



U.S. Citizenship
and Immigration
Services

Interoffice Memorandum

To: Regional Directors
Service Center Directors
Field Office Directors
National Benefits Center Director
Overseas District Directors

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Date: January 18, 2005

Re: Extension of Status for Conditional Residents with Pending or Denied Form I-829
Petitions Subject to Public Law 107-273

1. Purpose

This memorandum supplements previously issued interim guidance regarding statutory changes made by Public Law 107-273. Pub. L. 107-273 affects adjudication of Forms I-526, Immigrant Petition by Alien Entrepreneur, and Forms I-829, Petition by Entrepreneur to Remove Conditions. See June 10, 2003 policy memorandum, issued by Janis A. Sposato, entitled Amendments Affecting Petitions for Alien Entrepreneur (EB-5) Adjudication. This supplemental memorandum provides guidance on the extension of status for certain conditional residents with a pending or denied Form I-829 petitions that are subject to Pub. L. 107-273, and incorporates by reference certain provisions in the March 3, 2000, policy memorandum issued by Michael A. Pearson, entitled AFM Update: Immigrant Investor Petitioner – Form I-829 Adjudication (EB-5 Memo # 9). This supplemental guidance is effective immediately.

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2. Background

On November 2, 2002, the President signed into law the Twenty-First Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273, which provides for the special treatment of certain pending EB-5 petitions. Pub. L. 107-273 mandated a review of Form I-526 petitions filed by eligible aliens who: (1) had their petitions approved between January 1, 1995 and August 31, 1998, and (2) timely filed a subsequent Form I-829 prior to the November 2, 2002, the date of enactment of this law. In addition, if a timely filed Form I-829 was denied prior to November 2, 2002, Pub. L. 107-273 mandates that the alien must have filed a motion to reopen prior to January 2, 2003 in order to be deemed an eligible alien.

Pub. L. 107-273 also mandates that an eligible alien, who is no longer physically present in the United States, be paroled into the United States when such action is necessary to obtain final determinations on their Form I-526 or Form I-829 petitions. However, Pub. L. 107-273 specifies that legacy INS and today, the Secretary of Homeland Security, shall not parole any alien into the United States (1) who is inadmissible or deportable on any grounds or (2) whose Form I-829 was denied due to a material misrepresentation of fact or information contained in the petition or made by the alien during any interview with the DHS in connection with the adjudication of his or her Form I-829. Under these circumstances, such aliens are not eligible for parole.

Pub. L. 107-273 also requires that, for those cases where the Form I-829 has not already been adjudicated, an initial determination be made on an eligible alien's petition. If the Secretary of Homeland Security determines that the alien has met the job creation and capital investment requirements outlined by this law, and that there is no material misrepresentation with respect to the Form I-829, the Secretary must notify the alien and remove the conditional basis of the alien's status, as well as that of the alien's spouse and children if their status was obtained under section 216A of the Act.

3. Extension of Conditional Resident Status

Pub. L. 107-273 mandates up to two additional reviews of covered EB-5 cases. As a result, USCIS must continue to document the conditional resident status of eligible aliens with pending or denied Form I-829s until the conditional status has been removed or a final order of removal has been issued under section 242(a)(1) of the Act. The following information provided in section (g) and (h) of the EB-5 Memo # 9, pages 13 and 15, respectively, should be considered when adjudicating the extension of conditional resident status for eligible aliens under Pub. L. 107-273.

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If the Form I-829 is pending or it has been denied but no final order of removal has been entered, the district immigration information officer (IIO) must collect the expired conditional Permanent Resident Card and issue either:

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- a temporary I-551 stamp with a 12-month expiration date in the petitioner's unexpired, foreign passport (if the expiration date of the passport is one year or more), or
- if the petitioner is not in possession of an unexpired foreign passport, a Form I-94 (arrival portion) containing a temporary I-551 stamp with a 12-month expiration date and a photograph of the petitioner. **[NOTE: IIO may require petitioner to obtain unexpired passport, if available, prior to issuing temporary I-551 stamp.]**

The IIO must use the same conditional resident status code initially issued to the petitioner and grant the status for an additional 12 months. Documentation of conditional resident status must be issued until a final order of removal is issued. An order of removal is final if a decision is not appealed or, if appealed, when the appeal is dismissed by the Board of Immigration Appeals (BIA).

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Will entrepreneurs/investors remain in status after they file Form I-829?

Under 8 CFR § 216.6(a), upon receipt of a properly filed Form I-829, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition....

Can entrepreneurs/investors travel after filing Form I-829?

Under 8 CFR § 216.6(a)(3), an alien entrepreneur who has filed Form I-829 is authorized to travel outside the United States and return if in possession of appropriate documentation. The regulation at 8 CFR § 211.1(a)(5) authorizes admission if an alien presents an expired Form I-551, Permanent Resident Card, accompanied by a filing receipt issued within the previous 6 months for a Form I-829, if seeking admission or readmission after a temporary absence of less than 1 year. (Some filing receipts may authorize travel for up to 1 year.) **[NOTE: Service Centers may issue a duplicate Form I-829 receipt to facilitate extension of employment and travel authorization for pending cases.]** Waivers from visa requirements may be obtained under 8 CFR § 211.1(b). District offices are authorized to issue:

- (a) a temporary I-551 stamp with a 12-month expiration date in the petitioner's unexpired, foreign passport (if the expiration date of the passport is one year or more), or
- (b) if the petitioner is not in possession of an unexpired foreign passport, a form I-94 (arrival portion) containing a temporary I-551 stamp with a 12-month expiration date and a photograph of

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the petitioner. **[NOTE: IIO may require petitioner to obtain unexpired passport, if available, prior to issuing temporary I-551 stamp.]**

An alien entrepreneur may wish to contact his or her local USCIS district office to discuss the travel planned and to determine the routine procedures of that office for obtaining such necessary travel documentation. If necessary, thirty (30) days before the expiration of the Form I-829 **[NOTE: Also I-551 temporary stamp or card]**, the conditional resident should contact the district office nearest to where he or she is living for such documentation for purposes of travel outside of the United States.

4. Transportation Letters

District Field Offices should coordinate with HQ Field Operations when determining whether eligible aliens (or their dependents) who are currently overseas need to be paroled into the United States as provided under Pub. L. 107-273. HQ Field Operations will coordinate with the Office of International Operations (and associated overseas USCIS Offices) to ensure consistent application of parole decisions and to facilitate the issuance of transportation letters to eligible aliens or their dependents for re-entry into the United States. Once re-admitted, eligible aliens or their dependents will need to contact the District Field Office for temporary evidence of conditional permanent resident status.

Questions regarding this memorandum may be directed through appropriate channels to Service Center Operations or District Field Operations.

Notice

This memorandum is intended solely for guiding USCIS personnel in performance of their professional duties. It is not intended to be, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Attachments