

Department of Homeland Security

§ 245a.32

(1) To make a determination on the application;

(2) For the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraphs (c) of this section; or

(3) For the purposes of rescinding, pursuant to section 246(a) of the Act (8 U.S.C. 1256(a)), any adjustment of status obtained by the alien.

(c) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false statement or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false statement or document for use in an application for adjustment of status under this Subpart B.

(d) Information contained in granted files may be used by the Service at a later date to make a decision:

(1) On an immigrant visa petition or other status filed by the applicant under section 204(a) of the Act;

(2) On a naturalization application submitted by the applicant;

(3) For the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986; or

(4) For the furnishing of information, at the discretion of the Attorney General, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8.

(e) Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

§ 245a.22 Rescission.

(a) Rescission of adjustment of status under LIFE Legalization shall occur only under the procedures of 8 CFR part 246.

(b) Information furnished by an eligible alien pursuant to any application

filed under LIFE Legalization may be used by the Attorney General, and other officials and employees of the Department of Justice and any bureau or agency thereof, for purposes of rescinding, pursuant to 8 CFR part 246, any adjustment of status obtained by the alien.

§§ 245a.23–245a.29 [Reserved]

Subpart C—LIFE Act Amendments Family Unity Provisions

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

§ 245a.30 Description of program.

This Subpart C implements the Family Unity provisions of section 1504 of the LIFE Act Amendments, Public Law 106-554.

§ 245a.31 Eligibility.

An alien who is currently in the United States may obtain Family Unity benefits under section 1504 of the LIFE Act Amendments if he or she establishes that:

(a) He or she is the spouse or unmarried child under the age of 21 of an eligible alien (as defined under §245a.10) at the time the alien's application for Family Unity benefits is adjudicated and thereafter;

(b) He or she entered the United States before December 1, 1988, and resided in the United States on such date; and

(c) If applying for Family Unity benefits on or after June 5, 2003, he or she is the spouse or unmarried child under the age of 21 of an alien who has filed a Form I-485 pursuant to this Subpart B.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002]

§ 245a.32 Ineligible aliens.

The following categories of aliens are ineligible for Family Unity benefits under the LIFE Act Amendments:

(a) An alien who has been convicted of a felony or of three or more misdemeanors in the United States; or

(b) An alien who has ordered, incited, assisted, or otherwise participated in

§ 245a.33

8 CFR Ch. I (1–1–07 Edition)

the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion; or

(c) An alien who has been convicted by a final judgment of a particularly serious crime and who is a danger to the community of the United States; or

(d) An alien who the Attorney General has serious reasons to believe has committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(e) An alien who the Attorney General has reasonable grounds to believe is a danger to the security of the United States.

§ 245a.33 Filing.

(a) *General.* An application for Family Unity benefits under section 1504 of the LIFE Act Amendments must be filed on a Form I-817, Application for Family Unity Benefits, with the Missouri Service Center. A Form I-817 must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(b) *Decision.* The Missouri Service Center Director has sole jurisdiction to adjudicate an application for Family Unity benefits under the LIFE Act Amendments. If the Service finds that additional evidence is required from the alien in order to properly adjudicate the application, the Service shall request such evidence from the alien in writing. The Director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(c) *Referral of denied cases for consideration of issuance of notice to appear.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue a notice to appear. After an initial denial, an applicant's case will

not be referred for issuance of a notice to appear until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I-817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under § 245a.32(a), the Service reserves the right to issue a notice to appear at any time after the initial denial.

§ 245a.34 Protection from removal, eligibility for employment, and period of authorized stay.

(a) *Scope of protection.* Nothing in this Subpart C shall be construed to limit the authority of the Service to commence removal proceedings against an applicant for or beneficiary of Family Unity benefit under this Subpart C on any ground of removal. Also, nothing in this Subpart C shall be construed to limit the authority of the Service to take any other enforcement action against such an applicant or beneficiary with respect to any ground of removal not specified in paragraphs (a)(1) through (a)(4) of this section. Protection from removal under this Subpart C is limited to the grounds of removal specified in:

(1) Section 237(a)(1)(A) of the Act (aliens who were inadmissible at the time of entry or adjustment of status), except that the alien may be removed if he or she is inadmissible because of a ground listed in section 212(a)(2) (criminal and related grounds) or in section 212(a)(3) (security and related grounds) of the Act; or

(2) Section 237(a)(1)(B) of the Act (aliens present in the United States in violation of the Act or any other law of the United States);

(3) Section 237(a)(1)(C) of the Act (aliens who violated their non-immigrant status or violated the conditions of entry); or

(4) Section 237(a)(3)(A) of the Act (aliens who failed to comply with the change of address notification requirements).

(b) *Duration of protection from removal.* When an alien whose application for Family Unity benefits under the LIFE Act Amendments is approved, he or she will receive protection from removal, commencing with the date of approval