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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No. 1607–93]

RIN 1115–AD33

Adjustment of Status; Certain Nationals of the People's Republic of China

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts, with one change, an interim rule published in the **Federal Register** on July 1, 1993, by the Immigration and Naturalization Service (Service), which implemented the Chinese Student Protection Act of 1992 (CSPA). Although the Service no longer accepts applications from CSPA principals, this rule finalizes the procedures by which the spouses and children of CSPA beneficiaries who have been temporarily residing in the United States may become lawful permanent residents of this country. It also removes the procedures for granting voluntary departure for certain dependents pursuant to recent legislative changes.

EFFECTIVE DATE: December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Pearl B Chang, Chief, Residence and Status Services Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12711 of April 11, 1990, provided temporary protection for certain nationals of the People's Republic of China (PRC) and their dependents who were in the United States on or after June 5, 1989, up to and including the date of Executive Order 12711. It permitted temporary deferral of enforcement of their departure from the United States and conferred eligibility for certain other benefits through January 1, 1994.

The CSPA, Public Law 102–404, dated October 9, 1992, was enacted to regularize the status of, and extended permanent protections to, most of the PRC nationals and their dependents who were covered by Executive Order 12711. It provides these persons with the opportunity to become lawful permanent residents through adjustment of status under section 245 of the Immigration and Nationality Act (Act), a procedure whereby persons in the United States in temporary immigration status may convert to lawful permanent resident status. Section 245 of the Act requires most persons seeking to adjust status to show that they meet strict eligibility requirements; however, the CSPA allows many of these requirements to be waived for eligible CSPA applicants. If the Service denies an application for adjustment of status under the CSPA, the applicant, if not an arriving alien, may renew his or her application in proceedings under 8 CFR part 240. See 8 CFR 245.2(a)(5)(ii). The CSPA application period lasted from July 1, 1993, until June 30, 1994.

The CSPA does not allow every person covered by Executive Order 12711 to become a lawful permanent resident of the United States. A qualified CSPA applicant must have initially entered the United States on or before April 11, 1990, and must otherwise be a person described in section 1 of the Executive Order 12711; must have resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent departures; and may not have spent more than 90 days in the PRC between April 11, 1990, and October 9, 1992. A qualified applicant must also meet the requirements for adjustment of status under section 245 of the Act, unless such requirements have been expressly waived by, or are waived at the discretion of, the Attorney General in accordance with the CSPA.

On July 1, 1993, at 58 FR 35832–35839, the Service published an interim rule with request for comments in the **Federal Register**. The rule established procedures for adjustment of status of persons meeting the requirements of the CSPA. The interim rule became effective on July 1, 1993.

All CSPA applications had to be filed before July 1, 1994. There was no provision in the CSPA for late filings. The CSPA program was a success. The Service was able to promptly adjudicate the great majority of CSPA applications. A total of 52,425 applicants were granted adjustment of status under the CSPA during fiscal years 1993, 1994, and 1995. A very small number of CSPA applications remain pending. The Service is publishing this final rule to respond to comments received during the comment period, to further clarify the Service's position on the interim rule, and to provide for certain dependents currently in the United States who are not yet eligible to file for adjustment of status.

Comments

Interested persons were invited to submit written comments on or before August 2, 1993. The Service received 349 properly addressed written comments during the comment period. The discussion that follows summarizes the issues that have been raised relating to the interim rule and provides the Service's position on the issues.

General

The majority of commenters were pleased with the enactment of the CSPA. A small number of writers, however, recommended that the law be rescinded. Their concerns included the economic and social consequences of increased immigration, the CSPA's possible encouragement of unlawful immigration, the delays in implementation of democratic reforms in the PRC caused by the permanent migration of potential supporters, and the possibility that many CSPA beneficiaries would not need the protections offered by this legislation. Other writers were disturbed by the likelihood that persons who had not been actively involved in the democratic movement in the PRC or who had been communist party supporters would be able to obtain lawful permanent residence under the CSPA

The Service's implementing regulations cannot be used to rescind or change statutory benefits provided by the CSPA. The provisions of this rule minimize the potential for abuse of the

benefits provided by the CSPA, by ensuring that only persons who meet the requirements enacted by Congress will become lawful permanent residents. Accordingly, the provisions of the rule have not been changed because of these recommendations.

