

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, and 245

[INS No. 2124-01; AG Order No. 2596-2002]

RIN 1115-AG14

Adjustment of Status for Certain Aliens From Vietnam, Cambodia, and Laos in the United States; Waiver of Criminal Grounds of Inadmissibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice (Department) regulations to provide for the adjustment of status to that of lawful permanent resident for certain aliens from Vietnam, Cambodia, and Laos. On November 6, 2000, Public Law 106-429, the Foreign Operations Appropriations Act of 2001, was signed into law. Section 586 of Public Law 106-429 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 proposes to add regulations governing eligibility, evidence, and application and adjudication procedures, and also to add 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. Finally, this rule proposes a general amendment to the regulatory standards for waivers of the criminal grounds of inadmissibility under section 212(h) of the Act.

DATES: Written comments must be submitted on or before September 9, 2002.

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 2124-01 on your correspondence. Comments may also be submitted to the Service electronically at this address: insreg@usdoj.gov. When submitting comments electronically please include INS No. 2124-01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Service, 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 provides for adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos.

Why Is This Rule a Proposed Rule?

The Department of Justice (Department) is issuing this rule as a proposed rule in order to ensure that all aliens eligible for benefits under section 586 of Public law 106-429 have an equal opportunity to obtain those benefits. Section (a)(1) of Public Law 106-429 sets forth a time-limited application period (3 years from the date the rule is promulgated) and section (d) limits the number of total adjustments. The Department believes it is necessary to solicit comments on the regulations implementing this law prior to making the regulations effective. The Department seeks comments on all aspects of the proposed regulations, including, but not limited to, criteria for eligibility, evidentiary standards, counting methodology, application procedures, and appeal rights. After the

Department has reviewed the comments, the regulations will be finalized via a final rule published in the **Federal Register**, and the application period will begin.

Who Is Eligible To Adjust Status to That of Lawful Permanent Resident Under Section 586 of Public Law 106-429?

The Department's proposed regulations will codify the eligibility requirements for adjustment of status under section 586 of Public Law 106-429 at 8 CFR 245.21(a). 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:

- From Vietnam under the auspices of the Orderly Departure Program (ODP);
- From a refugee camp in East Asia; or
- From a displaced persons camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand.

(5) Applies for adjustment of status under section 586 of Public Law 106-429 during the period beginning on the "effective date" specified when this proposed rule is published as a final rule, and ending 3 years from the effective date, and pays 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 Is the Process of Adjustment of Status for Refugees?

The adjustment process for refugees is simple: One year after the alien has entered the United States as a refugee, he or she can apply to adjust status to lawful permanent resident (LPR) (see also 8 CFR 209.1). For those qualified aliens who have been denied refugee status but who fall into the Lautenberg category and are paroled into the United States as such, the process is similar—they can apply for LPR one year after

entry. (For a discussion of the Lautenberg category, see the section below "What is the Lautenberg Amendment?" See also, 8 CFR 245.7)

This rule, by contrast, covers aliens who are not eligible to adjust to LPR status under either of the above provisions. This rule is intended to benefit aliens whose relatives have died or emigrated or never formed a qualifying relationship with the alien, those aliens paroled into the United States who have no relatives (such as former employees of the United States government), and those who were never formally denied refugee status. For the vast majority of the rule's beneficiaries, there is no route to adjustment other than this provision.

Is There a Limit on the Number of Adjustments Under Section 586 of Public Law 106-429?

Yes, under section 586 of Public Law 106-429, the Attorney General has the authority to adjust the status of 5,000 aliens. Generally, the Department will adjudicate applications in the order in which they are submitted. The Service will assign a number to every application properly filed. The number will be assigned in ascending order, according to the filing date, except that, as discussed below, the Service will assign a number only if and when a necessary waiver is granted.

In the exercise of its discretion, the Service will adjudicate applications that do not require adjudication of a waiver to overcome any criminal, fraud, immigration violator, citizenship ineligibility, or illegal voting grounds of inadmissibility before those adjustment applications that do require such a waiver adjudication. These grounds of inadmissibility are identified in § 245.21(m)(3). The Department is of the view that applicants who seek waivers of such grounds have, by definition, violated the law in some way and are requesting the Attorney General to use his discretion to excuse that violation. Such applicants are not entitled to be given the same priority as those who have not engaged in conduct that would render them inadmissible to the United States and, accordingly, the Service will assign a priority to such applications according to the date that the requested waivers are granted, if that is the result, rather than the filing date of the application for adjustment.

