MEMORANDUM

TO: **MARIA ECHAVESTE**
FROM: **IRENE BUENO**
RE: **CONFERENCE CALL ON LIFA IMPLEMENTATION** – Thursday, January 4, 2001 at 2:30 pm (757-2104 code 1251)

PURPOSE:

The purpose of this call is:

(1) to ensure that DOJ, INS, State Dept. and Labor are implementing the new immigration provisions according to the timeframe set and based on our intent; and

(2) to get their comments on the AILA fact sheet.

(3) Status of meetings with the groups and Hill for their input on implementation.

BACKGROUND:

Attached is a chart that gives you a status of the implementation of these provisions (see attached). DoJ and INS is expected to meet before the call to work out the most important outstanding issues in the implementation of section 245(i) and late amnesty provisions. I suggest going through the list on checking on the status.

In addition, I sent to the group the draft fact sheet that AILA prepared and asked the group to review and to be prepared to discuss the issues (see attached). We should also ask the group for comments on the AILA paper.

Lastly, attached is the joint memo from Senators Abraham and Kennedy that provides legislative history on these provisions.

ATTENDEES:

You
Dawn Chirwa
Wendy Patten
Steve Mertens
Debra Bond

DOJ
- James Castello/Brad Glassman
- Patty First

INS

- Gerri Ratliff
- Bill Yates

State Dept.
- Ed Odom

Labor
- Earl Gohl
- Dale Ziegler

DRAFT 12/28/2000

B.W. yes

IMMIGRATION PROVISIONS – IMPLEMENTATION

245(i) – implement by mid -January

Issue/Task	**Contact/Timeline**	**Status**	**Next Steps**
- Physical Presence	INS Options by 1/3 Decision 1/8	- 12/27- INS is developing options that are easy to administer and flexible and is not subject to widespread fraud. - INS concerned about affidavit but open to looking at other simple ways to prove physical presence.	INS will report on options on Jan. 4. finalize by tomorrow
- Requirement on only principals not derivatives	INS 1/3	INS is reviewing have until [illegible]	INS is reviewing
Skeletal Application would be one and same when	INS 12/29	- 12/27 - INS will consider the issues of allowing a skeletal process at the beginning of the process. - In 1998, INS required a fuller application at the beginning but at the end allowed a skeletal application	- INS will report on finding on Jan 4. yes
Application deadline		- In 1998, must be received by expiration date 4/30/01 and gave receipts at the office or mailed after received. - INS plans to continue the same procedure as in 1998.	- INS should get input from groups and the Hill
Mtg w/ Hill & CBOs	INS/ASAP	- DOJ is scheduling mtg with the Hill for week of 1/1 - INS scheduling small mtg with the groups for week of 1/1	- Get feedback from Hill and groups on INS proposals. week
Update Reg	INS Draft by 1/12 Complete by 1/19	INS will draft pending the resolution of above issues.	INS needs to draft reg
Field Guidance	INS Draft 1/12	INS will draft pending the resolution	INS needs to draft

	Complete 1/19		
Fact Sheet & distribution (web page, 800 number	INS/2nd week of Jan Draft by 1/12 Complete 1/19	Check on status	INS needs to draft

Late Amnesty

Issue	Contact/Timeline	Status	Next Steps
No deportations, provide work authorization, travel permission	DOJ/ASAP	12/27: DOJ reports that:. **Deportation** – no problem. **Work Authorization** - need to consider further. Appears only authorized for if they are apprehended. Newman class already has work authorization. **Travel Authorization - ?** Don't see an issue	James will report on status on Jan. 4 conference call. 4/20 [illegible] will [illegible] work authorization
Expanding the class	DOJ/	- 12/27: DOJ lawyers are reviewing whether this provision can apply to other lawsuits. - Admin letters indicate support for expanding the class. - Joint Summary states AG should expand class of those ~~helped under this provision.~~	James will report on status on Jan. 4 conference call. opinion on expansion will be [illegible] Tuesday 4/4
Family Unity/apply the	INS	Joint memo states that this provision should be implemented in the same manner as in 1990 (ie. Allow aged out kids to be covered).	DOJ and INS will consider [illegible] will be eligible 6
Regs	INS/Due 120 days after enactment		Brad will take

NACARA/HRIFA TECHNICALS

Issue	Contact/Timeline	Status	Next Steps
Field Guidance	1/10/01	INS drafting field guidance	Check on status

V and K Visas

√ Visa

Issue	Contact/Timeline	Status	Next Steps
Timeline	State/INS – time line due 1/9/01	- 12/27 – State Dept. proposes to implement the V visa in the same way they currently do for K visas. This requires health screening, criminal background check and affidavit of support. - State and INS are working on a timeline that outlines steps to be taken, resources needed & potential problems.	- State Dept. awaiting WH input.

80 K

grupo

Subcttee

Memo

To: Maria Echaveste; Irene Bueno

From: Ben Johnson, Crystal Williams, Judy Golub

Date: December 27, 200012/28/00

Re: Extension of 245(i) until April 30, 2001

On December 21, 2000, the President signed into law H.R. 5666, Miscellaneous Appropriations of 2001. Section 1502 of that law extends the provisions of Section 245(i) of the Immigration and Nationality Act (the Act) to any alien (including the spouse or child of the principal alien) who becomes the beneficiary of an immigrant visa petition which was filed with the Attorney General or an application for a labor certification which was filed in accordance with the regulations of the Secretary of Labor not later than April 30, 2001. The new law also amends section 245(i) of the Act and adds a new section 245(i)(1)(C) requiring that for any petition for classification or application for labor certification filed after January 14, 1998, the beneficiary must be physically present in the United States on the date of the enactment of this law (December 21, 2000) in order to be eligible for 245(i).

This memorandum proposes the establishment of a uniform and consistent policy by the Immigration and Naturalization Service, and provides implementation instructions regarding the handling of applications and petitions prior to and after the approaching sunset date of the amended section 245(i) on April 30, 2001. The policies proposed in this memorandum are taken from INS directives issued on various dates from 1997 to 1999 in connection with the previous "grandfathering" of section 245(i) on January 14, 1998, or from existing statutes. These proposed policies are therefore consistent with established policies of the INS.

Based on the experience of implementing the previous "grandfathering" date of January 14, 1998, and of implementing other statutes that require physical presence on or before a specific date, INS policy has, in certain limited areas, been expanded to achieve the desired uniformity and consistency. The areas where this memo deviates from existing INS policy are as follows:

> In handling applications filed prior to the January 14, 1998 deadline, different INS offices established different standards for when a petition was deemed to have been "received by" the deadline. In order to create a uniform policy, we propose that all filings shall be considered to be "received by" the Service if they are filed in person before midnight on April 30, 2001, or delivered by mail, courier, or otherwise to a Service office or a designated Post Office box before midnight on April 30, 2001.
>
> On January 14, 1998, different INS offices established different procedures for accepting last minute filings. As a result, there was confusion and inconsistency in determining whether an application was received on or before the grandfathering date. To correct this problem we propose that all offices have extended hours, establish a drop-box for filing in person, and provide a receipt or date stamp for all filings submitted to the drop-box.
>
> In determining the intent and scope of the physical presence requirement, this memo adopts the language of the *Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000,* prepared and signed by Senator Spencer Abraham and Senator Edward Kennedy. The memorandum states, "the kind of evidence of physical presence INS ordinarily accepts demonstrating that the applicant has been physically present during a reasonable period preceding [the enactment] date, accompanied by an affidavit or declaration that the person was present on the date itself, should ordinarily suffice."

In determining what documents will be sufficient to show physical presence in the United States on the date of enactment (December 21, 2000), we propose that similar standards as those used in implementing the "physical presence" requirements of NACARA be adopted. The list of documents that may be submitted to meet this requirement are therefore adapted from §202(b)(2) of Public Law 105-100, and 8 CFR 245.13(e).

1. **Special District Office and Service Center procedures and operating hours for receiving applications and petitions on or before April 30, 2001.**

   - In order to allow the maximum opportunity for timely receipt of applications and petitions by the Service under these special section 245(i) sunset procedures, applicants and petitioners shall be permitted to submit their petition to any District, Sub-office or Service Center in the United States prior to the sunset date. As soon as practicable after April 30, 2001, all offices shall forward such petitions, with their attached fees, to the appropriate office for processing and adjudication.
   - All District Offices, Sub-office and Service Centers shall extend their normal business hours, or make other provisions to accept applications, in order to accommodate last minute 245(i) filings through midnight, April 30, 2001. Filings shall be considered to be "received by" the Service if they are filed in person before midnight on April 30, 2001, or delivered by mail, courier, or otherwise to a Service office or a designated Post Office box before midnight on April 30, 2001.
   - GSA-Issue? All District Offices shall establish an authorized drop box for applications to be filed in person on April 30, 2001. Each office must ensure that the appropriate numbers of authorized INS personnel are present until the doors are closed at midnight. For applications submitted in person, all Service offices shall ensure that receipts or date stamps are available to provide proof that the document was filed prior to the expiration of the deadline. Service Centers, while exempt from the above requirements, must ensure that they document all mail received at the Service Center or the applicable Post Office box before midnight on April 30, 2001, as having been received prior to May 1, 2001.
   - Each office must post a notice in every lobby, or outside of every building, and notify the local voluntary agencies, congressional offices, media, and all other interested parties as to the provisions that have been made to service last minute applications.
   - Offices may not pre-screen, or turn away any applicant who believes that he/she has a basis for filing.

2. **Processing of applications and petitions received under the special section 245(i) sunset procedures.**

   - In order to allow the maximum opportunity for timely receipt of petitions by the Service, petitioners will be permitted to submit their filings either to a District Office or to a Service Center prior to the sunset date. Filings submitted to a District Office on or before April 30, 2001 shall be bundled and forwarded with their fees to the appropriate Service Center.
   - Immigration & Naturalization Service regulations at 8 C.F.R. section 204.1(d) define "properly filed" as the petition being signed by the petitioner and the fee being received by INS. Thus, as happened with the 1/14/98 deadline, INS shall accept any skeletal petition that meets this definition. Adjudicating officers shall review all applications and petitions received under these special section 245(i) sunset procedures as soon as practicable after April 30, 2001.
   - Visa petitions that meet the threshold filing requirements may not be rejected. If it is determined that additional information and documentation may be needed in order to complete the processing, the Service shall send a Request for Evidence to the petitioner.

3. **The effect of the April 30, 2001 sunset date on eligibility to apply for adjustment of status under section 245(i) of the Act.**

- The Service shall continue the interpretation that has come to be known as the "alien-based" reading of section 245(i). Under this reading, it is the alien beneficiary (including any derivatives and those accompanying or following-to-join) of a visa petition or labor certification application filed on or before April 30, 2001 who is "grandfathered" and thus able to adjust status under 245(i), rather than any particular petition or application being grandfathered. In other words, the pre-May 1, 2001 filing allows the alien to use 245(i) as the vehicle for adjustment eligibility, even if the basis for the adjustment is based on a different filing, including a petition submitted and approved after April 30, 2001, or a diversity visa application. Applicants may change employers or petitioners, may remarry, or may become the beneficiaries of new petitions or labor certification applications for any number of reasons. As long as the alien seeking to adjust status based on section 245(i) is recognized as the "beneficiary" of a qualifying pre-May 1, 2001 petition or labor certification application, the alien may adjust status under that section using a visa number obtained through a post-April 30, 2001 filing.

- In order for a pre-May 1, 2001 filing to grandfather the alien, the filing must have been "approvable at the time of filing". In order to be approvable at the time of filing for the purposes of grandfathering, a pre-May 1, 2001 filing must simply meet the applicable substantive requirements for that filing that existed at the time the filing was made. A petition or labor certification application may be considered approvable at the time of filing even if the petition or application has not been acted upon, or where the petition has been denied, revoked or withdrawn.

- Cases that are deficient because the Service requires additional information, such as a birth or marriage certificate, information to complete a skeletal petition, or in which the petitioner would ordinarily be allowed to provide information pursuant to 8 C.F.R. 103.2(b)(8) are sufficient for grandfathering purposes once the additional information is submitted and the Service concludes that the petition was "approvable when filed."

- In cases where petitions have been denied, revoked or withdrawn, adjudicators attempting to determine whether the beneficiary of the pre-May 1, 2001 filing is grandfathered must look to that filing and determine whether it was "approvable when filed." When an immigrant visa petition has been denied due to circumstances arising after the petition or application was filed, the Service will continue to regard the alien as the "beneficiary" for the purposes of grandfathering under section 245(i). Changed circumstances generally relate to factors beyond the alien's control, including changes in fact, law, or interpretation subsequent to the filing that render the petition or application subsequently non-approvable.

- When an immigrant visa petition is withdrawn, the former beneficiary of the withdrawn filing is still grandfathered for the purpose of section 245(i). For example, a business files an I-140 on behalf of an alien. After 18 months, the business experiences a reversal and no longer needs the services of the alien. The alien is still grandfathered since he or she was the subject of an approvable petition at the time of filing.

- Section 245(i) defines the term "beneficiary" to include a spouse or child "eligible to receive a visa under section 203(d) of the Act." This applies to spouses or children "accompanying or following to join" the principal alien. An alien who is accompanying or following to join an alien who is a grandfathered alien is thus also the "beneficiary" of the grandfathered petition or labor certification application and is also grandfathered.

- The spouse or child of a grandfathered alien as of April 30, 2001 is also grandfathered for 245(i) purposes. This means that the spouse or child is grandfathered irrespective of whether the spouse or child adjusts with the principal. The pre-May 1, 2001 spouse or children also are grandfathered even after losing the status of spouse or child, such as by divorce or by becoming 21 years of age.
- Many aliens with pending, grandfathered petitions or labor certification applications will marry or have children after the qualifying petition or application was filed but before adjustment of status. These "after-acquired" children and spouses are allowed to adjust under 245(i) as long as they acquire the status of a spouse or child before the principal alien ultimately adjusts status.

4. The new physical presence requirement for the beneficiaries of qualifying petitions or applications filed after January 14, 1998.

