Adjustment of Status under the Legal Immigration Family Equity Act ("LIFE Act")

The Legal Immigration Family Equity Act ("LIFE Act") permits adjustment of status for certain aliens who would otherwise be ineligible to adjust their status under INA § 245(a).[1] LIFE Act, Pub. L. No. 106-553, 114 Stat. 2762 (2000), amended by Pub. L. No. 106-554, 114 Stat. 2763 (2000). Under INA § 245(i), adjustment of status was available to alien crewmen, aliens continuing or accepting unauthorized employment, aliens admitted in transit without visa, and aliens who entered the United States without inspection. INA §§ 245(i)(1)(A)(i)-(ii). To be eligible to adjust to lawful permanent resident status under INA § 245(i), the alien must demonstrate that he is not inadmissible from the United States or that all grounds of inadmissibility have been waived. INA § 245(i)(2)(A); 8 C.F.R. §1245.10(b)(3).[2] This provision sunset on January 14, 1998, but was revived under the LIFE Act, which extended INA § 245(i) through April 30, 2001. Except for those aliens who already grandfathered, INA § 245(i) is now expired.

To seek adjustment under INA § 245(i), the alien must submit a Form I-485 with a Supplement A, and the application must be accompanied by a fee (currently $1,000). 8 C.F.R. § 1245.2(a)(3)(iii). To be grandfathered in under INA § 245(i),[3] the alien must be the beneficiary of either a labor certification under INA § 212(a)(5)(A) or a petition under INA § 204 (including I-140, I-130, I-360, I-526) that was filed[4] on or before April 30, 2001, and if it was filed after

[1] The LIFE Act also made available a new temporary "V" visa for spouses and minor children of LPRs waiting more than three years for an immigrant visa based on a petition filed on or before December 21, 2000 (the date of the enactment of the LIFE Act), and a new temporary "K" visa for spouses and children of U.S. citizens living abroad.

[2]Adjustment of status under INA § 245(i) is unavailable to an alien who is inadmissible under INA § 212(a)(9)(B)(i)(II), absent a waiver. Matter of Lemus, 25 I&N Dec. 734 (BIA 2012) (clarifying Matter of Lemus, 24 I&N Dec. 373 (BIA 2007)). An alien who is inadmissible under INA § 212(a)(9)(C)(i)(I) is not eligible to adjust status under INA § 245(i). Mora v. Mukasey, 550 F.3d 231, 239 (2d Cir. 2008); Matter of Diaz and Lopez, 25 I&N Dec. 188 (BIA 2010).

[3] For an alien to independently qualify for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i) (2006), as a derivative grandfathered alien, the principal beneficiary of the qualifying visa petition must satisfy the requirements for grandfathering, including the physical presence requirement of section 245(i)(1)(C) of the Act, if applicable. Matter of Ilic, 25 I&N Dec. 717 (BIA 2012). A spouse or child accompanying or following to join a principal grandfathered alien cannot qualify as a derivative grandfathered alien for purposes of section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i) (2006), by virtue of a spouse or child relationship that arose after April 30, 2001. Matter of Estrada, 26 I&N Dec. 180 (BIA 2013). An alien is not independently "grandfathered" under INA § 245(i) on account of his/her marriage to another alien who is "grandfathered" under INA § 245(i) for having been a derivative beneficiary of a visa petition. Matter of Legaspi, 25 I&N Dec. 328 (BIA 2010). If the original beneficiary of an application for labor certification was subsequently replaced by another alien on or before April 30, 2001, only the substituted beneficiary would be considered a grandfathered alien. 8 C.F.R. § 1245.10(j).

[4] A beneficiary can adjust status based on an immigrant visa petition or labor certification that was approved after April 30, 2001, so long as his/her petition or application for certification was "properly filed" (postmarked or received by the Department) on or before April 30, 2001, and "approvable when filed." 8 C.F.R. §§ 1245.10(a)(i)(A)-(B). "Approvable when filed" means the qualifying petition or application was properly filed, meritorious in fact, and non-frivolous ("frivolous" being "patently without substance"). 8 C.F.R. § 1245.10(a)(3). An alien will be presumed to be the beneficiary of a "meritorious in fact" labor certification if the application was "properly filed" and "non-frivolous" and if no apparent bars to approval of the labor certification existed at the time it was filed. Matter of Butt, 26 I&N Dec. 108, 116 (BIA 2013). To determine whether the petition or application was "approvable" at the time it was filed, the Court should consider the circumstances that existed at the time of filing. 8 C.F.R. § 1245.10(a)(3). In

January 14, 1998, the applicant must have been physically present in the U.S. on December 21, 2000.[5] INA § 245(i); LIFE Act § 1502(a)(1)(B), Pub. L. No. 106-553; 8 C.F.R. § 1245.10. For purposes of establishing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i) (2006), an alien seeking to be "grandfathered" must be the beneficiary of an application for labor certification that was "approvable when filed." Matter of Butt, 26 I&N Dec. 108, 117 (BIA 2013).