Each alien granted adjustment of status under section 586 will count toward the 5,000 limit. The Service will monitor the total number of approvals in order to ensure that all applications pending appeal that are placed earlier in the queue could be approved within the

5,000 cap if the applications are granted on appeal. The Department's regulations concerning the 5,000 limit are at 8 CFR 245.21(m). The Department recommends that eligible aliens submit their applications as soon as possible after the final rule is promulgated in order to maximize their likelihood of getting a space within the 5,000 limit.

When Can Aliens File for Adjustment of Status Under Section 586 of Public Law 106-429?

Aliens may apply during the 3-year application period, which commences on the effective date of any final regulations promulgated pursuant to section 586 of Public Law 106-429. Applications received prior to the beginning of the application period will be rejected and returned to the applicant. The Department's proposed regulations regarding the application period are at 8 CFR 245.21(b)(1).

What Was the Orderly Departure Program (ODP)?

The ODP originated in 1979 under the initiative of the UNHCR in order to provide a safe, legal alternative to dangerous departures by boat, or over land, from Vietnam. Individuals who sought to leave Vietnam registered with the ODP office, situated in Bangkok, Thailand, where a case file was opened. Individuals, and close family members, were assigned tracking numbers, known as IV files. The first legal departure from Vietnam via the ODP was in December 1980.

Within the ODP, there were three subprograms: (1) The Regular Subprogram, which was reserved for applicants seeking family reunification and other individuals who demonstrated close connections with United States policies and programs prior to 1975; (2) the Reeducation Detainee Subprogram (which came to be known as the HO subprogram); and (3) the Amerasian Subprogram, for individuals who were fathered by Americans.

As a humanitarian response to an increasing demand for emigration from Vietnam, it was Service policy to offer Public Interest Parole to certain classes of applicants from within the ODP, including those who had been denied refugee status and those who were the beneficiaries of non-current relative visa petitions.

Many such parolees were ineligible, subsequent to arrival in the United States, to adjust their status under the provisions of section 599E of the Foreign Operations, Export Financing, and Related Appropriations Act of 1990

(Pub. L. 101-167) (the Lautenberg Amendment).

What Is the Lautenberg Amendment?

The Lautenberg Amendment is a means for aliens from certain nations (including Vietnam, Cambodia, and Laos) who have been denied refugee status but who are nevertheless granted a Public Interest Parole into the United States to adjust status to LPR. The beneficiaries of section 586 do not fall into this category because they were never considered for, and thus never denied, refugee status.

Parole status is technically a grant of entry into the United States and is different than admission. Aliens who have been admitted to a specific immigrant or nonimmigrant status (LPR, Refugee, H-1B, etc) may only be removed if the Service meets its burden of proof to show that the alien is deportable. In contrast, an alien in parole status is still technically facing admission, and if the Service places such an alien in removal proceedings, the burden of proof lies with the alien to show admissibility.

The Lautenberg Amendment specifically authorized individuals to apply for adjustment of status 1 year after arrival in the United States as a parolee. However, the language of the Lautenberg Amendment limited the ability to apply for adjustment to those individuals who had been paroled subsequent to a denial of refugee status. Therefore, individuals who were paroled as the beneficiary of a non-current relative visa petition could not apply for adjustment of status until a visa number became available. Additionally, dependent family members were paroled in the interest of maintaining family unity. These latter individuals have been left in a virtual indefinite parolee status because they were not beneficiaries of a specific relative visa petition.

The policy of offering Public Interest Parole ceased on September 30, 1994, although individuals previously authorized parole continued to travel to the United States after the date of cessation.

How Do Applicants Demonstrate That They Were Paroled Under the Auspices of the ODP?

Persons eligible for the benefits of section 586 of Public Law 106-429 because they were paroled under the auspices of the ODP may locate their assigned tracking number, the IV file number, in several places. The number appears on the parole authorization letter, the transportation letter, or the Form I-94, Arrival-Departure Record,

issued to them. If the applicant no longer has any of these documents, the Department has a complete database for all individuals processed under the ODP and can verify an applicant's claim if requested in writing along with the Form I-485.

