

abusive citizen or lawful permanent resident occurred.

[53 FR 30018, Aug. 10, 1988, as amended at 59 FR 26590, May 23, 1994; 61 FR 13079, Mar. 26, 1996]

§ 216.2 Notification requirements.

(a) *When alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, the Service shall notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When alien is required to apply for removal of the conditional basis of lawful permanent resident status.* Approximately 90 days before the second anniversary of the date on which the alien obtained conditional permanent residence, the Service should notify the alien a second time of the requirement that the alien and the petitioning spouse or alien entrepreneur must file a petition to remove the conditional basis of the alien's lawful permanent residence. Such notification shall be mailed to the alien's last known address.

(c) *Effect of failure to provide notification.* Failure of the Service to provide notification as required by either paragraph (a) or (b) of this section does not relieve the alien and the petitioning spouse, or alien entrepreneur of the requirement to file a petition to remove conditions within the 90 days immediately preceding the second anniversary of the date on which the alien obtained permanent residence.

[53 FR 30018, Aug. 10, 1988, as amended at 59 FR 26590, May 23, 1994]

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional per-

manent resident of the termination of the alien's conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a notice of intent to terminate an alien's conditional resident status, the director shall not adjudicate Form I-751 or Form I-829 until it has been determined that the alien's status will not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the notice of termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the director, although the alien may request a review of such determination in removal proceedings. In addition to the notice of termination, the director shall issue a notice to appear in accordance with 8 CFR part 239. During the ensuing removal proceedings, the alien may submit evidence to rebut the determination of the director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director

determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or removal proceedings under section 240 of the Act.

[62 FR 10349, Mar. 6, 1997]

§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) *Filing the petition*—(1) *General procedures*. Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiance/fiancée petition through which the alien obtained permanent residence must file a Petition to Remove the Conditions on Residence (Form I-751) with the Service. The petition shall be filed within this time period regardless of the amount of physical presence which the alien has accumulated in the United States. Before Form I-751 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b) of this chapter and by documentation as described in paragraph (a)(5) of this section, and it must be properly signed by the alien and the alien's spouse. If the joint petition cannot be filed due to the termination of the marriage through annulment, divorce, or the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing of the petition, the conditional permanent resident may apply for a waiver of the requirement to file the joint petition in accordance with the provisions of § 216.5 of this part. Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

(2) *Dependent children*. Dependent children of a conditional permanent resident who acquired conditional per-

manent resident status concurrently with the parent may be included in the joint petition filed by the parent and the parent's petitioning spouse. A child shall be deemed to have acquired conditional residence status concurrently with the parent if the child's residence was acquired on the same date or within 90 days thereafter. Children who cannot be included in a joint petition filed by the parent and parent's petitioning spouse due to the child's not having acquired conditional resident status concurrently with the parent, the death of the parent, or other reasons may file a separate Petition to Remove the Conditions on Residence (Form I-751).

(3) *Jurisdiction*. Form I-751 shall be filed with the director of the regional service center having jurisdiction over the alien's place of residence.

(4) *Physical presence at time of filing*. A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and dependent children, to comply with the interview requirements contained in the Act. Furthermore, if the documentation submitted in support of the petition includes affidavits of third parties having knowledge of the bona fides of the marital relationship, the petitioner must arrange for the affiants to be present at the interview, at no expense to the government. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(5) *Documentation*. Form I-751 shall be accompanied by evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Such evidence may include: