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The law governing household workers

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Thousands of Filipinos are employed in the U.S. as general houseworkers, baby-sitters and adult companions. As obtaining a green card spells a lengthy wait and there is not a nonimmigrant visa category in existence in which they can legally work during the pendency of their application, most of them are in an unlawful status.

With the enactment of the new law called the LIFE Act, specifically Section 245(i), those who entered the U.S. without inspection or by jumping ship, worked without authorization, or overstayed a nonimmigrant visa (e.g., tourist visa) are wondering if they can now breathe a sigh of relief.

Prior to the LIFE Act

Before the new law, household workers faced difficulty regularizing their status. Under the 1996 Act, a worker who has accrued 180 days of unlawful presence after April 1, 1997 is barred from entering the U.S. for three years. An accrual of 365 days of illegal presence would translate to a 10-year period of inadmissibility. The said bars would apply if the worker, who is required to leave the U.S. to apply for an immigrant visa at a U.S. consulate abroad, seeks reentry.

The law that makes a difference
Household workers in unlaw-

ful status were previously only eligible to adjust status under a special provision that expired on Jan. 14, 1998. Fortunately, Section 245(i) was reinstated on Dec. 21, 2000 which extended the old deadline to April 30, 2001. Under Section 245(i), household workers have a chance of obtaining a green card without having to return to the Philippines.

By foregoing the trip, the bar, which would add a three- or 10-year wait before the household worker could return to work and possible discourage the employer from pursuing a permanent residence case for the worker, will not be triggered.

Indeed, the LIFE Act is a great opportunity that can be taken advantage of by Filipinos in such a predicament. By being the beneficiary of a labor certification application properly filed on or before April 30, 2001 and physically present on Dec. 21, 2000, they could be "grandfathered" under the new law. By "grandfathered," we mean that an alien's eligibility to adjust his or her status and be interviewed in the U.S. for a green card is preserved.

"Properly filed" would mean that the labor certification forms ETA 750-A and B were properly completed by the employer and submitted to

the state employment service agency (SESA) by the said deadline. If the application was withdrawn or denied, the beneficiary is still grandfathered, as long as it was approvable at the time of filing.

Grandfather status

An applicant's eligibility is preserved regardless of whether he or she changes employers. Furthermore, eligibility is not forfeited should a speedier means of obtaining a green card be found even after the deadline. Such means could be having an employer who will petition the alien under the skilled worker category or having a sponsoring relative. Emphasis is put on the importance of filing before the deadline, as faster methods of obtaining a green card could be employed later after the application is filed.

The grandfather status extends even to derivative beneficiaries, i.e., his or her accompanying spouse and/or unmarried minor children at the time of the principal alien's adjustment. In addition, the spouse or child of a grandfathered alien as of April 30, 2001 is entitled to the benefit, regardless of whether he or she adjusts with the principal. The spouse or child will continue to be in the grandfather status even after losing his or her status or child such as through divorce

or aging out.

The labor certification application procedure

For a household worker to derive the benefits of the law and, in due course, regularize his or her status, there must be an employer who will petition him or her. The employer must intend to permanently employ the alien and the alien must likewise intend to permanently work for the said employer once the green card is obtained.

As the job is listed on Schedule B of the DOL and as Schedule B occupations cannot be certified, exemption from the DOL list must be obtained. If the household worker is qualified and the parties decide to pursue the permanent residence case, the labor certification application is filed with the DOL to establish a priority date for an immigrant visa.

The following are the requirements in filing a labor certification application:

1. The job must be a full-time position. This means that the employer must make an account of how a full-time schedule will be filled.

2. To be exempt from Schedule B, the household worker must have at least one year of full-time compensated experience in positions requiring performance of the same duties as the offered position.

3. The employer cannot

demand more than three months' experience as a minimum requirement for the job. Requiring more experience must be justified by business necessity.

4. The application must be supported by documentation of the alien's required one year's experience (consisting of the same job duties as those for the offered position), in the form of a letter from previous employers with whom the experience was accrued.

5. The application must also include an employment contract between the employer and the household worker, which spells out the terms and conditions of the employment, including payment of the prevailing wage.

6. Live-in positions must be justified by business necessity and the employer must provide free private room and board to the household worker.

The purpose of the labor certification requirement is to make sure that the employer is able to prove that there is no qualified U.S. worker at the time of the filing of the application and in the area of intended employment who are available or willing and able to fill the position being offered to the alien.

As part of the process, the employer is required to undertake a recruitment campaign including advertising in an appropriate publication. Worth mentioning is the fact that securing labor certification for live-in positions is a lot easier.

When the labor certification is approved, the employer will file the immigrant visa petition. Filing the petition reserves the alien's spot on the immigrant

visa waiting list. This is important in the event that he or she decides to work for another employer. As long as the first petition is not revoked, the original priority date will be assigned to the labor certification application of the new employer who must repeat the labor certification procedure.

After the labor certification is approved and the immigrant visa petition is filed, the rest of the case consists of waiting until the worker's spot in the waiting list is opened. As mentioned, the worker may now file for adjustment of status in the U.S. by virtue of Section 245(i) of the LIFE Act, upon filing the penalty fee of \$1,000.

Upgrading to skilled worker category

Household workers that are considered unskilled are classified under the "other worker" category. Because of the limited visa numbers allotted (10,000 per year worldwide), the waiting period before filing for adjustment of status is relatively long.

As of February 2001, visa numbers are available for priority dates earlier than Nov. 15, 1996. Next month, the date will advance to April 1, 1997. This serious backlog problem has prompted alterations in job offers in order to be included in the skilled worker category.

Currently, the skilled worker category does not have a waiting list, which means that there are visa numbers readily available.