

§215.8

8 CFR Ch. I (1–1–16 Edition)

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.

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