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

paragraph (1), the Attorney General shall provide for notice to such an entrepreneur, spouse, or child 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 an entrepreneur, spouse, or child, at or about the beginning of the 90-day period described in subsection (d)(2)(A) of this section, of the requirements of subsection (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 an entrepreneur, spouse, or child.

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

(1) In general

In the case of an alien entrepreneur 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 investment in the commercial enterprise was intended solely as a means of evading the immigration laws of the United States,

(B)(i) the alien did not invest, or was not actively in the process of investing, the requisite capital; or

(ii) the alien was not sustaining the actions described in clause (i) throughout the period of the alien's residence in the United States; or

(C) the alien was otherwise not conforming to the requirements of section 1153(b)(5) of this title,

then the Attorney General shall so notify the alien involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (and the alien spouse and alien child) 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 entrepreneur, alien spouse, or alien child to be removed—

(A) the alien entrepreneur 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 entrepreneur 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 entrepreneur fails to appear at the interview described in paragraph (1)(B) (if required under subsection (d)(3) of this section),

the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under this section or section 1186a of this title) 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 entrepreneur appears at any interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90 days of the date of the such filing[1] or interview (whichever is later), 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 commercial enterprise.

(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 alien involved and shall remove the conditional basis of the alien's status effective as of the second anniversary of the alien's lawful admission for permanent residence.

[1] So in original.

(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 alien involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien entrepreneur, alien spouse, or alien child 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 commercial enterprise.

(d) Details of petition and interview

(1) Contents of petition

Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that the alien—

(A)(i) invested, or is actively in the process of investing, the requisite capital; and

(ii) sustained the actions described in clause (i) throughout the period of the alien's residence in the United States; and

(B) is otherwise conforming to the requirements of section 1153(b)(5) of this title.

(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 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) Definitions

In this section:

(1) The term ''alien entrepreneur'' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) under section 1153(b)(5) of this title.

(2) The term ''alien spouse'' and the term ''alien child'' mean an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the spouse or child, respectively, of an alien entrepreneur.

(3) The term ''commercial enterprise'' includes a limited partnership.

(June 27, 1952, ch. 477, title II, ch. 2, § 216A, as added Pub. L. 101–649, title I, § 121(b)(1), Nov. 29, 1990, 104 Stat. 4990; amended Pub. L. 102–232, title III, § 302(b)(3), Dec. 12, 1991, 105 Stat. 1743; Pub. L. 104–208, div. C, title III, § 308(e)(8), Sept. 30, 1996, 110 Stat. 3009–620; Pub. L. 107–273, div. C, title I, § 11036(b), Nov. 2, 2002, 116 Stat. 1847.)

AMENDMENTS

2002—Subsec. (b)(1)(A). Pub. L. 107–273, § 11036(b)(1)(A), substituted ''investment in'' for ''establishment of''.

Subsec. (b)(1)(B). Pub. L. 107–273, § 11036(b)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) a commercial enterprise was not established by the alien,

''(ii) the alien did not invest or was not actively in the process of investing the requisite capital; or

''(iii) the alien was not sustaining the actions described in clause (i) or (ii) throughout the period of the alien's residence in the United States, or''.

Subsec. (d)(1). Pub. L. 107–273, § 11036(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each petition under subsection (c)(1)(A) of this section shall contain facts and information demonstrating that—

''(A) a commercial enterprise was established by the alien;

''(B) the alien invested or was actively in the process of investing the requisite capital; and

''(C) the alien sustained the actions described in subparagraphs (A) and (B) throughout the period of the alien's residence in the United States.''

Subsec. (f)(3). Pub. L. 107–273, § 11036(b)(3), added par. (3).

1996—Subsec. (b)(2). Pub. L. 104–208 substituted ''removal'' for ''deportation'' in heading and ''remove'' for ''deport'' in text.

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

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

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

1991—Subsec. (c)(2)(A). Pub. L. 102–232, § 302(b)(3)(A), in closing provisions inserted parenthetical provision relating to alien's spouse and children.

Subsecs. (c)(3)(B), (d)(2)(A). Pub. L. 102–232, § 302(b)(3)(B), struck out ''obtaining the status of'' before ''lawful admission''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–273 effective Nov. 2, 2002 and applicable to aliens having certain petitions pending under this section or section 1154 of this title on or after Nov. 2, 2002, see section 11036(c) of Pub. L. 107–273, set out as a note under section 1153 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 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as an Effective Date of 1990 Amendment note under section 1101 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.

IMMIGRATION BENEFITS

Pub. L. 107–273, div. C, title I, §§ 11031–11034, Nov. 2, 2002, 116 Stat. 1837–1846, provided that:

''SEC. 11031. REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

''(a) IN GENERAL.—In lieu of the provisions of section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)), subsection (c) shall apply in the case of an eligible alien described in subsection (b)(1).

