

§ 1212.15

8 CFR Ch. V (1-1-10 Edition)

outlines in 8 CFR 214.2(t), the Commissioner may, in the exercise of discretion:

- (i) Terminate the alien's parole status;
- (ii) Determine eligibility for waivers; and
- (iii) Admit the alien in S non-immigrant classification pursuant to the terms and conditions of section 101(a)(15)(S) of the Act and 8 CFR 214.2(t).

(c) *Departure.* If the alien's parole has been terminated and the alien has been ordered excluded from the United States, the LEA shall ensure departure from the United States and so inform the district director in whose jurisdiction the alien has last resided. The district director, if necessary, shall oversee the alien's departure from the United States and, in any event, shall notify the Commissioner of the alien's departure. The Commissioner shall be notified in writing of the failure of any alien authorized parole under this paragraph to depart in accordance with an order of exclusion and deportation entered after parole authorized under this paragraph has been terminated.

(d) *Failure to comply with procedures.* Any failure to adhere to the parole procedures contained in this section shall immediately be brought to the attention of the Commissioner, who will notify the Attorney General.

[60 FR 44265, Aug. 25, 1995]

§ 1212.15 Certificates for foreign health care workers.

(a) *Inadmissible aliens.* With the exception of the aliens described in paragraph (b) of this section, any alien coming to the United States for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible to the United States unless the alien presents a certificate as described in paragraph (f) of this section.

(b) *Inapplicability of the ground of inadmissibility.* The following aliens are not subject to this ground of inadmissibility:

- (1) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical health-care occupation is one where the alien is not required to

perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry;

(2) The spouse and dependent children of any immigrant alien who is seeking to immigrate in order to accompany or follow to join the principal alien; and

(3) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than an alien who is seeking to immigrate on the basis of an employment-based immigrant visa petition which was filed for the purpose of obtaining the alien's services in a health care occupation described in paragraph (c) of this section.

(c) *Occupations affected by this provision.* With the exception of the aliens described in paragraph (b) of this section, any alien seeking admission to the United States as an immigrant or any alien applying for adjustment of status to a permanent resident to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training, is subject to this provision:

- (1) Licensed practical nurses, licensed vocational nurses, and registered nurses.
- (2) Occupational therapists.
- (3) Physical therapists.
- (4) Speech-Language Pathologists and Audiologists.
- (5) Medical Technologists (Clinical Laboratory Scientists).
- (6) Physician Assistants.
- (7) Medical Technicians (Clinical Laboratory Technicians).

(d) *Presentation of the certificate.* An alien described in paragraph (a) of this section who is applying for admission as an immigrant seeking to perform labor in a health care occupation as described in this section must present a certificate to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status. The certificate must be valid at the time of visa issuance and

admission at a port-of-entry, or, if applicable, at the time of adjustment of status.

(e) *Organizations approved by the Service to issue certificates for health care workers.* (1) The Commission on Graduates of Foreign Nursing Schools may issue certificates pursuant to 8 U.S.C. 1182(a)(5)(C), and section 212(a)(5)(C) of the Act for the occupations of nurse (licensed practical nurse, licensed vocational nurse, and registered nurse), physical therapist, occupational therapist, speech-language pathologist and audiologist, medical technologist (clinical laboratory scientist), physician assistant, and medical technician (clinical laboratory technician).

(2) The National Board for Certification in Occupational Therapy is authorized by the Service to issue certificates under section 343 for the occupation of occupational therapist.

(3) The Foreign Credentialing Commission on Physical Therapy is authorized by the Service to issue certificates under section 343 for the occupation of physical therapist.

(f) *Contents of the certificate.* A certificate must contain the following information:

(1) The name and address of the certifying organization;

(2) A point of contact where the organization may be contacted in order to verify the validity of the certificate;

(3) The date of the certificate was issued;

(4) The occupation for which the certificate was issued;

(5) The alien's name, and date and place of birth;

(6) Verification that the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(7) Verification that the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(8) Verification that the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States as an immigrant under section 203(b) of the Act. This verification is not binding on the Service; and

(9) Verification either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of States licensing the occupation for which the certificate is issued, or that the alien has passed the occupation's licensing or certification examination.

(g) *English testing requirement.* (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of Health and Human Services has determined that an alien must have a passing score on one of the two tests listed in paragraph (g)(3) of this section before he or she can be granted a certificate.

(2) *Aliens exempt from the English language requirement.* Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirement.

(3) *Approved testing services.* (i) Michigan English Language Assessment Battery (MELAB). Effective June 30, 2000, the MELAB Oral Interview Speaking Test is no longer being given overseas and is only being administered in the United States and Canada. Applicants may take MELAB Parts 1, 2, and 3, plus the Test of Spoken English offered by the Educational Testing Service.

(ii) Test of English as a Foreign Language, Educational Testing Service (ETS).

(4) *Passing scores for various occupations—(i) Occupational and physical therapists.* An alien seeking to perform labor in the United States as an occupational therapist or physical therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL), Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. Certifying organizations shall not accept the results of the MELAB for the occupation of occupational therapist or physical therapist. Aliens seeking to obtain a certificate

to work as an occupational or physical therapist must take the test offered by the ETS. The MELAB scores are not acceptable for these occupations.

(ii) *Registered nurses.* An alien coming to the United States to perform labor as a registered nurse must obtain the following scores to obtain a certificate: ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50; MELAB: Final Score 79; Oral Interview: 3+.

(iii) *Licensed practical nurses and licensed vocational nurses.* An alien coming to the United States to perform labor as a licensed practical nurse or licensed vocational nurse must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50; MELAB: Final Score 77; Oral Interview: 3+.

(iv) *Speech-language pathologists and Audiologists, medical technologists (clinical laboratory scientists), and physician assistants.* An alien coming to the United States to perform labor as a speech-language pathologist and audiologist, a medical technologist (clinical laboratory scientist), or a physician assistant must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50; MELAB: Final Score 79; Oral Interview: 3+.

(v) *Medical technicians (clinical laboratory technicians).* An alien coming to the United States to perform labor as a medical technician (clinical laboratory technician) must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50; MELAB: Final Score 77; Oral Interview: 3+.

[63 FR 55011, Oct. 14, 1998, as amended at 64 FR 23177, Apr. 30, 1999; 66 FR 3444, Jan. 16, 2001]

**§ 1212.16 Applications for exercise of discretion relating to T non-immigrant status.**

(a) *Filing the waiver application.* An alien applying for the exercise of discretion under section 212(d)(13) or (d)(3)(B) of the Act (waivers of inadmissibility) in connection with an application for T nonimmigrant status shall submit Form I-192, with the appropriate fee in accordance with

§ 103.7(b)(1) of this chapter or an application for a fee waiver, to the Service with the completed Form I-914 application package for status under section 101(a)(15)(T)(i) of the Act.

(b) *Treatment of waiver application.* (1) The Service shall determine whether a ground of inadmissibility exists with respect to the alien applying for T non-immigrant status. If a ground of inadmissibility is found, the Service shall determine if it is in the national interest to exercise discretion to waive the ground of inadmissibility, except for grounds of inadmissibility based upon sections 212(a)(3), 212(a)(10)(C) and 212(a)(10)(E) of the Act, which the Commissioner may not waive. Special consideration will be given to the granting of a waiver of a ground of inadmissibility where the activities rendering the alien inadmissible were caused by or incident to the victimization described under section 101(a)(15)(T)(i) of the Act.

(2) In the case of applicants inadmissible on criminal and related grounds under section 212(a)(2) of the Act, the Service will only exercise its discretion in exceptional cases unless the criminal activities rendering the alien inadmissible were caused by or were incident to the victimization described under section 101(a)(15)(T)(i) of the Act.

(3) An application for waiver of a ground of inadmissibility for T non-immigrant status (other than under section 212(a)(6) of the Act) will be granted only in exceptional cases when the ground of inadmissibility would prevent or limit the ability of the applicant to adjust to permanent resident status after the conclusion of 3 years.

(4) The Service shall have sole discretion to grant or deny a waiver, and there shall be no appeal of a decision to deny a waiver. However, nothing in this paragraph (b) is intended to prevent an applicant from re-filing a request for a waiver of a ground of inadmissibility in appropriate cases.

(c) *Incident to victimization.* When an applicant for status under section 101(a)(15)(T) of the Act seeks a waiver of a ground of inadmissibility under section 212(d)(13) of the Act on grounds other than those described in sections 212(a)(1) and (a)(4) of the Act, the applicant must establish that the activities