

§ 245a.34

8 CFR Ch. I (1–13 Edition)

(b) *Decision.* The Missouri Service Center Director has sole jurisdiction to adjudicate an application for Family Unity benefits under the LIFE Act Amendments. 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.

[66 FR 29673, June 1, 2001, as amended by 72 FR 19107, Apr. 17, 2007]

§ 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 of the application. A grant of protection from removal under this section shall be considered effective from the date on which the application was properly filed.

(1) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's application for LIFE Legalization, any evidence of protection from removal shall be dated to expire 1 year after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits under the LIFE Act Amendments based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, any evidence of protection from removal shall be dated to expire 2 years after the date of approval, or the day before the alien's 21st birthday, whichever comes first.

(c) *Employment authorization.* An alien granted Family Unity benefits under the LIFE Act Amendments is authorized to be employed in the United States.

(1) In the case of an alien who has been granted Family Unity benefits

based on the principal alien's application for LIFE Legalization, the validity period of the employment authorization document shall be dated to expire 1 year after the date of approval of the Form I-817, or the day before the alien's 21st birthday, whichever comes first.

(2) In the case of an alien who has been granted Family Unity benefits based on the principal alien's adjustment to LPR status pursuant to his or her LIFE Legalization application, the validity period of the employment authorization document shall be dated to expire 2 years after the date of approval of the Form I-817, or the day before the alien's 21st birthday, whichever comes first.

(d) *Period of authorized stay.* An alien granted Family Unity benefits under the LIFE Act Amendments is deemed to have received an authorized period of stay approved by the Attorney General within the scope of section 212(a)(9)(B) of the Act.

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

§ 245a.35 Travel outside the United States.

(a) An alien who departs the United States while his or her application for Family Unity benefits is pending will be deemed to have abandoned the application and the application will be denied.

(b) An alien granted Family Unity benefits under the LIFE Act Amendments who intends to travel outside the United States temporarily must apply for advance authorization using Form I-131. The authority to grant an application for advance authorization for an alien granted Family Unity benefits under the LIFE Act Amendments rests solely with the Service. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be inadmissible under section 212(a)(2) or (3) of the Act, shall be paroled into the United States. He or she shall be provided the remainder of the protection from removal period previously granted under the Family Unity provisions of the LIFE Act Amendments.

§ 245a.36 [Reserved]

§ 245a.37 Termination of Family Unity Program benefits.

(a) *Grounds for termination.* The Service may terminate Family Unity benefits under the LIFE Act Amendments 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 June 4, 2003, 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 8 CFR 103.8. 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 8 CFR 103.8. 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.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002; 76 FR 53794, Aug. 29, 2011]