INA: ACT 210 - SPECIAL AGRICULTURAL WORKERS

Sec. 210. [8 U.S.C. 1160]

(a) Lawful Residence. -

(1) In general.- The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

> (A) Application Period.- The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.
>
> (B) Performance of seasonal agricultural services and residence in the united states.- The alien must establish that he has-
>
> (i) resided in the United States, and
>
> (ii) performed seasonal agricultural services in the United States for at least 90 man-days, during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.
>
> (C) Admissible as immigrant.- The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

(2) Adjustment to permanent residence. - The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

> (A) Group 1. - Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-months periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the dat e the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).
>
> (B) Group 2.-In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).
>
> (C) Numerical limitation.-Subparagraph (A) shall not apply to more than 350,000

aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) Termination of temporary residence.-

(A) During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if-

(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section **212(a)(6)(C)(i)** , or

(ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2), or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

(4) Authorized travel and employment during temporary residence.-During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) In general.-Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section **101(a)(20)**), other than under any provision of the immigration laws.

(b) Applications for Adjustment of Status.-

(1) To whom may be made.-

(A) Within the United States.-The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed-

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) Outside the United States.-The Attorney General, in cooperation with the

Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the pr ovisions of this section.

(2) Designation of entities to receive applications.-For purposes of receiving applications under this section, the Attorney General-

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) Proof of eligibility.-

(A) In general.-An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

(B) Documentation of work history.-

(i) An alien applying for adjustment of status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii)).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) Treatment of applications by designated entities.-Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the

applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) Limitation on access to information.-Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to paragraph (6) of this subsection.

(6) **1/** CONFIDENTIALITY OF INFORMATION. -

(A) In general.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B), or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(D) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $10,000.

(7) Penalties for false statements in applications.-

(A) Criminal penalty.-Whoever-

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion.-An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section **212(a)(6)(C)(i)** .

(c) Waiver of Numerical Limitations and Certain Grounds for Exclusion.-

(1) Numerical limitations do not apply.-The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion.-In the determination of an alien's admissibility under subsection (a)(1)(C)-

(A) Grounds of exclusion not applicable.-The provisions of paragraphs (5) and (7)(A) of section **212(a)** shall not apply.

(B) Waiver of other grounds.-

(i) In general.-Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived.-The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraph (2)(A) and (2)(B) (relating to criminals).

(II) Paragraph (4) (relating to aliens likely to become public charges).

(III) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana.

(IV) Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof.

(C) Special Rule for Determination of Public Charge.-
An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(4) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) Temporary Stay of Exclusion or Deportation and Work Authorization for Certain Applicants.-

(1) Before application period.-The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (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 f iling of an application for adjustment, the alien-

(A) may not be excluded or deported, 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.

(2) During application period.-The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien-

(A) may not be excluded or deported, 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.

(3) No application fees collected by the Service pursuant to this subsection may be used by the Service to offset the costs of the special agricultural worker legalization program until the Service implements the program consistent with the statutory mandate as follows:

(A) During the application period described in subsection (a)(1)(A) the Service may grant temporary admission to the United States, work authorization, and provide an "employment authorized" endorsement or other appropriate work permit to any alien who presents a preliminary application for adjustment of status under subsection (a) at a designated port of entry on the southern land border. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provid ed in this Act.

(B) During the application period described in subsection (a)(1)(A) any alien who has filed an application for adjustment of status within the United States as provided in subsection (b)(1)(A) pursuant to the provision of **8 C.F.R** . section **210.1(j)** is subject to paragraph (2) of this subsection.

(C) A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States and the documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility fo r special agriculture worker status is credible.

(e) Administrative and Judicial Review.-

(1) Administrative and judicial review.-There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) Administrative review.-

(A) Single level of administrative appellate review.-
The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) Standard for review.-Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) Judicial review.-

(A) Limitation to review of exclusion or deportation.- There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106 (as in effect before October 1, 1996).

(B) Standard for judicial review.-Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) Temporary Disqualification of Newly Legalized Aliens From Receiving Aid to Families With Dependent Children.-During the five- year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for aid under a State plan approved under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a S tate plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of

paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section **245A(h)(3)** to paragraph (1) is deemed a reference to the previous sentence.

(g) Treatment of Special Agricultural Workers.-For all purposes (subject to subsections (a)(5) and (f)) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section **101(a)(20)**).