''(b) ELIGIBLE ALIENS DESCRIBED.—

''(1) IN GENERAL.—An alien is an eligible alien described in this subsection if the alien—

''(A) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

''(B) pursuant to such approval, obtained the status of an alien entrepreneur with permanent resident status on a conditional basis described in section 216A of such Act (8 U.S.C. 1186b); and

''(C) timely filed, in accordance with section 216A(c)(1)(A) of such Act (8 U.S.C. 1186b(c)(1)(A)) and before the date of the enactment of this Act [Nov. 2, 2002], a petition requesting the removal of such conditional basis.

''(2) REOPENING PETITIONS PREVIOUSLY DENIED.—

''(A) IN GENERAL.—In the case of a petition described in paragraph (1)(C) that was denied under section 216A(c)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)(C)) before the date of the enactment of this Act, upon a motion to reopen such petition filed by the eligible alien not later than 60 days after such date, the Attorney General shall make determinations on such petition pursuant to subsection (c).

''(B) PETITIONERS ABROAD.—In the case of such an eligible alien who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain the determinations under subsection (c), unless the Attorney General finds that—

''(i) the alien is inadmissible or deportable on any ground; or

''(ii) the petition described in paragraph (1)(C) was denied on the ground that it contains a material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise.

''(C) DEPORTATION OR REMOVAL PROCEEDINGS.—In the case of such an eligible alien who was placed in deportation or removal proceedings by reason of the denial of the petition described in paragraph (1)(C), a motion to reopen filed under subparagraph (A) shall be treated as a motion to reopen such proceedings. The Attorney General shall grant such motion notwithstanding any time and number limitations imposed by law on motions to reopen such proceedings, except that the scope of any proceeding reopened on this basis shall be limited to whether any order of deportation or removal should be vacated, and the alien granted the status of an alien lawfully admitted for permanent residence (unconditionally or on a conditional basis), by reason of the determinations made under subsection (c). An alien who is inadmissible or deportable on any ground shall not be granted such status, except that this prohibition shall not apply to an alien who has been paroled into the United States under subparagraph (B).

''(c) DETERMINATIONS ON PETITIONS.—

''(1) INITIAL DETERMINATION.—

''(A) IN GENERAL.—With respect to each eligible alien described in subsection (b)(1), the Attorney General shall make a determination, not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002], whether—

''(i) the petition described in subsection (b)(1)(C) contains any material misrepresentation in the facts and information described in section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) and alleged in the petition with respect to a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation);

''(ii) subject to subparagraphs (B) and (C), such enterprise created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on any of the dates described in subparagraph (D); and

''(iii) on any of the dates described in subparagraph (D), the alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

''(B) INVESTMENT UNDER PILOT IMMIGRATION PROGRAM.—For purposes of subparagraph (A)(ii), an investment that satisfies the requirements of section 610(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), as in effect on the date of the enactment of this Act [Nov. 2, 2002], shall be deemed to satisfy the requirements of such subparagraph.

''(C) EXCEPTION FOR TROUBLED BUSINESSES.—In the case of an eligible alien who has made a capital in-

vestment in a troubled business (as defined in 8 CFR 204.6(e), as in effect on the date of the enactment of this Act), in lieu of the determination under subparagraph (A)(ii), the Attorney General shall determine whether the number of employees of the business, as measured on any of the dates described in subparagraph (D), is at no less than the pre-investment level.

''(D) DATES.—The dates described in this subparagraph are the following:

''(i) The date on which the petition described in subsection (b)(1)(C) is filed.

''(ii) 6 months after the date described in clause (i).

''(iii) The date on which the determination under subparagraph (A) or (C) is made.

''(E) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (A), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

''(F) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

''(i) NOTICE.—If the Attorney General renders an adverse determination with respect to clause (i), (ii), or (iii) of subparagraph (A), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the alien's lawful admission for permanent residence.

''(ii) CONTINUATION OF CONDITIONAL BASIS IF CERTAIN ADVERSE DETERMINATIONS.—If the Attorney General renders an adverse determination with respect to clause (ii) or (iii) of subparagraph (A), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) for a 2-year period.

''(iii) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General renders an adverse determination with respect to subparagraph (A)(i), and the eligible alien's rebuttal does not cause the Attorney General to reverse such determination, the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(iv) ADMINISTRATIVE AND JUDICIAL REVIEW.—An alien may seek administrative review of an adverse determination made under subparagraph (A) by filing a petition for such review with the Board of Immigration Appeals. If the Board of Immigration Appeals denies the petition, the alien may seek judicial review. The procedures for judicial review under this clause shall be the same as the procedures for judicial review of a final order of removal under section 242(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(1)). During the period in which an administrative or judicial appeal under this clause is pending, the Attorney General shall continue the conditional basis of the alien's permanent resident status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(2) SECOND DETERMINATION.—

''(A) AUTHORIZATION TO CONSIDER INVESTMENTS IN OTHER COMMERCIAL ENTERPRISES.—In determining under this paragraph whether to remove a conditional basis continued under paragraph (1)(F)(ii) with respect to an alien, the Attorney General shall consider any capital investment made by the alien in a commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation), in the United States, regardless of whether that investment was made before or after the determinations under paragraph (1) and regardless of whether the commercial enterprise is the same as that considered in the determinations under such paragraph, if facts and information with respect to the investment and the enterprise are included in the petition submitted under subparagraph (B).

''(B) PETITION.—In order for a conditional basis continued under paragraph (1)(F)(ii) for an eligible alien (and the alien's spouse and children) to be removed, the alien must submit to the Attorney General, during the period described in subparagraph (C), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) which the alien desires to have considered under this paragraph, regardless of whether such enterprise was created before or after the determinations made under paragraph (1).

''(C) PERIOD FOR FILING PETITION.—

''(i) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in clause (ii), the petition under subparagraph (B) must be filed during the 90-day period before the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) 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 clause (i).

''(D) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION.—

''(i) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under paragraph (1)(F)(ii), if no petition is filed with respect to the alien in accordance with subparagraph (B), the Attorney General shall terminate the permanent resident status of the alien (and the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) HEARING IN REMOVAL PROCEEDING.—In any removal proceeding with respect to an alien whose permanent resident status is terminated

under clause (i), the burden of proof shall be on the alien to establish compliance with subparagraph (B).

''(E) DETERMINATIONS AFTER PETITION.—If a petition is filed by an eligible alien in accordance with subparagraph (B), the Attorney General shall make a determination, within 90 days of the date of such filing, whether—

''(i) the petition contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in such petition;

''(ii) all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the eligible alien and the alien's spouse, sons, or daughters), and those jobs exist on the date on which the determination is made, except that—

''(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(ii);

''(II) the provisions of subparagraphs (B) and (C) of paragraph (1) shall apply to a determination under this clause in the same manner as they apply to a determination under paragraph (1)(A)(ii); and

''(III) if the Attorney General determined under paragraph (1)(A)(ii) that any jobs satisfying the requirement of such paragraph were created, the number of those jobs shall be subtracted from the number of jobs otherwise needed to satisfy the requirement of this clause; and

''(iii) considering all such enterprises together, on the date on which the determination is made, the eligible alien is in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), except that—

''(I) this clause shall apply only if the Attorney General made an adverse determination with respect to the eligible alien under paragraph (1)(A)(iii); and

''(II) if the Attorney General determined under paragraph (1)(A)(iii) that any capital amount was invested that could be credited towards compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)), such amount shall be subtracted from the amount of capital otherwise needed to satisfy the requirement of this clause.

''(F) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General renders an affirmative determination with respect to clauses (ii) and (iii) of subparagraph (E), and if the Attorney General renders a negative determination with respect to clause (i) of such subparagraph, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(G) REQUIREMENTS RELATING TO ADVERSE DETERMINATIONS.—

''(i) NOTICE.—If the Attorney General renders an adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved. The notice shall be in writing and shall state the factual basis for any adverse determination. The Attorney General shall provide the alien with an opportunity to submit evidence to rebut any adverse determination. If the Attorney General reverses all adverse determinations pursuant to such rebuttal, the Attorney General shall so notify the alien involved and shall remove the conditional basis of the alien's status (and that of the alien's spouse and children if it was obtained under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)) effective as of the second anniversary of the continuation, under paragraph (1)(F)(ii), of the conditional basis of the alien's lawful admission for permanent residence.

''(ii) TERMINATION IF ADVERSE DETERMINATION.—If the eligible alien's rebuttal does not cause the Attorney General to reverse each adverse determination under subparagraph (E), the Attorney General shall so notify the alien involved and, subject to subsection (d), shall terminate the permanent resident status of the alien (and that of the alien's spouse and children if it was obtained on a conditional basis under section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b)).

''(d) HEARING IN REMOVAL PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1)(F)(iii) or (2)(G)(ii) of subsection (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.

''(e) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who obtained the status of an alien lawfully admitted for permanent residence on a conditional basis before the date of the enactment of this Act [Nov. 2, 2002] by virtue of being the child of an eligible alien described in subsection (b)(1), the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after obtaining such status.

''(f) DEFINITION OF FULL-TIME.—For purposes of this section, the term 'full-time' means a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

''SEC. 11032. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN.

''(a) IN GENERAL.—With respect to each eligible alien described in subsection (b), the Attorney General or the Secretary of State shall approve the application described in subsection (b)(2) and grant the alien (and any spouse or child of the alien, if the spouse or child is eligible to receive a visa under section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d))) the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216A of such Act (8 U.S.C. 1186b). Such application shall be approved not later than 180 days after the date of the enactment of this Act [Nov. 2, 2002].

