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shall not become final until reviewed by a supervisory asylum officer.

(c) *Authority.* Asylum officers conducting credible fear interviews shall have the authorities described in §208.9(c).

(d) *Referral for an asylum hearing.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum claim in proceedings under section 240 of the Act. Parole of the alien may only be considered in accordance with section 212(d)(5) of the Act and §212.5 of this chapter. If an alien stowaway is found to have a credible fear of persecution, the asylum officer will so inform the alien and issue a Form I–863, Notice to Referral to Immigration Judge, for full consideration of the asylum claim in proceedings under §208.2(b)(1).

(e) *Removal of aliens with no credible fear of persecution.* If an alien is found not to have a credible fear of persecution, the asylum officer shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge, on which the alien shall indicate whether he or she desires such review. If the alien is not a stowaway, the officer shall also order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal. If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall also refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(f) *Review by immigration judge.* The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. If the alien requests such review, the asylum officer shall arrange for the detention of the alien and serve him or her with a Form I–863, Notice of Referral to Immigration Judge. The record of determination, including copies of the Form I–863, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. Upon review of the asylum officer's negative credible fear determination:

(1) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution, the case shall be returned to the Service for removal of the alien.

(2) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an asylum application in accordance with §208.4(b)(3)(i).

(3) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution, the alien shall be allowed to file an asylum application before the immigration judge in accordance with §208.4(b)(3)(iii). The immigration judge shall decide the asylum application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If and when a denial of the asylum application becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If and when an approval of the asylum application becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

Sec.

209.1 Admission for permanent residence after one year.
209.2 Adjustment of status of alien granted asylum.

AUTHORITY: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

§209.1 Admission for permanent residence after one year.

(a) *Eligibility*. (1) Every alien in the United States as a refugee under §207 of this chapter whose status has not been terminated, is required to appear before an immigration officer one year after entry to determine his/her admissibility under sections 235 and 240 of the Act. The applicant shall be examined under oath to determine admissibility. If the applicant is found to be admissible, he/she shall be inspected and admitted for lawful permanent residence as of the date of the alien's arrival in the United States. If the applicant is determined to be inadmissible, he/she shall be informed that he/she may renew the request for admission to the United States as an immigrant in exclusion proceedings under section 236 of the Act. The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act, whose application is based on his/her refugee status.

(2) Every alien processed by the Immigration and Naturalization Service abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980 shall be considered as having entered the United States as a refugee under section 207(a) of the Act.

(b) *Processing Application*. One year after arrival in the United States, every refugee entrant shall be notified to appear for examination before an immigration officer. Each applicant shall be examined under oath to determine eligibility for permanent residence. If the refugee entrant has been physically present in the United States for at least one year, forms FD–258 (Applicant Card) and G–325A (Biographical Information) will be processed. Unless there were medical grounds for exclusion at the time of arrival, a United States Public Health Service medical examination is not required. If the alien is found admissible after inspection under section 209(a) of the Act, he/she shall be processed for issuance of Form I–551 (Alien Registration Receipt Card).

[46 FR 45119, Sept. 10, 1981, as amended at 62 FR 10346, Mar. 6, 1997]

§209.2 Adjustment of status of alien granted asylum.

The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee status.

(a) *Eligibility*. (1) Except as provided in paragraph (a)(2) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by the district director to that of an alien lawfully admitted for permanent residence, provided the alien:

(i) Applies for such adjustment;

(ii) Has been physically present in the United States for at least one year after having been granted asylum;

(iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;

(iv) Has not been firmly resettled in any foreign country; and

(v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (4), (5)(A), (5)(B), and (7)(A)(i) of section 212(a) of the Act, and (vi) has a refugee number available under section 207(a) of the Act.

If the application for adjustment filed under this part exceeds the refugee numbers available under section 207(a) of the Act for the fiscal year, a waiting list will be established on a priority basis by the date the application was properly filed.

(2) An alien, who was granted asylum in the United States prior to November 29, 1990 (regardless of whether or not such asylum has been terminated under section 208(b) of the Act), and is no longer a refugee due to a change in circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted by the district director to that of an alien lawfully admitted for permanent residence even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 10l(a)(42) of the Act, or to be a spouse or child of such a refugee or to have been physically present in the United States for at

least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section. Such persons are exempt from the numerical limitations of section 209(b) of the Act. However, the number of aliens who are natives of any foreign state who may adjust status pursuant to this paragraph in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Act and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of the Act. Aliens who applied for adjustment of status under section 209(b) of the Act before June 1, 1990, are also exempt from its numerical limitation without any restrictions.

(b) *Inadmissible Alien.* An applicant who is inadmissible to the United States under section 212(a) of the Act, may, under section 209(c) of the Act, have the grounds of inadmissibility waived by the district director (except for those grounds under paragraphs (27), (29), (33), and so much of (23) as relates to trafficking in narcotics) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. An application for the waiver may be filed on Form I–602 (Application by Refugee for Waiver of Grounds of Excludability) with the application for adjustment. An applicant for adjustment who has had the status of an exchange alien nonimmigrant under section 101(a)(15)(J) of the Act, and who is subject to the foreign resident requirement of section 212(e) of the Act, shall be eligible for adjustment without regard to the foreign residence requirement.

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed on Form I–485, with fee, with the district director having jurisdiction over the applicant's place of residence. A separate application must be filed by each alien, and if the alien is 14 years or older it must be accompanied by a completed Form G–325A (Biographical Information) and Form FD–258 (Applicant Card). Except as provided in paragraph (a)(2) of this section, the application must also be supported by evidence that the applicant has been physically present in the United States for at least one year. If an alien has been placed in deportation, exclusion, or removal proceedings under any section of this Act (as effective on the date such proceedings commenced), the application can be filed and considered only in those proceedings.

(d) *Medical Examination.* Upon acceptance of the application, the applicant shall submit to an examination by a selected civil surgeon as required by sections 221(d) and 234 of the Act. The report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record.

(e) *Interview.* Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. The interview may be waived for a child under 14 years of age.

(f) *Decision.* The applicant shall be notified of the decision, and if the application is denied, of the reasons for denial. No appeal shall lie from the denial of an application by the district director but such denial will be without prejudice to the alien's right to renew the application in proceedings under parts 242 and 236 of this chapter. If the application is approved, the district director shall record the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application, but not earlier than the date of the approval for asylum in the case of an applicant approved under paragraph (a)(2) of this section.

[46 FR 45119, Sept. 10, 1981, as amended at 56 FR 26898, June 12, 1991; 57 FR 42883, 42884, Sept. 17, 1992; 58 FR 12149, Mar. 3, 1993; 62 FR 10346, Mar. 6, 1997]

PART 210—SPECIAL AGRICULTURAL WORKERS

Sec.
210.1 Definition of terms used in this part.
210.2 Application for temporary resident status.
210.3 Eligibility.
210.4 Status and benefits.
210.5 Adjustment to permanent resident status.

AUTHORITY: 8 U.S.C. 1103, 1160, 8 CFR part 2.