

shall lie from the immigration judge's decision.

(2) If the immigration judge finds that the alien has a reasonable fear of persecution or torture, the alien may submit Form I-589, Application for Asylum and Withholding of Removal.

(i) The immigration judge shall consider only the alien's application for withholding of removal under §208.16 and shall determine whether the alien's removal to the country of removal must be withheld or deferred.

(ii) Appeal of the immigration judge's decision whether removal must be withheld or deferred lies to the Board of Immigration Appeals. If the alien or the Service appeals the immigration judge's decision, the Board shall review only the immigration judge's decision regarding the alien's eligibility for withholding or deferral of removal under §208.16.

[64 FR 8493, Feb. 19, 1999; 64 FR 13881, Mar. 23, 1999]

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

Sec.

209.1 Adjustment of status of refugees.

209.2 Adjustment of status of alien granted asylum.

AUTHORITY: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

§209.1 Adjustment of status of refugees.

The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act whose application is based on his or her refugee status.

(a) *Eligibility.* (1) Every alien in the United States who is classified as a refugee under part 207 of this chapter, whose status has not been terminated, is required to apply to the Service 1 year after entry in order for the Service to determine his or her admissibility under section 212 of the Act.

(2) Every alien processed by the Immigration and Naturalization Service abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980, shall be considered as having entered the United

States as a refugee under section 207(a) of the Act.

(b) *Application.* Upon admission to the United States, every refugee entrant shall be notified of the requirement to submit an application for permanent residence 1 year after entry. An application for the benefits of section 209(a) of the Act shall be filed on Form I-485, without fee, with the director of the appropriate Service office identified in the instructions which accompany the Form I-485. A separate application must be filed by each alien. Every applicant who is 14 years of age or older must submit a completed Form G-325A (Biographical Information) with the Form I-485 application. Following submission of the Form I-485 application, a refugee entrant who is 14 years of age or older will be required to execute a Form FD-258 (Applicant Fingerprint Card) at such time and place as the Service will designate.

(c) *Medical examination.* A refugee seeking adjustment of status under section 209(a) of the Act is not required to repeat the medical examination performed under §207.2(c), unless there were medical grounds of inadmissibility applicable at the time of admission. The refugee is, however, required to establish compliance with the vaccination requirements described under section 212(a)(1)(A)(ii) of the Act, by submitting with the adjustment of status application a vaccination supplement, completed by a designated civil surgeon in the United States.

(d) *Interview.* The Service director having jurisdiction over the application will determine, on a case-by-case basis, whether an interview by an immigration officer is necessary to determine the applicant's admissibility for permanent resident status under this part.

(e) *Decision.* The director will notify the applicant in writing of the decision of his or her application for admission to permanent residence. If the applicant is determined to be inadmissible or no longer a refugee, the director will deny the application and notify the applicant of the reasons for the denial. The director will, in the same denial notice, inform the applicant of his or

her right to renew the request for permanent residence in removal proceedings under section 240 of the Act. There is no appeal of the denial of an application by the director, but such denial will be without prejudice to the alien's right to renew the application in removal proceedings under part 240 of this chapter. If the applicant is found to be admissible for permanent residence under section 209(a) of the Act, the director will approve the application and admit the applicant for lawful permanent residence as of the date of the alien's arrival in the United States. An alien admitted for lawful permanent residence will be issued Form I-551, Alien Registration Receipt Card.

[63 FR 30109, June 3, 1998]

§ 209.2 Adjustment of status of alien granted asylum.

The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee status.

(a) *Eligibility.* (1) Except as provided in paragraph (a)(2) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by the director to that of an alien lawfully admitted for permanent residence, provided the alien:

- (i) Applies for such adjustment;
- (ii) Has been physically present in the United States for at least one year after having been granted asylum;
- (iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;
- (iv) Has not been firmly resettled in any foreign country; and
- (v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (4), (5)(A), (5)(B), and (7)(A)(i) of section 212(a) of the Act, and (vi) has a refugee number available under section 207(a) of the Act.

If the application for adjustment filed under this part exceeds the refugee numbers available under section 207(a) of the Act for the fiscal year, a waiting list will be established on a priority

basis by the date the application was properly filed.

(2) An alien, who was granted asylum in the United States prior to November 29, 1990 (regardless of whether or not such asylum has been terminated under section 208(b) of the Act), and is no longer a refugee due to a change in circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted by the director to that of an alien lawfully admitted for permanent residence even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 101(a)(42) of the Act, or to be a spouse or child of such a refugee or to have been physically present in the United States for at least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section. Such persons are exempt from the numerical limitations of section 209(b) of the Act. However, the number of aliens who are natives of any foreign state who may adjust status pursuant to this paragraph in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Act and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of the Act. Aliens who applied for adjustment of status under section 209(b) of the Act before June 1, 1990, are also exempt from its numerical limitation without any restrictions.

(b) *Inadmissible Alien.* An applicant who is inadmissible to the United States under section 212(a) of the Act, may, under section 209(c) of the Act, have the grounds of inadmissibility waived by the director (except for those grounds under paragraphs (27), (29), (33), and so much of (23) as relates to trafficking in narcotics) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. An application for the waiver may be filed on Form I-602 (Application by Refugee for Waiver of Grounds of Excludability) with the application for adjustment. An applicant for adjustment who has had the status of an exchange alien nonimmigrant