



QUESTIONS AND ANSWERS

March 23, 2001

Section 245(i) Provision of the LIFE Act

Q1. What is the Section 245(i) provision of the Legal Immigration Family Equity Act (LIFE Act)?

A1. Section 245(i) allows certain persons, who have an immigrant visa immediately available but entered without inspection or otherwise violated their status and thus are ineligible to apply for adjustment of status in the United States, to apply if they pay a \$1,000 penalty. The LIFE Act temporarily extends the ability to preserve eligibility for this provision of law until April 30, 2001. Use of Section 245(i) adjustment of status previously was limited to eligible individuals who were the beneficiary of a visa petition or labor certification application filed on or before January 14, 1998.

Q2. Who are the "certain persons" covered under Section 245(i) adjustment of status?

A2. Those covered by the provision are listed at Section 245(a) and (c) of the Immigration and Nationality Act and include individuals who:

- Entered the United States illegally;
- Worked in the United States illegally,
- Failed to maintain continuously lawful status,
- Entered under the Visa Waiver Pilot Program,
- Entered as foreign crewmen, and
- Entered as foreign travelers in transit without a visa.

Q3. Am I eligible for Section 245(i) adjustment of status under the LIFE Act?

A3. To be eligible, you must:

- Be the beneficiary of a **Form I-130** immigrant visa petition ("Petition for Alien Relative"), or **Form I-140** immigrant visa petition ("Immigrant Petition for Alien Worker"), or **Form I-360** ["Petition for an Amerasian Widow(er), or Special Immigrant], or **Form I-526** ("Petition for an Alien Entrepreneur") filed with the INS on or before April 30, 2001, (either received by INS or, if mailed, postmarked on or before April 30, 2001) or

- Be the beneficiary of an application for labor certification filed with the Department of Labor (DOL) according to DOL rules on or before April 30, 2001, and
- Also have been physically present in the United States on December 21, 2000, if the qualifying visa petition or labor certification application was filed after January 14, 1998.

All petitions and applications must be properly filed and approvable when filed.

NOTE: There are some groups that may not be affected by any deadlines related to Section 245(i). The spouse or unmarried minor child of a U.S. citizen or the parent of a U.S. citizen child at least 21 years of age if he/she was inspected and lawfully admitted to the United States, but subsequently overstayed his/her authorized admission or worked without permission, **does not need to apply for adjustment of status under Section 245(i)**. Also, certain persons who are eligible for certain employment-based immigrant visas and who were inspected and lawfully admitted to the United States, but have not violated their status or worked without permission for more than 180 days, do not have to apply for adjustment of status under Section 245(i).

Q4. What is the deadline for filing in order to preserve eligibility for adjustment of status using Section 245(i)?

A4. You have a very short window of opportunity, which ends April 30, 2001, to **preserve your eligibility** to file for adjustment of status under Section 245(i). You are not required to file for adjustment of status (Form I-485) on or before April 30, 2001. However, to **preserve your eligibility** to apply for adjustment using Section 245(i) you must:

- Be the beneficiary of a Form I-130 immigrant visa petition ("Petition for Alien Relative") or Form I-140 immigrant visa petition ("Immigrant Petition for Alien Worker") filed with the INS on or before April 30, 2001, or
- Be the beneficiary of an application for labor certification filed with the DOL on or before April 30, 2001.

All petitions and applications must be properly filed and approvable when filed.

Q5. What does "properly filed" mean for an immigrant visa petition?

A5. "Properly filed" for an immigrant visa petition means that:

- The immigrant visa petition was received by INS prior to the close of business on or before April 30, 2001, or if mailed, was postmarked on or before April 30, 2001, and
- The immigrant visa petition contains the names of the petitioner and the beneficiary, the proper fee, and the signature of the petitioner.

Q6. What does "approvable when filed" mean for an immigrant visa petition?

A6. "Approvable when filed" for an immigrant visa petition means that:

- It was filed properly;
- It was meritorious in fact;
- It was not fraudulent; and
- At the time of filing, the beneficiary had the appropriate family relationship or employment relationship that would support the issuance of an immigrant visa.

Q7. What does "properly filed" mean for an application for labor certification?

A7. "Properly filed" for an application for labor certification means that it was filed with the DOL on or before April 30, 2001, according to DOL rules.

Q8. What does "approvable when filed" mean for an application for labor certification?

A8. "Approvable when filed" for an application for labor certification means that when the labor certification was filed with the DOL:

- It was filed properly according to DOL rules;
- It was meritorious in fact; and
- It was not fraudulent.

Q9. When do I submit my application for using Section 245(i) adjustment of status?

A9. You will be able to submit your application for adjustment of status under Section 245(i) at any later time when your immigrant petition is approved and a visa number is immediately available for you in accordance with the State Department's monthly Visa Bulletin.

Q10. What should my adjustment of status application under Section 245(i) include?

A10. The Section 245(i) application should include:

- Form I-485 ("Application to Register Permanent Residence or Adjust Status") with all information and documentation specified in the instructions;
- Supplement A to Form I-485;
- \$1,000 penalty fee;
- \$220 application fee and the \$25 fingerprinting fee; and
- Proof that the principal beneficiary of the immigrant visa petition or labor certification application was physically present in the United States on

December 21, 2000, if the qualifying visa petition or labor certification application was filed after January 14, 1998.

- In addition, if you want permission to work in the United States while your application is being processed, you may also apply for work authorization by including a Form I-765 ("Application for Employment Authorization") and the \$100 application fee.

Q11. Does everyone who files for adjustment of status using Section 245(i) have to pay the \$1,000 penalty fee?

A11. The only applicants using Section 245(i) who do not have to pay the \$1,000 penalty fee are those who, at the time they file their application for adjustment of status (Form I-485) under Section 245(i), are:

- Unmarried and less than 17 years of age, or
- The spouse or unmarried child (less than 21 years of age) of a legalized alien who qualifies for and has properly filed Form I-817, "Application for Voluntary Departure under the Family Unity Program." Such persons must submit a copy of their receipt or approval notice for filing Form I-817 along with their application for adjustment of status under Section 245(i).

All other applicants for adjustment of status (Form I-485) under Section 245(i) **must** pay the \$1,000 penalty fee.

Q12. Why do I have to prove that I was physically present in the United States on December 21, 2000?

A12. The law states that if you are the beneficiary of a visa petition or labor certification application that was filed after January 14, 1998, and on or before April 30, 2001, in order to be eligible for adjustment of status under Section 245(i) you also had to be physically present in the United States on the date the LIFE Act was enacted— December 21, 2000.

Q13. Do dependent family members also need to prove that they were physically present in the United States on December 21, 2000?

A13. No. The dependent spouse or children of the principal beneficiary do not need to prove that they were physically present in the United States on December 21, 2000. Only the principal beneficiary of the immigrant visa petition filed after January 14, 1998, and on or before April 30, 2001, is required to meet the physical presence requirement.

Q14. What kind of proof can I submit with my Section 245(i) adjustment-of-status application to demonstrate that I was in the United States on December 21, 2000?

A14. Government-issued documents are preferable as proof of physical presence, and INS and the Executive Office for Immigration Review (EOIR) documents have

precedence over the records of other agencies (see Q15 and Q16). If there are no government-issued documents that demonstrate your physical presence in the United States on December 21, 2000, INS will accept and evaluate non-government issued documents as well (see Q17). You may submit photocopies of government-issued documents as well as non-government-issued documents that establish your physical presence.

You may have a single document that may suffice to establish your physical presence on December 21, 2000. But if you do not possess documentation that contains the exact date of December 21, 2000, you may need to submit several documents to prove that you were physically present in the United States prior to, as well as after December 21, 2000.

INS will evaluate all evidence on a case-by-case basis and will not accept a personal affidavit attesting to your physical presence on December 21, 2000, without requiring an interview or additional evidence to validate the affidavit.

Q15. Specifically, what kind of INS documentation can I submit to prove that I was physically present in the United States on December 21, 2000?

A15. Examples of acceptable INS documentation include, but are not limited to:

- Photocopy of the Form I-94, Arrival-Departure Record, issued upon your arrival in the United States;
- Photocopy of Form I-862, Notice to Appear;
- Photocopy of the Form I-122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by INS on or prior to December 21, 2000, placing you in exclusion proceedings;
- Photocopy of the Form I-221, Order to Show Cause, issued by INS on or prior to December 21, 2000, placing you in deportation proceedings;
- Photocopy of any application or petition for an immigration benefit filed by you or on your behalf on or prior to December 21, 2000, which establishes your presence in the United States, or your INS fee receipt for the application or petition.

If you don't have the document(s) but believe that a copy is already contained in your INS file, you may submit a statement as to the name and location of the issuing federal, state, or local government agency, the type of document and the date on which it was issued. When processing your case, INS will look in your INS file to find the document(s) you specify. **You do not need to file a Freedom of Information Act (FOIA) request to obtain the actual document(s) from your INS file.**

Q16. Specifically, what kind of other government documentation can I submit to prove that I was physically present in the United States on December 21, 2000?

A16. Examples of such other government documentation include, but are not limited to:

- State driver's license;
- State identification card;
- County or municipal hospital record;
- Public college or public school transcript;
- Income tax records;
- Certified copy of a federal, state or local governmental record which was created on or prior to December 21, 2000, and filed by you or on your behalf to seek a benefit from that federal, state or local governmental agency;
- Certified copy of a federal, state or local governmental record which was created on or prior to December 21, 2000, that establishes that you submitted an income tax return, property tax payment, or similar submission or payment to that federal, state or local governmental agency;
- Your transcript from a private or religious school—that is registered with, or approved or licensed by, appropriate state or local authorities, accredited by the state or regional accrediting body, or by the appropriate private school association—or maintains enrollment records in accordance with state or local requirements or standards.

You will need to obtain the document(s) from other government (non-INS) agencies and submit photocopies of those records.

Q17. Specifically, what kind of non-government documentation can I submit to prove that I was physically in the United States on December 21, 2000?

A17. Examples of such non-government documentation include, but are not limited to:

- School records;
- Rental receipts;
- Utility bill receipts;
- Any other dated receipts;
- Personal checks written by the applicant bearing a bank cancellation stamp;
- Employment records, including pay stubs;
- Credit card statements showing the dates of purchase, payment, or other transaction;
- Certified copies of records maintained by organizations chartered by the Federal or State government, such as public utilities, accredited private and religious schools, and banks;
- If you established that you were part of a family unit living in the United States, documents proving the presence of another member of your family unit; and
- If you have ongoing correspondence or other interaction with INS, a list of the types and dates of such correspondence or other contact that you know are to be contained in INS records.

Such non-government documentation must indicate your name, have been dated at the time it was issued, and bear the seal or signature of the issuing authority (if the

documentation is normally signed or sealed), be issued on letterhead stationery, or be otherwise authenticated.

Q18. Am I still considered "illegal" if I have an immigrant visa petition or labor certification application filed on my behalf on or before April 30, 2001?

A18. The mere filing of a visa petition or application for a labor certification has no effect on your current immigration status or unlawful presence in the United States. If you are not in lawful status, you will continue to accrue periods of unlawful presence until you properly file your application for adjustment of status (Form I-485) under Section 245(i). When you file an application for adjustment of status, you stop accruing unlawful presence, but the periods of unlawful presence you accrued before your adjustment application are not eliminated.

Q19. Can I travel outside the United States if I have an immigrant visa petition or labor certification application filed on my behalf on or before April 30, 2001?

A19. If you are living illegally in the United States, the mere filing of a visa petition or application for a labor certification has no effect on your current immigration status or unlawful presence in the United States. If you leave the United States, you will have no authorization to re-enter the country.

When you file your application for adjustment of status (Form I-485), there is a way to obtain permission in advance to travel abroad by requesting "Advance Parole" from INS. **However, if you have accrued more than 180 days of unlawful presence, you should not travel abroad because you then will be barred from admission to the United States for either three years or 10 years, even if you were granted "Advance Parole."** Generally, the three-year bar to admission applies to those who were unlawfully present in the United States for more than 180 days and leave the country, and the 10-year bar applies to those who were unlawfully present in the United States for one year or more and leave the country.

Q20. Can I work in the United States if I have an immigrant visa petition or labor certification application filed on my behalf on or before April 30, 2001?

A20. No. The filing of a visa petition or application for a labor certification does not authorize you to work in the United States. You can apply for work authorization at the same time you file your application for adjustment of status (Form I-485) under Section 245(i) authorization by including a Form I-765 ("Application for Employment Authorization") and the \$100 application fee.

Q21. If I have applied for the diversity visa lottery program with the Department of State on or before April 30, 2001, will I be able to preserve my eligibility to adjust my status using Section 245(i)?

A21. No. The mere filing of a diversity visa lottery program application with the Department of State on or before April 30, 2001, does not preserve your eligibility to adjust your status using Section 245(i). However, if you are the beneficiary of an immigrant visa petition or application for labor certification filed on or before April 30, 2001—and also have been physically present in the United States on December 21, 2000, if the qualifying visa petition or labor certification application was filed after January 14, 1998—you may use winning a diversity visa as a basis for adjustment of status using Section 245(i).

Q22. What other immigration benefits does the LIFE ACT include?

A22. Creates a new temporary "V" non-immigrant status to allow the spouses and minor children of lawful permanent residents—waiting more than three years for an immigrant visa based upon an immigrant petition filed on or before December 21, 2000—to be admitted to and work in the United States while they are waiting for a visa number (priority date) to be reached on the State Department's visa waiting list.

- Expands the current K nonimmigrant status (which was only available to fiancées of U.S. citizens) to now include spouses and accompanying minor children of U.S. citizens to be admitted to the United States while their case is being processed.
- Provides adjustment of status for persons who filed before October 1, 2000, for class membership in one of three "amnesty" lawsuits (CSS v. Meese, LULAC v. INS, and Zambrano v. INS). Also provides family unity benefits, which may include employment authorization and protection from certain grounds of deportation, for certain spouses and children of applicants.
- Allows individuals, who previously could not have been eligible for relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA) or the Haitian Refugee Immigration Fairness Act (HRIFA) because they were ordered deported/removed from the United States, to reopen their removal proceedings to apply for adjustment of status under NACARA or HRIFA on or before June 19, 2001.

Q23. Where can I get specific information about the LIFE Act and my own situation?

A23. You can get general information on the LIFE Act and updates as regulations are finalized to implement the various provisions of the law through the INS Web site www.ins.usdoj.gov and the toll-free customer telephone service 1-800-375-5283. Forms can be easily downloaded from the Web site, or requested by calling 1-800-375-5283.

For more specific information about your own particular situation, you should be cautious to avoid unscrupulous immigration practitioners and contact a licensed attorney or a legal service provider recognized by the Board of Immigration Appeals (see Internet site www.usdoj.gov/eoir under "Pro Bono Program").

– INS –