

## §214.7

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readmitted in TD classification. The new Form I-94 shall bear the legend "multiple entry."

(iii) *Procedure for spouses and/or unmarried minor children of Canadian citizens admitted in TC classification who are no longer in possession of Form I-94 indicating admission in B-2 classification.* If the Canadian citizen seeking readmission to the United States is no longer in possession of an unexpired Form I-94, and the period of initial admission has not lapsed, he or she shall present alternate evidence described in paragraph (g)(1) of this section in order to be admitted in TN status. Spouses and/or children of Canadian citizen professionals seeking to extend their stay beyond the period indicated on the new Form I-94 shall be required to comply with the requirements of paragraph (h)(2) of this section, including remittance of the fee prescribed under §103.7 of this chapter.

(iv) *Nonapplicability of this section to spouses and/or unmarried minor children of self-employed professionals admitted in TC nonimmigrant classification.* Paragraphs (l)(2) (i), (ii), and (iii) of this section shall not apply to the spouses and/or unmarried minor children of Canadian citizen professionals in TC nonimmigrant classification who are self-employed in this country on January 1, 1994. Effective January 1, 1994, such persons are not eligible for TD classification.

[58 FR 69212, Dec. 30, 1993, as amended at 63 FR 1335, Jan. 9, 1998]

### **§214.7 What is habitual residence in the territories and possessions of the United States and what are the consequences thereof?**

(a) *Definitions.* As used in this section, the term:

(1) *Compacts* means the agreements of free association between the United States and the governments of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau, approved by Public Law 99-239 with respect to the governments of the Republic of the Marshall Islands and the Federated States of Micronesia, and by Public Law 99-658, with respect to Palau.

(2) *Freely associated states (FAS)* means the following parts of the

former Trust Territories of the Pacific Islands, namely, the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau.

(3) *Territories and possessions of the United States* means all territories and possessions of the United States to which the Act applies, including those commonwealths of the United States that are not States. It does not include American Samoa and the Commonwealth of the Northern Mariana Islands, as long as the Act does not apply to them.

(4)(i) *Habitual resident* means a citizen of the FAS who has been admitted to a territory or possession of the United States (other than American Samoa or the Commonwealth of the Northern Mariana Islands, as long as the Act is not applicable to them) pursuant to section 141(a) of the Compacts and who occupies in such territory or possession a habitual residence as that term is defined in section 461 of the Compacts, namely a place of general abode or a principal, actual dwelling place of a continuing or lasting nature. The term "habitual resident" does not apply to:

(A) A person who has established a continuing residence in a territory or possession of the United States, but whose cumulative physical presence in the United States amounts to less than 365 days; or

(B) A dependent of a resident representative described in section 152 of the Compacts; or

(C) A person who entered the United States for the purpose of full-time studies as long as such person maintains that status.

(ii) Since the term "habitual" resident requires that the person have entered the United States pursuant to section 141(a) of the Compacts, the term does not apply to FAS citizens whose presence in the territories or possessions is based on an authority other than section 141(a), such as:

(A) Members of the Armed Forces of the United States described in 8 CFR §235.1(c);

(B) Persons lawfully admitted for permanent residence in the United States; or

(C) Persons having nonimmigrant status whose entry into the United States is based on provisions of the

Compacts or the Act other than section 141(a) of the Compacts.

(5) *Dependent* means a citizen of the FAS, as defined in section 141(a) of the Compacts, who:

- (i) Is a habitual resident;
- (ii) Resides with a principal habitual resident;
- (iii) Relies for financial support on that principal habitual resident; and
- (iv) Is either the parent, spouse, or unmarried child under the age of 21 of the principal habitual resident or the parent or child of the spouse of the principal habitual resident.

(6) *Principal habitual resident* means a habitual resident with whom one or more dependents reside and on whom dependent(s) rely for financial support.

(7) *Self-supporting* means:

- (i) Having a lawful occupation of a current and continuing nature that provides 40 hours of gainful employment each week. A part-time student attending an accredited college or institution of higher learning in a territory or possession of the United States receives for each college or graduate credit-hour of study a three-hour credit toward the 40-hour requirement; or
- (ii) If the person cannot meet the 40-hour employment requirement, having lawfully derived funds that meet or exceed 100 percent of the official poverty guidelines for Hawaii for a family unit of the appropriate size as published annually by the Department of Health and Human Services.

