

Department of Homeland Security

§ 236.14

Control Act of 1986 (Cuban/Haitian Adjustment); or

(3) Is a naturalized U.S. citizen who was a permanent resident under section 210 or 245A of the Act or section 202 of the Immigrant Reform and Control Act of 1986 (IRCA) (Cuban/Haitian Adjustment), and maintained such a status until his or her naturalization.

[62 FR 10360, Mar. 6, 1997, as amended at 65 FR 43679, July 14, 2000]

§ 236.12 Eligibility.

(a) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(1) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(2) That as of May 5, 1988, (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90) or as of December 1, 1988, (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse or unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored immigrant status under section 203(a) (1), (2), or (3) or as an immediate relative under section 201 (b)(2) of the Act based on the same relationship.

(b) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described

in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

[62 FR 10360, Mar. 6, 1997, as amended at 65 FR 43679, July 14, 2000]

§ 236.13 Ineligible aliens.

The following categories of aliens are ineligible for benefits under the Family Unity Program:

(a) An alien who is deportable under any paragraph in section 237(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); provided that an alien who is deportable under section 237(a)(1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based upon a ground of inadmissibility described in section 212(a)(2) or (3) of the Act;

(b) An alien who has been convicted of a felony or three or more misdemeanors in the United States;

(c) An alien described in section 241(b)(3)(B) of the Act; or

(d) An alien who has committed an act of juvenile delinquency (as defined in 18 U.S.C. 5031) which if committed by an adult would be classified as:

(1) A felony crime of violence that has an element the use or attempted use of physical force against another individual; or

(2) A felony offense that by its nature involves a substantial risk that physical force against another individual may be used in the course of committing the offense.

[62 FR 10360, Mar. 6, 1997, as amended at 65 FR 43680, July 14, 2000]

§ 236.14 Filing.

(a) *General.* An application for benefits under the Family Unity Program must be filed at the service center having jurisdiction over the alien's place of residence. A Form I-817, Application for Family Unity Benefits, must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate

fee and documentation must be filed for each person claiming eligibility.

(b) *Decision.* The service center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(c) *Referral of denied cases for consideration of issuance of notice to appear.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue a notice to appear. After an initial denial, an applicant's case will not be referred for issuance of a notice to appear until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I-817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under §236.13(b), the Service reserves the right to issue a notice to appear at any time after the initial denial.

[62 FR 10360, Mar. 6, 1997, as amended at 65 FR 43680, July 14, 2000; 66 FR 29672, June 1, 2001]

§ 236.15 Voluntary departure and eligibility for employment.

(a) *Authority.* Voluntary departure under this section implements the provisions of section 301 of IMMACT 90, and authority to grant voluntary departure under the family unity program derives solely from that section. Voluntary departure under the family unity program shall be governed solely by this section, notwithstanding the provisions of section 240B of the Act and 8 CFR part 240.

(b) *Children of legalized aliens.* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program, may be granted voluntary departure under section

301 of IMMACT 90 for a period of 2 years.

(c) *Duration of voluntary departure.* An alien whose application for benefits under the Family Unity Program is approved will receive voluntary departure for 2 years, commencing with the date of approval of the application. Voluntary departure under this section shall be considered effective from the date on which the application was properly filed.

(d) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and will receive an employment authorization document. The validity period of the employment authorization document will coincide with the period of voluntary departure.

(e) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I-817 along with the correct fee required in §103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, or a naturalized U.S. citizen who was a lawful permanent resident under section 210 or 245A of the Act or section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 66-903, and maintained such status until his or her naturalization, and a petition for family-sponsored immigrant status has not been filed on behalf of the applicant. In such case, the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I-817 once the petition, Form I-130, has been filed on his or her behalf. No charging document will be issued for a period of 90 days from the date of the denial.

(f) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous