

without prejudice to renewal of an application and reconsideration in proceedings before the immigration judge.

[62 FR 10346, Mar. 6, 1997. Duplicated from § 211.4 at 68 FR 9835, Feb. 28, 2003]

**PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

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**§ 1212.1 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 admission if so admitted, and except as otherwise provided in the Act, this chapter, and for the following classes:

(a) *Canadian nationals, and aliens having a common nationality with nationals of Canada or with British subjects in Bermuda, Bahamian nationals or British subjects resident in Bahamas, Cayman Islands, and Turks and Caicos Islands.* A visa is not required of a Canadian national in any case. A passport is not required of such national except after a visit outside of the Western Hemisphere. A visa is not required of an alien having a common nationality with Canadian nationals or with British subjects in Bermuda, who has his or her residence in Canada or Bermuda. A passport is not required of such alien except after a visit outside of the Western Hemisphere. A visa and a passport are required of a Bahamian national or a British subject who has his residence in the Bahamas except that a visa is not required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfied the examining U.S. immigration officer at the Bahamas, that he is clearly and beyond a doubt entitled to admission in all other respects. A visa is not required of a British subject who has his residence in, and arrives directly from, the Cayman Islands or the Turks and Caicos Islands and who 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,

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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

(iii) Is the spouse or child of an alien described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, and is accompanying or following to join him or her.

(2) *Nationals of the British Virgin Islands.* A visa is not required of a national of the British Virgin Islands who has his or her residence in the British Virgin Islands, if:

(i) The alien is seeking admission solely to visit the Virgin Islands of the United States; or

(ii) At the time of embarking on an aircraft at St. Thomas, U.S. Virgin Islands, the alien meets each of the following requirements:

(A) The alien is traveling to any other part of the United States by aircraft as a nonimmigrant visitor for business or pleasure (as described in section 101(a)(15)(B) of the Act);

(B) The alien satisfies the examining U.S. Immigration officer at the port-of-entry that he or she is clearly and beyond a doubt entitled to admission in all other respects; and

(C) The alien presents a current *Certificate of Good Conduct* issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record.

(c) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national who:

(i) Is in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the DOS and is applying for admission as a temporary visitor for business or pleasure from contiguous territory.

(ii) Is a Mexican national entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border.

(2) A visa shall not be required of a Mexican national who:

(i) Is in possession of a Form DSP-150, with a biometric identifier, issued by the DOS, and a passport, and is applying for admission as a temporary visitor for business or pleasure from other than contiguous territory;

(ii) Is a crew member employed on an aircraft belonging to a Mexican company owned carrier authorized to engage in commercial transportation into the United States; or

(iii) Bears a Mexican diplomatic or official passport and who is a military or civilian official of the Federal Government of Mexico entering the United States for 6 months or less for a purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States, and the official's spouse or any of the official's dependent family members under 19 years of age, bearing diplomatic or official passports, who are in the actual company of such official at the time of admission into the United States. This provision does not apply to the spouse or any of the official's family members classifiable under section 101(a)(15)(F) or (M) of the Act.

(3) A Mexican national who presents a BCC at a POE must present the DOS-issued DSP-150 containing a machine-readable biometric identifier. The alien will not be permitted to cross the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(4) Mexican nationals presenting a combination B-1/B-2 nonimmigrant visa and border crossing card (or similar stamp in a passport), issued by DOS prior to April 1, 1998, that does not contain a machine-readable biometric identifier, may be admitted on the basis of the nonimmigrant visa only, provided it has not expired and the alien remains admissible. A passport is also required.

(5) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* A visa and a passport are not required of an alien employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken

in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment.

(d) *Citizens of the Freely Associated States, formerly Trust Territory of the Pacific Islands.* Citizens of the Republic of the Marshall Islands and the Federated States of Micronesia may enter into, lawfully engage in employment, and establish residence in the United States and its territories and possessions without regard to paragraphs (14), (20) and (26) of section 212(a) of the Act pursuant to the terms of Pub. L. 99-239. Pending issuance by the aforementioned governments of travel documents to eligible citizens, travel documents previously issued by the Trust Territory of the Pacific Islands will continue to be accepted for purposes of identification and to establish eligibility for admission into the United States, its territories and possessions.

(e) *Aliens entering Guam pursuant to section 14 of Public Law 99-396, "Omnibus Territories Act" and 8 CFR 212.1(e).* (1) As provided in 8 CFR 212.1(e), until November 28, 2009, a visa is not required of an alien who is a citizen of a country enumerated in 8 CFR 212.1(e)(3) who:

- (i) Is classifiable as a visitor for business or pleasure;
- (ii) Is solely entering and staying on Guam for a period not to exceed fifteen days;
- (iii) Is in possession of a round-trip nonrefundable and nontransferable transportation ticket bearing a confirmed departure date not exceeding fifteen days from the date of admission to Guam;
- (iv) Is in possession of a completed and signed Visa Waiver Information Form (Form I-736);
- (v) Waives any right to review or appeal the immigration officer's determination of admissibility at the port of entry at Guam; and
- (vi) Waives any right to contest any action for deportation, other than on the basis of a request for asylum.