Verifying the alien's claim that he or she entered the United States under the auspices of the ODP should not add a significant time period to the total time it takes to adjudicate the application. There is no fee for making this request if it is made as part of the application for benefits under this provision.

How Do Applicants Demonstrate That They Were Paroled From a Refugee Camp in East Asia?

Applicants who were paroled under different auspices than the ODP will have an identifiable United States Refugee Program (USRP) file number. That file number is prefaced with the first initial of the country of first asylum, e.g., TXXXXXX = Thailand; SXXXXXX = Singapore; IXXXXXX = Indonesia, and so forth. The number appears on the Form I-94 issued to them.

How Do Applicants Demonstrate That They Were Paroled From a Displaced Persons Camp in Thailand That Was Administered by the UNHCR?

This category comprises primarily Cambodian nationals who were initially in camps along the Thai-Cambodian border. These individuals should have a unique USRP file number representing Thailand, i.e., TXXXXXX. Additionally, applicants from displaced persons camps would normally have the designation of HP-1, HP-2, or HP-3 on the Form I-94, or elsewhere in the Alien file ("A" file). The "A" number and "HP" designation appear on the Form I-94 issued to them.

If the applicant no longer has his or her Form I-94, he or she may request the Department to do a search of its files to determine whether that alien ever received either number or designation in writing along with the Form I-485.

What Grounds of Inadmissibility Do Not Apply When Applying for Adjustment of Status Under Section 586 of Public Law 106-429?

The grounds of inadmissibility found at section 212(a)(4) of the Immigration and Nationality Act (Act), relating to public charge; (a)(5), relating to labor certification requirements and certifications for foreign healthcare workers; (a)(7)(A), relating to visa and travel documents; and (a)(9), relating to prior removals and unlawful presence, do not apply to applicants for

adjustment of status under section 586 of Public Law 106-429.

What Grounds of Inadmissibility May Be Waived When Applying for Adjustment of Status Under Section 586 of Public Law 106-429?

Section 586(c) of Public Law 106-429 authorizes the Attorney General to waive the grounds of inadmissibility found at section 212(a)(1) of the Act, relating to health; (a)(6)(B), (a)(6)(C), and (a)(6)(F), relating to failure to attend removal proceedings, misrepresentation, and document fraud violations, respectively; (a)(8)(A), relating to citizenship ineligibilities; and (a)(10)(B) and (a)(10)(D), relating to guardians of helpless aliens and unlawful voting. This waiver may be granted by the Attorney General (or by the Service as the Attorney General's delegate), in the exercise of his discretion, to prevent extreme hardship to the applicant, or to his or her United States citizen or lawful permanent resident spouse, parent, son, or daughter.

In addition to section 586(c), an individual seeking to adjust status under Public Law 106-429 may apply for any other immigrant waiver authorized under section 212 of the Act, if eligible. When a showing of extreme hardship is required for a waiver under any provision of section 212 of the Act, that hardship must be to one or more of the applicant's United States citizen or lawful permanent resident family members specified in that provision.

In some cases, the section 212 waiver supplements the provisions of section 586(c), while in others, such as criminal cases, section 212(h) of the Act is the exclusive means of relief. For example, individuals who are inadmissible on any of the medical grounds of section 212(a)(1)(A) of the Act have the option of applying for a waiver under section 212(g)(1), (2), or (3) of the Act, as applicable. Those individuals who are not eligible to apply under section 212(g) of the Act may apply for a waiver under section 586(c) of Public Law 106-429, if they can establish the requisite extreme hardship. In contrast, the waiver provision of section 586(c) does not include any of the criminal grounds of section 212(a)(2) of the Act; however, section 212(h) of the Act authorizes a waiver in limited cases.

It is important to note that waivers of inadmissibility are granted in the discretion of the Attorney General. The Board of Immigration Appeals has held that, in assessing whether an applicant has met the burden that a waiver is warranted in the exercise of discretion, the adjudicator must balance adverse factors evidencing inadmissibility as a

lawful permanent resident with the social and humane considerations presented to determine if the grant of relief appears to be in the best interests of the United States. *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996) (involving a waiver under section 212(h)(1)(B) of the Act). Establishment of extreme hardship and eligibility for a waiver requiring a showing of such hardship does not create an entitlement to the relief sought. *Id.*; *Matter of Cervantes-Gonzalez*, Int. Dec. 3380 (BIA 1999). Extreme hardship, once established, is but one favorable discretionary factor to be considered. *Id.*

Most recently, in the context of a case involving a waiver of a criminal ground of inadmissibility under section 209(c) of the Act, the Attorney General determined that favorable discretion should not be exercised for waivers involving violent or dangerous individuals, except in extraordinary circumstances. Extraordinary circumstances include situations where the alien has established exceptional and extremely unusual hardship, or situations where there are overriding national security or foreign policy considerations. Nevertheless, depending on the gravity of the underlying offense, the equities presented in such extraordinary circumstances may still be insufficient. *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002).

In view of these considerations, this proposed rule amends 8 CFR 212.7 to provide a general rule that the Service will exercise discretion in favor of the applicant in section 212(h) waiver cases that involve violent or dangerous crimes only in extraordinary circumstances. Moreover, depending on the nature and severity of the underlying offense to be waived, the Attorney General retains the discretion to determine that the mere existence of extraordinary circumstances is insufficient to warrant the grant of a waiver.

How Does an Individual Apply for the Waiver?

In order to obtain a waiver of one or more grounds of inadmissibility, an applicant must file Form I-601, Application for Waiver of Grounds of Excludability, with the Form I-485, Application to Register Permanent Residence or Adjust Status. As mentioned previously under the heading, "Is there a limit on the number of adjustments under section 586 of Public Law 106-429?", the Department may give preference to those applicants who do not need a waiver of inadmissibility over certain applicants who do.

Does an Applicant Have To Demonstrate That He or She Was Physically Present in the United States Prior to October 1, 1997?

Yes, however an eligible applicant will be able to meet this requirement when he or she demonstrates that he or she was paroled into the United States via one of the three qualifying programs. The documentation demonstrating that the applicant was paroled into the United States via one of the three qualifying programs will contain a date. If the date of the alien's parole was prior to October 1, 1997, the Department will consider the applicant to have met the requirement that the applicant was physically present in the United States prior to October 1, 1997.

How Can an Applicant Demonstrate That He or She Was Physically Present in the United States on October 1, 1997?

Applicants for adjustment of status under section 586 of Public Law 106-429 must submit, at the time they file the application for adjustment of status, evidence that they were physically present in the United States on October 1, 1997.

The Act is silent as to the methods by which an applicant may demonstrate his or her physical presence in the United States on that date. Increasingly, adjustment of status provisions of the immigration laws are enacted with the requirement that applicants demonstrate their physical presence in the United States on a specific date (most recently, for example, the amendments to section 245(i) of the Act). The Department believes it is appropriate at this time to codify a single regulatory standard for demonstrating an alien's physical presence on a particular date. This is similar to the common standard for evidence, testimony, signature, and other requirements applicable to a wide range of applications and petitions. This rule adds a new § 245.22 that would provide guidance to aliens who need to demonstrate physical presence in the United States on any specific date (cross-referenced in proposed § 245.21(g)(2)). This new section regarding evidence largely corresponds to the existing regulations at 8 CFR 245.15(i) for aliens who must demonstrate physical presence on a specific date for purposes of the Haitian Refugee Immigrant Fairness Act of 1998, section 902 of Division A of Public Law 105-277 (HRIFA). The rule incorporates, in part, the forms of documentation accepted for HRIFA applicants regarding physical presence (8 CFR 245.15(i) and (j)(2)) and adopts them as examples of possible proof of

physical presence for adjustment of status under section 586 of Public Law 106-429. The Department is also soliciting comments on what type of evidence can be best used to demonstrate an alien's physical presence in the United States for a specific date (in this case October 1, 1997).

Are the Dependents of Aliens Eligible To Adjust Status Under Section 586 of Public Law 106-429 Eligible To Adjust Status?

Section 586 of Public law 106-429 does not provide for the derivative adjustment of status for the spouse and children of aliens who adjust status under this law. To obtain lawful permanent resident status under this law, the spouse or child must be eligible under the terms of this law in his or her own right, and must apply on his or her own behalf. To the extent possible, the Service will adjudicate applications from family members at the same time.

