

conditional resident may still be residing with the citizen or permanent resident 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.

(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

audited financial statement or other probative evidence; and

(iii) Evidence that the alien sustained the actions described in paragraph (a)(4)(i) and (a)(4)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. Such evidence may include, but is not limited to, bank statements, invoices, receipts, contracts, business licenses, Federal or State income tax returns, and Federal or State quarterly tax statements.

(iv) Evidence that the alien created or can be expected to create within a reasonable time ten full-time jobs for qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien investor must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. Such evidence may include payroll records, relevant tax documents, and Forms I-9.

(5) *Termination of status for failure to file petition.* Failure to properly file the petition to remove conditions within the 90-day period immediately preceding the second anniversary of the date on which the investor obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the investor's permanent resident status and the initiation of removal proceedings. USCIS shall send a written notice of termination and a notice to appear to an investor who fails to timely file a petition for removal of conditions. No appeal shall lie from this decision; however, the investor may request a review of the determination during removal proceedings. In proceedings, the burden of proof shall rest with the investor to show by a preponderance of the evidence that he or she complied with the requirement to file the petition within

the designated period. USCIS may deem the petition to have been filed prior to the second anniversary of the investor's obtaining conditional permanent resident status and accept and consider a late petition if the investor demonstrates to USCIS' satisfaction that failure to file a timely petition was for good cause and due to extenuating circumstances. If the late petition is filed prior to jurisdiction vesting with the immigration judge in proceedings and USCIS excuses the late filing and approves the petition, USCIS shall restore the investor's permanent resident status, remove the conditional basis of such status, and cancel any outstanding notice to appear in accordance with 8 CFR 239.2. If the petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the investor and DHS.

(6) *Death of investor and effect on spouse and children.* If an investor dies during the prescribed 2-year period of conditional permanent residence, the spouse and children of the investor will be eligible for removal of conditions if it can be demonstrated that the conditions set forth in paragraph (a)(4) of this section have been met.

(b) *Petition review*—(1) *Authority to waive interview.* USCIS shall review the petition to remove conditions and the supporting documents to determine whether to waive the interview required by the Act. If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, USCIS may waive the interview and approve the petition. If not so satisfied, then USCIS may require that an interview of the investor be conducted.

(2) *Location of interview.* Unless waived, an interview relating to the petition to remove conditions for investors shall be conducted by a USCIS immigration officer at the office that has jurisdiction over either the location of the investor's commercial enterprise in the United States, the investor's residence in the United States, or the location of the adjudication of the petition, at the agency's discretion.

(3) *Termination of status for failure to appear for interview.* If the investor fails to appear for an interview in connec-

tion with the petition when requested by USCIS, the investor's permanent resident status will be automatically terminated as of the second anniversary of the date on which the investor obtained permanent residence. The investor will be provided with written notification of the termination and the reasons therefore, and a notice to appear shall be issued placing the investor in removal proceedings. The investor may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the investor to establish by a preponderance of the evidence that he or she complied with the interview requirements. If the investor has failed to appear for a scheduled interview, he or she may submit a written request to USCIS asking that the interview be rescheduled or that the interview be waived. That request should explain his or her failure to appear for the scheduled interview, and if a request for waiver of the interview, the reasons such waiver should be granted. If USCIS determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If USCIS waives the interview, USCIS shall restore the investor's conditional permanent resident status, cancel any outstanding notice to appear in accordance with 8 CFR 239.2, and proceed to adjudicate the investor's petition. If USCIS reschedules that investor's interview, USCIS shall restore the investor's conditional permanent resident status, and cancel any outstanding notice to appear in accordance with 8 CFR 239.2.

(c) *Adjudication of petition.* (1) The decision on the petition shall be made within 90 days of the date of filing or within 90 days of the interview, whichever is later. In adjudicating the petition, the director shall determine whether:

(i) [Reserved]

(ii) The alien invested or was actively in the process of investing the requisite capital; and

(iii) The alien sustained the actions described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section throughout the period of the alien's residence in the

United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence.

(iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a “troubled business” as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.

(2) If derogatory information is determined regarding any of these issues or it becomes known to the government that the investor obtained his or her investment funds through other than legal means, USCIS shall offer the investor the opportunity to rebut such information. If the investor fails to overcome such derogatory information or evidence that the investment funds were obtained through other than legal means, USCIS may deny the petition, terminate the investor’s permanent resident status, and issue a notice to appear. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the investor’s permanent resident status removed, regardless of any action taken or contemplated regarding other possible grounds for removal.

(d) *Decision*—(1) *Approval*. If, after initial review or after the interview, USCIS approves the petition, USCIS will remove the conditional basis of the investor’s permanent resident status as of the second anniversary of the date on which the investor acquired conditional permanent residence. USCIS shall provide written notice of the decision to the investor. USCIS may request the investor and derivative family members to appear for biometrics at a USCIS facility for proc-

essing for a new Permanent Resident Card.

(2) *Denial*. If, after initial review or after the interview, USCIS denies the petition, USCIS will provide written notice to the investor of the decision and the reason(s) therefore, and shall issue a notice to appear. The investor’s lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of USCIS’ written decision. The investor shall also be instructed to surrender any Permanent Resident Card previously issued by USCIS. No appeal shall lie from this decision; however, the investor may seek review of the decision in removal proceedings. In proceedings, the burden shall rest with USCIS to establish by a preponderance of the evidence that the facts and information in the investor’s petition for removal of conditions are not true and that the petition was properly denied.

[59 FR 26591, May 23, 1994, as amended at 63 FR 70315, Dec. 21, 1998; 74 FR 26939, June 5, 2009; 84 FR 35809, July 24, 2019; 85 FR 46925, Aug. 3, 2020]

## PART 217—VISA WAIVER PROGRAM

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AUTHORITY: 8 U.S.C. 1103, 1187; 8 CFR part 2.

SOURCE: 53 FR 24901, June 30, 1988, unless otherwise noted.

### § 217.1 Scope.

The Visa Waiver Program (VWP) described in this section is established pursuant to the provisions of section 217 of the Act.

[62 FR 10351, Mar. 6, 1997, as amended at 87 FR 18980, Apr. 1, 2022]

### § 217.2 Eligibility.

(a) *Definitions*. As used in this part, the term: