

## Appendix I

## Memorandum



C-1588-P

Subject Family Fairness: Guidelines For Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens	Date  FEB 2 1990
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To

From

Regional Commissioners  
 Eastern  
 Northern  
 Southern  
 Western

Office of the  
 Commissioner

On November 13, 1987, the Service implemented guidelines on granting voluntary departure to the ineligible spouses and children of legalized aliens, the so-called "family fairness" policy.

The Service is likely to face the issue of family fairness for several more years, because of the length of time needed for newly legalized aliens to acquire lawful permanent resident status and then to wait for a visa preference number to become available for family members. Accordingly, the Service is clarifying its family fairness policy, to assure uniformity in the granting of voluntary departure and work authorization for the ineligible spouses and children of legalized aliens.

Effective February 14, 1990, the following policy is to be implemented by all district directors in determining the eligibility for voluntary departure of ineligible spouses and children of legalized aliens.

1. Voluntary departure will be granted to the spouse and to unmarried children under 18 years of age, living with the legalized alien, who can establish that they have been residing in the United States since on or before November 6, 1986, if
  - the alien is admissible as an immigrant, except for documentary requirements;
  - the alien has not been convicted of a felony or three misdemeanors committed in the United States;
  - the alien has not assisted in the persecution of any person or persons on account of race, religion,

## Appendix I, continued

- nationality, membership in a particular social group or political opinion.
2. Voluntary departure will be granted for a one-year period to aliens who meet these requirements. Cases will be reviewed on an annual basis thereafter by district directors to determine whether extensions of voluntary departure should be issued.
    - A grant of voluntary departure based on family fairness will be terminated if the legalized family member loses his or her status.
    - A grant of voluntary departure based on family fairness will be terminated if the alien fails to maintain the requirements outlined in Paragraph 1.
    - A grant of voluntary departure issued pursuant to this policy shall not be terminated for the sole reasons that the legalized family member has become a lawful permanent resident.
  3. Documentary evidence must be submitted to establish
    - the family relationship, through marriage certificates for spouses and birth or baptismal certificates for children and
    - residence with the legalized alien, through a sworn affidavit, under penalty of perjury, by the legalized alien.
  4. Work authorization will be granted to aliens who qualify for voluntary departure under Paragraph One and as provided in Paragraph Two.
  5. In the case of a child born after November 6, 1986, no deportation proceedings shall be instituted as long as a parent maintains his or her status as a legalized alien.

The Legalization and Special Agricultural Worker Programs will eventually bring permanent lawful immigration status to nearly 3 million aliens. It is critical that the Service continue to respond to the needs of these aliens and their immediate family members in a consistent and humanitarian manner.

  
GENE MCNARY  
Commissioner