If an alien who adjusts status to that of lawful permanent resident (LPR) under section 586 of Public Law 106-429 has an alien spouse, child, or unmarried son or daughter who is not eligible in his or her own right, the LPR may file Form I-130, Petition for Alien Relative, to begin the regular immigration process for the spouse, child, or unmarried son or daughter.

Where and How Do Eligible Aliens File for Adjustment of Status Under Section 586 of Public Law 106-429?

When the regulations are effective and the 3-year application period begins, the Service will provide aliens eligible to adjust status to that of lawful permanent resident under section 586 of Public Law 106-429 with an address for the filing of Form I-485.

Applicants must be physically present in the United States, and must submit the associated filing fee, currently \$255 (\$160 for applicants under 14 years of age), or request that the fee be waived pursuant to 8 CFR 103.7(c). Applicants ages 14 through 79 must also submit a \$50 fingerprinting fee. Under Part 2, question h of Form I-485, applicants must write "INDOCHINESE PAROLEE P.L. 106-429" to indicate that they are applying based on this provision.

Is an Alien Currently in Proceedings Eligible To Apply?

An alien in proceedings who believes he or she is eligible for adjustment of status under section 586 of Public Law 106-429 may apply directly to the Service. In order to be eligible, however, an applicant for adjustment of status must be otherwise admissible to the

United States. The Department notes that, depending on the alien's circumstances and the charges brought, the immigration proceedings may have an effect on the alien's admissibility. If an alien is found inadmissible on a ground that cannot be waived, the alien will not be eligible for adjustment of status under section 586.

In order to maintain control of the adjudication of applicants under the 5,000 limit, this rule provides that the Service will adjudicate all of these cases, not the immigration judges, or the Board of Immigration Appeals. Accordingly, an alien who is currently in proceedings who alleges eligibility for adjustment of status under section 586 of Public Law 106-429 should contact Service counsel to request Service consent to the filing of a joint motion for administrative closure of the immigration proceedings while any application filed is pending with the Service. The Service will exercise its discretion on a case-by-case basis in determining whether to join in motions for administrative closure.

Is an Alien Who Already Is the Subject of a Final Order of Removal, Deportation, or Exclusion Eligible To Apply Under Section 586 of Public Law 106-429?

An alien with a final order of removal, deportation, or exclusion who is eligible for adjustment of status under section 586 of Public Law 106-429 is not precluded from filing an application for adjustment of status with the Service. In order to be eligible, however, an applicant for adjustment of status must be otherwise admissible to the United States, and the Department notes that many aliens who are the subject of a final order of exclusion, deportation, or removal will be unable to satisfy that requirement. Only those aliens who have been found removable under circumstances that establish an alien's inadmissibility on a ground that may be waived under section 586 of Public Law 106-429 would be eligible for adjustment under this provision.

Moreover, this rule contains a substantial general constraint on the exercise of discretion to grant waivers under section 212(h) of the Act relating to violent or dangerous crimes and provides that aliens who require a waiver of criminal and certain other grounds of inadmissibility may be accorded a priority date only as of the date of the granting of the necessary waivers, rather than the date of the filing of the application.

Accordingly, this section does not automatically stay the order of removal, deportation, or exclusion. An eligible

alien may request that the district director with jurisdiction over his or her place of residence grant a stay of removal for the pendency of the application. The regulations governing such a request are found at 8 CFR 241.6. Only the Service may grant such a stay relating to an application for adjustment of status under this section.

If the Service approves the application for adjustment of status, the Service shall provide notice to the immigration judge or the Board. The filing of such notice will constitute the automatic re-opening of the alien's immigration proceedings, vacating the final removal order and terminating the re-opened proceedings.

How Can Applicants for Adjustment of Status Under Section 586 of Public Law 106-429 Obtain Employment Authorization While Their Application for Adjustment of Status Is Pending?

Applicants may obtain employment authorization based on their pending Form I-485 by submitting Form I-765, Application for Employment Authorization, and the \$120 application fee unless the fee is waived. An applicant may submit Form I-765 simultaneously with the Form I-485 or at any time while the Form I-485 is pending. If the Service approves Form I-765, the applicant will be issued an employment authorization document.

Will an Applicant Filing an Application for Adjustment of Status Under Section 586 of Public Law 106-429 With the Service Be Required To Appear for an Interview?

The Service may require applicants for adjustment of status to appear for an interview, in the exercise of discretion.

Can an Applicant Travel Outside the United States While the Application Is Pending?

This rule does not prevent applicants with pending applications for adjustment of status from traveling abroad while their application is pending. However, in order to be eligible to lawfully re-enter the United States and avoid the abandonment of the application for adjustment of status, the Department will require that the alien obtain advance permission to travel (known as advance parole) from the Service prior to departing the United States. To obtain advance parole, applicants need to submit Form I-131, Application for a Travel Document, along with the \$110 filing fee.

However, the Department notes that, if an alien under a final order of removal leaves the country, that would constitute a self-deportation unless the

alien had previously been granted a waiver of any applicable grounds of inadmissibility before departing from the United States. Such an alien would need to obtain advance parole in addition to obtaining the necessary waivers of inadmissibility.

What Documentation Will Be Issued if the Adjustment of Status Application Is Approved?

After processing of the Form I-485 is completed, the Service will mail a notice of the decision to the applicant. If the application has been approved, the Service will issue a notice of approval instructing an alien to go to a local INS office to fill out Form I-89, which collects the necessary information to produce the Form I-551. To obtain temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the adjustment of status application. If the applicant is not in possession of an unexpired passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting the Alien Documentation, Identification, and Telecommunication System specifications described on Form M-378 so that the Service may prepare and issue alternate temporary evidence of lawful permanent residence status.

What Date Will Be Recorded as the "Record of Permanent Residence" for Aliens Granted Lawful Permanent Resident Status Under Section 586 of Public Law 106-429?

Upon the approval of an application for adjustment of status, the Service will record the alien's admission for lawful permanent residence as of the date of the alien's inspection and parole before October 1, 1997, under the ODP, from a refugee camp in East Asia, or from a displaced persons camp administered by UNHCR in Thailand.

If the Service Denies an Alien's Application for Adjustment of Status Under Section 586 of Public Law 106-429, Is There an Appeal?

Yes, the alien may appeal to the Administrative Appeals Office when the Service denies an application. Procedures are contained in 8 CFR 103.3(a)(2).

When an alien appeals the denial of his or her application to adjust status under section 586 of Public Law 106-429, he or she will retain the same spot

in the adjustment queue, with respect to the 5,000 limit on total adjustments under section 586 of Public Law 106-429. In other words, the Service will reserve space within the 5,000 limit on adjustments under section 586 of Public Law 106-429 for appellants who would have been able to adjust within the 5,000 limit had their applications been approved during the initial Service adjudication.

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 proposed 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 § 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 § 245.22. This additional documentation is considered an information collection.

Written comments are encouraged and will be accepted until September 9, 2002. 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, 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.

All comments and suggestions or questions regarding additional information should 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)514-3241.

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 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be 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.

§ 103.1 [Amended]

2. Section 103.1(f)(3)(iii)(C) is amended by adding the phrase “or section 586 of Public Law 106-429” immediately after “October 28, 1977”.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

4. Section 212.7 is amended by adding paragraph (d) to read as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

* * * * *

(d) *Criminal grounds of inadmissibility involving violent or dangerous crimes.* The Service, in general, will exercise discretion not to grant waivers of the criminal grounds of inadmissibility involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of status adjustment would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient.

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

5. 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.

6. 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.

* * * * *

7. 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 Pub. L. 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 the effective date when this rule is published as a final rule until 3 years from the effective date. 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 3-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 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, PO 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)(2) of this section. An immigration judge or the Board of Immigration Appeals Board 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 their 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 or not 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(a) 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.

(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 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 appeal will retain their place in the queue by virtue of their 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 number chronologically by the date of approval of the necessary waivers rather than the date of filing of the application.

8. 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 more specific regulations or instructions for the form(s) relating to a particular adjustment of status provision have been issued, such regulations or instructions for the form(s) are controlling to the extent that they conflict with this section and must be followed.

(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 sections 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 which 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 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: July 2, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02-17117 Filed 7-8-02; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-114-AD]

RIN 2120-AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra series airplanes. This proposal would require revising the airplane flight manual to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 8, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-114-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Tim Dulin, Aerospace Engineer, International

Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2141; fax (425) 227-1149.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687-4243, fax (425) 227-1232. Questions or comments may also be sent via the Internet using the following address: sandi.carli@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-114-AD." The postcard will be date stamped and returned to the commenter.