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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS No. 1050-87]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 201 of the Immigration Reform and Control Act (IRCA) provides for the legalization of aliens who have been residing illegally in the United States since before January 1, 1982. Since May 5, 1987, the Service has processed hundreds of thousands of applications for the legalization benefits provided by the IRCA. Actual operational experience with the program has brought about the necessity to amend the Service's regulations in order to correct technicalities and provide additional guidance as required. These regulations were published at 52 FR 16205, May 1, 1987.

DATES: The interim final is effective November 17, 1987. Comments must be received on or before December 17, 1987.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly (Deputy Assistant Commissioner, Legalization), (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub L. 99-603 was enacted on November 6, 1986. This legislation is the most comprehensive reform of our immigration laws since the enactment of the immigration and Nationality Act (NA) in 1952. This rule incorporates various technical and clarifying amendments to the regulations governing the legalization program established by the Immigration Reform and Control Act of 1986 (IRCA), Pub L. 99-603. In particular, the rule amends the term "alien's unlawful status was known to the government," and the list of aliens eligible to apply for legal status is expanded to include "Silva class members," duration of status aliens, asylum applicants and aliens who were paroled into the United States pursuant to the stateside criteria program, aliens paroled on or before May 1, 1987, and aliens who, subsequent to a departure from the United States, reentered the United States as nonimmigrants in order to return to an unrelinquished, unlawful residence. The rule also provides that temporary resident aliens who are under an order to deportation issued prior to their obtaining temporary resident status will not be considered to have been deported if they travel outside of the United States. Additionally, the rule deletes the provision whereby aliens could comply with the requirements of section 321 of the Immigration and Nationality Act (knowledge of English and American Government) at the time of interview for temporary resident status. The rule expands the use of affidavits of support to family members other than a spouse. The rule allows for the use of discretion by a district director in establishing the procedure for travel authorization document completion while an application for temporary residence status is pending. Finally, the rule removes the waiver requirement for aliens found admissible even though their income falls below the proverty level.

Summary of the Interim Rule

Section 254a.(c) is amended to provide that those aliens who departed the United States in order to obtain an immigrant visa at a consulate or embassy in Canada or Mexico, pursuant to the stateside criteria program, and who were paroled back into the United States, may apply for legalization if they are otherwise eligible

Section 245a.1(d) is being amended to further define the term "alien's unlawful status was known to the government." Section 245a.1(d)(4) will be added so that foreign students who can establish that the school they attended or were authorized to attend reported to the Service that the student violated their nonimmigrant student prior to January 1, 1982 will be considered within the category of those aliens whose unlawful status was known to the government. The Service has determined that this change is consistent with Congressional intent for a generous legalization program.

Section 245a.1(d)(2) is amended to correct a grammatical error.

Section 245a.1(e) is amended to correct a grammatical error.

Section 245a.1(l) is being amended to correct a grammatical error.

Section 245a.2(a)(2)(ii) is being amended to correct a grammatical error.

Section 245a.2(b) is being amended to clarify the eligibility status of non-immigrant Foreign Government Representatives (Class A—A-1, A-2); Representatives of Foreign Governments that are members of international organizations (Class G—G-1, G-2, G-3, G-4); and students (Class F). These aliens are often granted duration of status at the time of admission to the United States. This status has, for purposes of section 245A(a)(2)(B) of the INA, as amended by IRCA, created problems in determining when such nonimmigrant aliens' status terminated or expired. These sections address this issue.

The Service has determined that A, G, and F class aliens who were granted duration of status may be eligible for legalization in the following circumstances. Class A and G aliens will be considered eligible for legalization as aliens whose period of authorized admission expired through the passage of time, if the qualifying employment terminated prior to January 1, 1982, or the Department of State acknowledges that the alien's A or G status recognition ceased prior to January 1, 1982 and the alien is otherwise eligible for legalization. A class F alien will be eligible to apply for legalization if the alien completed his or her course of study, including any practical training, and the time period, if

any, in which the alien was granted to depart the United States expired, before January 1, 1982 and the alien is otherwise eligible for legalization.

Section 245a.2(b) is being amended to include those individuals who are members of the class of aliens estabished in *Silva vs. Levi*, No. 76–C4268 (N.D. ILL. March 22, 1977). In 1977, an injunction was issued in the case of *Silva v. Levi*. The Service was enjoined from effecting the departure of certain Western Hemisphere aliens because of an erroneous allocation of immigrant visa numbers to Cuban Refugees. Under this court order, any alien from an independent country of the Western Hemisphere who was present in the United States prior to March 11, 1977, and had a priority date for the issuance of an immigrant visa between July 1, 1968, and December 31, 1976, was permitted to remain in the United States indefinitely and to obtain employment. The notices issued to these aliens by the Service advising them of the foregoing became known as "Silva Letters." The Silva injunction was vacated on November 1, 1981. As of that date, the aliens in the Silva class who had not become permanent residents and who were otherwise in the United States unlawfully, were subject to deportation. Aliens who are members of this class will be eligible to apply for legal status provided they meet all other eligibility requirements.

