

U.S. Department of Justice
Immigration and Naturalization Service
425 I Street NW
Washington, DC 20536

MEMORANDUM FOR

ALL REGIONAL DIRECTORS
ALL SERVICE CENTER DIRECTORS
ALL DISTRICT DIRECTORS
ALL OFFICERS IN CHARGE

FROM:

William R. Yates
Deputy Executive Associate Commissioner
Office of Field Operations
Immigration Services Division

SUBJECT: Field Guidance regarding eligibility for Section 245(i) under the Legal Immigration Family Equity Act

On March 26, 2001, an interim rule was published in Federal Register (66 FR 16383) to amend the regulations at 8 CFR 245.10 establishing eligibility for adjustment of status under Section 245(i) of the Immigration and Nationality Act (INA). This memorandum supplements the January 26, 2001 and April 6, 2001 memoranda. This memorandum primarily discusses issues concerning eligibility for Section 245(i) as it relates to the postmark issue. All offices are reminded that only a visa petition or labor certification can provide eligibility for Section 245(i) of the INA.

Applications filed under the "old" Section 245(i) priority date (on or before January 14, 1998) are not subject to postmark issues. In addition, applications for adjustment of status with an approved petition do not have postmark issues and may be filed at any time, provided a visa number is available and other eligibility criteria are met.

I. Timely Filing Determined by Postmark:

The Legal Immigration Family Equity Act (LIFE Act) sets an April 30, 2001 deadline for receipt of visa petitions and labor certification applications when an applicant requests consideration under Section 245(i). Any immigrant visa petition physically received by the INS on or before April 30, 2001 is timely filed. However the March 26, 2001 interim rule contains a significant addition. Immigrant visa petitions postmarked on or before April 30, 2001 will also be deemed timely filed and thus qualified for eligibility under Section 245(i). The postmark date is not, in and of itself, a priority date. A priority date can only be

accorded after an immigrant visa petition has been reviewed according to Service policy.

For the purposes of the implementation of Section 245(i) of the INA, as amended by the LIFE Act, the term "postmark" means a stamp or other mark of cancellation placed on an envelope or package by the United States Postal Service (USPS).

Field Offices and Service Centers must retain evidence of the mailing date as part of the record of proceeding for all immigrant visa petitions and applications for adjustment of status received between May 1, 2001 and May 3, 2001, inclusive. For these applications and petitions, the original or a copy of the postmarked envelope, private mail service invoice or metered mail envelope shall be included in the record of proceeding of each application or petition submitted in that envelope.

A. Postmarked mail:

All applications and petitions postmarked by the USPS that bear a postmark date on or before April 30, 2001, regardless of the date of receipt, shall be considered filed on the date indicated on the postmark for the purposes of Section 245(i) eligibility. Any petition meeting this criteria received on or after May 1, 2001 should be stamped with the "Filed Prior to 245 (i) Sunset" stamp.

B. Illegible Postmarks and Missing Postmarks:

An application or petition mailed to the Service in an envelope with an illegible or missing postmark is to be considered postmarked on the sunset date, providing it is physically received by the Service:

- (1) on or before April 30, 2001, or
- (2) during that same period of time as the Service continues to receive material that was postmarked by the USPS by April 30, 2001. In most cases the Service anticipates that period of time will occur within three days of the sunset date.

This means, for the purpose of establishing a consistent and practical policy in determining eligibility for Section 245(i), only, the Service has decided that an application or petition received by mail after April 30, 2001 without a postmark or bearing an illegible postmark, shall be considered timely filed if physically received by the Service by the close of business May 3, 2001. Those petitions that meet this criteria, should be stamped with the "Filed Prior to 245(i) Sunset" stamp.

C. Private Mail Service:

Applications and petitions delivered by private mail service (other than the USPS), such as Federal Express, shall be considered received without a postmark. For the purposes of Section 245(i) INA, an application or petition received via private mail service after the sunset date shall be considered the same as a package with an illegible or missing postmark.

