''(C) in the case of humanitarian or national interest reasons in individual cases.

''(d) TRANSIT WITHOUT VISA PROGRAM.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act [8 U.S.C. 1182(d)(4)(C)] until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.''

[Amendment by Pub. L. 110–161, § 545, to section 7209 of Pub. L. 108–458, set out above, was executed to reflect the probable intent of Congress, notwithstanding errors in the directory language.]

EX. ORD. NO. 12172. DELEGATION OF AUTHORITY OF PRESIDENT TO SECRETARY OF STATE AND ATTORNEY GENERAL RESPECTING ENTRY OF IRANIAN ALIENS INTO THE UNITED STATES

Ex. Ord. No. 12172, Nov. 26, 1979, 44 F.R. 67947, as amended by Ex. Ord. No. 12206, Apr. 7, 1980, 45 F.R. 24101, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States, including the Immigration and Nationality Act, as amended [this chapter], 8 USC 1185 and 3 USC 301, it is hereby ordered as follows:

Section 1–101. Delegation of Authority. The Secretary of State and the Attorney General are hereby designated and empowered to exercise in respect of Iranians the authority conferred upon the President by section 215(a)(1) of the Act of June 27, 1952 (8 USC 1185), to prescribe limitations and exceptions on the rules and regulations governing the entry of aliens into the United States.

Section 1–102. Effective Date. This order is effective immediately.

JIMMY CARTER.

EX. ORD. NO. 13323. ASSIGNMENT OF FUNCTIONS RELATING TO ARRIVALS IN AND DEPARTURES FROM THE UNITED STATES

Ex. Ord. No. 13323, Dec. 30, 2003, 69 F.R. 241, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 215 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1185), and section 301 of title 3, United States Code, and to strengthen the national security of the United States through procedures and systems to manage and control the arrival and departure of persons from the United States, it is hereby ordered as follows:

SECTION 1. *Functions of the Secretary of Homeland Security*. The Secretary of Homeland Security is assigned the functions of the President under section 215(a) of the INA with respect to persons other than citizens of the United States. In exercising these functions, the Secretary of Homeland Security shall not issue, amend, or revoke any rules, regulations, or orders without first obtaining the concurrence of the Secretary of State.

SEC. 2. *Functions of the Secretary of State*. The Secretary of State is assigned the functions of the President under section 215(a) and (b) of the INA with respect to citizens of the United States, including those functions concerning United States passports. In addition, the Secretary may amend or revoke part 46 of title 22, Code of Federal Regulations, which concern persons other than citizens of the United States. In exercising these functions, the Secretary of State shall not issue, amend, or revoke any rules, regulations, or orders without first consulting with the Secretary of Homeland Security.

SEC. 3. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH.

§ 1186. Transferred

CODIFICATION

Section, act June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Nov. 6, 1986, Pub. L. 99–603, title III, § 301(c), 100 Stat. 3411, which related to admission of temporary H–2A workers, was renumbered § 218 by Pub. L. 100–525, § 2(*l*)(2), Oct. 24, 1988, 102 Stat. 2612, and transferred to section 1188 of this title.

§ 1186a. Conditional permanent resident status for certain alien spouses and sons and daughters

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien spouse (as defined in subsection (g)(1) of this section) and an alien son or daughter (as defined in subsection (g)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) of this section to have the conditional basis of such status removed.

(B) At time of required petition

In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsections[1] (c)(1) of this section.

(C) Effect of failure to provide notice

The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

(b) Termination of status if finding that qualifying marriage improper

(1) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

(A) the qualifying marriage—

(i) was entered into for the purpose of procuring an alien's admission as an immigrant, or

(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

[1] So in original. Probably should be ''subsection''.

(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien;

the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

(2) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

(c) Requirements of timely petition and interview for removal of condition

(1) In general

In order for the conditional basis established under subsection (a) of this section for an alien spouse or an alien son or daughter to be removed—

(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2) of this section, a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1) of this section, and

(B) in accordance with subsection (d)(3) of this section, the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1) of this section.

(2) Termination of permanent resident status for failure to file petition or have personal interview

(A) In general

In the case of an alien with permanent resident status on a conditional basis under subsection (a) of this section, if—

(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

(B) Hearing in removal proceeding

In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

(3) Determination after petition and interview

(A) In general

If—

(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of the interview, as to whether the facts and information described in subsection (d)(1) of this section and alleged in the petition are true with respect to the qualifying marriage.

(B) Removal of conditional basis if favorable determination

If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(C) Termination if adverse determination

If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

(D) Hearing in removal proceeding

Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to remove the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) of this section and alleged in the petition are not true with respect to the qualifying marriage.

(4) Hardship waiver

The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

(A) extreme hardship would result if such alien is removed,

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1), or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident par-

ent and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General. The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain the following facts and information:

(A) Statement of proper marriage and petitioning process

The facts are that—

(i) the qualifying marriage—

(I) was entered into in accordance with the laws of the place where the marriage took place,

(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

(III) was not entered into for the purpose of procuring an alien's admission as an immigrant; and

(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p)[2] of section 1184 of this title with respect to the alien spouse or alien son or daughter.

(B) Statement of additional information

The information is a statement of—

(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a) of this section, and

(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

(2) Period for filing petition

(A) 90-day period before second anniversary

Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) of this section must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

(B) Date petitions for good cause

Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

(C) Filing of petitions during removal

In the case of an alien who is the subject of removal hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such removal proceedings against an alien pending the filing of the petition under subparagraph (B).

