

of the grounds of inadmissibility under sections 212(a)(1), (a)(6)(B), (a)(6)(C), (a)(6)(F), (a)(8)(A), (a)(10)(B), and (a)(10)(D) of the Act as provided in section 586(c) of Public Law 106–429, if the alien demonstrates that a waiver is necessary to prevent extreme hardship to the alien, or to the alien’s spouse, parent, son or daughter who is a U.S. citizen or an alien lawfully admitted for permanent residence. In addition, the alien may apply for any other waiver of inadmissibility under section 212 of the Act, if eligible. In order to obtain a waiver for any of these grounds, the applicant must submit an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(g) *Evidence.* Applicants must submit evidence that demonstrates they are eligible for adjustment of status under section 586 of Public Law 106–429. Such evidence shall include the following:

(1) A birth certificate or other record of birth;

(2) Documentation to establish that the applicant was physically present in the United States on October 1, 1997, under the standards set forth in § 245.22 of this chapter.

(3) A copy of the applicant’s Arrival-Departure Record (Form I-94) (see § 1.4) or other evidence that the alien was inspected or paroled into the United States prior to October 1, 1997, from one of the three programs listed in paragraph (a)(2) of this section. Subject to verification, documentation pertaining to paragraph (a)(2) of this section is already contained in USCIS files and the applicant may submit an affidavit to that effect in lieu of actual documentation.

(h) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may apply on the form specified by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(i) *Travel while an application to adjust status is pending.* An applicant who wishes to travel outside the United States while the application is pending must obtain advance permission by filing the application specified by USCIS

with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(j) *Approval and date of admission as a lawful permanent resident.* When USCIS approves an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified in writing of USCIS’s decision. In addition, the record of the alien’s admission as a lawful permanent resident will be recorded as of the date of the alien’s inspection and parole into the United States, as described in paragraph (a)(1) of this section.

(k) *Notice of denial.* When USCIS denies an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified of the decision in writing.

(l) *Administrative review.* An alien whose application for adjustment of status under section 586 of Public Law 106–429 is denied by USCIS may appeal the decision to the Administrative Appeals Office in accordance with 8 CFR 103.3(a)(2).

[67 FR 78673, Dec. 26, 2002, as amended at 76 FR 53793, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011; 78 FR 18472, Mar. 27, 2013]

**§ 245.22 Evidence to demonstrate an alien’s physical presence in the United States on a specific date.**

(a) *Evidence.* Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where a more specific regulation relating to a particular adjustment of status provision has been issued in the 8 CFR, such regulation is controlling to the extent that it conflicts with this section.

(b) *The number of documents.* If no one document establishes the alien’s physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to and after that date.

(c) *DHS-issued documentation.* An applicant for permanent residence may

demonstrate physical presence by submitting DHS-issued (or predecessor agency-issued) documentation such as an arrival-departure form or notice to appear in immigration proceedings.

(d) *Government-issued documentation.* To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

- (1) A state driver's license;
- (2) A state identification card;
- (3) A county or municipal hospital record;
- (4) A public college or public school transcript;
- (5) Income tax records;
- (6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;
- (7) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting

body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

(e) *Copies of records.* It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application. If the alien is not in possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, State, or local government agency, the type of document and the date on which it was issued.

(f) *Other relevant document(s) and evaluation of evidence.* The adjudicator will consider any other relevant document(s) as well as evaluate all evidence submitted, on a case-by-case basis. The Service may require an interview when necessary.

(g) *Accuracy of documentation.* In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with records of the Service having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority.

[67 FR 78674, Dec. 26, 2002, as amended at 76 FR 53794, Aug. 29, 2011]

**§ 245.23 Adjustment of aliens in T nonimmigrant classification.**

(a) *Eligibility of principal T-1 applicants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

- (1) Applies for such adjustment;
- (2)(i) Was lawfully admitted to the United States as a T-1 nonimmigrant, as defined in 8 CFR 214.11(a)(2); and