- The new law requires that for all beneficiaries whose application was filed after January 14, 1998, the principal beneficiary must have been physically present in the U.S. on the date of enactment of the LIFE Act Amendments of 2000. The LIFE Act Amendments of 2000 were enacted on December 21, 2000. This new requirement is applicable only to principal applicants for 245(i), and not to derivatives, who continue to be allowed to "follow to join" if they otherwise qualify.
- It may be difficult for an individual physically present on the day of enactment to establish his or her presence on that precise date in order to qualify for 245(i). Direct evidence of physical presence on the precise date of enactment may not exist. Adjudicating officers shall therefore be flexible in the types of evidence they will accept to establish physical presence on the date of enactment.
- Documentation of physical presence may have been issued by any governmental or nongovernmental entity or person, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the issuing authority or its authorized representative, if the document would normally contain such authenticating instrument. Such documentation may include, but is not limited to:

  1. School records;
  2. Hospital or medical records, including affidavits under oath from treating physicians or medical service providers;
  3. Rental receipts;
  4. Utility bill receipts;
  5. Any other dated receipts;
  6. Personal checks written by the applicant bearing a dated bank cancellation stamp;
  7. Employment records, including pay stubs or affidavits made under oath from employers;
  8. Credit card statements showing the dates of purchase, payment, or other transaction;

9. Copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and parochial schools, and banks;
10. Records or affidavits made under oath from community organizations such as churches, unions, or other organizations;
11. Documents establishing that the applicant performed service, or engaged in a trade or business, within the United States which is evidenced by records maintained by the Commissioner of Social Security,
12. A copy of a Federal, State, or local governmental record that was created on or prior to December 21, 2000, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;
13. A copy of a Federal, State, or local governmental record that was created on or prior to December 21, 2000, 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, and
14. If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing the physical presence in the United States of another member of that same family unit.

- Where the applicant can show continuous presence in the United States for a reasonable period prior to December 21, 2001, such evidence shall create a presumption that the applicant was present on December 21, 2001. For example, the kind of evidence of physical presence ordinarily acceptable in demonstrating that the applicant has been physically present during a reasonable period preceding that date, accompanied by an affidavit or declaration that the person was present on the date itself, shall suffice.

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Washington, DC 20005
Tel. (202) 216-2400 - Fax. (202) 371-9449

AILA MEMO

DATE: December 28, 2000

TO: Maria Echaveste; Irene Bueno

FROM: Crystal Williams; Judy Golub; Ben Johnson

RE: DOL implementation of 245(i) extension

Enclosed is a suggested information sheet for the Department of Labor regarding handling of labor certification applications in connection with the extension of the section 245(i) cut-off date until April 30, 2001. Unlike the INS, the DOL never issued publicly available instructions regarding the handling of applications in anticipation of the previous January 14, 1998 cut-off. As a result, various DOL offices handled the applications in different ways.

Therefore, the items (other than the last item) in this information sheet are an amalgamation of the best practices during the 1998 cut-off period of various DOL and state offices (SESAs) involved in the process. The last item relates to the fact that DOL has already proposed, and is in the process of finalizing, a regulation that allows conversion of past non-Reduction in Recruitment (RIR) filings to the more efficient RIR process. Since this new deadline is likely to engender another spate of non-RIR filings, this last item reflects our strong recommendation that DOL also allow these pre-May 1 filings to be converted.

By way of background, the employer in an RIR filing has already conducted recruitment for the position and is asking the Department to issue its certification without requiring more recruitment under the direction of the state office (hence the term "reduction" in recruitment). Because of the short time frame involved, many employers will not have time to complete the full RIR recruitment process required by DOL before April 30, and thus will have to file a "traditional" labor certification application that requires a later recruitment under the direction of the state office. DOL has found RIRs to use considerably less government resources, and therefore to be more efficient. Employers also prefer the RIR process in most cases. Therefore, it is in everyone's interest to allow employers to later convert their "traditional" labor certification applications to RIRs. The regulation now in process at DOL would allow such conversions for applications filed prior to the date the regulation was proposed. We urge that the regulation allow conversions for applications filed prior to May 1, 2001.

PROCEDURES FOR IMPLEMENTING SECTION 245(i)

On December 21, 2000, the President signed into law H.R. 5666, Miscellaneous Appropriations of 2001. Section 1502 of that law amends section 245(i) of the Immigration and Nationality Act to provide certain immigration benefits to any alien who becomes the beneficiary of an immigrant visa petition or a permanent labor certification application filed not later than April 30, 2001. This provision is the same, in all respects relevant to the Department of Labor, as a 1997 law that provided such benefits for beneficiaries of applications filed by January 14, 1998. Based on experience from the 1998 deadline, it is important for the Department to put in place procedures to anticipate a rush of such filings prior to April 30, 2001. Those procedures are as follows:

- In order to allow full opportunity for timely receipt of applications, all SESAs shall remain open the full working day on April 30, 2001. If any SESA must close for emergency reasons during that day, applications received the next day that the SESA is open shall be processed as received on April 30.

- All SESAs shall date-stamp or write the receipt date on all applications delivered to their offices, or to a postal box designated for filing of applications, by April 30, 2001, with a date no later than April 30, 2001.

- All SESAs shall make arrangements for receiving hand delivered labor certification applications during the period April 23 through April 30, 2001, and earlier if possible. Dated receipts shall be issued to the person filing by hand delivery.

- In order to accommodate those who must file "skeletal applications" in order to meet the April 30, 2001 deadline, Certifying Officers and SESAs shall make liberal allowance for amendment of labor certification applications filed prior to April 30, 2001. As long as the employer remains the same, amendment of information regarding job description, requirements, title, wage offer, beneficiary's background and other similar items shall be permitted without requiring that the application be withdrawn and re-filed.

- Because many of the applications filed in anticipation of the April 30, 2001 cut-off are likely not to be Reduction in Recruitment (RIR) requests, the Department will make allowance for later conversion of those applications to RIR.

Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000.

The pending legislation contains certain immigration provisions worked out between members of both parties to further address certain issues addressed in the first instance in the Legal Immigration Family Equity Act of 2000, or LIFE Act, which is contained in the Commerce Justice State Appropriations bill being transmitted to the President. Because both the original LIFE Act and this legislation were developed outside the ordinary Committee process, they were not accompanied by the usual reports elaborating on the background and purpose of their provisions. This memorandum is accordingly submitted on behalf of the Chairman and Ranking Member of the Subcommittee on Immigration of the Senate Committee on the Judiciary to provide such elaboration in somewhat abbreviated form.

The original LIFE Act sought to address two problems. First, it sought to provide a new mechanism to address the problem created by the long backlog of immigrant visa applications for spouses and minor children of lawful permanent residents, who are currently having to wait many years for a visa to become available to them. Right now, many of these individuals are even precluded from visiting their spouse or parent in the United States on account of an administrative interpretation that the filing of their petition casts doubt on the bona fides of their applications for visitors visas, indicating that instead they are intending immigrants.

The LIFE Act creates a new temporary "V" visa under which these spouses (and their children) can come to the United States and wait for their visa here, if their immigrant visa petitions have been pending for more than three years. It also expands the criteria for "K" visas to include spouses and minor children of U.S. citizens. The purpose of the "V" and "K" visas is to provide a speedy mechanism by which family members may be reunited. We expect the Department of State and the INS to work together to create a process in keeping with the temporary nature of the visa that does not require potential beneficiaries to wait for months before their visas are approved. Like the existing Fiancé visa, the new "K" visa is not intended to be a prerequisite for the admission of citizen spouses, but a speedy mechanism for the spouses and minor children of U.S. citizens to obtain their immigrant visas in the U.S., rather than wait for long periods of time outside the U.S.

Second, the LIFE Act sought to correct past administrative mistakes that resulted in the wrongful denial of adjustment of status to hundreds of thousands of persons who should have qualified for permanent residence under the Immigration Reform and Control Act of 1986. It directs the Immigration and Naturalization Service (INS) to adjudicate the applications of individuals in two class action lawsuits on the merits, rather than

continuing to litigate whether they were timely filed.

The LIFE Act Amendments make three significant additions to the provisions in the LIFE Act. First, they delete the LIFE Act's special mechanism for "V" and "K" visa holders to adjust to lawful permanent residence, and instead add a new provision modifying section 245(i), a mechanism by which anyone eligible for an immigrant visa and for whom a visa is currently available can adjust his or her status to that of lawful permanent residence in the U.S., rather than have to return abroad for consular processing. That mechanism was reauthorized in 1996, but only for individuals who were beneficiaries of immigrant visa petitions or labor certification applications filed by January 14, 1998. The LIFE amendments move the date by which such petitions or applications must be filed forward in time to April 30, 2001.

They also add a new requirement that for all beneficiaries whose application was filed after January 14, 1998, the principal beneficiary must have been physically present in the U.S. on the date of enactment of the LIFE Act Amendments of 2000. The function of this last requirement is to make sure that the renewed availability of section 245(i) does not operate to encourage anyone to violate our immigration laws. Accordingly, it should be interpreted with common sense.

It may be difficult for an individual physically present on the day of enactment to establish his or her presence on that precise date to qualify for 245(i). The Immigration and Naturalization Service (INS) should therefore be flexible in the types of evidence it will accept to establish physical presence on the day of enactment. For example, the kind of evidence of physical presence INS ordinarily accepts demonstrating that the applicant has been physically present during a reasonable period preceding that date, accompanied by an affidavit or declaration that the person was present on the date itself, should ordinarily suffice. We also note that this new requirement is applicable only to principal applicants for 245(i), and not to derivatives, who continue to be allowed to "follow to join" if they otherwise qualify.

In order to ensure that persons who may benefit from this provision are aware of this legislation, we strongly encourage the INS to conduct a broad outreach program within the immigrant communities. Additionally, to ensure that all potentially eligible persons have an opportunity to qualify for 245(i), if necessary the INS should accept petitions and applications before the April 30, 2001 sunset date that do not contain all necessary supporting documents, and allow additional documents to be filed after the deadline.

Second, the legislation adds the members of a third class action law suit, *Zambrano v. INS*, to those covered by the LIFE Act's provisions concerning adjustment

of status under the Immigration Reform and Control Act of 1986 (IRCA). We note that persons eligible for adjustment pursuant to the combined LIFE provisions include everyone who has "filed with the Attorney General a written claim of class membership", that is all registered class members, not only those who have been issued employment authorization pursuant to a screening that did not reliably distinguish between potentially meritorious and non-meritorious applications.

We understand that several other class action lawsuits are still pending in the federal courts challenging other INS interpretations of the 1986 adjustment provisions. The precise posture of one of these cases, *Perales v. Thornburgh*, came to our attention after the legislation had been finalized. We understand that a class of about 200 identified plaintiffs in *Perales* challenged the same regulation whose illegality the INS has conceded in *Zambrano*. We would encourage the Attorney General to provide a just resolution for the *Perales* class members in light of the legislation enacted today.

Other cases that have come to out attention, such as *Proyecto San Pablo v. INS*, and *Immigrant Assistance Project v. INS*, are in a different posture from those addressed by the LIFE Act and these amendments, in that they do not involve regulations that INS has conceded were illegal. At the same time, however, it is now almost 2001, that is, almost 15 years after the enactment of IRCA, and these cases remain unresolved. We encourage the plaintiffs and the Attorney General to explore the possibility of settling these cases and bringing to an end the years of bitter and costly litigation. Nothing in this legislation is intended to preclude this option, or to preclude the Attorney General from resolving any other IRCA adjustment applications on the merits.

In that connection, we also note that when the 1986 legalization program was enacted, the Attorney General, pursuant to section 245A of the INA, was authorized to work in conjunction with voluntary organizations and other qualified State, local and community organizations to broadly disseminate information about the legalization program. The INS helped provide funding to these organizations to assist with the outreach effort, as well as with the preparation and submission of the applications for adjustment of status. A similar outreach campaign should be conducted to disseminate information about the opportunity to apply for adjustment of status under this Act. As noted above, almost 15 years have elapsed since the original legalization program was enacted, therefore the need to publicize the resolution of these issues reached by the LIFE Act and amendments thereto is critical to ensure that eligible persons are notified and have an opportunity to obtain the benefits of this Act. Moreover, nothing in the Act should be construed to preclude the Attorney General from providing funding to organizations qualified and experienced in the preparation and submission of adjustment applications.

Third, the amendments clarify that the spouses and unmarried children of the beneficiaries of Section 1104 of the LIFE Act are eligible for the Family Unity provisions of the Immigration Act of 1990. By enacting this provision, our objective is to ensure that these family members are treated in the same manner as the family members of those who adjusted their status under IRCA.

In addition, the amendments address two, more technical issues. Section 1104 LIFE Act applicants, as well as beneficiaries under the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigrant Fairness Act (HRIFA) are made eligible for certain waivers of grounds of inadmissibility. These waivers are ordinarily available only to persons who are outside the U.S. The amendments to the LIFE Act allow the covered individuals to apply for these waivers in the U.S.

Finally, the LIFE amendments clarify that section 241(a)(5) of the INA which bars anyone who has been ordered removed and who subsequently reenters the U.S. from obtaining any relief under the INA. Because adjustment under section 245A, NACARA, and HRIFA is not "relief under" the Act, LIFE amendments specify that this bar does not apply to LIFE section 1104 beneficiaries, or NACARA or HRIFA applicants.

Spencer Abraham
Chairman
Subcommittee on Immigration

Edward Kennedy
Ranking Member
Subcommittee on Immigration

FAX

From: CA/VO/L/R: Ed Odom

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Subj: V Timeline

Ref:

No. of pages: Cover + 1

Irene--Short and sweet. INS has seen this and has no problem. Their processing of change of status cases may follow a different timeline, but they tell us they can issue field instructions to admit Vs who get visas even if they are not yet processing changes of status. When you consider that the push will be to get folks here from overseas, it wouldn't seem to be too problematic for them to be a bit behind us (although in the end they may in fact be ready at the same time??). We can't say for sure about Ks because we have to have that extra petition from INS and they are still deciding what to do. Best we can do on K's is 6 weeks after they make that decision. Talk to you at 12:30.

Ed

"V" & Kii Visa Time Line

January	Establish implementation procedures.
	Write and publish regulations.
	Public relations outreach.
TBA	INS establishes implementation procedures for Kii processing.
February	Send processing instructions to posts.
	Mail application instructions to those who may be eligible for V visas.
April	Begin interviews and adjudication of V visas.
TBA	Worldwide capability to begin interviews and adjudication of Kii visas – approximately 6 weeks after INS establishes procedures.

MEMORANDUM

TO: **MARIA ECHAVESTE**
FROM: **IRENE BUENO**
RE: **CONFERENCE CALL ON LIFA IMPLEMENTATION** – Thursday, January 11, 2001 at 12:30 pm (757-2104 code 1251)

PURPOSE: The purpose of this call is get an update on the status of the implementation of these provisions.

BACKGROUND: Attached is a chart that gives you a status of the implementation of these provisions (see attached). Last Friday we met with the Hill and got their feedback on some of the issues. Esther and Lee seemed to be okay with the direction of the implementation of these provisions but were concerned about the State Department implementation of the V visa program.

ATTENDEES:

You
Dawn Chirwa
Wendy Patten
Steve Mertens
Debra Bond

DOJ
- James Castello/Brad Glassman
- Patty First

INS
- Ruth Tintary

State Dept.
- Ed Odom

Labor
- Earl Gohl
- Dale Ziegler

DRAFT 1/10/2001

IMMIGRATION PROVISIONS – IMPLEMENTATION

245(i) – implement by mid -January

Issue/Task	**Contact/Timeline**	**Status**	**Next Steps**
- Physical Presence	INS Options by 1/3 Decision 1/8	- 12/27- INS is developing options that are easy to administer and flexible and is not subject to widespread fraud. - INS concerned about affidavit but open to looking at other simple ways to prove physical presence.	INS will report on options on Jan. 11. 1/11 - Rep Com: DOJ - Today accept both govt + no govt.
- Requirement on only principals not derivatives	INS 1/3	INS/GC is reviewing	INS – what's the status of this review. recomm - only principals
Skeletal Application	INS 12/29	- 1/4/01- OK w/ skeletal application. - 12/27 – INS will consider the issues of allowing a skeletal process at the beginning of the process. - In 1998, INS required a fuller application at the beginning but at the end allowed a skeletal application	-Update? - Same application now.
Application deadline	Month - later	- 1/4/01- Maria would like to see a draft that describes when an application is received. - In 1998, must be received by expiration date 4/30/01 and gave receipts at the office or mailed after received. - INS plans to continue the same procedure as in 1998.	- INS should get input from groups and the Hill INS circulating memo Don't want to get specific b/c vary city [illegible]. consistent [illegible] - will be clarified later closer to date
Mtg w/ Hill & CBOs	INS/ASAP	- DOJ is scheduling mtg with the Hill for week of 1/1 - INS scheduling small mtg with the groups for	- Get feedback from Hill and groups on INS proposals.

		week of 1/1	
Update Reg	INS Send to WH ASAP	INS will draft pending the resolution of above issues.	Status? INS will clear
Field Guidance	INS Send to WH ASAP	INS has begun drafting.	Status?
Fact Sheet & distribution (web page, 800 number	INS/2nd week of Jan Draft by 1/12 Complete 1/19	INS will draft	Status?

Late Amnesty

Issue	Contact/Timeline	Status	Next Steps
No deportations, provide work authorization, travel permission	DOJ/ASAP	- 1/4/01- **Work Authorization** INS does not want to grant work authorization now. They want one process - 12/27: DOJ reports that:. **Deportation** – no problem. **Work Authorization** - need to consider further. Appears only authorized for if they are apprehended. Newman class already has work authorization. **Travel Authorization** – no problem	Update on work authorization 90 day get work auth after prove clean records. Advocates - reg cut people
Expanding the class	DOJ/	- 1/4/ - DOJ lawyers are reviewing this. - 12/27: DOJ lawyers are reviewing whether this provision can apply to other lawsuits. - Admin letters indicate support for expanding the class. - Joint Summary states AG should expand class of those helped under this provision.	James will ~~report on~~ status on ~~Jan.~~ 4 conference call. No way to expand
Family Unity/apply the	INS	Joint memo states that this provision should be implemented in the same manner as in 1990 (ie. Allow	DOJ and INS will consider

		aged out kids to be covered).	
Regs	INS/Due 120 days after enactment		

NACARA/HRIFA TECHNICALS

Issue	Contact/Timeline	Status	Next Steps
Field Guidance	1/10/01	INS drafting field guidance	Check on status

V and K Visas

Issue	Contact/Timeline	Status	Next Steps
Timeline	State/INS – time line due 1/9/01	- 1/5 –Lee and Esther expressed concerns about State Dept. approach - 12/27 – State Dept. proposes to implement the V visa in the same way they currently do for K visas. This requires health screening, criminal background check and affidavit of support. - State and INS are working on a timeline that outlines steps to be taken, resources needed & potential problems.	- Follow up meeting with Hill. - Review timeline

ROLL-OUT/PUBLIC RELATIONS PLAN

Issue	Contact/Timeline	Status	Next Steps
Need to develop public relations plan	**INS** **State**	?	?

MEMORANDUM

TO: **MARIA ECHAVESTE**
FROM: **IRENE BUENO**
RE: **CONFERENCE CALL ON LIFA IMPLEMENTATION** – Thursday, January 4, 2001 at 2:30 pm (757-2104 code 1251)

PURPOSE: The purpose of this call is:

(1) to ensure that DOJ, INS, State Dept. and Labor are implementing the new immigration provisions according to the timeframe set and based on our intent; and

(2) to get their comments on the AILA fact sheet.

(3) Status of meetings with the groups and Hill for their input on implementation.

BACKGROUND: Attached is a chart that gives you a status of the implementation of these provisions (see attached). DoJ and INS is expected to meet before the call to work out the most important outstanding issues in the implementation of section 245(i) and late amnesty provisions. I suggest going through the list on checking on the status.

In addition, I sent to the group the draft fact sheet that AILA prepared and asked the group to review and to be prepared to discuss the issues (see attached). We should also ask the group for comments on the AILA paper.

Lastly, attached is the joint memo from Senators Abraham and Kennedy that provides legislative history on these provisions.

ATTENDEES:

You
Dawn Chirwa
Wendy Patten
Steve Mertens
Debra Bond

DOJ
- ~~James Castello~~/Brad Glassman
- Patty First

INS

- Gerri Ratliff
- Bill Yates
- Ann Palmer

State Dept.
- Ed Odom ✓

Labor
- Earl Gohl
- Dale Ziegler ✓

2 meetings

(a) Brfg – Get basic info out.
2pm – walk through the new law b/c lots of calls – middle of next week.
FRI, – Get their input
rm 2226 – Don't address V + K visa
Lyhr

(b) meeting w/ Esther Patty + INS

DRAFT 12/28/2000

IMMIGRATION PROVISIONS – IMPLEMENTATION

245(i) – implement by mid -January

Issue/Task	Contact/Timeline	Status	Next Steps
- Physical Presence physical Presence	INS Options by 1/3 Decision 1/8	- 12/27- INS is developing options that are easy to administer and flexible and is not subject to widespread fraud. - INS concerned about affidavit but open to looking at other simple ways to prove physical presence.	INS will report on options on Jan. 4. Suspension of deportation utilization. options paper almost identical to AILA tomorrow.
- Requirement on only principals not derivatives	INS 1/3 Decision 1/8	INS is reviewing	- INS is reviewing it - GC tomorrow
Skeletal Application	INS 12/29	- 12/27 - INS will consider the issues of allowing a skeletal process at the beginning of the process. - In 1998, INS required a fuller application at the beginning but at the end allowed a skeletal application	- INS will report on finding on Jan 4. - OK w/ skeletal process. - only on issue adjustment of status + 245(i) concurrently but no ~~applicant~~ employment activity
Application deadline MG - be clear she wants to see in draft.	defined in their reg. in any INS office or service center	- In 1998, must be received by expiration date 4/30/01 and gave receipts at the office or mailed after received. - INS plans to continue the same procedure as in 1998.	- INS should get input from groups and the Hill - Add a grace period - Presumed it was filed timely if it was in the office
Mtg w/ Hill & CBOs	INS/ASAP 1/15	- DOJ is scheduling mtg with the Hill for week of 1/1 - INS scheduling small mtg with the groups for week of 1/1	- Get feedback from Hill and groups on INS proposals. Will do it after Hill +
Update Reg publication	INS ~~Draft by 1/12~~ to DOJ/WH Complete by 1/19 to WH.	INS will draft pending the resolution of above issues.	INS ~~needs to draft reg~~ has begun to draft - Send us interim drafts
Field Guidance	INS Same as ~~Draft 1/12~~ above	INS will draft pending the resolution	INS needs to draft

	Complete 1/19		
Fact Sheet & distribution (web page, 800 number	INS/2nd week of Jan ~~Draft by 1/12~~ Same Complete 1/19	Check on status	INS needs to draft

DOL -

Late Amnesty

Issue	Contact/Timeline	Status	Next Steps
No deportations, provide work authorization, travel permission MC - will think about it.	DOJ/ASAP	12/27: DOJ reports that:. **Deportation** – no problem. **Work Authorization** - need to consider further. Appears only authorized for if they are [illegible] apprehended. Newman class already has work authorization. **Travel Authorization** - No issue, will grant parole on a case	James will report on status on Jan. 4 conference call. 1/4 - INS doesn't want a separate process treat everyone the same except for Newman class members. Roll-out 4/20/01
Expanding the class	DOJ/ Brad.	- 12/27: DOJ lawyers are reviewing whether this provision can apply to other lawsuits. - Admin letters indicate support for expanding the class. - Joint Summary states AG should expand class of those helped under this provision.	James will report on status on Jan. 4 conference call. 1/4 - [illegible] & INS will speak about it. Call MC on 1/20..
Family Unity/~~apply~~ the	INS	~~application~~ Joint memo states that this provision should be implemented in the same manner as in 1990 (ie. Allow aged out kids to be covered).	lawyers DOJ and INS will review ~~consider~~. In 1990 allowed unmarried kids to apply when they aged out. Under statute or reg, no basis.
Regs	INS/Due 120 days after enactment 4/20/01		1) Basis re relating [illegible]

- INS needs
- 1 year application period from date of reg
- Fee
- overseas application INS/State
- Work Authorization

NACARA/HRIFA TECHNICALS

Issue	Contact/Timeline	Status	Next Steps
Field Guidance Forms already [illegible]	1/10/01	INS drafting field guidance	Check on status

Haitian

V and K Visas

§203 -
need to work w/ COIN

Issue	Contact/Timeline	Status	Next Steps
Timeline Financial resources	State/INS – time line due 1/9/01	- 12/27 – State Dept. proposes to implement the V visa in the same way they currently do for K visas. This requires health screening, criminal background check and affidavit of support. - State and INS are working on a timeline that outlines steps to be taken, resources needed & potential problems.	- State Dept. ~~awaiting WH input~~. meeting

Public Relations Plan/Rollout

- Groups
- Hill
- Press

Wed.

Sarah Taylor 202.514.1117

Memo

To: Maria Echaveste; Irene Bueno

From: Ben Johnson, Crystal Williams, Judy Golub

Date: December 27, 200012/28/00

Re: Extension of 245(i) until April 30, 2001

On December 21, 2000, the President signed into law H.R. 5666, Miscellaneous Appropriations of 2001. Section 1502 of that law extends the provisions of Section 245(i) of the Immigration and Nationality Act (the Act) to any alien (including the spouse or child of the principal alien) who becomes the beneficiary of an immigrant visa petition which was filed with the Attorney General or an application for a labor certification which was filed in accordance with the regulations of the Secretary of Labor not later than April 30, 2001. The new law also amends section 245(i) of the Act and adds a new section 245(i)(1)(C) requiring that for any petition for classification or application for labor certification filed after January 14, 1998, the beneficiary must be physically present in the United States on the date of the enactment of this law (December 21, 2000) in order to be eligible for 245(i).

This memorandum proposes the establishment of a uniform and consistent policy by the Immigration and Naturalization Service, and provides implementation instructions regarding the handling of applications and petitions prior to and after the approaching sunset date of the amended section 245(i) on April 30, 2001. The policies proposed in this memorandum are taken from INS directives issued on various dates from 1997 to 1999 in connection with the previous "grandfathering" of section 245(i) on January 14, 1998, or from existing statutes. These proposed policies are therefore consistent with established policies of the INS.

Based on the experience of implementing the previous "grandfathering" date of January 14, 1998, and of implementing other statutes that require physical presence on or before a specific date, INS policy has, in certain limited areas, been expanded to achieve the desired uniformity and consistency. The areas where this memo deviates from existing INS policy are as follows:

> In handling applications filed prior to the January 14, 1998 deadline, different INS offices established different standards for when a petition was deemed to have been "received by" the deadline. In order to create a uniform policy, we propose that all filings shall be considered to be "received by" the Service if they are filed in person before midnight on April 30, 2001, or delivered by mail, courier, or otherwise to a Service office or a designated Post Office box before midnight on April 30, 2001.
>
> On January 14, 1998, different INS offices established different procedures for accepting last minute filings. As a result, there was confusion and inconsistency in determining whether an application was received on or before the grandfathering date. To correct this problem we propose that all offices have extended hours, establish a drop-box for filing in person, and provide a receipt or date stamp for all filings submitted to the drop-box.
>
> In determining the intent and scope of the physical presence requirement, this memo adopts the language of the *Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000,* prepared and signed by Senator Spencer Abraham and Senator Edward Kennedy. The memorandum states, "the kind of evidence of physical presence INS ordinarily accepts demonstrating that the applicant has been physically present during a reasonable period preceding [the enactment] date, accompanied by an affidavit or declaration that the person was present on the date itself, should ordinarily suffice."

In determining what documents will be sufficient to show physical presence in the United States on the date of enactment (December 21, 2000), we propose that similar standards as those used in implementing the "physical presence" requirements of NACARA be adopted. The list of documents that may be submitted to meet this requirement are therefore adapted from §202(b)(2) of Public Law 105-100, and 8 CFR 245.13(e).

