

be filed with the regional processing facility within thirty (30) days after the service of the notice of termination. If no appeal is filed within that period, the Forms I-94, I-688 or other official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(ii) Termination proceedings must be commenced before the alien becomes eligible for adjustment of status under § 210.5 of this part. The timely commencement of termination proceedings will preclude the alien from becoming a lawful permanent resident until a final determination is made in the proceedings, including any appeal.

[53 FR 10064, Mar. 29, 1988, as amended at 55 FR 12629, Apr. 5, 1990; 60 FR 21975, May 4, 1995; 61 FR 46536, Sept. 4, 1996]

§ 210.5 Adjustment to permanent resident status.

(a) *Eligibility and date of adjustment to permanent resident status.* The status of an alien lawfully admitted to the United States for temporary residence under section 210(a)(1) of the Act, if the alien has otherwise maintained such status as required by the Act, shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence as of the following dates:

(1) *Group 1.* Aliens determined to be eligible for Group 1 classification, whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1989. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence one year from the date of the adjustment to temporary residence.

(2) *Group 2.* Aliens determined to be eligible for Group 2 classification whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1990. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence two years from the date of the adjustment to temporary residence.

(b) *ADIT processing*—(1) *General.* To obtain proof of permanent resident status an alien described in paragraph (a) of this section must appear at a legalization or Service office designated for this purpose for preparation of Form I-551, Alien Registration Receipt Card. Such appearance may be prior to the date of adjustment, but only upon invitation by the Service. Form I-551 shall be issued subsequent to the date of adjustment.

(2) Upon appearance at a Service office for preparation of Form I-551, an alien must present proof of identity, suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I-89.

[53 FR 10064, Mar. 29, 1988, as amended at 54 FR 50339, Dec. 6, 1989]

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

Sec.

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AUTHORITY: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

§ 211.1 Visas.

(a) *General.* A valid unexpired immigrant visa shall be presented by each arriving immigrant alien applying for admission to the United States for lawful permanent residence, except as immigrant alien who: (1) Is a child born subsequent to the issuance of an immigrant visa to his accompanying parent and applies for admission during the validity of such a visa; or (2) is a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided the child's application for admission to the United States is made within 2 years of his birth, the child is accompanied by his parent who is applying for readmission as a permanent resident upon the first return of the parent to the United

States after the birth of the child, and the accompanying parent is found to be admissible to the United States.

(b)(1) *Alien Registration Receipt Card (Form I-551)*—(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 or 216A of the Act, whichever is applicable, or within six months of the date of filing a Petition to Remove the Conditions on Residence (Form I-751) or a Petition by Entrepreneur to Remove Conditions (Form I-829) pursuant to 8 CFR part 216, if the alien is in possession of a Service-issued receipt for such filing, and:

(A) Is returning after a temporary absence abroad not exceeding one year, or

(B) Is an alien crewman regularly serving abroad an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman.

(ii) *Alien traveling pursuant to government orders.* An Alien Registration Receipt Card, including an expired Alien Registration Receipt Card issued to a conditional resident may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States and:

(A) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(B) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

(2) *Reentry permit.* Any immigrant alien returning to an unrelinquished

lawful permanent residence in the United States after a temporary absence abroad may present a valid unexpired reentry permit duly issued to him/her in lieu of an immigrant visa. A refugee travel document issued to a lawful permanent resident pursuant to part 223a of this chapter shall be regarded as a reentry permit.

(3) *Waiver of visas.* An immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad who satisfies the district director in charge of the port of entry that there is good cause for his or her failure to present an immigrant visa, Form I-551, or reentry permit may, upon application on Form I-193, Application for Waiver of Passport and/or Visa, be granted a waiver of that requirement. A resident alien who is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding one year and who cannot present Form I-551 because of its loss must file a Form I-90, Application to Replace Alien Registration Card, in duplicate, with the district director having jurisdiction over the port of entry who may in his or her discretion grant or deny without appeal a waiver of the required immigrant visa, reentry permit, or Form I-551. Filing the Form I-90 in such a case will serve not only as an application for replacement but also as an application for waiver of passport and visa, without the obligation to file a separate Form I-193. An alien who is granted a waiver through a filing of Form I-90 under this section shall, after admission into the United States, comply with the requirements of 8 CFR 264.5.

(4) *Private Law 98-53.* A lawful permanent resident alien who immediately preceding travel to the United States was employed by the American University of Beirut, and seeks admission either to remain temporarily in the United States and then resume employment with the American University of Beirut, or to resume permanent residence in the United States may present Form 551, Alien Registration Receipt Card, or a boarding letter issued by a United States consular or immigration officer in lieu of an immigrant visa.

(c) *Immigrants having occupational status defined in section 101(a)(15) (A), (E), or (G) of the Act.* An immigrant visa, reentry permit, or Form I-551 shall be invalid when presented by an alien who has an occupational status under section 101(a)(15) (A), (E), or (G) of the Act, unless he has previously submitted, or submits at the time he applies for admission to the United States, the written waiver required by section 247(b) of the Act and part 247 of this chapter.

(d) *Returning temporary residents—(I-688).* (1) Form I-688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of §210.1 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within one year after a temporary absence abroad.