(2) The DHS regulations for waiver of the visa requirement for aliens entering Guam pursuant to section 14 of

Public Law 99-396, prior to November 28, 2009, are set forth at 8 CFR 212.1(e).

(3) [Reserved]

(4) Admission under 8 CFR 212.1(e) renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act or as an immediate relative as defined in section 201(b), to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

(f) *Direct transits—(1) Transit without visa.* A passport and visa are not required of an alien who is being transported in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the transportation line and the Service under the provisions of section 238(d) of the Act on Form I-426 to insure such immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country: *Provided*, That such alien is in possession of a travel document or documents establishing his/her identity and nationality and ability to enter some country other than the United States.

(2) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Angola, Bangladesh, Belarus, Bosnia-a-herzegovina, Burma, Burundi, Central African Republic, People's Republic of China, Colombia, Congo (Brazzaville), Cuba, India, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Serbia, Sierra Leone, Somalia, Sri Lanka, and Sudan.

(3) *Foreign government officials in transit.* If an alien is of the class described in section 212(d)(8) of the Act, only a valid unexpired visa and a travel document valid for entry into a foreign country for at least 30 days from the date of admission to the United States are required.

(g) *Unforeseen emergency.* A non-immigrant seeking admission to the United States must present an unexpired visa and a passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act or a valid biometric border crossing card, issued by

the DOS on Form DSP-150, at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f),(i) or (o) of this section. Upon a nonimmigrant's application on Form I-193, Application for Waiver of Passport and/or Visa, a district director may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

(h) *Nonimmigrant spouses, fiancées, fiancés, and children of U.S. citizens.* Notwithstanding any of the provisions of this part, an alien seeking admission as a spouse, fiancée, fiancé, or child of a U.S. citizen, or as a child of the spouse, fiancé, or fiancée of a U.S. citizen, pursuant to section 101(a)(15)(K) of the Act shall be in possession of an unexpired nonimmigrant visa issued by an American consular officer classifying the alien under that section, or be inadmissible under section 212(a)(7)(B) of the Act.

(i) *Visa Waiver Pilot Program.* A visa is not required of any alien who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant pursuant to the provisions of section 217 of the Act and part 217 of this chapter if such alien is a national of a country designated under the Visa Waiver Pilot Program, who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure.

(j) *Officers authorized to act upon recommendations of United States consular officers for waiver of visa and passport requirements.* All district directors, the officers in charge are authorized to act upon recommendations made by United States consular officers or by officers of the Visa Office, Department of State, pursuant to the provisions of 22 CFR 41.7 for waiver of visa and passport requirements under the provisions of section 212(d)(4)(A) of the Act. The District Director at Washington, DC,

has jurisdiction in such cases recommended to the Service at the seat of Government level by the Department of State. Neither an application nor fee are required if the concurrence in a passport or visa waiver is requested by a U.S. consular officer or by an officer of the Visa Office. The district director or the Deputy Commissioner, may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant alien in writing to that effect.

(k) *Cancellation of nonimmigrant visas by immigration officers.* Upon receipt of advice from the Department of State that a nonimmigrant visa has been revoked or invalidated, and request by that Department for such action, immigration officers shall place an appropriate endorsement thereon.

(l) *Treaty traders and investors.* Notwithstanding any of the provisions of this part, an alien seeking admission as a treaty trader or investor under the provisions of Chapter 16 of the North American Free Trade Agreement (NAFTA) pursuant to section 101(a)(15)(E) of the Act, shall be in possession of a nonimmigrant visa issued by an American consular officer classifying the alien under that section.

(m) *Aliens in S classification.* Notwithstanding any of the provisions of this part, an alien seeking admission pursuant to section 101(a)(15)(S) of the Act must be in possession of appropriate documents issued by a United States consular officer classifying the alien under that section.

(n) *Alien in Q-2 classification.* Notwithstanding any of the provisions of this part, an alien seeking admission as a principal according to section 101(a)(15)(Q)(ii) of the Act must be in possession of a Certification Letter issued by the Department of State's Program Administrator documenting participation in the Irish peace process cultural and training programs.

(o) *Alien in T-2 through T-4 classification.* Individuals seeking T-2 through T-4 nonimmigrant status may avail themselves of the provisions of paragraph (g) of this section, except that the authority to waive documentary requirements resides with the Service Center.

(p) [Reserved]

(q) *Aliens admissible under the Guam-CNMI Visa Waiver Program and 8 CFR 212.1(q).* (1) *Eligibility for Program.* As provided in 8 CFR 212.1(q), in accordance with Public Law 110-229, beginning November 28, 2009, the Secretary of Homeland Security, in consultation with the Secretaries of the Departments of Interior and State, may waive the visa requirement in the case of a nonimmigrant alien who seeks admission to Guam or to the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program. To be admissible under the Guam-CNMI Visa Waiver Program, prior to embarking on a carrier for travel to Guam or the CNMI, each nonimmigrant alien must:

(i) Be a national of a country or geographic area listed in 8 CFR 212.1(q)(2);

(ii) Be classifiable as a visitor for business or pleasure;

(iii) Be solely entering and staying on Guam or the CNMI for a period not to exceed forty-five days;

(iv) Be in possession of a round trip ticket that is nonrefundable and non-transferable and bears a confirmed departure date not exceeding forty-five days from the date of admission to Guam or the CNMI. "Round trip ticket" includes any return trip transportation ticket issued by a participating carrier, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, or military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights;

(v) Be in possession of a completed and signed Guam-CNMI Visa Waiver Information Form (CBP Form I-736);

(vi) Be in possession of a completed and signed I-94, Arrival-Departure Record (CBP Form I-94);

(vii) Be in possession of a valid unexpired ICAO compliant, machine readable passport issued by a country that meets the eligibility requirements of paragraph (q)(2) of this section;

(viii) Have not previously violated the terms of any prior admissions. Prior admissions include those under the Guam-CNMI Visa Waiver Program,

the prior Guam Visa Waiver Program, the Visa Waiver Program as described in section 217(a) of the Act and admissions pursuant to any immigrant or nonimmigrant visa;

(ix) Waive any right to review or appeal an immigration officer's determination of admissibility at the port of entry into Guam or the CNMI;

(x) Waive any right to contest any action for deportation or removal, other than on the basis of: an application for withholding of removal under section 241(b)(3) of the INA; withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; or, an application for asylum if permitted under section 208 of the Act; and

(xi) If a resident of Taiwan, possess a Taiwan National Identity Card and a valid Taiwan passport with a valid re-entry permit issued by the Taiwan Ministry of Foreign Affairs.

(2) *Implementing regulations.* The DHS regulations for waiver of the visa requirement for aliens seeking admission to Guam or to the CNMI under the Guam-CNMI Visa Waiver Program are set forth at 8 CFR 212.1(q).

(3) [Reserved]

(4) *Admission under 8 CFR 212.1(q).* Admission under 8 CFR 212.1(q) renders an alien ineligible for:

(i) Adjustment of status to that of a temporary resident or, except as provided by section 245(i) of the Act, other than as an immediate relative as defined in section 201(b) of the Act, to that of a lawful permanent resident;

(ii) Change of nonimmigrant status; or

(iii) Extension of stay.

(5)-(7) [Reserved]

(8) *Inadmissibility and Deportability.* (i) *Determinations of inadmissibility.* (A) An alien who applies for admission under the provisions of the Guam-CNMI Visa Waiver Program, who is determined by an immigration officer to be inadmissible to Guam or the CNMI under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents,

will be refused admission into Guam or the CNMI and removed. Such refusal and removal shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission to Guam under the Guam-CNMI Visa Waiver Program, who applies for asylum, withholding of removal under section 241(b)(3) of the INA or withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2) and 1208.2(c)(1) and (2). The provisions of 8 CFR part 1208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the Act by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present in the CNMI during the transition period who express a fear of persecution or torture only may establish eligibility for withholding or deferral of removal pursuant to INA 241(b)(3) or pursuant to the regulations implementing Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(B) [Reserved]

(C) Refusal of admission under this paragraph or 8 CFR 212.1(q)(8)(i) shall not constitute removal for purposes of the Act.

(ii) *Determination of deportability.* (A) An alien who has been admitted to either Guam or the CNMI under the provisions of this section who is determined by an immigration officer to be deportable from either Guam or the CNMI under one or more of the grounds of deportability listed in section 237 of the Act, shall be removed from either Guam or the CNMI to his or her country of nationality or last residence. Such removal will be determined by DHS authority that has jurisdiction over the place where the alien is found, and will be effected without referral of

the alien to an immigration judge for a determination of deportability, except that an alien admitted to Guam under the Guam-CNMI Visa Waiver Program who applies for asylum or other form of protection from persecution or torture must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (2) and 1208.2(c)(1) and (2). The provisions of 8 CFR part 1208 subpart A shall not apply to an alien present or arriving in the CNMI seeking to apply for asylum prior to January 1, 2015. No application for asylum may be filed pursuant to section 208 of the INA by an alien present or arriving in the CNMI prior to January 1, 2015; however, aliens physically present or arriving in the CNMI prior to January 1, 2015, may apply for withholding of removal under section 241(b)(3) of the Act and withholding of removal under the regulations implementing Article 3 of the United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment.

(B) Removal by DHS under paragraph (b)(1) of this section or 8 CFR 212.1(q)(8)(ii) is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(iii) [Reserved]

(Secs. 103, 104, 212 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1104, 1132))

[26 FR 12066, Dec. 16, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1212.1, see the List of CFR Sections Affected, which appears in the Finding Aids section in the printed volume and on GPO Access.

**§ 1212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.**

(a) *Evidence.* Any alien who has been deported or removed from the United States is inadmissible to the United States unless the alien has remained outside of the United States for five consecutive years since the date of deportation or removal. If the alien has been convicted of an aggravated felony, he or she must remain outside of the United States for twenty consecutive years from the deportation date before he or she is eligible to re-enter the United States. Any alien who has been