

for an immigrant visa or for adjustment of status to that of a lawful permanent resident. Therefore, a departure from the United States at any time after having accrued more than 180 days of unlawful presence will render the alien inadmissible under that section for the purpose of adjustment of status or admission as an immigrant, unless he or she has obtained a waiver under section 212(a)(9)(B)(v) of the Act or falls within one of the exceptions in section 212(a)(9)(B)(iii) of the Act.

(j) *Termination of status*—(1) *General*. The status of an alien admitted to the United States as a V nonimmigrant under section 101(a)(15)(V) of the Act shall be automatically terminated 30 days following the occurrence of any of the following:

(i) The denial, withdrawal, or revocation of the Form I-130, Petition for Immediate Relative, filed on behalf of that alien;

(ii) The denial or withdrawal of the immigrant visa application filed by that alien;

(iii) The denial or withdrawal of the alien's application for adjustment of status to that of lawful permanent residence;

(iv) The V-1 spouse's divorce from the LPR becomes final; or

(v) The marriage of an alien in V-2 or V-3 status.

(2) *Dependents*. When a principal alien's V nonimmigrant status is terminated, the V nonimmigrant status of any alien listed as a V-3 dependent or who is seeking derivative benefits is also terminated.

(3) *Appeals*. If the denial of the immigrant visa petition is appealed, the alien's V nonimmigrant status does not terminate until 30 days after the administrative appeal is dismissed.

(4) *Violations of status*. Nothing in this section precludes the Service from immediately initiating removal proceedings for other violations of an alien's V nonimmigrant status.

(k) *Naturalization of the petitioner*. If the lawful permanent resident who filed the qualifying Form I-130 immigrant visa petition subsequently naturalizes, the V nonimmigrant status of the spouse and any children will terminate after his or her current period of

admission ends. However, in such a case, the alien spouse or child will be considered an immediate relative of a U.S. citizen as defined in section 201(b) of the Act and will immediately be eligible to apply for adjustment of status and related employment authorization. If the V-1 spouse or V-2 child had already filed an application for adjustment of status by the time the LPR naturalized, a new application for adjustment will not be required.

(1) *Aliens in proceedings*. 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, 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 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.

[66 FR 46702, Sept. 7, 2001, as amended at 72 FR 19107, Apr. 17, 2007]

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

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AUTHORITY: 8 U.S.C. 1101; 1104; 1184; 1185 (pursuant to Executive Order 13323, published January 2, 2004); 1365a note. 1379, 1731–32.

SOURCE: 45 FR 65516, Oct. 3, 1980, unless otherwise noted.

§215.1 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.

(e) The term *United States* means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

(f) The term *continental United States* means the District of Columbia and the several States, except Alaska and Hawaii.

(g) The term *geographical part of the United States* means:

- (1) The continental United States,
- (2) Alaska,
- (3) Hawaii,
- (4) Puerto Rico,
- (5) The Virgin Islands,
- (6) Guam,
- (7) American Samoa,
- (8) Swains Island, or

(9) The Commonwealth of the Northern Mariana Islands (beginning November 28, 2009).

(h) The term *depart from the United States* means depart by land, water, or air: (1) From the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided*, That a trip or journey upon a public ferry, passenger vessel sailing coastwise on a fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term *departure-control officer* means any immigration officer as defined in the regulations of the Immigration and Naturalization Service who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term *port of departure* means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), or the Virgin Islands, designated as a port of entry by the Secretary, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, or Swains Island, designated as a port of entry by the chief executive officer thereof.

(k) The term *special inquiry officer* shall have the meaning ascribed thereto in section 101(b)(4) of the Immigration and Nationality Act.

[45 FR 65516, Oct. 3, 1980, as amended at 74 FR 2836, Jan. 16, 2009; 74 FR 25388, May 28, 2009]

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§ 215.2 Authority of departure-control officer to prevent alien's departure from the United States.

(a) No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 215.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

(b) The written order temporarily preventing an alien, other than an enemy alien, from departing from the United States shall become final 15 days after the date of service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his departure from the United States, he shall be notified in writing concerning the provisions of this paragraph, and shall be advised of his right to request a hearing if entitled thereto under § 215.4. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien.

(c) Any alien who seeks to depart from the United States may be required, in the discretion of the departure-control officer, to be examined under oath and to submit for official inspection all documents, articles, and other property in his possession which are being removed from the United States upon, or in connection with, the alien's departure. The departure-control officer may permit certain other persons, including officials of the Department of State and interpreters, to participate in such examination or inspection and may exclude from presence at such examination or inspection any person whose presence would not further the objectives of such examination or inspection. The departure-control officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection, and may, if necessary to the

enforcement of this requirement, take possession of the alien's passport or other travel document.

