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must be submitted within thirty (30) days after the service of the Notice of Intent to Terminate. If the alien's status is terminated, the director of the regional processing facility shall notify the alien of the decision and the reasons for the termination, and further notify the alien that any Service Form I–94, Arrival-Departure Record or other official Service document issued to the alien authorizing employment and/or travel abroad, or any Form I–688, Temporary Resident Card previously issued to the alien will be declared void by the director of the regional processing facility within thirty (30) days if no appeal of the termination decision is filed within that period. The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) using Form I–694. Any appeal with the required fee shall be filed with the regional processing facility within thirty (30) days after the service of the notice of termination. If no appeal is filed within that period, the Forms I–94, I–688 or other official Service document shall be deemed void, and must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(ii) Termination proceedings must be commenced before the alien becomes eligible for adjustment of status under § 210.5 of this part. The timely commencement of termination proceedings will preclude the alien from becoming a lawful permanent resident until a final determination is made in the proceedings, including any appeal.

[53 FR 10064, Mar. 29, 1988, as amended at 55 FR 12629, Apr. 5, 1990; 60 FR 21975, May 4, 1995; 61 FR 46536, Sept. 4, 1996; 65 FR 82255, Dec. 28, 2000]

§ 210.5 Adjustment to permanent resident status.

(a) *Eligibility and date of adjustment to permanent resident status.* The status of an alien lawfully admitted to the United States for temporary residence under section 210(a)(1) of the Act, if the alien has otherwise maintained such status as required by the Act, shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence as of the following dates:

(1) *Group 1.* Aliens determined to be eligible for Group 1 classification, whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1989. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence one year from the date of the adjustment to temporary residence.

(2) *Group 2.* Aliens determined to be eligible for Group 2 classification whose adjustment to temporary residence occurred prior to November 30, 1988, shall be adjusted to lawful permanent residence as of December 1, 1990. Those aliens whose adjustment to temporary residence occurred after November 30, 1988 shall be adjusted to lawful permanent residence two years from the date of the adjustment to temporary residence.

(b) *ADIT processing*—(1) *General.* To obtain proof of permanent resident status an alien described in paragraph (a) of this section must appear at a legalization or Service office designated for this purpose for preparation of Form I–551, Permanent Resident Card. Such appearance may be prior to the date of adjustment, but only upon invitation by the Service. Form I–551 shall be issued subsequent to the date of adjustment.

(2) Upon appearance at a Service office for preparation of Form I–551, an alien must present proof of identity, suitable ADIT photographs, and a fingerprint and signature must be obtained from the alien on Form I–89.

[53 FR 10064, Mar. 29, 1988, as amended at 54 FR 50339, Dec. 6, 1989; 63 FR 70315, Dec. 21, 1998]

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

Sec.

211.1 Visas.
211.2 Passports.
211.3 Expiration of immigrant visas, reentry permits, refugee travel documents, and Form I–551.
211.4 Waiver of documents for returning residents.
211.5 Alien commuters.

AUTHORITY: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

SOURCE: 62 FR 10346, Mar. 6, 1997, unless otherwise noted.

§211.1 Visas.

(a) *General*. Except as provided in paragraph (b)(1) of this section, each arriving alien applying for admission (or boarding the vessel or aircraft on which he or she arrives) into the United States for lawful permanent residence, or as a lawful permanent resident returning to an unrelinquished lawful permanent residence in the United States, shall present one of the following:

(1) A valid, unexpired immigrant visa;

(2) A valid, unexpired Form I–551, Permanent Resident Card, if seeking readmission after a temporary absence of less than 1 year, or in the case of a crewmember regularly serving on board a vessel or aircraft of United States registry seeking readmission after any temporary absence connected with his or her duties as a crewman;

(3) A valid, unexpired Form I–327, Permit to Reenter the United States;

(4) A valid, unexpired Form I–571, Refugee Travel Document, properly endorsed to reflect admission as a lawful permanent resident;

(5) An expired Form I–551, Permanent Resident Card, accompanied by a filing receipt issued within the previous 6 months for either a Form I–751, Petition to Remove the Conditions on Residence, or Form I–829, Petition by Entrepreneur to Remove Conditions, if seeking admission or readmission after a temporary absence of less than 1 year;

(6) A Form I–551, whether or not expired, presented by a civilian or military employee of the United States Government who was outside the United States pursuant to official orders, or by the spouse or child of such employee who resided abroad while the employee or serviceperson was on overseas duty and who is preceding, accompanying or following to join within 4 months the employee, returning to the United States; or

(7) Form I–551, whether or not expired, or a transportation letter issued by an American consular officer, presented by an employee of the American University of Beirut, who was so employed immediately preceding travel to the United States, returning temporarily to the United States before resuming employment with the American University of Beirut, or resuming permanent residence in the United States.

(b) *Waivers*. (1) A waiver of the visa required in paragraph (a) of this section shall be granted without fee or application by the district director, upon presentation of the child's birth certificate, to a child born subsequent to the issuance of an immigrant visa to his or her accompanying parent who applies for admission during the validity of such a visa; or a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States.

(2) For an alien described in paragraph (b)(1) of this section, recordation of the child's entry shall be on Form I–181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence. The carrier of such alien shall not be liable for a fine pursuant to section 273 of the Act.

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an immigrant visa, Form I–551, or reentry permit, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in §103.7(b)(1) of this chapter, except that if the alien's Form I–551 was lost or stolen, the alien shall instead file Form I–90, Application to Replace Permanent Resident Card, with the fee prescribed in

§ 103.7(b)(1) of this chapter, provided the temporary absence did not exceed 1 year. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of an immigrant visa, Form I–551, or reentry permit and admit the alien as a returning resident, if the district director is satisfied that the alien has established good cause for the alien's failure to present an immigrant visa, Form I–551, or reentry permit. Filing the Form I–90 will serve as both application for replacement and as application for waiver of passport and visa, without the obligation to file a separate waiver application.

(c) *Immigrants having occupational status defined in section 101(a)(15) (A), (E), or (G) of the Act.* An immigrant visa, reentry permit, or Form I–551 shall be invalid when presented by an alien who has an occupational status under section 101(a)(15) (A), (E), or (G) of the Act, unless he or she has previously submitted, or submits at the time he or she applies for admission to the United States, the written waiver required by section 247(b) of the Act and 8 CFR part 247.

(d) *Returning temporary residents.* (1) Form I–688, Temporary Resident Card, may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 210.1 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within one year after a temporary absence abroad.

(2) Form I–688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 245a.2 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within 30 days after a temporary absence abroad, provided that the aggregate of all such absences abroad during the temporary residence period has not exceeded 90 days.

[62 FR 10346, Mar. 6, 1997, as amended at 63 FR 39218, July 22, 1998; 63 FR 70315, Dec. 21, 1998]

§ 211.2 Passports.

(a) A passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of his or her immigrant visa shall be presented by each immigrant except an immigrant who:

(1) Is the parent, spouse, or unmarried son or daughter of a United States citizen or of an alien lawful permanent resident of the United States;

(2) Is entering under the provisions of § 211.1(a)(2) through (a)(7);

(3) Is a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States;

(4) Is a stateless person or a person who because of his or her opposition to Communism is unwilling or unable to obtain a passport from the country of his or her nationality, or is the accompanying spouse or unmarried son or daughter of such immigrant; or

(5) Is a member of the Armed Forces of the United States.

(b) Except as provided in paragraph (a) of this section, if an alien seeking admission as an immigrant with an immigrant visa believes that good cause exists for his or her failure to present a passport, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of passport and admit the alien as an immigrant, if the district director is satisfied that the alien has established good cause for the alien's failure to present a passport.

§ 211.3 Expiration of immigrant visas, reentry permits, refugee travel documents, and Form I–551.

An immigrant visa, reentry permit, refugee travel document, or Form I–551

shall be regarded as unexpired if the rightful holder embarked or enplaned before the expiration of his or her immigrant visa, reentry permit, or refugee travel document, or with respect to Form I–551, before the first anniversary of the date on which he or she departed from the United States, provided that the vessel or aircraft on which he or she so embarked or enplaned arrives in the United States or foreign contiguous territory on a continuous voyage. The continuity of the voyage shall not be deemed to have been interrupted by scheduled or emergency stops of the vessel or aircraft en route to the United States or foreign contiguous territory, or by a layover in foreign contiguous territory necessitated solely for the purpose of effecting a transportation connection to the United States.

§ 211.4 Waiver of documents for returning residents.

