

## §211.4

## 8 CFR Ch. I (1-1-05 Edition)

before the expiration of his or her immigrant visa, reentry permit, or refugee travel document, or with respect to Form I-551, 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.

### §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 contig-

uous 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, Form I-551 or I-688 shall become 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

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United States shall be made on Form I-90.

[62 FR 10346, Mar. 6, 1997, as amended at 63 FR 70315, Dec. 21, 1998]

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

- Sec. 212.1 Documentary requirements for non-immigrants. 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense. 212.3 Application for the exercise of discretion under section 212(c). 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3). 212.5 Parole of aliens into the United States. 212.6 Border crossing identification cards. 212.7 Waiver of certain grounds of inadmissibility. 212.8 Certification requirement of section 212(a)(14). 212.9 Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants. 212.10 Section 212(k) waiver. 212.11 Controlled substance convictions. 212.12 Parole determinations and revocations respecting Mariel Cubans. 212.13 [Reserved] 212.14 Parole determinations for alien witnesses and informants for whom a law enforcement authority ('LEA') will request S classification. 212.15 Certificates for foreign health care workers. 212.16 Applications for exercise of discretion relating to T nonimmigrant status.

AUTHORITY: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

SOURCE: 17 FR 11484, Dec. 19, 1952, unless otherwise noted.

§212.1 Documentary requirements for nonimmigrants.

A valid unexpired visa and an unexpired passport, valid for the period set forth in section 212(a)(26) of the Act, shall be presented by each arriving nonimmigrant alien except that the passport validity period for an applicant for admission who is a member of a class described in section 102 of the Act is not required to extend beyond the date of his application for admis-

sion if so admitted, and except as otherwise provided in the Act, this chapter, and for the following classes:

(a) Citizens of Canada or Bermuda, Bahamian nationals or British subjects resident in certain islands—(1) Canadian citizens. A passport is not required except after a visit outside of the Western Hemisphere. A visa is not required.

(2) Citizens of the British Overseas Territory of Bermuda. A passport is not required except after a visit outside of the Western Hemisphere. A visa is not required.

(3) Bahamian nationals or British subjects resident in the Bahamas. A passport is required. A visa required of such an alien unless, prior to or at the time of embarkation for the United States on a vessel or aircraft, the alien satisfied the examining U.S. immigration officer at the Bahamas, that he or she is clearly and beyond a doubt entitled to admission, under section 212(a) of the Immigration and Nationality Act, in all other respects.

(4) British subjects resident in the Cayman Islands or in the Turks and Caicos Islands. A passport is required. A visa is required of such an alien unless he or she arrives directly from the Cayman Islands or the Turks and Caicos Islands and presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(b) Certain Caribbean residents—(1) British, French, and Netherlands nationals, and nationals of certain adjacent islands of the Caribbean which are independent countries. A visa is not required of a British, French, or Netherlands national, or of a national of Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has his or her residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or in Barbados, Grenada, Jamaica, or Trinidad and Tobago, who:

(i) Is proceeding to the United States as an agricultural worker;

(ii) Is the beneficiary of a valid, unexpired indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding to the Virgin Islands of the United States for such purpose, or