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Adjustment of Status for Undocumented Aliens

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On December 21, 2000, President Clinton signed into law the Legal Immigration and Family Equity Act of 2000 (LIFE Act), reinstating an old law known as Section 245(i) which allowed undocumented aliens to apply for green cards in the U.S. rather than applying at a U.S. Consulate abroad.

To be eligible under the new law, they must file their immigrant petition with the INS or labor certification application with the Department of Labor on or before April 30, 2001. By not being required to leave the U.S., they would avoid lengthy separation from their families or extended absence from their employment.

Entry Bars

Under another law, if an applicant has been unlawfully present in the U.S. for more than 180 days and departs from the country to apply for immigrant visa abroad, he or she would be barred from re-entering for at least three years. If his unlawful stay has exceeded one year, he or she would be refused entry for ten years.

Beneficiaries of the New Law

Previously, the cutoff date for filing to avail of this benefit was January 14, 1998. Those who were eligible to file included the following classes of aliens:

a. Those who entered without inspection

b. Those who overstayed or otherwise failed to maintain their lawful status at any time

c. Those who took on unauthorized work at any time after entry

d. Those who are crew members in the D nonimmigrant category

e. Those admitted in transit without a visa

The same classes of aliens are eligible under the new law. They will be "grandfathered in", meaning they will preserve their eligibility under Section 245(i), even if they do not or cannot file for adjustment before the April 30, 2001 deadline, so long as they are the beneficiaries of a bona fide immigrant petition or labor certification filed before that date.

Some aliens who were deemed unqualified under the old law remain ineligible under the new law, whether or not their immigrant visa petition or labor certification was filed on their behalf by April 30, 2001. They include alien stowaways, aliens admitted in the K nonimmigrant category as fiancé or fiancées of U.S. citizens, and aliens subject to the two-

year foreign residence requirement due to a prior or current period of stay in the J nonimmigrant category.

The New Physical Presence Requirement

Aside from extending the deadline, the LIFE Act also attached a new "physical presence" prerequisite for eligibility. It necessitates applicants, particularly beneficiaries of those applications filed after the previous deadline of January 14, 1998 but before the new deadline of April 30, 2001 to prove their physical presence in the U.S. on December 21, 2000, the date of the enactment of this measure. The purpose of this requirement is to deter any individual from unlawfully entering the U.S. to apply.

Currently, the INS is accepting as proof an affidavit or declaration that the person was present on the date itself. The development of definite regulations and guidelines is still in progress.

Application Procedures

The applicants must be certain that their eligible I-130, I-140, or labor certification application arrives at the proper government agency on or before April 30, 2001. It is crucial to comply with said deadline as petitions filed **after** that date will be disqualified for Section 245(i) and they will be compelled to process their immigrant visa application at an overseas U.S. Consulate, thereby exposing them to the three- or ten-year bar.

Those persons who opt to and are qualified to concurrently file their visa petition and application for adjustment of status must submit the application for adjustment of status under Section 245(i) (Form I-485A) along with the petition and the appropriate fees.

The Section 245(i) fee of $1,000 has been retained, aside from other filing fees assessed by the INS. The $1,000 fee is paid upon the filing of Form I-485A, which is submitted with the typical adjustment of status application (Form I-485). As mentioned, the immigrant visa petition and the adjustment of status application may be filed together by the immediate relatives of U.S. citizens. However, the adjustment of status application is usually not filed until the immigrant petition is approved, and in most employment-based applications, until after both the labor certification and immigrant petition have been approved. Therefore, in a majority of cases, the fee does not have to be paid before April 30, 2001.

Limitations

Section 245(i) does **not** give work authorization, protection from deportation, or travel permission. It only allows people who illegally entered the U.S. or are unqualified for adjustment of status under normal adjustment standards to apply for adjustment of status in the U.S.