§ 215.3 Alien whose departure is deemed prejudicial to the interests of the United States.

The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States.

(a) Any alien who is in possession of, and who is believed likely to disclose to unauthorized persons, information concerning the plans, preparation, equipment, or establishments for the national defense and security of the United States.

(b) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measures adopted by the United States or the United Nations for the defense of any other country.

(c) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country.

(d) Any alien who seeks to depart from the United States for the purpose of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or of destroying, or depriving the United States of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States.

(e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and

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who fails to present a Registration Certificate (SSS Form No. 2) showing that he has complied with his obligation to register under the Universal Military Training and Service Act, as amended.

(f) Any alien who is a fugitive from justice on account of an offense punishable in the United States.

(g) Any alien who is needed in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in the United States: *Provided*, That any alien who is a witness in, or a party to, any criminal case pending in any criminal court proceeding may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part.

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

(i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military and defensive operations of the United States or of any nation cooperating with the United States in the interests of collective security.

(j) Any alien, where doubt exists whether such alien is departing or seeking to depart from the United States voluntarily except an alien who is departing or seeking to depart subject to an order issued in extradition, exclusion, or deportation proceedings.

(k) Any alien whose case does not fall within any of the categories described in paragraphs (a) to (j), inclusive, of this section, but which involves circumstances of a similar character rendering the alien's departure prejudicial to the interests of the United States.

§215.4 Procedure in case of alien prevented from departing from the United States.

(a) Any alien, other than an enemy alien, whose departure has been temporarily prevented under the provisions of §215.2, may, within 15 days of the service upon him of the written order temporarily preventing his departure, request a hearing before a special inquiry officer. The alien's request for a hearing shall be made in writing and shall be addressed to the district director having administrative jurisdiction over the alien's place of residence. If the alien's request for a hearing is timely made, the district director shall schedule a hearing before a special inquiry officer, and notice of such hearing shall be given to the alien. The notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him, shall fix the time and place of the hearing, and shall inform the alien of his right to be represented, at no expense to the Government, by counsel of his own choosing.

(b) Every alien for whom a hearing has been scheduled under paragraph (a) of this section shall be entitled: (1) To appear in person before the special inquiry officer, (2) to be represented by counsel of his own choice, (3) to have the opportunity to be heard and to present evidence, (4) to cross-examine the witnesses who appear at the hearing, except that if, in the course of the examination, it appears that further examination may divulge information of a confidential or security nature, the special inquiry officer may, in his discretion, preclude further examination of the witness with respect to such matters, (5) to examine any evidence in possession of the Government which is to be considered in the disposition of the case, provided that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, (6) to have the time and opportunity to produce evidence and witnesses on his own behalf, and (7) to reasonable continuances, upon request, for good cause shown.

(c) Any special inquiry officer who is assigned to conduct the hearing provided for in this section shall have the

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authority to: (1) Administer oaths and affirmations, (2) present and receive evidence, (3) interrogate, examine, and cross examine under oath or affirmation both the alien and witnesses, (4) rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (5) take or cause depositions to be taken, (6) issue subpoenas, and (7) take any further action consistent with applicable provisions of law, Executive orders, proclamations, and regulations.

§ 215.5 Hearing procedure before special inquiry officer.

(a) The hearing before the special inquiry officer shall be conducted in accordance with the following procedure:

(1) The special inquiry officer shall advise the alien of the rights and privileges accorded him under the provisions of § 215.4.

(2) The special inquiry officer shall enter of record: (i) A copy of the order served upon the alien temporarily preventing his departure from the United States, and (ii) a copy of the notice of hearing furnished the alien.

(3) The alien shall be interrogated by the special inquiry officer as to the matters considered pertinent to the proceeding, with opportunity reserved to the alien to testify thereafter in his own behalf, if he so chooses.

(4) The special inquiry officer shall present on behalf of the Government such evidence, including the testimony of witnesses and the certificates or written statements of Government officials or other persons, as may be necessary and available. In the event such certificates or statements are received in evidence, the alien may request and, in the discretion of the special inquiry officer, be given an opportunity to interrogate such officials or persons, by deposition or otherwise, at a time and place and in a manner fixed by the special inquiry officer: *Provided*, That when in the judgment of the special inquiry officer any evidence relative to the disposition of the case is of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, such evidence shall not be presented at the hearing but shall be taken into consid-

eration in arriving at a decision in the case.

(5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.