Visa Number Allocation for CSPA Applicants

Many commenters were concerned about the interim rule's requirement that a CSPA applicant have an immediately available visa number under the worldwide third employment-based skilled worker preference category prior to approval of his or her adjustment application. Some writers urged the service to approve CSPA adjustments without regard to visa number availability, stating that any delay in granting permanent residency to qualified applicants would be contrary to the spirit and intent of the CSPA. Other commenters recommended that visa numbers for CSPA applicants be obtained from the refugee category or from a preference classification other than the third employment-based skilled worker category, since oversubscription by CSPA applicants could delay the immigration of urgently needed skilled workers.

Adjustments of status under the third employment-based skilled worker preference category are subject to several numerical limitations under the Act. The CSPA modifies the application of two of these restrictions; however, it does not waive all of the applicable statutory numerical limitations. The CSPA allows the Service to ''consider,'' or accept a CSPA adjustment of status application for processing, without regard to whether an immigrant visa number is immediately available. It also allows applications to be approved without regard to the per-country numerical limitations of section 202(a)(2) of the Act, and provides for a subsequent gradual deduction of these numbers from the China per-country quota. It does not allow such applicants to be approved without regard to the worldwide numerical restrictions of sections 201 and 203 of the Act.

The CSPA clearly requires applicants to adjust status under the third employment-based skilled worker category. Section 2(a)(1) of the CSPA directs the Service to regard each CSPA applicant as having been approved for classification under section 203(b)(3)(A)(i) of the Act as a third employment-based skilled worker.

A review of the legislative history also supports the rule's interpretation of the CSPA. The House report accompanying the CSPA clearly shows that CSPA adjustments of status are intended to be placed within the worldwide quota of section 201 of the Act. See H.R. No. 826, 102d Cong., 2d Sess. 5–6 (1992). In the report, Representative Jack Brooks states.

> [S.] 1216 places the number of Chinese adjustments within the worldwide annual quota of section 201 of the Immigration and Nationality Act and deducts from the PRC's per country ceiling each year a portion of the number of Chinese who adjust under this act. Because the worldwide quota is not waived, applicants will be required to await the availability of a visa number * * *. *Id.*

In the discussion in the Senate, managers of the bill also explained that CSPA adjustments will be counted against the worldwide quota. See 138 Cong. Rec. S7150 (daily ed. May 21, 1992). During this discussion, Senator Slade Gorton stated:

> * * * A second change involves a provision to count those persons receiving permanent residency under new worldwide immigration levels as established by the Immigration Act of 1990. Additional provisions also address the need to count them under China's per country ceiling without adversely affecting ongoing immigration from China. *Id.* At S7150.

The Service has minimized any adverse impact of the CSPA upon the availability of immigrant visa numbers for skilled workers. With the assistance of the Department of State, the Service was able to significantly streamline CSPA application processing and approve more than three-quarters of CSPA adjustment of status applications during the final 3 months of fiscal year 1993. These procedural changes allowed CSPA applicants to use immigrant visa numbers which would not otherwise have been utilized by any immigrant, due to lack of demand.

The interim rule's provisions concerning immigrant visa number limitations reflect statutory requirements of the CSPA and the Act. Accordingly, the rule has not been changed in response to these comments.

Order of Approval and Priority Date Assignment

A number of comments addressed the interim rule's procedure for determining the order in which adjustments would be granted to eligible CSPA applicants. These commenters felt that the date the application was properly filed with the Service should not determine the order of approval and suggested alternative procedures. Some commenters wanted the Service to give preference to applications submitted by students because they felt that the CSPA was primarily intended to protect them. Other suggestions included approving applications based on the date the applicant arrived in the United States; giving priority to applications filed by heads of families; delaying the adjustment of Chinese who have the right to reside in third countries, such as Hong Kong; and giving priority to applications submitted by persons who had not returned to the PRC after their initial admission to the United States. A few commenters also wanted to know how the Service determines whether an application has been ''properly filed.''

