applicant has been denied Family Unity Program benefits and is in deportation proceedings. The commenters suggest that the reference to judicial review in the interim rule includes the possibility of seeking review before an immigration judge.

The statute does not provide for administrative review of the Service's denial of Family Unity Program benefits. If an alien's application for Family Unity Program benefits is denied, he or she may still request relief from deportation in the form of voluntary departure in a deportation hearing before an immigration judge. Such a request would be made pursuant to section 244 of the Act and would be a separate determination from that made by the Service pursuant to section 301 of the Immigration Act of 1990. An immigration judge's denial of voluntary departure in deportation proceedings could then be appealed to the Board of Immigration Appeals and the Federal circuit court of appeals.

Employment Authorization

Several commenters proposed that the Service apply the same practice to the Family Unity Program as was applied to the Legalization Program and the administrative Family Fairness policy regarding employment authorization, for example, granting interim employment authorization for the time period between the granting of the application and the issuance of the employment authorization document (EAD) at a local Service office. Several commenters suggested that such interim work authorization should be stamped directly onto the receipt notice, with the period of validity to coincide with the EAD appointment date plus 90 days.

The Service's position regarding the issue of providing interim work authorization to Family Unity Program applicants remains unchanged. The Service has determined that a uniform procedure for issuance of EADs is necessary. Further, interim work authorization is less secure and presents enforcement problems. For the above reasons and those set forth in the interim rule, the Service will not authorize interim employment for the period between the granting of an application for Family Unity Program benefits and the issuance of an EAD. Instead, the applicant may apply on Form I–765 for issuance of an EAD, concurrently with Form I–817. To file Form I–765 at a Service Center, the applicant must include two (2) ADIT-style photographs.

Identify Document for Employment Authorization

The interim rule, at 8 CFR 242.6(e)(5), contained the language, ''issued by legitimate agency of the United States or a foreign government,'' when referring to an identity document the alien must present at the time of filing for an application for an EAD. Some commenters expressed concern that the language could be construed too narrowly to preclude State or local government-issued identification documents (whether domestic or foreign), and recommended that the final language of the rule clarify that identification documents will be accepted if they have been issued by smaller scale government sources, provided they are legitimate.

The intent of this requirement is to ensure that a person appearing at the local district office to obtain an EAD establish that he or she is the person granted Family Unity Program benefits before being given the EAD. The final rule clarifies this point.

Reference on Forms I–688B and I–551

One commenter requested that the Employment Authorization Card, Form I–688B, and the Alien Registration Receipt Card, Form I–551, include a reference to section 301 of IMMACT 90 to assist in identifying participants in this program.

The Form I–688B does have a reference to the Family Unity Program. Section 274a.12(a)(13) is used exclusively for the Family Unity Program. The Form I–551 reflects the section of law under which the alien immigrated but does not directly indicate the alien's previous participation in the Family Unity Program.

Continuing Relationship Requirement

One commenter requested a clarification regarding the continuing relationship requirement, specifically the definitions of ''child'' and ''spouse.''

The definition of ''child'' is the same as is defined in section 101(b)(1) of the Act, with the exception that the alien will not lose eligibility for the Family Unity Program by virtue of having attained the age of 21 after May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The definition of ''spouse'' includes the term as described in section 101(a)(35) of the Act. The term ''spouse'' is also described in decisions relating to the petitioning process for sections 201(b) and 203(a)(2) of the Act. There is no special definition of spouse associated with this rule.

In the interim rule, at § 242.6(c)(1)(ii), an eligible immigrant is required to also be eligible for family-sponsored second preference immigrant status under section 203(a)(2) of the Act *based on the same relationship*. One commenter believed that the ''based on the same relationship'' phrase should not be included in the promulgation of final regulations and that marital status on May 5, 1988, and not any time thereafter, be the relevant determination of eligibility. The commenter concluded that the disqualification is inconsistent with the purposes of the Family Unity Program.

Pursuant to section 301 paragraphs (a) and (b)(1) of the Immigration Act of 1990, the required relationship to a legalized alien must have existed on May 5, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 IMMACT 90, or as of December 1, 1988, in the case of a relationship to a legalized alien described in subsection (b)(2)(A). The issue is whether that relationship must continue in order for eligibility to continue, or whether the alien granted benefits under the Family Unity Program should be allowed to retain those benefits even if the required relationship changes.

The purpose of the Family Unity Program is to provide a transition for specific family members of legalized aliens to family-sponsored second preference immigrant status. If benefits under the Family Unity Program were retained even after a required relationship ended by marriage, divorce, or death, and the person became ineligible for family-sponsored second preference classification, the alien could potentially remain in the Family Unity Program without a means to become a permanent resident. This would go far beyond Congress' intent for the program and would be inconsistent with section 205 of the Act.

In essence, this regulation applies the same rules to the Family Unity Program which are applicable to persons with approved family-sponsored immigrant petitions in similar circumstances. If a marriage to a petitioner ends, or the unmarried son or daughter of a lawful permanent resident petitioner marries, approval of an immigrant petition based upon that relationship is automatically revoked, and that petition may no longer be used as a basis for immigration.