

§§ 214.8–214.14

8 CFR Ch. I (1–1–02 Edition)

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

comes 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.

[65 FR 56465, Sept. 19, 2000]

§§ 214.8–214.14 [Reserved]

§ 214.15 Certain spouses and children of lawful permanent residents.

(a) *Aliens abroad.* Under section 101(a)(15)(v) of the Act, certain eligible spouses and children of lawful permanent residents may apply for a V nonimmigrant visa at a consular office abroad and be admitted to the United States in V-1 (spouse), V-2 (child), or V-3 (dependent child of the spouse or child who is accompanying or following to join the principal beneficiary) nonimmigrant status to await the approval of:

(1) A relative visa petition;

(2) The availability of an immigrant visa number; or

(3) Lawful permanent resident (LPR) status through adjustment of status or an immigrant visa.

(b) *Aliens already in the United States.* Eligible aliens already in the United States may apply to the Service to obtain V nonimmigrant status for the same purpose. Aliens in the United States in V nonimmigrant status are entitled to reside in the United States as V nonimmigrants and obtain employment authorization.

(c) *Eligibility.* Subject to section 214(o) of the Act, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d) of the Act) of an immigrant visa petition to accord a status under section 203(a)(2)(A) of the Act that was filed with the Service under section 204 of the Act on or before December 21, 2000, may apply for V nonimmigrant status if:

(1) Such immigrant visa petition has been pending for 3 years or more; or

(2) Such petition has been approved, and 3 or more years have passed since such filing date, in either of the following circumstances:

(i) An immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A) of the Act; or

(ii) The alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245 of the Act, pursuant to the approval of such petition, remains pending.

(d) *The definition of "pending".* For purposes of this section, a pending petition is defined as a petition to accord a status under section 203(a)(2)(A) of the Act that was filed with the Service under section 204 of the Act on or before December 21, 2000, that has not been adjudicated. In addition, the petition must have been properly filed according to §103.2(a) of this chapter, and if, subsequent to filing, the Service returns the petition to the applicant for any reason or makes a request for evidence, the petitioner must satisfy the Service request within the time period set forth at §103.2(b)(8) of this chapter. If the Service denies a petition, but the petitioner appeals that decision, the petition will be considered pending until the administrative appeal is decided by the Service. A petition rejected by the Service as not properly filed is not considered to be pending.

(e) *Classification process for aliens outside the United States.*

(1) *V nonimmigrant visa.* An eligible alien may obtain a V nonimmigrant visa from the Department of State at a consular office abroad pursuant to the procedures set forth in 22 CFR 41.86.

(2) *Aliens applying for admission to the United States as a V nonimmigrant at a port-of-entry.* Aliens applying under section 235 of the Act for admission to the United States at a port-of-entry as a V nonimmigrant must have a visa in the appropriate category. Such aliens are exempt from the ground of inadmissibility under section 212(a)(9)(B) of the Act.

(f) *Application by aliens in the United States.* An alien described in paragraph (c) of this section who is in the United States may apply to the Service to obtain V nonimmigrant status pursuant to the procedures set forth in this sec-

tion and 8 CFR part 248. The alien must be admissible to the United States, except that, in determining the alien's admissibility in V nonimmigrant status, sections 212(a)(6)(A), (a)(7), and (a)(9)(B) of the Act do not apply.

(1) *Contents of application.* To apply for V nonimmigrant status, an eligible alien must submit:

(i) Form I-539, Application to Extend/Change Nonimmigrant Status, with the fee required by §103.7(b)(1) of this chapter;

(ii) The fingerprint fee as required by §103.2(e)(4) of this chapter;

(iii) Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, without the vaccination supplement; and

(iv) Evidence of eligibility as described by Supplement A to Form I-539 and in paragraph (f)(2) of this section.

