DOCUMENT RESUME

ED 320 458 FL 800 123

TITLE Legalization White Paper.
INSTITUTION Consortium on Employment Communication, Long Beach, CA.; National Association of Latino Elected and Appointed Officials Education Fund, Washington, DC.; United States Catholic Conference, Washington, D.C.
PUB DATE Jan 89
NOTE 29p.; This White Paper is also presented by the Alien Rights Law Project of the Washington Lawyers' Committee for Civil Rights under Law, American Immigration Lawyers Association, Chicago Commitee on Immigrant Protection, Mexican-American Legal Defense and Education Fund, and Teachers & Immigrants Aid of Chicago.
PUB TYPE Viewpoints (120)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Adult Basic Education; Citizenship Education; Civics; Federal Regulation; Financial Support; *Immigrants; Language Tests; *Literacy Education; Outreach Programs; *Public Agencies; *Public Policy; State Programs; Testing Problems
IDENTIFIERS *Immigration and Naturalization Service; *Immigration Reform and Control Act 1986

ABSTRACT

The second step of implementation of the legalization program of the Immigration Reform and Control Act of 1986 (IRCA) began on November 7, 1988. This second step is the process by which undocumented immigrants, initially granted temporary residence, may adjust to their status change to permanent resident. Certain aspects of the adjustment are causing difficulties for persons who have applied for permanent residence. The white paper addresses concerns of advocacy groups regarding the implementation of legalization's second step, including: (1) diminished outreach efforts on the part of the Immigration and Naturalization Service (INS); (2) difficulties regarding State Legalization Impact Assistance Grants: (3) the lack of standardization of the INS testing process; (4) confusion regarding financial assistance; (5) the effect of appeals on application for permanent residence; and (6) the use of fee receipts for work authorization. The white paper, presented by advocacy groups, discusses these problems point by point and offers specific recommendations for resolution. (Author/MSE) (Adjunct ERIC Clearinghouse on Literacy Education)

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Legalization White Paper

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This White Paper is presented by the following groups:

ALIEN RIGHTS LAW PROJECT OF THE WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CHICAGO COMMITTEE ON IMMIGRANT PROTECTION

MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATION FUND

NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS

TRAVELERS & IMMIGRANTS AID OF CHICAGO

UNITED STATES CATHOLIC CONFERENCE

CONSORTIUM ON EMPLOYMENT COMMUNICATION, CALIFORNIA STATE -- LONG BEACH

INTRODUCTION

The second step of the implementation of the legalization program of the Immigration Reform and Control Act of 1986 (IRCA) began on November 7, 1988. During the first step, persons who lived in an undocumented status before January 1, 1982, and who met certain other requirements were granted temporary residence in the United States.* The second step of IRCA's legalization program is the process by which those initially granted temporary residence may adjust to permanent residence. Certain aspects of the process of adjustment from temporary to permanent status are causing difficulties for persons who have applied for permanent residence.

This White Paper's purpose is to address some of the key concerns of advocacy groups regarding the implementation of legalization's second step. In particular, the White Paper will discuss the following:

-- Diminished outreach efforts by the Immigration and Naturalization Service (INS)

-- Difficulties regarding State Legalization Impact Assistance Grants (SLIAG)

-- The lack of standardization of the INS testing process

-- Confusion regarding financial assistance

-- The effect of appeals on application for permanent residence

-- The use of fee receipts for work authorization.

The White Paper, presented by the advocacy groups whose names appear on the title page of the document, will discuss these key problems point-by-point and offer recommendations for their resolution. A summary of recommendations appears at the end of the White Paper.

* Note that in addition to the general legalization program, IRCA has different deadlines and requirements for Special Agricultural Workers [SAWs].

OUTREACH

The legalization program initiated by IRCA is the largest legalization program in United States history. It is directed at many individuals who may need assistance in communicating with government offices. Thus, outreach efforts become crucial to successful implementation of this program.

Outreach Point #1: The INS is devoting less funds and effort to outreach during the second phase of legalization than it did during the first phase. While in the first phase the INS' outreach efforts were late in execution, they were nevertheless well-funded, and included a variety of approaches, such as radio and TV announcements, and posters and pamphlets. A similarly diverse outreach effort is desirable in the second phase. Second-phase outreach is further necessitated by the limited focus of outreach during the first phase, which was aimed at communicating the need to apply for temporary residence by May 4, 1988.

