U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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425 I Street NW
Washington, DC 20536

December 2, 2003

MEMORANDUM FOR ALL INTERIM REGIONAL DIRECTORS
ALL INTERIM SERVICE CENTER DIRECTORS
ALL INTERIM DISTRICT DIRECTORS, BCIS

FROM: William R. Yates /s/
Acting Associate Director for Operations
Bureau of Citizenship and Immigration Services

SUBJECT: Extension of Status for Conditional Residents with Pending Forms I-751, Petition to Remove Conditions on Residence

Background

The Immigration Marriage Fraud Amendments of 1986 (IMFA), Pub. L. 99-639 (November 10, 1986), were enacted to combat fraud perpetrated by aliens who marry only to obtain immigration benefits. The IMFA amended the Immigration and Nationality Act by adding a new section 216, which imposes an initial 2-year period of conditional residency on a person who acquired permanent resident status based on a recent marriage. Section 216 also provides a comprehensive procedure by which a conditional resident may have these conditions removed by filing a Form I-751, Petition to Remove Conditions on Residence. Currently, a conditional resident who files a Form I-751 receives a Form I-797, Notice of Action, extending his or her status as a conditional resident for a 1-year period. This Form I-797 also advises the conditional resident that travel and employment are authorized for that 1-year period. Thus, conditional residents with expired Forms I-551, Permanent Resident Cards, may present their expired Form I-551 and their Form I-797 as evidence of their status in the United States. There is no guidance concerning what documentation may be given to a conditional resident who has received this
1-year extension, but whose Form I-751 has not yet been adjudicated. This memorandum provides that guidance.

AILA InfoNet Doc. No. 03120940. (Posted 12/09/03)

Documenting a Conditional Resident's Status

According to the regulations at 8 CFR 216.4(a)(1), "Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition." Thus, any conditional resident who has filed a Form I-751 remains a conditional resident until a decision is made on his or her Form I-751. Such conditional resident is eligible to receive evidence of his or her conditional resident status.

If a conditional resident whose I-551 has expired and whose I-797 has "expired" or is about to "expire" requests documentation of his or her status for travel or employment purposes, the Bureau of Citizenship and Immigration Services (BCIS) officer who is processing this request should first check MFAS. If the Form I-751 is still pending, the BCIS officer should collect the expired Form I-551 and issue either:

- A temporary I-551 stamp with a 12-month expiration date in the conditional resident's unexpired, foreign passport (if the expiration date of the passport is one year or more); or

- If the conditional resident is not in possession of an unexpired foreign passport, a Form I-94 (arrival portion) containing a temporary I-551 stamp with a 12-month expiration date and a photograph of the conditional resident.

BCIS personnel with questions relating to this memorandum should go through appropriate supervisory channels and contact Elizabeth N. Lee via cc:Mail.

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