



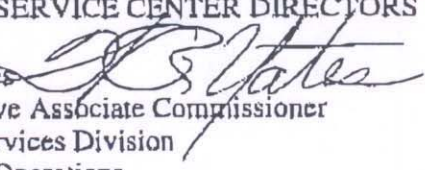
U.S. Department of Justice
Immigration and Naturalization Service

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425 I Street NW
Washington, DC 20536

AUG 14 2002

MEMORANDUM FOR ALL REGIONAL DIRECTORS
ALL SERVICE CENTER DIRECTORS

FROM: William R. Yates 
Deputy Executive Associate Commissioner
Immigration Services Division
Office of Field Operations

SUBJECT: Adjustment of status under sections 209 and 245 of the Act: the interview
requirement.

This policy memorandum lists the categories of applications for adjustment of status under sections 209 and 245 of the Act, for which, at the discretion of the Service, a determination may be made, after a review of the documentation in the A-file, that an interview of the applicant is unnecessary.

This memorandum supersedes the November 4, 1992 memorandum entitled, *Adjustment of Status - Waiver of Interview*, issued by the Office of Operations; and the relevant portions of the October 2, 1998 memorandum entitled, *Direct Mail Processing of Refugee and Asylee Applications to Adjust Status Under Section 209*, issued by the Office of Field Operations. It is also being incorporated into national I-485 Standard Operating Procedures for both Service Centers and District Offices.

It must be noted that nothing in this policy or memorandum creates any right or entitlement to an alien who has an application for adjustment of status pending before the Service. The Service retains the authority to require an interview for any particular application for adjustment of status under section 209 or 245 of the Act.

Background

The memoranda of November 4, 1992 and October 2, 1998, provided district and center directors the authority to make determinations on whether or not an interview is warranted for the adjudication of an individual application for adjustment of status (Form

I-485). This authority allows district and center directors to better manage their resources to provide vital customer service while directing the necessary resources into fraud detection and deterrence.

Authority

8 CFR § 245.6 provides:

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. This interview may be waived in the case of a child under the age of 14; when the applicant is clearly ineligible under section 245(c) of the Act or 245.1 of this chapter; or when it is determined by the Service that an interview is unnecessary.

8 CFR § 209.1(d) provides:

The Service Director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

8 CFR § 209.2(e) provides:

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. The interview may be waived for a child under 14 years of age. The Service director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

Policy

The Service must conduct an interview on all adjustment of status cases adjudicated under section 209 or 245 except when the case falls within one of the following categories, in which case the district or center director may determine that an interview is not necessary. However, even when a case falls within one of these categories, the service center director may refer the case to a district office for interview, or a district director may determine that an interview is necessary in the case, for any reason. Examples of such cases include those involving higher risk, complex issues, criminal charges, indications of fraud, or any other reason.

1. Employment-based applications for adjustment:

- A. The I-485 adjustment application is based upon a petition for an immigrant worker (Form I-140) that is accompanied by original or certified copies of supporting documents (or the documents are supplied in response to a request for

evidence/transfer out), or the adjustment application has been filed by a derivative spouse or child of such principal alien.

However, the petition must have been filed by the same entity for which the principal adjustment applicant is lawfully employed as a nonimmigrant. (Note: the director may consider, on a case by case basis, whether an interview is necessary if the alien uses the "portability" provisions of § 106(c) of the American Competitiveness in the 21st Century Act¹ to leave the petitioning employer after the adjustment application has been pending for more than 180 days);

- B. The adjustment application is based upon an approved immigrant petition for an alien entrepreneur, (Form I-526), or a petition for a religious worker (Form I-360), and is accompanied by original or certified copies of supporting documents (or the documents are supplied in response to a request for evidence/transfer out);

2. Family-based applications for adjustment:

- A. The adjustment application is based upon a petition for an immigrant relative (Form I-130) for an unmarried child of a United States citizen, parent of a United States citizen, or the spouse of a United States citizen who is applying to adjust to conditional resident status from that of a K-1 nonimmigrant (and any K-2 child of the K-1) within 90 days of entry. The adjustment of status application must be accompanied by original or certified copies of supporting documents (or supplied in response to a request for evidence/transfer out).
- B. The adjustment application is based upon a petition for an immigrant relative (Form I-130) for an unmarried and under 14-years of age child of a lawful permanent resident and accompanied by original or certified copies of supporting documents (or the documents are supplied in response to a request for evidence/transfer out);

3. Asylee/Refugee applications for adjustment:

- A. Most section 209 adjustment applications will be retained for adjudication at the Nebraska Service Center without an in-person interview per the authority set forth at 8 CFR 209.1(d) and 209.2(e). However, cases involving higher risk or complex issues, criminal charges and indications of fraud, and those where the record indicates changes in the country conditions on which the original grant of asylum was based should also be referred to the district office for interview.