1. **Special District Office and Service Center procedures and operating hours for receiving applications and petitions on or before April 30, 2001.**

   - In order to allow the maximum opportunity for timely receipt of applications and petitions by the Service under these special section 245(i) sunset procedures, applicants and petitioners shall be permitted to submit their petition to any District, Sub-office or Service Center in the United States prior to the sunset date. As soon as practicable after April 30, 2001, all offices shall forward such petitions, with their attached fees, to the appropriate office for processing and adjudication.
   - All District Offices, Sub-office and Service Centers shall extend their normal business hours, or make other provisions to accept applications, in order to accommodate last minute 245(i) filings through midnight, April 30, 2001. Filings shall be considered to be "received by" the Service if they are filed in person before midnight on April 30, 2001, or delivered by mail, courier, or otherwise to a Service office or a designated Post Office box before midnight on April 30, 2001.
   - GSA-Issue? All District Offices shall establish an authorized drop box for applications to be filed in person on April 30, 2001. Each office must ensure that the appropriate numbers of authorized INS personnel are present until the doors are closed at midnight. For applications submitted in person, all Service offices shall ensure that receipts or date stamps are available to provide proof that the document was filed prior to the expiration of the deadline. Service Centers, while exempt from the above requirements, must ensure that they document all mail received at the Service Center or the applicable Post Office box before midnight on April 30, 2001, as having been received prior to May 1, 2001.
   - Each office must post a notice in every lobby, or outside of every building, and notify the local voluntary agencies, congressional offices, media, and all other interested parties as to the provisions that have been made to service last minute applications.
   - Offices may not pre-screen, or turn away any applicant who believes that he/she has a basis for filing.

2. **Processing of applications and petitions received under the special section 245(i) sunset procedures.**

   - In order to allow the maximum opportunity for timely receipt of petitions by the Service, petitioners will be permitted to submit their filings either to a District Office or to a Service Center prior to the sunset date. Filings submitted to a District Office on or before April 30, 2001 shall be bundled and forwarded with their fees to the appropriate Service Center.
   - Immigration & Naturalization Service regulations at 8 C.F.R. section 204.1(d) define "properly filed" as the petition being signed by the petitioner and the fee being received by INS. Thus, as happened with the 1/14/98 deadline, INS shall accept any skeletal petition that meets this definition. Adjudicating officers shall review all applications and petitions received under these special section 245(i) sunset procedures as soon as practicable after April 30, 2001.
   - Visa petitions that meet the threshold filing requirements may not be rejected. If it is determined that additional information and documentation may be needed in order to complete the processing, the Service shall send a Request for Evidence to the petitioner.

3. **The effect of the April 30, 2001 sunset date on eligibility to apply for adjustment of status under section 245(i) of the Act.**

- The Service shall continue the interpretation that has come to be known as the "alien-based" reading of section 245(i). Under this reading, it is the alien beneficiary (including any derivatives and those accompanying or following-to-join) of a visa petition or labor certification application filed on or before April 30, 2001 who is "grandfathered" and thus able to adjust status under 245(i), rather than any particular petition or application being grandfathered. In other words, the pre-May 1, 2001 filing allows the alien to use 245(i) as the vehicle for adjustment eligibility, even if the basis for the adjustment is based on a different filing, including a petition submitted and approved after April 30, 2001, or a diversity visa application. Applicants may change employers or petitioners, may remarry, or may become the beneficiaries of new petitions or labor certification applications for any number of reasons. As long as the alien seeking to adjust status based on section 245(i) is recognized as the "beneficiary" of a qualifying pre-May 1, 2001 petition or labor certification application, the alien may adjust status under that section using a visa number obtained through a post-April 30, 2001 filing.
- In order for a pre-May 1, 2001 filing to grandfather the alien, the filing must have been "approvable at the time of filing". In order to be approvable at the time of filing for the purposes of grandfathering, a pre-May 1, 2001 filing must simply meet the applicable substantive requirements for that filing that existed at the time the filing was made. A petition or labor certification application may be considered approvable at the time of filing even if the petition or application has not been acted upon, or where the petition has been denied, revoked or withdrawn.
- Cases that are deficient because the Service requires additional information, such as a birth or marriage certificate, information to complete a skeletal petition, or in which the petitioner would ordinarily be allowed to provide information pursuant to 8 C.F.R. 103.2(b)(8) are sufficient for grandfathering purposes once the additional information is submitted and the Service concludes that the petition was "approvable when filed."
- In cases where petitions have been denied, revoked or withdrawn, adjudicators attempting to determine whether the beneficiary of the pre-May 1, 2001 filing is grandfathered must look to that filing and determine whether it was "approvable when filed." When an immigrant visa petition has been denied due to circumstances arising after the petition or application was filed, the Service will continue to regard the alien as the "beneficiary" for the purposes of grandfathering under section 245(i). Changed circumstances generally relate to factors beyond the alien's control, including changes in fact, law, or interpretation subsequent to the filing that render the petition or application subsequently non-approvable.
- When an immigrant visa petition is withdrawn, the former beneficiary of the withdrawn filing is still grandfathered for the purpose of section 245(i). For example, a business files an I-140 on behalf of an alien. After 18 months, the business experiences a reversal and no longer needs the services of the alien. The alien is still grandfathered since he or she was the subject of an approvable petition at the time of filing.
- Section 245(i) defines the term "beneficiary" to include a spouse or child "eligible to receive a visa under section 203(d) of the Act." This applies to spouses or children "accompanying or following to join" the principal alien. An alien who is accompanying or

following to join an alien who is a grandfathered alien is thus also the "beneficiary" of the grandfathered petition or labor certification application and is also grandfathered.

- The spouse or child of a grandfathered alien as of April 30, 2001 is also grandfathered for 245(i) purposes. This means that the spouse or child is grandfathered irrespective of whether the spouse or child adjusts with the principal. The pre-May 1, 2001 spouse or children also are grandfathered even after losing the status of spouse or child, such as by divorce or by becoming 21 years of age.

- Many aliens with pending, grandfathered petitions or labor certification applications will marry or have children after the qualifying petition or application was filed but before adjustment of status. These "after-acquired" children and spouses are allowed to adjust under 245(i) as long as they acquire the status of a spouse or child before the principal alien ultimately adjusts status.

4. **The new physical presence requirement for the beneficiaries of qualifying petitions or applications filed after January 14, 1998:**

- The new law requires that for all beneficiaries whose application was filed after January 14, 1998, the principal beneficiary must have been physically present in the U.S. on the date of enactment of the LIFE Act Amendments of 2000. The LIFE Act Amendments of 2000 were enacted on December 21, 2000. This new requirement is applicable only to principal applicants for 245(i), and not to derivatives, who continue to be allowed to "follow to join" if they otherwise qualify.

- It may be difficult for an individual physically present on the day of enactment to establish his or her presence on that precise date in order to qualify for 245(i). Direct evidence of physical presence on the precise date of enactment may not exist. Adjudicating officers shall therefore be flexible in the types of evidence they will accept to establish physical presence on the date of enactment.

- Documentation of physical presence may have been issued by any governmental or nongovernmental entity or person, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the issuing authority or its authorized representative, if the document would normally contain such authenticating instrument. Such documentation may include, but is not limited to:

  1. School records;
  2. Hospital or medical records, including affidavits under oath from treating physicians or medical service providers;
  3. Rental receipts;
  4. Utility bill receipts;
  5. Any other dated receipts;
  6. Personal checks written by the applicant bearing a dated bank cancellation stamp;
  7. Employment records, including pay stubs or affidavits made under oath from employers;
  8. Credit card statements showing the dates of purchase, payment, or other transaction;

9. Copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and parochial schools, and banks;
10. Records or affidavits made under oath from community organizations such as churches, unions, or other organizations;
11. Documents establishing that the applicant performed service, or engaged in a trade or business, within the United States which is evidenced by records maintained by the Commissioner of Social Security,
12. A copy of a Federal, State, or local governmental record that was created on or prior to December 21, 2000, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;
13. A copy of a Federal, State, or local governmental record that was created on or prior to December 21, 2000, 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, and
14. If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing the physical presence in the United States of another member of that same family unit.

- Where the applicant can show continuous presence in the United States for a reasonable period prior to December 21, 2001, such evidence shall create a presumption that the applicant was present on December 21, 2001. For example, the kind of evidence of physical presence ordinarily acceptable in demonstrating that the applicant has been physically present during a reasonable period preceding that date, accompanied by an affidavit or declaration that the person was present on the date itself, shall suffice.

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AILA MEMO

DATE: December 28, 2000

TO: Maria Echaveste; Irene Bueno

FROM: Crystal Williams; Judy Golub; Ben Johnson

RE: DOL implementation of 245(i) extension

Enclosed is a suggested information sheet for the Department of Labor regarding handling of labor certification applications in connection with the extension of the section 245(i) cut-off date until April 30, 2001. Unlike the INS, the DOL never issued publicly available instructions regarding the handling of applications in anticipation of the previous January 14, 1998 cut-off. As a result, various DOL offices handled the applications in different ways.

Therefore, the items (other than the last item) in this information sheet are an amalgamation of the best practices during the 1998 cut-off period of various DOL and state offices (SESAs) involved in the process. The last item relates to the fact that DOL has already proposed, and is in the process of finalizing, a regulation that allows conversion of past non-Reduction in Recruitment (RIR) filings to the more efficient RIR process. Since this new deadline is likely to engender another spate of non-RIR filings, this last item reflects our strong recommendation that DOL also allow these pre-May 1 filings to be converted.

By way of background, the employer in an RIR filing has already conducted recruitment for the position and is asking the Department to issue its certification without requiring more recruitment under the direction of the state office (hence the term "reduction" in recruitment). Because of the short time frame involved, many employers will not have time to complete the full RIR recruitment process required by DOL before April 30, and thus will have to file a "traditional" labor certification application that requires a later recruitment under the direction of the state office. DOL has found RIRs to use considerably less government resources, and therefore to be more efficient. Employers also prefer the RIR process in most cases. Therefore, it is in everyone's interest to allow employers to later convert their "traditional" labor certification applications to RIRs. The regulation now in process at DOL would allow such conversions for applications filed prior to the date the regulation was proposed. We urge that the regulation allow conversions for applications filed prior to May 1, 2001.

PROCEDURES FOR IMPLEMENTING SECTION 245(i)

On December 21, 2000, the President signed into law H.R. 5666, Miscellaneous Appropriations of 2001. Section 1502 of that law amends section 245(i) of the Immigration and Nationality Act to provide certain immigration benefits to any alien who becomes the beneficiary of an immigrant visa petition or a permanent labor certification application filed not later than April 30, 2001. This provision is the same, in all respects relevant to the Department of Labor, as a 1997 law that provided such benefits for beneficiaries of applications filed by January 14, 1998. Based on experience from the 1998 deadline, it is important for the Department to put in place procedures to anticipate a rush of such filings prior to April 30, 2001. Those procedures are as follows:

- In order to allow full opportunity for timely receipt of applications, all SESAs shall remain open the full working day on April 30, 2001. If any SESA must close for emergency reasons during that day, applications received the next day that the SESA is open shall be processed as received on April 30.

- All SESAs shall date-stamp or write the receipt date on all applications delivered to their offices, or to a postal box designated for filing of applications, by April 30, 2001, with a date no later than April 30, 2001.

- All SESAs shall make arrangements for receiving hand delivered labor certification applications during the period April 23 through April 30, 2001, and earlier if possible. Dated receipts shall be issued to the person filing by hand delivery.

- In order to accommodate those who must file "skeletal applications" in order to meet the April 30, 2001 deadline, Certifying Officers and SESAs shall make liberal allowance for amendment of labor certification applications filed prior to April 30, 2001. As long as the employer remains the same, amendment of information regarding job description, requirements, title, wage offer, beneficiary's background and other similar items shall be permitted without requiring that the application be withdrawn and re-filed.

- Because many of the applications filed in anticipation of the April 30, 2001 cut-off are likely not to be Reduction in Recruitment (RIR) requests, the Department will make allowance for later conversion of those applications to RIR.

Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000.

The pending legislation contains certain immigration provisions worked out between members of both parties to further address certain issues addressed in the first instance in the Legal Immigration Family Equity Act of 2000, or LIFE Act, which is contained in the Commerce Justice State Appropriations bill being transmitted to the President. Because both the original LIFE Act and this legislation were developed outside the ordinary Committee process, they were not accompanied by the usual reports elaborating on the background and purpose of their provisions. This memorandum is accordingly submitted on behalf of the Chairman and Ranking Member of the Subcommittee on Immigration of the Senate Committee on the Judiciary to provide such elaboration in somewhat abbreviated form.

The original LIFE Act sought to address two problems. First, it sought to provide a new mechanism to address the problem created by the long backlog of immigrant visa applications for spouses and minor children of lawful permanent residents, who are currently having to wait many years for a visa to become available to them. Right now, many of these individuals are even precluded from visiting their spouse or parent in the United States on account of an administrative interpretation that the filing of their petition casts doubt on the bona fides of their applications for visitors visas, indicating that instead they are intending immigrants.

The LIFE Act creates a new temporary "V" visa under which these spouses (and their children) can come to the United States and wait for their visa here, if their immigrant visa petitions have been pending for more than three years. It also expands the criteria for "K" visas to include spouses and minor children of U.S. citizens. The purpose of the "V" and "K" visas is to provide a speedy mechanism by which family members may be reunited. We expect the Department of State and the INS to work together to create a process in keeping with the temporary nature of the visa that does not require potential beneficiaries to wait for months before their visas are approved. Like the existing Fiancé visa, the new "K" visa is not intended to be a prerequisite for the admission of citizen spouses, but a speedy mechanism for the spouses and minor children of U.S. citizens to obtain their immigrant visas in the U.S., rather than wait for long periods of time outside the U.S.

Second, the LIFE Act sought to correct past administrative mistakes that resulted in the wrongful denial of adjustment of status to hundreds of thousands of persons who should have qualified for permanent residence under the Immigration Reform and Control Act of 1986. It directs the Immigration and Naturalization Service (INS) to adjudicate the applications of individuals in two class action lawsuits on the merits, rather than

continuing to litigate whether they were timely filed.