(8) *Receipt of unauthorized public benefits* means the acceptance of public benefits by fraud or willful misrepresentation in violation of section 401 or 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 638, 639.

(b) *Where do these rules regarding habitual residence apply?* The rules in this section apply to habitual residents living in a territory or possession of the United States to which the Act applies. Those territories and possessions are at present Guam, the Commonwealth of Puerto Rico, and the American Virgin Islands. These rules do not apply to habitual residents living in American Samoa or the Commonwealth of the

Northern Mariana Islands, as long as the Act does not extend to them. These rules are not applicable to habitual residents living in the fifty States or the District of Columbia.

(c) *When is an arriving FAS citizen presumed to be a habitual resident?* (1) An arriving FAS citizen will be subject to the rebuttable presumption that he or she is a habitual resident if the Service has reason to believe that the arriving FAS citizen was previously admitted to the territory or possession more than one year ago; and

(2) That the arriving FAS citizen either:

(i) Failed to turn in his or her Form I-94 when he or she previously departed from the United States; or

(ii) Failed to apply for a replacement Form I-94.

(d) *What rights do habitual residents have?* Habitual residents have the right to enter, reside, study, and work in the United States, its territories or possessions, in nonimmigrant status without regard to the requirements of sections 212(a)(5)(A) and 212(a)(7)(A) and (B) of the Act.

(e) *What are the limitations on the rights of habitual residents?* (1) A habitual resident who is not a dependent is subject to removal if he or she:

(i) Is not and has not been self-supporting for a period exceeding 60 consecutive days for reasons other than a lawful strike or other labor dispute involving work stoppage; or

(ii) Has received unauthorized public benefits by fraud or willful misrepresentation; or

(iii) Is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

(2) Any dependent is removable from a territory or possession of the United States if:

(i) The principal habitual resident who financially supports him or her and with whom he or she resides, becomes subject to removal unless the dependent establishes that he or she has become a dependent of another habitual resident or becomes self-supporting; or

(ii) The dependent, as an individual, receives unauthorized public benefits by fraud or willful misrepresentation; or

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(iii) The dependent, as an individual, is subject to removal pursuant to section 237 of the Act, or any other provision of the Act.

[65 FR 56465, Sept. 19, 2000]

### §§ 214.8–214.14 [Reserved]

#### § 214.11 Alien victims of severe forms of trafficking in persons.

(a) *Definitions.* The Service shall apply the following definitions as provided in sections 103 and 107(e) of the Trafficking Victims Protection Act (TVPA) with due regard for the definitions and application of these terms in 28 CFR part 1100 and the provisions of chapter 77 of title 18, United States Code:

*Bona fide application* means an application for T-1 nonimmigrant status as to which, after initial review, the Service has determined that there appears to be no instance of fraud in the application, the application is complete, properly filed, contains an LEA endorsement or credible secondary evidence, includes completed fingerprint and background checks, and presents *prima facie* evidence to show eligibility for T nonimmigrant status, including admissibility.

*Child* means a person described as such in section 101(b)(1) of the Act.

*Coercion* means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Immediate family member* means the spouse or a child of a victim of a severe

form of trafficking in persons, and, in the case of a victim of a severe form of trafficking in persons who is under 21 years of age, a parent of the victim.

*Involuntary servitude* means a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of legal process. Accordingly, involuntary servitude includes “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” (*United States v. Kozminski*, 487 U.S. 931, 952 (1988)).

*Law Enforcement Agency (LEA)* means any Federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons. LEAs include the following components of the Department of Justice: the United States Attorneys’ Offices, the Civil Rights and Criminal Divisions, the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (Service), and the United States Marshals Service. The Diplomatic Security Service, Department of State, also is an LEA.

*Law Enforcement Agency (LEA) endorsement* means Supplement B, *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* of Form I-914, *Application for T Nonimmigrant Status*.

*Peonage* means a status or condition of involuntary servitude based upon real or alleged indebtedness.

*Reasonable request for assistance* means a reasonable request made by a law enforcement officer or prosecutor to a victim of a severe form of trafficking in persons to assist law enforcement authorities in the investigation or prosecution of the acts of trafficking in persons. The “reasonableness” of the