(2) Form I-688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of §245a.2 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within 30 days after a temporary absence abroad, provided that the aggregate of all such absences abroad during the temporary residence period has not exceeded 90 days.

[31 FR 13387, Oct. 15, 1966, as amended at 42 FR 19478, Apr. 14, 1977; 45 FR 30062, 30063, May 7, 1980; 45 FR 32657, May 19, 1980; 46 FR 25597, May 8, 1981; 46 FR 37240, July 20, 1981; 50 FR 49921, Dec. 6, 1985; 52 FR 16193, May 1, 1987; 53 FR 30017, Aug. 10, 1988; 54 FR 30369, July 20, 1989; 58 FR 48778, Sept. 20, 1993; 59 FR 26950, May 23, 1994]

§211.2 Passports.

A passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of this immigrant visa shall be presented by each immigrant except an immigrant who: (a) Is the parent, spouse, or unmarried son or daughter of a United States citizen or of an alien lawful permanent resident of the United States, or (b) is a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided the child's application for admis-

sion to the United States is made within two years of his birth, the child is accompanied by his parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States, or (c) is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad, or (d) is a stateless person or a person who because of his opposition to Communism is unwilling or unable to obtain a passport from the country of his nationality or is the accompanying spouse or unmarried son or daughter of such immigrant, or (e) is a third-preference immigrant, or (f) is a member of the Armed Forces of the United States, or (g) satisfies the district director in charge of the port of entry that there is good cause for failure to present the required document, in which case an application for waiver shall be made on Form I-193.

[29 FR 10578, July 30, 1964, as amended at 30 FR 14776, Nov. 30, 1965]

§211.3 Expiration of immigrant visas, reentry permits, refugee travel document, and form I-551.

An immigrant visa, reentry permit, refugee travel document, or Form I-551 shall be regarded as unexpired if the rightful holder embarked or enplaned before the expiration of his immigrant visa, reentry permit, or refugee travel document, or, with respect to Form I-551, before the first anniversary of the date on which he departed from the United States: *Provided*, That the vessel or aircraft on which he so embarked or enplaned arrives in the United States or foreign contiguous territory on a continuous voyage. The continuity of the voyage shall not be deemed to have been interrupted by scheduled or emergency stops of the vessel or aircraft en route to the United States or foreign contiguous territory, or by a layover in foreign contiguous territory necessitated solely for the purpose of effecting a transportation connection to the United States.

[29 FR 10578, July 30, 1964, as amended at 38 FR 8238, Mar. 30, 1973; 45 FR 32657, May 19, 1980; 58 FR 48778, Sept. 20, 1993]

§ 211.4 Recording the entry of certain immigrant children admitted without immigrant visas.

When an immigrant alien who: (a) Is a child born subsequent to the issuance of an immigrant visa to his accompanying parent; or (b) is a child born during the temporary visit abroad of a mother who is a lawful permanent resident, or a national, of the United States, is admitted to the United States for lawful permanent residence without an immigrant visa, the admission shall be recorded on Form I-181.

[32 FR 9625, July 4, 1967. Redesignated at 41 FR 55849, Dec. 23, 1976]

§ 211.5 Alien commuters.

(a) *General.* Notwithstanding any other provisions of this part, an alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his place of employment in the United States. Such commutation may be daily or seasonal for employment which, on the whole, is regular and stable. At the time of each reentry the commuter must present a valid Form I-551, or I-688 in lieu of an immigrant visa and passport. An alien commuter engaged in seasonal work will be presumed to have taken up residence in the United States if he is present in this country for more than six months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular employment in the United States for a continuous period of six months shall be deemed to have lost his residence status, notwithstanding temporary entries in the interim for other than employment purposes, unless his employment in the United States was interrupted for reasons beyond his control other than lack of a job opportunity or he can demonstrate that he has worked ninety days in the United States in the

aggregate during the twelve-month period preceding his application for admission into the United States. Upon loss of status, Form I-551 or I-688 shall become invalid and shall be surrendered to an immigration officer.

(c) *Eligibility for benefits under the immigration and nationality laws.* Until he has taken up residence in the United States, an alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his own behalf or on behalf of his relatives other than as specified in paragraph (a) of this section. When an alien commuter takes up residence in the United States, he shall no longer be regarded as a commuter. He may facilitate proof of having taken up such residence by notifying the Service as soon as possible, preferably at the time of his first reentry for that purpose. Application for issuance of a new alien registration receipt card to show that he has taken up residence in the United States shall be made on Form I-90.

[40 FR 34106, Aug. 14, 1975. Redesignated and amended at 41 FR 55849, Dec. 23, 1976; 45 FR 32657, May 19, 1980; 46 FR 4858, Jan. 19, 1981; 52 FR 16193, May 1, 1987; 53 FR 18260, May 23, 1988; 54 FR 8184, Feb. 27, 1989; 58 FR 48778, Sept. 20, 1993]

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

Sec.

- 212.1 Documentary requirements for non-immigrants.
- 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.
- 212.3 Application for the exercise of discretion under section 212(c).
- 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).
- 212.5 Parole of aliens into the United States.
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- 212.7 Waiver of certain grounds of excludability.
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- 212.9 Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants.