

Adjustment of Status under the Legal Immigration Family Equity Act (“LIFE Act”)

The Legal Immigration Family Equity Act (“LIFE Act”) permits adjustment of status for certain aliens who would otherwise be ineligible to adjust their status under INA Section 245(a). LIFE Act, Pub. L. No. 106-553 (Dec. 21, 2000), and the LIFE Act Amendments, Pub. L. No. 106-554 (Dec. 21, 2000). Under section 245(i) of the Act, adjustment of status was available to alien crewmen, aliens continuing or accepting unauthorized employment, aliens admitted in transit without visa, and aliens who entered without inspection. INA Section 245(i)(1)(A)(i)-(ii). This law sunset on January 14, 1998, but was revived under the LIFE Act, which extended INA Section 245(i) to April 30, 2001.

INA Section 245(i) is now expired except for those aliens who already grandfathered. To seek adjustment under INA Section 245(i), the alien must pay a penalty (currently \$1,000) and file a Form I-485 with Supplement A. 8 C.F.R. Section 1245.2(a)(3)(iii). To be grandfathered under INA Section 245(i), the alien must be the beneficiary of either a labor certification under INA Section 212(a)(5)(A) or a petition under INA Section 204 (including I-140, I-130, I-360, I-526) that was filed on or before April 30, 2001. A beneficiary can adjust status based on an immigrant visa petition or labor certification that was approved after April 30, 2001, so long as his petition or application for certification was “properly filed” (postmarked or received by the Department) on or before April 30, 2001, and “approvable when filed.” 8 C.F.R. Section 1245.10(a)(2). “Approvable when filed” means the qualifying petition or application was properly filed, meritorious in fact, and non-frivolous (“frivolous” being “patently without substance”). 8 C.F.R. Section 1245.10(a)(3). If the labor certification or petition was filed after January 14, 1998, the applicant must have been physically present in the U.S. on December 21, 2000. INA Section 245(i); 8 C.F.R. Section 1245.10; LIFE Act Section 1502(a)(1)(B), Pub. L. No. 106-553. If the original beneficiary of an application for labor certification was subsequently replaced by another alien on or before April 30, 2001, only the substituted beneficiary would be considered a grandfathered alien. 8 C.F.R. Section 1245.10(j).

To be eligible to adjust to lawful permanent resident status under INA Section 245(i), the alien must show that he is not inadmissible from the United States or that all grounds of inadmissibility have been waived. INA Section 245(i)(2)(A); 8 C.F.R. Section 1245.10(b)(3). The Board has clarified that INA Section 245(i) implicitly waives only the ground of inadmissibility under INA Section 212(a)(6)(A)(i) (unlawful entry). Matter of Briones, 24 I&N Dec. 355, 363 (BIA 2007). An alien who is inadmissible under INA Section 212(a)(9)(B)(i)(II) (unlawful presence prior to departure or removal who seeks admission) or Section 212(a)(9)(C)(i)(I) (unlawful presence prior to entry or attempted reentry without being admitted), is therefore not eligible to adjust to lawful permanent resident status under INA Section 245(i), absent a discretionary waiver of the ground of inadmissibility. Matter of Lemus-Losa, 24 I&N Dec. 373, 377-80 (BIA 2007); Matter of Briones, 24 I&N Dec. at 362-71.