Section 245a.2(b) is being amended to include individuals who filed asylum applications prior to January 1, 1982. The Service has determined that these individuals were in an unlawful status known to the government when they filed their applications. If the application has been denied or not yet decided and the alien is otherwise eligible for legalization he or she is eligible to file an application for legalization.

Section 245a.2(b) is being amended to address aliens who would be otherwise eligible for legalization except for lawful entries which under current regulations interrupted their continuous unlawful residence. Such aliens will be required to establish that they had been in an unlawful status known to the government or that their stay had expired through the passage of time prior to January 1, 1982. Further, such aliens will be required to establish that they were returning to an unrelinquished, unlawful residence. These circumstances will establish that the applicants committed fraud when they entered the United States. Therefore, they will also be required to submit applications to waive their excludability under section 212(a)(19) of the Immigration and Nationality Act. The waivers may be granted for humanitarian purposes, to assure family unity or when the granting of such a waiver is in the public interest.

Section 245a.2(b) is being amended to clarify the eligibility status of those aliens who are otherwise eligible for legalization but left the United States and were paroled back into the United States on or before May 1, 1987. These aliens will be required to establish that they had been in an unlawful status known to the government or that their stay had expired through the passage of time prior to January 1, 1982. Further, such aliens will be required to establish that they were returning to an unrelinquished, unlawful residence. The Service has determined that this class of aliens should be treated in as equitable a manner as those who entered without inspection.

Section 245a.2(d)(4)(iii) is amended to permit family members in unusual circumstances to submit an affidavit of support on behalf of a legalization applicant. The current regulations provide that only a spouse or parent may file an affidavit of support. However, there are circumstances in which a parent or spouse is unable to file an affidavit of support for the legalization applicant. Such examples are, a minor who resides with and is supported by his or her aunt or uncle; or an elderly person who has retired, or requires special care who resides with and is supported by one of his or her children. This amendment expands this section to permit family members in these and similar situations to file affidavits of support.

Section 245a.2(e)(1) is being amended to correct a grammatical error.

Section 245a. 2(e)(2) is being amended to correct a grammatical error.

Section 245a.2(g) is being amended in order to help eliminate any misconception concerning the age parameters that apply to male aliens for registering under the Military Selective Service Act.

Section 245a.2(k)(4) is being amended to clarify the procedure concerning the special rule for determination of public charge. The Service has determined that the waiver process is not required when a determination is made that an alien is admissible pursuant to this section.

Section 245a.2(m)(2)(i) is amended to provide that Temporary Resident aliens who are under an order of deportation issued prior to their obtaining temporary resident status will not be considered to have deported themselves if they travel outside of the United States. This amendment is necessary because 8 CFR 243.5 provides that aliens who depart the United States while an order of deportation is outstanding are considered to have been deported.

IRCA created a new class of aliens, temporary residents, who are permitted to travel outside of the United States but are not aliens considered lawfully admitted for permanent residence. Since the resident status afforded these aliens is temporary, the Service will not vacate outstanding orders of deportation until the alien receives permanent residence. Therefore, under current regulations a temporary resident who is under an order of deportation will execute that order if he or she departs the United States. In order to avoid these types of situations § 245a.2(m)(2)(i) has been amended.

Section 245a.2(m)(3) is being amended to correct grammatical errors.

Section 245a.2(n)(1) is being amended to allow the Service's district directors the flexibility to determine where the travel documentation will be generated for aliens granted authorization to travel prior to a decision being rendered on their application. District directors may conduct processing at Service locations other than legalization offices. Various factors necessitate granting the district directors this flexibility (e.g., workload at Service locations, equipment, etc.).

Section 245a.2(n)(2) is being amended to correct the title of this paragraph and outline the conditions and procedures for granting travel authorization prior to the granting of temporary resident status.

Section 245a.2(q) is being amended to correct a grammatical error.

Section 245a.2(s) is being amended to correct a grammatical error.

Section 245a.2(t)(5) is being amended to correct a grammatical error.

Section 245a.2(u)(2)(1) is being amended to correct a grammatical error.

Section 245a.2(w) is being amended to correct a grammatical error.

Section 245a.3(a) is being amended to correct a grammatical error.

Section 245a.3(b)(4)(ii) is deleted. The IRCA does not require an understanding of ordinary English and a knowledge and understanding of the history and Government of the United States in order to obtain temporary resident status. In addition, the Service is currently preparing the guidelines and mechanisms necessary for aliens to comply with the provisions of section 245A(b)(1)(D) of the INA, as amended by IRCA.

