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petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for removal.

(d) *Decision*—(1) *Approval*. If the director approves the joint petition he or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate office of the Service for processing for a new Permanent Resident Card (if necessary), at which time the alien shall surrender any Permanent Resident Card previously issued.

(2) *Denial*. If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue a notice to appear under section 239 of the Act and 8 CFR part 239. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Permanent Resident Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in removal proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true or that the petition was properly denied.

[53 FR 30018, Aug. 10, 1988, as amended at 54 FR 30369, July 20, 1989; 59 FR 26590, May 23, 1994; 62 FR 10349, Mar. 6, 1997; 63 FR 70315, Dec. 21, 1998; 74 FR 26939, June 5, 2009; 85 FR 46925, Aug. 3, 2020]

§216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.

(a) *General*. (1) A conditional resident alien who is unable to meet the requirements under section 216 of the Act for a joint petition for removal of the conditional basis of his or her permanent resident status may file Form I-751, Petition to Remove the Conditions on Residence, if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

(i) Deportation or removal from the United States would result in extreme hardship;

(ii) The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death, and the conditional resident was not at fault in failing to file a timely petition; or

(iii) The qualifying marriage was entered into in good faith by the conditional resident but during the marriage the alien spouse or child was battered by or subjected to extreme cruelty committed by the citizen or permanent resident spouse or parent.

(2) A conditional resident who is in exclusion, deportation, or removal proceedings may apply for the waiver only until such time as there is a final order of exclusion, deportation or removal.

(b) *Fee*. Form I-751 shall be accompanied by the appropriate fee required under 8 CFR 106.2.

(c) [Reserved]

(d) *Interview*. The service center director may refer the application to the appropriate local office and require that the alien appear for an interview in connection with the application for a waiver. The director shall deny the application and initiate removal proceedings if the alien fails to appear for the interview as required, unless the alien establishes good cause for such failure and the interview is rescheduled.

(e) *Adjudication of waiver application*—

(1) *Application based on claim of hardship*. In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's removal from the United States, the director shall take into account only those factors that arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any removal from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

(2) *Application for waiver based upon the alien's claim that the marriage was*

entered into in good faith. In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include—

(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;

(ii) Documentation concerning the length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) Birth certificates of children born to the marriage; and

(iv) Other evidence deemed pertinent by the director.

(3) *Application for waiver based on alien's claim of having been battered or subjected to extreme mental cruelty.* A conditional resident who entered into the qualifying marriage in good faith, and who was battered or was the subject of extreme cruelty or whose child was battered by or was the subject of extreme cruelty perpetrated by the United States citizen or permanent resident spouse during the marriage, may request a waiver of the joint filing requirement. The conditional resident parent of a battered or abused child may apply for the waiver regardless of the child's citizenship or immigration status.

(i) For the purpose of this chapter the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence.

(ii) A conditional resident or former conditional resident who has not departed the United States after termination of resident status may apply for the waiver. The conditional resident may apply for the waiver regardless of his or her present marital status. The conditional resident may still be residing with the citizen or permanent resi-

dent spouse, or may be divorced or separated.

(iii) Evidence of physical abuse may include, but is not limited to, expert testimony in the form of reports and affidavits from police, judges, medical personnel, school officials and social service agency personnel. The Service must be satisfied with the credibility of the sources of documentation submitted in support of the application.

(iv) The Service is not in a position to evaluate testimony regarding a claim of extreme mental cruelty provided by unlicensed or untrained individuals. Therefore, all waiver applications based upon claims of extreme mental cruelty must be supported by the evaluation of a professional recognized by the Service as an expert in the field. An evaluation which was obtained in the course of the divorce proceedings may be submitted if it was provided by a professional recognized by the Service as an expert in the field.

(v) The evaluation must contain the professional's full name, professional address and license number. It must also identify the licensing, certifying, or registering authority. The Service retains the right to verify the professional's license.

(vi) The Service's decision on extreme mental cruelty waivers will be based upon the evaluation of the recognized professional. The Service reserves the right to request additional evaluations from expert witnesses chosen by the Service. Requests for additional evaluations must be authorized by the Assistant Regional Commissioner for Adjudications.

(vii) Licensed clinical social workers, psychologists, and psychiatrists are professionals recognized by the Service for the purpose of this section. A clinical social worker who is not licensed only because the state in which he or she practices does not provide for licensing 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 American Board of Examiners in Clinical Social Work.

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(viii) As directed by the statute, the information contained in the application 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 released only to the applicant, his or her authorized representative, an officer of the Department of Justice, or any federal 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 criminal proceeding.

(f) *Decision.* The director shall provide 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 removal proceedings. No appeal shall lie from the decision of the director; however, 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; 74 FR 26939, June 5, 2009; 85 FR 46925, Aug. 3, 2020]

§216.6 Petition by investor to remove conditional basis of lawful permanent resident status.

(a) *Filing the petition*—(1) *General procedures.* (i) A petition to remove the conditional basis of the permanent resident status of an investor accorded conditional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the investor with the appropriate fee. The investor must file within the 90-day period preceding the second anniversary of the date on which the investor acquired conditional permanent residence. Before the petition may be considered as properly filed, it must be accompanied by the fee required under 8 CFR 106.2, and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the investor.

Upon receipt of a properly filed petition, the investor's conditional permanent resident status shall be extended automatically, if necessary, until such time as USCIS has adjudicated the petition.

(ii) The investor's spouse and children may be included in the investor's petition to remove conditions. Where the investor's spouse and children are not included in the investor's petition to remove conditions, the spouse and each child must each file his or her own petition to remove the conditions on their permanent resident status, unless the investor is deceased. If the investor is deceased, the spouse and children may file separate petitions or may be included in one petition. A child who reached the age of 21 or who married during the period of conditional permanent residence, or a former spouse who became divorced from the investor during the period of conditional permanent residence, may be included in the investor's petition or must each file a separate petition.

(2) [Reserved]

(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 return to the United States, with his or her spouse and children, if necessary, to comply with the interview requirements 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 §211.1(b)(1) of this chapter, provided the alien complies with the interview requirements described in paragraph (b) of this section. An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with §235.11 of this chapter.

(4) *Documentation.* The petition for removal of conditions must be accompanied by the following evidence:

(i) [Reserved]

(ii) Evidence that the alien invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an