Q&A for Employers on the Legal Immigration and Family Equity (LIFE) Act of 2000

Overview:

Q: What is the LIFE Act?

The LIFE Act, which President Clinton signed into law on December 21, 2000, is part of the 106th Congress' final budget bills. The LIFE Act contains four major provisions that could potentially provide work authorization and permanent status to hundreds of thousands of individuals:

- New Temporary Status for Spouses and Children of Permanent Residents: Creates a new "V" nonimmigrant status for the spouses and minor children of U.S. permanent residents who have been sponsored and have been waiting for three years or more for their green card. This visa will give them a lawful status in the United States and work authorization until their green card application is finished processing.

- New Temporary Status for Spouses of U.S. Citizens: Expands the use of the "K" nonimmigrant visa, currently used for fiancées of U.S. citizens, to spouses of U.S. citizens who are waiting abroad for the approval of an immigrant visa. This provision would allow these spouses to enter the United States on temporary visas and obtain work authorization while their green card applications are pending.

- Late Legalization and Family Unity: Allows individuals who are members of certain class action lawsuits against the U.S. government for wrongfully denying them legalization during the 1980s to apply directly for permanent residence. Also allows the spouses and children of these individuals to remain in the United States and obtain work authorization until they can get green cards.

- Extension of Section 245(i): Allows individuals who are qualified for an immigrant visa (green card) based on a family relationship to a U.S. citizen or permanent resident or based on a sponsoring employer, but are "out of status," to pay a fee and get their green cards without leaving the country. This provision has been extended to individuals who have petitions or labor certifications filed for them before *April 30, 2001* and who were physically present in the United States on December 21, 2000.

Q: What type of documentation will these individuals have as proof of their eligibility to work?

Most individuals who obtain work authorization from the INS under one or more of these provisions will need to obtain an Employment Authorization Document ("EAD") before they may begin working. Once individuals obtain permanent residence, the INS will issue evidence of their permanent resident status known as a "green card." Both of these INS documents have the individual's photograph on them.

*****Employers must verify the employment eligibility of every employee hired after November 6, 1986. At time of hire, the employee *completes and signs Section One of the I-9 Form. The employer ensures that Section One is completed correctly and w*ithin 3 business days of hire the *employee must present appropriate documents. The employer must inspect documents presented.***

Employers verifying the work authorization status of an employee or prospective employee **may not** ask to see any specific document, but must allow the *employee* the choice of which documents to present.

Section 245(i):

Q: What is the new Section 245(i) in the LIFE Act?
The new Section 245(i) allows certain people who are qualified to obtain green cards based on employer sponsorship or a family relationship to get their green cards without leaving the country, even if they are not in a legal status. To be eligible, an individual must be either: (1) the beneficiary of a petition that has already been filed, or will be filed before April 30, 2001, with the Immigration and Naturalization Service (INS) by a U.S. citizen or permanent resident relative or sponsoring employer or (2) the beneficiary of a labor certification application filed on their behalf by an employer with the Department of Labor (DOL) before April 30, 2001. The LIFE Act also specifies that in order to use the Section 245(i) provision, the individual whose petition or labor certification was filed between January 14, 1998 and April 30, 2001 must prove that he or she was physically present in the U.S. on December 21, 2000, the date this measure became law.

Filing an immigrant visa petition or labor certification is the first step in the lengthy green card process, a process that may take from several months to several years in its entirety. For those who need labor certification to qualify for a green card, the second step in the process is for the employer to file an immigrant visa petition on their behalf. Once an immigrant visa petition (as noted above) is approved, the individual must apply for actual permanent residency (the "green card") by filing an adjustment of status application (Form I-485). Even if a person does not apply to adjust status until long after April 30, 2001, as long as the original immigrant visa petition or labor certification was filed before that date, if he/she is qualified, their eligibility for the benefit of §245(i) will not expire.

Q: Who could benefit from the new Section 245(i) provisions?
A person who is eligible for permanent residence based on a family relationship or job offer, and who wishes to adjust status to permanent residence without leaving the U.S., could benefit from the new Section 245(i). Most people who entered the U.S. without inspection, overstayed an admission, acted in violation of the terms of their status, worked without authorization, entered as a crewman, or were admitted in transit without a visa, are considered out of status and would be unable to complete the process to become a permanent resident in the U.S. without Section 245(i).

Q: Does the new Section 245(i) grant immediate work authorization, protection from deportation, or travel permission?
NO! Section 245(i) only allows people who illegally entered the United States or who are out of status for various reasons to adjust their status in the U.S. if they are otherwise eligible and *only when their turn in the green card line comes*. Certain individuals may be eligible for immediate adjustment; others may have to wait several years. Section 245(i) does not grant an individual any protection or rights while the individual is waiting for their turn in line. The individual is not protected from deportation if apprehended, and cannot obtain work authorization during this time. Once their final application for adjustment of status is filed, work authorization may be obtained.

Q: What can an employer do to help an employee use Section 245(i)?