(3) Personal interview

The interview under subsection (c)(1)(B) of this section shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) of this section and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

(e) Treatment of period for purposes of naturalization

For purposes of subchapter III of this chapter, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(f) Treatment of certain waivers

In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 1182 of this title of certain grounds of inadmissibility, such waiver terminates upon the termination of such permanent residence status under this section.

(g) Definitions

In this section:

(1) The term ''alien spouse'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

(A) as an immediate relative (described in section 1151(b) of this title) as the spouse of a citizen of the United States,

(B) under section 1184(d) of this title as the fiancee or fiance of a citizen of the United States, or

(C) under section 1153(a)(2) of this title as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 1153(d) of this title.

(2) The term ''alien son or daughter'' means an alien who obtains the status of an alien

[2] See References in Text note below.

lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

(3) The term ''qualifying marriage'' means the marriage described to in paragraph (1).

(4) The term ''petitioning spouse'' means the spouse of a qualifying marriage, other than the alien.

(June 27, 1952, ch. 477, title II, ch. 2, § 216, as added Pub. L. 99–639, § 2(a), Nov. 10, 1986, 100 Stat. 3537; amended Pub. L. 100–525, § 7(a), Oct. 24, 1988, 102 Stat. 2616; Pub. L. 101–649, title VII, § 701(a), Nov. 29, 1990, 104 Stat. 5085; Pub. L. 102–232, title III, § 302(e)(8)(B), Dec. 12, 1991, 105 Stat. 1746; Pub. L. 103–322, title IV, § 40702(a), Sept. 13, 1994, 108 Stat. 1955; Pub. L. 104–208, div. C, title III, § 308(d)(4)(E), (e)(7), (f)(1)(I), (J), Sept. 30, 1996, 110 Stat. 3009–618, 3009–620, 3009–621; Pub. L. 106–553, § 1(a)(2) [title XI, § 1103(c)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A–145.)

REFERENCES IN TEXT

Subsection (p) of section 1184 of this title, referred to in subsec. (d)(1)(A)(ii), was redesignated subsec. (r) of section 1184 by Pub. L. 108–193, § 8(a)(3), Dec. 19, 2003, 117 Stat. 2886.

CODIFICATION

Another section 216 of act June 27, 1952, was renumbered section 218 and is classified to section 1188 of this title.

AMENDMENTS

2000—Subsecs. (b)(1)(B), (d)(1)(A)(ii). Pub. L. 106–553 substituted ''section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title'' for ''section 1154(a) or 1184(d) of this title''.

1996—Subsec. (b)(1)(A)(i). Pub. L. 104–208, § 308(f)(1)(I), substituted ''admission'' for ''entry''.

Subsec. (b)(2). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (c)(2)(B). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and text.

Subsec. (c)(3)(D). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

Subsec. (c)(4)(A). Pub. L. 104–208, § 308(e)(7), substituted ''removed'' for ''deported''.

Subsec. (d)(1)(A)(i)(III). Pub. L. 104–208, § 308(f)(1)(J), substituted ''admission'' for ''entry''.

Subsec. (d)(2)(C). Pub. L. 104–208, § 308(e)(7), substituted ''removal'' for ''deportation'' wherever appearing in heading and text.

Subsec. (f). Pub. L. 104–208, § 308(d)(4)(E), substituted ''inadmissibility'' for ''exclusion''.

1994—Subsec. (c)(4). Pub. L. 103–322 inserted after second sentence ''In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.''

1991—Subsec. (g)(1). Pub. L. 102–232 substituted ''section 1153(d)'' for ''section 1153(a)(8)'' in closing provisions.

1990—Subsec. (c)(4). Pub. L. 101–649 struck out ''or'' at end of subpar. (A), struck out ''by the alien spouse for good cause'' after ''death of the spouse)'' and substituted '', or'' for period at end of subpar. (B), added subpar. (C), and inserted at end ''The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child.''

1988—Pub. L. 100–525, § 7(a)(1), made technical amendment to directory language of Pub. L. 99–639, § 2(a), which enacted this section.

Subsec. (c)(3)(A). Pub. L. 100–525, § 7(a)(2), substituted ''90 days'' for ''90-days''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective Dec. 21, 2000, and applicable to alien who is beneficiary of classification petition filed under section 1154 of this title before, on, or after Dec. 21, 2000, see section 1(a)(2) [title XI, § 1103(d)] of Pub. L. 106–553, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 40702(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994] and shall apply to applications made before, on, or after such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(e)(8) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 162(e) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 701(b) of Pub. L. 101–649 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to marriages entered into before, on, or after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–525 effective as if included in enactment of Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639, see section 7(d) of Pub. L. 100–525, set out as a note under section 1182 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1186b. Conditional permanent resident status for certain alien entrepreneurs, spouses, and children

(a) In general

(1) Conditional basis for status

Notwithstanding any other provision of this chapter, an alien entrepreneur (as defined in subsection (f)(1) of this section), alien spouse, and alien child (as defined in subsection (f)(2) of this section) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

(2) Notice of requirements

(A) At time of obtaining permanent residence

At the time an alien entrepreneur, alien spouse, or alien child obtains permanent resident status on a conditional basis under