The CSPA does not address the order in which qualified CSPA applicants should be allowed to adjust status. In the absence of a statutory directive, the Service elected to follow its standard practice by assigning each application a priority data based on the date on which the properly filed application was received by the Service, and by using this priority date to determine the order in which available visa numbers would be allocated and adjustments granted to qualified applicants. The Service has considered the alternatives suggested by these commenters; however, their proposals have not been adopted because they could not be efficiently implemented or because their implementation would unfairly delay the processing of other employment-based third preference skilled workers whose initial applications were filed before July 1, 1994.

Guidelines for determining when an application is considered to be properly filed are contained in the Service's regulations at 8 CFR 103.2(a)(7). An application is not considered properly filed if the application has not been properly signed, or unless a fee waiver has been granted, if the required fee is not attached.

Accordingly, the provisions of the rule have not been changed as a result of these comments.

Date of Arrival in the United States

Some commenters objected to the interim rule's requirement that eligible CSPA applicants must have been in the United States between June 5, 1989, and April 11, 1990. They pointed out that some persons who participated in the democratic movement may have been unable to leave the PRC or to enter the United States before the cut-off date.

This regulatory requirement reflects one of the three fundamental statutory requisites for CSPA eligibility. Section 2(b)(1) of the CSPA requires all eligible applicants to be persons described in section 1 of Executive Order 12711. Section 1 of Executive Order 12711 covers only persons who were in the United States on or after June 5, 1989, up to and including April 11, 1990.

There is no provision of the CSPA or Executive Order 12711 which would confer CSPA eligibility on persons who initially arrived in the United States after April 11, 1990.

Criteria for CSPA coverage were discussed several times in both the House and the Senate. The record contains no indication that Congress intended the Service to grant CSPA benefits to persons who are unable to meet this requirement. In the discussion on the final version of the bill as it passed in the House, supporters of the legislation addressed the fundamental requirements for CSPA eligibility. See 138 Cong. Rec. H7819–7820 (daily ed. Aug. 10, 1992). During this discussion, Congresswoman Nancy Pelosi explained:

> S. 1216 would allow Chinese nationals who were in the United States during the Tiananmen Square massacre to apply for permanent residency in the United States. To be eligible for permanent residency, the Chinese national must have first, been in the United States sometime between June 4, 1989 and April 11, 1990. *Id.* At H7820.

The Service had previously determined that a brief, casual, and innocent departure from the United States between June 5, 1989, and April 11, 1990, inclusive, would not preclude an individual from coverage under section 1 of Executive Order 12711 and eligibility for Executive Order 12711 benefits. As explained in the Supplementary Information to the interim rule, this same interpretation of the Executive Order 12711 requirements is applied when determining whether a CSPA applicant is a person described in section 1 of Executive Order 12711.

The requirement that an eligible applicant establish that he or she was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country, is based upon clear statutory requirements; accordingly, it has not been changed.

Physical Presence in the PRC

Many commenters discussed the prohibition on granting CSPA benefits to persons who had remained in the PRC for an aggregate of more than 90 days during the period between April 11, 1990, and October 9, 1992. Most of these writers recommended that the restriction be waived if circumstances beyond the applicant's control prevented his or her timely departure from the PRC, or if the applicant had obtained an advance parole prior to departing the United States. Other commenters felt that the rule should be modified to prohibit adjustment of status under the CSPA if the applicant traveled to the PRC for any reason after April 10, 1990; if the applicant stayed in the PRC for more than 30 days during the restricted period; or if the applicant stayed in the PRC for more than 90 days at any time after April 11, 1990. Some writers felt that the interim rule's restriction should be applied only if the applicant stayed in the PRC for more than 90 days on any single occasion.

The regulatory restriction on physical presence in the PRC is based on the third of the three fundamental statutory requisites for CSPA eligibility. Section 2(b)(3) of the CSPA states that the CSPA covers only a person who ''was not physically present in the People's Republic China for longer than 90 days after such date [April 11, 1990] and before the date of the enactment of this Act [October 9, 1992].''

A review of the legislative history also supports the rule's provisions. The fundamental requirements for CSPA eligibility were discussed prior to passage of the final version of the bill by the House. See 138 Cong. Rec. H7819–7820 (daily ed. Aug. 10, 1992). During this discussion, Congresswoman Pelosi explained that to be eligible for CSPA benefits the applicant, inter alia, must have ''*not been to China for more than 90 days after April 11, 1990.*'' *Id.* At H7820 (emphasis added).

There is no indication in this discussion that Congress intended the Service to grant CSPA benefits to any person unable to meet basic eligibility requirements, or that the 90-day limitation should apply only to applicants who had remained in the PRC for more than 90 days on any one occasion.

If eligible, a person who has spent more than 90 days in the PRC may be able to request permission to remain in the United States under another provision of the Act. For example, a person who has reason to fear persecution upon return to his or her home country and believes that he or she meets the definition of ''refugee'' found in section 101(a)(42) of the Act may be eligible to apply under section 208 of the Act for asylum.

The interim rule's provisions concerning physical presence in the PRC during the restricted period are based on the statutory requirements of the CSPA. Accordingly, the final rule makes no changes to these provisions.

Entry Without Inspection

Some commenters objected to the interim rule's requirement that, in order to be eligible for adjustment of status under the CSPA, an applicant must establish that he or she was inspected and admitted or paroled into the United States upon his or her last arrival in this country. A number of writers felt that entry without inspection should not preclude adjustment of status under the CSPA because these persons also deserved the protections offered by the CSPA. Others felt that persons who reentered the United States with an advance parole after having initially entered the country without inspection should not be allowed to adjust status because they had violated the U.S. immigration laws.

The CSPA expressly provides for certain rules that shall apply to an eligible alien who applies for adjustment of status under section 245 of the Act. While the CSPA does provide an exemption from ineligibility under section 245(c) of the Act, which generally precludes adjustment if the applicant has been employed without authorization; is not in lawful status when seeking employment-based immigrant status; had failed to continuously maintain a lawful nonimmigrant status or otherwise violated the terms of a nonimmigrant visa; or was admitted to the United States as a crewman, in transit without visa status, in S visa status, or under the visa waiver programs of sections 212(l) or 217 of the Act, it does not exempt applicants from compliance with the requirements of section 245(a) of the Act that they be inspected and admitted or paroled into the United States. Since the CSPA specifically requires applicants to apply under section 245 of the Act; expressly waives a portion of the requirements for adjustment under section 245 of the Act (section 245(c) of the Act); and makes no mention of waiving the other requirements of section 245, the Service has determined that CSPA applicants must comply with the requirements of section 245(a) of the Act. To date, several courts have concurred with the Service's interpretation.

While the Service cannot waive the requirements of section 245(a) of the Act for CSPA applicants, it also cannot impose additional restrictions beyond those required by the statute. A person who was paroled into the United States upon his or her last arrival meets the requirements of section 245(a) of the Act regardless of whether he or she had previously entered this country in violation of the immigration laws.

The Service wishes to point out that the Supplementary Information to the interim rule contains a typographical error, which may have confused some readers. The sentence reading: ''The CSPA also allows eligible applicants to

adjust status without regard to the provisions of section 245(a) of the Act.'' should have read: ''The CSPA allows eligible applicants to adjust status without regard to the provisions of section 245(c) of the Act.'' See 58 FR 35835 (1993). The following paragraph and the interim rule's regulatory language correctly state that the requirements of section 245(a) of the Act have not been waived. The Service regrets any confusion caused by this typographical error, which does not necessitate any changes to the final rule.

The Service received a number of inquiries after the end of the comment period concerning the effect of a recently enacted law on eligibility under the CSPA. Specifically, section 245(i) of the Act allows otherwise qualified persons who entered the United States without having been inspected and admitted or paroled to be granted adjustment of status upon payment of an additional sum of $1000. This provision became effective on October 1, 1994, 3 months after the close of the CSPA application period. It is due to sunset on October 23, 1997. Since the new law applies only to applications filed after October 1, 1994, (see 8 CFR 245.10(e)) it has no effect on CSPA adjustment-of-status applications. Accordingly, the interim rule's requirement that an eligible CSPA applicant show that he or she entered the United States following an inspection and admission or parole has not been changed.

Ineligibility Under Section 245(d) of the Act

A small number of commenters felt that otherwise-eligible applicants should be allowed to adjust status under the CSPA without regard to the provisions of section 245(d) of the Act, or requested further clarification concerning this provision.

Section 245(d) of the Act prohibits the approval of an adjustment-of-status application filed under section 245 of the Act if the applicant is a person lawfully admitted to the United States on a conditional basis under section 216 of the Act based on a recent marriage to a citizen or lawful permanent resident of the United States. It also prohibits the approval of an adjustment-of-status application filed under section 245 of the Act if the applicant last entered the United States in K–1 or K–2 nonimmigrant status as a fiancé(e) of a U.S. citizen or as the child of a K–1 nonimmigrant fiancé(e). By regulation, the Service had created an exception only in cases where the adjustment application is based on the marriage to the U.S. citizen who filed the fiancé(e) petition (See 8 CFR 245.1(c)(6)). Since CSPA adjustment-of-status applications are filed under section 245 of the Act and the CSPA does not waive this restriction, the Service must deny a CSPA adjustment-of-status application if the adjustment is prohibited under section 245(d) of the Act. The prohibition on adjustment of status does not apply to a person whose conditional residency under section 216 of the Act has been terminated. See Matter of Stockwell, 20 I & N Dec. 309 (BIA 1991). Accordingly, no changes have been made as a result of these comments.

Waivers of Inadmissibility

Several commenters asked the Service to modify the interim rule's provisions concerning inadmissibility under section 212(a) of the Act. Some commenters were concerned that the elderly or persons first entering the labor market would be unable to meet public charge requirements and asked that a blanket waiver be provided. Other writers felt that inadmissibility for health reasons was unfair and asked the Service to automatically waive that basis for inadmissibility. A few commenters asked the Service to include stronger statements concerning ineligibility based on current or former communist party membership and not to waive inadmissibility on this basis unless the applicant has provided evidence that his or her membership has been terminated.

The CSPA provides two blanket waivers of inadmissibility under section 212(a) of the Act. It automatically waives inadmissibility under section 212(a)(5) of the Act because the applicant did not obtain a labor certification or failed to meet certain requirements applicable to foreign-trained physicians. It also provides a blanket waiver of the provisions of section 212(a)(7)(A) of the Act relating to documentary requirements for entry as an immigrant. The CSPA also allows most other grounds of inadmissibility under section 212(a) of the Act to be individually waived at the discretion of the Attorney General for purposes of ensuring family unity or if approval of the waiver is otherwise in the public interest. Both health-related and public charge inadmissibility may be waived for these reasons at the discretion of the Attorney General. There is, however, no statutory foundation for providing a blanket waiver of inadmissibility on this basis, nor does such a blanket waiver appear to be necessary. Inadmissibility based on communist party membership may also be individually waived at the discretion of the Attorney General for purposes of ensuring family unity, if approval of a waiver is otherwise in the public interest, or if the applicant qualifies for any of the waivers provided in section 212(a)(3)(D) of the Act. The Service will, of course, deny an adjustment-of-status application filed by any person who is a current or former communist party member who does not qualify for a waiver. An applicant who has terminated communist party membership is encouraged to provide evidence of the termination with his or her application.

Accordingly, the interim rule's provisions relating to inadmissibility under section 212(a) of the Act have not been changed.

Dual Nationality

A few commenters discussed whether persons who are nationals of both the PRC and a second country should be allowed to adjust status under the CSPA. One commenter felt that dual nationals should not be allowed to adjust status under the CSPA, while another writer felt that a CSPA applicant should not be bound by the country of nationality claimed or established at the time of entry for the duration of his or her stay in the United States. A third commenter wanted clarification of dual nationality as it applies to persons bearing Hong Kong travel documents.

