

whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(1) A determination is made that Family Unity benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(2) The beneficiary commits an act or acts which render him or her ineligible for Family Unity benefits under the LIFE Act Amendments;

(3) The alien, upon whose status Family Unity benefits under the LIFE Act were based, fails to apply for LIFE Legalization by May 31, 2002, has his or her LIFE Legalization application denied, or loses his or her LPR status; or

(4) A qualifying relationship to the alien, upon whose status Family Unity benefits under the LIFE Act Amendments were based, no longer exists.

(b) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of §103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of §103.5a of this chapter. Nothing in this section shall preclude the Service from commencing removal proceedings prior to termination of Family Unity benefits.

(c) *Effect of termination.* Termination of Family Unity benefits under the LIFE Act Amendments shall render the alien amenable to removal under any ground specified in section 237 of the Act (including those grounds described in §245a.34(a)). In addition, the alien will no longer be considered to be in a period of stay authorized by the Attorney General as of the date of such termination.

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

Sec.

246.1 Notice.

246.2 Allegations admitted; no answer filed; no hearing requested.

246.3 Allegations contested or denied; hearing requested.

246.4 Immigration judge's authority; withdrawal and substitution.

246.5 Hearing.

246.6 Decision and order.

246.7 Appeals.

246.8 [Reserved]

246.9 Surrender of Form I-551.

AUTHORITY: Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

SOURCE: 62 FR 10385, Mar. 6, 1997, unless otherwise noted.

§246.1 Notice.

If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case, or it appears to an asylum office director that a person granted adjustment of status by an asylum officer pursuant to 8 CFR 240.70 was not in fact eligible for adjustment of status, a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind, which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

[62 FR 10385, Mar. 6, 1997, as amended at 64 FR 27881, May 21, 1999]

§246.2 Allegations admitted; no answer filed; no hearing requested.

If the answer admits the allegations in the notice, or if no answer is filed within the thirty-day period, or if no