

the arrest or detention of one of their nationals.

2. When Taiwan nationals (who carry "Republic of China" passports) are detained, notification should be made to the nearest office of the Coordination Council for North American Affairs, the unofficial entity representing Taiwan's interests in the United States.

3. British dependencies are also covered by this agreement. They are: Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

4. All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

(h) *Custody issues; release procedures.*

(1) A lawful permanent resident alien convicted of an aggravated felony may be released from custody, after having completed serving the sentence for such conviction, if the Attorney General determines that he or she is not a danger to the community and that he or she is likely to appear for all scheduled hearings. Review of each case to determine custody or release conditions shall include, but need not be limited to, consideration of the following factors:

- (i) Seriousness of the crime(s) of which convicted;
- (ii) Prior criminal history, especially the nature of the crimes and number of arrests;
- (iii) Sentence(s) imposed and time actually served;
- (iv) History of failures to appear for court (defaults);
- (v) Probation history;
- (vi) Evidence of rehabilitative effort or recidivism;
- (vii) Equities in the United States;
- (viii) Availability of relief from deportation and the likelihood of its being granted; and
- (ix) Prior immigration violations and history.

(2) If, after consideration of all factors listed in paragraph (h)(1) of this section, it is determined that the alien is not a threat to public safety and is likely to appear for all scheduled hearings, he or she may be released from custody under such conditions as the Attorney General may prescribe, in-

cluding the giving of a bond. If an appearance bond is prescribed as a condition of such release, it shall be in an appropriate and sufficient amount to encourage compliance with demands for appearance and with any other conditions of release.

(i) *Notification to Executive Office for Immigration Review of change in custody status.* The Service shall notify the Immigration Court having administrative control over the Record of Proceeding of any change in custody location or of release from, or subsequent taking into, Service custody of a respondent/applicant pursuant to 8 CFR 3.19(g).

[28 FR 8280, Aug. 13, 1963, as amended at 39 FR 20367, June 10, 1974; 39 FR 20959, June 17, 1974; 40 FR 30470, July 21, 1975; 48 FR 31005, July 6, 1983; 51 FR 34081, Sept. 25, 1986; 52 FR 2939, Jan. 29, 1987; 52 FR 16372, May 5, 1987; 53 FR 9283, Mar. 22, 1988; 55 FR 1579, Jan. 17, 1990; 55 FR 24859, June 19, 1990; 55 FR 43327, Oct. 29, 1990; 56 FR 18503, Apr. 23, 1991; 56 FR 23214, May 21, 1991; 57 FR 11573, Apr. 6, 1992; 57 FR 30898, July 13, 1992; 59 FR 42415, Aug. 17, 1994; 60 FR 16043, Mar. 29, 1995; 60 FR 34090, June 30, 1995; 61 FR 8859, Mar. 6, 1996]

§ 242.3 Confined aliens, incompetents, and minors.

(a) *Service.* If the respondent is confined, or if he is an incompetent, or a minor under the age of 14, the order to show cause, and the warrant of arrest, if issued, shall be served in the manner prescribed in § 242.1(c) upon the person or persons named in § 103.5a(c) of this chapter.

(b) *Service custody; cost of maintenance.* An alien confined because of physical or mental disability in an institution or hospital shall not be accepted into physical custody by the Service until an order of deportation has been entered and the Service is ready to deport the alien. When such an alien is an inmate of a public or private institution at the time of the commencement of the deportation proceedings, expenses for the maintenance of the alien shall not be incurred by the Government until he is taken into physical custody by the Service.

[22 FR 9796, Dec. 6, 1957, as amended at 37 FR 11470, June 8, 1972; 43 FR 48620, Oct. 19, 1978]

§ 242.4 Fingerprints and photographs.

Every alien 14 years of age or older against whom proceedings are commenced under this part by service of an order to show cause shall be fingerprinted and photographed. Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies upon request to the district director or chief patrol agent having jurisdiction over the alien's record. Any such alien, regardless of his or her age, shall be photographed and/or fingerprinted if required by any immigration officer authorized to issue an order to show cause as listed in § 242.1(a).

[59 FR 42415, Aug. 17, 1994]

§ 242.5 Voluntary departure prior to commencement of hearing.

(a)(1) *Authorized officers.* The authority contained in section 242(b) of the act to permit aliens to depart voluntarily from the United States may be exercised by district directors, district officers who are in charge of investigations, officers in charge, chief patrol agents, and service center directors, assistant district directors for Examinations, Director, Organized Crime Drug Enforcement Task Force, or Assistant Director, Organized Crime Drug Enforcement Task Force, (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL).

(2) *Authorization.* Notwithstanding any other provision of this section, an alien convicted on or after November 18, 1988, of an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure prior to commencement of hearing. Voluntary departure may be granted to any alien who is statutorily eligible: (i) Who is a native of a foreign contiguous territory and not within the purview of class (vi) of this paragraph; or (ii) whose application for extension of stay as a nonimmigrant is being denied; or (iii) who has voluntarily surrendered himself to the Service; or (iv) who presents a valid travel document and confirmed reservation for transportation out of the United States within 30 days; or (v) who is an F-1, F-2, J-1, or J-2 nonimmigrant and who has lost such status solely because

of a private bill introduced in his/her behalf; or (vi) who is admissible to the United States as an immigrant and: (A) Who is an immediate relative of a U.S. citizen, or (B) is otherwise exempt from the numerical limitation on immigrant visa issuance, or (C) has a priority date for an immigrant visa not more than 60 days later than the date show in the latest Visa Office Bulletin and has applied for an immigrant visa at an American Consulate which has accepted jurisdiction over the case, or (D) who is a third-preference alien with a priority date earlier than August 9, 1978, or (E) who is the beneficiary of an approved sixth-preference petition who satisfies Examinations without another petition that he/she can qualify for third preference and who cannot obtain a visa solely because a visa number is unavailable, and who has a priority date earlier than August 9, 1978; or (vii) who has been granted asylum and has not been granted parole status or a stay of deportation; (viii) in whose case the district director has determined there are compelling factors warranting grant of voluntary departure; or (ix) who is the child of a legalized alien currently residing in the United States, born during an authorized absence from the United States of the mother who is: (A) A legalized alien; or (B) An alien currently residing in the United States under voluntary departure pursuant to the Family Unity Program.

(3) *Periods of time/employment.* (i) Except for paragraphs (a)(2) (v) through (ix) of this section, any grant of voluntary departure shall contain a time limitation of usually not more than 30 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances, as determined on a case-by-case basis. Upon failure to depart, deportation proceedings will be initiated. As an exception to the 30-day voluntary departure period, an eligible alien under:

(A) Paragraph (a)(2)(v) of this section may be granted voluntary departure in increments of 1 year conditioned upon the F-1 or J-1 alien maintaining a full course of study at an approved institution of learning, or upon abiding by the terms and conditions of the exchange