

as an affidavit from a member of the community of good moral character, but only if the applicant provides an affidavit stating that more direct documentary evidence is unavailable.

[57 FR 34507, Aug. 5, 1992]

**§§ 240.21–240.39 [Reserved]**

**PART 241—CONTROLLED  
SUBSTANCE VIOLATIONS**

AUTHORITY: 8 U.S.C. 1103, 1251, 1252, 1357; 8 CFR part 2.

**§ 241.1 Controlled substance convictions.**

In determining the deportability of an alien who has been convicted of a violation of any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, the term *controlled substance* as used in section 241(a)(2)(B)(i) of the Act, shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, and shall include any substance contained in Schedules I through V of 21 CFR 1308.1, *et seq.* For the purposes of this section, the term *controlled substance* includes controlled substance analogues as defined in 21 U.S.C. 802(23) and 813.

[53 FR 9282, Mar. 22, 1988. Redesignated at 56 FR 8906, Mar. 4, 1991, and amended at 56 FR 38333, Aug. 13, 1991]

**PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL**

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- 242.26 Deportation of S-5, S-6, and S-7 non-immigrant.

AUTHORITY: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

**§ 242.1 Order to show cause and notice of hearing.**

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the filing of an order to show cause with the Office of the Immigration Judge, except for an alien who has been admitted to the United States under the provisions of section 217 of the Act and Part 217 of this chapter other than such an alien who has applied for asylum in the United States. In the proceeding, the alien shall be known as the respondent. Orders to show cause may be issued by:

- (1) District directors (except foreign);
- (2) Deputy district directors (except foreign);
- (3) Assistant district directors for investigations;
- (4) Deputy assistant district directors for investigations;
- (5) Assistant district directors for deportation;
- (6) Deputy assistant district directors for deportation;
- (7) Assistant district directors for examinations;
- (8) Deputy assistant district directors for examinations;
- (9) Officers in charge (except foreign);
- (10) Assistant officers in charge (except foreign);
- (11) Chief patrol agents;
- (12) Deputy chief patrol agents;
- (13) Associate chief patrol agents;
- (14) Assistant chief patrol agents;

- (15) Patrol agents in charge;
- (16) The Assistant Commissioner, Investigations;
- (17) Service center directors;
- (18) Supervisory asylum officers; or
- (19) Institutional Hearing Program Directors.

(b) *Statement of Nature of Proceedings.* The Order to Show Cause shall contain a statement of the nature of the proceeding, the legal authority under which the proceeding is conducted, a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of the law, and a designation of the charge against the respondent and of the statutory provisions alleged to have been violated. The Order shall require the respondent to show cause why he should not be deported. The Order shall call upon the respondent to appear before an Immigration Judge for a hearing at a time and place which shall be specified by the Immigration Court.

(c) *Service.* Service of the order to show cause may be accomplished either by personal service or by routine service; however, when routine service is used and the respondent does not appear for hearing or acknowledge in writing that he has received the order to show cause, it shall be reserved by personal service. When personal delivery of an order to show cause is made by an immigration officer, the contents of the order to show cause shall be explained and the respondent shall be advised that any statement he makes may be used against him. He shall also be advised of his right to representation by counsel of his own choice at no expense to the Government. He shall also be advised of the availability of free legal services programs qualified under part 292a of this chapter and organizations recognized pursuant to §292.2 of this chapter, located in the district where his deportation hearing will be held. He shall be furnished with a list of such programs, and a copy of Form I-618, Written Notice of Appeal Rights, regardless of the manner in which the service of the order to show cause was accomplished. Service of these documents shall be noted on Form I-213.

(d) *Visa Waiver Pilot Program.* Pursuant to section 217(b)(4)(B) of the Act, an alien who has been admitted to the United States under the provisions of that section has waived any right to contest any action against him or her for deportation, other than on the basis of an application for asylum. An alien admitted to the United States under section 217 of the Act shall be taken into custody and removed from the United States upon a determination by an immigration officer (district director who has jurisdiction over the place where the alien is found) that the alien is deportable in accordance with procedures in §217.4(c) of this chapter, and without commencement of a proceeding under this part, except that such an alien who applies for asylum in the United States shall be brought into proceedings as otherwise provided in this part.

[22 FR 9796, Dec. 6, 1957, as amended at 44 FR 4653, Jan. 23, 1979; 52 FR 2939, Jan. 29, 1987; 52 FR 3098, Jan. 30, 1987; 52 FR 5616, Feb. 25, 1987; 53 FR 24903, June 30, 1988; 55 FR 1579, Jan. 17, 1990; 55 FR 12627, Apr. 5, 1990; 56 FR 18502, Apr. 23, 1991; 56 FR 50812, Oct. 9, 1991; 59 FR 42414, Aug. 17, 1994; 60 FR 34090, June 30, 1995; 61 FR 8859, Mar. 6, 1996]

#### §242.2 Apprehension, custody, and detention.

(a) *Detainers in general.* (1) A detainer may be issued only in the case of an alien who there is reason to believe is amenable to exclusion or deportation proceedings under any provision of law. The following immigration officers are hereby authorized to issue detainers:

- (i) Border patrol agents, including aircraft pilots;
- (ii) Special agents;
- (iii) Deportation officers;
- (iv) Immigration inspectors;
- (v) Immigration examiners;
- (vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and
- (vii) Immigration officers who need the authority to issue detainers in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(2) *Availability of records.* In order for the Service to accurately determine the propriety of issuing a detainer,