days or more after the date the alien's adjustment of status application was filed, and the petition is subsequently approved:

(*1*) Adjudication of the pending petition shall be without regard to the requirement in 8 CFR 204.5(g)(2) to continuously establish the ability to pay the proffered wage after filing and until the beneficiary obtains lawful permanent residence; and

(*2*) The pending petition will be approved if it was eligible for approval at the time of filing and until the alien's adjustment of status application has been pending for 180 days, unless approval of the qualifying immigrant visa petition at the time of adjudication is inconsistent with a requirement of the Act or another applicable statute; and

(iii) The approval of the qualifying petition has not been revoked.

(3) In all cases, the applicant and his or her intended employer must demonstrate the intention for the applicant to be employed under the continuing or new employment offer (including self-employment) described in paragraphs (a)(1) and (2) of this section, as applicable, within a reasonable period upon the applicant's grant of lawful permanent resident status.

(b) *Definition of same or similar occupational classification.* The term ''same occupational classification'' means an occupation that resembles in every relevant respect the occupation for which the underlying employment-based immigrant visa petition was approved. The term ''similar occupational classification'' means an occupation that shares essential qualities or has a marked resemblance or likeness with the occupation for which the underlying employment-based immigrant visa petition was approved.

[81 FR 82490, Nov. 18, 2016]

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

Subpart A—Immigration Reform and Control Act of 1986 (RICA) Legalization Provisions

Sec.

Subpart B—Legal Immigration Family Equity (LIFE) Act Legalization Provisions

Subpart C—LIFE Act Amendments Family Unity Provisions

AUTHORITY: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

SOURCE: 52 FR 16208, May 1, 1987, unless otherwise noted.

Subpart A—Immigration Reform and Control Act of 1986 (IRCA) Legalization Provisions

§ 245a.1 Definitions.

As used in this chapter:

(a) *Act* means the Immigration and Nationality Act, as amended by The Immigration Reform and Control Act of 1986.

(b) *Service* means the Immigration and Naturalization Service (INS).

(c)(1) *Resided continuously* as used in section 245A(a)(2) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States, pursuant to the stateside criteria program, shall be regarded as having been granted advance parole by the Service.

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application.

(2) *Continuous residence,* as used in section 245A(b)(1)(B) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and of applying for permanent resident status, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period(s) allowed.

(d) In the term *alien's unlawful status was known to the government*, the term *government* means the Immigration and Naturalization Service. An alien's unlawful status was *known to the government* only if:

(1) The Service received factual information constituting a violation of the alien's nonimmigrant status from any agency, bureau or department, or subdivision thereof, of the Federal government, and such information was stored or otherwise recorded in the official Service alien file, whether or not the Service took follow-up action on the information received. In order to meet the standard of *information constituting a violation of the alien's nonimmigrant status,* the alien must have made a clear statement or declaration to the other federal agency, bureau or department that he or she was in violation of nonimmigrant status; or

(2) An affirmative determination was made by the Service prior to January 1, 1982 that the alien was subject to deportation proceedings. Evidence that may be presented by an alien to support an assertion that such a determination was made may include, but is not limited to, official Service documents issued prior to January 1, 1982, *i.e.*, Forms I–94 (see §1.4), Arrival-Departure Records granting a period of time in which to depart the United States without imposition of proceedings; Forms I–210, Voluntary Departure Notice letter; and Forms I–221, Order to Show Cause and Notice of Hearing. Evidence from Service records that may be used to support a finding

that such a determination was made may include, but is not limited to, record copies of the aforementioned forms and other documents contained in alien files, *i.e.*, Forms I–213, Record of Deportable Alien;

Unexecuted Forms I–205, Warrant of Deportation; Forms I–265, Application for Order to Show Cause and Processing Sheet; Forms I–541, Order of Denial of Application for Extension of Stay granting a period of time in which to depart the United States without imposition of proceedings, or any other Service record reflecting that the alien's nonimmigrant status was considered by the Service to have terminated or the alien was otherwise determined to be subject to deportation proceedings prior to January 1, 1982, whether or not deportation proceedings were instituted; or

(3) A copy of a response by the Service to any other agency which advised that agency that a particular alien had no legal status in the United States or for whom no record could be found.

(4) The applicant produces documentation from a school approved to enroll foreign students under §214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. A school may submit an affirmation that the school did forward to the Service the aforementioned report and that the school no longer has available copies of the actual documentation sent. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant student status.

(e) The term *to make a determination* as used in §245a.2(t)(3) of this part means obtaining and reviewing all information required to adjudicate an application for the benefit sought and making a decision thereon. If fraud, willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document, knowingly making a false statement or representation, or any other activity prohibited by section 245A(c)(6) of the Act is established during the process of making the determination on the application, the Service shall refer to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(f) The term *continuous physical presence* as used in section 245A(a)(3)(A) of the Act means actual continuous presence in the United States since November 6, 1986 until filing of any application for adjustment of status. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legalization if they reentered prior to May 1, 1987, provided they meet the continuous residence requirements, and are otherwise eligible for legalization.

(g) *Brief, casual, and innocent* means a departure authorized by the Service (advance parole) subsequent to May 1, 1987 of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(h) The term *brief and casual absences* as used in section 245a(b)(3)(A) of the Act permits temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must comply with §245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(i) *Public cash assistance* means income or needs-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(j) *Legalization Office* means local offices of the Immigration and Naturalization Service which accept and process applications for Legalization or

Special Agricultural Worker status, under the authority of the INS district directors in whose districts such offices are located.

(k) *Regional Processing Facility* means Service offices established in each of the four Service regions to adjudicate, under the authority of the INS Directors of the Regional Processing Facilities, applications for adjustment of status under section 210, 245A(a) or 245A(b)(1) of the Act.

(l) *Designated entity* means any state, local, church, community, farm labor organization, voluntary organization, association of agricultural employers or individual determined by the Service to be qualified to assist aliens in the preparation of applications for Legalization status.

(m) The term *family unity* as used in section 245(d)(2)(B)(i) of the Act means maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children under 18 years of age who are not members of some other household, and parents who reside regularly in the household of the family group.

(n) The term *prima facie* as used in section 245(e)(1) and (2) of the Act means eligibility is established if the applicant presents a completed I–687 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this part.

(o) *Misdemeanor* means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 CFR 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

(p) *Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception, for purposes of 8 CFR part 245a, the crime shall be treated as a misdemeanor.

(q) *Subject of an Order to Show Cause* means actual service of the Order to Show Cause upon the alien through the mail or by personal service.

(r) *A qualified designated entity in good-standing with the Service* means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989.

Subsequent to January 30, 1989, and throughout the period ending on November 6, 1990, a QDE in good-standing may: (1) Serve as an authorized course provider under § 245a.3(b)(5)(i)(C) of this chapter; (2) Administer the IRCA Test for Permanent Residency (proficiency test), provided an agreement has been entered into with and authorization has been given by INS under § 245a.1(s)(5) of this chapter; and, (3) Certify as true and complete copies of original documents submitted in support of Form I–698 in the format prescribed in § 245a.3(d)(2) of this chapter.

(s) *Satisfactorily pursuing*, as used in section 245A(b)(1)(D)(i)(II) of the Act, means:

(1) An applicant for permanent resident status has attended a recognized program for at least 40 hours of a minimum 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); or

(2) An applicant presents a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and U.S. history and government); or

(3) An applicant has attended for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. history and government); or

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987, and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by the district director or the Director of the Outreach Program under §245a.3(b)(5)(i)(D) of this chapter; or

(5) An applicant attests to having completed at least 40 hours of individual study in English and U.S. history and government and passes the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States. Such test may be given by INS, as well as, State Departments of Education (SDEs) (and their accredited educational agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by INS. Those SDEs and QDEs wishing to participate in this effort should write to the Director of the INS Outreach Program at 425 ''I'' Street, NW., Washington, DC 20536, for further information.

(t) Minimal understanding of ordinary English as used in section 245A(b)(1)(D)(i) of the Act means an applicant can satisfy basic survival needs and routine social demands. The person can handle jobs that involve following simple oral and very basic written communication.

(u) *Curriculum* means a defined course for an instructional program. Minimally, the curriculum prescribes what is to be taught, how the course is to be taught, with what materials, and when and where. The curriculum must:

(1) Teach words and phrases in ordinary, everyday usage;

(2) Include the content of the Federal Citizenship Text series as the basis for curriculum development (other texts with similar content may be used in addition to, but not in lieu of, the Federal Citizenship Text series);

(3) Be designed to provide at least 60 hours of instruction per class level;

(4) Be relevant and educationally appropriate for the program focus and the intended audience; and

(5) Be available for examination and review by INS as requested.

(v) The term *developmentally disabled* means the same as the term *developmental disability* defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Public Law 100–146. As a convenience to the public, that definition is printed here in its entirety:

> The term *developmental disability* means a severe, chronic disability of a person which:
>
> (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
>
> (2) Is manifested before the person attains age twenty-two;
>
> (3) Is likely to continue indefinitely;
>
> (4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
>
> (5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

[52 FR 16208, May 1, 1987, as amended at 52 FR 43845, Nov. 17, 1987; 53 FR 9863, Mar. 28, 1988; 53 FR 23382, June 22, 1988; 53 FR 43992, Oct. 31, 1988; 54 FR 29448, July 12, 1989; 56 FR 31061, July 9, 1991; 78 FR 18472, Mar. 27, 2013]

§ 245a.2 Application for temporary residence.

(a) *Application period for temporary residence.* (1) An alien who has resided unlawfully in the United States since January 1, 1982, who believes that he or she meets the eligibility requirements of section 245A of the Act must make application within the twelve month period beginning on May 5, 1987 and ending on May 4, 1988, except as provided in the following paragraphs.

(2)(i) [Reserved]

(ii) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on May 5, 1987 and ending on April 4, 1988 must file an application for adjustment of status to that of a temporary resident prior to the thirty-first day after the issuance of the Order to Show Cause.

(iii) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on April 5, 1988 and ending on May 4, 1988 must file an application for adjustment of status to that of a temporary resident not later than May 4, 1988.

(iv) An alien, described in paragraphs (a)(2)(i) through (iii) of this section, who fails to file an application for adjustment of status to that of a temporary resident under section 245A(a) of the Act during the respective time period(s), will be statutorily ineligible for such adjustment of status.

(b) *Eligibility.* The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

(1) An alien (other than an alien who entered as a nonimmigrant) who establishes that he or she entered the United States prior to January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application.

(2) An alien who establishes that he or she entered the United States as a nonimmigrant prior to January 1, 1982, and whose period of authorized admission expired through the passage of time prior to January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application.

(3) An alien who establishes that he or she entered the United States as a nonimmigrant prior to January 1, 1982, and whose unlawful status was known to the Government as of January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application.

(4) An alien described in paragraphs (b) (1) through (3) of this section who was at any time a nonimmigrant exchange visitor (as defined in section 101(a)(15)(J) of the Act), must establish that he or she was not subject to the two-year foreign residence requirements of section 212(e) or has fulfilled that requirement or has received a waiver of such requirements and has resided continuously in the United States in unlawful status since January 1, 1982.

(5) An alien who establishes that he or she was granted voluntary departure, voluntary return, extended voluntary departure or placed in deferred action category by the Service prior to January 1, 1982 and who has thereafter resided continuously in such status in the United States and who has been physically present in the United States from November 6, 1986 until the date of filing the application.

(6) An alien who establishes that he or she was paroled into the United States prior to January 1, 1982, and whose parole status terminated prior to January 1, 1982, and who has thereafter resided continuously in such status in the United States, and who has been physically present in the United States from November 6, 1986, until the date of filing the application.

(7) An alien who establishes that he or she is a Cuban or Haitian Entrant who was physically present in the United States prior to January 1, 1982, and who has thereafter resided continuously in the United States, and who has been physically present in the United States from November 6, 1986,

until the date of filing the application, without regard to whether such alien has applied for adjustment of status pursuant to section 202 of the Act.

(8) An alien's eligibility under the categories described in section 245(a)(2)(b) (1) through (7) and (9) through (15) shall not be affected by entries to the United States subsequent to January 1, 1982 that were not documented on Service Form I–94 (see §1.4), Arrival-Departure Record.

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant, such entry being documented on Service Form I–94, Arrival-Departure Record, in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

(11) A nonimmigrant who entered the United States for duration of status (''D/S'') is one of the following classes, A, A–1, A–2, G, G–1, G–2, G–3 or G–4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982, and who has thereafter continued to reside in the United States in an unlawful status. An alien who was a dependent family member and who may be otherwise eligible for legalization may be considered a member of this class of eligible aliens if the dependent family member was also in A and G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

(12) A nonimmigrant who entered the United States for duration of status (''D/S'') in one of the following classes, F, F–1, or F–2, who completed a full course of study, including practical training and whose time period if any to depart the United States after completion of study expired prior to January 1, 1982 and who has remained in the United States in an unlawful status since that time. A dependent F–2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Service Form I–94, Arrival-Departure Record that extended beyond January 1, 1982 is considered eligible if the principal F–1 alien is found eligible.

(13) An alien who establishes that he or she is a member of the class in the Silva-Levi lawsuit (No. 76–C–4268 (N.D. ILL. March 22, 1977)); that is, an alien from an independent country of the Western Hemisphere who was present in the United States prior to March 11, 1977, and was known by the Immigration and Naturalization Service (INS) to have a priority date for the issuance of an immigrant visa between July 1, 1968 and December 31, 1976, inclusive, and who was clearly eligible for an immigrant visa.

(14) An alien who filed an asylum application prior to January 1, 1982 and whose application was subsequently denied or whose application has not yet been decided is considered an alien in an unlawful status known to the government.

