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| based upon the evaluation of the recog-nized professional. The Service re-serves the right to request additional evaluations from expert witnesses cho-sen by the Service. Requests for addi-tional evaluations must be authorized by the Assistant Regional Commis-sioner for Adjudications.  (vii) Licensed clinical social workers, psychologists, and psychiatrists are professionals recognized by the Service for the purpose of this section. A clin-ical social worker who is not licensed only because the state in which he or she practices does not provide for li-censing will be considered a licensed professional recognized by the Service if he or she is included in the Register of Clinical Social Workers published by the National Association of Social Workers or is certified by the Amer-ican Board of Examiners in Clinical So-cial Work.  (viii) As directed by the statute, the information contained in the applica-tion and supporting documents shall not be released without a court order or the written consent of the applicant; or, in the case of a child, the written consent of the parent or legal guardian who filed the waiver application on the child’s behalf. Information may be re-leased only to the applicant, his or her authorized representative, an officer of the Department of Justice, or any fed-eral or State law enforcement agency. Any information provided under this part may be used for the purposes of enforcement of the Act or in any crimi-nal proceeding.  (f) *Decision.* The director shall pro-vide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefor, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Permanent Resident Card issued by the Service and issue a notice to appear placing the alien in re-moval proceedings. No appeal shall lie from the decision of the director; how-ever, the alien may seek review of such decision in removal proceedings.  [53 FR 30018, Aug. 10, 1988, as amended at 56 FR 22637, May 16, 1991; 59 FR 26591, May 23, 1994; 62 FR 10350, Mar. 6, 1997; 63 FR 70315, Dec. 21, 1998] | | | | | **§ 216.6 Petition by entrepreneur to re-** **move conditional basis of lawful**  **permanent resident status.**  (a) *Filing the petition*—(1) *General pro-cedures.* A petition to remove the con-ditional basis of the permanent resi-dent status of an alien accorded condi-tional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the alien entrepreneur on Form I–829, Petition by Entrepreneur to Remove Conditions. The alien entre-preneur must file Form I–829 within the 90-day period preceding the second anniversary of his or her admission to the United States as a conditional per-manent resident. Before Form I–829 may be considered as properly filed, it must be accompanied by the fee re-quired under § 103.7(b)(1) of this chap-ter, and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the alien. Upon receipt of a properly filed Form I–829, the alien’s conditional perma-nent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition. The entrepreneur’s spouse and children should be included in the petition to remove conditions. Children who have reached the age of twenty- one or who have married during the pe-riod of conditional permanent resi-dence and the former spouse of an en-trepreneur, who was divorced from the entrepreneur during the period of con-ditional permanent residence, may be included in the alien entrepreneur’s pe-tition or may file a separate petition. (2) *Jurisdiction.* Form I–829 must be filed with the regional service center having jurisdiction over the location of the alien entrepreneur’s commercial enterprise in the United States.  (3) *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 re-turn to the United States, with his or her spouse and children, if necessary, to comply with the interview require-ments contained in the Act. 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 | | | |
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| § 211.1(b)(1) of this chapter, provided the alien complies with the interview re-quirements described in paragraph (b) of this section. An alien who is not physically present in the United States during the filing period but subse-quently applies for admission to the United States shall be processed in ac-cordance with § 235.11 of this chapter. (4) *Documentation.* The petition for removal of conditions must be accom-panied by the following evidence:   (i) Evidence that a commercial enter-prise was established by the alien. Such evidence may include, but is not limited to, Federal income tax returns; (ii) Evidence that the alien invested or was actively in the process of invest-ing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement or other probative evidence; and   (iii) Evidence that the alien sus-tained the actions described in para-graph (a)(4)(i) and (a)(4)(ii) of this sec-tion throughout the period of the alien’s residence in the United States. The alien will be considered to have sustained the actions required for re-moval of conditions if he or she has, in good faith, substantially met the cap-ital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. Such evidence may include, but is not limited to, bank statements, invoices, receipts, contracts, business licenses, Federal or State income tax returns, and Federal or State quarterly tax statements.  (iv) Evidence that the alien created or can be expected to create within a reasonable time ten full-time jobs for qualifying employees. In the case of a ‘‘troubled business’’ as defined in 8 CFR 204.6(j)(4)(ii), the alien entre-preneur must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admis-sion as a conditional permanent resi-dent. Such evidence may include pay-roll records, relevant tax documents, and Forms I–9.  (5) *Termination of status for failure to file petition.* Failure to properly file Form I–829 within the 90-day period im- | | | | | mediately preceding the second anni-versary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien’s permanent resident status and the initiation of deportation pro-ceedings. The director shall send a written notice of termination and an order to show cause to an alien entre-preneur who fails to timely file a peti-tion for removal of conditions. No ap-peal shall lie from this decision; how-ever, the alien may request a review of the determination during deportation In deportation pro-proceedings.  ceedings, the burden of proof shall rest with the alien to show by a preponder-ance of the evidence that he or she complied with the requirement to file the petition within the designated pe-riod. The director may deem the peti-tion to have been filed prior to the sec-ond anniversary of the alien’s obtain-ing conditional permanent resident status and accept and consider a late petition if the alien demonstrates to the director’s satisfaction that failure to file a timely petition was for good cause and due to extenuating cir-cumstances. If the late petition is filed prior to jurisdiction vesting with the immigration judge in deportation pro-ceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien’s perma-nent resident status, remove the condi-tional basis of such status, and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the petition is not filed until after jurisdiction vests with the immigra-tion judge, the immigration judge may terminate the matter upon joint mo-tion by the alien and the Service.  (6) *Death of entrepreneur and effect on spouse and children.* If an entrepreneur dies during the prescribed two-year pe-riod of conditional permanent resi-dence, the spouse and children of the entrepreneur will be eligible for re-moval of conditions if it can be dem-onstrated that the conditions set forth in paragraph (a)(4) of this section have been met.  (b) *Petition review*—(1) *Authority to waive interview.* The director of the service center shall review the Form I– 829 and the supporting documents to | | | |
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| determine whether to waive the inter-view required by the Act. If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, the service center director may waive the interview and approve the petition. If not so satisfied, then the service center director shall for-ward the petition to the district direc-tor having jurisdiction over the loca-tion of the alien entrepreneur’s com-mercial enterprise in the United States so that an interview of the alien entre-preneur may be conducted. The direc-tor must either waive the requirement for an interview and adjudicate the pe-tition or arrange for an interview with-in 90 days of the date on which the pe-tition was properly filed.  (2) *Location*  *of*  *interview.* Unless waived, an interview relating to the Form I–829 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office that has jurisdic-tion over the location of the alien en-trepreneur’s commercial enterprise in the United States.  (3) *Termination of status for failure to appear for interview.* If the alien fails to appear for an interview in connection with the petition when requested by the Service, the alien’s permanent resi-dent status will be automatically ter-minated as of the second anniversary of the date on which the alien obtained permanent residence. The alien will be provided with written notification of the termination and the reasons there-fore, and an order to show cause shall be issued placing the alien under depor-tation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to es-tablish by a preponderance of the evi-dence that he or she complied with the interview requirements. If the alien has failed to appear for a scheduled interview, he or she may submit a writ-ten request to the district director ask-ing that the interview be rescheduled or that the interview be waived. That request should explain his or her fail-ure to appear for the scheduled inter-view, and if a request for waiver of the interview, the reasons such waiver should be granted. If the district direc-tor determines that there is good cause | | | | | for granting the request, the interview may be rescheduled or waived, as ap-propriate. If the district director waives the interview, he or she shall restore the alien’s conditional perma-nent resident status, cancel any out-standing order to show cause in accord-ance with § 242.7 of this chapter, and proceed to adjudicate the alien’s peti-tion. If the district director resched-ules that alien’s interview, he or she shall restore the alien’s conditional permanent resident status, and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the interview is rescheduled at the request of the alien, the Service shall not be required to conduct the inter-view within the 90-day period following the filing of the petition.  (c) *Adjudication of petition.* (1) The de-cision on the petition shall be made within 90 days of the date of filing or within 90 days of the interview, which-ever is later. In adjudicating the peti- shall determine tion, the director  whether:   (i) A commercial enterprise was es-tablished by the alien;   (ii) The alien invested or was ac-tively in the process of investing the requisite capital; and   (iii) The alien sustained the actions described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section throughout the period of the alien’s residence in the United States. The alien will be consid-ered to have sustained the actions re-quired for removal of conditions if he or she has, in good faith, substantially met the capital investment require-ment of the statute and continuously maintained his or her capital invest-ment over the two years of conditional residence.  (iv) The alien created or can be ex-pected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a ‘‘troubled business’’ as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.  (2) If derogatory information is deter-mined regarding any of these issues or it becomes known to the government that the entrepreneur obtained his or her investment funds through other | | | |
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| than legal means (such as through the sale of illegal drugs), the director shall offer the alien entrepreneur the oppor-tunity to rebut such information. If the alien entrepreneur fails to over-come such derogatory information or evidence the investment funds were ob-tained through other than legal means, the director may deny the petition, terminate the alien’s permanent resi-dent status, and issue an order to show cause. If derogatory information not relating to any of these issues is deter-mined during the course of the inter-view, such information shall be for-warded to the investigations unit for appropriate action. If no unresolved de-rogatory information is determined re-lating to these issues, the petition shall be approved and the conditional basis of the alien’s permanent resident status removed, regardless of any ac-tion taken or contemplated regarding other possible grounds for deportation.  (d) *Decision*—(1) *Approval.* If, after ini-tial review or after the interview, the director approves the petition, he or she will remove the conditional basis of the alien’s permanent resident sta-tus as of the second anniversary of the alien’s entry as a conditional perma-nent resident. He or she shall provide written notice of the decision to the alien and shall require the alien to re-port to the appropriate district office for processing for a new Permanent Resident Card, Form I–551, at which time the alien shall surrender any Per- Card previously manent Resident issued.  (2) *Denial.* If, after initial review or after the interview, the director denies the petition, he or she shall provide written notice to the alien of the deci-sion and the reason(s) therefor, and shall issue an order to show cause why the alien should not be deported from the United States. The alien’s lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the di-rector’s written decision. The alien shall also be instructed to surrender any Permanent Resident Card pre-viously issued by the Service. No ap-peal shall lie from this decision; how-ever, the alien may seek review of the decision in deportation proceedings. In deportation proceedings, the burden | | | | | shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien’s petition for removal of condi-tions are not true and that the petition was properly denied.  [59 FR 26591, May 23, 1994, as amended at 63 FR 70315, Dec. 21, 1998]  PART 217—VISA WAIVER PROGRAM  Sec. | | | | |
| 217.1 | Scope. | | | |
| 217.2 | Eligibility. | | | |
| 217.3 | Maintenance of status. | | | |
| 217.4 | Inadmissibility and deportability. | | | |
| 217.5 | [Reserved] | | | |
| 217.6 | Carrier agreements. | | | |
| 217.7 Electronic data transmission require- ment.  AUTHORITY: 8 U.S.C. 1103, 1187; 8 CFR part 2.  SOURCE: 53 FR 24901, June 30, 1988, unless otherwise noted. | | | | |
| **§ 217.1** | | **Scope.** | | |
| The Visa Waiver Pilot Program  (VWPP) described in this section is es-  tablished pursuant to the provisions of  section 217 of the Act.  [62 FR 10351, Mar. 6, 1997] | | | | |
| **§ 217.2** | | **Eligibility.** | | |
| (a) *Definitions.* As used in this part, the term:   *Carrier* refers to the owner, charterer, lessee, or authorized agent of any com-mercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place. *Designated country* refers to Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liech-tenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slo-venia, Spain, Sweden, Switzerland, and the United Kingdom. The United King-dom refers only to British citizens who have the unrestricted right of perma-nent abode in the United kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent | | | | |
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