The LIFE Act Amendments make three significant additions to the provisions in the LIFE Act. First, they delete the LIFE Act's special mechanism for "V" and "K" visa holders to adjust to lawful permanent residence, and instead add a new provision modifying section 245(i), a mechanism by which anyone eligible for an immigrant visa and for whom a visa is currently available can adjust his or her status to that of lawful permanent residence in the U.S., rather than have to return abroad for consular processing. That mechanism was reauthorized in 1996, but only for individuals who were beneficiaries of immigrant visa petitions or labor certification applications filed by January 14, 1998. The LIFE amendments move the date by which such petitions or applications must be filed forward in time to April 30, 2001.

They also add a new requirement that for all beneficiaries whose application was filed after January 14, 1998, the principal beneficiary must have been physically present in the U.S. on the date of enactment of the LIFE Act Amendments of 2000. The function of this last requirement is to make sure that the renewed availability of section 245(i) does not operate to encourage anyone to violate our immigration laws. Accordingly, it should be interpreted with common sense.

It may be difficult for an individual physically present on the day of enactment to establish his or her presence on that precise date to qualify for 245(i). The Immigration and Naturalization Service (INS) should therefore be flexible in the types of evidence it will accept to establish physical presence on the day of enactment. For example, the kind of evidence of physical presence INS ordinarily accepts demonstrating that the applicant has been physically present during a reasonable period preceding that date, accompanied by an affidavit or declaration that the person was present on the date itself, should ordinarily suffice. We also note that this new requirement is applicable only to principal applicants for 245(i), and not to derivatives, who continue to be allowed to "follow to join" if they otherwise qualify.

In order to ensure that persons who may benefit from this provision are aware of this legislation, we strongly encourage the INS to conduct a broad outreach program within the immigrant communities. Additionally, to ensure that all potentially eligible persons have an opportunity to qualify for 245(i), if necessary the INS should accept petitions and applications before the April 30, 2001 sunset date that do not contain all necessary supporting documents, and allow additional documents to be filed after the deadline.

Second, the legislation adds the members of a third class action law suit, *Zambrano v. INS*, to those covered by the LIFE Act's provisions concerning adjustment

of status under the Immigration Reform and Control Act of 1986 (IRCA). We note that persons eligible for adjustment pursuant to the combined LIFE provisions include everyone who has "filed with the Attorney General a written claim of class membership", that is all registered class members, not only those who have been issued employment authorization pursuant to a screening that did not reliably distinguish between potentially meritorious and non-meritorious applications.

We understand that several other class action lawsuits are still pending in the federal courts challenging other INS interpretations of the 1986 adjustment provisions. The precise posture of one of these cases, *Perales v. Thornburgh*, came to our attention after the legislation had been finalized. We understand that a class of about 200 identified plaintiffs in *Perales* challenged the same regulation whose illegality the INS has conceded in *Zambrano*. We would encourage the Attorney General to provide a just resolution for the *Perales* class members in light of the legislation enacted today.

Other cases that have come to out attention, such as *Proyecto San Pablo v. INS*, and *Immigrant Assistance Project v. INS*, are in a different posture from those addressed by the LIFE Act and these amendments, in that they do not involve regulations that INS has conceded were illegal. At the same time, however, it is now almost 2001, that is, almost 15 years after the enactment of IRCA, and these cases remain unresolved. We encourage the plaintiffs and the Attorney General to explore the possibility of settling these cases and bringing to an end the years of bitter and costly litigation. Nothing in this legislation is intended to preclude this option, or to preclude the Attorney General from resolving any other IRCA adjustment applications on the merits.

In that connection, we also note that when the 1986 legalization program was enacted, the Attorney General, pursuant to section 245A of the INA, was authorized to work in conjunction with voluntary organizations and other qualified State, local and community organizations to broadly disseminate information about the legalization program. The INS helped provide funding to these organizations to assist with the outreach effort, as well as with the preparation and submission of the applications for adjustment of status. A similar outreach campaign should be conducted to disseminate information about the opportunity to apply for adjustment of status under this Act. As noted above, almost 15 years have elapsed since the original legalization program was enacted, therefore the need to publicize the resolution of these issues reached by the LIFE Act and amendments thereto is critical to ensure that eligible persons are notified and have an opportunity to obtain the benefits of this Act. Moreover, nothing in the Act should be construed to preclude the Attorney General from providing funding to organizations qualified and experienced in the preparation and submission of adjustment applications.

Third, the amendments clarify that the spouses and unmarried children of the beneficiaries of Section 1104 of the LIFE Act are eligible for the Family Unity provisions of the Immigration Act of 1990. By enacting this provision, our objective is to ensure that these family members are treated in the same manner as the family members of those who adjusted their status under IRCA.

In addition, the amendments address two, more technical issues. Section 1104 LIFE Act applicants, as well as beneficiaries under the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigrant Fairness Act (HRIFA) are made eligible for certain waivers of grounds of inadmissibility. These waivers are ordinarily available only to persons who are outside the U.S. The amendments to the LIFE Act allow the covered individuals to apply for these waivers in the U.S.

Finally, the LIFE amendments clarify that section 241(a)(5) of the INA which bars anyone who has been ordered removed and who subsequently reenters the U.S. from obtaining any relief under the INA. Because adjustment under section 245A, NACARA, and HRIFA is not "relief under" the Act, LIFE amendments specify that this bar does not apply to LIFE section 1104 beneficiaries, or NACARA or HRIFA applicants.

Spencer Abraham
Chairman
Subcommittee on Immigration

Edward Kennedy
Ranking Member
Subcommittee on Immigration

The Legal Immigration Family Equity Act
December 15, 2000

MR. KENNEDY. Mr. President, many of us have worked throughout this Congress to bring greater fairness to our immigration laws. The Legal Immigration Family Equity Act and its amendments are a constructive compromise worked out between members of both parties to address a number of the injustices in current law that have harshly affected many immigrant families. Included in the final legislative package are three provisions that will provide long overdue relief to valued members of our communities and their families..

First, the legislation includes the partial restoration of section 245(i) for individuals who are physically present in the U.S. by the date the legislation is enacted into law. Spouses, children, parents and siblings of permanent residents or U.S. citizens will now be able to adjust their status in the U.S. and avoid needless separation from their loved ones. Similarly, persons who benefit from employer-based petitions will also be helped by the restoration of section 245(i).

Second, this legislation will benefit many of the "late amnesty" class members who have been in legal limbo for close to 15 years. Their spouses and children will be able to remain in the United States until they become eligible for permanent residence.

Finally, this legislation provides desperately needed technical corrections that will benefit persons eligible for relief under the Nicaraguan Adjustment and Central American Relief Act and the Haitian Refugee Immigrant Fairness Act.

Because these provisions were developed outside the usual committee process, they are not accompanied by committee reports on the background and purpose of the provisions. Therefore, as the Chairman and the Ranking Member of the Subcommittee on Immigration, Senator Abraham and I are submitting a detailed memorandum explaining the provisions.

Our action today is a significant step in the right direction, but this legislation is far from perfect. Critical pieces are missing.

We must continue to work for full parity for Central Americans, Haitians, and Liberians. It is unjust to treat refugees fleeing repression by left-wing dictators better than those fleeing repression by right-wing dictators. Congress must create a fair, uniform set of procedures for all of these refugees.

We also must continue to work for relief for permanent residents unfairly affected by the 1996 immigration law. The 1996 law contains some of the harshest provisions that Congress has enacted in many years. Their scope is sweeping. They hurt thousands of immigrants. They have taken immigrants away from their U.S. citizen families, without giving them even an opportunity to have their day in court. Next year, Congress must pass new legislation to correct the harsh provisions of these unfair laws.

It is also unfortunate that the legislation does not include far-reaching agreement on agricultural farmworkers. Senator Graham, Congressman Berman, and many others worked skillfully to achieve this agreement. They proposed an excellent compromise that would have benefitted both the agricultural workers and the farm owners.

These further reforms deserve high priority by the next Congress, and I look forward to working with my colleagues and with the administration of President-elect Bush to enact them into law.

IMPLEMENTATION MEETING
December 20, 2000

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Summary of Major LIFE Act Provisions

1. Section 245(i). The LIFE Act reauthorizes Section 245(i) of the INA until April 30, 2001. To be eligible for this benefits, applicants must prove: (a) they were physically present in the U.S. on December 21, 2000; and (b) are the beneficiary of an immigrant visa petition or labor certification application filed on or before April 30, 2001. To ensure eligibility, the Service encourages petitioners to file an immigrant petition or labor certification application on behalf of qualified applicants as soon as possible.

2. New V nonimmigrant visa category. The LIFE Act creates a new nonimmigrant visa for the spouses and minor children of legal permanent residents who have been waiting 3 years or more for an immigrant visa. Recipients of this temporary visa would be protected from deportation and granted work authorization until immigrant visa or adjustment of status processing is completed. The Service has not yet developed procedures for this new visa.

3. New K nonimmigrant visa category. The LIFE Act creates a new nonimmigrant visa for spouses and minor children of U.S. citizens, similar to the visa available to fiancé(e)s of U.S. citizens. Recipients of this temporary visa would be allowed to enter the United States for adjustment of status processing rather than awaiting immigrant visa processing abroad. Recipients would be granted work authorization until adjustment of status processing is completed. The Service has not yet developed procedures for this new visa.

4. Legalization. The LIFE Act provides an opportunity for certain late legalization class members (CSS v. Meese, LULAC v. Reno, and INS v. Zambrano) to apply to adjust status under modified requirements of the legalization program. The LIFE Act also provides protection from deportation and work authorization to spouses and minor children of these legalization applicants under the Family Unity program. Applicants may not filed for legalization under this provision until the Attorney General has promulgated regulations within 120 days of enactment.

5. NACARA/HRIFA. The LIFE Act waives certain grounds of inadmissibility relating to re-entry after a previous order of deportation or removal and prohibits reinstating previous orders of removal or deportation in order to prevent applications for adjustment of status, for suspension of deportation, or for cancellation of removal as provided by NACARA or HRIFA. NACARA and HRIFA applicants who become eligible to apply for adjustment of status, suspension of deportation, or cancellation of removal as a result of these changes may file one Motion to Reopen exclusion, deportation, or removal proceedings in order to apply for adjustment of status.

Title XV– LIFE Act Amendments

nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(h) CIVIL ACTIONS.—The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under this subsection. Any action under subsection (h) may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the State of Alaska.

SEC. 1410. DESIGNATION OF CRUISE VESSEL NO-DISCHARGE ZONES.

If the State of Alaska determines that the protection and enhancement of the quality of some or all of the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve require greater environmental protection, the State of Alaska may petition the Administrator to prohibit the discharge of graywater and sewage from cruise vessels operating in such waters. The establishment of such a prohibition shall be achieved in the same manner as the petitioning process and prohibition of the discharge of sewage pursuant to Section 312(f) of the Federal Water Pollution Control Act, as amended, and the regulations promulgated thereunder.

SEC. 1411. SAVINGS CLAUSE.

(a) Nothing in this Title shall be construed as restricting, affecting or amending any other law or the authority of any department, instrumentality or agency of the United States.

(b) Nothing in this Title shall in any way affect or restrict, or be construed to affect or restrict, the authority of the State of Alaska or any political subdivision thereof—

(1) to impose additional liability or additional requirements; or

(2) to impose, or determine the amount of an fine or penalty (whether criminal or civil in nature) for any violation of law; relating to the discharge of sewage (whether treated or untreated) or graywater in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve.

SEC. 1412. REGULATIONS.

The Secretary and the Administrator each may prescribe any regulations necessary to carry out the provisions of this Title.

SEC. 1413. INFORMATION GATHERING AUTHORITY.

The authority of Sections 308(a) and (b) of the Federal Water Pollution Control Act, as amended, shall be available to the Administrator to carry out the provisions of this Title. The Administrator and the Secretary shall minimize, to the extent practicable, duplication of or inconsistency with the inspection, sampling, testing, record-keeping and/ reporting requirements established by the Secretary under section 1406 of this Title.

SEC. 1414. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) CRUISE VESSEL.—The term "cruise vessel" means a passenger vessel as defined in section 2101(22) of Title 46, United States Code. The term "cruise vessel" does not include a vessel of the United States operated by the Federal Government or a vessel owned and operated by the government of a State.

(3) DISCHARGE.—The term "discharge" means any release however caused from a cruise vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying.

(4) GRAYWATER.—The term "graywater" means only galley, dishwasher, bath, and laundry waste water. The term does not include other wastes or waste streams.

(5) NAVICABLE WATERS.—The term "navigable waters" has the same meaning as in section 502 of the Federal Water Pollution Control Act, as amended.

(6) PERSON.—The term "person" means an individual, corporation, partnership, limited liability company, association, State, municipality, commission or political subdivision of a State, or any Federally recognized Tribe.

(7) SECRETARY.—The term "Secretary" means the Secretary of the department in which the United States Coast Guard is operating.

(8) SEWAGE.—The term "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

(9) TREATED SEWAGE.—The term "treated sewage" means sewage meeting all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended and of this Title, and regulations promulgated under either.

(10) UNTREATED SEWAGE.—The term "untreated sewage" means sewage that is not treated sewage.

(11) WATERS OF THE ALEXANDER ARCHIPELAGO.—The term "waters of the Alexander Archipelago" means all waters under the sovereignty of the United States within or near Southeast Alaska, beginning at a point 58°11'41"N, 136°39'25"W [near Cape Spencer Light], thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points:

(1) 58°05'17"N, 136°33'49"W and 58°11'41"N, 136°39'25"W [Cross Sound]

(2) 56°09'40"N, 134°40'00"W and 55°49'15"N, 134°17'40"W [Chatham Strait]

(3) 55°49'15"N, 134°17'40"W and 55°50'30"N, 133°54'15"W [Sumner Strait]

(4) 54°41'30"N, 132°01'00"W and 54°51'30"N, 131°20'45"W [Clarence Strait]

(5) 54°51'30"N, 131°20'45"W and 54°46'15"N, 130°52'00"W [Revillagigedo Channel]

The portion of each such geodesic situated beyond 3 nautical miles from the baseline from which the breadth of the territorial sea is measured forms the outer limit of the waters of the ~~Alexander Archipelago in those five locations.~~

TITLE XV—LIFE ACT AMENDMENTS

SEC. 1501. SHORT TITLE.

This title may be cited as the "LIFE Act Amendments of 2000".

SEC. 1502. SUBSTITUTION OF ALTERNATIVE ADJUSTMENT PROVISION.

(a) EXTENDED APPLICATION OF SECTION 245(i).—

(1) IN GENERAL.—Paragraph (1) of section 245(i) of the Immigration and Nationality Act (8 U.S.C. 1255(i)) is amended—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B)(i), by striking "January 14, 1998" and inserting "April 30, 2001";

(C) in subparagraph (B), by adding "and" at the end; and

(D) by inserting after subparagraph (B) the following new subparagraph:

"(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000;".

(2) MODIFICATION IN USE OF FUNDS.—Paragraph (3)(B) of such section is amended by inserting before the period the following: ", except that in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 286(m)".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (m) of section 245 of the Immigration and Nationality Act, as added by section 1102(c) of the Legal Immigration Family Equity Act, is repealed.

(2) Section 245 of the Immigration and Nationality Act, as amended by section 1102(d)(2) of the Legal Immigration Family Equity Act, is amended by striking "or (m)" each place it appears.

SEC. 1503. MODIFICATION OF SECTION 1104 ADJUSTMENT PROVISIONS.

(a) INCLUSION OF ADDITIONAL CLASS.—Section 1104(b) of the Legal Immigration Family Equity Act is amended—

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(3) Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano, 509 U.S. 918 (1993).".

(b) CONFORMING APPLICATION OF CONSENT PROVISION.—Section 1104(c) of the Legal Immigration Family Equity Act is amended by adding at the end the following new paragraph:

"(10) CONFORMING APPLICATION OF CONSENT PROVISION.—In addition to the waivers provided in subsection (d)(2) of such section 245A of the Immigration and Nationality Act, the Attorney General may grant the alien a waiver of the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)). In granting such waivers, the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section.".

(c) INAPPLICABILITY OF REMOVAL ORDER REINSTATEMENT.—Section 1104 of such Act is further amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection:

"(g) INAPPLICABILITY OF REMOVAL ORDER REINSTATEMENT.—Section 241(a)(5) of the Immigration and Nationality Act shall not apply with respect to an alien who is applying for adjustment of status under this section.".

SEC. 1504. APPLICATION OF FAMILY UNITY PROVISIONS TO SPOUSES AND UNMARRIED CHILDREN OF CERTAIN LIFE ACT BENEFICIARIES.

(a) IMMIGRATION BENEFITS.—Except as provided in subsection (d), in the case of an eligible spouse or child (as described in subsection (b)), the Attorney General—

(1) shall not remove the alien on a ground specified in paragraph (1)(A), (1)(B), (1)(C), or (3)(A) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)), other than so much of paragraph (1)(A) of such section as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 212(a) of such Act (8 U.S.C. 1182(a)); and

(2) shall authorize the alien to engage in employment in the United States during the period of time in which protection is provided under paragraph (1) and shall provide the alien with an "employment authorized" endorsement or

other appropriate document signifying authorization of employment.

(b) ELIGIBLE SPOUSES AND CHILDREN.—For purposes of this section, the term "eligible spouse or child" means an alien who is the spouse or unmarried child of an alien described in section 1104(b) of the Legal Immigration Family Equity Act if the spouse or child—

(1) entered the United States before December 1, 1988; and

(2) resided in the United States on such date.

(c) PROCESS FOR RELIEF FOR ELIGIBLE SPOUSES AND CHILDREN OUTSIDE THE UNITED STATES.—If an alien has obtained lawful permanent resident status under section 1104 of the Legal Immigration Family Equity Act and the alien has an eligible spouse or child who is no longer physically present in the United States, the Attorney General shall establish a process under which the eligible spouse or child may be paroled into the United States in order to obtain the benefits of subsection (a) unless the Attorney General finds that the spouse or child would be inadmissible or deportable on any ground, other than a ground for which the alien would not be subject to removal under subsection (a)(1). An alien so paroled shall not be treated as paroled into the United States for purposes of section 201(c)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(c)(4)).

(d) EXCEPTION.—An alien is not eligible for the benefits of this section if the Attorney General finds that—

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

(2) the alien is described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)).

(e) APPLICATION OF DEFINITIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section.

SEC. 1505. MISCELLANEOUS AMENDMENTS TO VARIOUS ADJUSTMENT AND RELIEF ACTS.

(a) NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT.—

(1) IN GENERAL.—Section 202(a) of the Nicaraguan Adjustment and Central American Relief Act is amended—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) RULES IN APPLYING CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) or (d) who is applying for adjustment of status under this section—

"(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply; and

"(B) the Attorney General may grant the alien a waiver of the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act.

In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).".

(2) PERMITTING MOTION TO REOPEN.—Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, removal, or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 101(a) of the Immigration and Nationality Act)), a national of Cuba or Nicaragua who has become eligible for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act as a result of the amendments made by paragraph (1), may file one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment under that Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under that Act. All such motions shall be filed within 180 days of the date of the enactment of this Act.

(b) HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.—

(1) INAPPLICABILITY OF CERTAIN PROVISIONS.—Section 902(a) of the Haitian Refugee Immigration Fairness Act of 1998 is amended—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) INAPPLICABILITY OF CERTAIN PROVISIONS.—In the case of an alien described in subsection (b) or (d) who is applying for adjustment of status under this section—

"(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act shall not apply; and

"(B) the Attorney General may grant the alien a waiver of the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act.

In granting waivers under subparagraph (B), the Attorney General shall use standards used in granting consent under subparagraphs (A)(iii) and (C)(ii) of such section 212(a)(9).".

(2) PERMITTING MOTION TO REOPEN.—Notwithstanding any time and number limitations imposed by law on motions to reopen exclusion, removal, or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 101(a) of the Immigration and Nationality Act)), a national of Haiti who has become eligible for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 as a result of the amendments made by paragraph (1), may file one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment under that Act. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for adjustment of status under that Act. All such motions shall be filed within 180 days of the date of the enactment of this Act.

(c) SECTION 309 OF IIRIRA.—Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is amended by adding at the end the following new subsection:

"(h) RELIEF AND MOTIONS TO REOPEN.—

"(1) RELIEF.—An alien described in subsection (c)(5)(C)(i) who is otherwise eligible for—

"(A) suspension of deportation pursuant to section 244(a) of the Immigration and Nationality Act, as in effect before the title III-A effective date; or

"(B) cancellation of removal, pursuant to section 240A(b) of the Immigration and Nationality Act and subsection (f) of this section;

shall not be barred from applying for such relief by operation of section 241(a)(5) of the Immigration and National Act, as in effect after the title III-A effective date.

"(2) ADDITIONAL MOTION TO REOPEN PERMITTED.—Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined by section 101(a) of the Immigration and Nationality Act)), any alien who is described in subsection (c)(5)(C)(i) and who has become eligible for cancellation of removal or suspension of deportation as a result of the enactment of paragraph (1) may file one motion to reopen removal or deportation proceedings in order to apply for cancellation of removal or suspension of deportation. The scope of any proceeding reopened on this basis shall be limited to a determination of the alien's eligibility for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of this subsection and shall extend for a period not to exceed 240 days.

"(3) CONSTRUCTION.—Nothing in this subsection shall preclude an alien from filing a motion to reopen pursuant to section 240(b)(5)(C)(ii) of the Immigration and Nationality Act, or section 242B(c)(3)(B) of such Act (as in effect before the title III-A effective date).".

SEC. 1506. EFFECTIVE DATE.

This title shall take effect as if included in the enactment of the Legal Immigration Family Equity Act.

TITLE XVI—IMPROVING LITERACY THROUGH FAMILY LITERACY PROJECTS

SEC. 1601. SHORT TITLE.

This title may be cited as the "Literacy Involves Families Together Act".

SEC. 1602. AUTHORIZATION OF APPROPRIATIONS.

*Section 1002(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6302(b)) is amended by striking "**$118,000,000** for fiscal year 1995" and inserting "**$250,000,000** for fiscal year 2001".*

SEC. 1603. IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.

Section 1111(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(c)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(7) the State educational agency will encourage local educational agencies and individual schools participating in a program assisted under this part to offer family literacy services (using funds under this part), if the agency or school determines that a substantial number of students served under this part by the agency or school have parents who do not have a high school diploma or its recognized equivalent or who have low levels of literacy.".

SEC. 1604. EVEN START FAMILY LITERACY PROGRAMS.

(a) PART HEADING.—The part heading for part B of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6361 et seq.) is amended to read as follows:

"PART B—WILLIAM F. GOODLING EVEN START FAMILY LITERACY PROGRAMS".

(b) STATEMENT OF PURPOSE.—Section 1201 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6361) is amended—

(1) in paragraph (1), by inserting "high quality" after "build on"; and

(2) by amending paragraph (2) to read as follows:

"(2) promote the academic achievement of children and adults;";

(3) by striking the period at the end of paragraph (3) and inserting "; and"; and

(4) by adding at the end the following:

"(4) use instructional programs based on scientifically based reading research (as defined in section 2252) and the prevention of reading difficulties for children and adults, to the extent such research is available.".

(c) PROGRAM AUTHORIZED.—

(1) RESERVATION FOR MIGRANT PROGRAMS, OUTLYING AREAS, AND INDIAN TRIBES.—Section 1202(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6362(a)) is amended—

*(A) in paragraph (1), in the matter preceding subparagraph (A), by inserting "(or, if such appropriated amount exceeds **$200,000,000**, 6 percent of such amount)" after "1002(b)";*

*(B) in paragraph (2), by striking "If the amount of funds made available under this subsection exceeds **$4,600,000**," and inserting "After the date of the enactment of the Literacy Involves Families Together Act,"; and*

(C) by adding at the end the following:

"(3) COORDINATION OF PROGRAMS FOR AMERICAN INDIANS.—The Secretary shall ensure that programs under paragraph (1)(C) are coordinated with family literacy programs operated by

MEMORANDUM

TO: **MARIA ECHAVESTE**
FROM: **IRENE BUENO**
RE: **MEETING WITH AGENCIES TO DISCUSS IMPLEMENTATION OF THE LIFE IMMIGRATION PROVISIONS** – Wednesday, December 20, 2000 at 11:00 am in the Roosevelt Room

PURPOSE: The purpose of this meeting is to discuss with the agencies their ideas on the timeline for implementation of the new immigration provisions. For the meeting attached: (1) is a proposed agenda with suggested talking points that highlight the main issues based on the AILA memo and joint memo on the legislative language from Senator Kennedy and Abraham. Also, attached is an agenda that will be distributed at the meeting.

BACKGROUND: Yesterday we met with AILA to get their suggestions for implementing the new immigration provisions. Based on their expertise and experience in the past with INS, they have made some very good suggestions on 245(i) and late amnesty. They continue to review the new V and K visas and NACARA/HRIFA technicals and will provide us their thoughts on those provisions. AILA stressed that it is important that INS provide timely, uniform, clear instructions on these provisions that is communicated to the public broadly. AILA will provide to us a draft fact sheet and instructions on 245(i) based on the 1998 instructions.

In addition, Senators Kennedy and Abraham have a signed a joint memorandum that is part of the official record that provides some legislative history and intent of these new provisions (see attached). I have spoken to Senator Kennedy's staff and they reiterate AILA's suggestions.

It important to communicate our interest in implementing this provisions as intended by Congress in a timely and uniform way and to communicate this information widely to the immigrant communities.

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OMB: Steve Mertens
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IMMIGRATION IMPLEMENTATION MEETING
December 20, 2000

INTRODUCTIONS

PURPOSE – to develop a timeline on the implementation of these new immigration provisions. The implementation must be timely, clear, and uniform implementation that is widely publicized to immigrant communities.

To implement these provisions, we should look to:

- Past practices/guidance that worked in the past particularly for 245(i) and late amnesty and family unity provisions.

- Joint Memorandum from Senators Kennedy and Abraham – we should review this memo that provides legislative history on the immigration provisions.

- Consult with the Congress and groups.

- Public outreach campaign

SECTION 245(i)

- Given that this provision was recently implemented, we should start and learn from what worked in 1998.
- Implementing this law quickly is important given the short timeframe.
- It is equally important that this implementation is uniform and consistently applied throughout the country.
- Also, there must be aggressive outreach to the immigrant communities.
- We have done some work in these area and make the following recommendations:
  - **Application process**
  - INS & DOL should allow for a **skeletal process.** INS previously skeletal process is a properly file petition signed by the petitioner and the fee.
  - DOL should also allow for a skeletal process but there may be challenges in light of the need to allow applicants to amend their applications after filing without DoL treating the application as withdrawn and resubmitted with a later, post-deadline filing date and the new labor rectification process). The new process is known as Reduction in Recruitment or RR. Under the RR program, application is not submitted until the recruitment is completed before the application is filed. AILA is concerned that those filing their labor certification applications would not have time to complete recruiting before the sect. 245(i) deadline of 4/30/01. AILA requests that DoL preserve the traditional labor certification process until the 4/30/00 or DOL could expand its conversion regulation so that the traditional labor certification can meet the 4/30 deadline and later be converted to the more efficient RIR.

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- **What constitutes "filed at the INS"?** – IN 1998, this created the greatest confusion because of lack of uniformity among the INS offices. One office said it must be postmarked, another received on the premises. Eventually INS decided it should be when it must be received by the deadline. Whatever date is picked, it must be uniform and clearly communicated to the public.

- **Standard for "Properly Filed"** – must also be consistent. The standard eventually reached in 1998 was that family-petitions should be that the individual had a bona fide claim for the benefit sought at the time of filing, and that even if the individual ultimately used another basis for qualifying for permanent residence, any bona fide petition or labor certification application filed before the deadline would be sufficient to main 245(i) eligibility.

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What does INS plan to require for this provision? What kind of showing?

LATE AMNESTY

- Law requires that regulations be published in **120 days.**

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- Develop proposed timeline – State Dept./INS

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PUBLIC OUTREACH CAMPAIGN

- Fact Sheet for public
- Specialty Press outreach, conference calls, etc.
- Web site

NEXT STEPS

Irene Bueno
12/28/2000 02:28:03 PM

Record Type: Record

To: LIFE

cc:
Subject: Immigration Provisions Implementation

As we discussed, I have scheduled another conference call for Jan. 4th, Thursday, 2pm. The conference call number is 757-2104 code 1251. Attached is the revised chart. Please let me know if you have any questions or comments.

LIFEImplementationChrt1228

Irene Bueno
12/29/2000 03:02:41 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc:
Subject: 245 (i) materials

I will print this out for you but this is the documents AILA drafted. I will review and then pass this along to INS.

---------------------- Forwarded by Irene Bueno/WHO/EOP on 12/29/2000 02:58 PM ---------------------------

Judy Golub <jgolub@aila.org>
12/28/2000 04:08:35 PM

Record Type: Record

To: Irene Bueno/WHO/EOP

cc: Crystal Williams <cwilliams@aila.org>, Ben Johnson <bjohnson@aila.org>
Subject: 245 (i) materials

Attached are the materials we discussed. The model instructions for both INS and DOL on 245(i) implementation are separate from our cover memos for each. Please call with any questions. Thanks.

- 15IN0004 245i memo.doc
- 15IN0003 DOL 245i notice.doc
- 21LE0006 245(i) INS policy memo.doc

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IMMIGRATION IMPLEMENTATION MEETING
December 20, 2000

- INTRODUCTION
- SECTION 245(i)
- LATE AMNESTY/ FAMILY UNITY — how do we implement
- NACARA/HRIFA TECHNICALS
- V AND K VISAS — 1/9 — State/INS
- PUBLIC OUTREACH CAMPAIGN
- NEXT STEPS

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NEXT STEPS

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693
fax: 213/386-9484

FAX COVER SHEET

To: John Podesta

The White House

Fax: (202) 456-2883

From: Peter A. Schey

Date: 9/28/56

Time: 11:35:20 PM

No. of pages (including this cover sheet): 5

Fax message:

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW
Foundation
256 S. OCCIDENTAL BOULEVARD
LOS ANGELES, CA 90057
Telephone: (213) 388-8693 Facsimile: (213) 386-9484

December 15, 2000

Urgent

MARIA

David W. Ogden, Esq.
Assistant Attorney General
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington DC 20530

Mary Ann Wyrsch
Acting Commissioner
Immigration and Naturalization Service
425 I Street NW
Washington DC 20536

Via telecopier & overnight mail

Re: *Catholic Social Services, Inc., v. Reno, et al.*

Dear Mr. Ogden and Ms. Wyrsch:

We write as class counsel on behalf of the 250,000 1982 amnesty applicants in *Catholic Social Services v. Reno (CSS)* and 150,000 applicants in *Newman v. INS*. We are respectfully requesting that the parties immediately confer (1) to discuss procedures and a time line for renewing plaintiff class members' employment authorization documents and immediate notification to the field that class members prima facie eligible for legalization should not be arrested or removed from the country; and (2) to explore settling this litigation in its entirety.

1. Reinstatement of interim relief in *CSS*

On November 21, 2000, the Ninth Circuit Court of Appeals, sitting *en banc*, refused to order dismissal of *CSS* on jurisdictional grounds as sought by the Immigration and Naturalization Service (INS). The court instead affirmed the district court's ordering the INS to issue class members stays of deportation and temporary employment authorization pending adoption and implementation of a final remedy for eligible class members.

The court of appeals' decision provides that the preliminary injunction is now in force. Slip.Op. at 14997 ("the district court did not err in granting the preliminary injunction *now in force...*" (emphasis added)); *see also, Id.* at 14993 ("That the preliminary injunction *is still in force and effect* is not a result of overreaching in the district court's order, but rather of the fact that the [INS] chose to appeal rather than comply" (emphasis added)). The preliminary injunction (1) requires the Immigration and Naturalization Service (INS), to reissue temporary employment authorization to about 50,000 *CSS* class members, and (2) prohibits the INS from arresting or deporting class members from the United States pending the district court's approval of a final remedial order.

The circuit court's en banc opinion makes clear that the district court acted properly in granting plaintiffs interim protection from joblessness and deportation:

> We affirm the district court's grant of preliminary injunction relief to this class. The merits of their case were decided in their favor in the earlier litigation, both by the district court in *CSS I* and by this court in *CSS II*. ... The class has thus clearly demonstrated a likelihood of success on the merits. It is equally clear that *the class would suffer immediate and severe hardship if its members were deported or denied work authorization pending final determination of their suits*. Accordingly, we hold that the district court acted within its discretion in issuing an order protecting, on an interim basis, the entire class certified in the earlier litigation ...

Slip.Op. at 14992-93 (emphasis added).

As you are no doubt aware, H.R. 4690, the FY 2001 appropriations act for Commerce, Justice, State and related agencies, which includes the Legal Immigration Family Equity Act ("LIFE"), has been passed by Congress and will soon, perhaps even today, become law. The LIFE Act repeals § 377 of the IIRAIRA and allows all *CSS, Newman and Zambrano* class members to have legalization applications adjudicated, whether they were "front-desked" or not. The new enactment will also eliminates the temporary resident step for class members, thus allowing them to apply immediately for permanent residence.

President Clinton has publicly "welcomed" the remedial legislation while adding that it *did not go far enough* in providing a remedy in light of the harm suffered by "the victims of the INS' misinterpretation of the law." In the Administration's view, it is now necessary to "fully correct the [INS'] flawed implementation of the 1986 legalization program under the Immigration Reform and Control Act of 1986." This is precisely the position the plaintiffs and the courts have taken for some 12 years.

Nevertheless, despite (i) the Ninth Circuit's decision in favor of CSS class members; (ii) the White House's declared support for a full and fair remedy for plaintiffs and class members; and (iii) the imminent passage of legislation providing specific benefits for class members, defendants have filed a motion asking that the court of appeals stay its mandate. The basis for this motion is that should mandate issue would again be entitled to critically important interim relief from arrest and deportation that was in place for about ten years until revoked by the INS approximately twenty-four months ago.

Given the court of appeals' decision, the Administration's recently announced position supporting a full and fair remedy for the amnesty class, and Congress's passage of legislation ordering defendants to process class members for legalization (essentially the same thing the courts ordered some 12 years ago), we cannot understand why the INS would wish to persist in arresting and removing class members and in denying them the right to engage in lawful employment.

Continuing to deny temporary work authorization and stays of deportation for class members who the INS has determined are *prima facie* eligible for legalization converts this litigation into little more than a race pitting the INS' ability to expel persons from the United States against the courts' ability to identify eligible class members and grant final relief on their behalf, and the implementation of a new law protecting class members that has the full support of Congress and the White House. That is a sporting approach to justice all should reject.

Please contact us as soon as possible to let us know defendants' position on *immediately* complying with the Ninth Circuit Court of Appeals' en banc decision affirming the right of class members who have established *prima facie* eligibility for legalization to interim relief. Unless defendants are prepared to promptly comply with the decision of the court of appeals, we will be compelled to seek emergency relief from either the court of appeals or the district court. We request an urgent telephonic meeting so that the parties may confer regarding the reinstatement of relief for plaintiffs and class members. If defendants agree to reinstate interim relief consistent with the court of appeals' decision, plaintiffs will agree not oppose a temporary stay of the Ninth Circuit's mandate.

2. Proposed non-binding mediation

We believe it is time that this litigation be brought to a speedy negotiated conclusion. We propose that a resolution acceptable to the parties and the courts be explored through the offices of the Ninth Circuit's Mediation Office. This program has previously facilitated prompt resolution of complex class action cases, and we believe would be helpful to the parties' ability to resolve the amnesty cases.

These cases have been litigated for over 12 years. In addition to the November 21 court of appeals' *en banc* decision, three previous Ninth Circuit decisions have rejected defendants' jurisdictional positions. In 1993 the Supreme Court likewise rejected defendants' jurisdictional arguments, identified certain class members who clearly possessed standing, and left it to the lower courts to identify "substantial cause" class members with standing, which they did.

The record in this case clearly shows that INS was *fully* aware of the 1986 legislative language specifically allowing brief travel abroad without disqualifying applicants from legalization. The agency through Attorney General Ed Meese wrote to the Senate Subcommittee and argued in favor of changing the language of the bill to disqualify applicants who had briefly traveled abroad without INS "advance parole." *Congress rejected this proposal.* The language of the final bill, as it had all along, allowed brief travel without requiring "advance parole." Undeterred, the INS issued regulations embracing the agency's rejected position, rather than implementing the language adopted by Congress. As the lower courts found, this was not a reasonable "misinterpretation" of the law. The INS knew exactly what it was doing, and was forced to change its rules only when the federal courts intervened with injunctions. Because of later abandoned defenses at first raised by the INS, the injunctions were not issued until after the application period ended, and the INS had not only deemed plaintiffs and class members ineligible for legalization, but also ineligible to even "apply" for legalization. Everyone now agrees INS's rules were invalid.

Now, Congress and the White House clearly support full and fair relief for *CSS* and *Newman* class members, and class members are about to become the beneficiaries of significant remedial legislation. These developments strongly mitigate in favor of immediate efforts to conclude these cases. The time has come to resume settlement discussions aimed at concluding these cases in light of the court of appeals' en banc decision and legislation about to be signed into law.

The draft settlement agreement previously discussed by the parties, combined with the LIFE Act and the court of appeals' recent decision provide a framework for settlement discussions that could quickly end these 12-year old cases and lead to a prompt remedy for class members. INS officers have other important tasks to perform, and the sooner a remedy can be executed the better for all concerned.

Settlement talks were previously terminated by defendants only because plaintiffs would not agree to limit the scope of the class definition in a manner which excluded most class members from relief. The Congress, the White House and the court of appeals all now agree that the class may be more generously defined so as to maximize the number of class members eligible for relief. In light of these developments a settlement should be easily within reach.

Please contact us as soon as possible to let us know (1) whether defendants may be willing to submit this case to a non-binding mediation program supervised by the court of appeals in order to explore a final settlement, and (2) defendants' position on immediately complying with the Ninth Circuit Court of Appeals' en banc decision affirming interim relief to class members who establish *prima facie* eligibility for legalization.

Sincerely,

Peter A. Schey
President

Carlos R. Holguín
General Counsel

ccs: John Podesta
Chief of Staff to the President
The White House
Washington DC 20500

Anthony M. Norwood
Office of Immigration Litigation
P.O. Box 878 Ben Franklin Station
Washington, DC 20044

M. Jocelyn Lopez Wright, Esq.
Office of Immigration Litigation
P.O. Box 878 Ben Franklin Station
Washington, DC 20044

Interested individuals and organizations

The Legal Immigration Family Equity Act
December 15, 2000

MR. KENNEDY. Mr. President, many of us have worked throughout this Congress to bring greater fairness to our immigration laws. The Legal Immigration Family Equity Act and its amendments are a constructive compromise worked out between members of both parties to address a number of the injustices in current law that have harshly affected many immigrant families. Included in the final legislative package are three provisions that will provide long overdue relief to valued members of our communities and their families..

First, the legislation includes the partial restoration of section 245(i) for individuals who are physically present in the U.S. by the date the legislation is enacted into law. Spouses, children, parents and siblings of permanent residents or U.S. citizens will now be able to adjust their status in the U.S. and avoid needless separation from their loved ones. Similarly, persons who benefit from employer-based petitions will also be helped by the restoration of section 245(i).

Second, this legislation will benefit many of the "late amnesty" class members who have been in legal limbo for close to 15 years. Their spouses and children will be able to remain in the United States until they become eligible for permanent residence.

Finally, this legislation provides desperately needed technical corrections that will benefit persons eligible for relief under the Nicaraguan Adjustment and Central American Relief Act and the Haitian Refugee Immigrant Fairness Act.

Because these provisions were developed outside the usual committee process, they are not accompanied by committee reports on the background and purpose of the provisions. Therefore, as the Chairman and the Ranking Member of the Subcommittee on Immigration, Senator Abraham and I are submitting a detailed memorandum explaining the provisions.

Our action today is a significant step in the right direction, but this legislation is far from perfect. Critical pieces are missing.

We must continue to work for full parity for Central Americans, Haitians, and Liberians. It is unjust to treat refugees fleeing repression by left-wing dictators better than those fleeing repression by right-wing dictators. Congress must create a fair, uniform set of procedures for all of these refugees.

We also must continue to work for relief for permanent residents unfairly affected by the 1996 immigration law. The 1996 law contains some of the harshest provisions that Congress has enacted in many years. Their scope is sweeping. They hurt thousands of immigrants. They have taken immigrants away from their U.S. citizen families, without giving them even an opportunity to have their day in court. Next year, Congress must pass new legislation to correct the harsh provisions of these unfair laws.

It is also unfortunate that the legislation does not include far-reaching agreement on agricultural farmworkers. Senator Graham, Congressman Berman, and many others worked skillfully to achieve this agreement. They proposed an excellent compromise that would have benefitted both the agricultural workers and the farm owners.

These further reforms deserve high priority by the next Congress, and I look forward to working with my colleagues and with the administration of President-elect Bush to enact them into law.

E. Kennedy

Joint Memorandum Concerning the Legal Immigration Family Equity Act of 2000 and the LIFE Act Amendments of 2000.

The pending legislation contains certain immigration provisions worked out between members of both parties to further address certain issues addressed in the first instance in the Legal Immigration Family Equity Act of 2000, or LIFE Act, which is contained in the Commerce Justice State Appropriations bill being transmitted to the President. Because both the original LIFE Act and this legislation were developed outside the ordinary Committee process, they were not accompanied by the usual reports elaborating on the background and purpose of their provisions. This memorandum is accordingly submitted on behalf of the Chairman and Ranking Member of the Subcommittee on Immigration of the Senate Committee on the Judiciary to provide such elaboration in somewhat abbreviated form.

The original LIFE Act sought to address two problems. First, it sought to provide a new mechanism to address the problem created by the long backlog of immigrant visa applications for spouses and minor children of lawful permanent residents, who are currently having to wait many years for a visa to become available to them. Right now, many of these individuals are even precluded from visiting their spouse or parent in the United States on account of an administrative interpretation that the filing of their petition casts doubt on the bona fides of their applications for visitors visas, indicating that instead they are intending immigrants.

