§ 212.2 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 deported or removed from the United States and is applying for a visa, admission to the United States, or adjustment of status, must present proof that he or she has remained outside of the United States for the time period required for re-entry after deportation or removal. The examining consular or immigration officer must be satisfied that since the alien’s deportation or removal, the alien has remained outside the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Act. Any alien who does not satisfactorily present proof of absence from the United States for more than five consecutive years, or twenty consecutive years in the case of an alien convicted of an aggravated felony, to the consular or immigration officer, and any alien who is seeking to enter the United States prior to the completion of the requisite five- or twenty-year absence, must apply for permission to re-apply for admission to the United States.
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States as provided under this part. A temporary stay in the United States under section 212(d)(3) of the Act does not interrupt the five or twenty consecutive year absence requirement.

(b) Alien applying to consular officer for nonimmigrant visa or nonresident alien border crossing card. (1) An alien who is applying to a consular officer for a nonimmigrant visa or a nonresident alien border crossing card, must request permission to reapply for admission to the United States if five years, or twenty years if the alien’s deportation was based upon a conviction for an aggravated felony, have not elapsed since the date of deportation or removal. This permission shall be requested in the manner prescribed through the consular officer, and may be granted only in accordance with sections 212(a)(9)(A) and 212(d)(3)(A) of the Act and 8 CFR 212.4. However, the alien may apply for such permission by submitting an application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1), in accordance with the form instructions, to the consular officer if that officer is willing to accept the application, and recommends to the district director that the alien be permitted to apply.

(2) The consular officer shall forward the application to the district director with jurisdiction over the place where the deportation or removal proceedings were held.

(c) Special provisions for an applicant for nonimmigrant visa under section 101(a)(15)(K) of the Act. (1) An applicant for a nonimmigrant visa under section 101(a)(15)(K) must:

   (i) Be the beneficiary of a valid visa petition approved by the Service; and

   (ii) File the application on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1), in accordance with the form instructions, with the consular officer for permission to reapply for admission to the United States after deportation or removal.

(2) The consular officer must forward the application to the designated USCIS office. If the alien is ineligible on grounds which, upon the applicant’s marriage to the United States citizen petitioner, may be waived under section 212(g), (h), or (i) of the Act, the consular officer must also forward a recommendation as to whether the waiver should be granted.

(d) Applicant for immigrant visa. Except as provided in paragraph (g)(2) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file the waiver request on the form designated by USCIS. Except as provided in paragraph (g)(2) of this section, if the applicant also requires a waiver under section 212(g), (h), or (i) of the Act, he or she must file both waiver requests simultaneously on the forms designated by USCIS with the fees prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(e) Applicant for adjustment of status. An applicant for adjustment of status under section 245 of the Act and part 245 of this chapter must request permission to reapply for entry in conjunction with his or her application for adjustment of status. This request is made by filing the application on the form designated by USCIS. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director must refer the application to the immigration judge for adjudication.

(f) Applicant for admission at port of entry. An alien may request permission at a port of entry to reapply for admission to the United States within 5 years of the deportation or removal, or 20 years in the case of an alien deported, or removed 2 or more times, or at any time after deportation or removal in the case of an alien convicted of an aggravated felony. The alien must file the , where required, with the DHS officer having jurisdiction over the port of entry.

(g) Other applicants. (1) Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section must apply on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

(2) An alien who is an applicant for parole authorization under 8 CFR 245.15(c)(2) or 8 CFR 245.13(k)(2) and requires consent to reapply for admission
§ 212.3 Application for the exercise of discretion under section 212(c).

(a) Jurisdiction. An application for the exercise of discretion under section 212(c) of the Act must be submitted on the form designated by USCIS with the fee prescribed in 8 CFR 103.7(b)(1) and in accordance with the form instructions. If the application is made in the course of proceedings under sections 235, 236, or 242 of the Act, the application shall be made to the Immigration Court.

(b) Filing of application. The application may be filed prior to, at the time of, or at any time after the applicant’s departure from or arrival into the United States. All material facts and/or circumstances which the applicant knows or believes apply to the grounds of excludability or deportability must be described. The applicant must also submit all available documentation relating to such grounds.

(c) Decision of the District Director. A district director may grant or deny an application for advance permission to return to an unrelinquished domicile under section 212(c) of the Act, in the exercise of discretion, unless otherwise prohibited by paragraph (f) of this section. The applicant shall be notified of the decision and, if the application is denied, of the reason(s) for denial. No appeal shall lie from denial of the application, but the application may be renewed before an Immigration Judge as provided in paragraph (e) of this section.

(d) Validity. Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability or deportability that were described in the application. An application who failed to describe any other grounds of excludability or deportability, or failed to disclose material facts existing at the time of the approval of the application, remains excludable or deportable under the previously unidentified grounds. If at a later date, the applicant becomes subject to exclusion or deportation based upon these previously unidentified grounds or upon new ground(s), a new application must be filed.