During the second phase of legalization, the INS' outreach efforts consist mainly of four mailings directed at temporary residents. As of this date, one mailing has already been completed, and the second, which consists of the actual application packet for permanent residency, is in the process of being mailed out. These first two mailings con-

tained a number of misstatements and omissions. With the two mailings left in which the INS could correct misunderstandings about the second phase, there is concern as to whether the confusion of temporary residents and those trying to assist them will be corrected in a timely manner.

Outreach Recommendation #1: A greater amount of funding and effort should be devoted to outreach Among temporary residents there is widespread ignorance of the need to file an application to adjust to permanent residence, as demonstrated by numerous calls from applicants to immigration hotlines. Many temporary residents believe that they have completed the second step of legalization when they receive their temporary resident card; they misinterpret the application for temporary residence as being the first step, and the receipt of the temporary residence card as the second and final step.

While direct mailings can play an important role in disseminating information, they should not be the sole method of communication. Outreach should take the form of printed and electronic media distributed through as wide a variety of channels as possible. At the very least, flyers could be distributed through local boards of education and English/civics course providers. (Many IRCA applicants will have to take classes on the English language and United States civics to satisfy legalization requirements.) Also,

the INS should with greater frequency hold training sessions for its personnel involved with the second phase of legalization.

Given the low level of English literacy among legalization applicants, the large percentage of Spanish-speaking applicants (over 80% of all applicants are of Latin American origin), and the fact that there are fewer Qualified Designated Entities (QDEs) involved in the second step of legalization, informative material should be translated into Spanish. INS translations could be easily carried out with the assistance of community or IRCA-coalition groups.

To facilitate INS funding for outreach, State Legalization Impact Assistance Grants (SLIAG) regulations could be clarified or amended to allow for the use of SLIAG monies for outreach activities. (SLIAG funds were created by IRCA to assist states in the implementation of the legalization program.) Outreach activities may be carried out through state agencies; through cooperative agreements among the INS, states, community-based organizations, and other interested parties; and through other efforts that states and local groups deem appropriate. Expenditures for SLIAG outreach activities could be classified as SLIAG administrative costs, and a cap of 50,000 dollars or two percent of each state's SLIAG allocation, whichever is greater, could be assessed.

Outreach Point #2: The lack of information on the second phase of legalization is especially acute in the nation's ethnic communities. Wide dissemination of information is especially desirable in these communities, as their residents move frequently, and rely on word-of-mouth information in light of inadequate government outreach. The restriction of community outreach efforts to mailings is unfortunate in the light of reports that INS material sent to legalization applicants frequently does not reach the intended destination.

Outreach Recommendation #2: In place and eager to participate in public information is the nationwide network of ethnic media. Access to this media by the INS would be facilitated by the contacts made during outreach efforts of the first step of legalization. Use of the ethnic media is relatively low-cost as well as efficient, given the respect these sources have in their communities. The INS would benefit from improved contacts with the ethnic media in terms of improved relations between the INS and ethnic communities, and a lowering of the number of undocumented immigrants.

Outreach Point #3: The INS application packet for permanent residency (Form M-306) is confusing.

Outreach Recommendation #3: The application packet for permanent residency contains errors and misleading information. An addendum, "Corrections to Form M-306" is being sent along with the application packet, yet there are six serious deficiencies in the packet that are not addressed by the addendum:

1. The packet currently does not point out that an applicant does not have to demonstrate a knowledge of the English language and United States civics if he or she has obtained a high school diploma or GED certificate, has studied 40 hours of English and civics during the course of a year of full-time study, or has passed an examination created by the Educational Testing Service (ETS) of Princeton, New Jersey, in conjunction with the Legalization Assistance Board.

2. The packet does not accurately describe the exemptions to the English/civics requirement. First, it is not indicated to applicants that it is age as of the date of application for permanent residence that will determine whether they are eligible for the exemption. Second, the exemption for applicants over age 50 who have resided in the United States for at least 20 years is not described. Thirdly, it could be clarified for applicants who claim an age exemption that they do not need to file a waiver form I-690 (Application for Waiver of Grounds of Excludability) in order to qualify for an exemption. Also, the exemption contained in the Technical Corrections Act of 1988 for developmentally disabled individuals is not mentioned.

3. The INS application packet is misleading on another point which causes great confusion among legalization applicants: the precise date on which an individual's one-year application period for permanent residence begins. The packet says that the period begins on the date that temporary residence was granted, but INS regulations state that this period commences at the end

of 18 months after the date that an individual applied for temporary residence. Yet some of the temporary resident cards supplied by the INS carry a date that refers to the issuance of the card rather than the date on which a person applied for temporary residence.

A problem arises because many persons whose temporary residence cards carry the date of card issuance quite logically confuse this date with the date from which they count eighteen months before applying for permanent residence. Such a mistake on the part of the individual could cost him or her the opportunity to apply for permanent residence with sufficient time. It is tragic that an individual who has made a sincere effort to follow all INS regulations could potentially lose an opportunity to become a permanent resident due to a lack of clarification of this problem. It is recommended that a chart be included in the application packet, detailing when a person can begin to apply for permanent residence. This approach could partially resolve this problem.

4. The application packet does not advise applicants that in the case of grounds of exclusion waived at temporary residence, no additional waiver of the same ground of excludability will be required for adjustment to permanent residence.

5. Under nonwaivable grounds of exclusion, the I-698 (Application to Adjust Status from Temporary to Permanent Resident) lists 212(a) (15), "likely to become a public charge." The application packet fails to describe the statutory and regulatory exception to this exclusion for aged, blind or disabled persons who were eligible for Supplemental Security Income (SSI) during the month they were granted temporary residence.

6. Under nonwaivable grounds of exclusion, the I-698 lists Section 212(a) (9) regarding crimes of moral turpitude. However, the form and instructions fail to describe the six month petty offense exception to these grounds of exclusion whereby the Immigration and Nationality Act excuses conviction for one such offense if sentence actually imposed did not exceed 6 months' imprisonment.

The aforementioned clarifications should be the subject of general outreach efforts, as well as being appended to the application packet.

Outreach Point 4: During the first phase of legalization the INS extended a cooperative agreement to qualified designated entities (QDEs) which recognized QDEs as allowable representatives for IRCA applicants and reimbursed them $15.00 for each legalization application they filed. The INS will not extend the cooperative agreement into Phase II of IRCA. Therefore, many QDEs are faced with financial pressures that will force them to close. Furthermore, the lack of an explicit recognition of QDEs as allowable representatives for IRCA applicants during Phase 2 will place QDEs who can stay open in jeopardy of charges of unauthorized practice of law by local authorities.

Outreach Recommendation #4: We recommend that the regulations on Representations and Appearances 8 C.F.R. Sec. 292.1 be amended to include QDEs in good standing as allowable representatives for IRCA permanent residence applicants. This could be accomplished by including in the list of allowable representatives at Sec. 292.1(a) "Qualified Designated Entities (QDEs). A QDE in good standing under Sec. 245a.1(r) is permitted to represent applicants for status under the Immigration Reform and Control Act."

Outreach Point #5: There exists a serious shortage of English/U.S. civics classes in areas that are inaccurately perceived to lack large populations of legalization applicants, particularly suburban and rural areas. For example, 21% of temporary residents in California reside in the suburbs of Los Angeles county. In California there are more than 300 cities in which more than 300 applicants reside. Five cities in California -- Ontario, Pomona, Long Beach, Pasadena and Fontana -- will fail to provide English/U.S. civics instruction to more than 70% of applicants who require classes during the 1988-89 school year.

Outreach Recommendation #5: The INS should inform school districts about where newly legalized individuals reside. The INS and the U.S. Department of Health and Human Services (HHS) should work to dispel the widespread notion that temporary residents are clustered solely in inner city "barrios."

SLIAG FUNDS

State Legalization Impact Assistance Grants (SLIAG) were mandated by IRCA to offset certain costs associated with the legalization program. While SLIAG monies can facilitate the implementation of the legalization program, certain administrative restrictions are hindering distribution and limiting the access to SLIAG funds that legalization applicants are entitled to receive.

SLIAG Point #1: With every state devising its own method of distributing SLIAG funds, a variety of implementation strategies are being used. Some of these practices, such as New Jersey's requirement that all teachers of SLIAG-funded classes possess state certification, and the creation of 100-hour English/civics courses in California, may constrict the availability of class slots for students who need legalization classes. While it is desirable that instruction be offered by state certified teachers, a requirement that teachers be certified may prevent some agencies from opening needed classes. Similarly, while English/civics instruction beyond the minimum 40 hours should be available, the offering of 100 hour courses may intensify the shortage of classroom space for legalization applicants.

SLIAG Recommendation #1: All participants in the implementation of SLIAG distribution -- at federal, state and local levels -- need to be informed that the amnesty program is primarily a legalization rather than an education effort. Education agencies need to implement programs to ensure that all amnesty applicants who need ESL/civics instruction have access to classes. These agencies need to verify that their policies and practices do not become obstacles to applicants. As HHS distributes SLIAG funds it needs to reiterate this point continually in its written communication to the states and in the workshops it holds with state administrators.

