

**§ 245a.10**

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[54 FR 29437, July 12, 1989, as amended at 54 FR 49964, Dec. 4, 1989]

**Subpart B—Legal Immigration Family Equity (LIFE) Act Legalization Provisions**

SOURCE: 66 FR 29673, June 1, 2001, unless otherwise noted.

**§ 245a.10 Definitions.**

In this Subpart B, the terms:

*Eligible alien* means an alien who, before October 1, 2000, filed with the Attorney General a written claim for class membership, with or without filing fee, pursuant to a court order issued in the case of:

(1) *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (CSS);

(2) *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (LULAC); or

(3) *Zambrano v. INS*, vacated, 509 U.S. 918 (1993) (*Zambrano*).

*Lawful Permanent Resident (LPR)* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

*LIFE Act* means the Legal Immigration Family Equity Act and the LIFE Act Amendments of 2000.

*LIFE Legalization* means the provisions of section 1104 of the LIFE Act and section 1503 of the LIFE Act Amendments.

*Prima facie* means eligibility is established if an “eligible alien” presents a properly filed and completed Form I-485 and specific factual information which in the absence of rebuttal will establish a claim of eligibility under this Subpart B.

**§ 245a.11 Eligibility to adjust to LPR status.**

An eligible alien, as defined in § 245a.10, may adjust status to LPR status under LIFE Legalization if:

(a) He or she properly files, with fee, Form I-485, Application to Register Permanent Residence or Adjust Status, with the Service during the application period beginning June 1, 2001, and ending May 31, 2002;

(b) He or she entered the United States before January 1, 1982, and resided continuously in the United States in an unlawful status since that date through May 4, 1988;

(c) He or she was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988;

(d) He or she is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in § 245a.18, and that he or she:

(1) Has not been convicted of any felony or of three or more misdemeanors committed in the United States;

(2) Has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(3) Is registered or registering under the Military Selective Service Act, if the alien is required to be so registered; and

(e) He or she can demonstrate basic citizenship skills.

**§ 245a.12 Filing and applications.**

(a) *When to file.* The application period begins on June 1, 2001, and ends on May 31, 2002. To benefit from the provisions of LIFE Legalization, an alien must properly file an application for adjustment of status, Form I-485, with appropriate fee, to the Service during this 1-year application period as described in this section. All applications, whether filed in the United States or filed from abroad, must be postmarked on or before May 31, 2002, to be considered timely filed.

(1) If the postmark is illegible or missing, and the application was mailed from within the United States,

the Service will consider the application to be timely filed if it is *received* on or before June 3, 2002.

(2) If the postmark is illegible or missing, and the application was mailed from outside the United States, the Service will consider the application to be timely filed if it is *received* on or before June 14, 2002.

(3) If the postmark is made by other than the United States Post Office, and is filed from within the United States, the application must bear a date on or before May 31, 2002, and must be received on or before June 3, 2002.

(4) If an application filed from within the United States bears a postmark that was made by other than the United States Post Office, bears a date on or before May 31, 2002, and is received after June 3, 2002, the alien must establish:

(i) That the application was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked by the United States Post Office May 31, 2002; and

(ii) That the delay in receiving the application was due to a delay in the transmission of the mail; and

(iii) The cause of such delay.

(5) If an application filed from within the United States bears both a postmark that was made by other than the United States Post Office and a postmark that was made by the United States Post Office, the Service shall disregard the postmark that was made by other than the United States Post Office.

(6) If an application filed from abroad bears both a foreign postmark and a postmark that was subsequently made by the United States Post Office, the Service shall disregard the postmark that was made by the United States Post Office.

(7) In all instances, the burden of proof is on the applicant to establish timely filing of an application for LIFE Legalization.

(b) *Filing of applications in the United States.* The Service has jurisdiction over all applications for the benefits of LIFE Legalization under this Subpart B. All applications filed with the Service for the benefits of LIFE Legalization must be submitted by *mail* to the

Service. After proper filing of the application, the Service will instruct the applicant to appear for fingerprinting as prescribed in §103.2(e) of this chapter. The Director of the Missouri Service Center shall have jurisdiction over all applications filed with the Service for LIFE Legalization adjustment of status, unless the Director refers the applicant for a personal interview at a local Service office as provided in §245a.19.

(1) *Aliens in exclusion, deportation, or removal proceedings, or who have a pending motion to reopen or motion to reconsider.* An alien who is prima facie eligible for adjustment of status under LIFE Legalization who is in exclusion, deportation, or removal proceedings before the Immigration Court or the Board of Immigration Appeals (Board), or who is awaiting adjudication of a motion to reopen or motion to reconsider filed with the Immigration Court of the Board, 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 Service. In the request to administratively close the matter or indefinitely continue the motion, the alien must include documents demonstrating prima facie eligibility for the relief, and proof that the application for relief had been properly filed with the Service as prescribed in this section. With the concurrence of Service counsel, if the alien appears eligible to file for relief under LIFE Legalization, the Immigration Court or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely.

(2) If an alien has a matter before the Immigration Court or the Board that has been administratively closed for reasons unrelated to this Subpart B, the alien may apply before the Service for LIFE Legalization adjustment of status.

(3) *Aliens with final orders of exclusion, deportation, or removal.* An alien, who is prima facie eligible for adjustment of status under LIFE Legalization, and who is subject to a final order of exclusion, deportation, or removal, may

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apply to the Service for LIFE Legalization adjustment.

(c) *Filing of applications from outside the United States.* An applicant for LIFE Legalization may file an application for LIFE Legalization from abroad. An application for LIFE Legalization filed from outside the United States shall be submitted by mail to the Service according to the instructions on the application. The Missouri Service Center Director shall have jurisdiction over all applications filed with the Service for LIFE Legalization adjustment of status. After reviewing the application and all evidence with the application, the Service shall notify the applicant of any further requests for evidence regarding the application and, if eligible, how an interview will be conducted.

(d) *Application and supporting documentation.* Each applicant for LIFE Legalization adjustment of status must file Form I-485. An applicant should complete Part 2 of Form I-485 by checking box “h—other” and writing “LIFE Legalization” next to that block. Each application must be accompanied by:

(1) The \$330 application fee.

(2) The \$25 fee for fingerprinting if the applicant is between the ages of 14 and 75.

(3) Evidence to establish identity, such as a passport, birth certificate, any national identity document from the alien’s country of origin bearing photo and fingerprint, driver’s license or similar document issued by a state if it contains a photo, or baptismal record/marriage certificate.

(4) A completed Form G-325A, Biographic Information Sheet, if the applicant is between the ages of 14 and 79.

(5) A report of medical examination, as specified in §245.5 of this chapter.

(6) Two photographs, as described in the instructions to Form I-485.

(7) Proof of application for class membership in *CSS*, *LULAC*, or *Zambrano* class action lawsuits as described in §245a.14.

(8) Proof of continuous residence in an unlawful status since prior to January 1, 1982, through May 4, 1988, as described in §245a.15.

(9) Proof of continuous physical presence from November 6, 1986, through May 4, 1988, as described in §245a.16.

(10) Proof of citizenship skills as described in §245a.17.

(e) *Burden of proof.* An alien applying for adjustment of status under this part has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status under this Subpart B. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification as set forth in paragraph (f) of this section.

(f) *Evidence.* The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation.

(g) *Secondary evidence.* Except as otherwise provided in this paragraph, if the primary evidence required in this Subpart B is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, statements or other relevant documents may be submitted. In adjudicating the application for LIFE Legalization adjustment of status, the Service shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraph (d)(3) of this section. However, subject to verification by the Service, if the evidence required to be submitted by the applicant is already contained in the Service’s file relating to the applicant, the applicant may submit a statement to that effect in lieu of the actual documentation.

### § 245a.13 During pendency of application.

(a) *In general.* When an eligible alien in the United States submits a prima facie application for adjustment of status under LIFE Legalization during the