

Department of Homeland Security

§211.5

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 apply on the form specified by USCIS, 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; 76 FR 53786, Aug. 29, 2011]

§211.3 Expiration of immigrant visa or other travel document.

An immigrant visa, reentry permit, refugee travel document, or a permanent resident card 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 a permanent resident card, 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.

[62 FR 10346, Mar. 6, 1997, as amended at 76 FR 53786, Aug. 29, 2011]

§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, the alien's permanent resident card becomes 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 in accordance with 8 CFR 264.5.

[62 FR 10346, Mar. 6, 1997, as amended at 63 FR 70315, Dec. 21, 1998; 76 FR 53786, Aug. 29, 2011]

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

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Section 212.1(q) also issued under section 702, Public Law 110–229, 122 Stat. 754, 854.

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