

## Department of Homeland Security

## § 245a.12

the alien is required to be so registered; and

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

[66 FR 29673, June 1, 2001, as amended at 67 38350, June 4, 2002]

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

(a) *When to file.* The application period began on June 1, 2001, and ends on June 4, 2003. 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 the 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 June 4, 2003, 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 9, 2003.

(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 18, 2003.

(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 June 4, 2003, and must be received on or before June 9, 2003.

(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 June 4, 2003, and is received after June 9, 2003, 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 that was postmarked by the United States Post Office June 4, 2003; 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

§ 245a.12

8 CFR Ch. I (1-1-11 Edition)

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 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 Form I-485 application fee as contained in 8 CFR 103.7(b)(1).

(2) The fee for fingerprinting as contained in 8 CFR 103.7(b)(1), if the applicant is between the ages of 14 and 79.

(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. This proof may be submitted either at the time of filing the application, subsequent to filing the application but prior to the interview, or at the time of the interview.

(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. Subject to

verification by the Service, if the evidence required to be submitted by the applicant is already contained in the Service's file or databases relating to the applicant, the applicant may submit a statement to that effect in lieu of the actual documentation.

[66 FR 29673, June 1, 2001, as amended at 67 38350, June 4, 2002]

**§ 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 application period, until a final determination on his or her application has been made, the applicant:

(1) May not be deported or removed from the United States;

(2) Is authorized to engage in employment in the United States and is provided with an "employment authorized" endorsement or other appropriate work permit; and

(3) Is allowed to travel and return to the United States as described at paragraph (e) of this section. Any domestic LIFE Legalization applicant who departs the United States while his or her application is pending without advance parole may be denied re-admission to the United States as described at paragraph (e) of this section.

(b) *Determination of filing of claim for class membership.* With respect to each LIFE Legalization application for adjustment of status that is properly filed under this Subpart B during the application period, the Service will first determine whether or not the applicant is an "eligible alien" as defined under § 245a.10 of this Subpart B by virtue of having filed with the Service a claim of class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit before October 1, 2000. If the Service's records indicate, or if the evidence submitted by the applicant with the application establishes, that the alien had filed the requisite claim of class membership before October 1, 2000, then the Service will proceed to adjudicate the application under the remaining standards of eligibility.

(c) *Prima facie eligibility.* Unless the Service has evidence indicating ineligibility due to criminal grounds of inad-

missibility, an application for adjustment of status shall be treated as a prima facie application during the pendency of application, until the Service has made a final determination on the application, if:

(1) The application was properly filed under this Subpart B during the application period; and

(2) The applicant establishes that he or she filed the requisite claim for class membership in the *CSS*, *LULAC*, or *Zambrano* lawsuit.

(d) *Authorization to be employed in the United States while the application is pending—(1) Application for employment authorization.* An applicant for adjustment of status under LIFE Legalization who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file a Form I-765, Application for Employment Authorization, with the Service, including the fee as set forth in § 103.7(b)(1) of this chapter. The applicant may submit Form I-765 either concurrently with or subsequent to the filing of the application for adjustment of status benefits on Form I-485.

(2) *Adjudication and issuance.* Until a final determination on the application has been made, an eligible alien who submits a prima facie application for adjustment of status under this Subpart B shall be authorized to engage in employment in the United States and be provided with an "employment authorized" endorsement or other appropriate work permit in accordance with § 274a.12(c)(24) of this chapter. An alien shall not be granted employment authorization pursuant to LIFE Legalization until he or she has submitted a prima facie application for adjustment of status under this Subpart B. If the Service finds that additional evidence is required from the alien in order to establish prima facie eligibility for LIFE Legalization, the Service shall request such evidence from the alien in writing. Nothing in this section shall preclude an applicant for adjustment of status under LIFE Legalization from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the alien may be eligible.