(15) An alien, otherwise eligible who departed the United States and was paroled into the United States on or before May 1, 1987 in order to return to an unrelinquished unlawful residence.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors.

(2) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group or political opinion.

(3) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived, pursuant to section 245A(d)(2)(B)(ii) of this Act.

(4) An alien who at any time was a nonimmigrant exchange visitor who is subject to the two-year foreign residence requirement unless the requirement has been satisfied or waived pursuant to the provisions of section 212(e) of the Act who has resided continuously in the United States in an unlawful status since January 1, 1982.

(5) [Reserved]

(6) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on May 5, 1987 and ending on

April 4, 1988 who does not file an application for adjustment of status to that of temporary resident under section 245A(a) of the Act prior to the thirty-first day after issuance of the order.

(7) An alien who is the subject of an Order to Show Cause issued under section 242 of the Act during the period beginning on April 5, 1988 and ending on May 4, 1988 who does not file an application for adjustment of status to that of a temporary resident under section 245A(a) of the Act prior to May 5, 1988.

(8) An alien who was paroled into the United States prior to January 1, 1982 and whose parole status terminated or expired subsequent to January 1, 1982, except an alien who was granted advance parole.

(d) *Documentation.* Evidence to support an alien's eligibility for the legalization program shall include documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed fingerprint card (Form FD–258), and a completed medical report of examination (Form I–693). All documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied. Failure by an applicant to authorize release to INS of information protected by the Privacy Act and/or related laws in order for INS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for these three categories are discussed below.

(1) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(i) Passport;

(ii) Birth certificate;

(iii) Any national identity document from the alien's country of origin bearing photo and fingerprint (e.g., a ''cedula'' or ''cartilla'');

(iv) Driver's license or similar document issued by a state if it contains a photo;

(v) Baptismal Record/Marriage Certificate; or

(vi) Affidavits.

(2) *Assumed names*—(i) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (d)(1) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirements of this paragraph documentation must be submitted to prove the common identity, *i.e.*, that the assumed name was in fact used by the applicant.

(ii) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

(3) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any combination of the following:

(i) Past employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

(A) Alien's address at the time of employment;

(B) Exact period of employment;

(C) Periods of layoff;

(D) Duties with the company;

(E) Whether or not the information was taken from official company records; and

(F) Where records are located and whether the Service may have access to the records.

If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

(ii) Utility bills (gas, electric, phone, etc.), receipts, or letters from companies showing the dates during which the applicant received service are acceptable documentation.

(iii) School records (letters, report cards, etc.) from the schools that the applicant or their children have attended in the United States must show name of school and periods of school attendance.

(iv) Hospital or medical records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

(v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official (whose title is shown);

(C) Shows inclusive dates of membership;

(D) States the address where applicant resided during membership period;

(E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the author knows the applicant; and

(G) Establishes the origin of the information being attested to.

(vi) Additional documents to support the applicant's claim may include:

(A) Money order receipts for money sent in or out of the country;

(B) Passport entries;

(C) Birth certificates of children born in the United States;

(D) Bank books with dated transactions;

(E) Letters or correspondence between applicant and another person or organization;

(F) Social Security card;

(G) Selective Service card;

(H) Automobile license receipts, title, vehicle registration, etc.;

(I) Deeds, mortgages, contracts to which applicant has been a party;

(J) Tax receipts;

(K) Insurance policies, receipts, or letters; and

(L) Any other relevant document.

(4) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (d)(3)(i) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the special rule will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(i) Evidence of a history of employment (*i.e.*, employment letter, W-2 Forms, income tax returns, etc.);

(ii) Evidence that he/she is self-supporting (*i.e.*, bank statements, stocks, other assets, etc.); or

(iii) Form I–134, Affidavit of Support, completed by a spouse in behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members where family circumstances warrant.

(5) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245a of the Act, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (d) of this section.

(6) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(e) *Filing of application.* (1) The application must be filed on Form I–687 at an office of a designated entity or at a Service Legalization Office within the jurisdiction of the District wherein the applicant resides. If the application is filed with a designated entity, the alien must have consented to having the designated entity forward the application to the legalization office. In the case of applications filed at a legalization office, the district director may, at his or her discretion:

(i) Require the applicant to file the application in person; or

(ii) Require the applicant to file the application by mail; or

(iii) Permit the filing of applications either by mail or in person.

The applicant must appear for a personal interview at the legalization office as scheduled. If the applicant is 14 years of age or older, the application must be accompanied by a completed Form FD–258 (Applicant Card).

(2) At the time of the interview, wherever possible, original documents must be submitted except the following: Official government records; employment or employment-related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in §204.2(j)(1) or (2) of this chapter. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Document Analysis Unit at the Regional Processing Facility having jurisdiction over the legalization office to which the documents were submitted.

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

(f) *Filing date of application.* The date the alien submits a completed application to a Service Legalization Office or designated entity shall be considered the filing date of the application, provided that in the case of an application filed at a designated entity the alien has consented to having the designated entity forward the application to the Service Legalization Office having jurisdiction over the location of the alien's residence. The designated entities are required to forward completed applications to the appropriate Service Legalization Office within sixty days of receipt.

(g) *Selective Service registration.* At the time of filing an application under this section, male applicants over the age of 17 and under the age of 26 are required to be registered under the Military Selective Service Act. An applicant shall present evidence that he has previously registered under that Act in the form of a letter of acknowledgement from the Selective Service System, or such alien shall present a completed and signed Form SSS–1 at the

time of filing Form I–687 with the Immigration and Naturalization Service or a designated entity. Form SSS–1 will be forwarded to the Selective Service System by the Service.

(h) *Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining a residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

(2) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application under this section.

(i) *Medical examination.* An applicant under this part shall be required to submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon shall report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status. Results of the medical examination must be presented to the Service at the time of interview and shall be incorporated into the record. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and part 235 of this chapter.

(j) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service Office and must be fingerprinted for the purpose of issuance of an employment authorization document and Form I–688. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant.

(k) *Applicability of exclusion grounds*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for temporary resident status: (14) Workers entering without Labor Certification; (20) immigrants not in possession of a valid entry document; (21) visas issued without compliance with section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of exclusion.* Except as provided in paragraph (k)(3) of this section, the Attorney General may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I–690. When an application for waiver of grounds of excludability is filed jointly with an application for temporary residence under this section, it shall be accepted for processing at the legalization office. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the legalization office, it shall be forwarded to the appropriate Regional Processing Facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances. An application for waiver of grounds of excludability under this part shall be approved or denied by the director of the Regional Processing Facility in whose jurisdiction the applicant's application

for adjustment of status was filed except that in cases involving clear statutory ineligibility or admitted fraud, such application may be denied by the district director in whose jurisdiction the application is filed, and in cases returned to a Service Legalization Office for re-interview, such application may be approved at the discretion of the district director. The applicant shall be notified of the decision and, if the application is denied, of the reason therefor. Appeal from an adverse decision under this part may be taken by the applicant on Form I–694 within 30 days after the service of the notice only to the Service's Administrative Appeals Unit pursuant to the provisions of § 103.3(a) of this chapter.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provision of the Act, the following provisions of section 212(a) may not be waived by the Attorney General under paragraph (k)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana;

(iii) Paragraphs (27) (prejudicial to the public interest), (28) (communist), and (29) (subversive);

(iv) Paragraph (33) (participated in Nazi persecution).

(4) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level, may be admissible. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

(5) *Public assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

(l) *Continuous physical presence since November 6, 1986.* (1) An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legalization if they reentered prior to May 1, 1987, and meet the continuous residence requirements and are otherwise eligible for legalization.

(2) A brief, casual and innocent absence means a departure authorized by the Service (advance parole) subsequent to May 1, 1987 of not more than thirty (30) days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(m) *Departure.* (1) During the time period from the date that an alien's application establishing prima facie eligibility for temporary resident status is reviewed at a Service Legalization Office and the date status as a temporary resident is granted, the alien applicant can only be readmitted to the United States provided his or her departure was authorized under the Service's advance parole provisions contained in § 212.5(f) of this chapter.

(2) An alien whose application for temporary resident status has been approved may be admitted to the United States upon return as a returning temporary resident provided he or she:

(i) Is not under deportation proceedings, such proceedings having been instituted subsequent to the approval of temporary resident status. A temporary resident alien will not be considered deported if that alien departs the United States while under an outstanding order of deportation issued prior to the approval of temporary resident status;

(ii) Has not been absent from the United States more than thirty (30) days on the date application for admission is made;

(iii) Has not been absent from the United States for an aggregate period of more than 90 days since the date the alien was granted lawful temporary resident status;

(iv) Presents Form I–688;

(v) Presents himself or herself for inspection; and

(vi) Is otherwise admissible.

(3) The periods of time in paragraph (m)(2)(ii) and (m)(2)(iii) of this section may be waived at the discretion of the Attorney General in cases where the absence from the United States was due merely to a brief temporary trip abroad due to emergent or extenuating circumstances beyond the alien's control.

(n)(1) *Employment and travel authorization; general.* Authorization for employment and travel abroad for temporary resident status applicants under section 245A(a) of the Act may only be granted by a Service Office. INS district directors will determine the Service location for the completion of processing of travel documentation. In the case of an application which has been filed with a designated entity, employment authorization may only be granted by the Service after the application has been properly received at the Service Office.

(2) *Employment authorization prior to the granting of temporary resident status.* (i) Permission to travel abroad and accept employment may be granted to the applicant after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status. Permission to travel abroad may be granted in emergent circumstances in accordance with the Service's advance parole provisions contained in §212.5(f) of this chapter after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status.

(ii) If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments of 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the Employment Authorization Document (Form I–766, Form I–688A or Form I–688B), that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office and, upon surrender of the previously issued Employment Authorization Document, will be issued Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

(4) *Revocation of employment authorization upon denial of temporary resident status.* Upon denial of an application for adjustment to temporary resident status the alien will be notified that if a timely appeal is not submitted, employment authorization shall be automatically revoked on the final day of the appeal period.

(o) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. An appeal from an adverse decision under this part may be taken by the applicant on Form I–694.

(p) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall

be filed with the Regional Processing Facility within thirty (30) days after service of the notice of denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period includes any time required for service or receipt by mail.

(q) *Motions.* The Regional Processing Facility director may *sua sponte* reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within 45 days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(r) *Certifications.* The Regional Processing Facility director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The party affected shall be given notice of such certification and of the right to submit a brief within thirty (30) days from service of the notice.

(s) *Date of adjustment to temporary residence.* The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at Service Legalization Office.

(t) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Justice Department or bureau of agency thereof, will be permitted to examine individual applications, except employees of designated entities where applications are filed with the same designated entity. For purposes of this part, any individual employed under contract by the Service to work in connection with the legalization program shall be considered an ''employee of the Justice Department or bureau or agency thereof.''

(2) Files and records prepared by designated entities under this section are confidential. The Attorney General and the Service shall not have access to these files and records without the consent of the alien.

(3) No information furnished pursuant to an application for legalization under this section shall be used for any purpose except: (i) To make a determination on the application; or, (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (t)(4) of this section.

(4) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(5) Information obtained in a granted legalization application and contained in the applicant's file is subject to subsequent review in reference to future benefits applied for (including petitions for naturalization and permanent resident status for relatives).

(u) *Termination of temporary resident status*—(1) *Termination of temporary resident status; General.* The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time in accordance with section 245A(b)(2) of the Act. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurrence of any of the following:

(i) It is determined that the alien was ineligible for temporary residence under section 245A of this Act;

(ii) The alien commits an act which renders him or her inadmissible as an immigrant, unless a waiver is secured pursuant to § 245a.2(k)(2).

(iii) The alien is convicted of any felony, or three or more misdemeanors;

(iv) The alien fails to file for adjustment of status from temporary resident to permanent resident on Form I–698 within forty-three (43) months of the date he/she was granted status as a temporary resident under § 245a.1 of this part.

(2) *Procedure*—(i) *Termination by the Service.* Except as provided in paragraph (u)(2)(ii) of this section, termination of an alien's temporary resident status under paragraph (u)(1) of this section will be made before instituting deportation proceedings against a temporary resident alien and only on notice sent to the alien by certified mail directed to his or her last known address, and to his or her representative, if any. The alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within thirty (30) days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the regional processing facility shall notify the alien of the decision and the reasons for the termination, and further notify the alien that any Service Form I–94, Arrival-Departure Record or other official Service document issued to the alien authorizing employment and/or travel abroad, or any Form I–688, Temporary Resident Card previously issued to the alien will be declared void by the director of the regional processing facility within thirty (30) days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the regional processing facility within thirty (30) days after the service of the notice of termination. If no appeal is filed within that period, the I–94, I–688 or other official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(ii) *Termination upon entry of final order of deportation or exclusion.* (A) The Service may institute deportation or exclusion proceedings against a temporary resident alien without regard to the procedures set forth in paragraph (u)(2)(i) of this section:

(*1*) If the ground for deportation arises under section 241(a)(2)(A)(iii) of the Act (8 U.S.C. 1251(a)(2)(A)(iii));

(*2*) If the ground for deportation arises after the acquisition of temporary resident status, and the basis of such ground of deportation is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)); or

(*3*) If the ground for exclusion arises after the acquisition of temporary resident status and is not waivable pursuant to section 245A(d)(2)(B)(ii) of the Act (8 U.S.C. 1255a(d)(2)(B)(ii)).

(B) In such cases, the entry of a final order of deportation or exclusion will automatically terminate an alien's temporary resident status acquired under section 245A(a)(1) of the Act.

(3) *Termination not construed as rescission under section 246.* For the purposes of this part the phrase *termination of status* of an alien granted lawful temporary residence under section 245A(a) of the Act shall not be construed to necessitate a rescission of status as described in section 246 of the Act, and the proceedings required by the regulations issued thereunder shall not apply.

(4) *Return to unlawful status after termination.* Termination of the status of any alien previously adjusted to lawful temporary residence under section 245A(a) of the Act shall act to return such alien to the unlawful status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under section 236 or 242 of the Act, as appropriate.

(v) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under section 245A of the Act is not entitled to submit a petition pursuant to section 203(a)(2) or to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence.

(w) *Declaration of Intending Citizen.* An alien who has been granted the status of temporary resident under section 245A(a)(1) of this Act may assert a claim of discrimination on the basis of citizenship status under section 274B of the Act only if he or she has previously filed Form I–772 (Declaration of Intending Citizen) after being granted such status. The Declaration of Intending Citizen is not required as a basis for filing a petition for naturalization; nor shall it be regarded as a right to United States citizenship; nor shall it be regarded as evidence of a person's status as a resident.

[52 FR 16208, May 1, 1987, as amended at 52 FR 43845, 43846, Nov. 17, 1987; 53 FR 23382, June 22, 1988; 54 FR 29449, July 12, 1989; 56 FR 31061, July 9, 1991; 58 FR 45236, Aug. 27, 1993; 60 FR 21040, May 1, 1995; 60 FR 21975, May 4, 1995; 61 FR 46536, Sept. 4, 1996; 65 FR 82256, Dec. 28, 2000; 78 FR 18472, Mar. 27, 2013; 85 FR 46927, Aug. 3, 2020]

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* (1) An alien may submit an application for lawful permanent resident status, with fee, immediately subsequent to the granting of lawful temporary resident status. Any application received prior to the alien's becoming eligible for adjustment to permanent resident status will be administratively processed and held by the INS, but will not be considered filed until the beginning of the nineteenth month after the date the alien was granted temporary resident status as defined in § 245a.2(s) of this chapter.

(2) No application shall be denied for failure to timely apply before the end of 43 months from the date of actual approval of the temporary resident application.

(3) The Service Center Director shall sua sponte reopen and reconsider without fee any application which was previously denied for late filing. No additional fee will be required for those applications which are filed during the twelve month extension period but prior to July 9, 1991.

(b) *Eligibility.* Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application. The alien need not be physically present in the United States at the time of application; however, the alien must establish continuous residence in the United States in accordance with the provisions of paragraph (b)(2) of this section and must be physically present in the United States at the time of interview and/or processing for permanent resident status (ADIT processing);

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application, Form I-687 (not the ''roll-back'' date) and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director or the Director of the Regional Processing Facility that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)(A) Can demonstrate that the alien meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

(B) Is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4)(i) of this section must be met by each applicant. However, these requirements shall be waived without formal application for persons who, as of the date of application or the date of eligibility for permanent residence under this part, whichever date is later, are:

(A) Under 16 years of age; or

(B) 65 years of age or older; or

(C) Over 50 years of age who have resided in the United States for at least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in Section 245a.2(d)(3) of this chapter; or

(D) Developmentally disabled as defined at § 245a.1(v) of this chapter. Such persons must submit medical evidence concerning their developmental disability; or

(E) Physically unable to comply. The physical disability must be of a nature which renders the applicant unable to acquire the four language skills of speaking, understanding, reading, and writing English in accordance with the criteria and precedence established in OI 312.1(a)(2)(iii) (Interpretations). Such persons must submit medical evidence concerning their physical disability.

(iii)(A) Literacy and basic citizenship skills may be demonstrated for purposes of complying with paragraph (b)(4)(i)(A) of this section by:

(*1*) Speaking and understanding English during the course of the interview for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary literacy level. The test of an applicant's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject matter covered in the revised (1987) Federal Textbooks on Citizenship or other approved training material. The test questions shall be selected from a list of 100 standardized questions developed by the Service. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowledge and understanding; or

(*2*) By passing a standardized section 312 test (effective retroactively as of November 7, 1988) such test being given in the English language by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS). The scope of the test is based on the 1987 edition of the Federal Textbooks on Citizenship series written at the elementary literacy level. An applicant may evidence passing of the standardized section 312 test by submitting the approved testing organization's standard notice of passing test results at the time of filing Form I–698, subsequent to filing the application but prior to the interview, or at the time of the interview. The test results may be independently verified by INS, if necessary.

(B) An applicant who fails to pass the English literacy and/or the U.S. history and government tests at the time of the interview, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests, submit evidence

of passing an INS approved section 312 standardized examination or submit evidence of fulfillment of any one of the ''satisfactorily pursuing'' alternatives listed at § 245a.1(s) of this chapter. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements. An applicant whose period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

(iv) To satisfy the English language and basic citizenship skills requirements under the ''satisfactorily pursuing'' standard as defined at § 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a ''Certificate of Satisfactory Pursuit'' (Form I–699) issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(s)(1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under § 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under § 245a.1(s)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of ''Satisfactory Pursuit'' may be submitted at the time of filing Form I–698, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A90M number must appear on any such evidence submitted). An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a ''Certificate of Satisfactory Pursuit'' must occur subsequent to May 1, 1987.

(5) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if the course materials for such instruction include textbooks published under the authority of section 346 of the Act, and it is

(i) Sponsored or conducted by: (A) An established public or private institution of learning recognized as such by a qualified state certifying agency; (B) An institution of learning approved to issue Forms I–20 in accordance with § 214.3 of this chapter; (C) A qualified designated entity within the meaning of section 245A(c)(2) of the Act, in goodstanding with the Service; or (D) Is certified by the district director in whose jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally.

(ii) A program seeking certification as a course of study recognized by the Attorney General under paragraph (b)(5)(i)(D) of this section shall file Form I–803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II, with the Director of Outreach for national level programs or with the district director having jurisdiction over the area in which the school or program is located. In the case of local programs, a separate petition must be filed with each district director when a parent organization has schools or programs in more than one INS district. A petition must identify by name and address those schools or programs included in the petition. No fee shall be required to file Form I–803;

(A) The Director of Outreach and the district directors may approve a petition where they have determined that (*1*) a need exists for a course of study in addition to those already certified under § 245a.3(b)(5)(i) (A), (B), or (C); and/or (*2*) of this chapter the petitioner has historically provided educational services in English and U.S. history and government but is not already certified under § 245a.3(b)(5)(i)(A), (B), or (C); and (*3*) of this chapter the petitioner is otherwise qualified to provide such course of study;

(B) Upon approval of the petition the Director of Outreach and district directors shall issue a Certificate of Attorney General Recognition on Form I–804 to the petitioner. If the petition is denied, the petitioner shall be notified in writing of the decision therefor. No appeal shall lie from a denial of Form I–803, except that in such case where the petitions of a local, cross-district program are approved in one district and denied in another within the same State, the petitioner may request review of the denied petition by the appropriate Regional Commissioner. The Regional Commissioner shall then make a determination in this case;

(C) Each district director shall compile and maintain lists of programs approved under paragraph (b)(5)(i)(D) of this section within his or her jurisdiction. The Director of Outreach shall compile and maintain lists of approved national level programs.

(6) *Notice of participation.* All courses of study recognized under §245a.3(b)(5)(i)(A) through (C) of this chapter which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation to the district director in whose jurisdiction the program is conducted. Acceptance of ''Certificates of Satisfactory Pursuit'' (Form I–699) shall be delayed until such time as the course provider submits the Notice of Participation, which notice shall be in the form of a letter typed on the letterhead of the course provider (if available) and include the following:

(i) The name(s) of the school(s)/program(s).

(ii) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(iii) The complete names of persons who are in charge of conducting English and U.S. history and government courses of study.

(iv) A statement that the course of study will issue ''Certificates of Satisfactory Pursuit'' to temporary resident enrollees according to INS regulations.

(v) A list of designated officials of the recognized course of study authorized to sign ''Certificates of Satisfactory Pursuit'', and samples of their original signatures.

(vi) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will not be excessive.

(vii) Evidence of recognition under 8 CFR 245a.3(b)(5)(i)(A), (B), or (C) (e.g., certification from a qualified state certifying agency; evidence of INS approval for attendance by nonimmigrant students, such as the school code number, or the INS identification number from the QDE cooperative agreement).

The course provider shall notify the district director, in writing, of any changes to the information contained in the Notice of Participation subsequent to its submission within ten (10) days of such change.

A Certificate of Attorney General Recognition to Provide Course of Study for Legalization (Phase II), Form I–804, shall be issued to course providers who have submitted a Notice of Participation in accordance with the provisions of this section by the district director. A Notice of Participation deficient in any way shall be returned to the course provider to correct the deficiency. Upon the satisfaction of the district director that the deficiency has been corrected, the course provider shall be issued Form I–804. Each district director shall compile and maintain lists of recognized courses within his or her district.

(7) *Fee structure.* No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in §245a.3(b)(10) and/or (12) of this section. Once fees are established, any change in fee without prior approval of the district director or the Director of Outreach may justify de-certification. In determining whether or not a fee is excessive, district directors and the Director of Outreach shall consider such factors as the means of instruction, class size, prevailing wages of instructors in the area of the program, and additional costs such as rent, materials, utilities, insurance, and taxes. District directors and the Director of Outreach may also seek the assistance of various Federal, State and local entities as the need arises (e.g., State Departments of

Education) to determine the appropriateness of course fees.

(8) The Citizenship textbooks to be used by applicants for lawful permanent residence under section 245A of the Act shall be distributed by the Service to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are also available at certain public institutions.

(9) *Maintenance of Student Records.* Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student, for a period of three years from the student's enrollment, the following information and documents:

(i) Name (as copied exactly from the I–688A or I–688);

(ii) A-number (90 million series);

(iii) Date of enrollment;

(iv) Attendance records;

(v) Assessment records;

(vi) Photocopy of signed ''Certificate of Satisfactory Pursuit'' issued to the student.

(10) *Issuance of ''Certificate of Satisfactory Pursuit'' (I–699).* (i) Each recognized course of study shall prepare a standardized certificate that is signed by the designated official. The Certificate shall be issued to an applicant who has attended a recognized course of study for at least 40 hours of a minimum of 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English and U.S. history and government course prescribed. Such standards shall conform with the provisions of § 245a.1(s) of this chapter.

(ii) The district director shall reject a certificate if it is determined that the certificate is fraudulent or was fraudulently issued.

(iii) The district director shall reject a Certificate if it is determined that the course provider is not complying with INS regulations. In the case of non-compliance, the district director will advise the course provider in writing of the specific deficiencies and give the provider thirty (30) days within which to correct such deficiencies.

(iv) District directors will accept Certificates from course providers once it is determined that the deficiencies have been satisfactorily corrected.

(v) Course providers which engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs. INS will not accept Certificates from these providers.

(vi) Certificates may be accepted if a program is cited for deficiencies or decertified at a later date and no fraud was involved.

(vii) Certificates shall not be accepted from a course provider that has been decertified unless the alien enrolled in and had been issued a certificate prior to the decertification, provided that no fraud was involved.

(viii) The appropriate State agency responsible for SLIAG funding shall be notified of all decertifications by the district director.

(11) *Designated official.* (i) The designated official is the authorized person from each recognized course of study whose signature appears on all ''Certificates of Satisfactory Pursuit'' issued by that course;

(ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students;

(iii)(A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must specify a *designated official.* Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time;

(B) Each designated official shall have read and otherwise be familiar with the ''Requirements and Guidelines for Courses of Study Recognized by the Attorney General''. The signature of a designated official shall affirm the official's compliance with INS regulations;

(C) The name, title, and sample signature of each designated official for

each recognized course of study shall be on file with the district director in whose jurisdiction the program is conducted.

(12) *Monitoring by INS.* (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of §245a.3(b)(5).

(B) Verify the existence of curriculum as defined in §245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that ''Certificates of Satisfactory Pursuit'' are being issued in accordance with §245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with §245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in compliance in accordance with §245a.3(b)(7).

(ii) If INS has reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provider is not performing according to the standards established in either §245a.3(b)(10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified. The appropriate State agency shall be notified in accordance with §245a.3(b)(10)(viii) of this chapter. A copy of the notice of decertification shall be sent to the State agency.

(13) Courses of study recognized by the Attorney General as defined at §245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where selection of qualified staff is limited, or where budget constraints restrict options, the following list of qualities for teacher selection is provided as guidance. Teacher selections should include as many of the following qualities as possible:

(i) Specific training in Teaching English to Speakers of Other Languages (TESOL);

(ii) Experience as a classroom teacher with adults;

(iii) Cultural sensitivity and openness;

(iv) Familiarity with competency-based education;

(v) Knowledge of curriculum and materials adaptation;

(vi) Knowledge of a second language.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors in the United States.

(2) An alien who is inadmissible to the United States as an immigrant, except as provided in §245a.3(g)(1).

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act by the end of 43 months from the date of actual approval of the temporary resident application.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(5) An alien whose temporary resident status has been terminated under §245a.2(u) of this chapter

(d) *Filing the application.* The provisions of part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I–698. Form I–698 must be accompanied by the correct fee and documents specified in the instructions. The application will be mailed to the director having jurisdiction over the applicant's place of residence.

(2) *Certification of documents.* The submission of original documents is not required at the time of filing Form I–698. A copy of a document submitted in support of Form I–698 filed pursuant to section 245A(b) of the Act and this part

may be accepted, though unaccompanied by the original, if the copy is certified as true and complete by

(i) An attorney in the format prescribed in § 204.2(j)(1) of this chapter; or

(ii) An alien's representative in the format prescribed in § 204.2(j)(2) of this chapter; or

(iii) A qualified designated entity (QDE) in good standing as defined in § 245a.1(r) of this chapter, if the copy bears a certification by the QDE in good-standing, typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: _____
Date: _____
Name: _____
QDE in good-standing representative
Name of QDE in good-standing: _____
Address of QDE in good-standing: _____
INS-QDE Cooperative Agreement Number: __

(iv) *Authentication.* Certification of documents must be authenticated by an original signature. A facsimile signature on a rubber stamp will not be acceptable.

(v) *Original documents.* Original documents must be presented when requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and complete by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

(4) Applicants who filed for temporary resident status prior to December 1, 1987, are required to submit the results of a serologic test for HIV virus on Form I–693, ''Medical Examination of Aliens Seeking Adjustment of Status'', completed by a designated civil surgeon, unless the serologic test for HIV was performed and the results were submitted on Form I–693 when the applicant filed for temporary resident status. Applicants who did submit an I–693 reflecting a serologic test for HIV was performed prior to December 1, 1987, must submit evidence of this fact when filing the I–698 application in order to be relieved from the requirement of submitting another I–693. If such evidence is not available, applicants may note on their I–698 application their prior submission of the results of the serologic test for HIV. This information shall then be verified at the Regional Processing Facility. Applicants having to submit an I–693 pursuant to this section are not required to have a complete medical examination. All HIV-positive applicants shall be advised that a waiver of the ground of excludability under section 212(a)(6) of the Act is available and shall be provided the opportunity to apply for the waiver. To be eligible for the waiver, the applicant must establish that:

(i) The danger to the public health of the United States created by the alien's admission to the United States is minimal,

(ii) The possibility of the spread of the infection created by the alien's admission to the United States is minimal, and

(iii) There will be no cost incurred by any government agency without prior consent of that agency. Provided these criteria are met, the waiver may be granted only for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest in accordance with § 245a.3(g)(2) of this chapter.

(5) If necessary, the validity of an alien's temporary resident card (I–688) will be extended in increments of one (1) year until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application lacking the proper fee or incomplete in any way shall be returned to the applicant with request for the proper fee, correction, additional information, and/or documentation. Once an application has been accepted by the Service and additional information and/or documentation is required, the applicant shall be sent a

notice to submit such information and/or documentation. In such case the application Form I–698 shall be retained at the RPF. If a response to this request is not received within 60 days, a second request for correction, additional information, and/or documentation shall be made. If the second request is not complied with by the end of 43 months from the date the application for temporary residence, Form I–687, was approved the application for permanent residence will be adjudicated on the basis of the existing record.

(e) *Interview.* Each applicant regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I–551. Each applicant shall be interviewed by an immigration officer, except that the adjudicative interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 43 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record.

(f) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful permanent resident status under section 245A(b) of the Act.

(g) *Applicability of exclusion grounds*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (g)(3) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under section 245A(b)(1) of the Act. In the event that the alien was excludable under any provision of section 212(a) of the Act at the time of temporary residency and failed to apply for a waiver in connection with the application for temporary resident status, or becomes excludable subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), and (29) (subversives);

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Determination of Likely to become a public charge* and Special Rule. Prior to use of the special rule for determination of public charge, paragraph (g)(4)(iii) of this section, an alien must first be determined to be excludable under section 212(a)(15) of the Act. If the applicant is determined to be *likely to become a public charge,* he or she may still be admissible under the terms of the Special Rule.

(i) In determining whether an alien is *likely to become a public charge* financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income, and vocation.

(ii) The Special Rule for determination of public charge, paragraph (g)(4)(iii) of this section, is to be applied only after an initial determination that the alien is inadmissible under the provisions of section 212(a)(15) of the act.

(iii) *Special Rule.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (g)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

(h) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exceed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(i) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. Applications for permanent residence under this chapter will not be denied at local INS offices (districts, suboffices, and legalization offices) until the entire record of proceeding has been reviewed. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. If inconsistencies are found between information submitted with the adjustment application and information previously furnished to the Service, the applicant shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I–694. If an application is denied, work authorization will be granted until a final decision has been rendered on an appeal or until the end of the appeal period if no appeal is filed. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding. An alien whose application is denied will not be required to surrender his or her

temporary resident card (I–688) until such time as the appeal period has tolled, or until expiration date of the I–688, whichever date is later. After exhaustion of an appeal, an applicant who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted within his or her eligibility period.

(j) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) the appellate authority designated in §103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility with the required fee within thirty (30) days after service of the Notice of Denial in accordance with the procedures of §103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility. Briefs filed after submission of the appeal should be mailed directly to the Regional Processing Facility. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(k) *Motions.* The Regional Processing Facility director may reopen and reconsider any adverse decision *sua sponte.* When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(l) *Certifications.* The Regional Processing Facility director or district director may, in accordance with §103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded back to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(m) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of filing of the application for permanent residence or the eligibility date, whichever is later. For purposes of making application to petition for naturalization, the continuous residence requirements for naturalization shall begin as of the date the alien's status is adjusted to that of a person lawfully admitted for permanent residence under this part.

(n) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the Legalization Program shall be considered an *employee of the Department of Justice or bureau or agency thereof.*

(2) No information furnished pursuant to an application for permanent resident status under this section shall be used for any purpose except: (i) To make a determination on the application; or (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (n)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her

application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information contained in granted legalization files may be used by the Service at a later date to make a decision (i) On an immigrant visa petition or other status filed by the applicant under section 204(a) of the Act; (ii) On a naturalization application submitted by the applicant; (iii) For the preparation of reports to Congress under section 404 of IRCA, or; (iv) For the furnishing of information, at the discretion of the Attorney General, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, Unites States Code.

(o) *Rescission.* Rescission of adjustment of status under 245a shall occur under the guidelines established in section 246 of the Act.

[54 FR 29449, July 12, 1989; 54 FR 43384, Oct. 24, 1989, as amended at 56 FR 31061, July 9, 1991; 57 FR 3926, Feb. 3, 1992; 59 FR 33905, July 1, 1994; 85 FR 46927, Aug. 3, 2020]

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

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

(1) *Act* means the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986.

(2) *Service* means the Immigration and Naturalization Service (INS).

(3) *Resided continuously* means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

(i) No single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between July 21, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application. An alien who, after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States pursuant to the stateside criteria program, shall be considered as having *resided continuously*.

(4) *Continuous residence* means that the alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded 30 days, and the aggregate of all absences has not exceeded 90 days between the date on which lawful temporary resident status was granted and the date permanent resident status was applied for, unless the alien can establish that due to emergent reasons or extenuating circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent resident status, shall break the continuity of such residence unless the temporary resident can establish to the satisfaction of the district director that he or she did not, in fact, abandon his or her residence in the United States during such period.

(5) *To make a determination* means obtaining and reviewing all information required to adjudicate an application

for the benefit sought and making a decision thereon. If fraud, willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document, knowingly making a false statement or representation, or any other activity prohibited by the Act is established during the process of making the determination on the application, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(6) *Continuous physical presence* means actual continuous presence in the United States since December 22, 1987, until filing of any application for adjustment of status. Aliens who were outside of the United States after enactment may apply for temporary residence if they reentered prior to March 21, 1988, provided they meet the continuous residence requirements, and are otherwise eligible for legalization.

(7) *Brief, casual, and innocent* means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, for not more than 30 days for legitimate emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(8) *Brief and casual* means temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must not exceed the specific periods of time required in order to maintain continuous residence.

(9) *Certain nationals of countries for which extended voluntary departure has been made available on the basis of a nationality group determination at any time during the 5-year period ending on November 1, 1987* is limited to nationals of Poland, Afghanistan, Ethiopia, and Uganda.

(10) *Public cash assistance* means income or need-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(11) *Designated entity* means any state, local, church, community, farm labor organization, voluntary organization, association of agricultural employers or individual determined by the Service to be qualified to assist aliens in the preparation of applications for legalization status.

(12) *Through the passage of time* means through the expiration date of the nonimmigrant permission to remain in the United States, including any extensions and/or change of status.

(13) *Prima facie eligibility* means eligibility is established if the applicant presents a completed I–687 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this part.

(b) *Application for temporary residence*—(1) *Application for temporary residence.* (i) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan who has resided continuously in the United States since prior to July 21, 1984, and who believes that he or she meets the eligibility requirements of section 245A of the Act must make application within the 21-month period beginning on March 21, 1988, and ending on December 22, 1989.

(ii) An alien who fails to file an application for adjustment of status to that of a temporary resident under § 245A.4 of this part during the time period, will be statutorily ineligible for such adjustment of status.

(2) *Eligibility* (i) The following categories of aliens who are not otherwise excludable under section 212(a) of the Act are eligible to apply for status to that of a person admitted for temporary residence:

(A) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, (other than an alien who entered as a nonimmigrant) who establishes that he or she entered the United States prior to July 21, 1984, and who

has thereafter resided continuously in the United States, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(B) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and whose period of authorized admission expired through the passage of time prior to January 21, 1985, and who has thereafter resided continuously in the United States, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(C) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and establishes that he or she entered the United States as a nonimmigrant prior to July 21, 1984, and who applied for asylum prior to July 21, 1984, and who has thereafter resided continuously in the United States, and who has been physically present in the United States from December 22, 1987, until the date of filing the application.

(D) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, who would otherwise be eligible for temporary resident status and who establishes that he or she resided continuously in the United States prior to July 21, 1984, and who subsequently reentered the United States as a nonimmigrant in order to return to an unrelinquished residence. An alien described in this paragraph must have received a waiver of 212(a)(19) as an alien who entered the United States by fraud.

(E) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and was a nonimmigrant who entered the United States in the classification A, A–1, A–2, G, G–1, G–2, G–3, or G–4, for Duration of Status (D/S), and whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 21, 1985, and who thereafter continued to reside in the United States.

(F) An alien who is a national of Poland, Uganda, Ethiopia, or Afghanistan, and who was a nonimmigrant who entered the United States as an F, F–1, or F–2 for Duration of Status (D/S), and who completed a full course of studies, including practical training (if any), and whose time period to depart the United States after completion of studies expired prior to January 21, 1985, and who has thereafter continued to reside in the United States. Those students placed in a *nunc pro tunc* retroactive student status which would otherwise preclude their eligibility for legalization under this section, must present evidence that they had otherwise terminated their status during the requisite time period. A dependent F–2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Service Form I–94 (see §1.4), Arrival-Departure Record that extended beyond July 21, 1984 is considered eligible if the principal F–1 alien is found eligible.

(3) *Ineligible aliens.* (i) An alien who has been convicted of a felony, or three or more misdemeanors.

(ii) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

(iii) An alien excludable under the provisions of section 212(a) of the Act whose grounds of excludability may not be waived.

(4) *Documentation.* Evidence to support an alien's eligibility for temporary residence status shall include documents establishing proof of identity, proof of nationality, proof of residence, and proof of financial responsibility, as well as photographs, a completed fingerprint card (Form FD–258), and a completed medical report of examination (Form I–693). All documentation submitted will be subject to Service verification. Applications submitted with unverifiable documentation may be denied. Failure by an applicant to authorize release to INS of information protected by the Privacy Act and/or related laws in order for INS to adjudicate a claim may result in denial of the benefit sought. Acceptable supporting documents for the four categories of documentation are discussed as follows:

(i) *Proof of identity.* Evidence to establish identity is listed below in descending order of preference:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(D) Driver's license or similar document issued by a state if it contains a photo;

(E) Baptismal Record/Marriage Certificate; or

(F) Affidavits.

(ii) *Proof of nationality.* Evidence to establish nationality is listed as follows:

(A) Passport;

(B) Birth certificate;

(C) Any national identity document from the alien's country of origin bearing photo and fingerprint;

(D) Other credible documents, including those created by, or in the possession of the INS, or any other documents (excluding affidavits) that, when taken singly, or together as a whole, establish the alien's nationality.

(iii) *Assumed names*—(A) *General.* In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name. The applicant's true identity is established pursuant to the requirements of paragraph (b)(4)(i) and (ii) of this section. The assumed name must appear in the documentation provided by the applicant to establish eligibility. To meet the requirement of this paragraph, documentation must be submitted to prove the common identity, *i.e.*, that the assumed name was in fact used by the applicant.

(B) *Proof of common identity.* The most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint, or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the applicant, made under oath, which identify the affiant by name and address, state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight.

(iv) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any combination of the following:

(A) Past employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal income tax returns on IRS Form 6166, a state verification of the filing of state income tax returns, letters from employer(s) or, if the applicant has been in business for himself or herself, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organizations must appear on the form or letter, as well as relevant dates. Letters from employers should be on employer letterhead stationery, if the employer has such stationery, and must include:

(*1*) Alien's address at the time of employment;

(*2*) Exact period of employment;

(*3*) Periods of layoff;

(*4*) Duties with the company;

(*5*) Whether or not the information was taken from official company records; and

(*6*) Where records are located, whether the Service may have access to the records.

If the records are unavailable, an affidavit form letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of paragraphs (b)(4)(iv)(A)(*5*) and (*6*) of this section. This affidavit form letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

(B) Utility bills (gas, electric, phone, etc.) receipts, or letters from companies showing the dates during which the applicant received service are acceptable documentation.

(C) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States must

show the name of school and periods of school attendance.

(D) Hospital or medical records showing treatment or hospitalization of the applicant or his or her children must show the name of the medical facility or physician and the date(s) of the treatment or hospitalization.

(E) Attestations by churches, unions, or other organizations as to the applicant's residence by letter which:

(*1*) Identify applicant by name;

(*2*) Are signed by an official (whose title is shown);

(*3*) Show inclusive dates of membership;

(*4*) State the address where applicant resided during membership period;

(*5*) Include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;

(*6*) Establish how the author knows the applicant; and

(*7*) Establish the origin of the information being attested to.

(F) Additional documents to support the applicant's claim may include:

(*1*) Money order receipts for money sent into or out of the country;

(*2*) Passport entries;

(*3*) Birth certificates of children born in the United States;

(*4*) Bank books with dated transactions;

(*5*) Letters or correspondence between applicant and other person or organization;

(*6*) Social Security card;

(*7*) Selective Service card;

(*8*) Automobile license receipts, title, vehicle registration, etc.;

(*9*) Deeds, mortgages, contracts to which applicant has been a party;

(*10*) Tax receipts;

(*11*) Insurance policies, receipts, or letters; and

(*12*) Any other relevant document.

(v) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the Special Rule under paragraph (b)(11)(iv)(C) of this section will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(A) Evidence of a history of employment (*i.e.*, employment letter, W-2 forms, income tax returns, etc.);

(B) Evidence that he/she is self-supporting (*i.e.*, bank statements, stocks, other assets, etc.); or

(C) Form I–134. Affidavit of Support, completed by a spouse on behalf of the applicant and/or children of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the Affidavit of Support shall be extended to other family members in unusual family circumstances.

Generally, the evidence of employment submitted under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is likely to become a public charge will be denied adjustment.

(vi) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of

status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification.

(vii) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(5) *Filing of application.* (i) The application must be filed on Form I–687 at an office of a designated entity or at a Service office within the jurisdiction of the district where the applicant resides. If the application is filed with a designated entity, the alien must have consented to having the designated entity forward the application to the Service office. In the case of applications filed at a Service office, the district director may, at his or her discretion:

(A) Require the applicant to file the application in person; or

(B) Require the applicant to file the application by mail; or

(C) Permit the filing of applications whether by mail or in person.

The applicant must appear for a personal interview at the Service office as scheduled. If the applicant is 14 years of age or older, the application must be accompanied by a completed Form FD–258 (Applicant Card).

(ii) At the time of the interview, whenever possible, original documents must be submitted except the following: Official government records; employment or employment-related records maintained by employers, union, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of the original document is desired by the applicant, the document must be accompanied by notarized copies or copies certified true and correct by a qualified designated entity or by the alien's representative in the format prescribed in §204.2(j)(1) or (2) of this chapter. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Document Analysis Unit at the Regional Processing Facility having jurisdiction over the Service office to which the documents were submitted.

(iii) A separate application must be filed by each applicant with the fees required by 8 CFR 106.2.

(6) *Filing date of application.* The date the alien submits a completed application to a Service office or designated entity shall be considered the filing date of the application, provided that in the case of an application filed at a designated entity the alien has consented to having the designated entity forward the application to the Service office having jurisdiction over the location of the alien's residence. Designated entities are required to forward completed applications to the appropriate Service office within 60 days of receipt.

(7) *Selective Service registration.* At the time of filing an application under this section, male applicants over the age of 17 and under the age of 26, are required to be registered under the Military Selective Service Act. An applicant shall present evidence that he has previously registered under that Act in the form of a letter of acknowledgement from the Selective Service System, or such alien shall present a completed and signed Form SSS–1 at the time of filing Form I–687 with the Immigration and Naturalization Service or a designated entity. Form SSS–1 will be forwarded to the Selective Service System by the Service.

(8) *Continuous residence.* (i) For the purpose of this Act, an applicant for temporary residence status shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

(A) No single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between July 21, 1984, through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(B) The alien was maintaining a residence in the United States; and

(C) The alien's departure from the United States was not based on an order of deportation.

(ii) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application under this section.

(9) *Medical examination.* (i) An applicant under this part shall be required to submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon shall report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status on Form I–693, ''Medical Examination of Aliens Seeking Adjustment of Status, (Pub. L. 99–603)''. Results of the medical examination must be presented to the Service at the time of interview and shall be incorporated into the record. Any applicant certified under paragraphs (1), (2), (3), (4) or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and part 235 of this chapter.

(ii) All applicants who file for temporary resident status are required to include the results of a serological test for the HIV virus on the I–693. All HIV-positive applicants shall be advised that a waiver is available and shall be provided with the opportunity to apply for a waiver.

(10) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of an employment authorization document and Form I–688. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14 years of age, or when it is impractical because of the health or advanced age of the applicant.

(11) *Applicability of exclusion grounds*—(i) *Grounds of exclusion not to be applied.* Paragraphs (14), (workers entering without labor certification); (20), (immigrants not in possession of a valid entry document); (21), (visas issued without compliance with section 203); (25), (illiterates); and (32) (graduates of non-accredited medical schools) of section 212(a) of the Act shall not apply to applicants for temporary resident status.

(ii) *Waiver of grounds of exclusion.* Except as provided in paragraph (b)(11)(iii) of this section, the Attorney General may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I–690. When an application for waiver of grounds of excludability is filed jointly with an application for temporary residence under this section, it shall be accepted for processing at the Service office. If an application for waiver of grounds of excludability is submitted after the alien's preliminary interview at the Service office, it shall be forwarded to the appropriate Regional Processing Facility. All applications for waivers of grounds of excludability must be accompanied by the correct fee in the exact amount. All fees for applications filed in the United States must be in the form of a money order, cashier's check, or bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances. An application for waiver of grounds of excludability under this part shall be approved or denied by the director of the Regional Processing Facility in whose jurisdiction the alien's application for adjustment of status was filed except that in cases involving clear statutory

ineligibility or fraud, such application may be denied by the district director in whose jurisdiction the application is filed, and in cases returned to a Service office for re-interview, such application may be approved at the discretion of the district director. The applicant shall be notified of the decision and, if the application is denied, of the reason therefore. Appeal from an adverse decision under this part may be taken by the applicant on Form I–694 within 30 days after the service of the notice only to the Service's Administrative Appeals Unit pursuant to the provisions of section 103.3(a) of this chapter.

(iii) *Grounds of exclusion that may not be waived.* Notwithstanding any other provision of the Act, the following provisions of section 212(a) may not be waived by the Attorney General under paragraph (b)(11)(ii) of this section:

(A) Paragraphs (9) and (10) (criminals);

(B) Paragraph (23) (narcotics) except for a single offense of simple possession of thirty grams or less of marijuana;

(C) Paragraphs (27) (prejudicial to the public interest), (28) (communist), and (29) (subversive);

(D) Paragraph (33) (participated in Nazi persecution).

(iv) *Determination of Likely to become a public charge* and the special rule. (A) Prior to use of the special rule for determination of public charge, an alien must first be determined to be excludable under section 212(a)(15) of the Act. If the applicant is determined to be *likely to become a public charge*, he or she may still be admissible under the terms of the Special Rule.

(B) In determining whether an alien is *likely to become a public charge*, financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criterion for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income and vocation.

(C) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level may be admissible under this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(v) *Public assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application.

(12) *Continuous physical presence since December 22, 1987.* (i) An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since December 22, 1987. Aliens who were outside of the United States on the date of enactment or departed the United States after enactment may apply for legalization if they reentered prior to March 21, 1988, and meet the continuous residence requirements and are otherwise eligible for legalization.

(ii) A brief, casual and innocent absence means a departure authorized by the Service (advance parole) subsequent to March 21, 1988, of not more than thirty (30) days for legitimate

emergency or humanitarian purposes unless a further period of authorized departure has been granted in the discretion of the district director or a departure was beyond the alien's control.

(13) *Departure.* (i) During the time period from the date that an alien's application establishing prima facie eligibility for temporary resident status is reviewed at a Service office and the date status as a temporary resident is granted, the alien applicant can be readmitted to the United States provided his or her departure was authorized under the Service's advance parole provisions contained in §212.5(f) of this chapter.

(ii) An alien whose application for temporary resident status has been approved may be admitted to the United States upon return as a returning temporary resident provided he or she:

(A) Is not under deportation proceedings, such proceedings having been instituted subsequent to the approval of temporary resident status. A temporary resident alien will not be considered deported if that alien departs the United States while under an outstanding order of deportation issued prior to the approval of temporary resident status;

(B) Has not been absent from the United States for more than 30 days on the date application for admission is made;

(C) Has not been absent from the United States for an aggregate period of more than 90 days since the date the alien was granted lawful temporary resident status;

(D) Presents Form I–688;

(E) Presents himself or herself for inspection; and

(F) Is otherwise admissible.

(iii) The periods of time in paragraphs (b)(13)(ii)(B) and (C) of this section may be waived at the discretion of the Attorney General in cases where the absence from the United States was due merely to a brief and casual trip abroad due to emergent or extenuating circumstances beyond the alien's control.

(14) *Employment and travel authorization*—(i) *General.* Authorization for employment and travel abroad for temporary resident status applicants under this section may be granted only by a Service office. INS district directors will determine the Service location for the completion of processing travel documentation. In the case of an application which has been filed with a designated entity, employment authorization may be granted by the Service only after the application has been properly received at the Service office.

(ii) *Employment and travel authorization prior to the granting of temporary resident status.* (A) Permission to travel abroad and accept employment may be granted to the applicant after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status. Permission to travel abroad may be granted in emergent circumstances in accordance with the Service's advance parole provisions contained in §212.5(f) of this chapter after an interview has been conducted in connection with an application establishing prima facie eligibility for temporary resident status.

(B) If an appointment cannot be scheduled within 30 days, authorization to accept employment will be granted, valid until the scheduled appointment date. The appointment letter will be endorsed with the temporary employment authorization. An employment authorization document will be given to the applicant after an interview has been completed by an immigration officer unless a formal denial is issued by a Service office. This temporary employment authorization will be restricted to six-months duration, pending final determination on the application for temporary resident status.

(iii) *Employment and travel authorization upon grant of temporary resident status.* Upon grant of an application for adjustment to temporary resident status by a Regional Processing Facility, the processing facility will forward a notice of approval to the alien at his or her last known address, or to his or her legal representative. The alien will be required to return to the appropriate INS office, surrender the I–688A or employment authorization document previously issued, and obtain Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

(iv) *Revocation of employment authorization upon denial of temporary resident*

status. Upon denial of an application for adjustment to temporary resident status, the alien will be notified that if a timely appeal is not submitted, employment authorization shall be automatically revoked on the final day of the appeal period. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding.

(15) *Decision*. The applicant shall be notified in writing of the decision. If the application is denied, the reason(s) for the decision shall be provided to the applicant. An appeal from an adverse decision under this part may be taken by the applicant on Form I–694.

(16) *Appeal process*. An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit), the appellate authority designated in §103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility (RPF) with the required fee within 30 days after service of the Notice of Denial in accordance with the procedures of §103.3(a) of this chapter. An appeal received after the 30-day period will not be accepted. The 30-day period for submission of an appeal begins three days after the Notice of Denial is mailed as provided in 8 CFR 103.8(b). If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional 30 days will be allowed for this review beginning at the time the ROP is mailed. A brief may be submitted with the appeal form or submitted up to 30 calendar days from the date of receipt of the appeal form at the RPF. Briefs filed after submission of the appeal should be mailed directly to the RPF. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(17) *Motions*. The Regional Processing Facility director may *sua sponte* reopen and reconsider any adverse decision. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision granting the benefit which has been requested. The director's new decision must be served on the appealing party within 45 days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs. Motions to reopen a proceeding or reconsider a decision shall not be considered under this part.

(18) *Certifications*. The Regional Processing Facility director may, in accordance with §103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded to the Regional Processing Facility director will be certified to the Administrative Appeals Unit.

(19) *Date of adjustment to temporary residence*. The status of an alien whose application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Service office.

(20) *Termination of temporary resident status*—(i) *Termination of temporary resident status (General)*. The status of an alien lawfully admitted for temporary residence under §245a.4 of this part may be terminated at any time. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurrence of any of the following:

(A) It is determined that the alien was ineligible for temporary residence under §245a.4 of this part;

(B) The alien commits an act which renders him or her inadmissible as an immigrant unless a waiver is obtained, as provided in this part;

(C) The alien is convicted of any felony, or three or more misdemeanors;

(D) The alien fails to file for adjustment of status from temporary resident to permanent resident within 31 months of the date he or she was granted status as a temporary resident.

(ii) *Procedure*. Termination of an alien's status will be made only on notice to the alien sent by certified mail

directed to his or her last known address, and, if applicable, to his or her representative. The alien must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within 30 days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the Regional Processing Facility shall notify the alien of the decision and the reason for the termination, and further notify the alien that any Service Form issued to the alien authorizing employment and/or travel abroad, or any Form I–688, Temporary Resident Card previously issued to the alien will be declared void by the director of the Regional Processing Facility within 30 days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal along with the required fee, shall be filed with the Regional Processing Facility within 30 days after the service of the notice of termination. If no appeal is filed within that period, the official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(iii) *Termination not construed as rescission under section 246.* For the purposes of this part the phrase *termination of status* of an alien granted lawful temporary residence under this section shall not be construed to necessitate a rescission of status as described in section 246 of the Act, and the proceedings required by the regulations issued thereunder shall not apply.

(iv) *Return to unlawful status after termination.* Termination of the status of any alien previously adjusted to lawful temporary residence shall act to return such alien to the status held prior to the adjustment, and render him or her amenable to exclusion or deportation proceedings under sections 236 or 242 of the Act, as appropriate.

(21) *Ineligibility for immigration benefits.* An alien whose status is adjusted to that of a lawful temporary resident under § 245a.4 of this part is not entitled to submit a petition pursuant to section 203(a)(2), nor is such alien entitled to any other benefit or consideration accorded under the Act to aliens lawfully admitted for permanent residence.

(22) *Declaration of intending citizen.* An alien who has been granted the status of temporary resident under § 245a.4 of this part may assert a claim of discrimination on the basis of citizenship status under section 274B of the Act only if he or she has previously filed Form I–772 (Declaration of Intending Citizen) after being granted such status. The Declaration of Intending Citizen is not required as a basis for filing a petition for naturalization; nor shall it be regarded as a right to United States citizenship; nor shall it be regarded as evidence of a person's status as a resident.