¹ For more information regarding the "portability" provision and adjustment applications, see section F of the June 19, 2001 memorandum signed by Michael Cronin, subject *Initial Guidance for Processing H-1B Petitions as Affected by the "American Competitiveness in the Twenty-First Century Act"* (Public Law 106-313) and Related Legislation (Public Law 106-311) and (Public Law 106-396).

4. Additional categories:

- A. The applicant has been interviewed in the course of an investigation, field examination, or prior interview for the same application, and the Service determines that a further interview is not necessary;
- B. The applicant is a native or citizen of Cuba filing for adjustment under the Act of November 2, 1966, or the spouse or child of such an alien regardless of their citizenship or place of birth; or,
- C. There is sufficient evidence contained in the record to support a denial of the adjustment of status application without conducting the interview.
- D. The applicant is the beneficiary of Form I-360 filed as a battered spouse or child and the Service is not in possession of any new information that casts doubt on the approval of the Form I-360.

Case-by-Case Determination

In every case, the determination of whether to conduct an interview of the applicant during the adjudication of an application for adjustment of status (Form I-485) must be made on a case-by-case basis and on the merits of the individual case.

Where there are concerns regarding possible fraud or misrepresentation, and neither the application nor record contain sufficient evidence to support a denial, the director must conduct an interview or investigation to address these concerns even though the case falls within the categories listed above.

Points of Contact

If you have questions regarding this memorandum, please contact, via appropriate channels, your center or regional representative. Service Center representatives may contact Danielle Lee via e-mail or by telephone, at (202) 305-8010. Regional representatives may contact Kathy Dominguez via email or at (202) 616-1050.

Memorandum



HQ 245-P

Subject Adjustment of Status - Section 245
Waiver of Interview

Date NOV - 4 1992

To All District Directors
All Service Center Directors
All Staff Assistants for Field Operations
Supervisory Immigration Examiners: ERO, NRO, SRO, WRO

From Office of Operations

An interim rule recently published in the Federal Register allows the Service to waive interviews of applicants for adjustment of status under Section 245 of the Immigration and Nationality Act (Act). A copy of the rule is attached for your reference.

The purpose of this provision is to enhance the ability of directors to efficiently and effectively manage workloads and resources; to enhance directors' abilities to direct resources into the area of fraud detection and deterrence; and, in instances where interviews are unnecessary, to reduce waiting time and burdens on the public.

The rule, which took effect immediately upon publication, does not specify which Service officials have the authority to waive interviews. It also does not set forth the criteria to be used when determining whether an interview should be waived.

Authority to waive interviews is hereby delegated to all district directors and service center directors. These directors are responsible for the application of this provision within their individual jurisdictions. Written local policies and procedures should be established to ensure that the waiver provision is applied only to cases falling within the Service-wide guidelines set forth in this memorandum. These local policies and procedures may also reflect local conditions dictating the need for further restrictions upon the application of the waiver provision. Interviews may not be waived merely to reduce backlogs. Copies of locally established policies should be received in Headquarters Adjudications (ATTN: Immigrant Branch) prior to the local implementation of the waiver policy.

All adjustment of status applicants under section 245 of the Act will continue to be interviewed, unless an individual determination has been made that an interview is not necessary, and the case falls within both Service-wide and local guidelines for interview-waiver cases. The determination as to whether an

interview is required must be made on a case-by-case basis. A waiver of the interview requirement may be granted only if:

- o the adjustment application is based upon a petition for an employment-based preference classification (I-140), accompanied by original or certified copies of supporting documents, and the principal alien will continue employment with the same individual or firm for whom he or she is lawfully employed as a nonimmigrant, or the adjustment application has been filed by a derivative spouse or child of such principal alien;
- o the adjustment application is based upon an immigrant petition for an unmarried minor child of a United States citizen accompanied by original or certified copies of supporting documents;
- o the adjustment application is based upon an immigrant petition for a parent of a United States citizen accompanied by original or certified copies of supporting documents;
- o the applicant has been interviewed in the course of an investigation or field examination, and the adjudicating examiner determines that further interview of the applicant is unnecessary;
- o the applicant is a native or citizen of Cuba filing for adjustment under the Act of November 2, 1966, or the spouse or child of such an alien regardless of their citizenship and place of birth; or *one more to interview all of this*
- o sufficient evidence is contained in the record to support a denial of the adjustment of status application.

Effective immediately, all district directors will submit consolidated district reports of interview waiver activity for each month. Negative reports are required. This report must be submitted by FAX transmission (202-514-0198) to the Office of Adjudications not later than the tenth (10th) day of the following month. A copy of the report form is attached for your use.

James J. Hogan
James J. Hogan
Executive Associate Commissioner

Attachments