SLIAG Point #2: In order to comply with HHS requirements that SLIAG funds be tracked, some states may take part in a program being prepared by HHS by which they will report the social security numbers of their legalization course students to HHS. There is a concern over the confidentiality of these social security numbers. There is further concern that the possession of a social security number may become the basis upon which a legalization applicant receives educational services; not all legalization applicants have been given a new social security number, however.

SLIAG Recommendation #2: HHS, in developing a SLIAG expenditure tracking system based on social security numbers,

should develop a policy regarding the confidentiality of these numbers during the course of interactions between HHS and other federal agencies.

SLIAG Point #3: SLIAG monies may not be used to reimburse vocational education or state job training programs (even those not associated with welfare programs).

SLIAG Recommendation #3: Implementing regulations for the SLIAG program should be amended to allow SLIAG funds to be used for vocational education and state job training programs that are not associated with welfare programs. (Job training programs for IRCA applicants cannot be associated with welfare programs: participants in a welfare-related program would be judged likely to become a public charge and thus be subject to denial of their legalization application.)

SLIAG Point #4: At the local level there is little information on how to apply for SLIAG funds. Class providers often would like to provide legalization courses yet are unsure about how to apply for SLIAG funds.

SLIAG Recommendation #4: IRCA mandated that each state establish a "single point of contact" (SPOC) to receive SLIAG funds from HHS. HHS could stress to these SPOCs the need to hold local workshops on how to access SLIAG funds.

INS TESTERS AND TEST QUESTIONS

Many legalization applicants will choose to comply with IRCA's requirement that they demonstrate an understanding of the English language and United States civics by taking a test at offices of the INS. There are certain areas of concern in regard to the questions used in this test and the training of INS examiners.

Testing Point #1: INS personnel who administer the INS test for permanent residence are afforded wide discretionary power in accepting or rejecting an answer. No record is made of the questions and answers of a test, and the process is subject to the judgment of the examiner.

Testing Recommendation #1: INS personnel involved in the test for permanent residence should receive written instructions explaining that the amnesty program is intended to be a liberal legalization process. This clearly implies that an INS examiner should accept as correct any answer that demonstrates an understanding of an issue. As an illustration of this point, a question that asks the individual to state the capital of the United States should be considered satisfactorily answered by the response "Washington," as well as "Washington, D.C."

Testing Point #2: For the first phase of the implementation of IRCA, the INS opened special Legalization Offices (LOs) to receive applications. The INS has decided to close some of these LOs during the second phase of the legalization program. The closing of LOs has led to situations in which INS personnel from District Offices (DOs) will have contact with legalization applicants for the first time. This District Office personnel may be unfamiliar with the intricacies of the legalization program, or the liberal intent with which it was created.

Testing Recommendation #2: INS personnel at DOs need to possess a thorough knowledge of IRCA. These employees should know about the confidentiality of legalization applications, as well as the eligibility criteria of IRCA. They should be aware of the apprehension that many members of ethnic communities feel toward the INS.

Testing Point #3: The test-giving preparation that INS personnel at LOs and DOs receive is less than the preparation that INS personnel receive for the naturalization exam.

Testing Recommendation #3: INS personnel -- especially those persons at DOs who did not work with the first phase of legalization -- should receive training in test giving

similar to the two-week preparation provided to INS personnel involved with the naturalization exam.

FINANCIAL ASSISTANCE ISSUES

An individual is subject to denial of permanent residence if he or she is considered likely to become a public charge. Precisely what constitutes a "likelihood of becoming a public charge" remains unclear. Even qualified designated entities (QDEs) that assist the community are unsure of how to advise their clientele on this issue, and the temporary resident population is further confused by the need to rely on imprecise, word-of-mouth information. As a result, applicants for permanent residence including pregnant women and aged, blind and disabled persons are often refusing to accept needed assistance for which they are indeed eligible.

Financial Assistance Point #1: There is a serious lack of information on the issue of public charge, particularly in the case of state and local programs. The INS has not provided specific information regarding which state and local programs jeopardize a person's legalization application.

Financial Assistance Recommendation #1: INS should work with advocacy groups to develop materials that address INS' interpretation of the public benefits issue. Publications regarding this issue should be made available to schools and community-based organizations involved in legalization as well as state and local-level offices that provide public

services such as welfare and housing. Publications should make clear the fact that a person can receive permanent residence even though he or she has accepted certain public benefits.