(2) *Evidence.* Supplement A to Form I-539 provides instructions regarding the submission of evidence. An alien applying for V nonimmigrant status with the Service should submit proof of filing of the immigrant petition that qualifies the alien for V status. Proof of filing may include Form I-797, Notice of Action, which serves as a receipt of the petition or as a notice of approval, or a receipt for a filed petition or notice of approval issued by a local district office. If the alien does not have such proof, the Service will review other forms of evidence, such as correspondence to or from the Service regarding a pending petition. If the alien does not have any of the items previously mentioned in this paragraph, but believes he or she is eligible for V nonimmigrant status, he or she should state where and when the petition was filed, the name and alien number of the petitioner, and the names of all beneficiaries (if known).

(g) *Period of admission.*

(1) *Spouse of an LPR.* An alien admitted to the United States in V-1 nonimmigrant status (or whose status in the United States is changed to V-1) will be granted a period of admission not to exceed 2 years.

(2) *Child of an LPR or derivative child.* An alien admitted to the United States in V-2 or V-3 nonimmigrant status (or whose status in the United States is changed to V-2 or V-3) will be granted

a period of admission not to exceed 2 years or the day before the alien's 21st birthday, whichever comes first.

(3) *Extension of status.* An alien may apply to the Service for an extension of V nonimmigrant status pursuant to this part and 8 CFR part 248. Aliens may apply for the extension of V nonimmigrant status, submitting Form I-539, and the associated filing fee, on or before 120 days before the expiration of their status. If approved, the Service will grant an extension of status to aliens in V nonimmigrant status who remain eligible for V nonimmigrant status for a period not to exceed 2 years, or in the case of a child in V-2 or V-3 status, the day before the alien's 21st birthday, whichever comes first.

(4) *Special rules.* The following special rules apply with respect to aliens who have a current priority date in the United States, but do not have a pending application for an immigrant visa abroad or an application to adjust status.

(i) For an otherwise eligible alien who applies for admission to the United States in a V nonimmigrant category at a designated Port-of-Entry and has a current priority date but does not have a pending immigrant visa abroad or application for adjustment of status in the United States, the Service will admit the alien for a 6-month period (or to the date of the day before the alien's 21st birthday, as appropriate).

(ii) For such an alien in the United States who applies for extension of V nonimmigrant status, the Service will grant a one-time extension not to exceed 6 months.

(iii) If the alien has not filed an application, either for adjustment of status or for an immigrant visa within that 6-month period, the alien cannot extend or be admitted or readmitted to V nonimmigrant status. If the alien does file an application, either for adjustment of status or for an immigrant visa within the time allowed, the alien will continue to be eligible for further extensions of V nonimmigrant status as provided in this section while that application remains pending.

(h) *Employment authorization.* An alien in V nonimmigrant status may apply to the Service for employment

authorization pursuant to this section and §274a.12(a)(15) of this chapter. An alien must file Form I-765, Application for Employment Authorization, with the fee required by 8 CFR 103.7. The Service will grant employment authorization to aliens in V nonimmigrant status who remain eligible for V nonimmigrant status valid for a period equal to the alien's authorized admission as a V nonimmigrant.

(i) *Travel abroad; unlawful presence.—*

(1) *V nonimmigrant status in the United States.* An alien who applies for and obtains V nonimmigrant status in the United States will be issued Form I-797, Notice of Action, indicating the alien's V status in the United States. Form I-797 does not serve as a travel document. If such an alien departs the United States, he or she must obtain a V visa from a consular office abroad in order to be readmitted to the United States as a V nonimmigrant. This visa requirement, however, does not apply if the alien traveled to contiguous territory or adjacent islands, possesses another valid visa, and is eligible for automatic revalidation.

(2) *V nonimmigrants with a pending Form I-485.* An alien in V nonimmigrant status with a pending Form I-485 (Application to Register Permanent Residence or Adjust Status) that was properly filed with the Service does not have to obtain advance parole in order to prevent the abandonment of that application when the alien departs the United States.

(3) *Unlawful presence.—*

(i) *Nonimmigrant admission.* An alien otherwise eligible for admission as a V nonimmigrant is not subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act. This is true even if the alien had accrued more than 180 days of unlawful presence in the United States and is applying for admission as a nonimmigrant after travel abroad.

(ii) *Permanent resident status.* A V nonimmigrant alien is subject to the ground of inadmissibility under section 212(a)(9)(B) of the Act when applying 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 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]

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.

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AUTHORITY: Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953