(h) Seasonal Agricultural Services Defined.-In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

FOOTNOTES FOR SECTION 210

INA: ACT 210 FN 1

FN 1 The final sentence of paragraph (6) was first amended by § 384 of IIRIRA, which was effective for "offenses occurring on or after the date of the enactment of this Act." However, **§ 623(b) of IIRIRA** rewrites the entire paragraph as shown. The language that was overwritten read as follows: "Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each violation." See also, section 245A(c) as amended by § 623 of IIRIRA.

INA: ACT 245A - ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

Sec. 245A.[8 U.S.C. 1255a]

(a) Temporary Resident Status.-The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) Timely application.-

> (A) During application period.-Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

(B) Application within 30 days of show-cause order.-An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242 (as in effect before October 1, 1996), must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) Information included in application.-Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

(2) Continuous unlawful residence since 1982.-

(A) In general.-The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) 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.

(C) Exchange visitors.-If the alien was at any time a nonimmigrant exchange alien (as defined in section **101(a)(15)(J)**), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

(3) Continuous physical presence since enactment.-

(A) In general.-The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) Treatment of brief, casual, and innocent absences.- An alien shall not be considered to have failed to maintained continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) 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 subsection.

(4) Admissible as immigrant.-The alien must establish that he-

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

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

(C) 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

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

For purposes of this subsection, 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.

(b) Subsequent Adjustment to Permanent Residence and Nature of Temporary Resident Status.-

(1) Adjustment to permanent residence.-The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence.-The alien must apply for such adjustment during the 2- year period ACT 245A beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) Continuous residence.-

(i) In general.-The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) Treatment of certain absences.-An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) Admissible as immigrant.-The alien must establish that he-

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

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

(D) Basic citizenship skills.-

(i) In general.-The alien must demonstrate that he either-

(I) meets the requirements of section **312(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 his discretion, 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) 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.

(2) Termination of temporary residence.-The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)-

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) Authorized travel and employment during temporary residence.-During the period an alien is in lawful temporary resident status granted under subsection (a)-

(A) Authorization of travel abroad.-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 under paragraph (1) 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.

(B) Authorization of employment.-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.

(c) Applications for Adjustment of Status.-

(1) To whom may be made.-The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed-

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

(2) Designation of qualified entities to receive applications.- For purposes of assisting in the program of legalization provided under this section, the Attorney General-

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) Treatment of applications by designated entities.-Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) Limitation on access to information.-Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) **1/** Confidentiality of information.-

(A) In general.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $10,000.

(6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisone d not more than five years, or both.

(7) Application fees.-

(A) Fee Schedule.-The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1). The Attorney General shall provide for an additional fee for filing an

application for adjustment under subsection (b)(1) after the end of the first year of the 2-year period described in subsection (b)(1)(A).

(B) Use of fees.-The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

(C) Immigration-related unfair employment practices.- Not to exceed $3,000,000 of the unobligated balances remaining in the account established in subparagraph (B) shall be available in fiscal year 1992 and each fiscal year thereafter for grants, contracts, and cooperative agreements to community-based organizations for outreach programs, to be administered by the Office of Special Counsel for Immigration-Related Unfair Employment Practices: Provided, That such amounts shall be in addition to any f unds appropriated to the Office of Special Counsel for such purposes: Provided further, That none of the funds made available by this section shall be used by the Office of Special Counsel to establish regional offices.

(d) Waiver of Numerical Limitations and Certain Grounds for Exclusion.-

(1) Numerical limitations do not apply.-The numerical limitations of sections **201** and **202** shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion.-In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)-

(A) Grounds of exclusion not applicable.-The provisions of paragraphs (5) and (7)(A) of section **212(a)** shall not apply.

(B) Waiver of other grounds.-

(i) In general.-Except as provided in clause (ii), the Attorney General may waive any other provision of section **212(a)** in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived.-The following provisions of section **212(a)** may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B) (relating to criminals).

(II) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(III) Paragraph (3) (relating to security and related grounds).

(IV) Paragraph (4) (relating to aliens likely to become public charges)

insofar as it relates to an application for adjustment to permanent residence.

Subclause (IV) (prohibiting the waiver of section 212(a)(4)) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(iii) Special rule for determination of public charge.-An alien is not ineligible for adjustment of status under this section due to being inadmissible under section **212(a)(4)** if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) Medical examination.-The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) Temporary Stay of Deportation and Work Authorization for Certain Applicants.-

(1) Before application period.-The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (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, 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.

(2) During application period.-The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien-

(A) may not be deported, 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.

