§ 214.7 Habitual residence in the territories and possessions of the United States and consequences thereof.

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


(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, as long as the Act does not apply to it.

(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, as long as the Act is not applicable to it) pursuant to section 141(a) of the Compacts and who occupies in such territory 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 § 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,
§§ 214.8–214.10


(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, the American Virgin Islands, and the Commonwealth of the Northern Mariana Islands. These rules do not apply to habitual residents living in American Samoa as long as the Act does not extend to it. 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

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

§§ 214.8–214.10 [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 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.