Pursuant to 8 C.F.R. § 245.10(j), "only the alien who was the beneficiary of the application for the labor certification on or before April 30, 2001, will be considered to have been grandfathered for purposes of filing an application for adjustment of status under section 245(i) of the Act. An alien who was substituted for the previous beneficiary of the application for the labor certification after April 30, 2001, will not be considered to be a grandfathered alien." The Second Circuit found that 8 C.F.R. § 245.10(j) and § 1245.10(j) provide a permissible construction of INA § 245(i)(1)(B)(ii) and that the statute confers grandfathered status on certain beneficiaries rather than particular applications, noting that the "focus of [the statute] . . . is on immigrants, not employers. Kar Onn Lee v. Holder, 701 F.3d 931, (2d Cir. 2012). The provision's apparent purpose is to provide immigrants with a limited opportunity to obtain and benefit from grandfathered status by the sunset date of August 30, 2001. Kar Onn Lee v. Holder, 701 F.3d 931, (2d Cir. 2012).

The LIFE Act also allows for adjustment of status for aliens who filed before October 1, 2000, for class membership in one the "late amnesty" lawsuits.[6] LIFE Act, §§ 1104 and 1503,

---

the case of a marriage-based visa petition, the applicant must prove that the marriage was bona fide at its inception in order to show that the visa petition was "meritorious in fact." Linares Huarcaya v. Mukasey, 550 F.3d 224 (2d Cir. 2008); Matter of Riero, 24 I&N Dec. 267 (BIA 2007). A petition that was properly filed and approvable when filed, "but later withdrawn, denied, or revoked due to circumstances arising after the time of filing, will preserve the alien beneficiary's grandfathered status if the alien is otherwise eligible to file an application for adjustment under section 245(i) of the Act." 8 C.F.R. § 1245.10(a)(3).

[5] Only the principal beneficiary (not his/her dependent family members) must show that he/she was physically present in the U.S. on December 21, 2000. 8 C.F.R. §§ 245.10(a)(1)(ii), 1245.10(a)(1)(ii). The applicant may submit several documents establishing his or her physical presents in the United States prior to, and after December 21, 2000, if no one documents that establishes the alien's physical presence on December 21, 2000. 8 C.F.R. §1245.10(n)(1).

[6] Catholic Social Services, Inc. v. Meese, vacated sub nom., Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993) ("CSS"); League of United Latin American Citizens v. INS, vacated sub nom., Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993) ("LULAC"); or Zambrano v. INS, vacated, 509 U.S. 918 (1993).

An alien may be an eligible CSS class member pursuant to the January 23, 2004 Settlement Agreement if he: (1) lived continuously and illegally in the U.S. from before January 1, 1982, until sometime between May 5, 1987, and May 4, 1988, when the alien (or his parent or spouse) visited the INS or a Qualified Designated Entity ("QDE") to apply for the 1986 amnesty program; and (2) the alien (or his parent or spouse) was turned away by the INS or QDE because he (or his parent or spouse) had, or the INS thought he had, traveled outside of the U.S. after November 6, 1986, without INS permission, and was otherwise eligible for legalization. To apply for class membership and legalization, the alien must file a Form I-687. See Important CSS Class Notice, Catholic Social Services, Inc. v. Ridge, No. Civ S-86-1343-LKK (E.D. Cal. Jan. 23, 2004).

An alien may be an eligible Newman (LULAC) class member pursuant to the February 18, 2004 Settlement Agreement if he: (1) lived continuously and illegally in the U.S. from before January 1, 1982, until some time between May 4, 1987, and May 4, 1988, when the alien (or his parent or spouse) visited the INS or a Qualified Designated

Pub. L. No. 106-553, 106-554; 8 C.F.R. § 245a.10-245a.22. The Department has jurisdiction over all applications for LIFE legalization benefits under the "late amnesty" lawsuits. 8 C.F.R. § 245a.12(b). An alien who is in exclusion, deportation, or removal proceedings, or who has a pending motion to reopen or motion to reconsider, and who is prima facie eligible for adjustment of status under LIFE Legalization, may request that the proceedings be administratively closed or that the motion filed be indefinitely continued, in order to allow the alien to pursue a LIFE Legalization application with the Department. 8 C.F.R. § 245a.12(b)(1); see also Matter of Morales, 21 I&N Dec. 130 (BIA 1996).

The application period for a "late amnesty" filing for adjustment began on June 1, 2001, and ended on June 4, 2003, during which time an alien had to file a Form I-485 with the Department. 8 C.F.R. §§ 245a.11, 245a.12. However, under the terms of settlement agreements reached with the Department, the filing deadline for certain legalization applicants under the terms of CSS and LULAC was extended through December 31, 2005.[7]

In order to qualify, the alien must have entered the U.S. before January 1, 1982, and resided continuously in the U.S. in an unlawful status since that date through May 4, 1988. 8 C.F.R. § 245a.11. He/she must also have been continuously present in the U.S. from November 6, 1986, through May 4, 1988,[8] must not have been convicted of a felony or of three or more misdemeanors in the U.S., and must not have engaged in persecution of others. 8 C.F.R. §§ 245a.11, 245a.16, 245a.18. The alien must demonstrate that he/she is admissible except with regard to grounds of inadmissibility under INA §§ 212(a)(5) and (7)(A).[9] 8 C.F.R. § 245a.18(b). Further, he/she must be registered under the Military Selective Service Act, if so required, and have or demonstrate basic citizenship skills. 8 C.F.R. § 245a.11(d)(3), (e).

The Family Unity provisions of the LIFE Act apply to "late amnesty" applications. LIFE Act, § 1504, Pub. L. No. 106-554; 8 C.F.R. § 245a.31. An alien currently in the U.S. may obtain Family Unity benefits if he/she establishes that he/she is the spouse or unmarried child under the

---

Entity ("QDE") to apply for the 1986 amnesty program; and (2) the alien (or his parent or spouse) was turned away by the INS or QDE because he (or his parent or spouse) had, or the INS thought he had, traveled outside of the U.S. after January 1, 1982, and returned to the U.S. using a tourist visa, student visa, or some other INS-issued document. To apply for class membership and legalization, the alien must file a Form I-687. See Important Newman (LULAC) Class Notice, Newman v. U.S. Citizenship and Immigration Services, Civ. No. 87-4757-WDK (CWx) (C.D. Cal. Feb. 18, 2004).

[7] See Order Approving Settlement of Class Action, Catholic Social Services, Inc. v. Ridge, No. Civ S-86-1343-LKK (E.D. Cal. Jan. 23, 2004); Order Approving Settlement of Class Action, Newman v. U.S. Citizenship and Immigration Services, Civ. No. 87-4757-WDK (CWx) (C.D. Cal. Feb. 18, 2004); Press Release, U.S. Citizenship and Immigration Services, USCIS Announces Extension of Deadline for Filing Applications Pursuant to the CSS and LULAC (Newman) Settlement Agreements (May 16, 2005), available at http://www.uscis.gov/files/pressrelease/CSS_LULAC16May05.pdf.

[8] An alien may maintain continuous physical presence in the U.S. despite "brief, casual, and innocent absences from the United States." 8 C.F.R. § 245a.16(b).

[9] The Attorney General may waive certain other provisions of section 212(a) of the Act under INA § 245A(d)(2)(B), although not those provisions relating to crimes involving moral turpitude, multiple criminal convictions, or others enumerated in 8 C.F.R. § 245a.18(c)(2). See 8 C.F.R. § 245a.18(b)(1). The alien may also apply for a waiver of inadmissibility under INA §§ 212(a)(9)(A) and (C). 8 C.F.R. § 245a.18(c)(1).

age of 21 of an eligible alien at the time the Family Unity application is adjudicated; he/she entered the U.S. before December 1, 1988, and resided in the U.S. on that date; and, if applying for Family Unity benefits on or after June 5, 2003, he/she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I-485. 8 C.F.R. § 245a.31. An alien is ineligible for Family Unity benefits if he/she has been convicted of a felony or of three or more misdemeanors, has engaged in the persecution of others, has been convicted of a particularly serious crime or a serious nonpolitical crime outside the U.S., or if there are reasonable grounds to believe that he/she is a "danger to the security of the United States." 8 C.F.R. § 245a.32.