(b) A complete verbatim transcript of the hearing, except statements made off the record shall be recorded. The alien shall be entitled, upon request, to the loan of a copy of the transcript, without cost, subject to reasonable conditions governing its use.

(c) Following the completion of the hearing, the special inquiry officer shall make and render a recommended decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the Government may have in its possession. The decision of the special inquiry officer shall recommend: (1) That the temporary order preventing the departure of the alien from the United States be made final, or (2) that the temporary order preventing the departure of the alien from the United States be revoked. This recommended decision of the special inquiry officer shall be made in writing and shall set forth the officer's reasons for such decision. The alien concerned shall at his request be furnished a copy of the recommended decision of the special inquiry officer, and shall be allowed a reasonable time, not to exceed 10 days, in which to submit representations with respect thereto in writing.

(d) As soon as practicable after the completion of the hearing and the rendering of a decision by the special inquiry officer, the district director shall forward the entire record of the case, including the recommended decision of the special inquiry officer and any written representations submitted by the alien, to the regional commissioner having jurisdiction over his district. After reviewing the record, the regional commissioner shall render a decision in the case, which shall be based upon the evidence in the record and on any evidence or information of a confidential or security nature which he deems pertinent. Whenever any decision is based in whole or in part on confidential or security information not included in the record, the decision

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shall state that such information was considered. A copy of the regional commissioner's decision shall be furnished the alien, or his attorney or representative. No administrative appeal shall lie from the regional commissioner's decision.

(e) Notwithstanding any other provision of this part, the Administrator of the Bureau of Security and Consular Affairs referred to in section 104(b) of the Immigration and Nationality Act, or such other officers of the Department of State as he may designate, after consultation with the Commissioner, or such other officers of the Immigration and Naturalization Service as he may designate, may at any time permit the departure of an individual alien or of a group of aliens from the United States if he determines that such action would be in the national interest. If the Administrator specifically requests the Commissioner to prevent the departure of a particular alien or of a group of aliens, the Commissioner shall not permit the departure of such alien or aliens until he has consulted with the Administrator.

(f) In any case arising under §§215.1 to 215.7, the Administrator shall, at his request, be kept advised, in as much detail as he may indicate is necessary, of the facts and of any action taken or proposed.

§215.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.

(a) In addition to the restrictions and prohibitions imposed by the provisions of this part upon the departure of aliens from the United States, any alien who seeks to depart from the Canal Zone, the Trust Territory of the Pacific Islands, or an outlying possession of the United States shall comply with such other restrictions and prohibitions as may be imposed by regulations prescribed, with the concurrence of the Administrator of the Bureau of Security and Consular Affairs and the Commissioner, by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or by the governor of an outlying possession of the United States, respectively. No alien shall be pre-

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vented from departing from such zone, territory, or possession without first being accorded a hearing as provided in §§215.4 and 215.5.

(b) The Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of any outlying possession of the United States shall have the authority to designate any employee or class of employees of the United States as hearing officers for the purpose of conducting the hearing referred to in paragraph (a) of this section. The hearing officer so designated shall exercise the same powers, duties, and functions as are conferred upon special inquiry officers under the provisions of this part. The chief executive officer of such zone, territory, or possession shall, in lieu of the regional commissioner, review the recommended decision of the hearing officer, and shall render a decision in any case referred to him, basing it on evidence in the record and on any evidence or information of a confidential or a security nature which he deems pertinent.

§215.7 Instructions from the Administrator required in certain cases.

In the absence of appropriate instructions from the Administrator of the Bureau of Security and Consular Affairs, departure-control officers shall not exercise the authority conferred by §215.2 in the case of any alien who seeks to depart from the United States in the status of a nonimmigrant under section 101(a)(15) (A) or (G) of the Immigration and Nationality Act, or in the status of a nonimmigrant under section 11(3), 11(4), or 11(5) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (61 Stat. 756): *Provided*, That in cases of extreme urgency, where the national security so requires, a departure-control officer may preliminarily exercise the authority conferred by §215.2 pending the outcome of consultation with the Administrator, which shall be undertaken immediately. In all cases arising under this section, the decision of the Administrator shall be controlling: *Provided*, That any decision to prevent the departure of an alien shall

be based upon a hearing and record as prescribed in this part.

§ 215.8 Requirements for biometric identifiers from aliens on departure from the United States.

(a)(1) The Secretary of Homeland Security, or his designee, may establish pilot programs at land border ports of entry, and at up to fifteen air or sea ports of entry, designated through notice in the FEDERAL REGISTER, through which the Secretary or his delegate may require an alien admitted to or paroled into the United States, other than aliens exempted under paragraph (a)(2) of this section or Canadian citizens under section 101(a)(15)(B) of the Act who were not otherwise required to present a visa or have been issued Form I-94 (see § 1.4) or Form I-95 upon arrival at the United States, who departs the United States from a designated port of entry, to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States.

(2) The requirements of paragraph (a)(1) shall not apply to:

(i) Aliens younger than 14 or older than 79 on date of departure;

(ii) Aliens admitted on A-1, A-2, C-3 (except for attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visas, and certain Taiwan officials who hold E-1 visas and members of their immediate families who hold E-1 visas who are maintaining such status at time of departure, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the requirements of paragraph (a)(1);

(iii) Classes of aliens to whom the Secretary of Homeland Security and the Secretary of State jointly determine it shall not apply; or

(iv) An individual alien to whom the Secretary of Homeland Security, the Secretary of State, or the Director of

Central Intelligence determines it shall not apply.

(b) An alien who is required to provide biometric identifiers at departure pursuant to paragraph (a)(1) and who fails to comply with the departure requirements may be found in violation of the terms of his or her admission, parole, or other immigration status. In addition, failure of a covered alien to comply with the departure requirements could be a factor in support of a determination that the alien is ineligible to receive a future visa or other immigration status documentation, or to be admitted to the United States. In making this determination, the officer will consider the totality of the circumstances, including, but not limited to, all positive and negative factors related to the alien's ability to comply with the departure procedures.

(c) A covered alien who leaves the United States without complying with the departure requirements in this section may be found to have overstayed the period of his or her last admission where the available evidence clearly indicates that the alien did not depart the United States within the time period authorized at his or her last admission or extension of stay. A determination that the alien previously overstayed the terms of his admission may result in a finding of inadmissibility for accruing prior unlawful presence in the United States under section 212(a)(9) of the Immigration and Nationality Act or that the alien is otherwise ineligible for a visa or other authorization to reenter the United States, provided that all other requirements of section 212(a)(9) have been met. A determination that an alien who was admitted on the basis of a nonimmigrant visa has remained in the United States beyond his or her authorized period of stay may result in such visa being deemed void pursuant to section 222(g) of the Act (8 U.S.C. 1202(g)) where all other requirements of that section are also met.

[69 FR 480, Jan. 5, 2004, as amended at 69 FR 53333, Aug. 31, 2004; 69 FR 58037, Sept. 29, 2004; 73 FR 77491, Dec. 19, 2008; 78 FR 18472, Mar. 27, 2013]

§215.9 Temporary Worker Visa Exit Program.

An alien admitted on certain temporary worker visas at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of his or her authorized period of stay through a port of entry participating in the program and must present designated biographic and/or biometric information upon departure. U.S. Customs and Border Protection will publish a Notice in the FEDERAL REGISTER designating which temporary workers must participate in the Temporary Worker Visa Exit Program, which ports of entry are participating in the program, which biographical and/or biometric information would be required, and the format for submission of that information by the departing designated temporary workers.

[73 FR 78130, Dec. 19, 2008]

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

- Sec.
- 216.1 Definition of conditional permanent resident.
- 216.2 Notification requirements.
- 216.3 Termination of conditional resident status.
- 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.
- 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.
- 216.6 Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

AUTHORITY: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

SOURCE: 53 FR 30018, Aug. 10, 1988, unless otherwise noted.

§216.1 Definition of conditional permanent resident.

A *conditional permanent resident* is an alien who has been lawfully admitted for permanent residence within the meaning of section 101(a)(20) of the Act, except that a conditional permanent resident is also subject to the conditions and responsibilities set forth in section 216 or 216A of the Act, whichever is applicable, and part 216 of this

chapter. Unless otherwise specified, the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to the right to apply for naturalization (if otherwise eligible), the right to file petitions on behalf of qualifying relatives, the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed; the duty to register with the Selective Service System, when required; and the responsibility for complying with all laws and regulations of the United States. All references within this chapter to lawful permanent residents apply equally to conditional permanent residents, unless otherwise specified. The conditions of section 216 of the Act shall not apply to lawful permanent resident status based on a self-petitioning relationship under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(b)(ii), or 204(a)(1)(B)(iii) of the Act or based on eligibility as the derivative child of a self-petitioning spouse under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act, regardless of the date on which the marriage to the abusive citizen or lawful permanent resident occurred.

[53 FR 30018, Aug. 10, 1988, as amended at 59 FR 26590, May 23, 1994; 61 FR 13079, Mar. 26, 1996]

§216.2 Notification requirements.

(a) *When alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, the Service shall notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When alien is required to apply for removal of the conditional basis of lawful*