

Department of Homeland Security

§211.1

(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

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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 DHS officer *with jurisdiction over the port of entry where the alien arrives*. 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 8 CFR 103.7(b)(1), except that if the alien's Form I-551 was lost or stolen, the alien must instead file Form I-90, Application to Replace Permanent Resident Card, with the fee prescribed in 8 CFR 103.7(b)(1), provided the temporary absence did not exceed 1 year. In the exercise of discretion, the DHS officer *who has jurisdiction over the port of entry where the alien arrives* 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 DHS 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; 74 FR 26937, June 5, 2009]

§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 *DHS officer who has jurisdiction over the port of entry where the alien arrives*. 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 8 CFR 103.7(b)(1). In the exercise of discretion, the *DHS officer with jurisdiction over the port of entry*, may waive the alien's lack of passport and admit the alien as an immigrant, if DHS is satisfied that the alien has established good cause for his or her failure to present a passport.

[62 FR 10346, Mar. 6, 1997, as amended at 74 FR 26937, June 5, 2009]

§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

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AUTHORITY: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255; 8 U.S.C. 1185 note (section 7209 of Public Law 108-458; Title VII of Public Law 110-229; 8 CFR part 2.

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

§212.0 Definitions.

For purposes of §212.1 and §235.1 of this chapter:

Adjacent islands means Bermuda and the islands located in the Caribbean Sea, except Cuba.

Cruise ship means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

Ferry means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars.

Pleasure vessel means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire.