§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $57.68 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: December 19, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–32504 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 245

[INS No. 2124–01; AG Order No. 2642–2002]

RIN 1115–AG14

Adjustment of Status for Certain Aliens from Vietnam, Cambodia, and Laos in the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule finalizes the Department of Justice regulations implementing section 586 of Public Law 106–429, which provides for the adjustment of status for certain aliens from Vietnam, Cambodia, and Laos. Eligible applicants must have been physically present in the United States both prior to and on October 1, 1997, and inspected and paroled into the United States before October 1, 1997, either from Vietnam under the Orderly Departure Program, from a refugee camp in East Asia, or from a displaced persons camp administered by the United Nations in Thailand. This rule establishes eligibility, evidence, and application and adjudication procedures. Starting January 27, 2003, aliens who believe they are eligible may apply for permanent residence under section 586. This rule also adds a new section in the regulations that lists the types of evidence an alien may use to demonstrate his or her physical presence in the United States on a specific date.

DATES: This final rule is effective January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, Telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is Section 568 of Public Law 106–429?

On November 6, 2000, the President signed Public Law 106–429, the Foreign Operations Appropriations Act of 2001. Section 586 of Public Law 106–429, 8 U.S.C. 1255 note, provides for adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos.

Who Is Eligible for Adjustment of Status to That of Lawful Permanent Resident Under Section 586 of Public Law 106–429?

This final rule establishes the eligibility requirements for adjustment of status under section 586 of Public Law 106–429. To be eligible, an alien must demonstrate that he or she:

(1) Is a citizen or native of Vietnam, Cambodia, or Laos;

(2) Was inspected and paroled into the United States before October 1, 1997;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Was paroled into the United States:

(a) From Vietnam under the auspices of the Orderly Departure Program;

(b) From a refugee camp in East Asia; or

(c) From a displaced persons camp administered by the United Nations High Commissioner for Refugees in Thailand;

(5) Applied for adjustment of status under section 586 of Public Law 106–429 during the period beginning on January 27, 2003 and ending on January 25, 2006, and paid all appropriate fees; and

(6) Is otherwise eligible to receive an immigrant visa and otherwise admissible to the United States for permanent residence except for those grounds of inadmissibility that do not apply or that are waived.

What Does This Final Rule Do?

The preamble to this final rule discusses issues raised in the public comment letters submitted regarding the proposed regulation, published at 67 FR 45402 (July 9, 2002). This rule makes several changes to the regulation in response to those comments, as discussed below. Finally, this rule provides instructions for aliens seeking to apply for adjustment of status under section 586 and marks the start and end dates for the three-year application period.

Public Comment

The proposed regulation set forth a 60-day period, from July 9, 2002, until September 9, 2002, for any interested member of the public to submit comments on the proposed regulation. The Department of Justice (''Department'') received seven letters, raising a total of 23 distinct issues. These comments are discussed below and are generally divided into three sections: comments concerning eligibility and evidence for adjustment

of status under section 586, comments regarding the physical presence section, and comments regarding standards for granting a waiver under section 212(h) of the Immigration and Nationality Act (''Act'') (8 U.S.C. 1182(h)).

Comments Regarding the Regulations Pertaining to Section 586 of Public Law 106–429

The 5,000 Limit on Adjustments of Status Under Section 586

Commenters raised two issues about the 5,000 limit on adjustments under section 586. First, two commenters requested that the Department acknowledge the stated intention of Congress to consider raising the total number of adjustments provided for in section 586. Second, one commenter went further to state that the Department should retain applications received after the 5,000-adjustment limit has been reached, pending the Congressional action to raise the limit.

In response to the first issue, the Department acknowledges that the legislative history contains references to Congress's intention to consider expanding the 5,000-adjustment cap, if necessary, to accommodate otherwise eligible aliens, through future legislation. *See* H.R. Conf. Rep. 106–997, at 106 (2000). Indeed, throughout the legislative process and subsequent rulemaking process, non-governmental organizations involved with the potentially eligible groups have stated that the total number of aliens who would be eligible for adjustment of status under section 586 far exceeds 5,000.

Notwithstanding the possibility that Congress might change the law in the future, however, the Department is responsible for implementing the law as currently written. This means the Department will track the total number of adjustments and stop adjudicating applications after the 5,000 limit has been reached. At that time, the Department will also notify Congress and the public that the limit has been reached. If the limit is raised or removed through future legislation, the Department will process applications accordingly.

In response to the second issue, the Department does not plan to keep those applications submitted after the 5,000 limit has been reached. The expense of submitting an application to adjust status under this provision is significant, currently $305, including fingerprint fees. If employment authorization and advance parole applications are also submitted, that figure grows to $535. The Department believes that it is not in the applicants' interests for the Department to retain such large sums of their money for an indefinite period of time based on the possibility of future legislation. Rather, it is better to return such applications and the accompanying fees and allow the same applicants the opportunity to apply again if the limit is expanded.

However, for purposes of processing applications if the 5,000 limit is expanded or eliminated, the Department will keep chronological records of those applicants who submitted timely applications but did not obtain a space within the 5,000 limit. In addition to keeping such records, the Department will issue a dated notice to the applicant along with the returned application. Aliens are encouraged to retain their application package and this notice in case in the 5,000 limit is expanded or eliminated.

Nevertheless, if at the time the 5,000 limit is reached it appears that Congress is about to pass legislation to expand or eliminate the cap, the Department will use its discretion to decide whether or not to keep such applications and the related fees. This final rule adds a new 8 CFR 245.21(m)(4) to reflect this policy.

The Processing Prioritization of Applicants Who Do Not Need A Waiver of Criminal Grounds of Inadmissibility Under Section 212(h) of the Act

The Department received three comments that the processing scheme set forth in the proposed rule should be changed. The commenters stated that applicants who have applied for a waiver of a criminal ground of inadmissibility should be given the same processing priority as those who do not require such a waiver.

The Department does not agree with these comments. These regulations provide some priority to those applicants who do not require a waiver of the criminal, fraud, immigration violator, citizenship ineligibility, or illegal voting grounds of inadmissibility, over those who do. *See* 8 CFR 245.21(m)(3). For purposes of receiving a number in the queue, applications for waivers on other grounds of inadmissibility will be considered as if they were applications for adjustment not requiring waivers. For instance, applicants for a waiver of a ground of inadmissibility on health-related grounds (section 212(a)(1) of the Act, 8 U.S.C. 1182(a)(1)) will receive a number in the queue as if they were not applying for a waiver. Essentially, the first group—those applicants who do not require a waiver of the criminal, fraud, immigration violator, citizenship ineligibility, or illegal voting grounds of inadmissibility—will be assigned a number chronologically by date of application relative to the 5,000 limit. The second group will be assigned a number chronologically by date of the waiver approval.

The Department anticipates that an adjudication involving the waiver will take longer than an adjudication not involving a waiver, and therefore, the Department does not want to slow down the adjudication process by giving out numbers to aliens who are not yet eligible to receive adjustment of status. It is correct that those applicants requiring a waiver will face a disadvantage. In the proposed rule, the Department stated that in setting forth this processing hierarchy the Department was of the view that those aliens who have not engaged in the aforementioned activities, and thereby rendered themselves inadmissible, should be treated more favorably than those who have engaged in such behavior. The Department continues to be of this view, and as such, will not be amending the regulations to reflect these three comments.

Eligibility of Persons Who Are Currently in Immigration Proceedings

The Department received two comments stating that immigration judges should have the authority to consider applications for adjustment of status under section 586 during immigration proceedings.

The Department believes that the adjudication of applications for adjustment of status under section 586 is best administered by the Immigration and Naturalization Service (''Service'') in one central location. Moreover, maintaining control of the 5,000 limit on adjustments is most efficiently accomplished by centralizing filing and adjudication. Because verification of an applicant's claim to eligibility under section 586 will most likely require significant research by the Service, the Department believes that centralizing the application and adjudication at one Service office will provide the most efficient service to applicants. As such, the Department will not amend the regulations to reflect these comments.

Additionally, one commenter objected to the requirement that the Service concur before an immigration judge or the Board of Immigration Appeals (''BIA'') administratively closes the proceedings. The commenter argued that an eligible alien could be prevented from obtaining benefits under section 586 if the Service failed to join in the motion. The commenter stated that eliminating the Service consent requirement is necessary to ensure that

meritorious cases will not be denied consideration where the Service does not concur with the motions to close cases. The Department disagrees with these comments. Administrative closure of a case is used to remove temporarily a case from an immigration judge's calendar or from the BIA's docket. As a general matter, ''[a] case may not be administratively closed if opposed by either of the parties.'' *Matter of Gutierrez-Lopez,* 21 I. & N. Dec. 479, 480 (BIA 1996). Efficiency of the immigration court system is increased by requiring parties to agree to close a case administratively. The Service, which will adjudicate applications for adjustment of status under this regulation, will likely concur in administrative closure if it believes the alien is eligible for the relief sought. If the alien has other issues to resolve before an immigration judge, having the case go forward allows those issues to be resolved at the same time the Service adjudicates the alien's application to adjust status under section 586. Completing concurrently as many processes as possible adds to efficiency of the immigration court system.

