

§ 1214.3

administratively closed by filing a motion to re-calendar with the immigration court or a motion to reinstate with the Board. If the alien is in Service custody pending the completion of immigration proceedings, the Service may continue to detain the alien until a decision has been rendered on the application. An alien who is in custody and requests bond or a bond redetermination will be governed by the provisions of part 236 of this chapter.

(b) *Stay of final order of exclusion, deportation, or removal.* A determination by the Service that an application for T-1 nonimmigrant status is bona fide automatically stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the T application. The filing of an application for T nonimmigrant status does not stay the execution of a final order unless the Service has determined that the application is bona fide. Neither an immigration judge nor the Board of Immigration Appeals has jurisdiction to adjudicate an application for a stay of execution, deportation, or removal order, on the basis of the filing of an application for T nonimmigrant status.

§ 1214.3 Certain spouses and children of lawful permanent residents; aliens in proceedings; V visas.

An alien who is already in immigration proceedings and believes that he or she may have become eligible to apply for V nonimmigrant status should request before the immigration judge or the Board of Immigration Appeals, as appropriate, that the proceedings be administratively closed (or before the Board that a previously-filed motion for reopening or reconsideration be indefinitely continued) in order to allow the alien to pursue an application for V nonimmigrant status with the Service. If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely. In the event that the Service finds an alien eligible for V nonimmigrant status, the Service can adjudicate the change of status under this section. In

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the event that the Service finds an alien ineligible for V nonimmigrant status, the Service shall recommence proceedings by filing a motion to re-calendar.

PART 1215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

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- 1215.7 Instructions from the Administrator required in certain cases.

AUTHORITY: Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185).

SOURCE: 45 FR 65516, Oct. 3, 1980, unless otherwise noted. Duplicated from part 215 at 68 FR 9836, Feb. 28, 2003.

EDITORIAL NOTE: Nomenclature changes to part 1215 appear at 68 FR 9846, Feb. 28, 2003.

§ 1215.1 Definitions.

For the purpose of this part:

- (a) The term *alien* means any person who is not a citizen or national of the United States.
- (b) The term *Commissioner* means the Commissioner of Immigration and Naturalization.
- (c) The term *regional commissioner* means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.
- (d) The term *district director* means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.