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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 236, 274a and 299

[INS No. 1823-96]

RIN 1115-AE72

Implementation of Hernandez v. Reno Settlement Agreement; Certain Aliens Eligible for Family Unity Benefits After Sponsoring Family Member's Naturalization; Additional Class of Aliens Ineligible for Family Unity Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations to provide changes that are necessary to implement that portion of the settlement agreement in *Hernandez v. Reno*, C.A. No. 9:93 CV 63 (E.D. Tex., filed Dec. 30, 1997), requiring the development and implementation of a single application form to be used in connection with the adjudication of requests for benefits under the Family Unity Program, including voluntary departure and an employment authorization document. This interim rule also clarifies the regulations to provide that certain aliens will not lose their eligibility for the Family Unity Program simply because their sponsoring family member has become a naturalized United States citizen. In addition, this interim rule adds a class of aliens who are ineligible for Family Unity benefits. Individuals who, as juveniles, committed an act of juvenile delinquency which, if committed by an adult would be classified as a felony "crime of violence against another individual," are ineligible for benefits under the Family

Unity Program. Finally, this rule deletes as matter of agency procedure the category for Family Unity Program-based employment authorization set forth at 8 CFR 274a.12(c)(12). The Service recognizes that this category is redundant in light of the existence of a virtually identical category set forth at 8 CFR 274a.12(a)(13).

DATES: *Effective date:* This interim rule is effective July 14, 2000.

Comment date: Written comments must be submitted on or before September 12, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington DC 20536. To ensure proper handling please reference INS No. 1823-96 on your correspondence. Comments are available or public inspection at the above address by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Anne Gyemant, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington DC 20536, telephone (202) 514-4754.

SUPPLEMENTARY INFORMATION:

What Is the Family Unity Program?

Established by section 301 of the Immigration Act of 1990, IMMACT 1990, Public Law 101-649 (November 29, 1990), the Family Unity Program provides renewable periods of voluntary departure and employment authorization for the eligible spouses and children of legalized aliens. A legalized alien is a person who has been granted temporary or permanent residence status under section 210 (Special Agricultural Worker (SAW)) or section 245A (Legalization) programs of the Immigration and Nationality Act (Act), or a permanent resident under the Cuban/Haitian Adjustment Act under section 202 of the Immigrant Reform and Control Act of 1986 (IRCA), Public Law 99-603 (November 6, 1986). To establish eligibility for the benefits, the family relationship must have existed as of May 5, 1988, for the Legalization and Cuban/Haitian Adjustment Act programs or as of December 1, 1988, for SAW recipients. The family members must also have been present in the United States prior to May 5 or

December 1, 1988, as applicable, and have resided in the U.S. since that date.

What Are the Changes to the Family Unity Program Created by the Settlement of the Hernandez v. Reno Class Action Lawsuit?

As part of the settlement of a Nationwide class action lawsuit, *Hernandez v. Reno*, C.A. No. 9:93 CV 63 (E.D. Tex., filed Dec. 30, 1997), the Service agreed to revise the existing Family Unity Program benefits application system so that an applicant no longer had to file one application (Form I-817, Application for Voluntary Departure under the Family Unity Program) to receive a grant of voluntary departure under the Family Unity Program and then file a separate application (Form I-7657, Application for Employment Authorization) to receive an employment authorization document. The implementation of this aspect of the settlement agreement has involved two phases. During the first phase, which was implemented effective January 29, 1998, the Service issued supplemental instructions which provided that from then forward, the Form I-765 would be treated as a supplement to and not a form separate from the Form I-817. The Form I-765 supplement was attached to each Form I-817 that was mailed to potential applicants. Applicants were encouraged to file the two forms jointly and were required to pay only the filing fee applicable to the Form I-817.

What Is the Fee Required for the Form I-817?

Since the implementation of phase one, the Service revised its fee structure including the amount charged for the Form I-817. (See 63 FR 43604). The amount currently charged as a result of the change is \$120. The fee is necessary to recover the cost to the Government of both the adjudication of a request for voluntary departure and the issuance of an employment authorization document under the Family Unity Program. (63 FR 1775). A separate application and fee, however, will be required of any person granted Family Unity benefits who seeks to replace a Family Unity Program benefit based on an employment authorization document that is lost, misplaced, mutilated, or destroyed.

What Is the Single Application System Created Using the Revised Form I-817?

Phase two of the implementation of the "single application" system agreed to under the *Hernandez v. Reno* settlement agreement involved the development and issuance of a revised Form I-817 that would contain sufficient requests for information from the applicant so that an employment authorization document could be issued without resorting to the use of the Form I-765 as a supplement. Such a form has now been developed and has been sent to the Office of Management and Budget (OMB) for review. Approval of the revised Form I-817, now entitled "Application for Benefits under the Family Unity Program," will result in the grant of voluntary departure for a 2-year period and the issuance of an employment authorization document valid for the same period as the grant of voluntary departure.

Who Is an "Eligible Immigrant" Under the Family Unity Program?

Under the Family Unity Program, an applicant is an "eligible immigrant" for purposes of the program if he or she is a spouse or unmarried child of a legalized alien. A legalized alien has been defined under 8 CFR § 236.11 as a temporary or permanent resident under section 210 (SAW) and section 245A (Legalization) programs of the Act or a permanent resident under the Cuban/Haitian Adjustment Act under section 202 of IRCA.

An alien has been defined, for purposes of this Act, to include, "any person not a citizen or national of the United States." See 8 U.S.C. 1101(a)(3) (Supp. IV 1998). The Service recognizes that defining "legalized alien" to include naturalized U.S. citizens is exceptional. Nevertheless, in light of the congressional policies of family reunification and encouragement of naturalization, we think it is clear that Congress did not intend to deprive eligible legalized residents of family unity benefits under these provisions on the basis of their having obtained U.S. citizenship through naturalization. The regulatory definition thus addresses a specific situation and has not application outside this context.

Will an Applicant Lose Eligibility if His or Her Sponsoring Family Member Naturalizes?

This rule clarifies that an applicant does not lose eligibility under the Family Unity Program when the family member through whom the applicant claims eligibility becomes a naturalized U.S. citizen provided that the lawful

permanent resident maintained status as a legalized alien up until the time of his/her naturalization. However, the naturalized family member should file a Form I-130, Petition for Alien Relative, on the applicant's behalf so that the applicant can apply for adjustment of status to become a lawful permanent resident. If the applicant is an "immediate relative," which includes the spouse, parents and minor children of a U.S. citizen, the naturalized family member may apply for adjustment of status by submitting Form I-485, Application for Adjustment of Status to Permanent Resident at the same time as the Form I-130 petition. All other applicants may apply for adjustment of status by filing Form I-485 as soon as a Form I-130 petition is approved for them, and they are notified that a visa number is available. The visa number must be available at both the time of application and the time of approval of the Form I-485. All approved applicants will remain eligible for Family Unity Program benefits until their adjustment of status to that of a lawful permanent resident. If the sponsoring family member filed a Form I-130 petition for the family-based 2A preference category, Spouse and Children and Unmarried Sons and Daughters of Permanent Residents, for the applicant before naturalization, he may file a new Form I-130 petition after naturalization for the family-based 1A preference category, Unmarried Sons and Daughters of Citizens. The change of preference classification may significantly accelerate the applicant's priority date.

What Is the Purpose of Making Certain Juvenile Offenders a New Class of Aliens Ineligible for Family Unity Benefits?

On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208. Section 383 of IIRIRA provides that aliens who committed a specific act of juvenile delinquency, as defined in 18 U.S.C. 5031, are ineligible for benefits under the Family Unity Program. Disqualifying acts include acts which if committed by an adult, would be classified either (1) as a felony crime of violence that involved the use or attempted use of physical force against another individual, or (2) a felony offense which intrinsically involved a substantial risk of the use of such physical force.

What Is the Definition of a "Juvenile" Under This Rule, and Where Does the Definition Come From?

The definitions to be used in implementing section 383 of IIRIRA are drawn from the United States Code. A "juvenile" is defined as a "person who has not attained his eighteenth birthday." 18 U.S.C. 5031. "Juvenile delinquency" is defined as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult." 18 U.S.C. 5031. As a result, the class of aliens ineligible for Family Unity Program benefits now includes individuals who, while under the age of 18, violated a law of the United States which, if committed by an adult, would have constituted either (1) a felony crime of violence involving the use or the attempted use of physical force against another individual, or (2) a felony offense involving a substantial risk of the use of violence against another individual. Section 383 also applies to any alien who is over the age of 18, and who committed such an act of juvenile delinquency before his or her 18th birthday.

What Is the Effective Date of This Section?

The amendments made by section 383 of IIRIRA apply to benefits granted or extended after September 30, 1996.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The reason and the necessity for immediate implementation of this interim rule without prior notice and comment is because parts of this rule merely codify in the Service's regulation the statutory mandates in section 383 of Public Law 104-208. In addition, some of the changes in this rule are beneficial to the affected public in that they either serve to implement the *Hernandez v. Reno* settlement agreement or to clarify that certain aliens do not lose eligibility because their sponsoring family member has naturalized. Therefore, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d). The removal of 8 CFR 274a.12(c)(12), Family Unity Program-based employment authorization, is an agency rule of

practice and procedure and, therefore, exempt from the requirements of 5 U.S.C. 553.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, 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. While this rule does affect individuals, the number affected will be minimal. There is no impact on small entities.

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 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 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 12866

This rule is 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. Accordingly, this regulation has been submitted to the OMB for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationships 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 13132, it is determined that this rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

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

Family Policymaking Assessment

The Commissioner of the Immigration and Naturalization Service has reviewed this regulation and has determined that it may affect family well-being as that term is used in section 654 of the Treasury-General Government Appropriations Act, 1999, Public Law 105-277 Div. A. Accordingly, the Service has assessed this action in accordance with the criteria specified by section 654(c)(1). This regulation will create a positive effect on the family by allowing Family Unity Program beneficiaries to retain eligibility when their sponsoring family member naturalizes. This will have the effect of keeping families together by encouraging their adjustment of status to that of a legal permanent resident while allowing them to retain Family Unity Program benefits until that time. Additionally, when the sponsoring family member naturalizes, the subsequent change of preference classification may significantly move forward the applicant's priority date, allowing them to adjust their status even sooner. Finally, this regulation will have the effect of strengthening the stability of the family and establishing an explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

Paperwork Reduction Act of 1995

The Service has requested expedited OMB review of the revised Form I-817 in order to comply with the settlement agreement in the *Hernandez v. Reno* litigation. During the course of the development of the revised Form I-817, the Service made several revisions unrelated to the implementation of the *Hernandez v. Reno* settlement. These additional revisions were necessary due to changes in the Family Unity provisions and inadmissibility grounds affected by the IIRIRA. Finally, changes were made on the form to reflect the changes made to the regulations by this interim rule. The Service is requesting comments on revised Form I-817.

List of Subjects

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

1. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104-208, 8 CFR part 2.

2. Section 236.11 is amended by revising the definition "Legalized alien" to read as follows:

§ 236.11 Definitions.

* * * * *

For purposes of §§ 236.10 to 236.18 only, *Legalized alien* means an alien who:

(1) Is a temporary or permanent resident under section 210 or 245A of the Act;

(2) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment); or

(3) Is a naturalized U.S. citizen who was a permanent resident under section 210 or 245A of the Act or section 202 of the Immigrant Reform and Control Act of 1986 (IRCA) (Cuban/Haitian Adjustment), and maintained such a status until his or her naturalization.

3. Section 236.12(a)(2) is revised to read as follows:

§ 236.12 Eligibility.

(a) * * *

(2) That as of May 5, 1988, (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2) (C) of section 301 of IMMACT 90) or as of December 1, 1988, (in the case of a relationship to a legalized alien described in subsection (b)(2) (A) of section 301 of IMMACT 90), he or she was the spouse or unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored immigrant status under section 203(a) (1), (2), or (3) or as an immediate relative under section 201 (b)(2) of the Act based on the same relationship.

* * * * *

4. Section 236.13 is amended by:
 a. Removing the "or" at the end of paragraph (b);
 b. Removing the period at the end of paragraph (c), and inserting in its place a "; or"; and by
 c. Adding a new paragraph (d) to read as follows:

§ 236.13 Ineligible aliens.

* * * * *
 (d) An alien who has committed an act of juvenile delinquency (as defined in 18 U.S.C. 5031) which if committed by an adult would be classified as:
 (1) A felony crime of violence that has an element the use or attempted use of physical force against another individual; or
 (2) A felony offense that by its nature involves a substantial risk that physical force against another individual may be used in the course of committing the offense.
 5. Section 236.14(a) is revised to read as follows:

§ 236.14 Filing.

(a) *General.* An application for benefits under the Family Unity Program must be filed at the service center having jurisdiction over the alien's place of residence. A Form I-817 Application for Benefits Under the Family Unity Program, must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.
 * * * * *

6. Section 236.15 is amended by revising paragraphs (d), (e), and (f) to read as follows:

§ 236.15 Voluntary departure and eligibility for employment.

* * * * *
 (d) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and will receive an employment authorization document. The validity period of the employment authorization document will coincide with the period of voluntary departure.

(e) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I-817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, or a naturalized U.S. citizen who was a lawful permanent resident under section 210 or 245A of the Act or section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 66-903, and maintained such status until his or her naturalization, and a petition for family-sponsored immigrant status has not been filed on behalf of the applicant. In such case, the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I-817 once the petition, Form I-130, has been filed on his or her behalf. No charging

document will be issued for a period of 90 days from the date of the denial.

(f) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application should only include changes to previous applications and evidence of continuing eligibility since the date of prior approval.

§ 236.18 [Amended]

7. Section 236.18 is amended by removing the phrase "or who are" from paragraph (a)(2).

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

8. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, 8 CFR part 2.

§ 274a.12 [Amended]

9. Section 274a.12 is amended by removing and reserving paragraph (c)(12).

PART 299—IMMIGRATION FORMS

10. The authority citation for part 299 continues to read as follows:

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

11. Section 299.1 is amended in the table by revising the entry for Form I-817 to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I-817	05-30-99	Application for Benefits under the Family Unity Program.

Dated: July 5, 2000.
Doris Meissner,
Commissioner, Immigration and Naturalization Service.
 [FR Doc. 00-17814 Filed 7-13-00; 8:45 am]
 BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
9 CFR Part 94
[Docket No. 00-033-2]
Change in Disease Status of the Republic of Korea Because of Rinderpest and Foot-and-Mouth Disease
AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.
SUMMARY: We are adopting as a final rule, without change, an interim rule that removed the Republic of Korea from the list of regions declared free of rinderpest and foot-and-mouth disease. We took this action because the existence of foot-and-mouth disease was confirmed there. The interim rule prohibits or restricts the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the