The Department does not believe that the regulations will prevent any alien's application for adjustment of status under section 586 from being considered. The regulations provide that an alien in immigration proceedings may apply directly to the Service for adjustment of status independent of his or her proceedings. The Service may adjudicate such an application without resolution of the proceedings. Moreover, the Department points to the distinction between the administrative proceedings resulting in an order of removal of an alien and the actual removal of the alien. In the unlikely scenario where the Service does not concur with the alien's motion for administrative closure, even though the alien appears eligible for adjustment under section 586, and where the alien is ultimately issued a removal order, the Service has discretion to withhold the removal of the alien until the adjustment application is resolved. The alien would have to make such a request to the district director after the order is issued. The Department notes that the granting of adjustment under section 586 is tantamount to reopening and vacating any order of removal issued. This final regulation will not be amended in response to these comments.

Eligibility of Persons Who Are Derivative Family Members

One commenter requested that the final rule be amended to allow for the adjustment of derivative family members.

The Department cannot accommodate the commenter's request. The proposed regulations do not include a provision for the adjustment of derivative family members of eligible aliens because the statutory language of section 586 does not include such a provision. Rather, every alien has to be eligible on his or her own behalf. The Department notes that the Act does provide a process, albeit a lengthier one, for dependent family members of lawful permanent residents to obtain permanent resident status. Once his or her adjustment of status application is approved, the new lawful permanent resident can submit Form I–130, Petition for Alien Relative, for a dependent spouse and unmarried children.

Eligibility of Persons Who Traveled After October 1, 1997

The Department received two comments requesting that the final rule be clarified regarding travel by eligible aliens that took place after October 1, 1997. In short, the commenters requested that the final rule state that otherwise eligible aliens who left the United States after initially entering prior to October 1, 1997, via one of the three qualifying programs, are not rendered ineligible by virtue of that subsequent travel.

The Department agrees with the commenters that travel subsequent to October 1, 1997, does not render an alien ineligible for adjustment of status under section 586. The commenters expressed the concern that, because such aliens will have a Form I–94, Arrival/Departure Document, that is dated after October 1, 1997, the adjustment application will be denied because they will not have proof of entry prior to October 1, 1997. The Department understands that such aliens could have traveled and re-entered the United States via parole or another lawful manner of entry. In these instances, although the alien may no longer possess the documentation of the original entry, evidence of the initial entry may be available in Department records, and therefore could be verified during adjudication. This final rule, at 8 CFR 245.21(g)(3), provides for such an alien to submit an affidavit, in lieu of the initial Form I–94, establishing that he or she entered prior to October 1, 1997, via one of the three qualifying programs.

Eligibility of Persons Who Entered the United States via Humanitarian Parole

The Department received one comment requesting that the final rule clarify that aliens who entered the United States via humanitarian parole (rather than public interest parole) are eligible for adjustment of status under section 586.

The Department agrees with the commenter. Section 586 requires only that the applicant be paroled into the United States via one of the three qualifying programs. While the Department believes the vast majority of the potential beneficiaries of section 586 were granted public interest parole, some potential beneficiaries were granted humanitarian parole. Such aliens, if otherwise qualified, are eligible for adjustment of status under section 586. This statement is consistent with the proposed regulations at 8 CFR 245.21(a)(2). Therefore, the Department has not amended the final regulations.

The Medical Examination Requirement

One commenter requested that the Department remove the medical examination requirement for adjustment under section 586 in the final regulations. The commenter stated that the examinations are expensive and unnecessary because the aliens have resided in the United States for a long period of time.

The Department believes that the medical examination requirement is not an unusual or unduly burdensome requirement and has decided to retain the examination requirement in the final regulations. Medical examinations are necessary for the applicant to demonstrate that he or she is not inadmissible under section 212(a)(1) of the Act (8 U.S.C. 1182(a)(1)). The fact that aliens have been living in the United States for a long period of time does not change this requirement. Department regulations require the vast majority of adjustment applicants to undergo a medical examination, regardless of the number of years they have spent in the United States. For example, all applicants adjusting status under section 245(a) of the Act (8 U.S.C. 1255(a)) must undergo a medical examination despite the fact that many such applicants have been residing in the United States in nonimmigrant status for several years.