D. Metered Mail:

Applications and petitions received in envelopes with metered postage, shall be considered

timely received if:

- a) There is a USPS cancellation postmark dated on or before April 30, 2001, or
- b) No USPS cancellation postmark is present but the metered date is on or before April 30, 2001 and the envelope is received on or before May 3, 2001.

Any petitions received on or after May 1, 2001 that meet the criteria should be stamped with the "Filed Prior to 245(i) Sunset" stamp.

E. "Filed Prior to 245(i) Sunset" Stamp

Applications and petitions received after the sunset date that meet the guidelines provided in Section I, shall be marked with a stamp indicating "Filed Prior to 245(i) Sunset." In short, all cases considered filed on or before the sunset date that are received on or after May 1, 2001, shall bear a "Filed Prior to 245(i) Sunset" stamp. Service Centers and Regional Offices will be responsible for the distribution of the "Filed Prior to 245(i) Sunset" stamps for their jurisdiction.

The "Filed Prior to 245(i) Sunset" stamp will serve as notification that the application or petition appears to have been filed on or before the sunset date. It shall not be binding on a Service Officer when determining whether an applicant for adjustment of status is entitled to benefits under Section 245(i) of the INA, as amended by the LIFE Act and Life Act Amendments of 2000.

II. Accepting Out-of-Jurisdiction Filings

Effective on the date of this memorandum, Field Offices and Service Centers shall accept all properly filed immigrant visa petitions and applications for adjustment of status with fee and signature, without regard to jurisdiction. This policy shall continue through the close of business April 30, 2001 for applications filed in person, and through May 3, 2001 for applications filed by mail.

All Field Offices should accept the following filings:

- All applications/petitions presently accepted locally that are filed by mail or in person.
- Form I-485 filed, by mail or in person, with an I-130, I-140 or I-360 petition.
- Forms I-130, I-140 or I-360 filed by mail or in person (including "skeletal" applications submitted).
- Form I-485 application package without the fingerprint fee (fingerprint fee should be requested of applicant).

Any applications or petitions accepted that are not adjudicated locally should be forwarded to the appropriate Service Center.

Service Centers should accept all properly filed applications or petitions indicated above, without regard to jurisdiction. Service Centers should then forward the applications or

petitions to the appropriate office.

Offices should **NOT** accept the following filings:

- Labor certifications.
- Applications with improper application fees, except missing fingerprint fees (See Fees section for further instructions).
- Late legalization applications for adjustment of status.
- Applications for adjustment of status that do not comply with 8 CFR 245.2(a)(2).

III. Fees

Any fee receipting and data entry functions not completed at the time the application or petition is received, must be performed, in accordance with Department of Treasury regulations, after the Sunset date. Applicants requiring a document showing delivery on the sunset date should be encouraged to send the petition/application by mail using a postal service that provides a receipt.

If the receipting is performed, the following guidelines should be followed:

1. If an applicant submits a single check for multiple applications and/or petitions and the fee is incorrect, all of the applications should be returned to the applicant and a receipt should not be issued.
2. If an applicant submits multiple checks for multiple applications and/or petitions and the fee is incorrect on some of the applications, the applications with the incorrect amounts should be returned. Receipts should be issued for those with correct amounts.
3. In the case of multiple checks, where one application is dependent upon the principal application being accepted, every attempt should be made to fee in the principal application first followed by any riding applications. If the principal application must be returned, all riding applications must be returned.
4. Applicants/Attorneys should be encouraged, during this period, to submit separate checks for each application and/or petition to prevent the entire application package from being returned for improper fees.
5. All offices should continue their normal practice with regards to the acceptance of cash.

IV. Contact

Additional information on handling applications and petitions, in light of Section 245(i) INA, as amended, may be gleaned from memoranda on the topic dated January 26, 2001 and April 6, 2001. Service Centers should direct questions to Danielle Lee at 202-514-6328. Field Offices should direct questions to Kathy Dominguez at 202-616-1050.