

Investor Pilot Program, and, if the petition is denied, of the reasons for the denial and of the regional center's right of appeal to the Associate Commissioner for Examinations. Notification of denial and appeal rights, and the procedure for appeal shall be the same as those contained in 8 CFR 103.3.

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, the Assistant Commissioner for Adjudications shall issue a notice of intent to terminate the participation of a regional center in the pilot program upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided thirty days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If the Assistant Commissioner for Adjudications determines that the regional center's participation in the Pilot Program should be terminated, the Assistant Commissioner for Adjudications shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the Associate Commissioner for Examinations as provided in 8 CFR 103.3.

(7) *Requirements for alien entrepreneurs.* An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.

(i) *Exports.* For purposes of paragraph (m) of this section, the term "exports" means services or goods which are pro-

duced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States;

(ii) *Indirect job creation.* To show that 10 or more jobs are actually created indirectly by the business, reasonable methodologies may be used. Such methodologies may include multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid forecasting devices which indicate the likelihood that the business will result in increased employment.

(8) *Time for submission of petitions for classification as an alien entrepreneur under the Immigrant Investor Pilot Program.* Commencing on October 1, 1993, petitions will be accepted for filing and adjudicated in accordance with the provisions of this section if the alien entrepreneur has invested or is actively in the process of investing within a regional center which has been approved by the Service for participation in the Pilot Program.

(9) *Effect of termination of approval of regional center to participate in the Immigrant Investor Pilot Program.* Upon termination of approval of a regional center to participate in the Immigrant Investor Pilot Program, the director shall send a formal written notice to any alien within the regional center who has been granted lawful permanent residence on a conditional basis under the Pilot Program, and who has not yet removed the conditional basis of such lawful permanent residence, of the termination of the alien's permanent resident status, unless the alien can establish continued eligibility for alien entrepreneur classification under section 203(b)(5) of the Act.

[56 FR 60910, Nov. 29, 1991, as amended at 57 FR 1860, Jan. 16, 1992; 58 FR 44608, 44609, Aug. 24, 1993]

§ 204.7 Preservation of benefits contained in savings clause of Immigration and Nationality Act Amendments of 1976.

In order to be considered eligible for the benefits of the savings clause contained in section 9 of the Immigration and Nationality Act Amendments of 1976, an alien must show that the facts

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established prior to January 1, 1977 upon which the entitlement to such benefits was based continue to exist.

[41 FR 55849, Dec. 23, 1976]

§ 204.8 Petitions for employees of certain United States businesses operating in Hong Kong.

(a) *General.* A petition to accord an alien status as an employee of a United States business operating in Hong Kong pursuant to section 124 of the Immigration Act of 1990 shall be filed by the employer on Form I-140, Immigrant Petition for Alien Worker. Since section 124 provides for up to 12,000 additional visa numbers only in each of fiscal years 1991 through 1993, petitions for these employees will not be accepted after September 30, 1993.

(b) *Definitions.* As used in this section:

Affiliate means one of two subsidiaries both of which are owned and controlled by the same parent or individual or one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. Effective October 1, 1991, in the case of a partnership that is organized in the United States to provide accounting services along with managerial and consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if its markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

Executive capacity means an assignment within an organization in which the employee primarily:

(i) Directs the management of the organization or a major component or function of the organization;

(ii) Establishes the goals and policies of the organization, component, or function;

(iii) Exercises wide latitude in discretionary decision-making; and

(iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Managerial capacity means an assignment within an organization in which the employee primarily:

(i) Manages the organization, or a department, subdivision, function, or component of the organization;

(ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised, or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

Officer means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or associate trust officer, the controller, any assistant controller, or any other officer of the entity customarily performing functions similar to those performed by any of the foregoing officers.

Parent means a firm, corporation, or other legal entity which has subsidiaries.

Specialized knowledge means, with respect to an organization, that an alien has a special knowledge of the organization's product and its application in