

§ 235.1 Scope of examination.

(a) *General.* Application to enter the United States shall be made either in person to an immigration officer at a U.S. port of entry enumerated in part 100 of this chapter at a time when the immigration office at the port is open for inspection or as provided in § 235.13.

(b) *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining immigration officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR part 53. If such an applicant for admission fails to satisfy the examining immigration officer that he is a U.S. citizen, he shall thereafter be inspected as an alien.

(c) *Alien members of United States Armed Forces and members of a force of a NATO country.* Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him/her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces is not subject to the exclusion provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter the United States under official orders is exempt from the control provision of the Act. Any alien who is a member of either of the foregoing classes may, upon request, be inspected under the provisions of the Act, and his/her entry as an alien may be recorded. If the alien does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter the United States under the provisions of the Act, the alien shall be so informed and his/her entry shall not be recorded.

(d) *Qualifications for aliens.* The following general qualifications and requirements shall be met by each alien seeking to enter the United States for permanent, indefinite, or temporary stay, and regardless of the purpose for which he/she seeks to enter:

(1) He/she shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he/she is not subject to exclusion under the immigration laws, Executive Orders, or Presidential Proc-

lamations and is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States.

(2) For the purpose of this part, any alien coming to a United States port from a foreign port, from an outlying possession of the United States, from Guam, Puerto Rico, or the Virgin Islands of the United States, or from another port of the United States at which examination under this part was not completed, shall be regarded as an arrival.

(3) Any person, including an alien crewman, passing through the Canal Zone on board a vessel which enters and clears at the Canal Zone port only to transit the Zone, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage.

(4) Any person including an alien crewman, on board a vessel which after arrival at a United States port of entry passes the Great Lakes seaway en route to another United States port and which enters and clears at points in Canada only to transit the seaway, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage.

(5) Any person seeking to enter the United States, including an alien crewman, on board a vessel en route from one United States port to another United States port shall not be regarded as coming from a foreign port solely by reason of the vessel's stop at Freeport, Bahamas, for bunkering only.

(6) Any person, including an alien crewman on board a vessel en route to the United States solely for bunkering purposes or an aircraft en route to the United States solely for refueling purposes, who does not seek to enter the United States, shall be regarded as not arriving for purposes of immigration.

(7) The immigration inspection of any person, including an alien crewman, on board a vessel or aircraft, may be postponed to an onward port of arrival, if the vessel or aircraft will only bunker or refuel at the first port of call.

(8) Any citizen of Canada or Mexico seeking to enter the United States as a principal alien E-1 or E-2, or as an L-1 or TN, for the purpose of employment at a site where the Secretary of Labor has certified to or otherwise informed the Commissioner that there is a strike or other labor dispute involving a work stoppage of workers in progress, and the temporary entry of that citizen of Canada or Mexico may affect adversely either the settlement of any such labor dispute or the employment of any person who is involved in any such dispute, may be refused entry in the classification sought. The applicant shall be advised in writing of the reason(s) for the refusal. A designated representative of the government of Canada or Mexico shall be promptly notified in writing of the reason(s) for the refusal of entry.

(e) *U.S. citizens, lawful permanent residents of the United States, Canadian nationals, and other residents of Canada having a common nationality with Canadians, entering the United States by small craft.* Upon being inspected by an immigration officer and found eligible for admission as a citizen of the United States, or found eligible for admission as a lawful permanent resident of the United States, or in the case of a Canadian national or other resident of Canada having a common nationality with Canadians being found eligible for admission as a temporary visitor for pleasure, a person who desires to enter the United States from Canada in a small pleasure craft of less than 5 net tons without merchandise may be issued, upon application and payment of a fee prescribed under §103.7(b)(1) of this chapter, Form I-68, Canadian Border Boat Landing Card, and may thereafter enter the United States along with the immediate shore area of the United States on the body of water designated on the Form I-68 from time to time for the duration of that navigation season without further inspection. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I-68 shall be valid only for the purpose of visits not to exceed 72 hours and only if the alien will remain in nearby shopping areas, nearby residential neighborhoods, or other similar

areas adjacent to the immediate shore area of the United States. If the bearer of Form I-68 seeks to enter the United States by means other than small craft of less than 5 net tons without merchandise, or if he or she seeks to enter the United States for other purposes, or if he or she is an alien, other than a lawful permanent resident alien of the United States, and intends to proceed beyond an area adjacent to the immediate shore area of the United States, or remains in the United States longer than 72 hours, he or she must apply for admission at a United States port of entry.

(f) *Arrival/Departure Record, Form I-94—(1) Nonimmigrants.* Each nonimmigrant alien, except as indicated below, who is admitted to the United States shall be issued a completely executed Form I-94 which must be endorsed to show: Date and place of admission, period of admission, and nonimmigrant classification. A nonimmigrant alien who will be making frequent entries into the United States over its land borders may be issued a Form I-94 which is valid for any number of entries during the validity of the form. A nonimmigrant alien entering the United States at a land border Port-of-Entry who is issued Form I-94 will be charged a fee as prescribed under §103.7(b)(1) of this chapter. In the case of a nonimmigrant alien admitted with the classification TN (Trade, North American Free Trade Agreement (NAFTA)), the specific occupation of such alien as set forth in Appendix 1603.D.1 of the NAFTA shall be recorded in item number 18 on the reverse side of the arrival portion of Form I-94, and the name of the employer shall be noted on the reverse side of both the arrival and departure portions of Form I-94. The departure portion of Form I-94 shall bear the legend "multiple entry." A Form I-94 is not required by:

(i) Any nonimmigrant alien described in §212.1(a) of this chapter and 22 CFR 41.129(a) who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States;

(ii) Any nonimmigrant alien residing in the British Virgin Islands who was

admitted only to the U.S. Virgin Islands as a visitor for business or pleasure under §212.1(b) of this chapter;

(iii) Any Mexican national in possession of a valid nonresident alien Mexican border crossing card who is admitted as a border crosser or nonimmigrant visitor at a Mexican border port of entry for a period not to exceed 72 hours to visit within 25 miles of the border;

(iv) Any Mexican national in possession of a valid Mexican passport and a multiple-entry nonimmigrant visa issued under section 101(a)(15)(B) of the Act who is admitted at a Mexican border port of entry as a nonimmigrant visitor for a period not to exceed 72 hours to visit within 25 miles of the border; or

(v) Any Mexican national eligible for a Mexican Border Visitors Permit, Form I-444, under paragraph (g) of this section.

(vi) Bearers of Mexican diplomatic or official passports described in §212.1(c-1) of this chapter.

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I-94 which must include:

- (i) Date and place of parole;
- (ii) Period of parole; and

(iii) Conditions under which the alien is paroled into the United States. A fee shall not be required for Form I-94 when it is issued for the purpose of paroling an alien into the United States.

(g) *Mexican Border Visitors Permit, Form I-444.* (1) Any Mexican national exempt from issuance of a Form I-94 under paragraph (f)(1) (iii) or (iv) of this section shall be issued a Mexican Border Visitor's Permit, Form I-444, whenever:

(i) The period of admission sought is more than 72 hours but not more than 30 days; or

(ii) The applicant desires to travel more than 25 miles from the Mexican border but within the 5-state area of Arizona, California, Nevada, New Mexico, or Texas. A separate Form I-444 will be issued for each applicant for admission and a fee as prescribed under §103.7(b)(1) of this chapter shall be

charged for each applicant, or until the family cap is reached.

(2) If, after entry and issuance of the Form I-444, the alien seeks to remain for longer than 30 days or to proceed outside of the five-state area, the alien must apply for permission at a Service office located within the five-state area.

[32 FR 9627, July 4, 1967, as amended at 32 FR 11628, Aug. 11, 1967; 45 FR 70428, Oct. 24, 1980; 46 FR 43826, Sept. 1, 1981; 47 FR 49953, Nov. 4, 1982; 49 FR 33434, Aug. 23, 1984; 58 FR 69217, Dec. 30, 1993; 60 FR 40068, Aug. 7, 1995; 60 FR 50389, Sept. 29, 1995]

§235.2 Examination postponed.

Whenever an alien on arrival is found or believed to be suffering from a disability which renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

[22 FR 9791, Dec. 6, 1957]

§235.3 Detention and deferred inspection.

(a) *Prior to inspection.* All persons arriving at a port in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the master, commanding officer, purser, person in charge, agent, owner, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to detain shall not be required. The Service will not be liable for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissibility by a Service officer.

(b) *Aliens with no documentation or false documentation.* Any alien who appears to the inspecting officer to be inadmissible, and who arrives without documents (except an alien for whom documentary requirements are waived