XI

TITLE ___—ENCOURAGING IMMIGRANT FAMILY REUNIFICATION

SEC. ___01. SHORT TITLE.

This title may be cited as—

(1) the "Legal Immigration Family Equity Act"; or

(2) the "LIFE Act".

SEC. ___02. NONIMMIGRANT STATUS FOR SPOUSES AND CHILDREN OF PERMANENT RESIDENTS AWAITING THE AVAILABILITY OF AN IMMIGRANT VISA; PROVISIONS AFFECTING SUBSEQUENT ADJUSTMENT OF STATUS FOR SUCH NONIMMIGRANTS.

(a) IN GENERAL.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

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

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

(3) by adding at the end the following:

"(V) subject to section 214(o), an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section

203(d)) of a petition to accord a status under section 203(a)(2)(A) that was filed with the Attorney General under section 204 on or before the date of the enactment of the Legal Immigration Family Equity Act, if—

"(i) such petition has been pending for 3 years or more; or

"(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

"(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A); or

"(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245, pursuant to the approval of such petition, remains pending.

(b) PROVISIONS AFFECTING NONIMMIGRANT STATUS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(o)(1) In the case of a nonimmigrant described in section 101(a)(15)(V)—

"(A) the Attorney General shall authorize the alien to engage in employment in the United States during the period of authorized admission and shall provide the alien with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment; and

"(B) the period of authorized admission as such a nonimmigrant shall terminate 30 days after the date on which any of the following is denied:

"(i) The petition filed under section 204 to accord the alien a status under section 203(a)(2)(A) (or, in the case of a child granted nonimmigrant status based on eligibility to receive a visa under section 203(d), the petition filed to accord the child's parent a status under section 203(a)(2)(A)).

"(ii) The alien's application for an immigrant visa pursuant to the approval of such petition.

"(iii) The alien's application for adjustment of status under section 245 pursuant to the approval of such petition.

"(2) In determining whether an alien is eligible to be admitted to the United States as a nonimmigrant under section 101(a)(15)(V), the grounds for inadmissibility specified in section 212(a)(9)(B) shall not apply.

"(3) The status of an alien physically present in the United States may be adjusted by the Attorney General, in the discretion of the Attorney General and under such regulations as the Attorney General may prescribe, to that of a nonimmigrant under section 101(a)(15)(V), if the alien—

"(A) applies for such adjustment;

"(B) satisfies the requirements of such section; and

"(C) is eligible to be admitted to the United States, except in determining such admissibility, the grounds for inadmissibility specified in paragraphs (6)(A), (7), and (9)(B) of section 212(a) shall not apply.".

(c) PROVISIONS AFFECTING PERMANENT RESIDENT STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

"(m)(1) The status of a nonimmigrant described in section 101(a)(15)(V) who the Attorney General determines was physically present in the United States at any time during the period beginning on July 1, 2000, and ending on October 1, 2000, may be adjusted by the Attorney General, in the discretion of the Attorney General and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence, if—

"(A) the alien makes an application for such adjustment;

"(B) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, except in determining such admissibility, the grounds for inadmissibility specified in paragraphs (6)(A), (7), and (9)(B) of section 212(a) shall not apply; and

"(C) an immigrant visa is immediately available to the alien at the time the alien's application is filed.

"(2) Paragraph (1) shall not apply to an alien who has failed (other than through no fault of the alien or for technical reasons) to maintain continuously a lawful status since obtaining the status of a nonimmigrant described in section 101(a)(15)(V).

"(3) Upon the approval of an application for adjustment made under paragraph (1), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 202 and 203 within the class to which the alien is chargeable for the fiscal year then current.

"(4) The Attorney General may accept an application for adjustment made under paragraph (1) only if the alien remits with such application a sum equalling $1,000, except that such sum shall not be required from an alien if it would not be required from the alien if the alien were applying under subsection (i).

"(5) The sum specified in paragraph (4) shall be in addition to the fee normally required for the processing of an application under this section.

"(6)(A) The portion of each application fee (not to exceed $200) that the Attorney General determines is required to process an application under this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (o) of section 286.