Making Available the List of Persons Who Entered the United States via Auspices of the Orderly Departure Program (''ODP'')

The Department received one comment requesting that a list of all persons who entered the United States under the auspices of the ODP be made public.

While the Department understands the potential utility of this request, the

Department does not disclose such lists of individuals who are potentially eligible for immigration benefits. Although The Privacy Act of 1974, as amended, does not cover non-resident aliens (under 5 U.S.C. 552a(a)(2), the term ''individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence), Department policy generally forbids the release of personal information regarding groups of individuals. Individuals who wish to obtain proof that they entered the United States via the ODP may so state as part of their application for adjustment of status under section 586, or make a request for the information via the Freedom of Information Act (FOIA). As stated in the proposed rule, the Department likely can verify an alien's assertion that he or she entered via the ODP.

The Use of the IV Tracking Number To Demonstrate Eligibility

The Department received one comment regarding the use of an alien's IV tracking number to demonstrate that he or she was processed through the ODP. The commenter stated that in some cases, the alien will not have a unique identifying IV number, but rather a V number, or an alien registration number.

Aliens processed through the ODP were assigned both IV and V numbers. The IV number was assigned to an alien, and any accompanying family members, at his or her initial registration with the United States Government. Later, a V number was assigned to the alien, and accompanying family members, if he or she was scheduled to depart the program and enter the United States. Finally, some of those aliens granted humanitarian parole in place of public interest parole received alien registration numbers as well. The Department regulations require only that the applicant demonstrate that he or she was processed via the ODP or one of the other two programs. As stated previously, subject to verification by the Department, those aliens who were processed via the ODP who no longer have any paperwork from the ODP may submit an affidavit to the Department in lieu of the actual documentation. *See* 8 CFR 245.21(g)(3).

The Question Concerning the Public Charge Ground of Inadmissibility on Form I–485, Application To Register for Permanent Resident or Adjust Status

The Department received one comment stating that the final rule should indicate that applicants for adjustment of status under section 586 are not required to answer question number two on part three of Form I–485, regarding an applicant's use of public assistance. The commenter stated that applicants for adjustment of status under section 586 are exempt from the public charge ground of inadmissibility at section 212(a)(4) of the Act (8 U.S.C. 1182(a)(4)), and so the question is unnecessary.

The Department agrees with this comment and has stated in the proposed rule and will state in policy memoranda that applicants for adjustment of status under section 586 are exempt from section 212(a)(4) of the Act. As such, the commenter is correct in that an answer of ''yes'' to the specified question cannot result in the denial of the application because the alien is inadmissible under section 212(a)(4) of the Act. However, there are some scenarios where the answer to this question may indirectly affect the adjudication in ways other than inadmissibility under section 212(a)(4) of the Act, such as when certain types of immigration benefit fraud are suspected. Therefore, full and complete answers to each question on Form I–485, including this question, are required. Another reason for retaining the question on the form is that the Form I–485 remains the same for all adjustment programs. The Department does not create a new form each time Congress creates a new adjustment program. As such, the Department does not want to issue separate instructions for adjustment under section 586. The Department has retained this question on the form.

Employment Authorization Documents

One commenter requested that the Department provide all applicants with employment authorization documents at no charge at the time they submit their applications for adjustment. The commenter also stated that the final regulations should make it clear that the applicants who do not desire employment authorization do not need to submit the application for employment authorization along with the application for adjustment of status.

Although as the commenter has stated, many eligible aliens already have employment authorization issued under other provisions of law and thus do not need employment authorization, the proposed regulation provides a means for an alien who desires employment authorization to obtain it. If an alien believes he or she cannot pay the application fee (currently $120), he or she can request a fee waiver when submitting the application. Thus, the Department has retained in the final rule the requirement that those aliens desiring employment authorization file an application for employment authorization and submit the accompanying fee. Another commenter requested that the Department regulations make the adjudication of an application for employment authorization based upon a section 586 adjustment application subject to the 90-day adjudication provision of 8 CFR 274a.13(d). Under these regulations, that is currently the case. With certain exceptions, any application for employment authorization based upon an adjustment application filed under 8 CFR part 245—including 8 CFR 245.21 pertaining to adjustment for certain aliens from Vietnam, Cambodia, and Laos—is subject to the 90-day provision of 8 CFR 274a.13(d) per the regulations. *See* 8 CFR 274a.12(c)(9); 8 CFR 274a.13(d). The current regulations do require that a section 586-based application for employment authorization be adjudicated within 90 days or interim employment authorization must be issued.

Advance Parole Eligibility Requirements

Three commenters raised the issue of advance parole. They requested that the final rule state that the eligibility criteria for obtaining advance parole based on a pending application for adjustment filed under section 586 is the same as the advance parole criteria for adjustment applicants under section 245(a) of the Act (8 U.S.C. 1255). Section 245(a) applicants are generally granted advance parole, in the discretion of the Service, if they have demonstrated ''any bona fide business or personal reason.'' *See* instructions to Form I–131, Application for Travel Document. Without such a standard, one commenter suggests that the different Service offices will apply varying eligibility standards. The Department does not believe that it needs to articulate such a standard in the regulation. The standard for obtaining advance parole is the same for those obtaining it in connection with an adjustment application filed under section 586 as for those obtaining advance parole in connection with other adjustment programs; the Form I–131 is the same for each program.

The Department's proposed regulations provided the alien with the ability to obtain advance parole, in the discretion of the Service, based on a pending adjustment application under section 586. *See* section 245.21(i) of the proposed regulations. When these final regulations are effective, the Department will issue guidance to its field officers covering all aspects of this adjustment program, including advance parole. The

Department believes this will ensure consistent treatment of applications for advance parole based upon a proper filing for adjustment under section 586.

For those with final orders of removal or more than 180 days of unlawful presence in the United States, the ground of inadmissibility under section 212(a)(9) of the Act (8 U.S.C. 1182(a)(9)) would not bar adjustment under this rule. However, applicants should keep in mind that, should their section 586 application be denied, departure from the United States may amount to a self-deportation, in which case, absent a waiver, they would be inadmissible under section 212(a)(9) of the Act for either three or 10 years. In addition, in the case of an applicant over 18 years of age who has accrued more than 180 days of unlawful presence in the United States, such departure would render the alien inadmissible under section 212(a)(9)(B) of the Act (8 U.S.C. 1182(a)(9)(B)).

Outreach to Potentially Eligible Aliens

One commenter requested that the Department conduct an outreach program in the native languages of the potential beneficiaries to ensure that those potential beneficiaries with limited English proficiency are aware of the opportunity to adjust status under section 586.

The Department agrees that it is important that all potentially eligible aliens understand the benefits provided under section 586 as well as the eligibility criteria set forth by this provision. Normally, when the Department announces the beginning of such an adjustment program, the Department develops materials explaining the program, the eligibility criteria, the application procedures, and other pertinent issues. This material is distributed to local, national, and other interested media outlets, and also to non-governmental and community-based organizations. By their very nature, these groups are best suited to provide news and information to specific communities. The section 586 adjustment program will be no exception to this general practice.

Comments Regarding the Regulations Pertaining to the Demonstration of Physical Presence in the United States on a Specific Date

The Department received one comment that the creation of a single section in the regulations regarding the demonstration of physical presence for adjustment applicants who need to demonstrate physical presence in the United States on a specific date should be accomplished via a separate rulemaking.

The Department disagrees with the comment that a separate rule is necessary to create a single section in the regulations regarding the demonstration of physical presence on a specific date. As stated in the proposed rule, Department regulations already contain several similar sections for various adjustment of status provisions containing more or less the same physical presence standards. Rather than continue to create redundant regulations, the Department believes that it is appropriate at this time to bring the provisions together into one single section of the regulations. Because the applicants for section 586 need to demonstrate that they were physically present in the United States on October 1, 1997, and because the physical presence part of the rulemaking is largely non-substantive and re-organizational in nature, it is an appropriate part of this larger rulemaking.

Comments Regarding Waivers of Criminal Grounds of Inadmissibility

The Final Regulations Regarding the Section 586 Rule Should Be Promulgated Separately Than the Waiver Provisions of Section 212(h) of the Act

The proposed regulations contained a separate section regarding the waiver provisions of section 212(h) of the Act (8 U.S.C. 1182(h)). The Department received one comment that the proposed regulations regarding the waiver provisions of section 212(h) of the Act (8 U.S.C. 1182(h)) should be promulgated in a rule separate from the section 586 rule. The Department agrees with this comment and is publishing two separate rules instead of one. An interim final rule regarding waivers under section 212(h) of the Act is published elsewhere in this issue of the **Federal Register**.

May Section 586 Applicants Apply for Waivers of the Criminal Grounds of Inadmissibility?

Yes. Applicants must demonstrate that they are admissible as an immigrant to obtain benefits under section 586, just as they would have to do under other adjustment programs. Although section 586(c) provides that four grounds of inadmissibility do not apply, and provides special rules for waivers of several other grounds, section 586 does not mention the availability of waivers for criminal aliens. Even so, the Department has determined that criminal aliens who are inadmissible under section 212(a)(2) of the Act may apply for a waiver under section 212(h) of the Act. The Department is aware that many aliens who might otherwise be eligible under section 586 are inadmissible on criminal grounds. The Attorney General has determined to exercise the discretion accorded to him under section 212(h) in connection with applicants under section 586. Because section 212(h) is a general provision applicable to waivers for immigrants, it is appropriate to adopt standards for the exercise of discretion in all cases under section 212(h), rather than creating a new standard applicable only to the Indochinese population covered by section 586. Accordingly, the Department is publishing a separate interim rule (published elsewhere in this issue of the **Federal Register**) with regard to the Attorney General's authority under section 212(h) of the Act to grant waivers of inadmissibility to criminal aliens.

Application for Adjustment of Status Under Section 586

What Is the Application Period for Adjustment of Status Under Section 586?

The three-year period for submitting applications for adjustment of status under section 586 begins January 27, 2003 and ends January 25, 2006. *See* 8 CFR 245.21(b)(1). As stated previously, if the 5,000-adjustment limit is reached prior to the end of the application period, the Department will notify Congress and the public of that fact. If the limit is not reached by the end of the three-year application period, only those applications received by the Department on or prior to, or containing a postmark dated on or prior to January 25, 2006 will be accepted for processing.

Where Can I File an Application for Adjustment of Status Under Section 586?

Applications for adjustment of status under section 586 should be sent to the following address: INS Nebraska Service Center, P.O. Box 87485, Lincoln, NE 68501–7485.

What Must an Application for Adjustment of Status Under Section 586 Contain?

The regulations at 8 CFR 245.21(b)(2) state what constitutes a proper application under section 586. An alien must be physically present in the United States to apply for adjustment of status under section 586. An applicant must submit Form I–485, Application to Register Permanent Residence or Adjust Status, along with the appropriate

application fee contained in 8 CFR 103.7(b)(1). Applicants who are 14 through 79 years of age must also submit the fingerprinting service fee provided for in 8 CFR 103.7(b)(1). Each application filed must be accompanied by evidence establishing eligibility as provided in 8 CFR 245.21(g); two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I–693 and vaccination supplement) specified in 8 CFR 245.5; and, if needed, an application for waiver of inadmissibility. Under Part 2, question h of Form I–485, applicants must write ''INDOCHINESE PAROLEE P.L. 106–429''.

The regulations at 8 CFR 245.21(c), (d), and (e), discuss the additional filing procedures for aliens in removal proceedings, aliens with final orders of removal, and aliens needing waivers of grounds of inadmissibility, respectively.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect certain individuals from Vietnam, Cambodia, and Laos by implementing the adjustment of status provisions of section 586 of Public Law 106–429. This rule will have no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement (Form I–485) contained in this rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this information collection is 1115–0053. This final rule permits certain aliens from Vietnam, Cambodia, and Laos to adjust status. In addition to the evidence required by Form I–485, this rule at 8 CFR 245.21(g)(2) requires applicants to demonstrate that they were physically present in the United States on October 1, 1997, by supplying the evidence outlined in 8 CFR 245.22. This additional documentation is considered an information collection. Written comments are encouraged and will be accepted until February 24, 2003.

Accordingly, the Service has submitted an information collection request to the Office of Management and Budget (OMB) for emergency review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). If granted, emergency approval is valid for 180 days.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument, shall be directed to the Immigration and Naturalization Service, Regulations and Forms Services Division, 425 I Street, NW, Room 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514–3291.

Your comments should address one or more of the following four points:

(1) Evaluating whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, utility, and clarity of the information to be collected; and

(4) Minimizing the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Application requirements for the adjustment of status under section 586 of Public Law 106–429.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number (File No. OMB–27), Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. Section 586 of Public Law 106–429 allows certain aliens from Vietnam, Cambodia, and Laos to adjust status to lawful permanent resident. The information collection is necessary in order for the Service to make a determination that the eligibility requirements and conditions are met regarding the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 respondents at 30 minutes per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 2,500 burden hours.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations

(Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, parts 103 and 245 of chapter I of title 8 of the Code of Federal Regulations are amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557, 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

2. Section 103.1(f)(3)(iii)(C) is revised to read as follows:

103.1 Delegations of authority.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(C) Indochinese refugee applications for adjustment of status under section 103 of the Act of October 28, 1977, or section 586 of Public Law 106–429;

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PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

4. Section 245.15(i) is revised to read as follows:

§ 245.15 Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

* * * * *

(i) *Evidence of presence in the United States on December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing the alien's presence in the United States on December 31, 1995. Such evidence may consist of the evidence listed in § 245.22.