The LIFE Act also allows for adjustment of status for aliens who filed before October 1, 2000, for class membership in one the “late amnesty” lawsuits—i.e., Catholic Social Services, Inc. v. Meese, vacated sub nom., Reno v. Catholic Services, Inc., 509 U.S. 43 (1993); League of United Latin American Citizens (“LULAC”) v. INS, vacated sub nom., Reno v. Catholic Services, Inc., 509 U.S. 43 (1993); or Zambrano v. INS, vacated, 509 U.S. 918 (1993). LIFE Act, Sections 1104 and 1503, Pub. L. No. 106-553, 106-554; 8 C.F.R. § 245a.10 - 245a.22. In order to qualify, the alien must have entered the U.S. before January 1, 1982, and resided continuously in the U.S. in an unlawful status since that date through May 4, 1988. 8 C.F.R. Section 245a.11. He must also have been continuously present in the U.S. from November 6, 1986 through May 4, 1988, must not have been convicted of a felony or of three or more misdemeanors in the U.S., and must not have been a persecutor. 8 C.F.R. Sections 245a.11, 245a.16, 245a.18. An alien is not considered to have failed to maintain continuous physical presence in the U.S. by virtue of brief, casual, and innocent absences from the U.S. 8 C.F.R. Section 245a.16. Further, the alien must demonstrate that he is admissible except for grounds of inadmissibility under INA Section 212(a)(5) and 7(A). 8 C.F.R. Section 245a.18. The Attorney General may waive certain other provisions of section 212(a) of the Act under INA Section 245A(d)(2)(B), although not those provisions relating to crimes involving moral turpitude, multiple criminal convictions, or others enumerated in 8 C.F.R. Section 245a.18(c)(2). Id. The alien may also apply for a waiver of inadmissibility under section 212(a)(9)(A) and (C) of the Act. Id. Further, he must be registered or be registering under the Military Selective Service Act, if so required, and have or demonstrate basic citizenship skills. 8 C.F.R. Section 245a.11.

The application period for a “late amnesty” filing for adjustment began on June 1, 2001 and ended on June 4, 2003, during which time an alien had to file with the Department of Homeland Security a Form I-485: Application to Register Permanent Residence or Adjust Status. 8 C.F.R. Sections 245a.11, 245a.12. However, under the terms of settlement agreements reached with the Department, the filing deadline for certain legalization applicants under the terms of Catholic Social Services and LULAC was extended until December 31, 2005. See Order Approving Settlement of Class Action, Catholic Social Services v. Ridge, No. Civ S-86-1343-LKK (E.D. Cal. Jan. 23, 2004) available at http://www.uscis.gov/files/article/CSS_Settlement.pdf Order Approving Settlement of Class Action, Newman v. U.S. Citizenship and Immigration Services, Civ. No. 87-4757-WDK (CWx) (E.D. Cal. Feb. 18, 2004) available at http://uscis.gov/graphics/lawsregs/LULAC_Settlement.pdf; Press Release, U.S. Citizenship and Immigration Services, USCIS Announces Extension of Deadline for Filing Applications Pursuant to the CSS and LULAC (NEWMAN) Settlement Agreements (May 16, 2005) available at http://uscis.gov/graphics/publicaffairs/newsrels/CSS_LULAC16May05.pdf. Confidentiality provisions apply to the information furnished pursuant to such applications. 8 C.F.R. Section 245a.21.

The Department has jurisdiction over all applications for the benefits of LIFE Legalization under the “late amnesty” lawsuits. 8 C.F.R. Section 245a.12(b). An alien who is in exclusion, deportation, or removal proceedings, or who has a pending motion to reopen or motion to reconsider, and who is prima facie eligible for adjustment of status under LIFE Legalization, 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 Department. 8 C.F.R. Section 245a.12(b)(1). With the concurrence of the Department, 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. Id.; see also Matter of Morales, 21 I&N Dec 130 (BIA 1996).

The Family Unity provisions of the LIFE Act apply to “late amnesty” applications. LIFE Act, Section 1504, Pub. L. No. 106-554; 8 C.F.R. Section 245a.31. An alien currently in the U.S. may obtain Family Unity benefits if she establishes that she is the spouse or unmarried child under the age of 21 of an eligible alien at the time the Family Unity application is adjudicated; she entered the U.S. before December 1, 1988, and resided in the U.S. on that date; and, if applying for Family Unity benefits on or after June 5, 2003, she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I-485. 8 C.F.R. Section 245a.31. An alien is ineligible for Family Unity benefits if she has committed one of several offenses, including being convicted of a felony or three or more misdemeanors, and having engaged in persecution of others. 8 C.F.R. Section 245a.32.

<http://www.justice.gov/eoir/vll/benchbook/templates/Adjustment245%28i%29%20LifeAct%20Standard.htm> (Accessed 10/17/2012)