

relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent resident status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval*. If, after initial review or after the interview, the director approves the petition, he or she will remove the conditional basis of the alien's permanent resident status as of the second anniversary of the alien's entry as a conditional permanent resident. He or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate district office for processing for a new Alien Registration Receipt Card, Form I-551, at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial*. If, after initial review or after the interview, the director denies the petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor, and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from this decision; however, the alien may seek review of the decision in deportation proceedings. In deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true and that the petition was properly denied.

[59 FR 26591, May 23, 1994]

## PART 217—VISA WAIVER PILOT PROGRAM

Sec.

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AUTHORITY: 8 U.S.C. 1103, 1187; 8 CFR part 2.

SOURCE: 53 FR 24901, June 30, 1988, unless otherwise noted.

### § 217.1 Scope.

The Visa Waiver Pilot Program is established solely pursuant to the provisions of section 217 of the Act and subject to all conditions and restrictions stipulated in that section, including those relating to the length of the program and the number of countries which may be designated as Visa Waiver Pilot Program countries.

### § 217.2 Eligibility.

(a) *General*. Notwithstanding the provisions of section 212(a)(7)(B)(i)(II) of the Act, a nonimmigrant visa may be waived for an alien who is a national of a country enumerated in § 217.5 of this part regardless of place of residence or point of embarkation who:

- (1) Is classifiable as a visitor as defined in section 101(a)(15)(B) of the Act;
- (2) Seeks admission to the United States for a period not to exceed ninety days;
- (3) Is in possession of a valid passport issued by a designated country;
- (4) Is in possession of a completed and signed Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form;
- (5) Waives any right otherwise provided in the Act to administrative or judicial review or appeal of an immigration officer's determination as to his or her admissibility other than on the basis of an application for asylum in the United States as provided in section 208 of the Act; and
- (6) Waives any right to contest any action for deportation, other than on the basis of an application for asylum in the United States as provided in section 208 of the Act.

(b) *Applicants arriving by air or sea.* (1) Applicants must be in possession of a return trip ticket which will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; or will transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination. A return trip ticket includes any of the following:

- (i) A round trip, non-transferable transportation ticket which is valid for a period of not less than one year;
- (ii) Airline employee passes indicating return passage;
- (iii) Individual vouchers;
- (iv) Group vouchers for charter flights only; or
- (v) Military travel orders which include military dependents for return to duty stations outside the United States on United States military flights.

(2) Applicants must arrive in the United States on a carrier which has entered into an agreement as provided in § 217.6 of this part.

(c) *Applicants arriving at land border Ports-of-Entry.* Any applicant arriving at a land border Port-of-Entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border Port-of-Entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I-94W, nonimmigrant Visa Waiver Arrival/Departure Form.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets the eligibility criteria set forth in this section.

[53 FR 24901, June 30, 1988, as amended at 53 FR 50160, Dec. 13, 1988; 56 FR 32953, July 18, 1991; 60 FR 40068, Aug. 7, 1995]

### § 217.3 Maintenance of status.

(a) *Eligibility for immigration benefits.* An alien admitted to the United States under this part may be admitted as a visitor for business or pleasure for a period not to exceed ninety days. An alien admitted under this part must maintain his or her status as a visitor as defined in section 101(a)(15)(B) of the

Act and must not engage in activities in the United States which are inconsistent with that status. An alien admitted under this part is not eligible for extension of his or her authorized period of temporary stay in the United States; is not eligible for adjustment of his or her status to that of an alien lawfully admitted for permanent residence pursuant to section 245 of the Act, other than as an immediate relative as defined in section 201(b) of the Act or under the provisions of section 245(i) of the Act; and is not eligible for change of nonimmigrant status pursuant to section 248 of the Act.

(b) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed thirty days. If departure is accomplished during this period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(c) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States in the status of a Visa Waiver Pilot Program visitor after a departure to foreign contiguous territory or adjacent island provided that:

(1) His or her authorized period of temporary stay has not expired,

(2) He or she intends to depart the United States prior to the expiration of his or her authorized period of temporary stay,

(3) He or she presents a valid, unexpired passport which reflects admission to the United States as a Visa Waiver Pilot Program visitor, and

(4) He or she continues to meet all criteria set forth in § 217.2(a) of this part with the exception of arrival on a signatory carrier.

(d) *Adjacent islands.* The term *adjacent islands* means Anguilla, Antigua, Aruba, Bahamas, Barbados, Barbuda, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Cuba, Curacao, Dominica, the Dominican Republic,