Section 245a.3(b)(4)(iii) has been redesignated § 245a.3(b)(4)(ii) and is amended by inserting language regarding the minimum age at which an

alien must satisfy the requirements of section 245A(b)(1)(D) of the INA, as amended by IRCA. The rule also sets forth who is eligible for a discretionary waiver of these requirements.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

The Information Collection Requirements contained in this regulation have been cleared by the OMB under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows.

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

1. The authority citation for Part 245a continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 245a.1 [Amended]

2. Section 245a.1(c)(1) is amended by adding the following sentence to the concluding text of paragraph (c)(1):

* * * * *

(c)(1) * * *

An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States, pursuant to the stateside criteria program, shall be regarded as having been granted advance parole by the Service.

3. Section 245a.1(d)(2) is amended by removing "deportable" and inserting "Deportable" where it appears in the phrase "i.e., Forms I–213, Record of deportable Alien;"

4. Section 245a.1(d) is amended by adding a new paragraph (d)(4) to read as follows:

* * * * *

(d) * * *

(4) The applicant produces documentation from a school approved to enroll foreign students under § 214.3 which establishes that the said school forwarded to the Service a report that clearly indicated the applicant had violated his or her nonimmigrant student status prior to January 1, 1982. In order to be eligible under this part, the applicant must not have been reinstated to nonimmigrant student status.

5. Section 245a.1(e) is amended by removing "prohibitied" and inserting "prohibited" where it appears in the phrase "or any other activity prohibited by section 245(A)(c)(6) of the Act."

6. Section 245a.1(l) is amended by removing "Designate entity", and inserting "Designated entity" where it appears at the beginning of the paragraph.

§ 245a.2 [Amended]

7. Section 245a.2(a)(2)(ii) is amended by removing "endig", and inserting "ending" where it appears in the phrase, "endig on April 4, 1988."

8. Section 245a.2(b), introductory text is revised to read as follows:

* * * * *

(b) *Eligibility.* The following categories of aliens, who are otherwise eligible to apply for legalization, may file for adjustment to temporary residence status:

* * * * *

9. Section 245a.2(b)(8) is amended by changing the word "or" to "on" where it appears immediately preceding "Service Form I–94."

10. Section 245a.2(b) is amended by adding paragraphs (b) (9) through (15) to read as follows:

* * * * *

(b) * * *

(9) An alien who would be otherwise eligible for legalization and who was present in the United States in an unlawful status prior to January 1, 1982, and reentered the United States as a nonimmigrant in order to return to an unrelinquished unlawful residence.

(10) An alien described in paragraph (b)(9) of this section must receive a waiver of the excludable charge 212(a)(19) as an alien who entered the United States by fraud.

(11) A nonimmigrant who entered the United States for duration of status ("D/S") in one of the following classes, A, A–1, A–2, G, G–1, G–2, G–3 or G–4, whose qualifying employment terminated or who ceased to be recognized by the Department of State as being entitled to such classification prior to January 1, 1982, and who has thereafter continued to reside in the United States in an unlawful status.

(12) A nonimmigrant who entered the United States for duration of status ("D/S") in one of the following classes, F, F–1, or F–2, who completed a full course of study, including practical training and whose time period if any to depart the United States after completion of study expired prior to January 1, 1982 and who has remained in the United States in an unlawful status since that time.

(13) An alien who establishes that he or she is a member of the class in the Silva-Levi lawsuit (No. 76–C–4268 (N.D. ILL. March 22, 1977)); that is, an alien from an independent country of the Western Hemisphere who was present in the United States prior to March 11, 1977, and was known by the Immigration and Naturalization Service (INS) to have a priority date for the issuance of an immigrant visa between July 1, 1968 and December 31, 1976, inclusive, and who was clearly eligible for an immigrant visa.

(14) An alien who filed an asylum application prior to January 1, 1982 and whose application was subsequently denied or whose application has not yet been decided is considered an alien in an unlawful status know n to the government.

(15) An alien, otherwise eligible who departed the United States and was paroled into the United States on or before May 1, 1987 in order to return to an unrelinquished unlawful residence.

11. Section 245a.2(c)(8) is amended by adding the text "or expired" after the word "terminated" and before the word "subsequent."

12. Section 245a.2(d)(4)(iii) is amended by removing all existing text after the word "children" and adding the following:

* * * * *

(d) * * *

(4) * * *

(iii) * * * of the applicant or a parent in behalf of children which guarantees complete or partial financial support. Acceptance of the affidavit of support shall be extended to other family members in unusual family circumstances.

13. Section 245a.2(e)(1), the concluding paragraph is amended by removing "the applicant must be accompanied" and inserting "the application must be accompanied".

14. Section 245a.2(e)(2), the last sentence is amended by inserting a comma after "director" and before "original."

15. Section 245a.2(g) is amended by removing "27" and inserting "26."

16. Section 245a.2(k)(4), the first sentence is amended by removing the phrase "under paragraph (k)(2) of this section" and adding a period "." after the word "admissible."

17. Section 245a.2(m)(2)(i) is amended by adding the following after the word "proceedings":

* * * * *

(m) * * *

(2) * * *

(i) * * *, such proceedings having been instituted subsequent to the approval of temporary resident status. A temporary resident alien will not be considered deported if that alien departs the United States while under an outstanding order of deportation issued prior to the approval of temporary resident status;

* * * * *

18. Section 245a.2(m)(3) is amended by removing the word "required" after the word "abroad" and before the word "due".

19. Section 245a.2(n)(l) is amended by adding the following sentence between the existing first and second sentences to read as follows:

* * * * *

(n) * * *

(1) * * * INS district directors will determine the Service location for the completion of processing of travel documentation. * * *

20. Section 245a.2(n)(2) is amended by inserting "and travel" after "Employment" and before "authorization" in the title of the paragraph; replacing the word "will" with the word "may" in the first sentence after the word "employment" and before the word "be"; and by removing in the first paragraph the sentences beginning with "Applications may be presented" and concluding with "fee receipt and scheduled appointment" and inserting text to read as follows:

* * * * *

(n) * * *

(2) * * *

* * * Permission to travel abroad may be granted in emergent circumstances in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter after an interview has been conducted in connection with an application establishing prima facie eligiblity for temporary resident status.

21. Section 245a.2(n)(2) is further amended by designating the first paragraph as (i) and the second paragraph as (ii).

22. Section 245a.2(q), the last sentence is amended by removing "motion" and inserting "motions" where it appears in the text of the paragraph.

22. Section 245a.2(s) is amended by revising the paragraph heading to read "*Date of adjustment to temporary residence.*"

24. Section 245a.2(t)(5) is amended by removing "Information obtained in granted legalization" and inserting "Information obtained in a granted legalization.

25. Section 245a.2(u)(1), the last sentence of the introductory text is amended by removing "occurance," and inserting "occurence.

26. Section 245a.2(u)(1)(ii) is amended by removing the language following the word "immigrants," and inserting the following language.

* * * * *

(u) * * *

(1) * * *

(ii) * * * unless a waiver is secured pursuant to § 245a.2(k)(2).

* * * * *

27. Section 245a.2(w) is amended by removing "Declaration of intending citizen", and inserting "Declaration of Intending Citizen."

§ 245a.3 [Amended]

28. Section 245a.3(a) is amended by adding a parenthesis after "A" and before "b" in the last sentence of the paragraph.

29. Section 245a.3(b)(4)(i) is amended by removing the word "or" at the end of the paragraph.

30. Section 245a.3(b)(4)(ii) is revised to read as follows:

* * * * *

(b) * * *

(4) * * *

(ii) The requirements of paragraph (b)(4)(i) of the section must be met by each applicant who is 14 years or older, except that these requirements may be waived at the discretion of the Attorney General if the alien is 65 years or older.

* * * * *

31. Section 245a.3(b)(4)(iii) is removed.

Dated: October 26, 1987.

Alan C. Nelson,

Commissioner.

[FR Doc. 87-26236 Filed 11-16-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 037CE, Special Conditions No. 23-ACE-33]

Special Conditions; Ballistic Recovery System, Inc., Modified Cessna 150/A150 Series Airplanes and 152/A152 Model Airplanes To Incorporate the GARD-150 System

AGENCY: Federal Aviation Administration DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued under §§ 21.16 and 21.101(b) of the Federal Aviation Regulations (FAR) to become part of the certification basis for the supplementary type certification of the Ballistic Recovery Systems, Inc., General Aviation Recovery Device (GARD) modifications to Cessna 150/A150 Series and 152/A152 Model Airplanes. This system is referred to as the GARD-150. These modifications have novel or unusual design features associated with a parachute recovery system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: November 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald K. Rathgeber, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION

Background

On January 12, 1987, Ballistic Recovery Systems, Inc. (BRS), 9242 Hudson Boulevard, Lake Elmo, Minnesota 55042, filed an application for a supplemental type certificate (STC) to install the GARD-150 parachute recovery system on Cessna 150/A150 Series and 152/A152 Model Airplanes. The applicant proposes to certificate a parachute recovery system which is intended to recover an airplane in emergency situations; such as mid-air collision, loss of engine power, loss of airplane control, severe structural failure, pilot disorientation, or pilot incapacitation. The GARD-150 system, which is only to be used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

The GARD-150 system consists of a parachute with a canopy size of approximately 50 feet in diameter which is packed in a pressurized canister mounted in the left aft portion of the baggage compartment. A solid propellant rocket motor is used to deploy the canopy. A door is positioned above the canister to seal the canister, parachute canopy, and rocket motor from the elements and provide free exit