"(B) One-half of any remaining portion of such fee shall be deposited by the Attorney General into the Immigration Examination Fee Account established under section 286(m), and one-half of any remaining portion of such fees shall be deposited by the Attorney General into the Breached Bond/Detention Fund established under section 286(r).

"(7) Nothing in this subsection shall be construed as precluding a nonimmigrant described in section 101(a)(15)(V) who is eligible for adjustment of status under subsection (a) from applying for and obtaining adjustment under such subsection. In the case of such an application, the alien shall be required to remit only the fee normally required for the processing of an application under subsection (a).".

(d) CONFORMING AMENDMENTS.—

(1) ADMISSION OF NONIMMIGRANTS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended, in each of subsections (b) and (h), by striking "(H)(i) or (L)" and inserting "(H)(i), (L), or (V)".

(2) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

(A) in each of subsections (d) and (f), by striking "under subsection (a)," each place such term appears and inserting "under subsection (a) or (m),"; and

(B) in subsection (e)(1), by striking "subsection (a)." and inserting "subsection (a) or (m).".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to an alien who is the beneficiary of a classification petition filed under section 204 of the Immigration and Nationality Act on or before the date of the enactment of this Act.

SEC. _03. NONIMMIGRANT STATUS FOR SPOUSES AND CHILDREN OF CITIZENS AWAITING THE AVAILABILITY OF AN IMMIGRANT VISA.

(a) IN GENERAL.—Section 101(a)(15)(K) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(K)) is amended to read as follows:

"(K) subject to subsections (d) and (p) of section 214, an alien who—

"(i) is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

"(ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

"(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;".

(b) PROVISIONS AFFECTING NONIMMIGRANT STATUS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), as amended by section 2 of this Act, is further amended by adding at the end the following:

"(p)(1) A visa shall not be issued under the provisions of section 101(a)(15)(K)(ii) until the consular officer has received a petition filed in the United States by the spouse of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe.

"(2) In the case of an alien seeking admission under section 101(a)(15)(K)(ii) who concluded a marriage with a citizen of the United States outside the United States, the alien shall be considered inadmissible under section 212(a)(7)(B) if the alien is not at the time of application for admission in possession of a valid nonimmigrant visa issued by a consular officer in the foreign state in which the marriage was concluded.

"(3) In the case of a nonimmigrant described in section 101(a)(15)(K)(ii), and any child of such a nonimmigrant who was admitted as accompanying, or following to join, such a nonimmigrant, the period of authorized admission shall terminate 30 days after the date on which any of the following is denied:

"(A) The petition filed under section 204 to accord the principal alien status under section 201(b)(2)(A)(i).

"(B) The principal alien's application for an immigrant visa pursuant to the approval of such petition.

"(C) The principal alien's application for adjustment of status under section 245 pursuant to the approval of such petition.".

(c) CONFORMING AMENDMENTS.—

(1) ADMISSION OF NONIMMIGRANTS.—Section 214(d) of the Immigration and Nationality Act (8 U.S.C. 1184(d)) is amended by striking "101(a)(15)(K)" and inserting "101(a)(15)(K)(i)".

(2) CONDITIONAL PERMANENT RESIDENT STATUS.—Section 216 of the Immigration and Nationality Act (8 U.S.C. 1186a) is amended, in each of subsections (b)(1)(B) and (d)(1)(A)(ii), by striking

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"214(d)" and inserting "subsection (d) or (p) of section 214".

(3) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

(A) in subsection (d), by striking "(relating to an alien fiancee or fiance or the minor child of such alien)"; and

(B) in subsection (e)(3), by striking "214(d)" and inserting "subsection (d) or (p) of section 214".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to an alien who is the beneficiary of a classification petition filed under section 204 of the Immigration and Nationality Act before, on, or after the date of the enactment of this Act.

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SEC. ___04. ADJUSTMENT OF STATUS OF CERTAIN CLASS ACTION PARTICIPANTS WHO ENTERED BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE.

(a) IN GENERAL.—In the case of an eligible alien described in subsection (b), the provisions of section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a), as modified by subsection (c), shall apply to the alien.