(f) Administrative and Judicial Review.-

(1) Administrative and judicial review.-There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) No review for late filings.-No denial of adjustment of status under this section based

on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) Administrative review.-

(A) Single level of administrative appellate review.- The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

(B) Standard for review.-Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(4) Judicial review.-

(A) Limitation to review of deportation.-There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106 (as in effect before October 1, 1996). ***2/***

(B) Standard for judicial review.-Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(C) ***3/*** Jurisdiction of courts.-Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer.

(g) Implementation of section.-

(1) Regulations.-The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe-

(A) regulations establishing a definition of the term "resided continuously", as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) Considerations.-In prescribing regulations described in paragraph (1)(A)-

(A) Periods of continuous residence.-The Attorney General shall specify

individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) Absences caused by deportation or advanced parole.- The Attorney General shall provide that-

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) Waivers of certain absences.-The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) Use of certain documentation.-The Attorney General shall require that-

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment- related documents with respect to the alien are available to the applicant. (3) Interim final regulations.-Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) Temporary Disqualification of Newly Legalized Aliens from Receiving Certain Public Welfare Assistance.-

(1) In general.-During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law-

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for-

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but

in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food and Nutrition Act of 2008 ***4/*** ; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision. Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) Exceptions.-Paragraph (1) shall not apply-

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), or

(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(3) Restricted Medicaid benefits.-

(A) Clarification of entitlement.-Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance-

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) Restriction of benefits.-

(i) Limitation to emergency services and services for pregnant women.-Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to-

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) No restriction for exempt aliens and children.-The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) Definition of medical assistance.-In this paragraph, the term "medical assistance" refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

(4) Treatment of certain programs.-Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) Richard B. Russel National School Lunch Act.

(B) The Child Nutrition Act of 1966.

(C) **3b/ 3e/** The Carl D. Perkins Career and Technical Education Act of 2006.

(D) Title I of the Elementary and Secondary Education Act of 1965.

(E) The Headstart-Follow Through Act.

(F) **3c/** 3d/ Title I of the Workforce Investment Act of 1998.

(G) Title IV of the Higher Education Act of 1965.

(H) The Public Health Service Act.

(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) Adjustment not affecting fascell-stone benefits.-For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) Dissemination of Information on Legalization Program.- Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

FOOTNOTES FOR SECTION 245A

INA: ACT 245A FN 1

FN 1 The final sentence of paragraph 5 was first amended by **§ 384 of IIRIRA**, which was effective for "offenses occurring on or after the date of the enactment of this Act." However, § 623(a) rewrites the entire paragraph as shown. The language that was overwritten read as follows: "Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each violation." See also, section **210(b)(6)** as amended by **§ 623 of IIRIRA**.

INA: ACT 245A FN 2

FN 2 See **§ 377(b) of IIRIRA**.

INA: ACT 245A FN 3

FN 3 Added by **§ 377(a) of IIRIRA**, effective as if included in the enactment of the Immigration Reform and Control Act of 1986.

INA: ACT 245A FN 3a

FN 3a **Section 752(b)(5)** of Public Law 106-78, dated October 22, 1999, amended section 245A(h)(4)(A) by changing "National School Lunch Act" to "Richard B. Russell National School Lunch Act".

INA: ACT 245A FN 3b

FN 3b Section **245A(h)(4)(C)** amended by section 3 of Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub. L. 105-332.

INA: ACT 245A FN 3c

FN 3c Section **405(d)(4)**, Pub. L. 105-277, under Technical and Conforming Amendments inserted "or title I of the Workforce Investment Act of 1998."

INA: ACT 245A FN 3d

FN 3d Section **405(f)(4)** , Pub. L. 105-277, under Technical and Conforming Amendments further amended section 245A(h)(4)(F) by striking "The Job Training Partnership Act or title" and inserting "Title"

INA: ACT 245A FN 3e

FN 3e Section **2a** of Public Law 109-270, dated August 12, 2006, amended section 245A(h)(4)(C) by striking " Carl D. Perkins Vocational and Technical Education Act of 1998" and inserting "The Carl D. Perkins Career and Technical Education Act of 2006".

INA: ACT 245A FN 4

FN 4 Section **4002(b)(1)(B)** of Public Law 110-234, dated May 22, 2008, required an amendment to paragraph(b)(2)(J) of Public Law 110-234. Paragraph **(b)(2)(J)** required an amendment to 8 U.S.C. 1255a which appears in section 245A(h)(1)(A)(iii) of the Immigration and Nationality Act. Accordingly section 245A(h)(1)(A)(iii) is amended by striking "Food Stamp Act of 1977" each place it appears and inserting "Food and Nutrition Act of 2008"