

§ 103.11

\$25.00 by filing a Freedom of Information Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgment must confirm the requester's obligation to pay.

[40 FR 7237, Feb. 19, 1975, as amended at 41 FR 34938, Aug. 18, 1976; 42 FR 15408, March 22, 1977; 43 FR 22332, May 25, 1978; 44 FR 23514, Apr. 20, 1979; 48 FR 49652, Oct. 27, 1983; 48 FR 51430, Nov. 9, 1983; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, 31149, June 1, 1993]

§ 103.11 Business information.

Business information provided to the Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with 28 CFR 16.7.

[58 FR 31149, June 1, 1993]

§ 103.12 Definition of the term "lawfully present" aliens for purposes of applying for Title II Social Security benefits under Public Law 104-193.

(a) *Definition of the term an "alien who is lawfully present in the United States."* For the purposes of section 401(b)(2) of Pub. L. 104-193 only, an "alien who is lawfully present in the United States" means:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104-193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(b)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

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(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) *Non-issuance of an Order to Show Cause and non-enforcement of deportation and exclusion orders.* An alien may not be deemed to be lawfully present solely on the basis of the Service's decision not to, or failure to, issue an Order to Show Cause or solely on the basis of the Service's decision not to, or failure to, enforce an outstanding order of deportation or exclusion.

[61 FR 47041, Sept. 6, 1996, as amended at 63 FR 63595, Nov. 16, 1998; 64 FR 8487, Feb. 19, 1999; 65 FR 82255, Dec. 28, 2000]

§ 103.20 Purpose and scope.

(a) Sections 103.20 through 103.36 comprise the regulations of the Service implementing the Privacy Act of 1974, Public Law 93-597. The regulations apply to all records contained in systems of records maintained by the Service which are identifiable by individual name or identifier and which are retrieved by individual name or identifier, except those personnel records governed by regulations of the Office of

Personnel Management. The regulations set forth the procedures by which individuals may seek access to records pertaining to themselves and request correction of those records. The regulations also set forth the requirements applicable to Service employees maintaining, collecting, using or disseminating such records.

(b) The Associate Commissioner, Information Systems, shall ensure that the provisions of §§ 103.20 through 103.36 of this title and 28 CFR 16.40 through 16.58, and any revisions, are brought to the attention of and made available to:

(1) Each employee at the time of issuance of the regulations and at the time of any amendments; and

(2) Each new employee at the time of employment.

(c) The Associate Commissioner, Information Systems, shall be responsible for ensuring that employees of the Service are trained in the obligations imposed by the Privacy Act of 1974 (5 U.S.C 522a) and by these regulations.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49652, Oct. 27, 1983; 58 FR 31149, June 1, 1993]

§ 103.21 Access by individuals to records maintained about them.

(a) *Access to available records.* An individual who seeks access to records about himself or herself in a system of records must submit a written request in person or by mail to the Freedom of Information/Privacy Act Officer at the location where the records are maintained. If the location is unknown, the request may be submitted to the nearest Service office or to the Headquarters FOIA/PA Officer, 425 I Street, NW., Washington, DC 20536. The outside of the envelope should be marked "Privacy Act Request." A Form G-639, Freedom of Information/Privacy Act Request may be used for convenience and to facilitate identification of the record requested. However, a request may be made in any written form and should clearly identify the record sought by the name and any other personal identifiers for the individual (such as the alien file number or Social Security Account Number), date and place of birth, and type of file in which the record is believed to be located.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself, unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records.

(1) An individual seeking access to records about himself in person shall establish his identity by the presentation of a single document bearing a photograph (such as a passport, Permanent Resident Card or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).

(2) Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number if applicable. Form DOJ 361, Certification of Identity, may be obtained from any Service office and used to obtain the notarized signature needed to verify identity.

(c) *Verification of guardianship.* The parent or guardian of a child or of a person judicially determined to be incompetent and seeking to act on behalf of such child or incompetent, shall, in addition to establishing his own identity, establish the identity of the child or other person he represents as required in paragraph (b) of this section, and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records pertaining to himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form indicating that the Service is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *Specification of records sought.* Requests for access to records, either in person or by mail, shall describe the