(b) ELIGIBLE ALIENS DESCRIBED.—An alien is an eligible alien described in this subsection if, before October 1, 2000, the alien filed with the Attorney General a written claim for class membership, with or without a filing fee, pursuant to a court order issued in the case of—

(1) Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993); or

(2) League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc., 509 U.S. 43 (1993).

(c) MODIFICATIONS TO PROVISIONS GOVERNING ADJUSTMENT OF STATUS.—The modifications to section 245A of the Immigration and Nationality Act that apply to an eligible alien described in subsection (b) of this section are the following:

(1) TEMPORARY RESIDENT STATUS.—Subsection (a) of such section 245A shall not apply.

(2) ADJUSTMENT TO PERMANENT RESIDENT STATUS.—In lieu of paragraphs (1) and (2) of subsection (b) of such section 245A, the Attorney General shall be required to adjust the status of an eligible alien described in subsection (b) of this section to that of an alien lawfully admitted for permanent

residence if the alien meets the following requirements:

(A) APPLICATION PERIOD.—The alien must file with the Attorney General an application for such adjustment during the 12-month period beginning on the date on which the Attorney General issues final regulations to implement this section.

(B) CONTINUOUS UNLAWFUL RESIDENCE.—

(i) IN GENERAL.—The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act that were most recently in effect before the date of the enactment of this Act shall apply.

(ii) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(iii) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) of such Act or has fulfilled that requirement or received a waiver thereof.

(iv) CUBAN AND HAITIAN ENTRANTS.—For purposes of this section, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96–422 shall be considered to have entered the

United States and to be in an unlawful status in the United States.

(C) CONTINUOUS PHYSICAL PRESENCE.—

(i) IN GENERAL.—The alien must establish that the alien was continuously physically present in the United States during the period beginning on November 6, 1986, and ending on May 4, 1988, except that—

(I) an alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of this subparagraph by virtue of brief, casual, and innocent absences from the United States; and

(II) brief, casual, and innocent absences from the United States shall not be limited to absences with advance parole.

(ii) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this section or section 245A of the Immigration and Nationality Act.

(D) ADMISSIBLE AS IMMIGRANT.—The alien must establish that the alien—

(i) is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the Immigration and Nationality Act;

(ii) has not been convicted of any felony or of three or more misdemeanors committed in the United States;

(iii) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(iv) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

(E) BASIC CITIZENSHIP SKILLS.—

(i) IN GENERAL.—The alien must demonstrate that the alien either—

(I) meets the requirements of section 312(a) of the Immigration and

Nationality Act (8 U.S.C. 1423(a)) (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) EXCEPTION FOR ELDERLY OR DEVELOPMENTALLY DISABLED INDIVIDUALS.—The Attorney General may, in the discretion of the Attorney General, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled.

(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312(a) of the Immigration and Nationality Act may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III of such Act.

(3) TEMPORARY STAY OF REMOVAL, AUTHORIZED TRAVEL, AND EMPLOYMENT DURING PENDENCY OF APPLICATION.—In lieu of subsections (b)(3) and (e)(2) of such section 245A, the Attorney General shall provide that, in the case of an eligible alien described in subsection (b) of this section who presents a prima facie application for adjustment of status to that of an alien lawfully admitted for permanent residence under such section 245A during the application period described in paragraph (2)(A), until a final determination on the application has been made—

(A) the alien may not be deported or removed from the United States;

(B) the Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need; and

(C) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(4) APPLICATIONS.—Paragraphs (1) through (4) of subsection (c) of such section 245A shall not apply.

(5) CONFIDENTIALITY OF INFORMATION.—Subsection (c)(5) of such section 245A shall apply to information furnished by an eligible alien described in subsection (b) pursuant to any application filed under such section 245A or this section, except that the Attorney General (and other officials and employees of the Department of Justice and any bureau or agency thereof) may use such information for purposes of rescinding, pursuant to section 246(a) of the Immigration and Nationality Act (8 U.S.C. 1256(a)), any adjustment of status obtained by the alien.

(6) USE OF FEES FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.—Notwithstanding subsection (c)(7)(C) of such section 245A, no application fee paid to the Attorney General pursuant to this section by an eligible alien described in subsection (b) of this section shall be available in any fiscal year for the purpose described in such subsection (c)(7)(C).

(7) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS BEFORE APPLICATION PERIOD.—In lieu of subsection (e)(1) of such section 245A, the Attorney General shall provide that in the case of an eligible alien described in subsection (b) of this section who is apprehended before the beginning of the application period described in paragraph (2)(A) and who can establish a prima facie case of eligibility to have his status adjusted under such section 245A pursuant to this section (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported or removed from the United States; and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(8) JURISDICTION OF COURTS.—Effective as of November 6, 1986, subsection (f)(4)(C) of such section 245A shall not apply to an eligible alien described in subsection (b) of this section.

(9) PUBLIC WELFARE ASSISTANCE.—Subsection (h) of such section 245A shall not apply.

(d) APPLICATIONS FROM ABROAD.—The Attorney General shall establish a process under which an alien who has become eligible to apply for adjustment of status to that of an alien lawfully admitted for permanent residence as a result of the enactment of this section and who is not physically present in the United States may apply for such adjustment from abroad.

(e) DEADLINE FOR REGULATIONS.—The Attorney General shall issue regulations to implement this section not later than 120 days after the date of the enactment of this Act.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—The provisions of subparagraphs (A) and (B) of section 245A(f)(4) of the Immigration and Nationality Act (8 U.S.C. 1255a(f)(4)) shall apply to administrative or judicial review of a determination under this section or of a determination respecting an application for adjustment of status under section 245A of the Immigration and Nationality Act filed pursuant to this section.

(g) DEFINITION.—For purposes of this section, the term "such section 245A" means section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a).

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AILA MEMO

DATE: December 18, 2000

TO: Maria Echaveste

FROM: Judy Golub; Crystal Williams; Denyse Sabagh; Ben Johnson

RE: Implementation of Section 245(i) Reinstatement and Class Action Participants Who Entered Before January 1, 1982

We urge that the cornerstones to implementating this new legislation will be clarity and uniformity. It is critical that INS develop and communicate clear policies and procedures, and that they be instituted in the same manner nationwide. Equally important is open communication with the affected communities, to ensure that the agencies are made aware of the practical impact of their policies. As discussed below, many of the problems that have arisen in the past with respect to 245(i) and legalization were the result of these kinds of communication problems. The joint memorandum issued by Senators Kennedy and Abraham (attached) provides a useful guideline for any implementation plan.

We look forward to working with the Immigration and Naturalization Service, Department of Labor, and Department of State to help them to effectively, fairly and efficiently implement the provisions of the LIFE amendments, restoration of 245(i), legalization and the family unity provisions, the "V" and "K-2" visas, and the NACARA and HRIFA technical corrections. We hope that this memo begins this discussion.

Section 245(i) Implementation

Based on experience with the last "grandfathering" deadline in section 245(i) of January 14, 2000, we have a number of suggestions to apply the lessons of that experience, both in using the best practices from that period and in avoiding the errors that were made:

- **Allow for skeletal filings at INS.** 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 should accept a skeletal petition that meets this definition. Additional information and documentation that may be needed to complete processing can then be obtained by means of Requests for Evidence.

- **Allow for skeletal filings at DOL.** Two issues arise in connection with the alternative of filing a labor certification application with the Department of Labor before the new 245(i) deadline. The first is the issue that arose last time: the need for DOL to liberally allow applicants to amend their applications after filing without the Department treating the application as withdrawn and resubmitted with a later, post-deadline, filing date.

The second issue relates to changes in labor certification procedures that happen to coincide in time with this legislation. DOL currently is attempting to transition from "traditional" labor certification applications, under which recruitment is conducted under the supervision of state employment agencies, to more efficient processes by which recruitment is completed before the application is filed (the current version of this process is known as Reduction in Recruitment or "RIR"). In this regard, DOL is now in the process of finalizing a regulation that would allow existing traditional labor certification applications to be converted to RIRs without re-starting the application process. The largest group of beneficiaries of this conversion will be the labor certification applications filed immediately before January 14, 1998. This regulation as proposed would include only applications filed by July 26, 2000 (the date the regulation was proposed). Unfortunately, those attempting to file their labor certification applications by April 30, 2001, may not have enough time to complete the recruiting process beforehand and thus would have to file "traditional" labor certification applications. Therefore, at a minimum, DOL must preserve the traditional process until the new 245(i) deadline. Better still would be if DOL could expand its conversion regulation so that traditional labor certifications filed to meet the April 30, 2000 deadline later can be converted to the more efficient RIR.

- **Accepting petitions at any INS office.** Last time, INS allowed petitions to be filed at any INS office, with the idea that INS would internally forward the filings to the proper venue. We would suggest that this approach be repeated, but that one pitfall from the 1/14/98 effort be avoided. A number of INS district offices set up boxes where filings could be deposited. Unfortunately, no receipts were issued and the filings either were not date-stamped at all or were date-stamped several days after filing. Many people who filed in this manner not only had no evidence that their petitions had been timely filed, but INS took the position that they indeed had NOT been timely filed, and their 245(i) eligibility was denied. It would therefore be extremely important this time that either receipts be issued or the filings be consistently and accurately date-stamped.

- **What constitutes "filed at the INS."** Perhaps the greatest problem surrounding the 1/14/98 deadline was erroneous information being provided by INS regarding what constituted "filed at the INS." Some offices advised the public that a petition would be considered filed on time if it was postmarked by 1/14. Others announced that the petition reaching the receiving post office would suffice. Still others indicated that the filing must actually reach the premises of the INS office by 1/14. Ultimately, INS took the third position—that the filing must have reached the INS office by 1/14. However, hundreds of people had relied on other representations only to later discover that their filings were not considered timely. Therefore, whatever the position that INS takes as to where the filing must actually be by 4/30/01, it must communicate that position clearly and consistently, and abide by it when the time comes to have the adjustment of status application adjudicated.

- **Substantive standards for "properly filed."** It will be important that INS clearly articulate and maintain its standard for what constitutes a properly filed petition. The standard that ultimately was reached last time for family-based petitions should be the standard from the outset and across the board: 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 4/30/01 would be sufficient to maintain 245(i) eligibility.

Late Legalization Implementation

Implementation of the provisions for "late legalization" class members raises a number of logistical issues for implementation. To ensure that these class members are properly protected and that the problems that gave rise to these class actions in the first place are not repeated, we make the following suggestions:

- Since the application process cannot begin until INS issues final regulations, and recent history of INS rule-making has shown that a considerable amount of time will pass before these regulations will issue, it is vital that INS provide work authorization and travel permission to class members and that INS refrain from deporting or removing these individuals.

- Many of the issues that gave rise to this litigation related to improperly restrictive regulations that were ultimately resolved in the manner advocated by the plaintiffs (for example, the definition of "physical presence"). In order to avoid propounding the problem, INS should work with affected community representatives, such as the CBOs and AILA, before the rules are proposed or finalized to achieve agreement on the route to be followed.

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

IMMIGRATION IMPLEMENTATION MEETING
December 20, 2000

- **INTRODUCTION**
- **SECTION 245(i)**
- **LATE AMNESTY/ FAMILY UNITY**
- **NACARA/HRIFA TECHNICALS**
- **V AND K VISAS**
- **PUBLIC OUTREACH CAMPAIGN**
- **NEXT STEPS**

Sally Scott / Jim / Barbara Wendy / Karen > NSC

$\boxed{\text{DED Mtg}}$ -12/2/00

Scott B - Awkward to only provide to Haitians & not to the ~~other~~ other govt.

- Foreign policy rationale stronger for ~~other~~ other than Haitian

OLC doesn't like safety of DED purposes, OLC likes TPS better.

Barbara Strack - No principle basis for DED except in light of foreign policy

James C - OLC - thinks is of questionable legality but Bush used DED use in light of ~~DED~~ TPS
(EVD - AG authority)
AG has broad authority.

Sympathetic Case Haitian - Airplane crews - most ~~...~~ significant for Haitian

Workers - Health workers - deserving paroled for 6 mo -

Prosecutorial Discretion - Individual cases
Categorical relief is time limited.

Sally - Repatriation agreement -
Strongest argument
Not DED since safety issue

- Preliminary discussions