

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS
APPROPRIATIONS, 2001

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Public Law 106-429
106th Congress

An Act

Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes. <<NOTE: Nov. 6, 2000 - [H.R. 4811]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
[...]

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Sec. 586. (a) The status of certain aliens from Vietnam, Cambodia, and Laos described in subsection (b) of this section may be adjusted by the Attorney General, under such regulations as she may prescribe, to that of an alien lawfully admitted permanent residence if--

- (1) within 3 years after the date of promulgation by the Attorney General of regulations in connection with this title the alien makes an application for such adjustment and pays the appropriate fee;
- (2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence except as described in subsection (c); and
- (3) the alien had been physically present in the United States prior to October 1, 1997.

(b) The benefits provided by subsection (a) shall apply to any alien who is a native or citizen of Vietnam, Laos, or Cambodia and who was inspected and paroled into the United States before October 1, 1997 and was physically present in the United States on October 1, 1997; and

- (1) was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program; or
- (2) was paroled into the United States from a refugee camp in East Asia; or
- (3) was paroled into the United States from a displaced

person camp administered by the United Nations High Commissioner for Refugees in Thailand.

(c) Waiver of Certain Grounds for Inadmissibility.--The provisions of paragraphs (4), (5), and (7)(A) and (9) of section 212(a) of the Immigration and Nationality Act shall not be applicable to any alien seeking admission to the United States under this subsection, and notwithstanding any other provision of law, the Attorney General may waive 212(a)(1); 212(a)(6)(B), (C), and (F); 212(8)(A); 212(a)(10)(B) and (D) with respect to such an alien in order to prevent extreme hardship to the alien or the alien's spouse, parent, son or daughter, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation.

(d) Ceiling.--The number of aliens who may be provided adjustment of status under this provision shall not exceed 5,000.

(e) Date of Approval.--Upon the approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in subsection (b)(1), (b)(2) and (b)(3).

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(f) No Offset in Number of Visas Available.--When an alien is granted the status of having been lawfully admitted for permanent residence under this section the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act.

Public Law 108-447

(m) INDOCHINESE PAROLEES- Section 586 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (8 U.S.C. 1255 note), as enacted into law by section 101(a) of Public Law 106-429, is amended--

(1) by striking 'Attorney General' each place that term appears and inserting 'Secretary of Homeland Security';

(2) in subsection (a)--

(A) in the matter preceding paragraph (1), by striking 'she' and inserting 'the Secretary of Homeland Security'; and

(B) in paragraph (1), by striking `within three years after the date of promulgation by the Attorney General of regulations in connection with this title';

(3) in subsection (c), by striking `212(8)(A)' and inserting `212(a)(8)(A)';

(4) by striking subsection (d);

(5) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively;

(6) by adding at the end the following new subsection:

8 CFR 245.21

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

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

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

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

8 CFR 245.22

§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date. (Section added effective 1/27/03; 67 FR 78667)

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

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

(c) Service-issued documentation. To demonstrate physical presence on a specific date, the alien may submit Service-issued documentation. Examples of acceptable Service documentation include, but are not limited to, photocopies of:

(1) Form I-94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) Form I-862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I-122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I-221, Order to Show Cause, issued by the Service on or prior to the required date, placing the applicant in deportation proceedings under section 242 or 242A (redesignated as section 238) of the Act (as in effect prior to April 1, 1997); or

(5) Any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to the required date that establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

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

(1) A state driver's license;

(2) A state identification card;

(3) A county or municipal hospital record;

(4) A public college or public school transcript;

(5) Income tax records;

(6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other

party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(7) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

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

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

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