Financial Assistance Point #2: Aged, blind or disabled persons who have accepted public benefits that could disqualify them from permanent residence may apply to have this past history waived from consideration. However, the availability of this waiver is not well known, and persons who are eligible to use it may not be able to do so.

Financial Assistance Recommendation #2: The availability of public benefit waivers for the aged, blind, and disabled needs to be communicated more effectively. A logical vehicle for this information would be the two remaining mailings that the INS will be sending to legalization applicants. INS examiners need to be fully aware of the use of waivers and should be advised to counsel applicants about their eligibility for waivers.

EFFECT OF APPEALS ON APPLICATION FOR PERMANENT RESIDENCE

There are substantial backlogs in the processing of appeals of temporary residence applications. It currently takes six to nine months to receive a decision on an appeal, and the workload is growing.

Appeals Point #1: Because of the increasing backlog of appeals, some individuals who appeal their rejection for temporary residence will not receive a response until their period of adjustment to permanent residence has ended.

Appeals Recommendation #1: For persons whose applications for temporary residence have been successfully appealed, the INS should allow a twelve month period in which to apply for permanent residence. This twelve month period should begin on the date that the individual's temporary residence was approved.

USE OF FEE RECEIPTS FOR WORK AUTHORIZATION

Upon application for temporary residence, the individual was given a fee receipt, which provides important verification of status until a work authorization card is received by mail. The use of the fee receipt as an official document has provoked certain problems.

Fee Receipt Point #1: Employers have received from the INS notification that their employees must have a work authorization card. Many individuals have not yet received this card, and in the interim must use for purposes of identification their fee receipt card, issued upon application for temporary residence. The INS has not made it clear to employers that this card is acceptable in lieu of the work authorization card. Confusion has resulted between employers and employees over this issue.

Fee Receipt Recommendation #1: In the regulations that INS sends to employers, it must be pointed out that fee receipt cards are valid substitutes for work authorization cards.

BRIEF SUMMARY OF RECOMMENDATIONS

Outreach recommendation #1:

A greater amount of funding should be devoted to outreach. Outreach efforts should utilize a much wider variety of media.

Outreach recommendation #2:

Ethnic media should be utilized as a vehicle for INS outreach efforts.

Outreach recommendation #3:

The seriously misleading information in the application packet for permanent residence (Form M-306) should be clarified in general outreach efforts and in addenda to the application packet.

Outreach recommendation #4:

The regulations on Representations and Appearances 8 C.F.R. Sec. 292.1 should be amended to include Qualified Designated Entities (QDEs) in good standing as allowable representatives for IRCA permanent residence applications.

Outreach recommendation #5:

The INS should inform school districts about where newly legalized individuals reside.

SLIAG recommendation #1:

As the U.S. Health and Human Services Department (HHS) distributes SLIAG funds, it needs to reiterate that the amnesty program is primarily a legalization and not an education effort. The policies and practices of educational agencies should not become an obstacle to legalization applicants.

SLIAG recommendation #2:

HHS should develop a policy regarding the confidentiality of social security numbers obtained during the tracking of SLIAG expenditures.

SLIAG recommendation #3:

Implementing regulations for the SLIAG program should be amended to allow SLIAG funds to be used for vocational education and state job training programs that are not associated with welfare programs.

SLIAG recommendation #4:

HHS could stress to the state-level recipients of SLIAG funds the need to hold local workshops on how to access SLIAG funds.

INS testing recommendation #1:

INS personnel involved in testing related to permanent residence applications should eceive written instructions explaining that the amnesty program is intended to be a liberal legalization process, and that a variety of responses to oral test questions are acceptable.

INS testing recommendation #2:

INS District Office personnel who were not involved with the first phase of legalization need to be informed of the confidentiality of legalization applications.

INS testing recommendation #3:

INS personnel giving the test for permanent residence should receive training in test giving similar to the two-week preparation provided to INS personnel involved with the naturalization exam.

Financial assistance recommendation #1:

INS should work with advocacy groups to develop materials that address INS' interpretation of the public benefits issue.

Financial assistance recommendation #2:

The availability of public benefit waivers for the aged, blind, and disabled needs to be communicated more effectively by the INS.

Appeals recommendation #1:

For persons whose applications for temporary residence have been successfully appealed, the INS should allow a twelve month period in which to apply for permanent residence. This twelve month period should begin on the date that the individual's temporary residence was approved.

Fee receipt recommendation #1:

In the regulations that INS sends to employers, it must be pointed out that fee receipt cards are valid substitutes for work authorization cards.