(a) 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 inadmissible 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 if the district director determines that such alien:

(1) Was not otherwise inadmissible at the time of entry, or having been otherwise inadmissible at the time of entry is with respect thereto qualified for an exemption from deportability under section 237(a)(1)(H) of the Act; and

(2) Is not otherwise subject to removal.

(b) Denial of a waiver by the district director is not appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before the immigration judge.

§ 211.5 Alien commuters.

(a) *General.* An alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his or her place of employment in the United States. An alien commuter engaged in seasonal work will be presumed to have taken up residence in the United States if he or she is present in this country for more than 6 months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his or her actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular employment in the United States for a continuous period of 6 months shall be deemed to have lost residence status, notwithstanding temporary entries in the interim for other than employment purposes. An exception applies when employment in the United States was interrupted for reasons beyond the individual's control other than lack of a job opportunity or the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States. Upon loss of status, Form I–551 or I–688 shall become invalid and must be surrendered to an immigration officer.

(c) *Eligibility for benefits under the immigration and nationality laws.* Until he or she has taken up residence in the United States, an alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his or her own behalf or on behalf of his or her relatives other than as specified in paragraph (a) of this section. When an alien commuter takes up residence in the United States, he or she shall no longer be regarded as a commuter. He or she may facilitate proof of having taken up such residence by notifying the Service as soon as possible, preferably at the time of his or her first reentry for that purpose. Application for issuance of a new Permanent Resident Card to show that he or she has taken up residence in the

United States shall be made on Form I–90.

[62 FR 10346, Mar. 6, 1997, as amended at 63 FR 70315, Dec. 21, 1998]

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

Sec.

212.1 Documentary requirements for nonimmigrants.
212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.
212.3 Application for the exercise of discretion under section 212(c).
212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).
212.5 Parole of aliens into the United States.
212.6 Border crossing identification cards.
212.7 Waiver of certain grounds of inadmissibility.
212.8 Certification requirement of section 212(a)(14).
212.9 Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants.
212.10 Section 212(k) waiver.
212.11 Controlled substance convictions.
212.12 Parole determinations and revocations respecting Mariel Cubans.
212.13 [Reserved]
212.14 Parole determinations for alien witnesses and informants for whom a law enforcement authority (''LEA'') will request S classification.
212.15 Certificates for foreign health care workers.
212.16 Applications for exercise of discretion relating to T nonimmigrant status.

AUTHORITY: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

SOURCE: 17 FR 11484, Dec. 19, 1952, unless otherwise noted.

§ 212.1 Documentary requirements for nonimmigrants.

A valid unexpired visa and an unexpired passport, valid for the period set forth in section 212(a)(26) of the Act, shall be presented by each arriving nonimmigrant alien except that the passport validity period for an applicant for admission who is a member of a class described in section 102 of the Act is not required to extend beyond the date of his application for admission if so admitted, and except as otherwise provided in the Act, this chapter, and for the following classes:

(a) *Canadian nationals, and aliens having a common nationality with nationals of Canada or with British subjects in Bermuda, Bahamian nationals or British subjects resident in Bahamas, Cayman Islands, and Turks and Caicos Islands.* A visa is not required of a Canadian national in any case. A passport is not required of such national except after a visit outside of the Western Hemisphere. A visa is not required of an alien having a common nationality with Canadian nationals or with British subjects in Bermuda, who has his or her residence in Canada or Bermuda. A passport is not required of such alien except after a visit outside of the Western Hemisphere. A visa and a passport are required of a Bahamian national or a British subject who has his residence in the Bahamas except that a visa is not required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfied the examining U.S. immigration officer at the Bahamas, that he is clearly and beyond a doubt entitled to admission in all other respects. A visa is not required of a British subject who has his residence in, and arrives directly from, the Cayman Islands or the Turks and Caicos Islands and who presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(b) *Certain Caribbean residents*—(1) *British, French, and Netherlands nationals, and nationals of certain adjacent islands of the Caribbean which are independent countries.* A visa is not required of a British, French, or Netherlands national, or of a national of Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has his or her residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or in Barbados, Grenada, Jamaica, or Trinidad and Tobago, who:

(i) Is proceeding to the United States as an agricultural worker;

(ii) Is the beneficiary of a valid, unexpired indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the