which is necessary for consistency between the regulation and case law, will become effective immediately.

The Department's implementation of this rule as a interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The reasons and necessity for immediate implementation of this interim rule are as follows: (1) To resolve the conflict among the circuits regarding this issue; (2) to respond to the controversy raised by the BIA decisions; (3) to render moot the decisions referred to the Attorney General by the BIA; and (4) to provide a benefit to those aliens who meet its criteria. An abbreviated comment period of 30 days is necessary because of the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, supra, which repeals the provision for section 212(c) relief and substitutes other relief, effective April 1, 1997. This regulation thus will be applicable only in the case of aliens in proceedings and who have filed an application for section 212(c) relief as of the effective date. Nothing in this regulation is intended to affect, nor will it affect, the operation of the Illegal Immigration Reform and Immigrant Responsibility Act, *supra*, to applications for relief pending on the general effective date of that act.

The Attorney General, 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 adverse economic impact on a substantial number of small entities. It will affect certain individual aliens, not small entities. This rule does not constitute significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6(b) of Executive Order 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.3 paragraph (f)(2) is revised to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

* * * * *

(f) * * *

(2) The alien has not maintained lawful domicile in the United States, as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the Act, for at least seven consecutive years immediately preceding the filing of the application;

* * * * *

Dated: November 19, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–29996 Filed 11–22–96; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 245

[INS No. 1373–95]

RIN 1115–AD12

Adjustment of Status to That of Person Admitted for Permanent Residence: Interview

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule published in the Federal Register by the Immigration and Naturalization Service (the Service) on November 2, 1992, which allows the Service to determine when interviews are needed to adjudicate applications for adjustment of status to that of a lawful permanent resident alien. This action is considered necessary to promote more efficient adjudications and convenience to the public.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Gerard Casale, Senior Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Section 245 of the Immigration and Nationality Act (the Act) provides that the status of certain aliens in the United States may be adjusted to that of lawful permanent residents at the discretion of the Attorney General under such regulations as she may prescribe. This process, known as adjustment of status, is governed by section 245 of the Act and 8 CFR part 245. Pursuant to 8 CFR 245.6, an applicant over the age of 14 is generally required to be interviewed by an officer of the Service.

On November 2, 1992, the Service published an interim rule with request for public comments in the Federal Register, at 57 FR 49374–49375. The rule revised 8 CFR 245.6 to allow the Service to conduct interviews only in cases where it determines that an interview is necessary. The rule also eliminated a provision allowing interviews to be waived for persons who had applied before November 20, 1990, for adjustment of status under the Cuban Adjustment Act of November 2, 1996, since that specific provision was no longer needed.

The interim rule became effective on November 2, 1992. Interested persons were invited to submit written comments regarding the interim rule on or before December 2, 1992. The Service received five written comments regarding the rule. Since the closing of the period for public comment, no new factors have affected the stated basis for the interim rule. Meanwhile, significant increases in total application receipts have underscored the need for promoting efficient use of adjudications resources. The following discussion summarizes the issues involved in the interview determination rule, including those raised by the commenters, and the conclusions reached by the Service.

Fraud

Traditionally, the interview of applicants for adjustment of status has been seen as an important element in the Service's ability to detect and deter fraud. On that account, one commenter opposed the change to selective interviewing. Citing reports indicating a significant number of fraudulent marriages connected with petitions for immigration benefits, he concluded that the prospect of an interview deters additional persons from fraudulently claiming eligibility for lawful permanent resident status. The Service shares this interest in avoiding the creation of opportunities for fraud. However, the conversion to select interviewing does not assure any particular applicants that they will not be interviewed and does not limit the Service's ability to interview a particular applicant for permanent resident status. Interviews of a significant number of applicants, particularly those claiming eligibility based on a recent marriage, will continue. In fact, the Service intends to conduct interviews in all cases in which

it is likely that the interview would disclose a basis for ineligibility.

