Sponsored by LULAC Council 100LULAC Resolution
Hector M. Flores, Immediate Past President

SECTION 245(i) of the Immigration and Nationality Act as amended

WHEREAS, The League of United Latin American Citizens (LULAC) is committed to protecting the human and civil rights of all immigrants living and working in the United States; and

WHEREAS, action is needed to amend and update section 245(i) of the Immigration and Nationality Act (INA), 8 U.S.C. section 1255(i), PL 103-317 Title V section 506(b), 108 Stat. 1724 (August 26, 1994), PL 106-554, Title XV 114 Stat. 2763 (December 21, 2000); Sections 8 C.F.R. sections 245.10, 1245.10; 146 Cong. Rec. S1123-01 (daily ed. Oct. 27, 2000); 146 Cong. Rec. S11850-52 (daily ed. December 15, 2000); and

WHEREAS, Section 245(i) is a procedural humanitarian provision of the Immigration and Nationality Act which ameliorates the costs of having to travel to the aliens country of origin for his or her interview for lawful permanent residence. The humanitarian rationale of this provision recognizes that the alien's costs of travel may be significant and that the alien may be required to remain in his or her country of origin for many months, hence, away from his or her family and from employment. Section 245(i) allows such a person to apply for adjustment of status in the United States, i.e., to be interviewed by an officer of the U.S. Citizenship and Immigration Service instead of an officer of the U.S. Consulate in the person's country of origin, notwithstanding the fact that s/he entered without inspection, overstayed, or worked without authorization. Section 245(i) last sunset date was April 30, 2001. Therefore, notwithstanding INA section 245(a), or INA 245(c), a person can apply for adjustment of status if s/he paid a penalty fee of $1,000.00 if s/he (and members of his/her family) is the beneficiary of any labor certification or petition under INA section 204 that was filed on or before April 30, 2001; and

WHEREAS, Section 245(i) was added to the Immigration and Nationality Act by Section 506(b), Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, Act of August 26, 1994, Pub. L. No. 103-317, 108 Stat. 1724. *Effective Date, Sunset and Repeal of Sunset*. Under Section 506(c) of said Act as originally enacted, the amendment adding subsection (i) was to take effect on October 1, 1994, and cease to have effect on October 1, 1997. However, following a series of interim amendments, such section sunset date was extended to January 14, 1998; and

WHEREAS, Section 245(i) was revived under the LIFE Act amendments to include any application or petition filed before April 30, 2001 if the person applying was physically present in the United States on December 21, 2000. Eligible persons also included stowaways, crewmen, and visa waiver entrants. Legal Immigration Family Equity (LIFE) Act Amendments of 2000, Title XV of Public Law 106-554, 114 Stat. 2763 (December 21, 2000); and

WHEREAS, certain conflicts arising in the application of section 245(i) before January 14, 1998 and the one extended to sunset on April 30, 2001, have been resolved without recourse to the courts by the U.S. Citizenship and Immigration Service (previously the Immigration and Naturalization Service); and

WHEREAS, an early conflict between section 245(i) and another section of the Immigration and Nationality Act, section 212(a)(6)(A), which makes entrants without inspection or parole, inadmissible, was resolved in favor of these illegal entrants under section 245(i). Legal Opinion, Martin, General Counsel, U.S. Immigration and Naturalization Service, CO 245(i), CO 212(a)(6)(A) (February 19, 1997). Also, the physical presence on or before December 21, 2000 requirement in the most recent enactment of section 245(i) was held to apply only to labor certifications and petitions filed after January 14, 1998 . Memorandum, Cronin, Acting Executive Associate Commissioner, U.S. Immigration and Naturalization Service, HQ 70/23.1-P (January 26, 2001); and

WHEREAS, Some circuit courts offer a different reading of section 245(i) from other circuit courts. For instance, an applicant for adjustment of status under section 245(i) who is inadmissible for section 212((a)(6)(C) and 212(a)(9)(A)-(C) violations may apply for adjustment proceedings if s/he lives in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and eastern and western districts of Washington because the 9th Circuit decided that section 245(i) preceded the inadmissibility grounds of some parts of section 212. *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004) motion to reconsider denied 403 F.3d 1116 (2005). *See also Acosta v. Gonzalez*, 439 F.3d 550 (9th Cir. 2006) relying on *Perez-Gonzalez*, id. Adjustment applicants under section 245(i) are *also* treated the same way by the 10th Circuit court. *Padilla-Caldera v. Gonzalez*, 426 F.3d 1294 (10th Cir. 2005). Therefore, adjustment applicants living in Colorado , Kansas , New Mexico , Oklahoma , Utah , and Wyoming are able to adjust in spite of previous illegal entries and status violations committed before December 21, 2000 , the deadline for physical presence in the United States per the LIFE Act amendments. Everyone else living outside of the jurisdiction of these courts, like Texas and Louisiana, would be unable to have their illegal entry under INA section 212(a)(9)(C) (entry or reentry to the United States after being unlawfully present in the United States for an aggregate period of more than one year) waived under 245(i). A difference of opinion between the 5th Circuit and the 9th as well as the 10th Circuits is causing a huge difference in the way that section 245(i) is applied; and

WHEREAS, the 10th Circuit in *Padilla-Caldera* found that Congress clearly intended to override any application of inadmissibility ground of section 212(9)(C)(i)(I) with the enactment of the LIFE Act amendments as well as section 245(i). The court reasoned, it is improbable that Congress having explicitly allowed applications for adjustment from aliens who have been in the country illegally by requiring INS/USICE to continue to superimpose the requirements of the earlier conflicting statutory provision; and

NOW THEREFORE, BE IT RESOLVED THAT:

1) The revival of section 245(i) would help thousands of individuals who have been unable to travel to their countries of origin for their final interview for lawful permanent residence due to lack of sufficient funds, or lack of time, or because of the demands of their families, especially those with young children, or the demands of their jobs. (A new section 245(i) needs to sunset as of the date of its enactment for those physically present in the United States as of the date of the enactment of section 245(i). In addition, the fingerprinting minimum age should be reduced to 12 years of age.)

2) The U.S. Congress needs to inject uniformity to the application of Section 245(i) in view of current discrepancies that exist in different federal judicial districts of the United States by explicitly waiving grounds of inadmissibility under INA sections 212(a)(6)(A)-(C) and 212(a)(9)(A)-(C). Furthermore, in those cases in which an applicant for adjustment has been removed or deported, a waiver of such grounds in the interest of family unification or, in the alternative, in the national, economic or security interest of the country is in the best interest of a uniform application of section 245(i). In those cases in which an applicant for adjustment has falsely represented himself or herself, or who has conspired for someone to falsely represent himself or herself, to be a U.S. citizen for any purpose or benefit under INA, a waiver of such grounds in the interest of family unification or, in the alternative, in the national, economic or security interest of the country is in the best interest of a uniform application of section 245(i). Because a waiver currently exists in INA section 212(a)(6)(C)(ii) for those who made such a claim before September 30, 1996, this waiver should be updated for those who made such a claim before the date of enactment of a new section 245(i).

Adopted this 14th of July 2007

Rosa Rosales
LULAC National President