Executive Office for Immigration Review, Justice

§ 1235.11 

(a) General—(1) Conditional residence based on family relationship. An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Form I-751, Petition to Remove the Conditions on Residence, within the 90-day period immediately preceding the second anniversary of the alien’s admission for permanent residence.

(2) Conditional residence based on entrepreneurship. An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Form I-829, Petition by Entrepreneur to Remove Conditions, within the 90-day period immediately preceding the second anniversary of the alien’s admission for permanent residence.

(b) Correction of endorsement on immigrant visa. If the alien is subject to the
provisions of section 216 of the Act, but
the classification endorsed on the im-
migrant visa does not so indicate, the
endorsement shall be corrected and the
alien shall be admitted as a lawful per-
manent resident on a conditional basis,
if otherwise admissible. Conversely, if
the alien is not subject to the provi-
sions of section 216 of the Act, but the
visa classification endorsed on the im-
migrant visa indicates that the alien is
subject thereto (e.g., if the second an-
niversary of the marriage upon which
the immigrant visa is based occurred
after the issuance of the visa and prior
to the alien’s application for admis-
sion) the endorsement on the visa shall
be corrected and the alien shall be ad-
mitted as a lawful permanent resident
without conditions, if otherwise admis-
sible.

(c) Expired conditional permanent resi-
dent status. The lawful permanent resi-
dent alien status of a conditional resi-
dent automatically terminates if the
conditional basis of such status is not
removed by the Service through ap-
proval of a Form I–751, Petition to Re-
move the Conditions on Residence or,
in the case of an alien entrepreneur (as
defined in section 216A(f)(1) of the Act),
Form I–829, Petition by Entrepreneur
to Remove Conditions. Therefore, an
alien who is seeking admission as a re-
turning resident subsequent to the sec-
ond anniversary of the date on which
conditional residence was obtained (ex-
cept as provided in §1211.1(b)(1) of this
chapter) and whose conditional basis of
such residence has not been removed
pursuant to section 216(c) or 216A(c) of
the Act, whichever is applicable, shall
be placed under removal proceedings.
However, in a case where conditional
residence was based on a marriage, re-
moval proceedings may be terminated
and the alien may be admitted as a re-
turning resident if the required Form
I–751 is filed jointly, or by the alien
alone (if appropriate), and approved by
the Service. In the case of an alien en-
trepreneur, removal proceedings may
be terminated and the alien admitted
as a returning resident if the required
Form I–829 is filed by the alien entre-
trepreneur and approved by the Service.