Employers who wish to use this provision for prospective employees may sponsor an individual for permanent residence based on an offer of employment by filing either an application for labor certification with the Department of Labor or, if labor certification is not required, by filing an immigrant visa petition with the INS *before April 30, 2001*. As stated above, the filing of either of these documents does not grant any immediate lawful status or work authorization, but will preserve that employee's eligibility to use Section 245(i) to get their green card in the future, when they are at the end of the green card process. **If a current employee for whom and I-9 form has been completed comes forward as a result of the extension of 245(i) and asks for permanent residence sponsorship, the employer may be obligated to remove the employee from its payroll if the employee states that he/she is not currently employment authorized. Once a current employee admits that he/she is not employment authorized, the employer must act in order to avoid employer sanctions violations.** Employees that admit a violation of status may not be on the payroll while the application for permanent residence is pending. Employers seeking to sponsor an employee should obtain the services of an immigration attorney to advise them of the responsibilities and obligations of sponsorship.

"V" Visa

Q: What is the new "V" Visa and who is eligible?
In order to address the severe visa backlogs for families of green card holders, the LIFE Act allows the spouses and minor children of legal permanent residents who have been in the backlog for three years or more to legally come to the United States, or, if they already are here without authorization, to gain legal status. Under current law, because these individuals are intending immigrants, there is no way for them to legally come to

the United States, even for a short visit, and no way for them to legalize their status without leaving the country for many years. By creating a new "V" visa, the law grants these family members a legal status and work authorization in the United States while waiting on their green cards.

To qualify, the spouse and children must be the beneficiary of an immigrant visa petition filed by a lawful permanent resident (green card holder) *before* the date of enactment of LIFE, and must have been waiting at least three years either for the petition to be decided or for their turn in the visa quota line. Individuals who meet these criteria but who are already in the United States in an unlawful or another nonimmigrant status may apply to the INS to "adjust" their status to the new category. Those outside the United States must apply for the visa at a consulate abroad.

Q: Does an employer need to do anything to help someone get a "V" visa?

No, the "V" visa does not require any direct employer sponsorship. However, applicants for this visa, like applicants for all visas, must demonstrate that they have enough financial resources to keep from becoming public charges. In this context, either an applicant for a V visa or his or her sponsor may ask their employer for a letter documenting their employment and/or prospect for future employment. An employer asked to write such a letter may wish to consult with their immigration counsel if the request indicates that the employee currently is unauthorized to work in the U.S. Once someone enters the United States with a V visa or adjusts status to the V visa, they may apply to the INS for an EAD, and may begin working once the card is issued.

"K" Visa

Q: What is the new "K" Visa and who is eligible?

In order to address the severe backlogs in processing of petitions for family-based petitions, the LIFE Act expands the use of the "K" visa (which currently allows fiancées of U.S. citizens to enter the U.S. to get married) to include the spouses of U.S. citizens who already are married and are waiting outside of the U.S. for their immigrant visa petition approval. The foreign spouse's minor children also can be included in the petition. The visa will allow them to join the U.S. citizen in the United States while waiting on their green card. The visa would also allow them to work in the United States. To qualify for K status, the U.S. citizen already must have filed an immigrant visa petition with the INS for the foreign spouse, and must also file a new, separate K petition for the spouse. Once the K petition is approved, the foreign spouse must apply for the K visa in the country where the marriage took place.

Q: Does an employer need to do anything to help someone get a "K" visa?

No. Like the "V" visa, the "K" visa does not require any direct employer sponsorship. However, applicants for this visa, like all applicants for all visas, must demonstrate that the have enough financial resources to keep from becoming a public charge during their stay. In this context, either a K visa applicant or his or her sponsor may ask an employer for a letter documenting their employment and prospect for future employment. An employer asked to write such a letter may wish to consult with their immigration counsel if the request indicates that the employee currently may be unauthorized to work in the

U.S. Once someone enters the United States with a K visa, they may apply to the INS for an EAD, and may begin working once the card is issued.

Late Legalization and Family Unity

Q: What is "late legalization" and who is eligible?
The LIFE Act allows certain individuals who were unfairly precluded from the 1986 amnesty (enacted in the Immigration Reform and Control Act (IRCA)) a chance to reapply under a slightly modified version of that program. To qualify, an individual must have already filed a claim (before October 1, 2000) for membership in one of three class action lawsuits against the government for their improper implementation of the IRCA amnesty; *CSS v. Meese*, *LULAC v. Reno*, or *INS v. Zambrano*. The new law allows these class members to file an application for a green card with the INS during the one-year period after regulations are issued. Under the modified program, the applicant must meet certain criteria, including specified periods of residence and physical presence in the U.S. during the 1980s, and must be eligible for admission as an immigrant (*e.g.*, not have a past criminal record, be able to support him or herself financially in the United States, etc.).

Individuals who meet these criteria will be allowed to apply for permanent residence and work authorization while their application is pending. They will also be protected from deportation and issued travel authorization. The INS also must create a process whereby individuals who qualify, but who are now outside of the U.S, can apply under this program.

Q: What is "family unity" and who is eligible?

The LIFE Act prevents the deportation of the spouses and minor children of a person who applies for late legalization under the new law. Consistent with prior laws, these family members also are eligible for work authorization. To be eligible, a person must be the spouse or minor child of an applicant for late legalization, must have been residing in the U.S. since before December 1, 1988, and must not have a criminal record.

Q: Does an employer need to do anything to help an individual obtain either of these benefits?

No. As with the K and V visas, an employer is not required to file anything to help someone gain these benefits. However, an employer might be asked to write a letter documenting an individual's employment or prospects for future employment as part of the applicant's evidence that they will not become a public charge. An employer asked to write such a letter may wish to consult with their immigration counsel if the request indicates that the employee may currently be unauthorized to work in the U.S. A person who has filed an application under this program may also apply for an EAD, and may begin working once INS issues the card.