

Department of Homeland Security

§ 103.12

of its receipt, appeal the denial to the Assistant Attorney General, Office of Legal Policy, (Attention: Office of Information and Privacy), Department of Justice, Washington, DC 20530. Both the envelope and letter must be clearly marked: "FREEDOM OF INFORMATION APPEAL" or "INFORMATION APPEAL."

(e) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to \$25.00 by filing a Freedom of Information Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgment must confirm the requester's obligation to pay.

[40 FR 7237, Feb. 19, 1975, as amended at 41 FR 34938, Aug. 18, 1976; 42 FR 15408, March 22, 1977; 43 FR 22332, May 25, 1978; 44 FR 23514, Apr. 20, 1979; 48 FR 49652, Oct. 27, 1983; 48 FR 51430, Nov. 9, 1983; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, 31149, June 1, 1993]

§ 103.11 Business information.

Business information provided to the Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with 28 CFR 16.7.

[58 FR 31149, June 1, 1993]

§ 103.12 Definition of the term "lawfully present" aliens for purposes of applying for Title II Social Security benefits under Public Law 104-193.

(a) *Definition of the term an "alien who is lawfully present in the United States."* For the purposes of section 401(b)(2) of Pub. L. 104-193 only, an "alien who is lawfully present in the United States" means:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104-193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(b)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) *Non-issuance of an Order to Show Cause and non-enforcement of deportation and exclusion orders.* An alien may not be deemed to be lawfully present solely on the basis of the Service's decision not to, or failure to, issue an Order to Show Cause or solely on the basis of the Service's decision not to, or failure to, enforce an outstanding order of deportation or exclusion.

[61 FR 47041, Sept. 6, 1996, as amended at 63 FR 63595, Nov. 16, 1998; 64 FR 8487, Feb. 19, 1999; 65 FR 82255, Dec. 28, 2000]