

# Client Alert

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## NEWSFLASH: PRESIDENT SIGNS MORE NEW IMMIGRATION PROVISIONS INTO LAW

Ending a budget battle in which immigration issues played a key role, the President today signed appropriations bills into law containing immigration provisions, including some which will have an impact on the business community. The Legal Immigration and Family Equity Act ("LIFE Act") temporarily reauthorizes section 245 (i) of the Immigration and Nationality Act ("INA") until April 30, 2001; provides relief to late amnesty filers and their families; creates a new "V" visa for certain spouses and children of permanent residents; and expands the "K" visa category to include spouses of U.S. citizens. In addition, the new legislation authorizes the INS to establish and collect from business customers a \$1,000 "premium" fee to expedite the processing of employment-based petitions and applications. A brief summary of the new legislation follows:

### **Temporary Restoration of INA §**

**245(i):** In the most time-sensitive provision of the new legislation, the LIFE Act extends the 245 (i) "grandfather" clause from January 14, 1998 to April 30, 2001. It provides that individuals for whom immigrant visa petitions or labor certification applications have been filed by April 30, 2001 may pay an additional \$1,000 fee and eventually adjust status within the U.S., despite the fact that they would otherwise be barred from adjusting due to violations of status (such as failure to maintain valid nonimmigrant status, acceptance of unauthorized employment or entering

the U.S. without inspection). However, individuals for whom immigrant visa petitions or labor certification applications were/are filed after January 14, 1998 but before April 30, 2001 must prove that they were physically present in the U.S. on the date of enactment of the LIFE Act in order to be eligible for Section 245 (i) adjustment of status. This provision is significant since, for many people who are in the United States with status violations, leaving the U.S. would subject them to a three or 10-year bar from reentering the U.S.

### **Adjustment of Status for Late**

**Legalization Class Members:** The legislation permits tens of thousands of individuals who were part of certain class action lawsuits (*CSS v. Meese*, *LULAC v. Reno*, or *INS v. Zambrano*) against the INS challenging its improper handling of the 1986 amnesty program. Qualifying individuals may, among other things, apply for permanent residence (whether or not they are still in the U.S.), a stay of deportation, work authorization and permission to travel abroad while their adjustment of status applications are pending.

### **Protection for Spouses and Children of Late Legalization Applicants:**

The new law provides that qualifying spouses and unmarried children of late legalization class members who are eligible to adjust status under the LIFE Act will receive work authorization in the U.S., parole into the U.S. to obtain the benefits conferred by the LIFE Act

if they are outside the U.S. and significant (but not unlimited) protection from deportation. To qualify, family members must have entered the U.S. before December 1, 1988, must have resided in the U.S. on that date, and must not have been convicted of certain criminal activity, engaged in persecution of others, or be a danger to the community.

**The New "V" Visa:** The legislation creates a new "V" visa, with employment authorization, for spouses and minor children of permanent residents who have been waiting for an immigrant visa for three years following the filing or approval of an immigrant visa petition. The immigrant visa petition, however, must have been filed with the INS as of the date the LIFE Act is signed into law. Applicants for the new "V" visa will be eligible to obtain "V" status without having to leave the U.S., even if they are in the U.S. unlawfully.

**The Expanded "K" Visa:** The legislation permits spouses of U.S. citizens, and minor children accompanying the spouse, to enter the U.S. with work authorization while waiting for approval of an immigrant visa petition on their behalfs. To qualify, the recipient of the "K" visa must be outside the U.S., an immigrant petition must already have been filed on the recipient's behalf, and the "K" visa petition must be filed in the U.S. by the citizen spouse. The "K" visa must be issued by a consulate in the country where the marriage occurred (if the marriage to the U.S. citizen occurred outside the U.S.).

**Premium Processing Fee:** The new provisions authorize the INS to collect a “premium processing” fee of \$1,000 for certain immigrant and nonimmigrant employment-based petitions and applications in order to expedite their adjudication. The provision includes neither

information about which types of cases will be covered under premium processing nor the time-frame for adjudication of premium processing cases. There is very serious concern that such a system will simply result in so-called “expedited” cases being adjudicated within current

timeframes while non-premium cases become even further backlogged. For this reason, PHJ&W attorneys will be working with the INS, the American Immigration Lawyer’s Association and the employer community in an effort to ensure this system is implemented in a way that reflects the true intent of Congress.