The LIFE Act creates a new temporary "V" visa under which these spouses (and their children) can come to the United States and wait for their visa here, if their immigrant visa petitions have been pending for more than three years. It also expands the criteria for "K" visas to include spouses and minor children of U.S. citizens. The purpose of the "V" and "K" visas is to provide a speedy mechanism by which family members may be reunited. We expect the Department of State and the INS to work together to create a process in keeping with the temporary nature of the visa that does not require potential beneficiaries to wait for months before their visas are approved. Like the existing Fiancé visa, the new "K" visa is not intended to be a prerequisite for the admission of citizen spouses, but a speedy mechanism for the spouses and minor children of U.S. citizens to obtain their immigrant visas in the U.S., rather than wait for long periods of time outside the U.S.

Second, the LIFE Act sought to correct past administrative mistakes that resulted in the wrongful denial of adjustment of status to hundreds of thousands of persons who should have qualified for permanent residence under the Immigration Reform and Control Act of 1986. It directs the Immigration and Naturalization Service (INS) to adjudicate the applications of individuals in two class action lawsuits on the merits, rather than

continuing to litigate whether they were timely filed.

The LIFE Act Amendments make three significant additions to the provisions in the LIFE Act. First, they delete the LIFE Act's special mechanism for "V" and "K" visa holders to adjust to lawful permanent residence, and instead add a new provision modifying section 245(i), a mechanism by which anyone eligible for an immigrant visa and for whom a visa is currently available can adjust his or her status to that of lawful permanent residence in the U.S., rather than have to return abroad for consular processing. That mechanism was reauthorized in 1996, but only for individuals who were beneficiaries of immigrant visa petitions or labor certification applications filed by January 14, 1998. The LIFE amendments move the date by which such petitions or applications must be filed forward in time to April 30, 2001.

They also add a new requirement that for all beneficiaries whose application was filed after January 14, 1998, the principal beneficiary must have been physically present in the U.S. on the date of enactment of the LIFE Act Amendments of 2000. The function of this last requirement is to make sure that the renewed availability of section 245(i) does not operate to encourage anyone to violate our immigration laws. Accordingly, it should be interpreted with common sense.

It may be difficult for an individual physically present on the day of enactment to establish his or her presence on that precise date to qualify for 245(i). The Immigration and Naturalization Service (INS) should therefore be flexible in the types of evidence it will accept to establish physical presence on the day of enactment. For example, the kind of evidence of physical presence INS ordinarily accepts demonstrating that the applicant has been physically present during a reasonable period preceding that date, accompanied by an affidavit or declaration that the person was present on the date itself, should ordinarily suffice. We also note that this new requirement is applicable only to principal applicants for 245(i), and not to derivatives, who continue to be allowed to "follow to join" if they otherwise qualify.

In order to ensure that persons who may benefit from this provision are aware of this legislation, we strongly encourage the INS to conduct a broad outreach program within the immigrant communities. Additionally, to ensure that all potentially eligible persons have an opportunity to qualify for 245(i), if necessary the INS should accept petitions and applications before the April 30, 2001 sunset date that do not contain all necessary supporting documents, and allow additional documents to be filed after the deadline.

Second, the legislation adds the members of a third class action law suit, *Zambrano v. INS*, to those covered by the LIFE Act's provisions concerning adjustment

of status under the Immigration Reform and Control Act of 1986 (IRCA). We note that persons eligible for adjustment pursuant to the combined LIFE provisions include everyone who has "filed with the Attorney General a written claim of class membership", that is all registered class members, not only those who have been issued employment authorization pursuant to a screening that did not reliably distinguish between potentially meritorious and non-meritorious applications.

We understand that several other class action lawsuits are still pending in the federal courts challenging other INS interpretations of the 1986 adjustment provisions. The precise posture of one of these cases, *Perales v. Thornburgh*, came to our attention after the legislation had been finalized. We understand that a class of about 200 identified plaintiffs in *Perales* challenged the same regulation whose illegality the INS has conceded in *Zambrano*. We would encourage the Attorney General to provide a just resolution for the *Perales* class members in light of the legislation enacted today.

Other cases that have come to out attention, such as *Proyecto San Pablo v. INS*, and *Immigrant Assistance Project v. INS*, are in a different posture from those addressed by the LIFE Act and these amendments, in that they do not involve regulations that INS has conceded were illegal. At the same time, however, it is now almost 2001, that is, almost 15 years after the enactment of IRCA, and these cases remain unresolved. We encourage the plaintiffs and the Attorney General to explore the possibility of settling these cases and bringing to an end the years of bitter and costly litigation. Nothing in this legislation is intended to preclude this option, or to preclude the Attorney General from resolving any other IRCA adjustment applications on the merits.

In that connection, we also note that when the 1986 legalization program was enacted, the Attorney General, pursuant to section 245A of the INA, was authorized to work in conjunction with voluntary organizations and other qualified State, local and community organizations to broadly disseminate information about the legalization program. The INS helped provide funding to these organizations to assist with the outreach effort, as well as with the preparation and submission of the applications for adjustment of status. A similar outreach campaign should be conducted to disseminate information about the opportunity to apply for adjustment of status under this Act. As noted above, almost 15 years have elapsed since the original legalization program was enacted, therefore the need to publicize the resolution of these issues reached by the LIFE Act and amendments thereto is critical to ensure that eligible persons are notified and have an opportunity to obtain the benefits of this Act. Moreover, nothing in the Act should be construed to preclude the Attorney General from providing funding to organizations qualified and experienced in the preparation and submission of adjustment applications.

Third, the amendments clarify that the spouses and unmarried children of the beneficiaries of Section 1104 of the LIFE Act are eligible for the Family Unity provisions of the Immigration Act of 1990. By enacting this provision, our objective is to ensure that these family members are treated in the same manner as the family members of those who adjusted their status under IRCA.

In addition, the amendments address two, more technical issues. Section 1104 LIFE Act applicants, as well as beneficiaries under the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigrant Fairness Act (HRIFA) are made eligible for certain waivers of grounds of inadmissibility. These waivers are ordinarily available only to persons who are outside the U.S. The amendments to the LIFE Act allow the covered individuals to apply for these waivers in the U.S.

Finally, the LIFE amendments clarify that section 241(a)(5) of the INA which bars anyone who has been ordered removed and who subsequently reenters the U.S. from obtaining any relief under the INA. Because adjustment under section 245A, NACARA, and HRIFA is not "relief under" the Act, LIFE amendments specify that this bar does not apply to LIFE section 1104 beneficiaries, or NACARA or HRIFA applicants.

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DECEMBER 27, 2000

BACKGROUND re PROYECTO SAN PABLO v. INS

The legislative history for the LIFE ACT Amendments urges the plaintiffs and the Attorney General to explore the possibility of settling Proyecto San Pablo v. INS and states that nothing in the LIFE ACT legislation is intended to preclude the Attorney General from "resolving IRCA adjustment applications on the merits." This memo is written to provide background information regarding Proyecto San Pablo and to propose a manner of settling this case on the merits.

This class action lawsuit was filed in Tucson, Arizona in August 1989 for the benefit of individuals who were previously deported before they filed an application for legalization. The district court has certified a class that includes approximately 1,000 individuals in the Northern and Western INS Region who applied for legalization under IRCA during the application period from May 1987 to May 1988. The class covers individuals who have lived in the United States since before January 1, 1982; filed an application for legalization in the Northern or Western region; and were denied legalization on the basis of a prior deportation. Class members have been able to obtain work authorization on the basis of a temporary protective order issued by the court in January 1992. This case has been to the Ninth Circuit twice, and each time has been remanded for further proceedings. The case is currently scheduled for trial to begin on January 9, 2001.

When this lawsuit was filed in 1989, plaintiffs presented substantive challenges to the denial of IRCA adjustment applications on the merits and also procedural challenges to the manner in which the legalization applications were adjudicated. After the Supreme Court's 1993 decision in Reno v. Catholic Social Services, courts have held that in the legalization class action lawsuits, district courts have jurisdiction only over the "procedural" challenges, not over "substantive" challenges to the denial of IRCA applications. There are two main procedural issues being litigated at trial: (1) whether class members should be given an opportunity to review their prior deportation files in order to bring a collateral attack on the prior deportation; and (2) whether class members should be given an opportunity to submit an application for a waiver to waive the prior deportation.

As to plaintiffs' substantive challenge, IRCA contains waivers for the benefit of individuals who were previously deported and then returned to the United States. INA §245A(d)(2), 8 U.S.C. §1255a(d)(2). Plaintiffs have maintained that Congress created these waivers for the benefit of class members. In other words, if the waiver is granted, and if the applicant is otherwise eligible for legalization, then the application should not be denied on the grounds that the applicant was previously deported. The Immigration Service has maintained that even if the waiver is approved, the application should still be denied on the merits because the applicant has not maintained "continuous unlawful residence" in the United States as required by INA §245A(a)(2), 8 U.S.C. §12551(a)(2).

In 1991, the district court rejected INS's interpretation of the statute. According to the district court:

> If defendants' interpretation is accepted, there appears to be no purpose to the [IRCA] waiver. . . . The Court believes that Congress intended the availability of the waiver provisions for legalization applicants such that a [deportation] would not automatically break the applicants' continuous residence.

784 F.Supp. 738, 747 (D.Az. 1991). After the Supreme Court's CSS decision in 1993, this order was vacated on the grounds that it was not a procedural ruling, but a substantive decision went to the merits of the IRCA applications filed by class members.

Plaintiffs believe that settlement of this lawsuit would be in the best interests of both the legalization applicants and the Immigration Service. The proposed settlement goes beyond what plaintiffs can obtain at trial, in that the settlement addresses the substantive merits of IRCA adjustment applications, not just the procedural issues. However, plaintiffs believe that this is within the parameters encouraged by the legislative history and that the proposed settlement is a fair resolution for the plaintiffs and not burdensome on the Immigration Service. The class members of this lawsuit have lived in the United States since before January 1, 1982. They are all law abiding residents who are not disqualified because of any criminal offenses. They have strong ties to their communities and many provide essential support to families including U.S. citizen children. The class is relatively small (INS estimates that there are approximately 800 class members); and the class is easily identifiable in that all class members have already filed applications for legalization during the legalization application period and they were denied on the basis of a prior deportation.

Plaintiffs propose that this case can be settled by recognizing the availability of the waivers established in IRCA for class members, and allowing class members to file applications for waivers. Class members would not have to file new legalization applications, since the legalization applications have already been filed. The settlement would allow class members to reopen their denied legalization applications, submit waiver applications, and obtain legal residence under IRCA provided that the Immigration Service approves their waiver applications. As the district court ruled in 1991, such a resolution of this lawsuit is in keeping with Congress' intention in enacting IRCA to include the class members of this lawsuit in the legalization program.

Irene Bueno
12/21/2000 04:59:32 PM

Record Type: Record

To: LIFE

cc: Maria Echaveste/WHO/EOP, Rochelle G. Thompson/WHO/EOP
Subject: Immigration Implementation Conference Call

In follow-up to our immigration meeting, I would like to schedule a conference call on **Wednesday, December 27 at 2 pm** to discuss the progress of implementation of the immigration provisions particularly section 245(i) and late amnesty. The Conference call number is 202-757-2104 code 1251. I realize that many people will be on Wed. but please make arrangements for someone from agency to be on the call. Also, to help track our progress on various issues, I have drafted a chart that is based on our meeting. However, I did make some changes particularly on 245(i) so please review that section closely. Please let me know if you have any questions or comments. Happy Holidays!

Irene Bueno 456-6558

LIFEImplementationChrt1221

245(i) -
Affidavit would lead to widespread fraud
common + flexible

IMMIGRATION PROVISIONS – IMPLEMENTATION

245(i) - Implement by mid Jan

Issue/Task	**Contact/Timeline**	**Status**	**Next Steps**
Physical Presence prove only applies to principal applicant not derivative	INS Options by 1/5 Decision 1/8	INS concerned about affidavit but open to looking at other simple ways to prove physical presence.	INS needs to develop options. [illegible] one document?
Application – ① skeletal process, ② ~~postmarked by expiration date~~ date of receipt - receipts	INS 12/29	Same as 1998 - allowed skeletal applications at the end - timing important - skeletal process. Fraud concern	- INS update reg, field guidance and fact sheet - Not to make sure not cause other problem.
Mtg w/ Hill & CBOs	INS/ASAP	? ~~[illegible]~~ Next mtg week	INS/DOJ should schedule this week Potty-Ed not [illegible]
Update Reg	INS Draft by 1/5 Complete by 1/12	Check on status	INS needs to draft reg
Field Guidance	INS Draft 1/5 Complete 1/12	Check on status	INS needs to draft
Fact Sheet & distribution (web page, 800 number Broad outreach	INS/2nd week of Jan Draft by 1/5 Complete 1/12	Check on status	INS needs to draft

Late Amnesty

Issue	**Contact/Timeline**	**Status**	**Next Steps** held
No deportations, provide work authorization, travel permission	DOJ~~/ASAP~~ Internal INS next week..	- DOJ needs to consider these issues. - Deportation - no problem - Work authority - lawyers need to review . . apprehended only?	James ~~will hold~~ held internal DOJ meeting to discuss these issues + 245(i). New [illegible]
Expanding the class	DOJ/ "	- Admin letters indicate support for expanding the class. - Joint Summary states AG should expand class of those helped under this provision. - Lawyers will look into . . . limit. lawsuit possible	James will hold internal DOJ meeting to discuss these issues ability [illegible] under lawsuit? expedite certain cases
Family Unity	INS	Implemented in the same manner as in 1990 - age out	
Regs	INS/Due 120 days after enactment		

HRIFA

NACARA/TECHNICALS

Issue	Contact/Timeline	Status	Next Steps
Field Guidance	1/10/01	INS drafting field guidance	Check on status

V and K Visas

Issue	Contact/Timeline	Status	Next Steps
Timeline	State/INS	State and INS are working on a timeline that outlines steps to be taken, resources needed & potential problems.	Timeline due 1/9/01

- 12/27/00 - Ed planning to guard - immigrant [illegible] ~~[illegible]~~ fiancee visa ~~[illegible]~~ health ~~[illegible]~~ concerns - needs more scrutiny. or tourist visa ~~[illegible]~~ only show visa pending 3 yrs.

criminal ~~[illegible]~~ - check public ~~charge~~ charge.