

known to the Government before January 1, 1982. Known to the Government means documentation existing in one or more Federal Government agencies' files such that when such document is taken as a whole, it warrants a finding that the alien's status in the United States was unlawful. Any absence of mandatory annual and/or quarterly registration reports from Federal Government files does not warrant a finding that the alien's unlawful status was known to the Government.

(i) *A or G nonimmigrants.* An eligible alien who entered the United States for duration of status (D/S) in one of the following nonimmigrant classes, A-1, A-2, G-1, G-2, G-3 or G-4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982. A dependent family member may be considered a member of this class if the dependent family member was also in A or G status when the principal A or G alien's status terminated or ceased to be recognized by the Department of State.

(ii) *F nonimmigrants.* An eligible alien who entered the United States for D/S in one of the following nonimmigrant classes, F-1 or F-2, who completed a full course of study, including practical training, and whose time period, if any, to depart the United States after completion of study expired prior to January 1, 1982. A dependent F-2 alien otherwise eligible who was admitted into the United States with a specific time period, as opposed to duration of status, documented on Form I-94, Arrival-Departure Record, that extended beyond January 1, 1982, is considered eligible if the principal F-1 alien is found eligible.

(iii) *Nonimmigrant exchange visitors.* An eligible alien who was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Act), who entered the United States before January 1, 1982, and who:

(A) Was not subject to the 2-year foreign residence requirement of section 212(e) of the Act; or

(B) Has fulfilled the 2-year foreign residence requirement of section 212(e) of the Act; or

(C) Has received a waiver for the 2-year foreign residence requirement of section 212(e) of the Act.

(3) *Asylum applicants.* An eligible alien who filed an asylum application prior to January 1, 1982, and whose application was subsequently denied or whose application was not decided by May 4, 1988.

(4) *Aliens considered to be in unlawful status.* Aliens who were present in the United States in one of the following categories were considered to be in unlawful status:

(i) An eligible alien who was granted voluntary departure, voluntary return, extended voluntary departure, or placed in deferred action category by the Service prior to January 1, 1982.

(ii) An eligible alien who is a Cuban or Haitian entrant (as described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 and at §212.5(g) of this chapter), who entered the United States before January 1, 1982. Pursuant to section 1104(c)(2)(B)(iv) of the LIFE Act, such alien is considered to be in an unlawful status in the United States.

(iii) An eligible alien who was paroled into the United States prior to January 1, 1982, and whose parole status terminated prior to January 1, 1982.

(iv) An eligible alien who entered the United States before January 1, 1982, and whose entries to the United States subsequent to January 1, 1982, were not documented on Form I-94.

**§ 245a.16 Continuous physical presence from November 6, 1986, through May 4, 1988.**

(a) The Service will determine whether an alien was continuously physically present in the United States from November 6, 1986, through May 4, 1988, based on the evidence provided by the alien. An alien must provide with the application evidence establishing his or her continuous physical presence in the United States from November 6, 1986, through May 4, 1988. Evidence establishing the alien's continuous physical presence in the United States from November 6, 1986, to May 4, 1988, may consist of any documentation issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was

dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument.

(b) For purposes of this section, an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States. Also, brief, casual, and innocent absences from the United States are not limited to absences with advance parole. Brief, casual, and innocent absence(s) as used in this paragraph means temporary, occasional trips abroad as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States. A single absence from the United States of more than thirty (30) days or an aggregate of all absences exceeding ninety (90) days shall not be deemed to be a brief, casual, and innocent absence unless the alien had advance parole or the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period(s) allowed.

(c) An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous physical presence as required at the time of filing an application under this section.

#### § 245a.17 Citizenship skills.

(a) *Requirements.* Applicants for adjustment under LIFE Legalization must meet the requirements of section 312(a) of the Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States). Unless an exception under paragraph (c) of this section applies to the applicant, LIFE Legalization applicants must establish that:

(1) He or she has complied with the same requirements as those listed for naturalization applicants under §§312.1 and 312.2 of this chapter; or

(2) He or she has a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and United States history and government). The applicant may submit a high school diploma or GED either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted); or

(3) He or she has attended, or is attending, a state recognized, accredited learning institution in the United States, and that institution certifies such attendance. The course of study at such learning institution must be for a period of one academic year (or the equivalent thereof according to the standards of the learning institution) and the curriculum must include at least 40 hours of instruction in English and United States history and government. The applicant may submit certification on letterhead stationery from a state recognized, accredited learning institution either at the time of filing Form I-485, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A-number must appear on any such evidence submitted).

(b) *Second interview.* An applicant who fails to pass the English literacy and/or the United States history and government tests at the time of the interview, shall be afforded a second opportunity after 6 months (or earlier, at the request of the applicant) to pass the tests or submit evidence as described in paragraphs (a)(2) or (a)(3) of this section. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements.

(c) *Exceptions.* LIFE Legalization applicants are exempt from the requirements listed under paragraph (a)(1) of