* * * * *

5. Section 245.21 is added to read as follows:

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Public Law 106–429).

(a) *Eligibility.* The Service may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States before October 1, 1997;

(2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Files an application for adjustment of status in accordance with paragraph (b) of this section during the 3-year application period; and

(5) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) *Applying for benefits under section 586 of Public Law 106–429.* (1) *Application period.* The application period lasts from January 27, 2003 until January 25, 2006. The Service will accept applications received after the end of the application period, but only if the 5,000 limit on adjustments has not been reached prior to the end of the three-year application period, and the application bears an official postmark dated on or before the final day of the application period. Postmarks will be evaluated in the following manner:

(i) If the postmark is illegible or missing, the Service will consider the application to be timely filed if it is received on or before 3 business days after the end of the application period.

(ii) In all instances, the burden of proof is on the applicant to establish timely filing of an application.

(2) *Application.* An alien must be physically present in the United States to apply for adjustment of status under section 586 of Public Law 106–429. An applicant must submit Form I–485, Application to Register Permanent Residence or Adjust Status, along with the appropriate application fee contained in § 103.7(b)(1) of this chapter. Applicants who are 14 through 79 years of age must also submit the fingerprinting service fee provided for in § 103.7(b)(1) of this chapter. Each application filed must be accompanied by evidence establishing eligibility as provided in paragraph (g) of this section; two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical examination (Form I–693 and vaccination supplement) specified in § 245.5; and, if needed, an application for waiver of inadmissibility. Under Part 2, question h of Form I–485, applicants must write ''INDOCHINESE PAROLEE P.L. 106–429''. Applications must be sent to: INS Nebraska Service Center, P.O. Box 87485, Lincoln NE 68501–7485.

(c) *Applications from aliens in immigration proceedings.* An alien in pending immigration proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b) of this section. An immigration judge or the Board of Immigration Appeals may not adjudicate applications for adjustment of status under this section. An alien who is currently in immigration proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106–429 may contact Service counsel after filing an application to request the consent of the Service to the filing of a joint motion for administrative closure. Unless the Service consents to such a motion, the immigration judge or the Board may not defer or dismiss the proceeding in connection with section 586 of Public Law 106–429.

(d) *Applications from aliens with final orders of removal, deportation, or exclusion.* An alien with a final order of removal, deportation, or exclusion who believes he or she is eligible for adjustment of status under section 586 of Public Law 106–429 must apply directly to the Service in accordance with paragraph (b) of this section.

(1) An application under this section does not automatically stay the order of removal, deportation, or exclusion. An alien who is eligible for adjustment of status under section 586 of Public Law 106–429 may request that the district director with jurisdiction over the alien grant a stay of removal during the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6.

(2) The Service in general will exercise its discretion not to grant a stay of removal, deportation, or exclusion with respect to an alien who is inadmissible on any of the grounds specified in paragraph (m)(3) of this section, unless there is substantial reason to believe that the Service will grant the necessary waivers of inadmissibility.

(3) An immigration judge or the Board may not grant a motion to re-open or stay in connection with an application under this section.

(4) If the Service approves the application, the approval will constitute the automatic re-opening of the alien's immigration proceedings, vacating of the final order of removal, deportation, or exclusion, and termination of the reopened proceedings.

(e) *Grounds of inadmissibility that do not apply.* In making a determination of whether an applicant is otherwise eligible for admission to the United States for lawful permanent residence under the provisions of section 586 of Public Law 106–429, the grounds of inadmissibility under sections 212(a)(4), (a)(5), (a)(7)(A), and (a)(9) of the Act shall not apply.

(f) *Waiver of grounds of inadmissibility.* In connection with an application for adjustment of status under this section, the alien may apply for a waiver of the grounds of inadmissibility under sections 212(a)(1), (a)(6)(B), (a)(6)(C), (a)(6)(F), (a)(8)(A), (a)(10)(B), and (a)(10)(D) of the Act as provided in section 586(c) of Public Law 106–429, if the alien demonstrates that a waiver is necessary to prevent extreme hardship to the alien, or to the alien's spouse, parent, son or daughter who is a U.S. citizen or an alien lawfully admitted for permanent residence. In addition, the alien may apply for any other waiver of inadmissibility under section 212 of the Act, if eligible. In order to obtain a waiver for any of these grounds, an applicant must submit Form I–601, Application for Waiver of Grounds of Excludability, with the application for adjustment.

(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.

(h) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under this section may submit Form I–765, Application for Employment Authorization, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves the application for employment authorization, the applicant will be issued an employment authorization document.

(i) *Travel while an application to adjust status is pending.* An alien may travel abroad while an application to adjust status is pending. Applicants must obtain advance parole in order to avoid the abandonment of their application to adjust status. An applicant may obtain advance parole by filing Form I–131, Application for a Travel Document, along with the application fee listed in 8 CFR 103.7(b)(1). If the Service approves Form I–131, the alien will be issued Form I–512, Authorization for the Parole of an Alien into the United States. Aliens granted advance parole will still be subject to inspection at a port-of-entry.

(j) *Approval and date of admission as a lawful permanent resident.* When the Service approves an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified in writing of the Service's decision. In addition, the record of the alien's admission as a lawful permanent resident will be recorded as of the date of the alien's inspection and parole into the United States, as described in paragraph (a)(1) of this section.

(k) *Notice of denial.* When the Service denies an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106–429, the applicant will be notified of the decision in writing.

(l) *Administrative review.* An alien whose application for adjustment of status under section 586 of Public Law 106–429 is denied by the Service may appeal the decision to the Administrative Appeals Office in accordance with 8 CFR 103.3(a)(2).

(m) *Number of adjustments permitted under this section.* (1) *Limit.* No more than 5,000 aliens may have their status adjusted to that of a lawful permanent resident under section 586 of Public Law 106–429.

(2) *Counting procedures.* Each alien granted adjustment of status under this section will count towards the 5,000 limit. The Service will assign a tracking number, ascending chronologically by filing date, to all applications properly filed in accordance with paragraphs (b) and (g) of this section. Except as described in paragraph (m)(3) of this section, the Service will adjudicate applications in that order until it reaches 5,000 approvals under this part. Applications initially denied but pending on administrative appeal will retain their place in the queue by virtue of their tracking number, pending the Service's adjudication of the appeal.

(3) *Applications submitted with a request for the waiver of a ground of inadmissibility.* In the discretion of the Service, applications that do not require adjudication of a waiver of inadmissibility under section 212(a)(2), (a)(6)(B), (a)(6)(F), (a)(8)(A), or (a)(10)(D) of the Act may be approved and assigned numbers within the 5,000 limit before those applications that do require a waiver of inadmissibility under any of those provisions. Applications requiring a waiver of any of those provisions will be assigned a tracking number chronologically by the date of approval of the necessary waivers rather than the date of filing of the application.

(4) *Procedures when the 5,000 limit is reached.* The Service will track the total number of adjustments and stop processing applications after the 5,000 limit has been reached. When the limit is reached, the Service will return any additional applications to applicants with a dated notice encouraging applicants to retain their application package and the notice in the event the 5,000 limit is expanded or eliminated and the alien wishes to apply again. The Service will keep an identifying chronological record of the application for purposes of processing applications under this section if the 5,000 limit subsequently is expanded or eliminated. If at the time the 5,000 limit is reached, it appears that Congress is about to pass legislation to expand or eliminate the cap, the Service retains the discretion to retain such applications and the related fees.

6. Section 245.22 is added to read as follows:

§ 245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.

(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.

Dated: December 19, 2002.

John Ashcroft,

Attorney General.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 2249–02; AG Order No. 2641–2002]

RIN 1115–AG90

Waiver of Criminal Grounds of Inadmissibility for Immigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: On July 9, 2002, the Department of Justice published a proposed rule to implement a law authorizing the adjustment of status for certain aliens from Cambodia, Vietnam, and Laos, and to codify the Attorney General's approach to granting waivers under section 212(h) of the Immigration and Nationality Act of the criminal grounds of inadmissibility. This rule amends the Department of Justice regulations concerning the standards for waivers of the criminal grounds of inadmissibility for immigrants and responds to public comments on the notice of proposed rulemaking published on July 9, 2002. In order to allow the public an additional opportunity for public comment on this change in the regulations, this rule is being published as an interim final rule with a further 30-day comment period.

DATES: *Effective date:* This rule is effective January 27, 2003.

Comment date: Written comments must be submitted on or before January 27, 2003.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS Number 2249–02 on the correspondence. Comments may also be submitted electronically at *insregs@usdoj.gov.* When submitting comments electronically, include INS No. 2249–02 in the subject box so that the comments can be properly routed to