The possibility that fraudulent claims would be increased by the combination of selective interviewing and the direct mailing of adjustment applications to the four service centers was another consideration. A commenter suggested that service center adjudicators, who do not conduct interviews, lack the experience of working on suspect cases and the knowledge of fraud patterns prevalent in particular localities, and therefore would be unable to identify those applications for which an interview is needed. The Service's view is that adjudicators at the service centers have sufficient experience and training in the detection of fraudulent claims to eligibility for immigration benefits and that they will continue to apply this knowledge in determining when interviews are not necessary. For example, when processing petitions to remove the conditions imposed on persons who obtained permanent residency based on a recent marriage during the past several years, the responsibility for assessing the risk of fraud has been assigned to service center adjudicators, who refer suspect cases to local offices for interview. Service center adjudicators also recently handled a large number of applications for adjustment of status under the Chinese Student Protection Act of 1992 in a similar manner.

Impact of the Interview Determination Program on the Adjustment Application Filing Fee

Another issue raised by the interview determination program is whether its efficiencies should result in a reduction in the current fee for adjustment of status applications. One commenter reasoned that a decrease in the number of interviews would result in the Service spending less to process applications for adjustment of status, yielding savings that should be passed to the public in the form of a lower filing fee. However, the Service does not intend that the elimination of some interviews will lessen the total resources devoted to adjudication of applications for adjustment of status; rather, the change will shift some workloads and costs from the district offices to the service centers. Officer time and other resources formerly devoted to interviewing clearly eligible applicants will be dedicated to uncovering fraud in high-risk adjustment of status cases. Also, a previously discussed, a significant number of applicants will continue to be interviewed. Therefore, while the decrease in the percentage of cases interviewed will benefit many applicants, the Service does not expect it to change significantly the overall cost of adjudicating adjustment applications.

Processing Time

As far as maintenance of adjudications standards allows, the Service has an abiding interest in minimizing the time required to complete action on adjustment of status applications. One commenter saw the interim rule as an example of Service efforts to alleviate adjudications backlogs and make the most of existing resources, while another recommended that the Service issue a decision within 90 days of receipt of the application.

Timely adjudication of requests for benefits is a Service goal, and selective waiving of interviews will allow decisions to be issued more quickly in routine and non-suspect adjustment of status cases. The Service has recently introduced Customer Service Standards which aim at completing action on adjustment applications within a shorter time. However, since some Service offices currently have heavier caseloads in relation to available personnel, they may incur backlogs longer than those of other offices. Caseloads are also subject to unanticipated surges in the number or type of applications received. Final processing may be delayed in individual cases for other reasons outside the adjudicator's control, as when additional time is required to await an immigrant visa priority date, the receipt of supplementary information from the applicant, or the completion of an investigation regarding a questionable claim.

Applicant Request for Waiver of Interview

A question whether there would be a procedure allowing an applicant to request a waiver of the interview has been considered. The determination whether an interview is necessary involves evaluation of all relevant factors concerning the application, including any special circumstances. However, the decision will be made on the basis of the evidence of eligibility and not an applicant's desire to avoid an interview. The Service cannot assure an applicant in advance that no interview will be required, since information may be received which discloses the need for interview of an application who initially did not appear to require it. Consequently, the INS will not adopt a procedure to entertain advance requests to waive the interview.

The Selection of Cases

Each adjustment of status application will be reviewed on a case-by-case basis to determine whether an interview is needed. The Service will monitor fraud trends and the use of the interview determination provision to provide guidelines for adjudicators.

Concern was expressed as to how the interview determination decision would be reached, particularly if it would result in interviews being called merely to address minor documentary deficiencies. A minor deficiency is not, in itself, an indicator of fraud. The Service does not plan to interview an applicant solely because he or she neglected to submit a document which can be more easily requested and submitted by mail.

A commenter suggested that the Service adopt a nationwide list of specified adjustment application categories which, in her opinion, presented a low risk of fraud and yet were consuming nearly half of the staff time devoted to adjustment interviews in a large district office; the time freed by waiving interviews of such cases could then be re-directed to fraud deterrence and reduction of the waiting time for processing applications. The Service recognizes that at any point in time there are categories of applications which pose a generally lower risk of fraud than others. However, it does not follow that the rule must be altered on that account. A regulation prescribing fixed categories of applications for which interviews must be waived would hamper the Service's flexibility in adjusting to changes in fraud profiles and caseloads. The existing rule, which neither specifies nor limits the types of adjustment cases on which the interview determination may be made, affords the Service and its adjudicating offices the widest freedom of action to balance local needs and priorities.

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 the rule will not have a significant economic impact on a substantial number of small entities because of the following factors: This rule merely adopts as final an interim rule which has been in effect since November 2, 1992. By removing the interview requirement, the rule has eliminated an inconvenience to a number of individual applicants for adjustment of status who otherwise would have been required to appear in

person at a Service office to be interviewed by an immigration examiner. This rule does not have impact on small entities.

Executive Order 12866

This rule is not 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, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship 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 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 245 which was published at 57 FR 49374–49375 on November 2, 1992, is adopted as a final rule without change.

Dated: October 28, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–29971 Filed 11–22–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505–AA71

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Amendments to interim rule.

SUMMARY: The Department of the Treasury is issuing revisions to the interim regulations for the Bank Enterprise Award (BEA) Program published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996. The BEA Program was authorized by the Community Development Banking and Financial Institutions Act of 1994. The program is designed to encourage insured depository institutions to make equity investments in or otherwise support Community Development Financial Institutions and/or increase lending and other services provided within distressed communities.

DATES: This interim rule is effective November 25, 1996. Comments must be received on or before December 26, 1996.

ADDRESSES: All questions or comments concerning this interim rule should be addressed to the Director, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kirsten S. Moy, Director, Community Development Financial Institutions Fund at (202) 622–8662. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. General

Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Moreover, the Department of the Treasury finds that any economic or other consequences of this interim rule are a direct result of the implementation of statutory provisions.

Administrative Procedures Act

Pursuant to 5 U.S.C. 553(a)(2), these amendments are not subject to the provisions in 5 U.S.C. 553(b) concerning notice and public comment or the delayed effective date provisions of 5 U.S.C. 553(d). Furthermore, the Department for good cause finds that notice and public comment prior to effect are impracticable and contrary to the public interest. These revisions are intended to amend the interim regulations for the BEA Program that were published in the Federal Register on October 19, 1995 and subsequently amended on January 23, 1996 and February 29, 1996. The purpose of the revisions is to give applicants greater flexibility as to the type of instruments that will be considered Equity Investments, reduce the burden associated with reporting certain Eligible Development Activities, and permit applicants that achieved less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of their projected activities to receive a partial, pro-rated award.

Catalog of Federal Financial Assistance Number Bank Enterprise Award Program—21.021.

II. Background

On October 19, 1995, the Department published interim regulations in the Federal Register for the Bank Enterprise Award Program (12 CFR part 1806). These interim regulations were amended pursuant to revisions published in the Federal Register on January 23, 1996 and corrections to these revisions published in the Federal Register on February 29, 1996. Subsequent to the publication of such interim regulations, as amended, the Department has developed policies designed to clarify several existing provisions in the interim regulations. The purpose of these amendments is to give applicants greater flexibility as to the type of instruments that will be considered Equity Investments, reduce the burden associated with reporting certain Eligible Development Activities, and permit applicants that achieved less than 90 percent, as opposed to less than 90 percent but at least 75 percent, of their projected activities to receive a partial, pro-rated award.

III. Bank Enterprise Award Program

Under the Bank Enterprise Award Program (12 CFR Part 1806), the Department will provide awards to selected Applicants that successfully carry out certain community development activities. The following summarizes the amendments to the interim regulations.

Definitions

The term ''Equity Investment'' is amended in Section 1806.103(q) to give Applicants greater flexibility as to the type of instruments that will be considered Equity Investments. An Equity Investment shall be considered new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), a purchase of any type of partnership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an equity investment by the Fund.