifying criminal activity or if there are other affirmative evidence in the record suggesting that the applicant may have unreasonably refused to provide such assistance. In these instances, USCIS will request that the Department of Justice determine, based on all available affirmative evidence, whether the applicant unreasonably refused to provide assistance in a criminal investigation or prosecution. The Department of Justice will have 90 days to provide a written determination to USCIS, or where appropriate, request an extension of time to provide such a determination. After such time, USCIS may adjudicate the application whether or not the Department of Justice has provided a response.

(f) *Decision.* The decision to approve or deny a Form I-485 filed under section 245(m) of the Act is a discretionary determination that lies solely within USCIS's jurisdiction. After completing its review of the application and evidence, USCIS will issue a written decision approving or denying Form I-485 and notify the applicant of this decision.

(1) *Approvals.* If USCIS determines that the applicant has met the requirements for adjustment of status and merits a favorable exercise of

discretion, USCIS will approve the Form I-485. Upon approval of adjustment of status under this section, USCIS will record the alien's lawful admission for permanent residence as of the date of such approval.

(2) *Denials.* Upon the denial of an application for adjustment of status under section 245(m) of the Act, the applicant will be notified in writing of the decision and the reason for the denial in accordance with 8 CFR part 103. If an applicant chooses to appeal the denial to the Administrative Appeals Office pursuant to the provisions of 8 CFR 103.3, the denial will not become final until the appeal is adjudicated.

(g) *Filing petitions for qualifying family members.* A principal U-1 applicant may file an immigrant petition under section 245(m)(3) of the Act on behalf of a qualifying family member as defined in paragraph (a)(2) of this section, provided that:

(1) The qualifying family member has never held U nonimmigrant status;

(2) The qualifying family relationship, as defined in paragraph (a)(2) of this section, exists at the time of the U-1 principal's adjustment and continues to exist through the adjudication of the adjustment or issuance of the immigrant visa for the qualifying family member;

(3) The qualifying family member or the principal U-1 alien, would suffer extreme hardship as described in 8 CFR 245.24(g) (to the extent the factors listed are applicable) if the qualifying family member is not allowed to remain in or enter the United States; and

(4) The principal U-1 alien has adjusted status to that of a lawful permanent resident, has a pending application for adjustment of status, or is concurrently filing an application for adjustment of status.

(h) *Procedures for filing petitions for qualifying family members.*

(1) *Required documents.* For each qualifying family member who plans to seek an immigrant visa or adjustment of status under section 245(m)(3) of the Act, the U-1 principal applicant must submit, either concurrently with, or after he or she has filed, his or her Form I-485:

(i) Form I-929 in accordance with the form instructions;

(ii) The fee prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver;

(iii) Evidence of the relationship listed in paragraph (a)(2) of this section, such as a birth or marriage certificate. If primary evidence is unavailable, secondary evidence or affidavits may be submitted in accordance with 8 CFR 103.2(b)(2);

(iv) Evidence establishing that either the qualifying family member or the U-1 principal alien would suffer extreme hardship if the qualifying family member is not allowed to remain in or join the principal in the United States. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to document all applicable factors in their applications, as the presence or absence of any one factor may not be determinative in evaluating extreme hardship. To establish extreme hardship to a qualifying family member who is physically present in the United States, an applicant must demonstrate that removal of the qualifying family member would result in a degree of hardship beyond that typically associated with removal. Factors that may be considered in evaluating whether removal would result in extreme hardship to the alien or to the alien's qualifying family member include, but are not limited to:

(A) The nature and extent of the physical or mental abuse suffered as a result of having been a victim of criminal activity;

(B) The impact of loss of access to the United States courts and criminal justice system, including but not limited to, participation in the criminal investigation or prosecution of the criminal activity of which the alien was a victim, and any civil proceedings related to family law, child custody, or other court proceeding stemming from the criminal activity;

(C) The likelihood that the perpetrator's family, friends, or others acting on behalf of the perpetrator in the home country would harm the applicant or the applicant's children;

(D) The applicant's needs for social, medical, mental health, or other supportive services for victims of crime that are unavailable or not reasonably accessible in the home country;

(E) Where the criminal activity involved arose in a domestic violence context, the existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household;

(F) The perpetrator's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant or the applicant's children; and

(G) The age of the applicant, both at the time of entry to the United States and at the time of application for adjustment of status; and

(v) Evidence, including a signed statement from the qualifying family member and other supporting documentation, to establish that discretion should be exercised in his or her favor. Although qualifying family members are not required to establish that they are admissible on any of the grounds set forth in section 212(a) of the Act other than on section 212(a)(3)(E) of the Act, USCIS may take into account all factors, including acts that would otherwise render the applicant inadmissible, in making its discretionary decision on the application. Where adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate. Depending on the nature of the adverse factors, the applicant may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. For example, USCIS will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(2) *Decision.* The decision to approve or deny a Form I-929 is a discretionary determination that lies solely within USCIS's jurisdiction. The Form I-929 for a qualifying family member may not be approved, however, until such time as the principal U-1 applicant's application for adjustment of status has been approved. After completing its review of the application and evidence, USCIS will issue a written decision and notify the applicant of that decision in writing.

(i) *Approvals.* (A) For qualifying family members who are outside of the United States, if the Form I-929 is approved, USCIS will forward notice of the approval either to the Department of State's National Visa Center so the applicant can apply to the consular post for an immigrant visa, or to the appropriate port of entry for a visa exempt alien.

(B) For qualifying family members who are physically present in the United States, if the Form I-929 is approved, USCIS will forward notice of the approval to the U-1 principal applicant.

(ii) *Denials.* If the Form I-929 is denied, the applicant will be notified in writing of the reason(s) for the denial in accordance with 8 CFR part 103. If an applicant chooses to appeal the denial to the Administrative Appeals Office pursuant to 8 CFR 103.3, the denial will not become final until the appeal is adjudicated. Denial of the U-1 principal applicant's application will result in the automatic denial of a qualifying family member's Form I-929. There shall be no appeal of such an automatic denial.

(i) *Application procedures for qualifying family members who are physically present in the United States to request adjustment of status.* (1) *Required documents.* Qualifying family members in the United States may request adjustment of status by submitting:

(i) Form I-485, Application to Register Permanent Residence or Adjust Status, in accordance with the form instructions;

(ii) An approved Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant;

(iii) The fee prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver; and

(iv) The biometric services fee as prescribed in 8 CFR 103.7(b)(1) or an application for a fee waiver.

(2) *Decision.* The decision to approve or deny Form I-485 is a discretionary determination that lies solely within USCIS's jurisdiction. After completing its review of the application and evidence, USCIS will issue a written decision approving or denying Form I-485 and notify the applicant of this decision in writing.

(i) *Approvals.* Upon approval of a Form I-485 under this section, USCIS shall record the alien's lawful admission for permanent residence as of the date of such approval.

(ii) *Denial.* Upon the denial of any application for adjustment of status, the applicant will be notified in writing of the decision and the reason for the denial in accordance with 8 CFR part 103. If an applicant chooses to appeal the denial to the Administrative Appeals Office pursuant to the provisions of 8 CFR 103.3, the denial will not become final until the appeal is

adjudicated. During the appeal period, the applicant may not obtain or renew employment authorization under 8 CFR 274a.12(c)(9). Denial of the U-1 principal applicant's application will result in the automatic denial of a qualifying family member's Form I-485; such an automatic denial is not appealable.

(j) *Effect of departure.* If an applicant for adjustment of status under this section departs the United States, he or she shall be deemed to have abandoned the application, and it will be denied. If, however, the applicant is not under exclusion, deportation, or removal proceedings, and he or she filed a Form I-131, Application for Travel Document, in accordance with the instructions on the form, or any other appropriate form, and was granted advance parole by USCIS for such absences, and was inspected and paroled upon returning to the United States, he or she will not be deemed to have abandoned the application. If the adjustment of status application of such an individual is subsequently denied, he or she will be treated as an applicant for admission subject to sections 212 and 235 of the Act. If an applicant for adjustment of status under this section is under exclusion, deportation, or removal proceedings, USCIS will deem the application for adjustment of status abandoned as of the moment of the applicant's departure from the United States.

(k) *Exclusive jurisdiction.* USCIS shall have exclusive jurisdiction over adjustment applications filed under section 245(m) of the Act.

(l) *Inapplicability of 8 CFR 245.1 and 245.2.* The provisions of 8 CFR 245.1 and 245.2 do not apply to aliens seeking adjustment of status under section 245(m) of the Act.

## PART 299—PRESCRIBED FORMS

■ 10. The authority citation in part 299 continues to read as follows:

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

■ 11. Section 299.1 is amended in the table by adding the entries "I-485, Supplement E" and "I-929", in proper alpha/numeric sequence to read as follows:

### § 299.1 Prescribed forms.

\* \* \* \* \*

Form No.	Edition date	Title
I-485, Supplement E	10/31/08	T and U Nonimmigrant Supplement to Form I-485 Instructions.
I-929	10/31/08	Petition for Qualifying Family Member of a U-1 Nonimmigrant.

■ 12. Section 299.5 is amended in the table by adding the entries “I-485, Supplement E” and “I-929”, in proper

alpha/numeric sequence to read as follows:

**§ 299.5 Display of control numbers.**

\* \* \* \* \*

Form No.	Form title	Currently assigned OMB control No.
I-485, Supplement E	T and U Nonimmigrant Supplement to Form I-485 Instructions	1615-0023
I-929	Petition for Qualifying Family Member of a U-1 Nonimmigrant	1615-0106

**Paul A. Schneider,**  
Deputy Secretary.

[FR Doc. E8-29277 Filed 12-11-08; 8:45 am]  
BILLING CODE 9111-97-P

**DEPARTMENT OF AGRICULTURE**  
**Food Safety and Inspection Service**  
**9 CFR Parts 317 and 381**  
[Docket No. FSIS-2008-0040]  
RIN 0583-AD05

**Uniform Compliance Date for Food Labeling Regulations**

**AGENCY:** Food Safety and Inspection Service, USDA.  
**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is establishing January 1, 2012, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2009, and December 31, 2010. FSIS periodically announces uniform compliance dates for new meat and poultry product labeling regulations to minimize the economic impact of label changes.

**DATES:** This rule is effective December 12, 2008. Comments on this final rule must be received on or before January 12, 2009.

**ADDRESSES:** FSIS invites interested persons to submit comments on this final rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the online instructions at that site for submitting comments.

- *Mail, including floppy disks or CD-ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Room 2534, South Agriculture Building, Washington, DC 20250-3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2008-0040. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Rosalyn Murphy-Jenkins, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250-3700; Telephone 202-205-0623, Fax 202/205-0145 or 202/205-0271.

**SUPPLEMENTARY INFORMATION:**

**Background**

FSIS periodically issues regulations that require changes in the labeling of meat and poultry food products. Many meat and poultry establishments also produce non-meat and non-poultry food products subject to the jurisdiction of the Food and Drug Administration (FDA). FDA also periodically issues regulations that require changes in the labeling of such products.

On December 14, 2004, FSIS issued the final rule that provided that the Agency will set uniform compliance dates for new meat and poultry product labeling regulations in two year increments and will periodically issue final rules announcing those dates. That final rule also established January 1, 2008, as the uniform compliance date for meat and poultry product labeling regulations that issued between January 1, 2005, and December 31, 2006 (69 FR 74405). Consistent with the 2004 final rule, FSIS issued a subsequent final rule, on March 5, 2007, that established January 1, 2010, as the uniform compliance date for meat and poultry product labeling regulations that issued between January 1, 2007, and December 31, 2008 (72 FR 9651).

**The Final Rule**

This final rule establishes January 1, 2012, as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2009 and December 31, 2010, is consistent with the previous final rules establishing uniform