THE FILIPINO EXPRESS
October 10-16, 1994

More on Who Qualifies Under New Law on Adjustment of Status

By Reuben S. Seguritan

As of October 1, the INS has started processing adjustment of status application under the new law that was enacted on August 26, 1994. Individuals affected by this law are those previously ineligible for adjustment of status because of illegal entry, unlawful status and unauthorized employment.

Those who are now eligible include aliens who:

1) entered without inspection; 2) were foreign crewmen; 3) were previously barred from adjustment because of unauthorized employment; 4) were previously barred from adjustment because they had failed to maintain lawful status; 5) originally entered under the visa waiver pilot program; and 6) entered as transit without visa aliens.

Examples:

1. An alien got a visa to Mexico. From there he entered the U.S. through the border without being inspected by an INS officer.

2. A cruise ship cook "jumped ship" in Miami.

3. A nurse validly entered under an H-1 visa. She failed her RN exam, and consequently her visa could not be extended.

4. A teacher entered the U.S. under a different name.

5. An accountant came to the U.S. under an H-1 visa to work for a certain company. He later moonlighted without securing INS authorization.

6. An engineer working in the Middle East was in transit to the U.S. without a visa on his way to the Philippines.

The implementing rules have not come out yet so that there are still unanswered questions, but they are expected to be released soon. Supplement A to form I-485, which is supposed to be used in connection with the new law, has not been approved, so the INS district is accepting applications with just the basic filing fee of $130. The applications will be sorted out by the INS at a later date and the penalty of $ 650 will then be paid.

In the meantime, those who are supposed to be interviewed in Manila this month have not received their interview notices. The U.S. Embassy has instead sent them a letter informing them of the effect of the new law, specifically the requirement that they must remain outside the U.S. for at least 90 days before they can complete the processing of their immigrant visas. Furthermore, they have been advised that the U.S. Embassy will not proceed in setting an interview date unless the applicants inform the embassy of their intention.

The State Department has issued the following warning in its October Visa Bulletin:

"Someone who has been physically present in the United States shall not be eligible to receive an immigrant visa at a consular office within 90 days following departure from the United States unless such person (1) was maintaining a lawful nonimmigrant status at the time of departure, or (2) is the spouse or unmarried child of a legalization beneficiary, entered the United States before May 5, 1988 and applied for "Family Unity" benefits under Sec. 301(a) of the 1990 Act. Consequently, effective October 1, 1994, almost all persons in the U.S. but *NOT* in lawful nonimmigrant status who will apply for an immigrant visa at a consular office *MUST* plan to remain outside the U.S. for at least 90 days."
"IMMIGRANT VISA APPLICANTS WHO ARE IN THE U.S. BUT ARE NOT IN LAWFUL NONIMMIGRANT STATUS AND WHO ARE NOT PREPARED TO REMAIN OUTSIDE THE U.S. FOR AT LEAST 90 DAYS SHOULD CONSIDER APPLYING TO INS FOR ADJUSTMENT OF STATUS. (Note that persons in the U.S. who *ARE* in lawful nonimmigrant status prior to their immigrant visa application(s) are *NOT* affected by INA 212(o). If such persons will be applying at a consular office abroad for an immigrant visa, they must be prepared to present evidence to establish that they were in legal nonimmigrant status prior to their departure from the U.S., however.)"

In a teleconference with immigration attorneys held on September 29, 1994, officers from the Department of State and the INS noted the following:

1. cases that were denied under the old law may be refiled on or after October 1, and they will be adjudicated under the new law.

2. Those who entered as fiances but did not get married to the citizen who filed the fiance petition cannot adjust their status because the new law does not waive the prohibition.

3. The five-year bar on adjustment of status to those who failed to appear for deportation, those who failed to appear for an administrative asylum interview, those who failed to depart under a grant of voluntary departure, etc. still stands.

4. The 90 day absence from the U.S. can be to any country and not just to the country where the alien is visa processing.

5. Evidence to prove 90 days of residence outside the U.S. may include airline tickets, entry/exit stamps, evidence of rent payments, and hotel bills.

6. The best evidence to establish that the alien was in lawful nonimmigrant status at the time of his last departure from the U.S. is the I-94.