

program within the limitations imposed by 22 CFR 514.23; or

(B) Paragraphs (a)(2)(vi) (A), (B), and (C) of this section may be granted voluntary departure until the American Consul issues an immigrant visa and, at the discretion of the district director, issuance may be in increments of 30 days, conditioned upon continuing availability of an immigrant visa as shown in the latest Visa Office Bulletin and upon the alien's diligent pursuit of efforts to obtain the visa; or

(C) Paragraphs (a)(2)(vi) (D) and (E) of this section may be granted voluntary departure, conditioned upon the continued validity of the approved third- or sixth-preference petition, as appropriate, and the alien's retention of the status established in the petition for an indefinite period until an immigrant visa is available; or

(D) Paragraphs (a)(2) (vii) and (viii) of this section may be granted voluntary departure in increments of time, not to exceed 1 year, as determined by the district director to be appropriate in the case; or

(E) Paragraph (a)(2)(ix) of this section may be granted voluntary departure in increments of time, not to exceed 2 years.

(ii) An alien eligible for voluntary departure in paragraphs (a)(2) (v) through (viii) of this section may apply for employment authorization under the appropriate citation in §274a.12 of this chapter.

(b) *Application.* Any alien who believes himself or herself to be eligible for voluntary departure under section 242(b) of the Act may apply therefore at any office of the Service any time prior to the commencement of deportation proceedings against him or her. The officers designated in paragraph (a) of this section may deny or grant the application and determine the conditions under which the alien's departure shall be effected. An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply for relief from deportation under any provision of law.

(c) *Revocation.* If, subsequent to the granting of an application for voluntary departure under this section, it

is ascertained that the application should not have been granted, that grant may be revoked without notice by any district director, district officer in charge of investigations, officer in charge, chief patrol agent, 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).

[23 FR 9123, Nov. 26, 1958, as amended at 29 FR 13242, Sept. 24, 1964; 35 FR 16362, Oct. 20, 1970; 43 FR 29528, July 10, 1978; 45 FR 27917, Apr. 25, 1980; 46 FR 25598, May 8, 1981; 47 FR 49954, Nov. 4, 1982; 52 FR 2940, Jan. 29, 1987; 55 FR 12627, Apr. 5, 1990; 55 FR 24859, June 19, 1990; 56 FR 18503, Apr. 23, 1991; 60 FR 66067, Dec. 21, 1995]

§242.6 Family Unity Program.

(a) *General.* Except as otherwise specifically provided in paragraph (b) of this section, the definitions contained in Title 8 of the Code of Federal Regulations shall apply to the administration of this section.

(b) *Definitions.* As used in this section:

Eligible immigrant means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

Legalized alien means an alien who:

(i) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(ii) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

(c) *Eligibility*—(1) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(i) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(ii) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or

(b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse of unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(2) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

(d) *Ineligible aliens.* The following categories of aliens are ineligible for benefits under the Family Unity Program:

(1) An alien who is deportable under any paragraph in section 241(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); *provided that* an alien who is deportable under paragraph (1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based upon an exclusion ground described in section 212(a) (2) or (3) of the Act;

(2) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(3) An alien described in section 243(h)(2) of the Act.

(e) *Filing—(1) General.* An application for voluntary departure under the Family Unity Program must be filed at the Service Center having jurisdiction over the alien's place of residence. A Form I-817 (Application for Voluntary Departure under the Family Unity Pro-

gram) must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(2) *Decision.* The Service Center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(3) *Referral of denied cases for consideration of issuance of Order to Show Cause.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue an Order to Show Cause (OSC). After an initial denial, an applicant's case will not be referred for issuance of an OSC until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I-817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under paragraph (d)(2) of this section, the Service reserves the right to issue an Order to Show Cause at any time after the initial denial.

(4) *Voluntary departure under § 242.5 and eligibility for employment under § 274a.12(c)(12).* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program may be granted voluntary departure under § 242.5(a)(2)(ix) for a period of 2 years.

(5) *Duration of voluntary departure under § 242.6.* An alien whose application for benefits under the Family Unity Program is approved will receive a 2-year period of voluntary departure. The 2-year period will begin on the date the Services approves the application.

(6) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document on Form I-765 (Application for Employment Authorization). The application may be filed concurrently with Form I-817. The application must be accompanied by the correct fee required by §103.7(b)(1) of this chapter. The validity period of the employment authorization will coincide with the period of voluntary departure.

(7) *Travel outside the United States.* An alien granted Family Unity Program benefits who intends to travel outside the United States temporarily must apply for advance authorization using Form I-131 (Application for Travel Document). The authority to grant an application for advance authorization for an alien granted Family Unity Program benefits rests solely with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be excludable under section 212(a) (2) or (3) of the Act, shall be inspected and admitted in the same immigration status the alien had at the time of departure, and provided the remainder of the 2-year voluntary departure previously granted under the Family Unity Program.

(8) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I-817 along with the correct fee required in §103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, and a petition for family-sponsored immigrant status has not been filed in behalf of the applicant. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I-817 once the petition, Form I-130, has been

filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(9) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application need only include changes to previous applications and evidence of continuing eligibility since the date of the prior approval.

(f) *Eligibility for Federal financial assistance programs.* An alien granted Family Unity Program benefits based on a relationship to a legalized alien as defined in paragraph (b) of this section is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien is ineligible for such assistance under sections 245A(h) or 210(f) of the Act, respectively.

(g) *Termination of Family Unity Program benefits—(1) Grounds for termination.* The Service may terminate benefits under the Family Unity Program whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(i) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(ii) The beneficiary commits an act or acts which render him or her inadmissible as an immigrant or ineligible for benefits under the Family Unity Program;

(iii) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(iv) The beneficiary is the subject of a final order of exclusion or deportation issued subsequent to the grant of benefits on any ground of deportability or excludability that would have rendered the alien ineligible for benefits under §242.6(d)(1) of this chapter, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(v) A qualifying relationship to a legalized alien no longer exists.

(2) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of the chapter. Nothing in this section shall preclude the Service from commencing exclusion or deportation proceedings prior to termination of Family Unity Program benefits.

(3) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of deportation or exclusion, shall render the alien amendable to exclusion or deportation proceedings under sections 236 or 242 of the Act, as appropriate.

[60 FR 66067, Dec. 21, 1995]

§ 242.7 Cancellation proceedings.

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause prior to jurisdiction vesting with the Immigration Judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States;

(5) The respondent was placed under proceedings for failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act; or

(6) The Order to Show Cause was improvidently issued.

(b) *Motion to dismiss.* After commencement of proceedings pursuant to § 3.14 of this chapter, any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

(c) *Motion for remand.* After commencement of the hearing, any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Service.

(d) *Warrant of arrest.* When an order to show cause is cancelled or proceedings are terminated under this section any outstanding warrant of arrest is cancelled.

(e) *Termination of deportation proceedings by immigration judge.* An immigration judge may terminate deportation proceedings to permit the respondent to proceed to a final hearing on a pending application or petition for naturalization when the respondent has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors; in every other case, the deportation hearing shall be completed as promptly as possible notwithstanding the pendency of an application for naturalization during any state of the proceedings.

[47 FR 49954, Nov. 4, 1982; 47 FR 51351, Nov. 15, 1982, as amended at 52 FR 2940, Jan. 29, 1987; 52 FR 3099, Jan. 30, 1987; 52 FR 5616, Feb. 25, 1987; 53 FR 30022, Aug. 10, 1988]

§ 242.7a Waiver of documents; returning residents.

Pursuant to the authority contained in section 211(b) of the Act, an alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence was excludable because of failure to have or to present a valid passport, immigrant visa, reentry permit, border crossing card, or other document required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director: *Provided*, That such alien (a) was not otherwise excludable at the time of entry, or (b) having been otherwise excludable at the time of entry is with respect thereto qualified for an exemption from deportability under section 241(a)(1)(H) of the Act, and (c) is not otherwise subject to deportation. Denial of a waiver by the district director