(23) *Limitation on access to information and confidentiality.* (i) No person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the Legalization Program shall be considered an *employee of the Department of Justice or bureau or agency thereof.*

(ii) No information furnished pursuant to an application for temporary or permanent resident status under this section shall be used for any purpose except:

(A) To make a determination on the application; or,

(B) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (b)(23)(iii) of this section.

(iii) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution

of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(iv) Information contained in granted legalization files may be used by the Service at a later date to make a decision on an immigrant visa petition (or other status petition) filed by the applicant under section 204(a), or for naturalization applications submitted by the applicant.

(c) *Adjustment from temporary to permanent resident status.* The provisions of § 245a.3 of this part shall be applied to aliens adjusting to permanent residence under this part.

[54 FR 6505, Feb. 13, 1989, as amended at 54 FR 29455, July 12, 1989; 54 FR 47676, Nov. 16, 1989; 60 FR 21976, May 4, 1995; 65 FR 82256, Dec. 28, 2000; 76 FR 53794, Aug. 29, 2011; 78 FR 18472, Mar. 27, 2013; 85 FR 46927, Aug. 3, 2020]

§ 245a.5 Temporary disqualification of certain newly legalized aliens from receiving benefits from programs of financial assistance furnished under federal law.

(a) Except as provided in § 245a.5(b), any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 245A of the Act (Adjustment of Status of Certain Entrants Before January 1, 1982, to that of Person Admitted for Lawful Residence) or 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) is ineligible, for a period of five years from the date such status was obtained, for benefits financed directly or indirectly, in whole or in part, through the programs identified in § 245a.5(c) of this chapter.

(b)(1) Section 245a.5(a) shall not apply to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422, as in effect on April 1, 1983), or in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(2) With respect to any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 210A of the Act only, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996, *et seq.*) or title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) shall not be construed to be financial assistance referred to in § 245a.5(a).

(3) Section 245a.5(a) shall not apply to benefits financed through the programs identified in § 245a.5(c), which are marked with an asterisk (*), except to the extent that such benefits:

(i) Consist of, or are financed by, financial assistance in the form of grants, wages, loan, loan guarantees, or otherwise, which is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers, and

(ii) Are targeted to individuals in financial need; either (A) in order to be eligible, individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (B) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

(c) The programs of Federal financial assistance referred to in § 245a.5(a) are those identified in the list set forth below. The General Services Administration (GSA) Program Numbers set forth in the right column of the program list refer to the program identification numbers used in the Catalog of Federal Domestic Assistance, published by the United States General Services Administration, as updated through December, 1986.

	GSA Program Numbers
Department of Agriculture:	
Farm Operating Loans	10.406
Farm Ownership Loans	10.407

	GSA Program Numbers
Department of Health and Human Services:	
Assistance Payments—Maintenance Assistance (Maintenance Assistance; Emergency Assistance; State Aid; Aid to Families with Dependent Children)	13.780
Low-Income Home Energy Assistance	13.789
*Community Services Block Grant	13.792
*Community Services Block Grant—Discretionary Awards	13.793
Department of Housing and Urban Development:	
Mortgage Insurance—Housing in Older, Declining Areas (223(e))	14.123
Mortgage Insurance—Special Credit Risks (237)	14.140
*Community Development Block Grants/Entitlement Grants	14.218
*Community Development Block Grants/Small Cities Program (Small Cities)	14.219
Section 312 Rehabilitation Loans (312)	14.220
*Urban development action grants	14.221
*Community Development Block Grants/State's Program	14.228
Section 221(d)(3) Mortgage Insurance for Multifamily Rental Housing for Low and Moderate Income Families (Below Market Interest Rate)	14.136
Department of Labor:	
Senior Community Service Employment Program (SCSEP)	17.235
Office of Personnel Management:	
Federal Employment for Disadvantaged Youth—Part-Time (Stay-in-School Program)	27.003
Federal Employment for Disadvantaged Youth—Summer (Summer Aides)	27.004
Small Business Administration:	
Small Business Loans (7(a) Loans)	59.012
Department of Energy:	
Weatherization Assistance for Low-Income Persons	81.042
Department of Education:	
Patricia Roberts Harris Fellowships (Graduate and Professional Study; Graduate and Professional Study Opportunity Fellowships; Public Service Education Fellowships)	84.094
Legal Training for the Disadvantaged (The American Bar Association Fund for Public Education)	84.136
Allen J. Ellender Fellowship Program (Ellender Fellowship)	84.148
Legal Services Corporation:	
Payments to Legal Services Corporation	.....

[54 FR 29437, July 12, 1989, as amended at 54 FR 49964, Dec. 4, 1989]

§ 245a.6 Treatment of denied application under part 245a, Subpart B.

If the district director finds that an eligible alien as defined at § 245a.10 has not established eligibility under section 1104 of the LIFE Act (part 245a, Subpart B), the district director shall consider whether the eligible alien has established eligibility for adjustment to temporary resident status under section 245A of the Act, as in effect before enactment of section 1104 of the LIFE Act (part 245a, Subpart A). In such an adjudication using this Subpart A, the district director will deem the ''date of filing the application'' to be the date the eligible alien establishes that he or she was ''front-desked'' or that, though he or she took concrete steps to apply, the front-desking policy was a substantial cause of his or her failure to apply. If the eligible alien has established eligibility for adjustment to temporary resident status, the LIFE Legalization application shall be deemed converted to an application for temporary residence under this Subpart A.

[67 FR 38350, June 4, 2002]

Subpart B—Legal Immigration Family Equity (LIFE) Act Legalization Provisions

SOURCE: 66 FR 29673, June 1, 2001, unless otherwise noted.

§ 245a.10 Definitions.

In this Subpart B, the terms:

Eligible alien means an alien (including a spouse or child as defined at section 101(b)(1) of the Act of the alien who was such as of the date the alien alleges that he or she attempted to file or was discouraged from filing an application for legalization during the original application period) who, before October 1, 2000, filed with the Attorney General a written claim for class membership, with or without filing fee, pursuant to a court order issued in the case of:

(1) *Catholic Social Services, Inc.* v. *Meese*, vacated sub nom. *Reno* v. *Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (*CSS*);

(2) *League of United Latin American Citizens* v. *INS*, vacated sub nom. *Reno* v. *Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (*LULAC*); or

(3) *Zambrano* v. *INS*, vacated, 509 U.S. 918 (1993) (*Zambrano*).

Lawful Permanent Resident (LPR) means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

LIFE Act means the Legal Immigration Family Equity Act and the LIFE Act Amendments of 2000.

LIFE Legalization means the provisions of section 1104 of the LIFE Act and section 1503 of the LIFE Act Amendments.

Prima facie means eligibility is established if an ''eligible alien'' presents a properly filed and completed Form I–485 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this Subpart B.

Written claim for class membership means a filing, in writing, in one of the forms listed in § 245a.14 that provides the Attorney General with notice that the applicant meets the class definition in the cases of *CSS*, *LULAC* or *Zambrano*.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38350, June 4, 2002; 67 FR 66532, Nov. 1, 2002]

§ 245a.11 Eligibility to adjust to LPR status.

An eligible alien, as defined in § 245a.10, may adjust status to LPR status under LIFE Legalization if:

(a) He or she properly files, with fee, Form I–485, Application to Register Permanent Residence or Adjust Status, with the Service during the application period beginning June 1, 2001, and ending June 4, 2003.

(b) He or she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988;

(c) He or she was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988;

(d) He or she is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in § 245a.18, and that he or she:

(1) Has not been convicted of any felony or of three or more misdemeanors committed in the United States;

(2) Has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(3) Is registered or registering under the Military Selective Service Act, if the alien is required to be so registered; and

(e) He or she can demonstrate basic citizenship skills.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38350, June 4, 2002]

§ 245a.12 Filing and applications.

(a) *When to file.* The application period began on June 1, 2001, and ends on June 4, 2003. To benefit from the provisions of LIFE Legalization, an alien must properly file an application for adjustment of status, Form I–485, with appropriate fee, to the Service during the application period as described in this section. All applications, whether filed in the United States or filed from abroad, must be postmarked on or before June 4, 2003, to be considered timely filed.

(1) If the postmark is illegible or missing, and the application was mailed from within the United States, the Service will consider the application to be timely filed if it is *received* on or before June 9, 2003.

(2) If the postmark is illegible or missing, and the application was mailed from outside the United States, the Service will consider the application to be timely filed if it is *received* on or before June 18, 2003.

(3) If the postmark is made by other than the United States Post Office, and is filed from within the United States, the application must bear a date on or before June 4, 2003, and must be received on or before June 9, 2003.

(4) If an application filed from within the United States bears a postmark that was made by other than the United States Post Office, bears a date on or before June 4, 2003, and is received after June 9, 2003, the alien must establish:

(i) That the application was actually deposited in the mail before the last collection of the mail from the place of deposit that was postmarked by the United States Post Office June 4, 2003; and

(ii) That the delay in receiving the application was due to a delay in the transmission of the mail; and

(iii) The cause of such delay.

(5) If an application filed from within the United States bears both a postmark that was made by other than the United States Post Office and a postmark that was made by the United States Post Office, the Service shall disregard the postmark that was made by other than the United States Post Office.

(6) If an application filed from abroad bears both a foreign postmark and a postmark that was subsequently made by the United States Post Office, the Service shall disregard the postmark that was made by the United States Post Office.

(7) In all instances, the burden of proof is on the applicant to establish timely filing of an application for LIFE Legalization.

(b) *Filing of applications in the United States.* The Service has jurisdiction over all applications for the benefits of LIFE Legalization under this Subpart B. All applications filed with the Service for the benefits of LIFE Legalization must be submitted by *mail* to the Service. After proper filing of the application, the Service will instruct the applicant to appear for fingerprinting as prescribed in 8 CFR 103.16. The Director of the National Benefit Center shall have jurisdiction over all applications filed with the Service for LIFE Legalization adjustment of status, unless the Director refers the applicant for a personal interview at a local Service office as provided in § 245a.19.

(1) *Aliens in exclusion, deportation, or removal proceedings, or who have a pending motion to reopen or motion to reconsider.* An alien who is prima facie eligible for adjustment of status under LIFE Legalization who is in exclusion, deportation, or removal proceedings before the Immigration Court or the Board of Immigration Appeals (Board), or who is awaiting adjudication of a motion to reopen or motion to reconsider filed with the Immigration Court of the Board, may request that the proceedings be administratively closed or that the motion filed be indefinitely continued, in order to allow the alien to pursue a LIFE Legalization application with the Service. In the request to administratively close the matter or indefinitely continue the motion, the alien must include documents demonstrating prima facie eligibility for the relief, and proof that the application for relief had been properly filed with the Service as prescribed in this section. With the concurrence of Service counsel, if the alien appears eligible to file for relief under LIFE Legalization, the Immigration Court or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely.

(2) If an alien has a matter before the Immigration Court or the Board that has been administratively closed for reasons unrelated to this Subpart B, the alien may apply before the Service for LIFE Legalization adjustment of status.

(3) *Aliens with final orders of exclusion, deportation, or removal.* An alien, who is prima facie eligible for adjustment of status under LIFE Legalization, and who is subject to a final order of exclusion, deportation, or removal, may apply to the Service for LIFE Legalization adjustment.

(c) *Filing of applications from outside the United States.* An applicant for LIFE Legalization may file an application for LIFE Legalization from abroad. An application for LIFE Legalization filed from outside the United States shall be submitted by mail to the Service according to the instructions on the application. The National Benefit Center Director shall have jurisdiction over all applications filed with the Service for LIFE Legalization adjustment of status. After reviewing the application and all evidence with the application, the Service shall notify the applicant of any further requests for evidence regarding the application and, if eligible, how an interview will be conducted.

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must submit the form prescribed by USCIS completed in accordance with the form instructions accompanied by the required evidence.

(1) The Form I–485 application fee as contained in 8 CFR 106.2.

(2) [Reserved]

(3) Evidence to establish identity, such as a passport, birth certificate, any national identity document from the alien's country of origin bearing

photo and fingerprint, driver's license or similar document issued by a state if it contains a photo, or baptismal record/marriage certificate.

(4) [Reserved]

(5) A report of medical examination, as specified in § 245.5 of this chapter.

(6) [Reserved]

(7) Proof of application for class membership in *CSS*, *LULAC*, or *Zambrano* class action lawsuits as described in § 245a.14.

(8) Proof of continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988, as described in § 245a.15.

(9) Proof of continuous physical presence from November 6, 1986, through May 4, 1988, as described in § 245a.16.

(10) Proof of citizenship skills as described in § 245a.17. This proof may be submitted either at the time of filing the application, subsequent to filing the application but prior to the interview, or at the time of the interview.

(e) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status under this Subpart B. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (f) of this section.

(f) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. Subject to verification by the Service, if the evidence required to be submitted by the applicant is already contained in the Service's file or databases relating to the applicant, the applicant may submit a statement to that effect in lieu of the actual documentation.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38350, June 4, 2002; 76 FR 53794, Aug. 29, 2011; 85 FR 46927, Aug. 3, 2020]

§ 245a.13 During pendency of application.

(a) *In general.* When an eligible alien in the United States submits a prima facie application for adjustment of status under LIFE Legalization during the application period, until a final determination on his or her application has been made, the applicant:

(1) May not be deported or removed from the United States;

(2) Is authorized to engage in employment in the United States and is provided with an ''employment authorized'' endorsement or other appropriate work permit; and

(3) Is allowed to travel and return to the United States as described at paragraph (e) of this section. Any domestic LIFE Legalization applicant who departs the United States while his or her application is pending without advance parole may be denied re-admission to the United States as described at paragraph (e) of this section.

(b) *Determination of filing of claim for class membership.* With respect to each LIFE Legalization application for adjustment of status that is properly filed under this Subpart B during the application period, the Service will first determine whether or not the applicant is an ''eligible alien'' as defined under § 245a.10 of this Subpart B by virtue of having filed with the Service a claim of class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit before October 1, 2000. If the Service's records indicate, or if the evidence submitted by the applicant with the application establishes, that the alien had filed the requisite claim of class membership before October 1, 2000, then the Service will proceed to adjudicate the application under the remaining standards of eligibility.

(c) *Prima facie eligibility.* Unless the Service has evidence indicating ineligibility due to criminal grounds of inadmissibility, an application for adjustment of status shall be treated as a prima facie application during the pendency of application, until the

Service has made a final determination on the application, if:

(1) The application was properly filed under this Subpart B during the application period; and

(2) The applicant establishes that he or she filed the requisite claim for class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit.

(d) *Authorization to be employed in the United States while the application is pending*—(1) *Application for employment authorization.* An applicant for adjustment of status under LIFE Legalization who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file a Form I–765, Application for Employment Authorization, with the Service, including the fee as set forth in 8 CFR 106.2. The applicant may submit Form I–765 either concurrently with or subsequent to the filing of the application for adjustment of status benefits on Form I–485.

(2) *Adjudication and issuance.* Until a final determination on the application has been made, an eligible alien who submits a prima facie application for adjustment of status under this Subpart B shall be authorized to engage in employment in the United States and be provided with an ''employment authorized'' endorsement or other appropriate work permit in accordance with § 274a.12(c)(24) of this chapter. An alien shall not be granted employment authorization pursuant to LIFE Legalization until he or she has submitted a prima facie application for adjustment of status under this Subpart B. If the Service finds that additional evidence is required from the alien in order to establish prima facie eligibility for LIFE Legalization, the Service shall request such evidence from the alien in writing. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the alien may be eligible.

(e) *Travel while the application is pending.* This paragraph is authorized by section 1104(c)(3) of the LIFE Act relating to the ability of an alien to travel abroad and return to the United States while his or her LIFE Legalization adjustment application is pending. Parole authority is granted to the National Benefit Center Director for the purposes described in this section. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted advance parole or admission into the United States under any other provision of law or regulation for which the alien may be eligible.

(1) An applicant for LIFE Legalization benefits who wishes to travel during the pendency of the application and who is applying from within the United States should file, with his or her application for adjustment, at the National Benefit Center, a Form I–131, Application for Travel Document, with fee as set forth in 8 CFR 106.2. The Service shall approve the Form I–131 and issue an advance parole document, unless the Service finds that the alien's application does not establish a prima facie claim to adjustment of status under LIFE Legalization.

(2) An eligible alien who has properly filed a Form I–485 pursuant to this Subpart B, and who needs to travel abroad pursuant to the standards prescribed in section 212(d)(5) of the Act, may file a Form I–131 with the district director having jurisdiction over his or her place of residence.

(3) If an alien travels abroad and returns to the United States with a grant of advance parole, the Service shall presume that the alien is entitled to return under section 1104(c)(3)(B) of the LIFE Act, unless, in a removal or expedited removal proceeding, the Service shows by a preponderance of the evidence, that one or more of the provisions of § 245a.11(d) makes the alien ineligible for adjustment of status under LIFE Legalization.

(4) If an alien travels abroad and returns without a grant of advance parole, he or she shall be denied admission and shall be subject to removal or expedited removal unless the alien establishes, clearly and beyond doubt, that:

(i) He or she filed an application for adjustment pursuant to LIFE Legalization during the application period that

presented a prima facie claim to adjustment of status under LIFE Legalization; and,

(ii) His or her absence was either a brief and casual trip consistent with an intention on the alien's part to pursue his or her LIFE Legalization adjustment application, or was a brief temporary trip that occurred because of the alien's need to tend to family obligations relating to a close relative's death or illness or similar family need.

(5) An applicant for LIFE Legalization benefits who applies for admission into the United States shall not be subject to the provisions of section 212(a)(9)(B) of the Act.

(6) Denial of admission under this section is not a denial of the alien's application for adjustment. The alien may continue to pursue his or her application for adjustment from abroad, and may also appeal any denial of such application from abroad. Such application shall be adjudicated in the same manner as other applications filed from abroad.

(f) *Stay of final order of exclusion, deportation, or removal.* The filing of a LIFE Legalization adjustment application on or after June 1, 2001, and on or before June 4, 2003, stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the LIFE Legalization application, unless the district director who intends to execute the order makes a formal determination that the applicant does not present a prima facie claim to LIFE Legalization eligibility pursuant to §§ 245a.18(a)(1) or (a)(2), or §§ 245a.18(c)(2)(i), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v), or (c)(2)(vi), and serves the applicant with a written decision explaining the reason for this determination. Any such stay determination by the district director is not appealable. Neither an Immigration Judge nor the Board has jurisdiction to adjudicate an application for stay of execution of an exclusion, deportation, or removal order, on the basis of the alien's having filed a LIFE Legalization adjustment application.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002; 85 FR 46927, Aug. 3, 2020]

§ 245a.14 Application for class membership in the *CSS, LULAC,* or *Zambrano* lawsuit.

The Service will first determine whether an alien filed a written claim for class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit as reflected in the Service's indices, a review of the alien's administrative file with the Service, and by all evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that, before October 1, 2000, he or she was a class member applicant in the *CSS*, *LULAC*, or *Zambrano* lawsuit. An alien should include as many forms of evidence as the alien has available to him or her. Such forms of evidence include, but are not limited to:

(a) An Employment Authorization Document (EAD) or other employment document issued by the Service pursuant to the alien's class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit (if a photocopy of the EAD is submitted, the alien's name, A-number, issuance date, and expiration date should be clearly visible);

(b) Service document(s) addressed to the alien, or his or her representative, granting or denying the class membership, which includes date, alien's name and A-number;

(c) The questionnaire for class member applicant under *CSS*, *LULAC*, or *Zambrano* submitted with the class membership application, which includes date, alien's full name and date of birth;

(d) Service document(s) addressed to the alien, or his or her representative, discussing matters pursuant to the class membership application, which includes date, alien's name and A-number. These include, but are not limited to the following:

(1) Form I–512, Parole authorization, or denial of such;

(2) Form I–221, Order to Show Cause;

(3) Form I–862, Notice to Appear;

(4) Final order of removal or deportation;

(5) Request for evidence letter (RFE); or

(6) Form I–687 submitted with the class membership application.

(e) Form I–765, Application for Employment Authorization, submitted

pursuant to a court order granting interim relief.

(f) An application for a stay of deportation, exclusion, or removal pursuant to a court's order granting interim relief.

(g) Any other relevant document(s).

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

§ 245a.15 Continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988.

(a) *General.* The Service will determine whether an alien entered the United States before January 1, 1982, and resided in continuous unlawful status since such date through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application for LIFE Legalization evidence establishing that he or she entered the United States before January 1, 1982, and resided in continuous unlawful status since that date through May 4, 1988.

(b) *Evidence.* (1) A list of evidence that may establish an alien's continuous residence in the United States can be found at § 245a.2(d)(3).

(2) The following evidence may establish an alien's unlawful status in the United States:

(i) Form I–94 (see § 1.4), Arrival-Departure Record;

(ii) Form I–20A–B, Certificate of Eligibility for Nonimmigrant (F–1) Student Status—For Academic and Language Students;

(iii) Form IAP–66, Certificate of Eligibility for Exchange Visitor Status;

(iv) A passport; or

(v) Nonimmigrant visa(s) issued to the alien.

(c) *Continuous residence.* An alien shall be regarded as having resided continuously in the United States if:

(1) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(2) The alien was maintaining residence in the United States; and

(3) The alien's departure from the United States was not based on an order of deportation.

(d) *Unlawful status.* The following categories of aliens, who are otherwise eligible to adjust to LPR status pursuant to LIFE Legalization, may file for adjustment of status provided they resided continuously in the United States in an unlawful status since prior to January 1, 1982, through May 4, 1988:

(1) An eligible alien who entered the United States without inspection prior to January 1, 1982.

(2) *Nonimmigrants.* An eligible alien who entered the United States as a nonimmigrant before January 1, 1982, whose authorized period of admission as a nonimmigrant expired before January 1, 1982, through the passage of time, or whose unlawful status was known to the Government before January 1, 1982. Known to the Government means documentation existing in one or more Federal Government agencies' files such that when such document is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. Any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was known to the Government.

(i) *A or G nonimmigrants.* An eligible alien who entered the United States for duration of status (D/S) in one of the following nonimmigrant classes, A–1, A–2, G–1, G–2, G–3 or G–4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982. A dependent family member may be considered a member of this class if the dependent family member was also in A or G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

(ii) *F nonimmigrants.* An eligible alien who entered the United States for D/S in one of the following nonimmigrant classes, F–1 or F–2, who completed a full course of study, including practical training, and whose time period, if any,

to depart the United States after completion of study expired prior to January 1, 1982. A dependent F–2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Form I–94, Arrival-Departure Record, that extended beyond January 1, 1982, is considered eligible if the principal F–1 alien is found eligible.

(iii) *Nonimmigrant exchange visitors.* An eligible alien who was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Act), who entered the United States before January 1, 1982, and who:

(A) Was not subject to the 2-year foreign residence requirement of section 212(e) of the Act; or

(B) Has fulfilled the 2-year foreign residence requirement of section 212(e) of the Act; or

(C) Has received a waiver for the 2-year foreign residence requirement of section 212(e) of the Act.

(3) *Asylum applicants.* An eligible alien who filed an asylum application prior to January 1, 1982, and whose application was subsequently denied or whose application was not decided by May 4, 1988.

(4) *Aliens considered to be in unlawful status.* Aliens who were present in the United States in one of the following categories were considered to be in unlawful status:

(i) An eligible alien who was granted voluntary departure, voluntary return, extended voluntary departure, or placed in deferred action category by the Service prior to January 1, 1982.

(ii) An eligible alien who is a Cuban or Haitian entrant (as described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 and at § 212.5(g) of this chapter), who entered the United States before January 1, 1982. Pursuant to section 1104(c)(2)(B)(iv) of the LIFE Act, such alien is considered to be in an unlawful status in the United States.

(iii) An eligible alien who was paroled into the United States prior to January 1, 1982, and whose parole status terminated prior to January 1, 1982.

(iv) An eligible alien who entered the United States before January 1, 1982, and whose entries to the United States subsequent to January 1, 1982, were not documented on Form I–94.

[66 FR 29673, June 1, 2001, as amended at 78 FR 18472, Mar. 27, 2013]

§ 245a.16 Continuous physical presence from November 6, 1986, through May 4, 1988.

(a) The Service will determine whether an alien was continuously physically present in the United States from November 6, 1986, through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application evidence establishing his or her continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Evidence establishing the alien's continuous physical presence in the United States from November 6, 1986, to May 4, 1988, may consist of any documentation 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 authenticating instrument.

(b) For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.

(c) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous physical presence as required at the time of filing an application under this section.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

§ 245a.17 Citizenship skills.

(a) *Requirements.* Applicants for adjustment under LIFE Legalization must meet the requirements of section 312(a) of the Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). Unless an exception under paragraph (c) of this section applies to the applicant, LIFE Legalization applicants must establish that:

(1) He or she has complied with the same requirements as those listed for naturalization applicants under §§ 312.1 and 312.2 of this chapter; or

(2) He or she has a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and United States history and government). The applicant may submit a high school diploma or GED either at the time of filing Form I–485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted); or

(3) He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I–485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

(b) *Second interview.* An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier, at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

(c) *Exceptions.* LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of this section if he or she has qualified for the same exceptions as those listed for naturalization applicants under §§ 312.1(b)(3) and 312.2(b) of this chapter. Further, at the discretion of the Attorney General, the requirements listed under paragraph (a) of this section may be waived if the LIFE Legalization applicant:

(1) Is 65 years of age or older on the date of filing; or

(2) Is developmentally disabled as defined under § 245a.1(v).

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002]

§ 245a.18 Ineligibility and applicability of grounds of inadmissibility.

(a) *Ineligible aliens.* (1) An alien who has been convicted of a felony or of three or misdemeanors committed in the United States is ineligible for adjustment to LPR status under this Subpart B; or

(2) An alien who has assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion is ineligible for adjustment of status under this Subpart B.

(b) *Grounds of inadmissibility not to be applied.* Section 212(a)(5) of the Act (labor certification requirements) and section 212(a)(7)(A) of the Act (immigrants not in possession of valid visa and/or travel documents) shall not apply to applicants for adjustment to LPR status under this Subpart B.

(c) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c)(2)

of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to ensure family unity, or when the granting of such a waiver is otherwise in the public interest. If available, an applicant may apply for an individual waiver as provided in paragraph (c)(1) of this section without regard to section 241(a)(5) of the Act.

(1) *Special rule for waiver of inadmissibility grounds for LIFE Legalization applicants under sections 212(a)(9)(A) and 212(a)(9)(C) of the Act.* An applicant for adjustment of status under LIFE Legalization who is inadmissible under section 212(a)(9)(A) or 212(a)(9)(C) of the Act, may apply for a waiver of these grounds of inadmissibility while present in the United States, without regard to the normal requirement that a Form I–212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, be filed prior to embarking or re-embarking for travel to the United States, and without regard to the length of time since the alien's removal or deportation from the United States. Such an alien shall file Form I–690, Application for Waiver of Grounds of Excludability Under Sections 245A or 210 of the Immigration and Nationality Act, with the district director having jurisdiction over the applicant's case if the application for adjustment of status is pending at a local office, or with the Director of the National Benefit Center. Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Act does not cure a break in continuous residence resulting from a departure from the United States at any time during the period from January 1, 1982, and May 4, 1988, if the alien was subject to a final exclusion or deportation order at the time of the departure.

(2) *Grounds of inadmissibility that may not be waived.* Notwithstanding any other provisions of the Act, the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (c) of this section:

(i) Section 212(a)(2)(A)(i)(I) (crimes involving moral turpitude);

(ii) Section 212(a)(2)(A)(i)(II) (controlled substance, except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana);

(iii) Section 212(a)(2)(B) (multiple criminal convictions);

(iv) Section 212(a)(2)(C) (controlled substance traffickers);

(v) Section 212(a)(3) (security and related grounds); and

(vi) Section 212(a)(4) (public charge) except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act). If a LIFE Legalization applicant is determined to be inadmissible under section 212(a)(4) of the Act, he or she may still be admissible under the Special Rule described under paragraph (d)(3) of this section.

(d)(1) In determining whether an alien is ''likely to become a public charge'', financial responsibility of the alien is to be established by examining the totality of the alien's circumstance at the time of his or her application for adjustment. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, family status, assets, resources, education and skills.

(2) An alien who has a consistent employment history that shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (c)(2)(vi) of this section. The alien's employment history need not be continuous in that it is uninterrupted. In applying the Special Rule, the Service will take into account an alien's employment history in the United States to include, but not be limited to, employment prior to and immediately following the enactment of IRCA on November 6, 1986. However, the Service will take into account that an alien may not have consistent employment history due to the fact that an eligible alien was in an unlawful status and was not authorized to work. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision.

The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for determination of public charge.

(3) In order to establish that an alien is not inadmissible under paragraph (c)(2)(vi) of this section, an alien may file as much evidence available to him or her establishing that the alien is not likely to become a public charge. An alien may have filed on his or her behalf a Form I–134, Affidavit of Support. The failure to submit Form I–134 shall not constitute an adverse factor.

(e) *Public cash assistance and criminal history verification.* Declarations by an alien that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification by the Service. The alien must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38351, June 4, 2002; 85 FR 46927, Aug. 3, 2020]

§ 245a.19 Interviews.

(a) All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed, except that the adjudicative interview may be waived for a child under the age of 14, or when it is impractical because of the health or advanced age of the applicant. Applicants will be interviewed by an immigration officer as determined by the Director of the National Benefit Center. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution. Applications for LIFE Legalization adjustment may be denied without interview if the applicant is determined to be statutorily ineligible.

(b) At the time of the interview, wherever possible, original documents must be submitted except the following: official government records; employment or employment-related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf.

(c) If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by the alien's representative. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Service.

[66 FR 29673, June 1, 2001, as amended at 85 FR 46927, Aug. 3, 2020]

§ 245a.20 Decisions, appeals, motions, and certifications.

(a) *Decisions*—(1) *Approval of applications.* If the Service approves the application for adjustment of status under LIFE Legalization, the district director shall record the alien's lawful admission for permanent residence as of the date of such approval and notify the alien accordingly. The district director shall also advise the alien regarding the delivery of his or her Form I–551, Permanent Resident Card, and of the process for obtaining temporary evidence of alien registration. If the alien has previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the district director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the district director.

(2) *Denials.* The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. An applicant

affected under this part by an adverse decision is entitled to file an appeal on Form I–290B Notice of Appeal to the Administrative Appeals Office (AAO), with the required fee specified in 8 CFR 106.2. Renewal of employment authorization issued pursuant to 8 CFR 245a.13 will be granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed. After exhaustion of an appeal, an alien who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted on or before June 4, 2003.

(b) *Appeals process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations, Administrative Appeals Office (AAO), who is the appellate authority designated in §103.1(f)(3) of this chapter. Any appeal shall be submitted to the Service office that rendered the decision with the required fee.

(1) If an appeal is filed from within the United States, it must be received by the Service within 30 calendar days after service of the Notice of Denial (NOD) in accordance with the procedures of §103.3(a) of this chapter. An appeal received after the 30 day period has tolled will not be accepted. The 30 day period for submitting an appeal begins 3 days after the NOD is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative, and an appeal has been properly filed, an additional 30 days will be allowed for this review from the time the ROP is photocopied and mailed.

(2) If an applicant's last known address of record was outside the United States, and the NOD was mailed to that foreign address, the appeal must be received by the Service within 60 calendar days after service of the NOD in accordance with the procedures of §103.3(a) of this chapter. An appeal received after the 60 day period has tolled will not be accepted. The 60-day period for submitting an appeal begins 3 days after the NOD is mailed.

(c) *Motions.* The Service director who denied the application may reopen and reconsider any adverse decision *sua sponte.* When an appeal to the AAO has been filed, the director may issue a new decision that will grant the benefit that has been requested. Motions to reopen a proceeding or reconsider a decision shall not be considered under this Subpart B.

(d) *Certifications.* The Service director who adjudicates the application may, in accordance with §103.4 of this chapter, certify a decision to the AAO when the case involves an unusually complex or novel question of law or fact.

(e) *Effect of final adjudication of application on aliens previously in proceedings*—(1) *Upon the granting of an application.* If the application for LIFE Legalization is granted, proceedings shall be deemed terminated or a final order of exclusion, deportation, or removal shall be deemed canceled as of the date of the approval of the LIFE Legalization application for adjustment of status.

(2) *Upon the denial of an application*—(i) *Where proceedings were administratively closed.* In the case of an alien whose previously initiated exclusion, deportation or removal proceeding had been administratively closed or continued indefinitely under §245a.12(b)(1), the director shall make a request for recalendaring to the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, when there is a final decision denying the LIFE Legalization application. The Immigration Court or the Board will then recalendar the prior proceeding.

(ii) *Where final order was stayed.* If the application for LIFE Legalization is denied, the stay of a final order of exclusion, deportation, or removal afforded in §245a.13(f) shall be deemed lifted as of the date of such denial.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002; 72 FR 19107, Apr. 17, 2007; 85 FR 46927, Aug. 3, 2020]

§ 245a.21 Confidentiality.

(a) No person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the LIFE Legalization provisions shall be considered an

employee of the Department of Justice or bureau or agency thereof.

(b) No information furnished pursuant to an application for permanent resident status under this Subpart B shall be used for any purpose except:

(1) To make a determination on the application;

(2) For the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraphs (c) of this section; or

(3) For the purposes of rescinding, pursuant to section 246(a) of the Act (8 U.S.C. 1256(a)), any adjustment of status obtained by the alien.

(c) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false statement or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false statement or document for use in an application for adjustment of status under this Subpart B.

(d) Information contained in granted files may be used by the Service at a later date to make a decision:

(1) On an immigrant visa petition or other status filed by the applicant under section 204(a) of the Act;

(2) On a naturalization application submitted by the applicant;

(3) For the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986; or

(4) For the furnishing of information, at the discretion of the Attorney General, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8.

(e) Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

§ 245a.22 Rescission.

(a) Rescission of adjustment of status under LIFE Legalization shall occur only under the procedures of 8 CFR part 246.

(b) Information furnished by an eligible alien pursuant to any application filed under LIFE Legalization may be used by the Attorney General, and other officials and employees of the Department of Justice and any bureau or agency thereof, for purposes of rescinding, pursuant to 8 CFR part 246, any adjustment of status obtained by the alien.

§§ 245a.23–245a.29 [Reserved]

Subpart C—LIFE Act Amendments Family Unity Provisions

SOURCE: 66 FR 29673, June 1, 2001, unless otherwise noted.

§ 245a.30 Description of program.

This Subpart C implements the Family Unity provisions of section 1504 of the LIFE Act Amendments, Public Law 106–554.

§ 245a.31 Eligibility.

An alien who is currently in the United States may obtain Family Unity benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

(a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under § 245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;

(b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and

(c) If applying for Family Unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I–485 pursuant to this Subpart B.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002]

§ 245a.32 Ineligible aliens.

The following categories of aliens are ineligible for Family Unity benefits under the LIFE Act Amendments:

(a) An alien who has been convicted of a felony or of three or more misdemeanors in the United States; or

(b) An alien who has ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion; or

(c) An alien who has been convicted by a final judgment of a particularly serious crime and who is a danger to the community of the United States; or

(d) An alien who the Attorney General has serious reasons to believe has committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(e) An alien who the Attorney General has reasonable grounds to believe is a danger to the security of the United States.

§ 245a.33 Filing.

(a) *General.* An application for Family Unity benefits under section 1504 of the LIFE Act Amendments must be filed on a Form I–817, Application for Family Unity Benefits, with the National Benefit Center. A Form I–817 must be filed with the correct fee required in 8 CFR 106.2 and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(b) *Decision.* The National Benefit Center Director has sole jurisdiction to adjudicate an application for Family Unity benefits under the LIFE Act Amendments. The Director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(c) *Referral of denied cases for consideration of issuance of notice to appear.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue a notice to appear. After an initial denial, an applicant's case will not be referred for issuance of a notice to appear until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under § 245a.32(a), the Service reserves the right to issue a notice to appear at any time after the initial denial.

[66 FR 29673, June 1, 2001, as amended at 72 FR 19107, Apr. 17, 2007; 85 FR 46927, Aug. 3, 2020]

§ 245a.34 Protection from removal, eligibility for employment, and period of authorized stay.

(a) *Scope of protection.* Nothing in this Subpart C shall be construed to limit the authority of the Service to commence removal proceedings against an applicant for or beneficiary of Family Unity benefit under this Subpart C on any ground of removal. Also, nothing in this Subpart C shall be construed to limit the authority of the Service to take any other enforcement action against such an applicant or beneficiary with respect to any ground of removal not specified in paragraphs (a)(1) through (a)(4) of this section. Protection from removal under this Subpart C is limited to the grounds of removal specified in:

(1) Section 237(a)(1)(A) of the Act (aliens who were inadmissible at the time of entry or adjustment of status), except that the alien may be removed if he or she is inadmissible because of a ground listed in section 212(a)(2) (criminal and related grounds) or in section 212(a)(3) (security and related grounds) of the Act; or

(2) Section 237(a)(1)(B) of the Act (aliens present in the United States in violation of the Act or any other law of the United States);

(3) Section 237(a)(1)(C) of the Act (aliens who violated their nonimmigrant status or violated the conditions of entry); or

(4) Section 237(a)(3)(A) of the Act (aliens who failed to comply with the change of address notification requirements).

(b) *Duration of protection from removal.* When an alien whose application for Family Unity benefits under the LIFE Act Amendments is approved, he or she will receive protection from removal, commencing with the date of approval of the application. A grant of protection from removal under this section shall be considered effective from the date on which the application was properly filed.

(1) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's application for LIFE Legalization, any evidence of protection from removal shall be dated to expire 1 year after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, any evidence of protection from removal shall be dated to expire 2 years after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(c) *Employment authorization.* An alien granted Family Unity benefits under the LIFE Act Amendments is authorized to be employed in the United States.

(1) In the case of an alien who has been granted Family Unity benefits based on the principal alien's application for LIFE Legalization, the validity period of the employment authorization document shall be dated to expire 1 year after the date of approval of the Form I–817, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, the validity period of the employment authorization document shall be dated to expire 2 years after the date of approval of the Form I–817, or the day before the alien's 21st birthday, whichever comes first.

(d) *Period of authorized stay.* An alien granted Family Unity benefits under the LIFE Act Amendments is deemed to have received an authorized period of stay approved by the Attorney General within the scope of section 212(a)(9)(B) of the Act.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002]

§ 245a.35 Travel outside the United States.

(a) An alien who departs the United States while his or her application for Family Unity benefits is pending will be deemed to have abandoned the application and the application will be denied.

(b) An alien granted Family Unity benefits under the LIFE Act Amendments who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131. The authority to grant an application for advance authorization for an alien granted Family Unity benefits under the LIFE Act Amendments rests solely with the Service. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be inadmissible under section 212(a)(2) or (3) of the Act, shall be paroled into the United States. He or she shall be provided the remainder of the protection from removal period previously granted under the Family Unity provisions of the LIFE Act Amendments.

§ 245a.36 [Reserved]

§ 245a.37 Termination of Family Unity Program benefits.

(a) *Grounds for termination.* The Service may terminate Family Unity benefits under the LIFE Act Amendments whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(1) A determination is made that Family Unity benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(2) The beneficiary commits an act or acts which render him or her ineligible for Family Unity benefits under the LIFE Act Amendments;

(3) The alien, upon whose status Family Unity benefits under the LIFE Act were based, fails to apply for LIFE Legalization by June 4, 2003, has his or her LIFE Legalization application denied, or loses his or her LPR status; or

(4) A qualifying relationship to the alien, upon whose status Family Unity benefits under the LIFE Act Amendments were based, no longer exists.

(b) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of 8 CFR 103.8. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of 8 CFR 103.8. Nothing in this section shall preclude the Service from commencing removal proceedings prior to termination of Family Unity benefits.

(c) *Effect of termination.* Termination of Family Unity benefits under the LIFE Act Amendments shall render the alien amenable to removal under any ground specified in section 237 of the Act (including those grounds described in §245a.34(a)). In addition, the alien will no longer be considered to be in a period of stay authorized by the Attorney General as of the date of such termination.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002; 76 FR 53794, Aug. 29, 2011]

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

Sec.

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

SOURCE: 62 FR 10385, Mar. 6, 1997, unless otherwise noted.

§246.1 Notice.

If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case, or it appears to an asylum office director that a person granted adjustment of status by an asylum officer pursuant to 8 CFR 240.70 was not in fact eligible for adjustment of status, a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind, which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

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

§246.2 Allegations admitted; no answer filed; no hearing requested.

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

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