''(b) ELIGIBLE ALIENS DESCRIBED.—An alien is an eligible alien described in this subsection if the alien—

''(1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

''(2) pursuant to such approval, timely filed before the date of the enactment of this Act [Nov. 2, 2002] an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and

''(3) is not inadmissible or deportable on any ground.

''(c) TREATMENT OF CERTAIN APPLICATIONS.—

''(1) REVOCATION OF APPROVAL OF PETITIONS.—If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was

based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

''(2) APPLICATIONS NO LONGER PENDING.—

''(A) IN GENERAL.—If an application described in subsection (b)(2) is not pending on the date of the enactment of this Act [Nov. 2, 2002], the Attorney General shall disregard the circumstances leading to such lack of pendency and treat it as reopened, if such lack of pendency is due to a determination that the alien—

''(i) failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)); or

''(ii) departed the United States without advance parole.

''(B) APPLICANTS ABROAD.—In the case of an eligible alien who filed an application for adjustment of status described in subsection (b)(2), but who is no longer physically present in the United States, the Attorney General shall establish a process under which the alien may be paroled into the United States if necessary in order to obtain adjustment of status under this section.

''(d) RECORDATION OF DATE; REDUCTION OF NUMBERS.—Upon the approval of an application under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence on a conditional basis as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1151(d) and 1153(b)(5)) for the fiscal year then current.

''(e) REMOVAL OF CONDITIONAL BASIS.—

''(1) PETITION.—In order for a conditional basis established under this section for an alien (and the alien's spouse and children) to be removed, the alien must satisfy the requirements of section 216A(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)), including the submission of a petition in accordance with subparagraph (A) of such section. Such petition may include the facts and information described in subparagraphs (A) and (B) of section 216A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)) with respect to any commercial enterprise (regardless of whether such enterprise is a limited partnership and regardless of whether the alien entered the enterprise after its formation) in the United States in which the alien has made a capital investment at any time.

''(2) DETERMINATION.—In carrying out section 216A(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(3)) with respect to an alien described in paragraph (1), the Attorney General, in lieu of the determination described in such section 216A(c)(3), shall make a determination, within 90 days of the date of such filing, whether—

''(A) the petition described in paragraph (1) contains any material misrepresentation in the facts and information alleged in the petition with respect to the commercial enterprises included in the petition;

''(B) subject to subparagraphs (B) and (C) of section 11031(c)(1), all such enterprises, considered together, created full-time jobs for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the alien and the alien's spouse, sons, or daughters), and those jobs exist or existed on either of the dates described in paragraph (3); and

''(C) considering the alien's investments in such enterprises on either of the dates described in paragraph (3), or on both such dates, the alien is or was in substantial compliance with the capital investment requirement described in section 216A(d)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(1)(B)).

''(3) DATES.—The dates described in this paragraph are the following:

''(A) The date on which the application described in subsection (b)(2) was filed.

''(B) The date on which the determination under paragraph (2) is made.

''(f) CLARIFICATION WITH RESPECT TO CHILDREN.—In the case of an alien who was a child on the date on which the application described in subsection (b)(2) was filed, the alien shall be considered to be a child for purposes of this section regardless of any change in age or marital status after such date.

''SEC. 11033. REGULATIONS.

''The Immigration and Naturalization Service shall promulgate regulations to implement this chapter [chapter 1 (§§ 11031–11034) of subtitle B of title I of div. C of Pub. L. 107–273, enacting this note] not later than 120 days after the date of enactment of this Act [Nov. 2, 2002]. Until such regulations are promulgated, the Attorney General shall not deny a petition filed or pending under section 216A(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1186b(c)(1)(A)) that relates to an eligible alien described in section 11031, or on an application filed or pending under section 245 of such Act (8 U.S.C. 1255) that relates to an eligible alien described in section 11032. Until such regulations are promulgated, the Attorney General shall not initiate or proceed with removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) that relate to an eligible alien described in section 11031 or 11032.

''SEC. 11034. DEFINITIONS.

''Except as otherwise provided, the terms used in this chapter shall have the meaning given such terms in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)).''

§ 1187. Visa waiver program for certain visitors

(a) Establishment of program

The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the ''program'') under which the requirement of paragraph (7)(B)(i)(II) of section 1182(a) of this title may be waived by the Attorney General, in consultation with the Secretary of State and in accordance with this section, in the case of an alien who meets the following requirements:

(1) Seeking entry as tourist for 90 days or less

The alien is applying for admission during the program as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) for a period not exceeding 90 days.

(2) National of program country

The alien is a national of, and presents a passport issued by, a country which—

(A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c) of this section.

(3) Machine readable passport

(A) In general

Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.