Although the Service explained its position concerning dual nationality in the Supplementary Information to the interim rule, the interim rule's regulatory language merely requires CSPA principal applicants to be nationals of the PRC. As explained in the Supplementary Information, the Service would not necessarily preclude a person who is a dual national of the PRC and one or more other countries from satisfying the PRC nationality requirement under the CSPA. The Service has held for other purposes, however, that a person is bound by the nationality claimed at the time of entry into the United States for the duration of his or her stay and sees no reason to alter this practice for purposes of the CSPA. Accordingly, no changes have been made as a result of these comments.

Late Arriving Dependents

Most commenters discussed the benefits provided to family members in the United States who are unable to qualify for CSPA adjustment of status because they arrived in the United States after April 11, 1990. Many writers felt that these late arriving dependents (LADs) should be allowed to adjust status under the CSPA or should be granted benefits similar to those

provided to qualified CSPA principals. They suggested that LADs be granted benefits such as: A waiver of per-country quota limitations; a waiver of the 2-year home-country residency requirement of section 212(e) of the Act; a waiver of the requirements of section 245(c) of the Act; placement under the second family-sponsored preference category; and establishment of a family unity program similar to that provided for the spouses and children of persons who adjusted status under the Immigration Reform and Control Act of 1986, Public Law 99–603. Some commenters objected to the rumored inclusion of LADs in the second employment-based preference category. Other writers asked that LADs be granted liberal approval of advance parole requests and employment authorization; excused from presenting birth and marriage certificates with an adjustment-of-status application; allowed to file adjustment-of-status applications at the Service Centers; permitted to apply for adjustment of status before the principal's CSPA adjustment application is approved; granted adjustment if the principal could have adjusted under the CSPA but chose to utilize another classification; and allowed to adjust status or to apply for immigrant visas in a third country, rather than being forced to return to the PRC.

As discussed in the Supplementary Information to the interim rule, the CSPA requires eligible applicants to meet three basic eligibility requirements. He or she: (1) Must have initially entered the United States on or before April 11, 1990, and must otherwise be a person described in section 1 of Executive Order 12711; (2) must have resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent departures; and (3) may not have spent more than 90 days in the PRC between April 11, 1990, and October 9, 1992. Persons who do not meet these requirements cannot adjust status under the CSPA or be granted CSPA benefits. The CSPA also provides no authority to waive any of the statutory requirements of the Act for persons who do not meet the eligibility requirements for CSPA adjustment of status. Section 203(d) of the Act, however, allows a spouse or child who is not otherwise entitled to an immigrant status and the immediate issuance of an immigrant visa to be eligible for the same preference immigrant classification and priority date if the relationship existed at the time the principal became a lawful permanent resident. A LAD who is the spouse or child of a CSPA principal may, therefore, use the principal's CSPA priority date under the third employment-based preference classification and seek immigrant visa issuance or adjustment of status when the priority date becomes current. LADs who were unable to maintain lawful nonimmigrant status have been allowed to remain in the United States in voluntary departure status pending the availability of the appropriate visa numbers.

The ability of the Attorney General to grant voluntary departure has been limited by the enactment of 240B of the Act which took effect on April 1, 1997. Section 240B of the Act limited the grant of voluntary departure in lieu of removal proceedings or before the conclusion thereof, to a period not to exceed 120 days including extensions. If such relief was granted at the conclusion of removal proceedings, the period may not exceed 60 days including extensions. Persons granted voluntary departure under such circumstances may not receive work authorization. However, if the grant of voluntary departure was given either during, or at the conclusion of, exclusion or deportation proceedings that were commenced prior to April 1, 1997, the Attorney General may grant voluntary departure for an unspecified period of time consistent with both Service regulations and policies. Persons granted voluntary departure under these circumstances may continue to receive employment authorization.

Although in recent months the third employment-based skilled worker category has once again become current, not all remaining LADs will be able to file for adjustment of status immediately. Recognizing that with the new restrictions on duration, voluntary departure is no longer an adequate option for such aliens, the Service may consider granting remaining LADs deferred action on a case-by-case basis. Accordingly, 8 CFR 245.9(m) has been amended to remove the reference to voluntary departure. This regulation is being adopted as a final rule without public comment because such comment is both impracticable and unnecessary. This change simply amends Service regulations to reflect a statutory change which severely curtails and, in the vast majority of cases, effectively nullifies part of the existing regulation.

In cases where an LAD requests that the Service grant deferred action, the Service will proceed according to section X of the Service's Standard Operating Procedures for Enforcement Officers: Arrest, Detention, Processing and Removal (1997). Specifically, a Service director may, in his or her discretion, recommend deferral of (removal). Deferred action recognizes that the Service has limited enforcement resources and that every attempt should be made administratively to use these resources in a manner which will achieve the greatest impact under the immigration laws. Deferred action does not confer any immigration status on an alien, nor is it in any way a reflection of an alien's lawful immigration status. It does not affect periods of unlawful presence previously accrued or accruing while in such ''status'' as defined in section 212(a)(9) of the Act, and does not alter the status of any alien who is present in the United States without being inspected and admitted. Under no circumstances does deferred action cure any defect in status under any section of the Act for any purpose. Since deferred action is not an immigration status, no alien has the right to deferred action. It is used solely for the administrative convenience of, and in the discretion of, the Service and confers no protection or benefit on an alien. Deferred action does not preclude the Service from commencing removal proceedings at any time against an alien. While in deferred action status, an alien may be granted work authorization pursuant to 8 CFR 274a.12(c)(14).

LADs who apply for adjustment of status in the United States while section 245(i) of the Act remains in effect may adjust status despite ineligibility under section 245(c) of the Act upon payment of the additional sum.

Other Dependents

Some commenters asked for further clarification about benefits available under the CSPA to sons and daughters who reach 21 years of age or marry. Other writers asked that family members living in the PRC be paroled into the United States or be issued nonimmigrant visas to immigrate to the United States.

A son or daughter who is over the age of 21 and meets the CSPA eligibility requirements, including arrival in the United States before April 11, 1990, may adjust status under the CSPA without regard to age or marital status at the time of adjustment. See 8 CFR 245.9(c)(2), which specifies only that he or she was unmarried and under the age of 21 on April 11, 1990. A spouse or child who does not meet the CSPA requirements may be eligible to adjust status as a family-based second preference immigrant. The CSPA, however, provides no authority for parole of family members into the United States, nor does it allow the use

of nonimmigrant visas to immigrate to this country.

Accordingly, no changes have been made as a result of these comments.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain nationals of the PRC to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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 Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988.

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 1 year, and 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.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 245 which was published at 58 FR 35832 on July 1, 1993, is adopted as a final rule with the following change:

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

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

2. In § 245.9, paragraph (m) is revised to read as follows:

§ 245.9 Adjustment of Status of Certain Nationals of the People's Republic of China under Public Law 102–404.

* * * * *

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Public Law 102–404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment-of-status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act.

Dated: October 31, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 307, 308, 310, 318, 381, 416, and 417

[Docket No. 97–067N]

Livestock Carcasses and Poultry Carcasses Contaminated With Visible Fecal Material

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice on complying with food safety standards under the HACCP system regulations.

SUMMARY: The Food Safety and Inspection Service is publishing this notice to assure that the owners and operators of federally inspected slaughter establishments are aware that the Agency views its ''zero tolerance'' for visible fecal material as a food safety standard. Fecal material is a vehicle for microbial pathogens, and microbiological contamination is a food safety hazard that is reasonably likely to occur in the slaughter production process. In controlling microbiological contamination, a hazard analysis and critical control point plan for slaughter must be designed, among other things, to ensure that, by the point of post-mortem inspection of livestock carcasses or when poultry carcasses enter the chilling tank, no visible fecal material is present.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of livestock products and poultry products that are unwholesome, adulterated, or misbranded. A livestock product or poultry product is adulterated under any of a number of circumstances, including the following: if it bears or contains any poisonous or deleterious substance which may render it injurious to health, unless when the substance is not an added substance, the quantity in or on the article does not ordinarily render it injurious to health; if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise