If a Form I–129 is filed concurrently with, or was filed prior to, the filing of the Form I–485 and the Form I–129 is still pending, the Form I–129 must be adjudicated before the adjudication of the Form I–485. If the Form I–129 is approved, the beneficiary (applicant of the I–485) will be considered to have maintained status for purposes of § 245(a). Pursuant to earlier policy guidance, the I–485 will then be held in abeyance pending the development of a certification process under INA § 212(a)(5)(C).[1]

If the I–129 is denied and the applicant appears to be otherwise eligible to adjust status, the memo instructs that the applicant must be allowed the opportunity to amend his or her pending I–485 and to request consideration under INA § 245(i). The memo states that pursuant to 8 CFR § 245.10(d), the applicant must be notified in writing of the intent to deny the adjustment application unless Supplement A to Form I–485 and the required additional fee is filed within 30 days of the notice date.

If the applicant has not filed a Form I–129 with (or prior to the adjudication of) the Form I–485, and if he or she appears to be otherwise eligible to adjust status, the memo instructs the Service to send the applicant a modified Intent to Deny. In these cases, the applicant will be given the option either to submit the required Supplement A and additional fee, or to have a completed Form I–129, with fee, filed in his or her behalf to extend H–1A status.

According to the August 21 memo, the Service should inform applicants in these cases that they have either 30 days or until September 30, 1997, whichever is earlier, to respond to the Intent to Deny.

If the applicant chooses the latter of the above two options, the Form I–129 must be adjudicated before any further adjudication of the Form I–485. If the I–129 is approved, the beneficiary (applicant) will be considered to have maintained status for purposes of INA § 245(a). As indicated above, the Service will then hold the I–485 in abeyance, pending the development of a certification process.

If the I–129 is denied and the applicant appears to be otherwise eligible to adjust status, the memo instructs that the Service must send the applicant another Intent to Deny, pursuant only to 8 CFR § 245.10(d), giving him or her the opportunity to amend the pending adjustment application for consideration under § 245(i).

The memo states that in those situations where the INS has inadvertently required the applicant to submit the additional fee under § 245(i), the Service should retain the base filing fee ($130) for the I–485. The Service however, should refund the surcharge portion of the fee paid by adjustment applicants under § 245(i) whose applications were denied solely because they failed to submit an application for an extension of stay.

The memo instructs INS offices to compile a list of those adjustment applicants who are eligible for a refund and to so notify those individuals by letter.

The policy guidance contained in the new memo is effective immediately. ❑

## 7. LSC Finalizes "Kennedy Amendment" Provisions

In 74 Interpreter Releases 787 (May 12, 1997), we reported that the Legal Services Corporation (LSC) had published both final and interim regulations implementing legislation that restricts the use of LSC funds to assist undocumented and other ineligible aliens. The rule outlined which classes are deemed to be ineligible, and provided additional guidance.

The LSC has now finalized the interim portion of that earlier regulation. The new final rule was published in 62 Fed. Reg. 45755–57 (Aug. 29, 1997), and is reproduced in Appendix V of this Release.

As background, an omnibus appropriations bill for fiscal year (FY) 1996 (Pub. L. No. 104–134, 110 Stat. 1321) contained, among other things, the provisions of the FY 1996 appropriations bill for the Departments of Commerce, Justice and State, the judiciary and related agencies. That bill funded the LSC for FY 1996, and imposed additional restrictions on the use of LSC funds.[2] Those restrictions are currently incorporated by reference into the LSC's FY 1997 appropriations act.

The legislation bars the LSC from providing funds to any organization that provides legal assistance to "ineligible aliens." Specifically, an entity may receive LSC funds only if it represents an alien who is

1 See 74 Interpreter Releases 966 (June 16, 1997).

2 See 73 Interpreter Releases 187, 190 (Feb. 12, 1996).

present in the U.S. and is: (1) lawfully admitted for permanent residence; (2) married to a U.S. citizen or is the parent or unmarried child under 21 of such an alien, and has filed an application to adjust to permanent residence; (3) a refugee or asylee; (4) an alien granted withholding of deportation under INA § 243(h); (5) an H–2A agricultural worker as described in § 305 of the Immigration Reform and Control Act of 1986 (relating to certain employment issues for which the alien may be assisted with LSC funds); or (6) an alien granted conditional entry before April 1, 1980 under INA § 203(a)(7) because of fear of persecution.

The LSC published an interim rule in August 1996, to which it received several comments.[1] The April 1997 final rule (the subject of our May 12, 1997 report) incorporated a number of technical and substantive revisions suggested by the commenters, and substantially reorganized portions of the rule to give it a more logical structure. In addition, the final rule incorporated provisions to implement the so-called "Kennedy Amendment," a new statutory provision permitting the use of a recipient's non-LSC funds for legal assistance to otherwise ineligible aliens who are the victims of domestic abuse. Because this provision was added after publication of the interim rule, the LSC published the Kennedy Amendment provisions as interim provisions to the April 1997 final rule, with a period for public comment.

The LSC received two sets of comments to the Kennedy Amendment provisions. After considering the comments, the LSC has revised the definition of "battered or subjected to extreme cruelty" as contained in the Kennedy Amendment provisions, and adopted the remainder of the interim provisions as final.

The new final rule takes effect on September 29, 1997. ❑

## 8. Recent Law Review Articles

The following recent law review articles may be of interest to our readers. Contact the journals directly for reprints:[2]

Adoption

Intercountry adoption and the flight from unwed fathers' rights: whose right is it anyway? by Alexandra Maravel. 48 S.C. L. Rev. 497–575 (1997).

Asylum

The effect of criminal conduct under refugee and asylum status, by Evangeline G. Abriel. 3 Sw. J.L. & Trade Americas 359–372 (1996).

Failure of state protection within the context of the Convention refugee regime with particular reference to gender-related persecution, by Elizabeth Adjin-Tettey. 3 J. Int'l Legal Stud. 53–86 (1997).

International law sources applicable to female genital mutilation: a guide to adjudicators of refugee claims based on a fear of female genital mutilation, by Bernadette Passade Cissé. (35 Colum. J. Transnat'l L. 429–451 (1997).

The new asylum rule: not yet a model of fair procedure, by Philip G. Schrag & Michelle R. Pistone. 11 Geo. Immigr. L.J. 267–302 (1997).

Persecution on account of political opinion—inconsistencies and ambiguities (*Shu-Hao Zhao v. Schiltgen*, No. C 93–3660 CW, 1995 WL 165562, N.D. Cal. Mar. 31, 1995), by Allison D. Sealove. 23 Brook. J. Int'l. L. 309–337 (1997).

United States follows Canadian lead and takes an unequivocal position against female genital mutilation (*In re Fauziya Kasinga*, 35 I.L.M. 1145, 1996), by TiaJuana Jones-Bibbs. 4 Tulsa J. Comp. & Int'l L. 275–304 (1997).

The United States has opened its door to victims of female genital mutilation (*In re Fauziya Kasinga*, Int. Dec. 3278, BIA June 13, 1996), by Mary M. Sheridan. 71 St. John's L. Rev. 433–463 (1997).

Citizenship Issues

Alien donors: the participation of noncitizens in the U.S. campaign finance system, by Bruce D. Brown. 15 Yale L. & Pol'y Rev. 503–552 (1997).

Creating a United States-Mexico political double helix: the Mexican government's proposed Dual Nationality Amendment, by Pablo L. Chavez. 33 Stan. J. Int'l L. 119–151 (1997).

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1 See 73 Interpreter Releases 1224 (Sept. 16, 1996).

2 For our most recent previous listing of law review items, see 74 Interpreter Releases 1010 (June 30, 1997).